Hearing Date: July 31, 2009
J:\MANDATES\2003\tc\03-tc-04\tc\refiled test claim\toc.doc

ITEM 3

TEST CLAIM
FINAL STAFF ANALYSIS

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3

Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, and Signal Hill, Co-claimants

On Remand from the Los Angeles County Superior Court
(Consolidated Case Nos. BS089769 and BS089785)
County of Los Angeles et al. v. Commission on State Mandates (2007) 150 Cal.App.4th 898

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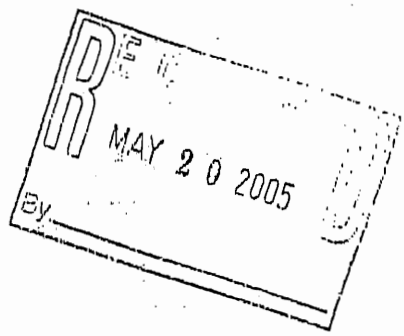

ORIGINAL FILED
MAY 2 4 2005
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

COUNTY OF LOS ANGELES, et al. Petitioners/Plaintiffs, v. STATE OF CALIFORNIA; et al. Respondents/Defendants.	Consolidated Case Nos. BS089769 and BS089785 [Assigned to the Hon. Victoria G. Chaney] **PEREMPTORY WRIT OF MANDATE** Date: May 10, 2005 Dept.: 324
And Real Pat-ties in Interest City of Agoura Hills, et al.	Action Filed: April 28, 2004
CITY OF ARTESIA, a municipal corporation; et al. Petitioners/Plaintiffs, v. STATE OF CALIFORNIA, et al. Respondents/Defendants.	

TO RESPONDENT COMMISSION ON STATE MANDATES:

WHEREAS judgment has been entered in this action ordering that a peremptory writ of mandate be issued from this Court,

THEREFORE, YOU ARE HEREBY COMMANDED:

(a) to set aside your decisions dated March 25, 2004, affirming your Executive Director's rejections of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21;

(b) to fully consider Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21 in light of this Court's judgment and determine whether the Claimants are entitled to reimbursement. In doing so, you should not apply that portion of Government Code § 175 16 which states, "'Executive Order' does not include any order, plan, requirement, rule or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code;" and

(c) to take further action specifically enjoined on you by law.

YOU ARE FURTHER COMMANDED to make and file a return to this writ within ninety (90) days from the date a copy of this writ is served on you showing what you have done to comply with this writ.

Dated: May 24 2005

LOS ANGELES COUNTY SUPERIOR COURT CLERK

By: _____
E. SASALBURU, DEPUTY

LET THE FOREGOING WRIT ISSUE.

Dated: May 24 2005

Victria Gerrard Cheney
Superior Court Judge

SUPERIOR COURT, LOS ANGELES COUNTY, CALIFORNIA

APPROVED AS TO FORM:

BURHEN-N & GEST LLP

By: _____
Howard Gest
Attorneys for Petitioners

COMMISSION ON STATE MANDATES

By: _____
Paul M. Starkey
Attorney for Respondent
Commission on State Mandates

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On May 26, 2005, I served the foregoing document, described as

PEREMPTORY WRIT OF MANDATE

in this action by placing

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

Commission on State Mandates
c/o Paul Starkey, Chief Legal Counsel
Commission Counsel
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 26, 2005 at Los Angeles, California.

Danette Armstead

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On May 26, 2005, I served the foregoing document, described as

NOTICE OF ENTRY OF JUDGMENT AND ISSUANCE OF WRIT OF MANDATE

in this action by placing

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

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Executed on May 26, 2005 at Los Angeles, California.

Danette Armstead

SERVICE LIST *County of Los Angeles et al. v. State of California; et al.;* *City of Artesia et al. v. State of California, et al.*	
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C

Court of Appeal, Second District, Division 3, California.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
COMMISSION ON STATE MANDATES, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
City of Artesia, etc., et al., Plaintiffs and Appellants,
v.
Commission on State Mandates, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
No. B183981.

May 10, 2007.

Background: County and cites presented test claims to California Commission on State Mandates, seeking reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board. Commission would not adjudicate claims on the ground that subvention was precluded by statute. County and cities sued Commission, seeking an order requiring State to reimburse them for carrying out new obligations, along with other relief. Commission and county and cities filed cross-motions for judgment on the pleadings. The Superior Court, Los Angeles County, Nos. BS089769 and BS089785,Victoria G. Chaney, J., entered partial grant of cross-motions. Trial court also granted in part the petitions by county and cities for a writ of mandate directing Commission to consider the test claims and determine whether county and cities were entitled to reimbursement. Commission appealed and county and cities cross-appealed.

Holdings: The Court of Appeal, Aldrich, J., held that (1) Commission forfeited its statute of limitations defense based on failure to raise it in trial court, and (2) question of whether obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by Commission.

Affirmed.

West Headnotes

[1] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
"Subvention" under constitutional provision concerning reimbursement to local government for state-mandated programs generally means grant of financial aid or assistance, or subsidy. West's Ann.Cal. Const. Art. 13B, § 6.

[2] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Constitutional rule of state subvention that requires state to pay for new governmental programs imposed on local governments does not require state to reimburse local agencies for any incidental cost that may result from enactment of state law; rather, subvention requirement is restricted to governmental services which local agency is required by state law to provide to its residents. West's Ann.Cal. Const. Art. 13B, § 6.

[3] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Constitutional rule of state subvention which requires state to reimburse local government for implementing required governmental programs is intended to prevent state from transferring costs of government from itself to local agencies. West's Ann.Cal. Const. Art. 13B, § 6.

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[4] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Under constitutional rule of state subvention which requires state to reimburse local government for governmentally imposed programs, reimbursement is required when state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb. West's Ann.Cal. Const. Art. 13B, § 6.

[5] Pleading 302 ⚿343

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k343 k. In General. Most Cited Cases

Pleading 302 ⚿350(2)

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k350 Application and Proceedings Thereon
302k350(2) k. Time for Proceedings. Most Cited Cases
A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired; the rules governing demurrers apply.

[6] Pleading 302 ⚿350(8)

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k350 Application and Proceedings Thereon
302k350(3) Hearing, Determination, and Relief
302k350(8) k. Matters Considered. Most Cited Cases
The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice.

[7] Appeal and Error 30 ⚿863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In General. Most Cited Cases
On review of a judgment on the pleadings, the appellate court must determine if the complaint states a cause of action as a matter of law.

[8] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
On review of a judgment on the pleadings, the appellate court reviews the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory.

[9] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases
In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence; however, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

[10] Mandamus 250 ⚿187.4

250 Mandamus

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250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.4 k. Presentation and Reservation in Lower Court of Grounds of Review. Most Cited Cases
On appeal from trial court's issuance of a writ of mandate directing the California Commission on State Mandates to set aside its decisions rejecting test claims of city and counties, which claims sought reimbursement pursuant to constitutional requirement for subvention for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit, Commission forfeited any right it may have had to assert 90-day statute of limitations defense, where Commission failed to raise the defense in its pleadings in the trial court. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.C.C.P. § 341.5.

[11] Limitation of Actions 241 ⚿180(2)

241 Limitation of Actions
241V Pleading, Evidence, Trial, and Review
241k180 Demurrer, Exception, or Motion Raising Defense
241k180(2) k. Matters Appearing on Face of Pleadings. Most Cited Cases
The time-bar of a statute of limitations may be raised by demurrer where the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, for the reason that it fails to state facts sufficient to state a cause of action.

[12] Limitation of Actions 241 ⚿182(5)

241 Limitation of Actions
241V Pleading, Evidence, Trial, and Review
241k181 Pleading Statute as Defense
241k182 Necessity
241k182(5) k. Waiver or Estoppel by Failure to Plead. Most Cited Cases
Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer.

[13] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
In proceedings initiated by county and cities against California Commission on State Mandates for reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board, the question of whether the obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by the Commission; although provision of Government Code would have excluded from subvention any order that included a permit issued by Regional Water Boards, that section was unconstitutional under article imposing subvention requirement whenever the Legislature "or any state agency" mandated a new program or higher level of service, making it necessary to determine whether state mandates existed. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17516(c).
See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 119-122; Cal. Jur. 3d, State of California, § 101 et seq.
West Codenotes
Held UnconstitutionalWest's Ann.Cal.Gov.Code § 17516(c) ****764** Raymond G. Fortner, Jr., County Counsel, Judith A. Fries, Principal Deputy County Counsel for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

Burhenn & Gest, Howard Gest, Los Angeles, and David Burhenn for Plaintiffs and Appellants County of Los Angeles, Los Angeles County Flood Control District and Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village.

Thomas F. Casey III, County Counsel, (San Mateo) and Miruni Soosaipillai, Deputy for City/County Association of Governments of San Mateo County, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Morrison & Foerster and Robert L. Falk, San Francisco, for Bay Area Stormwater Management Agencies Association, as Amicus Curiae on behalf of Plaintiffs and Appellants.

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Camille Shelton, Sacramento, and Eric D. Feller for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Tom Green and Mary E. Hackenbracht, Assistant Attorneys General, Helen G. Arens and Jennifer F. Novak, Deputy Attorneys General for Regional Water Quality Control Board, Los Angeles Region as Amicus Curiae on behalf of Defendant and Appellant.

ALDRICH, J.

***903** INTRODUCTION

The California Commission on State Mandates (the Commission) appeals from the judgment entered following the partial grant of cross-motions for judgment on the pleadings. The County of Los Angeles, the Los Angeles County Flood Control District, and the Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village (collectively, County/Cities) filed a cross-appeal from the judgment.

In 2001, the Regional Water Quality Control Board (Regional Water Board), Los Angeles Region, issued a National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater and urban runoff discharges, which obligated County/Cities to inspect industrial, ***904** commercial and construction water treatment facilities (which obligation County/Cities claim the State previously performed) and to install and maintain trash receptacles at transit stops.

County/Cities presented "test claims" [FN1] to the Executive Director of the Commission****765** seeking reimbursement for carrying out these obligations pursuant to the constitutional requirement for subvention arising from a state mandate (Cal. Const., art. XIII B, § 6). The Executive Director returned the claims unadjudicated, because they did not involve an executive order under section 17516 of the Government Code (Section 17516c). In denying the appeals of County/Cities, the Commission noted it was without authority to declare a statute unconstitutional and concluded that Section 17516c excludes from the subvention requirement any order, which includes a permit, issued by the Regional Water Boards of the State Water Resources Control Board (State Water Board).

> FN1. " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov.Code, § 17521.)

Section 6 of article XIII B of the California Constitution (article XIII B, section 6) provides in pertinent part: "Whenever the Legislature or *any state agency* mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...." (Italics added.)

As we shall discuss, Section 17516c is unconstitutional to the extent it exempts Regional Water Boards from the constitutional state mandate subvention requirement. Its creation of an exception for Regional Water Boards, which are state agencies, contravenes the plain, unequivocal, and all-inclusive reference to "any state agency" in article XIII B, section 6. Moreover, a contrary conclusion is not compelled by virtue of the fact that Section 17516c essentially mirrors the language of section 2209, subdivision (c) (§ 2209(c)) of the Revenue and Taxation Code. A statute cannot trump the constitution.

We decline to consider the Commission's new claim that the constitutional challenge to Section 17516c by County/Cities is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure. This statute of limitations defense, which should have been raised before the trial court, is not cognizable on this appeal.

***905** The Commission urges that should this court conclude Section 17516c is unconstitutional, the appropriate remedy is to afford the Commission the opportunity to pass on the merits of the subject test claims on the issues of whether: (1) the subject permit qualifies as a state mandated program under article XIII B, section 6; (2) the permit amounts to a new program or higher level of service; and (3) the permit imposes costs on local entities (Gov.Code, §§ 17514, 17556). We find its position persuasive.

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The cross-appeal filed by County/Cities is premised on the theory that if subvention of funds from the Commission is foreclosed by Section 17516c, County/Cities are entitled to pursue an independent action against the Regional Water Board, Los Angeles Region (LA Regional Water Board). This cross-appeal, which is simply protective in nature, is moot.

In sum, we uphold the trial court's issuance of a writ of mandate directing the Commission to set aside its decisions affirming its Executive Director's rejections of the subject test claims and to consider fully these test claims and determine whether County/Cities are entitled to reimbursement without consideration of Section 17516c, and we affirm the judgment in its entirety.

BACKGROUND

1. *Article XIII B, section 6, Subvention of Funds for State Mandates*

"The electorate approved Proposition 4 in 1979, thus adding article XIII B to the **766 state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called 'Spirit of 13,' imposed a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) This measure also "provided [for] reimbursement to local governments for the costs of complying with certain requirements mandated by the state." (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 275 Cal.Rptr. 449.)

"[V]oters were told that section 6 of Proposition 4 was intended to prevent state government attempts 'to force programs on local governments without the state paying for them.' (Ballot Pamp., Special Statewide Elec. [(Nov. 6, 1979)] p. 18.)" (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784; see also, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202 [intent was not all local costs arising from compliance with state law to be reimbursable; rather, intent was to prevent "the perceived *906 attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public"].)

"Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [Citation.] The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the 'state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,' read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, italics original; see also, *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318 [a reimbursement requirement was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources"].)

Article XIII B, section 6 provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide such a subvention of funds for the following mandates. [¶] (1) Legislative mandates requested by the local agency affected. [¶] (2) Legislation defining a new crime or changing an existing definition of a crime. [¶] (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[1] " 'Subvention' generally means a grant of financial aid or assistance, or a **767 subsidy. [Citation.]

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As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

[2][3][4] "Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.] This does not mean that the state is required to ***907** reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by state law to provide to its residents. [Citation.] The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. [Citation.] Reimbursement is required when the state 'freely chooses to impose on local agencies *any* peculiarly "governmental" cost which they were not previously required to absorb.' [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, at 1577-1578, 15 Cal.Rptr.2d 547.)

The subvention requirement of article XIII B, section 6 is triggered if "the Legislature or any state agency" mandates a new program or higher level of service. (Art. XIII B, § 6.) Such requirement is inapplicable where the additional costs on local governments are imposed by a federal mandate, i.e., the federal government. Article XIII B, section 9, subdivision (b), defines federally mandated appropriations as those "required to comply with mandates of the courts or the federal government which, *without discretion,* require an expenditure for additional services or which *unavoidably make the provision of existing services more costly.*" [FN2] (Italics added.)

> FN2. "In 1980, after the adoption of article XIII B, [the Legislature] amended the statutory definition of 'costs mandated by the federal government' to provide that these include 'costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties* or *loss of funds* to *public or private persons* in the state....' (Rev. & Tax.Code, § 2206, italics added; Stats.1980, ch. 1256, § 3, p. 4247.)" (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 75, 266 Cal.Rptr. 139, 785 P.2d 522.)
>
> There is no precise formula or rule for determining whether the "costs" are the product of a federal mandate. Our Supreme Court explained: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary." (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

2. *Existence of State Mandate Matter for the Commission*

Whether a particular cost incurred by a local government arises from carrying out a state mandate for which subvention is required under article XIII B, section 6, is a matter for the Commission to determine in the first instance.

908** A local government initiates the process for subvention under article XIII B, section 6 by filing a claim with the Commission.*768** (Gov.Code, § 17521; cf. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89, 61 Cal.Rptr.2d 134, 931 P.2d 312 [futility exception to exhaustion of administrative remedies doctrine applicable to failure to file claim before Commission].) The initial claim is referred to as a "test claim." (Gov.Code, § 17521.)

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"The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov.Code, § 17500.)" (*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.) The provisions of Government Code sections 17500 et seq."provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by"article XIII B, section 6. (Gov.Code, § 17552.)

"It created a 'quasi-judicial body' (*ibid.*) called the Commission on State Mandates ... ([Gov.Code], § 17525) to 'hear and decide upon [any] claim' by a local government that the local government 'is entitled to be reimbursed by the state for costs' as required by article XIII B, section 6. (Gov.Code, § 17551, subd. (a).) It defined 'costs' as 'costs mandated by the state'-'any increased costs' that the local government 'is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program' within the meaning of article XIII B, section 6. (Gov.Code, § 17514.) Finally, in section 17556(d) it declared that 'The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that' the local government 'has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.' "(*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.)

3. *Regional Water Board Order Not "Executive Order"*

Section 17516c defines, in pertinent part, an " '[e]xecutive order' [as] any order, plan, requirement, rule, or regulation issued by ... [a]ny agency ... of state government[,]' " except an " '[e]xecutive order' does not include any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code." [FN3](Added by Stats.1984, ch. 1459, § 1.)

FN3. Section 17516c further provides: "It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

LA Regional Water Board argues the trial court's ruling sustaining its demurrer to the fourth cause of action for a writ of mandate directing it to delete the subject two obligations under the Permit as violative of section 17516 should be upheld, because section 17516"applies to construction of major waste treatment facilities, not trash receptacles or inspections." This analysis, however, is inconsistent with the plain language of section 17516 in its entirety.

***909** In light of the above definition, the subject permit issued by an order of the LA Regional Water Board cannot constitute an "executive order implementing any statute[,] ... which mandates a new program or higher level of service of an existing program within the meaning of" the ****769** article XIII B, section 6 requirement of subvention of funds to local governments for carrying out a state mandate. (Gov.Code, § 17514.)

4. *Procedural Posture*

LA Regional Water Board issued Order No. 01-182, which adopted NPDES Permit No. CAS004001 (Permit). This Permit imposed two obligations on County/Cities for the purpose of regulating municipal stormwater and urban runoff discharges in Los Angeles County. The first required County/Cities to inspect industrial, commercial and construction sites to ensure compliance with the law, and the other required County/Cities to install and maintain trash receptacles at transit stops.

County/Cities filed four test claims, i.e., Test Claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, seeking reimbursement of costs for carrying out these obligations. The Executive Director rejected these

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test claims as excluded from subvention pursuant to Section 17516c.

In the administrative appeals, the Commission found it was bound by Section 17516c, upheld its executive director's decision, and denied the appeals.

In their amended and consolidated petitions and complaints, County/Cities sought, among other things: (1) an order requiring the State to reimburse them for the new programs or higher level of service under the permit or, alternatively, to allow them to offset payment of permit and other fees or moneys owed or to be transferred to the State against their costs; (2) an order enjoining State from refusing to reimburse them in the future; or, alternatively, (3) a preemptory writ of mandate directing the Commission to accept their test claims and find they are entitled to reimbursement; (4) a declaration that section 17516 is unconstitutional; (5) a preemptory writ of mandate directing LA Regional Water Board either to delete or not ***910** enforce the subject obligations under the permit; and (6) a stay of the challenged portions of the permit.

The Commission and County/Cities filed cross-motions for judgment on the pleadings. The trial court granted the Commission's motion as to the second cause of action for declaratory relief. The court explained: "The only actual controversy between [County/Cities] and [Commission] is whether [County/Cities]' claims should be deemed reimbursable. The sole and exclusive procedure by which to adjudicate this controversy is a mandate action under Code of Civil Procedure section 1094.5. ([Government Code s]ections 17552, 17559.) The only pertinent relief under ...section 1094.5 is a finding that [the Commission] 'has not proceeded in the manner required by law.' Declaratory relief is not available."

After construing the motion addressed to the third cause of action as a motion to strike improper requested relief, the court granted the motion and struck that part of the third cause of action requesting an order directing the Commission to find their claims to be reimbursable on the ground "[t]he court has no power at this time to do so. [Citations.]"

Turning to County/Cities' motion for judgment on the pleadings, the trial court granted the motion as to the third cause of action for extraordinary writ relief, except as to the stricken request for improper relief.[FN4]

> FN4. In the third cause of action, County/Cities sought a writ of mandate (Code Civ. Proc., § 1094.5) compelling a court finding that section 17516 was unconstitutional on its face or as applied in this action and directing the Commission to accept their test claims for filing and approving them for reimbursement.

The court found that to the extent Section 17516c excepted the orders of Regional****770** Water Boards from the definition of "executive orders," Section 17516c was unconstitutional in that it expressly contravened article XIII B, section 6. The court ordered the Commission to set aside its order affirming its executive director's rejections of the four test claims and to consider these claims on the merits.

In granting in part County/Cities' petitions for a writ of mandate, the trial court found the Commission, "though it proceeded as required by statutory law, as it was constrained to do, has not proceeded as required by superior constitutional law. (Code Civ. Proc., [§]1094.5, subd. (a).) The question whether [County/Cities] state valid claims for reimbursement must be remanded to [C]ommission, which is ordered to consider [these] claims on their merits. [Citations.]"

***911** A peremptory writ of mandate was issued on May 24, 2005. Judgment was entered the same date. This appeal and cross-appeal followed.

STANDARD OF REVIEW

[5][6][7][8] "The standard for reviewing a judgment on the pleadings is settled: 'A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired. The rules governing demurrers apply. [Citation.] The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice. [Citations.] On review we must determine if the complaint states a cause of action as a matter of law.' [Citation.] 'We review the complaint de novo to determine whether [it] alleges facts sufficient to state a cause of action under any legal

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theory. [Citation.]' [Citation.]" (*McCormick v. Travelers Ins. Co.* (2001) 86 Cal.App.4th 404, 408, 103 Cal.Rptr.2d 258.)

[9] "In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407, 216 Cal.Rptr. 782, 703 P.2d 122.) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)"(*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 394, 69 Cal.Rptr.2d 231.)

DISCUSSION

1. *Defense of Statute of Limitations Forfeited*

[10] On appeal for the first time, the Commission asserts the challenge of County/Cities to the constitutionality of Section 17156c is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure, which governs the timeliness of actions challenging the constitutionality of state funding for municipalities, school districts, special districts, and local agencies.

Code of Civil Procedure section 341.5 provides: "Notwithstanding any other provision of law, any action or proceeding in which a county, city, city and county, school district, special district, or any other local agency is a plaintiff or petitioner, that is brought against the State of California challenging the constitutionality of any statute relating to state funding for counties, cities, cities and counties, school districts, special districts, or other local agencies, shall be commenced within 90 days of the effective date of the ***912** statute at issue in the action. For purposes of this section, 'State of California' means the State of California itself, or any of its agencies, departments, commissions, boards, or public officials." (Added by ****771** Stats.1994, ch. 155 (Assem. Bill No. 860), § 1, eff. July 11, 1994; amended by Stats.1994, ch. 156 (Sen. Bill No. 2127), § 1, eff. July 11, 1994.)

The Commission argues the constitutional challenge to Section 17516c is time-barred, because: "Government Code section 17500 et seq., including section 17516, relates to state funding for counties and cities relative to state-mandated local programs.... [S]ection 17516 was enacted in 1984 and became effective January 1, 1985. The petition in this case challenging section 17516 as unconstitutional was filed April 28, 2004[,]" which was more than 90 days after the effective date of section 17516.

[11][12] The time-bar of a statute of limitations may be raised by demurrer "[w]here the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, [for the reason that] it fails to state facts sufficient to state a cause of action. [Citation.]" (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, 30 Cal.Rptr.3d 588.) Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer. (See e.g., *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581, 15 Cal.Rptr. 641, 364 P.2d 473; *Davies v. Krasna* (1975) 14 Cal.3d 502, 508, 121 Cal.Rptr. 705, 535 P.2d 1161; *Mitchell v. County Sanitation District No. 1 of Los Angeles County* (1957) 150 Cal.App.2d 366, 371, 309 P.2d 930; see also, Code Civ. Proc., § 458.)

As the Commission concedes, it did not raise "[Code of Civil Procedure] section 341.5 as an affirmative defense in its pleadings in the trial court." This omission signifies that the Commission therefore has forfeited any right it may have had to assert section 341.5 to bar, as untimely, the claims of County/Cities to the constitutionality of Section 17516c.

For a contrary conclusion, the Commission argues "the statute of limitations to challenge an administrative action is jurisdictional and should not be considered waived. (*United Farm Workers of America v. Agricultural Labor Relations Board* (1977) 74 Cal.App.3d 347, 350, 141 Cal.Rptr. 437; *Tielsch v. City of Anaheim* (1984) 160 Cal.App.3d 576, 578, 206 Cal.Rptr. 740; *Donnellan v. City of Novato* (2001) 86 Cal.App.4th 1097, 1103, 103 Cal.Rptr.2d 882.) If a time limit in a mandamus proceeding is held to be jurisdictional, estoppel or waiver cannot extend the time. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666, 674, 125 Cal.Rptr. 757, 542 P.2d 1349.)"

***913** The Commission's fall-back position is that this court should exercise its discretion to determine the applicability of the time-bar, because this "issue is a

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question of law rather than of fact" and "[t]his matter affects the public interest since [County/Cities] are seeking reimbursement from the state for costs incurred to comply with a permit" issued by the LA Regional Water Board. In other words, "taxpayers statewide could unjustly suffer the consequences of funding a local program if Code of Civil Procedure section 341.5 is not considered and ...section 17516 is held to be unconstitutional." As authority, the Commission relies primarily on *City of Sacramento v. State of California* (1990) 50 Cal.3d at pages 64-65, 266 Cal.Rptr. 139, 785 P.2d 522 [where issue of law rather than fact raised, public-interest exception governs over collateral estoppel bar] and *Connell v. Superior Court, supra,* 59 Cal.App.4th at pages 387-388, 396-397, 69 Cal.Rptr.2d 231 [public interest exception applicable to allow review of question of law as to whether recycled waste water regulation constituted reimbursable state mandate].)

Neither of the Commission's positions is successful. In the first instance, the time-**772 bar of section 341.5 of the Code of Civil Procedure applies to a challenge to the constitutionality of any statute relating to state funding for counties and other local governmental entities, *not* to a challenge to an action by an administrative agency. As for the second, neither *City of Sacramento* nor *Connell* stand for the proposition that the bar of the applicable statute of limitations may be raised for the first time on appeal.

Additionally, the Commission's characterization of the public interest to be served is a non sequitur. If section 17516 were in fact unconstitutional, it does not follow that "taxpayers statewide could *unjustly* suffer the consequences of funding a local program[.]" (Italics added.) How could such funding result in injustice when any requirement of reimbursement to local governments would be under the constitutional compulsion of article XIII B, section 6?

2. *Existence of Federal or State Mandate Issue for the Commission*

[13] It is undisputed that a federal mandate is not subject to the subvention requirement of article XIII B, section 6 for a state mandate. Accordingly, if the Permit, including the subject two obligations thereunder, constitutes a federal mandate, the constitutionality of Section 17516c is not implicated, and thus, no issue as to its constitutionality is before this court to address on the merits. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912, 83 Cal.Rptr. 670, 464 P.2d 126 ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court."].)

*914 In its amicus curiae brief, LA Regional Water Board takes the position that, as a matter of law, Section 17516c is consistent with article XIII B, section 6 (and thus not unconstitutional) "to the extent Division 7, Chapter 5.5 (commencing with Water Code section 13370)" simply implements federal mandates under the Clean Water Act (33 U.S.C. § 1342(b)). The water boards, i.e., the State Water Board and its Regional Water Boards, implement the federal permit program under Chapter 5.5, which the California Legislature enacted to by-pass administration of such program directly by the federal Environmental Protection Agency.

LA Regional Water Board takes the further position that the federal mandate nature of its NPDES permits remains constant although it exercises discretion to control the discharge of pollutants through municipal stormwater programs not appearing in federal regulations. Specifically, LA Regional Water Board argues: "When a state [Regional Water Board] issues an NPDES permit requiring municipalities to inspect facilities as a means of controlling their discharge of pollutants, this is not shifting state responsibilities onto local agencies [, because f]ederal law imposes inspection requirements upon municipal permittees."

As for the trash receptacle obligation, LA Regional Water Board points out the Clean Water Act allows the use of programs to control discharge of pollutants in connection with a municipal stormwater permit and argues one such program under the Permit is the ability of "municipalities to employ 'Best Management Practices' (BMPs) to ... attain water quality standards." It identifies "[t]he Permit's trash receptacle requirement as one such [BMP]."

It further argues that the trash receptacle obligation cannot be deemed a state-mandated program, because it is not "an absolute requirement. Any permittee may petition the Regional Water Board to substitute another equally effective BMP for one included within the Permit.[ ] [For instance, i]f a permittee demonstrates that **773 a pre-existing program or level of

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service will be equally effective in controlling pollution, it may seek to substitute that program."

We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances. As explained ante, the existence of a federal, as contrasted with a state, mandate is not easily ascertainable.

By letter, we invited the parties and LA Regional Water Board to address whether an obligation under an NPDES permit by a Regional Water Board can qualify as a state mandate within the meaning of article XIII B, section 6, assuming an NPDES permit itself qualified as a federal mandate, and if so, ***915** why each of the subject two obligations does or does not constitute a state mandate. We have received their responses.

a. *"NPDES" Permits Issued by Regional Water Boards*

"California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862(*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76; *WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389.)

For purposes of this case, the important point is described by the California Supreme Court in *Burbank:* "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* [(1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239].) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional [water] boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)" (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

"California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional [water] boards, overseen by the State [Water] Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional [Water] Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)" [FN5] (*City of Rancho Cucamonga***774 v. Regional Water Quality *916 Control Bd.* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In a related case, Division Five of this District upheld the authority of LA Regional Water Board to issue the Permit here. (*County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 999-1000, 50 Cal.Rptr.3d 619 [holding the nine Regional Water Boards authorized under state law to issue NPDES permits] review den.)

FN5. In pertinent part, article XIII B, section 6, provides: "[T]he Legislature may, but need not, provide a subvention of funds for the following mandates: [¶] ... [¶] (3)Legislative mandates enacted prior to January 1, 1995, or executive orders ... initially implementing legislation enacted prior to January 1, 1975." (Art. XIII B, § 6, subd. par. (a)(3).) LA Regional Water Board argues that subvention under article XIII B, section 6, is not required as to the Permit, because it is an executive order implementing the Porter-Cologne Act, (Wat. Code, § 13020 et seq.) which is legislation enacted in 1969. This argument fails for the reason that the executive order resulting in the 2001 Permit was not one "*initially* " implementing such pre-1975 legislation. Equally unsuccessful is LA Regional Water Board's apparent argument that Section 17516c should be deemed constitutional for the reason that "most of" the Porter-Cologne Act (Division 7) was enacted prior to 1975. The fatal fallacy of this position is that the exclusion of

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Section 17516c applies to all orders issued pursuant to Division 7 *regardless* of the date the statute in question was enacted.

b. *Potential Federal and State Components of NPDES Permit*

As expected, LA Regional Water Board contends that as in the case of NPDES "permits as a whole, the individual conditions of an NPDES permit are federally required to meet the mandates of the Clean Water Act."It argues: "The Permit is federally required. The conditions within it are federally required to implement the Clean Water Act's mandates. The two cannot be separated into a 'federal' permit with 'state' conditions. [Citation.]"

County/Cities respond, contrariwise, that "[a]n NPDES permit can contain both federal and non[-]federal requirements." As case authority, they rely primarily on *Burbank, supra,* 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862.Our Supreme Court concluded that under the supremacy clause of the federal Constitution, a Regional Water Board must comply with the federal Clean Water Act in issuing an NPDES permit. (*Id.* at pp. 626-627, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Nonetheless, "[u]nder the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not 'less stringent' than those set out in the Clean Water Act [citation]." (*Id.* at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Court thus acknowledged in *Burbank* that an NPDES permit may contain terms federally mandated and terms exceeding federal law. (See also, *Burbank, supra,* at pp. 618, 628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) County/Cities also point out that the potential for non-federally mandated components of an NPDES permit is acknowledged under both federal law [FN6] and state law.[FN7]

FN6. In this regard, they rely on this federal statute: "Except as expressly provided in this Act [33 USCS §§ 1251 et seq.], nothing in this Act [33 USCS §§ 1251 et seq.] shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation ... is in effect under this Act [33 USCS §§ 1251 et seq.], such State [, etc.] ... may not adopt or enforce any effluent limitation or other limitation ... which is less stringent than the effluent limitation, or other limitation...." (33 U.S.C. § 1370.)

FN7. On this point, they rely on this statutory provision: "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Wat.Code, § 13377.)

****775 *917** Additionally, County/Cities argue "that an obligation imposed on a municipality arises as a result of a federal law or program does not, in and of itself, render that obligation a federal mandate." Rather, they assert that to qualify as a federal mandate, "federal law itself must impose the obligation upon the municipality." They point out Government Code section 17556 provides that costs flowing from a federal mandate may be subject to subvention if such costs exceed such mandate.[FN8] They also cite two cases in support of their position.

FN8. Government Code section 17556, subdivision (c), provides: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds ... [¶] ... [¶][t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *San Diego Unified School Dist. v. Commission on*

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State Mandates (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, our Supreme Court concluded the costs incurred by school districts in holding mandatory expulsion hearings under Education Code section 48915 were state mandates subject to subvention under article XIII B, section 6. The court explained that expulsion was mandated under the Education Code, rather than federal law, and thus, the fact the costs were incurred to comport with federal due process, a federal mandate, was not controlling. (*San Diego Unified School Dist. v. Commission on State Mandates, supra,* at pp. 880-882, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In the other case, *Hayes v. Commission on State Mandates, supra,* 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the appellate court concluded that the finding a mandate was federal turned on whether "the state freely chose to impose the costs upon the local agency as a means of implementing a federal program" and that under these circumstances, "the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Id.* at p. 1594, 15 Cal.Rptr.2d 547.)

c. *Existence of State Mandates Matter for the Commission*

A review of the pleadings and the matters that may be judicially noticed (Evid.Code, §§ 451, 452, 459) leads to the inescapable conclusion that whether the two obligations in question constitute federal or state mandates presents factual issues which must be addressed in the first instance by the ***918** Commission if Section 17516c were found to be unconstitutional. Resolution of the federal or state nature of these obligations therefore is premature and, thus, not properly before this court.

In its response, the Commission argues that if this court determines Section 17516c is unconstitutional, the subject test claims "should be remanded to ... Commission to 'decide in the first instance whether a local agency is entitled to reimbursement under [article XIII B,] section 6[.]'(*Lucia Mar Unified School District v. Honig [, supra,]* 44 Cal.3d 830, 837 [244 Cal.Rptr. 677, 750 P.2d 318]; Gov.Code, § 17552.)"

The Commission stated that on such remand, it would apply the following cases in determining whether state mandates exist: *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, which sets forth various factors and criteria for determining whether the federal program imposes a mandate on the state; *Hayes v. Commission on State Mandates, supra,* 11 Cal.App.4th 1564, 15 ****776** Cal.Rptr.2d 547, which it contends "provides guidance on whether the state, in turn, has mandated a federal program on the local governments"; *Long Beach Unified Sch. Dist. v. State of California, supra,* 225 Cal.App.3d 155, 275 Cal.Rptr. 449, which analyzes whether the state-mandated activities exceed federal requirements; and *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, which also provides guidance on this same issue.

3. *"Executive Order" under Revenue and Taxation Code Not Probative*

The Commission contends the exclusion of orders of the Regional Water Boards from the definition of "executive order" in Section 17516c does not contravene article XIII B, section 6, because section 17516 derives from the definition of "executive order" in Revenue and Taxation Code section 2209, [FN9] of which the voters were presumed to have known to exist ***919** when they adopted Proposition 4 (i.e., art. XIII B, § 6) in 1979, and thus, Proposition 4 intended to endorse and continue such exclusion from the definition of "executive order" which was later carried over to Section 17516c. We disagree.

FN9. Revenue and Taxation Code section 2209(c) provides: " 'Executive order' means any order, plan, requirement, rule or regulation issued ... [¶] ... [¶][b]y any agency ... of state government; provided that the term 'executive order' shall not include any order ... issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

"It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned discharges which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial as-

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> sistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.
>
> " 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."(Rev. & Tax Code, § 2209(c); added by Stats.1974, ch. 457, p. 1079, § 2 and amended by Stats.1975, ch. 486, p. 998, § 2, eff. Sept. 2, 1975.)

We further disagree with the Commission's reliance on a presumption that when the voters adopted Proposition 1A in November 2004, they knew of, and thus, necessarily approved of Section 17516c's exclusion of orders of Regional Water Boards from the definition of "executive order."

Our focus, instead, must be on the import of article XIII B, section 6, not on the pre-constitutional scheme for subvention of funds to local agencies of which section 2209 of the Revenue and Taxation Code was part. As our Supreme Court instructs: "In construing the meaning of the constitutional provision (i.e., article XIII B, section 6), our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. [Citation.]" (*County of Los Angeles v. California, supra,* 43 Cal.3d 46, at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

The subvention requirement of article XIII B, section 6 applies "[w]henever the Legislature or any state agency mandates a new program or higher level of service...." The all-encompassing "any state agency" language defeats any perceived presumption that the electorate intended to incorporate into article XIII B, section 6 the exclusion of a particular state agency, e.g., the Regional Water Board, from its subvention requirement.

**777 4. *Section 17516c Unconstitutional as to Regional Water Boards*

LA Regional Water Board argues in its amicus brief that Section 17516c is constitutional for the additional reason that its exemption from the subvention requirement of article XIII B, section 6, is "appropriate because the Water Boards regulate water pollution with an even hand. Whether the pollution originates from a local public agency or a private industrial source, the Water Boards must assure their permits protect water quality consistent with state and federal law."

This argument is not persuasive. Whether the permit in question issued by Regional Water Boards governs both public and private pollution dischargers to the same extent presents factual issues not yet resolved. In any event, the applicability of permits to public and private discharges does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6. (See *Carmel Valley Fire Protection Dist. v. State of* ***920** *California* (1987) 190 Cal.App.3d 521, 530-531, 534, 537, 541, 234 Cal.Rptr. 795 [executive orders for protective fire clothing and equipment state mandated even if record, which was incomplete, revealed private sector firefighters also subject to the executive orders].)

In contrast, the constitutional infirmity of Section 17516c is readily apparent from its plain language that the definition of " '[e]xecutive order' does not include *any* order, plan, requirement, rule, or regulation *issued by the State Water ... Board or by any regional water ... board* pursuant to Division 7 (commencing with Section 13000) of the Water Code."(§ 17516c, italics added.) This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of article XIII B, section 6 that subvention of funds is required "[w]henever ...*any state agency* mandates a new program or higher level of service on any local government ...." [FN10] (§ 17516c, italics added.) We therefore conclude that Section 17516c is unconstitutional to the extent it excludes "any order ... issued by ... any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code" from the definition of " 'executive order.' "

> FN10. At oral argument, when asked to identify the public policy or other reason that would be served by exempting Regional Water Boards from the constitutional subvention requirement, counsel for LA Re-

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> gional Water Board responded exemption is warranted, because water is an important concern. No one can quarrel with the fact water plays an important role in California. Nonetheless, this reason does not compel the conclusion that an exemption should be carved out for Regional Water Boards as contrasted with those state agencies which regulate other important state interests.

This conclusion leads to the further conclusion that whether one or both of the subject two obligations constitutes a state mandate necessitating subvention of funds under article XIII B, section 6 is an issue that must in the first instance be resolved by the Commission. Accordingly, we uphold the trial court's issuance of a writ of mandate directing the Commission to vacate its decisions affirming its executive director's rejection of the four test claims and to consider these claims on the merits.

5. *Cross-Appeal Moot*

County/Cities filed a protective cross-appeal from the judgment to the extent the trial court dismissed the portions of their writ of mandate petitions against LA Regional Water Board.[FN11] The threshold ****778** issue raised is whether County/Cities are entitled to proceed directly in superior court against LA ***921** Regional Water Board for reimbursement relief if they are statutorily precluded from obtaining a hearing before the Commission.

> FN11. The trial court sustained the demurrer to the fourth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the inspection and trash receptacle obligations. The court granted its own motion for judgment on the pleadings without leave to amend as to LA Regional Water Board on the first cause of action for a writ of mandate directing reimbursement; the second cause of action for declaratory relief; and the fifth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the subject obligations.

County/Cities' position is they are entitled to a hearing on the merits of their claims before either the Commission or LA Regional Water Board. If this court determines the Commission's jurisdiction is exclusive, the Commission must afford them a hearing and determine the merits of their subvention claim under article XIII B, section 6. If not exclusive, County/Cities must be allowed to seek relief directly against Regional Water Board before the superior court.

LA Regional Water Board argues County/Cities have no right to seek subvention relief from a Regional Water Board, because reimbursement of costs mandated by state must be pursued through the statutory subvention scheme, which is "the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B...." (Gov.Code, § 17552.) Their claims thus must be addressed exclusively to the Commission in first instance.

The cross-appeal against LA Regional Water Board is moot in light of our above conclusion that the Commission is to hear and determine the merits of the County/Cities' test claims. We therefore do not reach the merits of the issues raised in the cross-appeal.

CONCLUSION

Section 17516c is unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of "executive orders" for which subvention of funds to local governments for carrying out state mandates is required pursuant to article XIII B, section 6. The trial court therefore properly issued a writ of mandate directing the Commission to resolve the four test claims on the merits without reference to Section 17516c. In light of this conclusion, we need not, and therefore do not, address the issues raised on the now moot cross-appeal.

***922** DISPOSITION

The judgment is affirmed. Each party shall bear its own costs on appeal and cross-appeal.

We concur: KLEIN, P.J., and CROSKEY, J.
Cal.App. 2 Dist.,2007.
County of Los Angeles v. Commission on State Mandates

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150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622

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COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-54[illegible]

J. TYLER McCAULEY
AUDITOR-CONTROLLER

RECEIVED
OCT 18 2007
COMMISSION ON
STATE MANDATES

September 2, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

We submit and enclose herewith a test claim to obtain timely and complete reimbursement for Los Angeles County's Transit Trash Receptacles Program, now required under the California Regional Water Quality Control Board's Executive Order Number 01-182, issued on December 13, 2001.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

For J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916)323-3562
CSM 1 (12/89)

For Official Use Only
Claim No.

TEST CLAIM FORM

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person	**Telephone No.**
Leonard Kaye	(213) 974-8564

Address
500 West Temple Street, Room 603
Los Angeles, CA 90012

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of " costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	**Telephone No.**
J. Tyler McCauley Auditor-Controller	(213) 974-8301

Signature of Authorized Representative	**Date**
Marina Quinn for J. Tyler McCauley	9-2-03

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
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County of Los Angeles Test Claim
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Transit Trash Receptacles

Notice of Filing

The County of Los Angeles filed the referenced test claim on September 3, 2003 with the Commission on State Mandates of the State of California at the Commission's Office at 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Brief

The California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached herein as Exhibit 4), Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL (total maximum daily loads)], expressly mandates, in subsection c.3.[1], (on Permit page 49), that:

> "c. Permittees not subject to a trash TMDL shall:
>
> - - -
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [Emphasis added.]

The mandate to place and maintain trash receptacles at transit stops is new, not required under prior law. As noted in the declaration of Frank Kuo, Facilities Project Manager II in the Watershed Management Division of Los Angeles County's Department of Public Works, [attached as Exhibit 1], on page 2:

[1] California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL], subsection 3. is hereafter also referred to as the 'test claim legislation'.

> "... the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), requiring Los Angeles County to place and maintain trash receptacles at all transit stops within its jurisdiction, except for the Los Angeles River and Ballona Creek Watershed Management areas, was not required under prior law."

It should be noted that Los Angeles County is not now required to place and maintain trash receptacles at transit stops within the Los Angeles River and Ballona Creek Watershed Management areas and also was not so required under prior law.

Accordingly, the mandate to place and maintain trash receptacles at transit stops, is new --- without precedent.

In addition, the requirement, to place and maintain trash receptacles at transit stops, is not found in federal law.

Federal Law

As noted in the declaration of Frank Kuo, Facilities Project Manager II in the Watershed Management Division of Los Angeles County's Department of Public Works, [attached as Exhibit 1], on pages 1-2:

> " ... the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) mandate [requiring the placement and/or maintenance of trash receptacles at transit stops] was not, and currently is not, required under federal law.
>
> - - -
>
> ... federal law applies to Permittees subject to TMDL, as noted, on page 9, in the subject Permit:

> "Section 303(d) of the (federal) CWA (Clean Water Act) requires that the State identify a list of water-impaired bodies and develop and implement Total Maximum Daily Loads (TMDLs) for those water bodies (33 U.S.C. Section 1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, [and] still meet applicable water quality standards and protect beneficial uses."" [Emphasis added.]

It should be noted that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, pertains to "Permittees not subject to a trash TMDL" and, accordingly, not subject to federal law requiring the State to identify a list of water-impaired bodies and develop and implement Total Maximum Daily Loads.

Therefore, the placement and maintenance of trash receptacles at transit stops is not required under federal law.

In addition, no user fees and no other [federal or state] revenues are available to fund the new State mandate requiring the placement and maintenance of trash receptacles at transit stops.

No Other Funding

No other funding is available to comply with the State mandate, requiring the placement and maintenance of trash receptacles at transit stops. In this regard, Aras Ahmed, Associate Civil Engineer, in the Programs Development Division of Los Angeles County's Department of Public Works, states in his declaration [attached as Exhibit 2], on page 2, that:

> "... Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.)"

Mr. Ahmed, also indicates, on page 2 of his declaration, that:

> "... Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.)."

Moreover, charging a fee requires identifying which transit user deposited trash in the receptacle --- an impractical and expensive task. In addition, charging a fee for depositing trash could discourage the intended use of the trash receptacles and encourage discarding trash elsewhere --- precisely the result the test claim legislation was designed to avoid.

Therefore, no user fees or other funding is available to comply with the State mandate, requiring the placement and maintenance of trash receptacles at transit stops, as claimed herein.

5. State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

> (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as no federal law or regulation is implemented in the subject law as previously discussed .

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments as previously discussed.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the

costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature as previously discussed.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL, subsection c.3., as these disclaimers are all not applicable to the subject claim.

Scope of Work

Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), including:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.

2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.

3. Designing receptacle pad improvement, if needed.

4. Constructing and installing trash receptacle units.

5. Collecting trash and maintaining receptacles.

Aras Ahmed, Associate Civil Engineer, in the Programs Development Division of Los Angeles County's Department of Public Works, states in his declaration [attached as Exhibit 2], on pages 2 -3, that:

> "... the [above] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), and cost the County of Los Angeles in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a)."

Regarding the County's costs in performing the [above] duties, Mr. Ahmed has prepared a pertinent cost schedule, attached here as pages 4-5 of his declaration [found in Exhibit 2]. These costs are detailed as follows:

" **December 13, 2001 – October 31, 2002**

1. Identifying all transit stops within the jurisdiction

Job code (X3003087, Installation of NPDES trash receptacles)	$ 19, 989.17

August 1, 2002 – January 12, 2003

2. Selecting the proper trash receptacle design, evaluating proper placement of trash receptacles, specification and drawing preparation

Job code (X3003087)	$ 38,461.87

August 1, 2002 – January 12, 2003

3. Preliminary engineering works (Construction contract preparation and specification reviewing process, Bid advertising and awarding process)

Job code (X3003087)	$ 19,662.02

January 12, 2003 – April 11, 2003

4. Constructing and installing trash receptacle units[2]

- - -

Fabrication and installation of 366 units[3]	$ 214,003.86
1,615 sf of concrete pad used	$ 16,751.72
	$ 230,755.58

[2] Also see Exhibit 5 for authorization to contract for the required placement and maintenance of transit trash receptacles, as adopted by the Los Angeles County Board of Supervisors on March 18, 2003.

[3] Also see Exhibit 8 for the construction contract.

Construction Management

Job code (X3003087) $ 34,628.31

5. Trash collection and receptacle maintenance

Force Account cost for maintaining and collecting trash in FY 2002-03 $ 3, 513.94

Maintenance contractor cost for maintaining and collecting trash in FY 2002-03 [4]
321 units x $22.50 per week X 13 weeks $ 93,892.50

6. Projected cost for on-going maintenance in FY 2003-04
321 units x $22.50 per week X 52 weeks $ 375,570.00"

Therefore, the [above] costs, incurred by the County in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), are well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a). Moreover, such costs are also reimbursable "costs mandated by the State".

Costs Mandated by the State

The County's costs in performing new duties under the test claim legislation, as illustrated in the attached declarations[5], are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et. seq. of the Government Code.

---

[4] Also see pertinent maintenance contracts in Exhibit 6 and Exhibit 7.

[5] These declarations are attached as Exhibits 1-3 hereto.

The County was required to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements must be met:

1. There are increased costs which a local agency is required to incur after July 1, 1980; and

2. The costs are incurred pursuant to executive orders promulgated on or after January 1, 1975; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of the [above] requirements for finding costs mandated by the State are met here.

First, local government has been incurring costs in implementing the executive order, test claimed herein, since December 13, 2001, well after July 1, 1980.

Second, the executive order, test claimed herein, was issued on December 13, 2001, well after January 1, 1975.

Third, the test claim legislation, as previously discussed, has imposed new duties on local government, not found in prior law.

Accordingly, "a new program or higher level of service..." has been enacted in the test claim legislation.

Therefore, reimbursement of the County's "costs mandated by the State", incurred in implementing the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL, subsection c.3., is required as claimed herein.

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Frank Kuo

Frank Kuo makes the following declaration and statement under oath:

I, Frank Kuo, Facilities Project Manager II in the Watershed Management Division of Los Angeles County's Department of Public Works, am responsible for implementing the subject law.

I declare that it is my information or belief that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached to the subject test claim), Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL (total maximum daily loads)], requires, in subsection c.3., (on Permit page 49), that:

> "c. Permittees not subject to a trash TMDL shall:
>
> - - -
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [Emphasis added.]

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) was not, and currently is not, required under federal law.

I declare that it is my information or belief that federal law applies to Permittees subject to TMDL, as noted, on page 9, in the subject Permit:

> "Section 303(d) of the (federal) CWA (Clean Water Act) requires that the State identify a list of water-impaired bodies and develop

and implement Total Maximum Daily Loads (TMDLs) for those water bodies (33 U.S.C. Section 1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, [and] still meet applicable water quality standards and protect beneficial uses."

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), requiring Los Angeles County to place and maintain trash receptacles at all transit stops within its jurisdiction, except for the Los Angeles River and Ballona Creek Watershed Management areas, was not required under prior law.

I declare that it is my information or belief that Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), including:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles
3. Designing receptacle pad improvement, if needed
4. Constructing and installing trash receptacle units
5. Collecting trash and maintaining receptacles

I declare that it is my information or belief that the [above] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), and cost the County of Los Angeles in

excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the test claim legislation as amended herein require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

8/28/03

ALHAMBRA, CA.

Date and Place

Signature

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Aras Ahmed

Aras Ahmed makes the following declaration and statement under oath:

I, Aras Ahmed, Associate Civil Engineer, in the Programs Development Division of Los Angeles County's Department of Public Works, am responsible for the initial implementation of the subject program.

I declare that it is my information or belief that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached to the subject test claim), Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL (total maximum daily loads)], requires, in subsection c.3., (on Permit page 49), that:

> "c. Permittees not subject to a trash TMDL shall:
>
> - - -
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [Emphasis added.]

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) was not, and currently is not, required under federal law.

I declare that it is my information or belief that federal law applies to Permittees subject to TMDL, as noted, on page 9, in the subject Permit:

> "Section 303(d) of the (federal) CWA (Clean Water Act) requires that the State identify a list of water-impaired bodies and develop and implement Total Maximum Daily Loads (TMDLs) for those water bodies (33 U.S.C. Section 1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, [and] still meet applicable water quality standards and protect beneficial uses."

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), requiring Los Angeles County to place and maintain trash receptacles at all transit stops within its jurisdiction, except for the Los Angeles River and Ballona Creek Watershed Management areas, was not required under prior law.

I declare that it is my information or belief that Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), including:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles
3. Designing receptacle pad improvement, if needed
4. Constructing and installing trash receptacle units
5. Collecting trash and maintaining receptacles

I declare that it is my information or belief that the [above] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit

Number CAS004001, Part 4, Section F.5.c.3.), and cost the County of Los Angeles in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that I have prepared the attached schedule, detailing costs incurred by Los Angeles County in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the test claim legislation as amended herein require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

8/28/03
ALHAMBRA, CA

Date and Place

Signature

Cost Schedule Attachment
Declaration of Aras Ahmed

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

December 13, 2001 – October 31, 2002

1. Identifying all transit stops within the jurisdiction

Job code (X3003087,
Installation of NPDES trash receptacles) $ 19,989.17

August 1, 2002 – January 12, 2003

2. Selecting the proper trash receptacle design, evaluating proper placement of trash receptacles, specification and drawing preparation

Job code (X3003087) $ 38,461.87

August 1, 2002 – January 12, 2003

3. Preliminary engineering works (Construction contract preparation and specification reviewing process, Bid advertising and awarding process)

Job code (X3003087) $ 19,662.02

January 12, 2003 – April 11, 2003

4. Constructing and installing trash receptacle units
describe contract and amount

Fabrication and installation of 366 units	$214,003.86
1,615 sf of concrete pad used	$ 16,751.72
Total Cost	$230,755.58

Construction Management

Job code (X3003087) $ 34,628.31

5. Trash collection and receptacle maintenance

Force Account cost for maintaining and
Collecting trash in FY 2002-03 $ 3,513.94

Maintenance contractor cost for maintaining
and collecting trash in FY 2002-03
321 units x $22.50 per week x 13 weeks $ 93,892.50

6. Projected Cost for on-going maintenance in FY 2003-04

321 units x $22.50 per week x 52 weeks $375,570.00

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> **" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."**

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/30/03; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. Existing Permit

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. Nature of Discharges and Sources of Pollutant

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of internal combustion engine

operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment, of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions, (i) a focus on setting contaminant limits rather than programmatic evaluations, (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., [*Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight*, Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Haile, R.W. et al. (1999); *Huntington Beach Closure Investigation: Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight*, Rachel T. Noble *et al.* (2001); *Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001)].

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water nor remove pollutants, and thus the natural purification characteristics are

lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In, Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B., (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization: Water Resources Research*, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System--Impacts, Solutions and Prognoses*: The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*: Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979); Dubuque, Iowa, Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

Source Selection and Monitoring Report, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list, contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry; Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp., California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al.*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1993); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al.* editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, , L.L. Tiefenthaler *et al.* Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil Grit Separators in Suburban MD*, Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff from Impervious Surfaces in Four Urban Catchments of Different*

Landuse, Ranabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI, March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) - (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   Public Information and Participation
   Development Planning
   Development Construction
   Public Agency Activities
   Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline-monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing*, Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).

   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an 'Interpretative Policy Memorandum on Reapplication Requirements' for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 – 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p) provides that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000,* on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re:* California Department of Transportation (State Board Order WQ 2001-08), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*, (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

    - The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.

    - The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

    Malibu Creek and Rural Santa Monica Bay WMA
    Ballona Creek and Urban Santa Monica Bay WMA
    Los Angeles River WMA
    San Gabriel River WMA
    Dominguez Channel/Los Angeles Harbor WMA, and
    Santa Clara River WMA

    Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th. Cir, 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999)

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways. (*Headwaters, Inc. vs. Talent Irrigation District*, 243 F.3d. 526 (9th Cir., 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. **Implementation**

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or

2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

   c) Category C - Flows incidental to urban activities:

      (1) Reclaimed and potable landscape irrigation runoff;

      (2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

      (3) Drains for foundations, footings, and crawl spaces;

      (4) Air conditioning condensate;

      (5) Dechlorinated/debrominated swimming pool discharges;

      (6) Dewatering of lakes and decorative fountains;

      (7) Non-commercial car washing by residents or by non-profit organizations; and

      (8) Sidewalk rinsing.

   The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;

2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;

3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;

4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;

5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;

6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;

7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and

8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;

2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;

3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

   The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

   a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

   b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

   c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

a) "No Dumping" Message

Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

b) Countywide Hotline

The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002, and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1.	
Watershed	***Target Pollutants for Outreach***
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities

- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]

- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:

- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances ;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industriall Commercial*, (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. Development Construction Program

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1. above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:

A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:

For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

   a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

      (1) Investigation of any complaints received;

      (2) Upon notification, immediate response to overflows for containment; and

      (3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

   b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations, "water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"Authorized Discharge" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"Automotive Service Facilities" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"Basin Plan" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"Beneficial Uses" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"Best Management Practices (BMPs)" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"Commercial Development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
   a) Vehicle or equipment fueling areas;
   b) Vehicle or equipment maintenance areas, including washing and repair;
   c) Commercial or industrial waste handling or storage;
   d) Outdoor handling or storage of hazardous materials;
   e) Outdoor manufacturing areas;
   f) Outdoor food handling or processing;
   g) Outdoor animal care, confinement, or slaughter; or
   h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint;

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1]
Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.html#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage of wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.

2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.

3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).

2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].

2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. Duty to Mitigate [40 CFR 122.41 (d)]

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. Inspection and Entry [40 CFR 122.41(i), CWC § 13267]

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and,

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. Signatory Requirements [40 CFR 122.41(k) & 122.22]

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. Reopener and Modification [40 CFR 122.41(f) & 122.62]

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][4]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][5]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

   a) Criminal Penalties for:

[5] *Supra*. See footnote number 3.

(1) Negligent Violations:

The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:

The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. Rescission

Regional Board Order No. 96-054 is hereby rescinded.

S. Expiration

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

_____

Dennis A. Dickerson
Executive Officer

December 13, 2001

ATTACHMENT A
LIST OF PERMITTEES
BY
WATERSHED MANAGEMENT AREAS

Santa Monica Bay

Malibu Creek and Other Rural
Agoura Hills
*Calabasas
Los Angeles County Flood Control
Los Angeles County
Malibu
Westlake Village

Ballona Creek and Other Urban
Beverly Hills
Culver City
El Segundo
Hermosa Beach
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Manhattan Beach
Palos Verdes Estates
Rancho Palos Verdes
Redondo Beach
Rolling Hills
Rolling Hills Estates

*Santa Monica
West Hollywood

Dominguez Channel/ Los Angeles Harbor Drainage

Carson
Gardena
Hawthorne
Inglewood
Lawndale
Lomita
Los Angeles (City of)
Los Angeles County Flood Control

Los Angeles (County of)
*Torrance

Los Angeles River

Alhambra
Arcadia
Bell
Bell Gardens
Burbank
Commerce
Compton
Cudahy
El Monte
*Glendale
Hidden Hills
Huntington Park
La Canada Flintridge
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Lynwood
Maywood
Monrovia
Montebello
Monterey Park
Paramount

Pasadena
Rosemead
San Fernando
San Gabriel
San Marino
Sierra Madre
Signal Hill
South El Monte
South Gate
South Pasadena
Temple City
Vernon

San Gabriel River

Artesia
Azusa
Baldwin Park
Bellflower
Bradbury
Cerritos
Claremont
Covina
Diamond Bar
Downey
Duarte
Glendora
Hawaiian Gardens
Industry
Irwindale
La Habra Heights
La Mirada
La Puente
La Verne
Lakewood
*Long Beach[1]
Los Angeles County Flood Control
Los Angeles (County of)
Norwalk
Pomona
Pico Rivera
San Dimas
Santa Fe Springs
Walnut
West Covina
Whittier

Santa Clara River

*Santa Clarita
Los Angeles County Flood Control
Los Angeles (County of)

*Italicized agencies are present in more than one Watershed Management Area. *Indicates City with the largest watershed population other than County of Los Angeles and the City of Los Angeles.*

[1] *The City of Long Beach is covered under order No. 99-060*

ATTACHMENT B
Critical Sources Categories[1]

Tier 1 Categories

Municipal Landfills (SIC 4953)

Hazardous Waste Treatment, Disposal and Recovery Facilities[2]

Facilities Subject to SARA Title III (also known as EPCRA)[2]

Restaurants[3]

Wholesale trade (scrap, auto dismantling) (SIC 50)

Automotive service facilities[3]

Fabricated metal products (SIC 34)

Motor freight (SIC 42)

Chemical/allied products (SIC 28)

Automotive Dealers/Gas Stations (SIC 55)

Primary Metals Products (SIC 33)

Tier 2 Categories

Electric/Gas/Sanitary (SIC 49)

Air Transportation (SIC 45)

Rubbers/Miscellaneous Plastics (SIC 30)

Local/Suburban Transit (SIC 41)

Railroad Transportation (SIC 40)

Oil & Gas Extraction (SIC 13)

Lumber/Wood Products (SIC 24)

Machinery Manufacturing (SIC 35)

Transportation Equipment (SIC 37)

Stone, Clay, Glass, Concrete (SIC 32)

Leather/Leather Products (SIC 31)

Miscellaneous Manufacturing (SIC 39)

Food and kindred Products (SIC 20)

Mining of Nonmetallic Minerals (SIC 14)

Printing and Publishing (SIC 27)

Electric/Electronic (SIC 36)

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[1] Italicized categories belong to Phase 1 facilities
[2] Various categories subject to these requirements
[3] See Definition in Part 5. of the permit

Paper and Allied Products (SIC 26)

Furniture and Fixtures (SIC 25)

Laundries *(SIC 72)*

Instruments (SIC 38)

Textile Mills Products (SIC 22)

Apparel (SIC 23)

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
MONITORING AND REPORTING PROGRAM - CI 6948
FOR
ORDER No. 01-182
NPDES No. CAS004001
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES, EXCEPT THE CITY OF LONG BEACH

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I. Program Reporting Requirements

The Principal Permittee shall submit, no later than October 15 of each year beginning in the year 2002, a Unified Annual Storm Water Report (Unified Annual Report) documenting the progress of Permittees' implementation of the SQMP and the requirements of this Order. The Unified Annual Report shall contain a section covering common activities conducted collectively by the Permittees, and an integrated summary of the Monitoring Program results. Each Permittee shall submit an Individual Annual Report to the Principal Permittee, by the date determined by the Principal Permittee, to be included in the Unified Annual Report. The Unified Annual Reports shall cover each fiscal year from July 1 through June 30. The first Unified Annual Report, to be submitted on October 15, 2002, shall report for the period from July 1, 2001 through June 30, 2002. Specific requirements that must be addressed in the Annual Reports are listed below.

A. Unified Annual Report

The Principal Permittee shall include the following in the Unified Annual Report:

1. A compilation of Permittee Individual Annual Reports.

2. Proposed changes to the SQMP, as recommended by the WMCs.

3. An assessment of the effectiveness of SQMP requirements to reduce storm water pollution. This assessment shall be comprised of a compilation of watershed-wide assessments conducted by each WMC. Assessments shall be based upon the specific record-keeping information requirement in each section of the permit, monitoring data, summaries of program effectiveness from each Permittee, and any other information related to program effectiveness. The program assessment shall include summaries of the following:

   a) Summary of common activities conducted by all Permittees;

   b) WMA BMP implementation;

   c) Identification of management measures proven to be effective and/or ineffective at reducing urban runoff pollutants and flow;

   d) Permittee level of effort, as indicated in their Individual Annual Report self evaluations (Attachment U-4, section VI); and

   e) Integrated summary of Monitoring Program results, including the identification of water quality improvements or degradation, and recommendations for improvements to the SQMP (including proposed BMPs) based on the results from the Monitoring Program.

4. Pursuant to Part 2 of this Order, after a determination by either a Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, a Receiving Water Limitations (RWL) Compliance Report shall be attached to the subsequent Unified Annual Report. A status RWL Compliance Report shall be submitted every alternate year following the submittal of the first Report. The RWL Compliance Report shall include the following:

   a) A plan to comply with the RWL (Part 2 of this Order);

   b) Changes to the SQMP to eliminate water quality exceedances;

   c) Enhanced monitoring to demonstrate compliance; and

   d) Results of implementation.

   After all water quality exceedances have been abated, a RWL Compliance Report is not required.

B. Individual Annual Reports

Each Individual Annual Report shall document and describe all activities conducted by a Permittee to meet all requirements of this Order, during the completed annual reporting period. Individual Annual Reports shall use the attached form (Attachment U-4), or create another reporting format that includes all items on the attached form. Each Permittee shall complete the form in its entirety, except for those requirements applicable only to the Principal Permittee, as indicated on the form. Status of compliance with permit requirements including implementation dates for all time-specific deadlines should be included for each program area. If permit deadlines are not met, Permittees shall report the reasons why the requirement was not met and how the requirements will be met in the future, including projected implementation dates. A comparison of program implementation results to performance standards established in this Order and in the SQMP shall be included for each program area.

C. Monitoring Program Management

The Principal Permittee shall submit a Storm Water Monitoring Report (Monitoring Report) on August 15, 2002, and annually on August 15, thereafter. The Monitoring Report to be submitted on August 15, 2002 shall include the results of monitoring from July 1, 2001 through June 30, 2002. Each Monitoring Report shall include:

1. Status of implementation of the Monitoring Program.

2. Data, results, methods of evaluating the data, graphical summaries of the data, and an explanation/discussion of the data for each component of the monitoring program, including any specific reporting requirements included in Section II. Monitoring Program.

3. An analysis of the findings of each Monitoring Program component. The analysis shall identify and prioritize water quality problems. Based on the identification and prioritization of water quality problems, the analysis shall identify potential sources of the problems, and recommend future

monitoring and BMP implementation measures for identifying and addressing the sources. The analysis shall also include an evaluation of the effectiveness of existing control measures.

4. Identification and analysis of any long-term trends in storm water or receiving water quality.

5. An estimation of total pollutant loads due to storm water/urban runoff for each mass emission station.

6. A comparison to the applicable Water Quality Standards for each component of the Monitoring Program. The lowest applicable standard from the Basin Plan, the Ocean Plan, or the CTR shall be used for comparison. Constituents that exceed applicable Water Quality Standards shall be highlighted. When data indicate that discharges are causing or contributing to exceedances of applicable Water Quality Standards, a discussion of possible pollutant sources shall be included in the Monitoring Report and a RWL Compliance Report (Section I.A.4) shall be submitted with the subsequent Unified Annual Report.

7. For each monitoring component, maps of all monitoring station locations and descriptions of each location.

8. All Monitoring Reports shall be submitted in both electronic and paper formats.

D. Integrated Receiving Water Impacts Report

The Principal Permittee shall, not later than August 15, 2005, prepare and submit an Integrated Receiving Water Impacts Report, which may also serve as the fourth-year Monitoring Report. The Report shall include, but not be limited to, a comprehensive analysis of the results of the data from each component of the Monitoring Program, and other pertinent studies available, and feasible environmental indicators. It should also include a budget summary for each monitoring requirement and recommendations on future monitoring requirements. This report will be an integral part of the next ROWD.

E. Certification

All applications, reports, or information submitted to the Regional Board shall be signed and certified pursuant to US EPA regulations at 40 CFR 122.41 (k). Each report shall contain the following completed declaration:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility, of a fine and imprisonment for knowing violations.

Executed on the ___ day of _____ , 20_,

at _____.

(Signature)_____ (Title)_____";

Permittee submittals to the Principal Permittee shall also be signed and certified pursuant to USEPA regulations 40 CFR 122.41 (k).

The Principal Permittee shall submit the original of each Unified Annual Report to:

INFORMATION TECHNOLOGY
CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD - LOS ANGELES REGION
320 W. 4TH STREET, SUITE 200
LOS ANGELES, CA 90013

A copy of the Unified Annual Report shall also be mailed to:

REGIONAL ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105

II. Monitoring Program

The primary objectives of the Monitoring Program include, but are not limited to:

- Assessing compliance with this Order;
- Measuring and improving the effectiveness of the SQMPs;
- Assessing the chemical, physical, and biological impacts of receiving waters resulting from urban runoff;
- Characterization of storm water discharges;
- Identifying sources of pollutants; and
- Assessing the overall health and evaluating long-term trends in receiving water quality.

Ultimately, the results of the monitoring requirements outlined below should be used to refine the SQMP for the reduction of pollutant loadings and the protection and enhancement of the beneficial uses of the receiving waters in Los Angeles County.

The Principal Permittee and Permittees shall implement the Monitoring Program as follows:

CORE MONITORING

A. Mass Emissions

The Principal Permittee shall monitor mass emissions to accomplish the following objectives:

- Estimate the mass emissions from the MS4;
- Assess trends in the mass emissions over time; and
- Determine if the MS4 is contributing to exceedances of Water Quality Standards by comparing results to applicable standards in the Basin Plan, the Ocean Plan, or the CTR, and with emissions from other dischargers.

1. The Principal Permittee shall monitor mass emissions from the following seven mass emission stations: Ballona Creek, Malibu Creek, Los Angeles River, San Gabriel River, Coyote Creek, Dominguez Channel, and the Santa Clara River. The Principal Permittee shall monitor the first storm event and a minimum of 2 additional storm events for each season. A minimum of two dry weather samples per year at each mass emission station shall also be analyzed. Sampling at all stations shall begin no later than February 1, 2002, except for sampling in the Santa Clara River, which will begin no later than October 15, 2002.

2. All storms events, in addition to those required above, that result in at least 0.25 inches of rainfall shall be sampled and analyzed for TSS. Results shall be used to assess the variability of storm water constituents and provide a more accurate estimate of mass emissions (pollutant correlation with TSS). This requirement does not apply to manual sampling stations.

3. Samples for mass emission monitoring may be taken with the same type of automatic sampler used under Order 96-054. Grab samples shall be taken for pathogen indicators and oil and grease. The samplers shall be set to monitor storms that produce 0.25 inches or greater of rainfall.

Samples taken at mass emission stations during the first storm event of the wet season shall be analyzed for all constituents listed in Attachment U-1.

4. Manual samples shall be collected from mass emission stations where it is not feasible to install an automatic sampler (Santa Clara River). Manual samples shall be flow-weighted composites, collected during the first 3 hours, or for the duration of the storm if it is less than 3 hours. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[1], unless the Regional Board Executive Officer approves an alternate protocol.

5. Samples from mass emission stations shall be analyzed for all constituents listed in Attachment U-1. If a constituent is not detected at the method detection limit for its respective test method listed in Attachment U-1 in more than 75 percent of the first 48 sampling events, it need not be further analyzed unless the observed occurrences show concentrations greater than state water quality standards. The Principal Permittee will also conduct annual confirmation sampling for non-detected constituents during the first storm of the wet season every year at each station.

6. The Principal Permittee shall perform an annual analysis, to be included in the Monitoring Report, of the correlation between pollutants of concern (including but not limited to metals and PAHs) and TSS loadings for the sampling events that are analyzed for the complete list of constituents.

B. Water Column Toxicity Monitoring

The Principal Permittee shall analyze mass emission samples for toxicity to evaluate the extent and causes of toxicity in receiving waters and to modify and utilize the SQMP to implement practices that eliminate or reduce sources of toxicity in storm water.

1. The Principal Permittee shall analyze samples from two storm events (including the first storm of each year) and two dry weather events from each mass emission station for toxicity every year. A minimum of one freshwater and one marine species shall be used for toxicity testing for each station event. Specifically, *Ceriodaphnia dubia* (water flea) 7-day survival/reproduction and *Strongylocentrotus purpuratus* (sea urchin) fertilization tests shall be used. These tests should include a dilution series (0.5x steps) that ranges from the undiluted sample (or the highest concentration that can be tested within the limitations of the test methods or sample type) to less than or equal to 6% sample.

2. Toxicity Identification Evaluations (TIE)

The Principal Permittee shall begin a Phase I TIE immediately on all samples that are substantially toxic (greater than or equal to 1 Toxic Unit)

[1] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

to either test species.[2] If a sample is substantially toxic to both species, a TIE shall be performed for both species. The Phase I TIE shall include the following treatments and corresponding blanks:

a) Baseline toxicity;

b) Particle removal by centrifugation;

c) Solid phase extraction of the centrifuged sample using C18 media;

d) Complexation of metals using ethylenediaminetetraacetic acid (EDTA) addition to the raw sample;

e) Neutralization of oxidants/metals using sodium thiosulfate addition to the raw sample; and

f) Inhibition of organo-phosphate (OP) pesticide activation using piperonyl butoxide addition to the raw sample (crustacean toxicity tests only).

3. Toxicity Reduction Evaluations (TRE)

a) When the same pollutant or class of pollutants is identified through the TIE process as causing at least 50% of the toxic responses in at least 3 samples at a sampling location, a TRE shall be performed for that identified toxic pollutant. TRE development shall be performed by a neutral third party (retained by the Principal Permittee), with input from Permittees and Regional Board staff. The TRE shall include all reasonable steps to identify the source(s) of toxicity and discuss appropriate BMPs to eliminate the causes of toxicity. Once the source of toxicity and appropriate BMPs are identified, the Principal Permittee shall submit the TRE to the Regional Board Executive Officer for approval. At a minimum, it shall include a discussion of the following items:

(1) The potential sources of pollutant(s) causing toxicity;

(2) A list of municipalities that may have jurisdiction over sources of pollutant(s) causing toxicity;

(3) Recommended BMPs to reduce the pollutant(s) causing toxicity;

(4) Proposed changes to the SQMP to reduce the pollutant(s) causing toxicity; and

(5) Suggested follow-up monitoring to demonstrate that toxicity has been removed.

[2] Substantial toxicity means the amount of toxicity necessary to successfully conduct a Phase I TIE. Toxic Units are calculated by dividing 100 by the calculated median test response value (e.g., LC50 or EC50). For example, a LC50 of 50% sample equals 2 Toxic Units. Ceriodaphnia TIEs require at least 50% mortality in undiluted sample (1 Toxic Unit) at any time during the 7-day duration of the initial chronic bioassay (SCCWRP).

b) Since the Phase I TIEs may only identify a broad category of toxicants (e.g., nonpolar organics), additional TIE analyses may be required in order to identify or confirm the identity of the pollutants causing toxicity before the TRE can be completed.

c) If TRE implementation for a specific pollutant coincides with TMDL implementation for that pollutant, the efforts may be coordinated.

d) Upon approval by the Regional Board Executive Officer, the Permittee(s) having jurisdiction over sources causing or contributing to toxicity shall implement the recommended BMPs and take all reasonable steps necessary to eliminate toxicity.

e) The Principal Permittee shall be responsible for the development of a maximum of two TREs per year. If applicable, the Principal Permittee may use the same TRE for the same toxic pollutant or pollutant class in different watersheds. The TRE process shall be coordinated with TMDL development and implementation (ie. If a TMDL for zinc is being implemented when a TRE for zinc is required, the efforts shall be coordinated to avoid overlap).

f) The Principal Permittee shall report on the development, implementation, and results for each TRE in the annual Monitoring Report, beginning the year following the identification of each pollutant or pollutant class causing toxicity.

C. Tributary Monitoring

The Principal Permittee shall monitor tributaries to identify sub-watersheds where storm water discharges are causing or contributing to exceedances of Water Quality Standards, and to prioritize drainage and sub-drainage areas that need management actions.

1. The Principal Permittee shall develop and implement a watershed-based tributary monitoring program, in which a minimum of six tributaries per year will be monitored, based on the schedule described below:

a) Monitoring station locations will be rotated so that a minimum total of six tributaries will be monitored per year. Each tributary shall be monitored for a minimum period of one year. If no exceedances of applicable water quality standards occur during one year of monitoring at a single tributary station, the Principal Permittee may move that monitoring station to another tributary, subject to the approval of the Regional Board Executive Officer. When an applicable water quality standard is exceeded in three out of four sampling events in a given monitoring year, the Permittees shall initiate a focused effort to identify sources of pollutants within that subwatershed.

b) Tributary monitoring shall begin in the Los Angeles River WMA, and shall be rotated to locations in other watersheds as monitoring at each station is complete, as approved by the Regional Board Executive Officer. The Principal Permittee shall include a

description and explanation of each proposed station location and a summary of the prior year's results of the tributary monitoring program in the annual Monitoring Report.

c) Monitoring shall begin at the following tributaries:

(1) Aliso Creek;
(2) Bull Creek;
(3) Arroyo Seco Channel;
(4) Rio Hondo Channel;
(5) Burbank West; and
(6) Verdugo Wash.

2. Tributary monitoring shall begin October 15, 2002.

3. The Principal Permittee shall monitor the first storm event and at least 3 additional storm events during each storm season. At least one dry weather flow per year will also be sampled at each station.

4. Samples shall be flow-weighted composites, collected during the first 3 hours or for the duration of the storm if it is less than 3 hours. Samples may be collected manually or automatically. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[3], unless the Regional Board Executive Officer approves an alternate protocol. Samples shall be taken just upstream of the tributary's confluence with the mainstem. Constituents to be analyzed for each location shall include the following:

a) pH, dissolved oxygen, temperature, conductivity, and total suspended solids;

b) Indicator bacteria;

c) All priority pollutants (Attachment U-1) for the first storm of the year;

d) All constituents for which the water body is impaired downstream of the monitoring station;[4]

e) All constituents that caused toxicity or exceeded any applicable water quality criteria at the associated mass emission station the previous year (these constituents shall be listed in each Monitoring Report); and

f) Flow (flow may be estimated using EPA methods[5] at sites where flow measurement devices are not in place).

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[3] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

[4] The 1998 California 303(d) List and TMDL Priority Schedule lists pollutants for which each water body is impaired, www.swrcb.ca.gov/tmdl/docs/303d98.pdf#reg4

[5] NPDES Storm Water Sampling Guidance Document, EPA 833-B-92-001, July 1992

D. Shoreline Monitoring

The City of Los Angeles shall monitor shoreline stations to evaluate the impacts to coastal receiving waters and the loss of recreational beneficial uses resulting from storm water/urban runoff. This component shall be integrated and coordinated with similar monitoring programs in the region.

1. The City of Los Angeles shall monitor eighteen water quality sampling stations along the shoreline of the Pacific Ocean within the Santa Monica Bay to determine compliance with the California's bathing water standards for public beaches and ocean water-contact sport areas[6], and the related impacts of discharges from storm drains and piers. The shoreline monitoring program shall be implemented as follows:

   a) The eighteen established shoreline water quality stations listed in Attachment U-2 shall be monitored. Station locations may be modified based on recommendations from the Santa Monica Bay Restoration Project (SMBRP) and approval from the Regional Board Executive Officer;

   b) Three indicator groups shall be tested for using either membrane filtration, multiple tube fermentation, or chromogenic substrate test kits. Monitoring shall include the following types and frequencies of sampling:

Parameter	Units	Sample Frequency
Total coliforms	CFU or MPN/100 ml	6/week (Mon-Sat)[7]
Fecal coliform[8]	CFU or MPN/100 ml	6/week (Mon-Sat)[5]
Enterococcus	CFU or MPN/100 ml	6/week (Mon-Sat)[5]

   c) Shoreline monitoring shall occur during daylight hours. Samples may be omitted in the event of hazardous weather;

   d) Shoreline monitoring frequencies at certain stations may be modified based on the use of the adjacent beaches and their proximity to storm drains, as recommended by the SMBRP's Technical Advisory Committee and the Los Angeles County Department of Health Services (LA County DHS).

   e) Data collected shall be transmitted daily to the LA County DHS. The City of Los Angeles will annually assess the data and submit it to the Principal Permittee for inclusion in the Monitoring Report;

   f) When exceedances of public health standards for bacteria occur, the LA County DHS shall take the appropriate action, as described in the Regulations for Public Beaches and Ocean Water-Contact Sports Areas.[9]

[6] California Department of Health Services, Health and Safety Code §115880 (Assembly Bill 411, Statutes of 1997, Chapter 765

[7] Samples will be collected on Sundays preceding Monday holidays

[8] *Escherichia Coli (E. Coli)* may be substituted for Fecal Coliform if chromogenic substrate test kits are used

[9] Regulations for Public Beaches and Ocean Water-Contact Sports Areas, Title 17 CCR Group 10, developed in response to Health and Safety Code §115880

g) The City of Los Angeles will continue to conduct all monitoring, testing, and data transferring actions as part of the SMBRP regional program for the Santa Monica Bay.

E. Trash Monitoring

To assess the quantities of trash in receiving waters after storm events and to identify areas impaired for trash, the Principal Permittee shall conduct visual observations of trash and take a minimum of one photograph at each mass emission station after the first storm event and 3 additional storm events per year.

1. The Principal Permittee and Permittees in the Los Angeles River and Ballona Creek WMAs (listed in Permit Attachment A) shall develop and implement a trash monitoring program for the Los Angeles River and Ballona Creek watersheds no later than October 15, 2002. The monitoring program and schedule shall be consistent with and pursuant to CWC §13267 "Request for Trash Monitoring", issued by the Regional Board on December 21, 2001. For the first two years of monitoring, either of the following formats for monitoring plans may be used:

   a) For each watershed, the group of Permittees in that watershed will capture and quantify trash from an area no less than 10% of the total land area over which they have jurisdiction. The monitoring areas shall represent 10% of every land use the group of Permittees has jurisdiction over. If storm drain configuration versus land use make the representation of 10% of a land use infeasible, the Permittees can choose areas that represent their land uses as accurately as possible, as long as the extent of the surface being monitored represents 10%. This monitoring shall use full capture devices. During wet weather, all sampling devices will be emptied within 72 hours of every rain event of 0.25 inch or greater. During dry weather, sampling devices will be emptied and analyzed every three months in the absence of precipitation.

   b) For each watershed, the group of Permittees in that watershed will sample a minimum of ten representative sites for each land use monitored. For each sampling site, a minimum of five catch basins will be fitted with inserts, for a total of not less than 50 catch basin inserts per land use monitored. The existing litter removal practices that the cities implement will remain in place, so that monitoring will evaluate how much trash is washed into the system under current practices. A structural full capture device shall be installed downstream of at least one sampling site for each land use monitored. For this sampling site, all of the catch basins that are upstream of the full capture-monitoring device must be fitted with inserts. This configuration will provide information on the relative effectiveness of the catch basin inserts as opposed to the full capture systems in varying land uses and under varying weather conditions. During wet weather, all sampling devices will be emptied within 72 hours of every rain event of 0.25 inch or greater. During dry weather, sampling

devices will be emptied and analyzed every three months in the absence of precipitation.

2. Permittees shall report data in a single unit of measure that is reproducible and measures the amount of trash, irrespective of water content (e.g. compacted volume based on a standardized compaction rate, or dry weight). Permittees may select the unit, but all Permittees must use the same unit of measure.

3. Following the first two years of data collection, Permittees shall conduct compliance monitoring, which involves calculating trash loading as a running three-year average (estimated total load discharged from 2003-2006, divided by three).

4. All trash collected shall be disposed of in compliance with all applicable State, federal, and local regulations.

REGIONAL MONITORING

The Principal Permittee shall participate on regional monitoring committees to help establish on-going regional programs that address public health concerns, monitor trends in natural resources and nearshore habitats, and assess regional impacts from all pollutant sources. Regional Monitoring participation shall include, but not necessarily be limited to, the efforts described below.

F. Estuary Sampling

The Southern California Coastal Waters Research Project (SCCWRP), in conjunction with the USEPA, the State Board, three Regional Boards, and participating dischargers, has organized an effort to implement a regional monitoring program for the southern California bight. Previous studies (in 1994 and 1998) included microbiology, water quality, sediment chemistry, sediment toxicity testing, benthic infauna, demersal fish, and bioaccumulation. A similar bight-wide monitoring effort is planned to be conducted in 2003. The Principal Permittee shall participate on the Steering Committee for this bight-wide monitoring project, and complete the estuary sampling requirement described below in parallel with this effort.

In addition to participation in the Bight-wide study, the goal of this requirement is to sample estuaries for sediment chemistry, sediment toxicity, and benthic macroinvertibrate community to determine the spatial extent of sediment fate from storm water, and the magnitude of its effects. A map of each estuary which depicts the impacted areas shall be produced. The maps shall provide the information necessary to conduct effective sediment monitoring to determine trends and accumulation, as a future permit requirement.

1. The Principal Permittee shall sample a maximum of 25 sites in each estuary/mouth (Ballona Creek, Malibu Creek, Los Angeles River, San Gabriel River, and Dominguez Channel) once during the permit term. Sediment samples shall be taken at each station by means of a $0.1m^2$ ($1.1 ft^2$) modified Van Veen sediment grab sampler.

2. The Principal Permittee shall also sample a total of 25 sites outside of the direct outfalls to assess cumulative effects.

3. All samples shall be analyzed for the following:
   a) Sediment Chemistry (priority pollutants)
   b) Total Organic Carbon (TOC)
   c) Grain size
   d) Sediment Toxicity
      (1) Amphipod survival bioassays shall be conducted on each sediment sample. Toxicity shall be indicated by an amphipod survival rate of 70% or less in a single test.
      (2) Phase I TIEs of interstitial water, using the amphipod test species, shall be conducted for samples from stations identified to be toxic in a single amphipod survival bioassay.
   e) Benthic Macroinvertibrates
      (1) All sediment samples shall be passed through a 1.0mm (0.039 in) screen to retrieve the benthic organisms. Benthic epifauna and infauna shall be analyzed to determine the structure of the benthic community.
      (2) The Principal Permittee shall identify all organisms to lowest possible taxon.
      (3) The Principal Permittee shall determine the Total Biomass of:
         (i) Mollusks;
         (ii) Echinoderms;
         (iii) Annelids/polychaetes
         (iv) Crustaceans; and
         (v) All other macroinvertebrates.
      (4) The Principal Permittee shall determine the community structure analysis, including wet weight of each taxonomic group (listed above), number of species, number of individuals per species, total numerical abundance, species abundance per grab, species richness, species diversity, species evenness and dominance, similarity analysis, cluster analyses, or other appropriate multivariate statistical techniques approved by the Regional Board Executive Officer, and the Infaunal Index[10].

4. The Principal Permittee shall create a map of each estuary depicting degraded areas and the spatial distribution of sediment from storm water. In the Integrated Monitoring Report, the Principal Permittee shall suggest appropriate locations for regular sediment monitoring, based on the results of this study.

[10] Benthic Response Index for Assessing Infaunal Communities on the Mainland Shelf of Southern California, the SCCWRP

G. Bioassessment

The Principal Permittee shall continue participation in the Stormwater Monitoring Coalition (SMC), as well as coordinate with the Surface Water Ambient Monitoring Program (SWAMP) being developed by the State Board to complete the bioassessment requirement. The Regional Board anticipates that the SMC will organize an effort to evaluate the biological index approach for southern California and to design a research project for developing an Index of Biological Integrity (IBI) for this region. The SWAMP has begun work on a statewide effort to determine how to identify reference sites with the goal of IBI development.

The purpose of the bioassessment requirement is to detect biological trends in receiving waters and to collect data for the development of an IBI for southern California. The ultimate goals of bioassessment are to assess the biological integrity of receiving waters, to detect biological responses to pollution, and to identify probable causes of impairment not detected by chemical and physical water quality analysis.

1. The Principal Permittee shall coordinate with the SMC and SWAMP to identify the most appropriate locations for bioassessment stations within Los Angeles County.

2. Station selection shall be complete within one year from the date this Order is adopted, and sampling shall begin no later than October of 2003.

3. The Principal Permittee shall monitor a minimum of 20 bioassessment stations in October of each year, beginning in 2003. A minimum of three replicate samples shall be collected at each station during each sampling event.

4. A professional environmental laboratory shall perform all laboratory, quality assurance, and analytical procedures. The Principal Permittee may collect samples when properly trained in CSBP methods. The Principal Permittee shall develop Standard Operation Procedures (SOPs) for the Bioassessment Monitoring Program that describes all procedures and responsible parties. The SOPs must contain step-by-step field, laboratory and data entry procedures, as well as, related QA/QC procedures. There must also be specific information about the bioassessment program including: assessment program description, its organization and the responsibilities of all its personnel; assessment project description and objectives; qualifications of all personnel; and the type of training each member has received. A copy of the SOPs shall be available to the Regional Board Executive Officer upon request.

5. Field sampling must conform to the SOP established for the California Stream Bioassessment Procedure (CSBP) when appropriate. For sampling of aquatic environments where the CSBP is not appropriate (i.e., an estuary or unwadable stream), California Department of Fish and Game and the Regional Board Executive Officer shall be consulted in order to determine the most appropriate protocol to be implemented. Field crews shall be trained on aspects of the protocol and appropriate safety issues. All field data and sample Chain of Custody (COC) forms must be examined for completion and gross errors by the field crews, the

receiving laboratory, and the Principal Permittee. These forms shall be available to California Department of Fish and Game or the Regional Board Executive Officer upon request. Field inspections should be planned with random visits and should be performed by the Principal Permittee, if properly trained in CSBP methods, or an independent auditor. These visits should report on all aspects of the field procedure with corrective action occurring immediately.

6. Taxonomic identification laboratories process the biological samples that usually consist of subsampling organisms, enumerating and identifying taxonomic groups and entering the information into an electronic format. There should be intra-laboratory QA/QC results for subsampling, taxonomic validation and corrective actions. Biological laboratories should also maintain reference collections, vouchered specimens (the Principal Permittee can request return of their sample voucher collections) and remnant collections. Biological laboratories shall participate in an inter-laboratory (external) taxonomic validation program at a recommended level of 20% for the first two years of the program. If there are no substantial QA/QC problems, the level of external validation may be decreased to 10% in year three upon approval from the Regional Board. External QA/QC should be arranged through the California Department of Fish and Game's Aquatic Bioassessment Laboratory in Rancho Cordova.

7. Sampling, laboratory, quality assurance, and analysis procedures shall follow the standardized "Non-point Source Bioassessment Sampling Procedures" for professional bioassessment as set forth in the California Department of Fish and Game California Stream Bioassessment Procedure (CSBP)[11]. The following results and information shall be included in the annual Monitoring Report:

   a) All physical, chemical and biological data collected in the assessment;

   b) Photographs and GPS locations of all stations;

   c) Documentation of quality assurance and control procedures;

   d) Analysis that shall include calculation of the metrics used in the CSBP;

   e) Comparison of mean biological and habitat assessment metric values between stations and year-to-year trends;

   f) Electronic data formatted to the California Department of Fish and Game Aquatic Bioassessment Laboratory for inclusion in the Statewide Access Bioassessment Database; and

   g) Copies of all QA/AC documents from laboratories.

[11] California Stream Bioassessment Procedure (Protocol Brief for Biological and Physical/Habitat Assessment in Wadeable Streams), California Department of Fish and Game - Aquatic Bioassessment Laboratory, May 1999. Located at www.dfg.ca.gov/cabw/protocols.html.

SPECIAL STUDIES

H. New Development Impacts Study in the Santa Clara Watershed

The Principal Permittee, with support from the City of Santa Clarita, shall monitor tributaries in the Santa Clara watershed to determine impacts from new development and to compare storm water quality between subwatersheds with and without SUSMPs.

1. The Principal Permittee, in cooperation with the City of Santa Clarita, shall select one station that is representative of a subwatershed in which the majority of development has occurred without SUSMP implementation, and one station (SUSMP station) in a subwatershed in which the majority of the development has/will include SUSMP implementation. Other inputs to runoff, such as septic systems, in the two subwatersheds should be similar.

2. The Principal Permittee shall coordinate with the City of Santa Clarita and the Regional Board to develop a proposed study design, including a description of the drainage areas to be monitored and sampling locations, no later than August 1, 2002. If appropriate, this study may be conducted in conjunction with the Peak Discharge Impact Study, described below.

3. The Principal Permittee shall monitor the first storm event and at least 2 additional storm events during each storm season. At least one dry weather event per year will also be sampled at each station.

4. Samples shall be flow-weighted composites, collected during the first 3 hours, or for the duration of the storm if it is less than 3 hours. Samples may be collected manually or automatically. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[12], unless the Regional Board Executive Officer approves alternate protocol. Constituents to be analyzed for each location shall include the following:

   a) pH, dissolved oxygen, temperature, conductivity, chloride, nitrogen, and TSS;

   b) Metals: aluminum, arsenic, beryllium, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, silver, and zinc;

   c) Pathogen Indicators (Coliform);

   d) PAHs; and

   e) Flow (flow may be estimated using EPA methods at sites where flow measurement devices are not in place).

5. The Principal Permittee shall submit an analysis of the data, including a description of each subwatershed, year-to-year changes compared to the amount of development that occurred in each, comparisons between

[12] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

stations, and an analysis of SUSMP effectiveness, with the fourth year Monitoring Report.

I. Peak Discharge Impact Study

The Principal Permittee shall conduct a study to evaluate peak flow control and to determine numeric criteria to prevent or minimize erosion of natural stream channels and banks caused by urbanization.[13] The Principal Permittee may partner with the Ventura County Flood Control District to expand the stream erosion study to the Santa Clara River watershed. The study shall begin no later than August 1, 2002.

J. BMP Effectiveness Study

The Principal Permittee shall conduct or participate in studies to evaluate the effectiveness of structural and treatment control BMPs. The objective of this study shall include the following:

- Monitor the reduction of pollutants of concern in storm water (including, but not limited to: trash, suspended sediment, pathogen indicators, nutrients, heavy metals, and oil and grease) from five or more different types of BMPs that have been properly installed within the year preceding monitoring. Monitoring shall be continued until the effectiveness of the BMP can be determined.
- Evaluate the requirements, feasibility and cost of maintenance for each BMP.
- Develop recommendations for appropriate BMPs for the reduction of pollutants of concern in storm water in Los Angeles County.

The Principal Permittee may participate in the SMBRP's, "Performance Evaluation of Structural BMPs for Storm Water Pollution Control in the Santa Monica Bay Watershed" study to meet this requirement. Participation includes collaboration and fund contribution to cover the scope of the proposed study.

K. Standard Monitoring Provisions

All monitoring activities shall meet the following requirements:

1. Monitoring and Records [40 CFR 122.41(j)(1)]
   Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Monitoring and Records [40 CFR 122.41(j)(2)] [CWC §13383(a)]
   The Principal Permittee and Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the Report of Waste Discharge and application for this Order, for a period of at least five (5) years from

[13] Permit, Part 4.D.2 (Development Planning Program) requires the development of numerical criteria for peak flow control in natural drainage systems.

the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Board or USEPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge.

3. Monitoring and Records [40 CFR 122.21(j)(3)]
   Records of monitoring information shall include:
   a) The date, exact place, and time of sampling or measurements;
   b) The individual(s) who performed the sampling or measurements;
   c) The date(s) analyses were performed;
   d) The individual(s) who performed the analyses;
   e) The analytical techniques or methods used; and,
   f) The results of such analyses.

4. Monitoring and Records [40 CFR 122.21(j)(4)]
   All sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this Order.

5. Monitoring and Records [40 CFR 122.21(j)(5)]
   The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both.

6. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by an appropriate governmental regulatory agency.

7. For priority toxic pollutants that are identified in the CTR (65 *Fed. Reg.* 31682), the MLs published in Appendix 4 of the SIP shall be used for all analyses, unless otherwise specified. The MLs from the SIP are incorporated into the Constituent List (Attachment U-1).

8. The Monitoring Report shall specify the analytical method used, the MDL and the ML for each pollutant. For the purpose of reporting compliance with numerical limitations, performance goals, and receiving water limitations, analytical data shall be reported with one of the following methods, as appropriate:

a) An actual numerical value for sample results greater than or equal to the ML;

b) "Not-detected (ND)" for sample results less than the laboratory's MDL with the MDL indicated for the analytical method used; or

c) "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML. The estimated chemical concentration of the sample shall also be reported. This is the concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

9. For priority toxic pollutants, if the Principal Permittee or Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Principal Permittee must submit documentation from the laboratory to the Regional Board Executive Officer for approval prior to raising the ML for any constituent.

10. Monitoring Reports [40 CFR 122.41(l)(4)(ii)]

If the Principal Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, unless otherwise specified in the Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual Monitoring Reports.

11. Monitoring Reports [40 CFR 122.41(l)(4)(iii)]

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order.

12. If no flow occurred during the reporting period, the Monitoring Report shall so state.

13. The Regional Board Executive Officer or the Regional Board, consistent with 40 CFR 122.41, may approve changes to the Monitoring Program, after providing the opportunity for public comment, either:

a) By petition of the Principal Permittee or by petition of interested parties after the submittal of the annual Monitoring Report. Such petition shall be filed not later than 60 days after the Monitoring Report submittal date, or

b) As deemed necessary by the Regional Board Executive Officer following notice to the Principal Permittee.

Ordered by:

Dennis A. Dickerson
Executive Officer
Date: December 13, 2001

ATTACHMENT U-1
LIST OF CONSTITUENTS FOR THE STORM WATER MONITORING PROGRAM AND ASSOCIATED MINIMUM LEVELS (MLs)[1]

CONSTITUENTS	MLs
CONVENTIONAL POLLUTANTS	**mg/L**
Oil and Grease	5
Total Phenols	0.1
Cyanide	0.005
pH	0 - 14
Temperature	None
Dissolved Oxygen	Sensitivity to 5 mg/L
BACTERIA	
Total coliform	<20mpn/100ml
Fecal coliform	<20mpn/100ml
Enterococcus (marine waters)	<20mpn/100ml
E. coli (fresh waters)	
GENERAL	**mg/L**
Dissolved Phosphorus	0.05
Total Phosphorus	0.05
Turbidity	0.1NTU
Total Suspended Solids	2
Total Dissolved Solids	2
Volatile Suspended Solids	2
Total Organic Carbon	1
Total Petroleum Hydrocarbon	5
Biochemical Oxygen Demand	2
Chemical Oxygen Demand	20-900
Total Ammonia-Nitrogen	0.1
Total Kjeldahl Nitrogen	0.1
Nitrate-Nitrite	0.1
Alkalinity	2
Specific Conductance	1umho/cm
Total Hardness	2
MBAS	0.5
Chloride	2
Fluoride	0.1
Methyl tertiary butyl ether (MTBE)	1

[1] For Priority Pollutants, the MLs represent the lowest value listed in Appendix 4 of SIP. MDLs must be lower than or equal to the ML value. If a particular ML is not attainable in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure may be used instead.

METALS	µg/L
Aluminum	100
Antimony	0.5
Arsenic	1
Beryllium	0.5
Cadmium	0.25
Chromium (total)	0.5
Copper	0.5
Hex. Chromium	5
Iron	100
Lead	0.5
Mercury	0.5
Nickel	1
Selenium	1
Silver	0.25
Thallium	1
Zinc	1
SEMIVOLATILE ORGANIC COMPOUNDS	**µg/L**
Acids	
2-Chlorophenol	2
2, 4-Dichlorophenol	1
2,4-Dimethylphenol	2
2, 4-Dinitrophenol	5
2-Nitrophenol	10
4-Nitrophenol	5
4-Chloro-3-methylphenol	1
Pentachlorophenol	2
Phenol	1
2,4,6-Trichlorophenol	10
BASE/NEUTRAL	**µg/L**
Acenaphthene	1
Acenaphthylene	2
Anthracene	2
Benzidine	5
1,2 Benzanthracene	5
Benzo(a)pyrene	2
Benzo(g,h,i)perylene	5
3,4 Benzoflouranthene	10
Benzo(k)flouranthene	2
Bis(2-Chloroethoxy) methane	5
Bis(2-Chloroisopropyl) ether	2
Bis(2-Chloroethyl) ether	1
Bis(2-Ethylhexl) phthalate	5
4-Bromophenyl phenyl ether	5

Butyl benzyl phthalate	10
2-Chloroethyl vinyl ether	1
2-Chloronaphthalene	10
4-Chlorophenyl phenyl ether	5
Chrysene	5
Dibenzo(a,h)anthracene	0.1
1,3-Dichlorobenzene	1
1,4-Dichlorobenzene	1
1,2-Dichlorobenzene	1
3,3-Dichlorobenzidine	5
Diethyl phthalate	2
Dimethyl phthalate	2
di-n-Butyl phthalate	10
2,4-Dinitrotoluene	5
2,6-Dinitrotoluene	5
4,6 Dinitro-2-methylphenol	5
1,2-Diphenylhydrazine	1
di-n-Octyl phthalate	10
Fluoranthene	0.05
Fluorene	0.1
Hexachlorobenzene	1
Hexachlorobutadiene	1
Hexachloro-cyclopentadiene	5
Hexachloroethane	1
Indeno(1,2,3-cd)pyrene	0.05
Isophorone	1
Naphthalene	0.2
Nitrobenzene	1
N-Nitroso-dimethyl amine	5
N-Nitroso-diphenyl amine	1
N-Nitroso-di-n-propyl amine	5
Phenanthrene	0.05
Pyrene	0.05
1,2,4-Trichlorobenzene	1
CHLORINATED PESTICIDES	**µg/L**
Aldrin	0.005
alpha-BHC	0.01
beta-BHC	0.005
delta-BHC	0.005
gamma-BHC (lindane)	0.02
alpha-chlordane	0.1
gamma-chlordane	0.1
4,4'-DDD	0.05
4,4'-DDE	0.05
4,4'-DDT	0.01
Dieldrin	0.01
alpha-Endosulfan	0.02

beta-Endosulfan	0.01
Endosulfan sulfate	0.05
Endrin	0.01
Endrin aldehyde	0.01
Heptachlor	0.01
Heptachlor Epoxide	0.01
Toxaphene	0.5
Polychlorinated Biphenyls	**µg/L**
Aroclor-1016	0.5
Aroclor-1221	0.5
Aroclor-1232	0.5
Aroclor-1242	0.5
Aroclor-1248	0.5
Aroclor-1254	0.5
Aroclor-1260	0.5
ORGANOPHOSPHATE PESTICIDES	**µg/L**
Chlorpyrifos	0.05
Diazinon	0.01
Prometryn	2
Atrazine	2
Simazine	2
Cyanazine	2
Malathion	1
HERBICIDES	**µg/L**
Glyphosate	5
2,4-D	0.02
2,4,5-TP-SILVEX	0.2

ATTACHMENT U-2
SHORELINE MONITORING STATIONS

Station	Location[1]	Latitude	Longitude
S1	Surfrider Beach, Malibu, 50 yds E. of breech	34.03500	118.67833
S2	Topanga Point, Malibu, seaward of lifeguard station	34.03833	118.58083
S3	Pulga storm drain, Pacific Palisades, 50 yds E. of drain	34.03361	118.53417
S4	Santa Monica Canyon storm drain, Pacific Palisades, 50 yds E. of drain	34.02639	118.51861
S5	Santa Monica Pier, Santa Monica, 50 yds S. of pier	34.00833	118.49667
S6	Pico-Kenter storm drain, Santa Monica, 50 yds S. of drain	34.00583	118.49250
S7	Ashland storm drain, Santa Monica, 50 yds S. of drain	33.99639	118.48472
S8	Windward storm drain, Los Angeles, 50 yds S. of drain	33.98778	118.47750
S9	Marina Del Rey Beach, Marina Del Rey, at lifeguard tower.	33.98139	118.45833
S10	Ballona Creek, Playa Del Rey, 50 yds S. of south jetty	33.96083	118.45611
S11	Culver Blvd., extended, Playa Del Rey, N side of Culver storm drain	33.95639	118.45167
S12	Imperial Hwy. Storm drain, Playa Del Rey, 50 yds S. of drain	33.93028	118.43722
S13	El Porto, Manhattan Beach, 40th St. extended	33.90389	118.42250
S14	Manhattan Beach Pier, Manhattan Beach, 50 yds S. of pier	33.88360	118.41278
S15	Hermosa Beach Pier, Hermosa Beach, 50 yds S. of pier	33.86111	118.40278
S16	Redondo Pier, Redondo Beach, 50 yds S. of pier	33.83833	118.39111
S17	Ave. I storm drain, Redondo Beach, Ave. I extended, 50 yds S. of drain	33.81889	118.39111
S18	Malaga Cove, Palos Verdes Estates, Arroyo Circle extended	33.80500	118.39467

[1] Station locations from *Ocean Water Regulatory & Monitoring Protocol*, County of Los Angeles, Department of Health Services, May 5, 1999.

Attachment U-3
Total Maximum Daily Loads Scheduled for Implementation in Los Angeles County within 10 Years

Watershed	*TMDL*
Malibu	Coliform, Nutrients
Malibu Creek Lakes and Tributaries	Metals
Ballona Creek	Trash, Coliform, Historic Pesticides, Metals, TBT
Dominguez Channel/LA Harbor	Coliform, PAHs, Historic Pesticides, PCBs, DDT, Metals, Nutrients, Trash
Los Angeles River	Trash, Nutrients, Coliform, Chlorpyrifos, Metals
San Gabriel River	Nutrients, Coliform, Metals, Trash
San Gabriel Lakes	Coliform
Santa Monica Bay Beaches	Coliform, Metals, Chlordane, Historic PCBs and Pesticides
Santa Clara River	Historic Pesticides, Chloride, Coliform, Nitrogen, Eutrophication, Trash
Los Cerritos Channel	Metals, Ammonia, Coliform

Los Angeles County Municipal Storm Water Permit (Order 01-182)
Individual Annual Report Form
Attachment U-4

This form summarizes the requirements in Order No. 01-182. Each Permittee must complete this form in its entirety, except for those requirements applicable only to the Principal Permittee. Only report activities that were performed during the previous fiscal year. Upon completion, this form shall be submitted to the Principal Permittee, by the date specified by the Principal Permittee, for inclusion in the unified Annual Storm Water Program Report. Attachments should be included where necessary to provide sufficient information on program implementation.

The goals of this Report are to: 1) concisely document implementation of the Storm Water Quality Management Program (SQMP) during the past fiscal year; 2) evaluate program results for continuous improvement; 3) to determine compliance with Order 01-182; and 4) to share this information with other Permittees, municipal decision makers, and the public.

!	YOU MUST FILL OUT ALL THE INFORMATION REQUESTED *Do not leave any of the sections blank.*
N/A	If the question does not apply to your municipality, please indicate N/A in the space provided and provide a brief explanation
U	If the information requested is currently unavailable, please indicate U in the space provided and give a brief explanation.

This Report Form consists of the following sections:

SECTION	PAGE
I. Program Management	**2-4**
II. Receiving Water Limitations	**5**
III. SQMP Implementation	**5-7**
IV. Special Provisions	**8**
IV.A. Public Information and Participation Program	**8-14**
IV.B. Industrial/Commercial Facilities Program	**15-17**
IV.C. Development Planning Program	**18-21**
IV.D. Development Construction Program	**22-23**
IV.E. Public Agency Activities Program	**24-33**
IV.F. IC/ID Elimination Program	**34-37**
V. Monitoring	**38**
VI. Assessment of Program Effectiveness	**38**
VII. Certification	**39**

Los Angeles County Municipal Storm Water Permit (Order 01-182)
Individual Annual Report Form
Attachment U-4

Reporting Year 200__- 200__

I. Program Management

A. Permittee Name: _____

B. Permittee Program Supervisor: _____

Title:
Address:
City: Zip Code:
Phone: Fax:

C. In the space below, briefly describe how the storm water program is coordinated within your agency's departments and divisions. Include a description of any problems with coordination between departments. To facilitate this, complete the Table 1.

TABLE 1 - Program Management

Storm Water Management Activity	Division/Department	# of Individuals Responsible for Implementing
1. Outreach & Education		
2. Industrial/Commercial Inspections		
3. Construction Permits/Inspections		
4. IC/ID Inspections		
5. Street sweeping		
6. Catch Basin Cleaning		
7. Spill Response		
8. Development Planning (project/SUSMP review and approval)		
9. Trash Collection		

Los Angeles County Municipal Storm Water Permit (Order 01-182)
Individual Annual Report Form
Attachment U-4

D. Staff and Training

Attach a summary of staff training over the last fiscal year. This shall include the staff name, department, type of training, and date of training.

E. Budget Summary

1. Does your municipality have a storm water utility? Yes ☐ No ☐

If no, describe the funding source(s) used to implement the requirements of Order No. 01-182.

2. Are the existing financial resources sufficient to accomplish all required activities? Yes ☐ No ☐

3. Complete Table 2 to the extent that accurate information is available (indicate U in the spaces where the information is unavailable), and report any supplemental dedicated budgets for the same categories on the lines below the table.

4. List any additional state/federally funded projects related to storm water.

Los Angeles County Municipal Storm Water Permit (Order 01-182)
Individual Annual Report Form
Attachment U-4

TABLE 2

Program Element	Expenditures in Previous Fiscal Year	Estimated Amount Needed to implement Order 01-XXX
1. Program management a. Administrative costs b. Capital costs		
2. Public Information and Participation a. Public Outreach/Education b. Employee Training c. Corporate Outreach d. Business Assistance		
3. Industrial/Commercial inspection/ site visit activities		
4. Development Planning		
5. Development Construction a. Construction inspections		
6. Public Agency Activities a. Maintenance of structural and treatment control BMPs b. Municipal street sweeping c. Catch basin cleaning d. Trash collection/recycling e. Capital costs f. Other		
7. IC/ID Program a. Operations and Maintenance b. Capitol Costs		
8. Monitoring		
9. Other		
10. TOTAL		

List any supplemental dedicated budgets for the above categories:

List any activities that have been contracted out to consultants/other agencies:

Los Angeles County Municipal Storm Water Permit (Order 01-182)
Individual Annual Report Form
Attachment U-4

II. Receiving Water Limitations (Part 2)

A. Are you aware, or have you been notified, of any discharges from your MS4 that cause or contribute to a condition of nuisance or to the violation of any applicable water quality standards? Yes ☐ No ☐

B. Has the Regional Board notified you that discharges from your MS4 are causing or contributing to an exceedance of water quality standards? Yes ☐ No ☐

C. If you answered Yes to either of the above questions, you must attach a Receiving Water Limitations (RWL) Compliance Report. The Report must include the following:

1. A description of the pollutants that are in exceedance and an analysis of possible sources;
2. A plan to comply with the RWL (Permit, Part 2);
3. Changes to the SQMP to eliminate water quality exceedances;
4. Enhanced monitoring to demonstrate compliance; and
5. Results of implementation.

III. SQMP Implementation (Part 3)

A. Has your agency implemented the SQMP and any additional controls necessary to reduce the discharges of pollutants in storm water to the maximum extent practicable? Yes ☐ No ☐

B. If your agency has implemented additional or different controls than described in the countywide SQMP, has your agency developed a local SQMP that reflects the conditions in its jurisdiction and specifies activities being implemented under the appropriate elements described in the countywide SQMP? Yes ☐ No ☐

C. Describe the status of developing a local SQMP in the box below.

D. If applicable, describe an additional BMP, in addition to those in the countywide SQMP, that your city has implemented to reduce pollutants in storm water to the maximum extent practicable.

E. Watershed Management Committees (WMCs)

1. Which WMC are you in?
2. Who is your designated representative to the WMC?
3. How many WMC meetings did you participate in last year?
4. Describe specific improvements to your storm water management program as a result of WMC meetings.
5. Attach any comments or suggestions regarding your WMC.

F. Storm Water Ordinance

1. Have you adopted a storm water and urban runoff ordinance to enforce all requirements of Order 01-182? Yes ☐ No ☐

   If not, describe the status of adopting such an ordinance.

2. If yes, have you already submitted a copy of the ordinance to the Regional Board? Yes ☐ No ☐

   If not, please attach a copy to this Report.

3. Were any amendments made to your storm water ordinance during the last fiscal year? Yes ☐ No ☐
If yes, attach a copy of amendments to this Report.

G. Discharge Prohibitions

1. List any non-storm water discharges you feel should be further regulated:

2. List any non-storm water discharges you feel should be exempt, and provide an explanation for each:

IV. Special Provisions (Part 4)

A. Public Information and Participation (Part 4.B)

In addition to answering the following questions, attach a summary of all storm water education activities that your agency conducted or participated in last year.

1. No Dumping Message

a) How many storm drain inlets does your agency own?

b) How many storm drain inlets were marked with a no dumping message in the last fiscal year?

c) What is the total number of storm drain inlets that are legibly marked with a no dumping message?

If this number is less than the number in question 1.b, describe why all inlets have not been marked, the process used to implement this requirement, and the expected completion date.

d) How many public access points to creeks, channels, and other water bodies within your jurisdiction have been posted with no dumping signage in the past year?

Describe your agency's status of implementing this requirement by the date required in Order No. 01-182.

2. Reporting Hotline

a) Has your agency established its own hotline for reporting and for general storm water management information? Yes ☐ No ☐

b) If so, what is the number?

c) Is this information listed in the government pages of the telephone book? Yes ☐ No ☐

d) If no, is your agency coordinated with the countywide hotline? Yes ☐ No ☐

e) Do you keep record of the number of calls received and how they were responded to? Yes ☐ No ☐

f) How many calls were received in the last fiscal year?

g) Describe the process used to respond to hotline calls.

h) Have you provided the Principal Permittee with your current reporting contact information? Yes ☐ No ☐

i) Have you compiled a list of the general public reporting contacts for all Permittees and posted it on the www.888CleanLA.com web site *(Principal Permittee only)?* Yes ☐ No ☐

If not, when is this scheduled to occur?

3. Outreach and Education

a) Describe the strategy developed to provide outreach and bilingual materials to target ethnic communities. Include an explanation of why each community was chosen as a target, how program effectiveness will be determined, and status of implementation. *(Principal Permittee only)*

b) Did the Principal Permittee organize quarterly Public Outreach Strategy meetings that you were aware of? Yes ☐ No ☐

How many Public Outreach Strategy meetings did your agency participate in last year?

Explain why your agency did not attend any or all of the organized meetings.

Identify specific improvements to your storm water education program as a result of these meetings:

List suggestions to increase the usefulness of quarterly meetings:

If quarterly Public Outreach Strategy meetings were not organized, explain why not and when this requirement will be implemented *(Principal Permittee only)*.

c) Approximately how many impressions were made last year on the general public about storm water quality via print, local TV, local radio, or other media?

d) Describe efforts your agency made to educate local schools on storm water pollution.

e) Did you provide all schools within each school district in Los Angeles County with materials necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution *(Principal Permittee only)*? Yes ☐ No ☐

If not, explain why.

f) Describe the strategy developed to measure the effectiveness of in-school educational programs, including assessing students' knowledge of storm water pollution problems and solutions before and after educational efforts *(Principal Permittee only)*.

For Permit Years 2-5, attach an assessment of the effectiveness of in-school storm water education programs.

g) What is the behavioral change target that was developed based on sociological data and other studies *(Principal Permittee only)?*

If no target has been developed, explain why and describe the status of developing a target.

What is the status of meeting the target by the end of Year 5?

4. Pollutant-Specific Outreach

   a) Attach a description of each watershed-specific outreach program that your agency developed *(Principal Permittee only)*. All pollutants listed in Table 1 (Section B.1.d.) must be included.

   b) Did your agency cooperate with the Principal Permittee to develop specific outreach programs to target pollutants in your area? Yes ☐ No ☐

   c) Did your agency help distribute pollutant-specific materials in your city? Yes ☐ No ☐

   d) Describe how your agency has made outreach material available to the general public, schools, community groups, contractors and developers, etc...

5. Businesses Program

   a) Briefly describe the Corporate Outreach Program that has been developed to target gas stations and restaurant chains *(Principal Permittee only)*.

   b) How many corporate managers did your agency *(Principal Permittee only)* reach last year?

   c) What is the total number of corporations to be reached through this program *(Principal Permittee only)*?

   d) Is your agency meeting the requirement of reaching all gas station and restaurant corporations once every two years *(Principal Permittee only)*? Yes ☐ No ☐
   If not, describe measures that will be taken to fully implement this requirement.

e) Has your agency developed and/or implemented a Business Assistance Program? Yes ☐ No ☐

If so, briefly describe your agency's program, including the number of businesses assisted, the type of assistance, and an assessment of the program's effectiveness.

6. Did you encourage local radio stations and newspapers to use public service announcements? Yes ☐ No ☐

How many media outlets were contacted?

Which newspapers or radio stations ran them?

Who was the audience?

7. Did you supplement the County's media purchase by funding additional media buys? Yes ☐ No ☐

Estimated dollar value/in-kind contribution:

Type of media purchased:

Frequency of the buys:

Did another agency help with the purchase? Yes ☐ No ☐

8. Did you work with local business, the County, or other Permittees to place non-traditional advertising? Yes ☐ No ☐

If so, describe the type of advertising.

9. Did you establish local community partnerships to distribute educational storm water pollution prevention material? Yes ☐ No ☐

Describe the materials that were distributed:

Who were the key partners?

Who was the audience (businesses, schools, etc.)?

10. Did you participate in or publicize workshops or community events to discuss storm water pollution? Yes ☐ No ☐

How many events did you attend?

11. Does your agency have a website that provides storm water pollution prevention information? Yes ☐ No ☐

If so, what is the address?

12. Has awareness increased in your community regarding storm water pollution? Yes ☐ No ☐

Do you feel that behaviors have changed? Yes ☐ No ☐

Explain the basis for your answers. Include a description of any evaluation methods that are used to determine the effectiveness of your agency's outreach.

13. How would you modify the storm water public education program to improve it on the City or County level?

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B. Industrial/Commercial Facilities Program

1. Critical Source Inventory Database

Did you (individually or jointly) update the Database for Critical Sources Inventory? Yes ☐ No ☐

Comments/Explanation/Conclusion:

2. Inspection Program

Provide the reporting data as suggested in the following tables.

Category	Initial Number of Facilities at the start of cycle proposed for inspection by categories (after the initial year, the updated number based on the new data)	Number of facilities inspected in the current reporting year	% Completed at the time of this report for present cycle (from the initial value, and from the updated value after first cycle)	Total number since permit adoption
Landfills				
TSDF				
...				

Comments/Explanation/Conclusion:

3. BMPs Implementation

Provide the reporting data as suggested in the following table.

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Category	Number of facilities inspected by category in this reporting year	Number of facilities identified as adequately implementing BMPs as specified in this reporting year	% adequately implementing out of total in this reporting year	Number of facilities required to implement or upgrade in this reporting year	Number of facilities inspected by category in this reporting cycle	Number of facilities identified as adequately implementing BMPs as specified in this reporting cycle	% adequately implementing out of total in this reporting cycle	Number of facilities required to implement or upgrade in this reporting cycle	Total Number during this permit adequately implementing	Total Number during this permit required to implement or upgrade
Landfills										
...										

Comments/Explanation/Conclusion:

4. Enforcement Activities

Provide the reporting data as suggested in the following tables.

Enforcement Actions by categories (e.g. Warning letter, NOV, referral to D.A., etc.)	Number of facilities issued enforcement actions in the current reporting year	Number of facilities issued enforcement actions in the current reporting cycle	Number of facilities (re)inspected due to enforcement actions in current reporting year	Number of facilities (re)inspected due to enforcement actions in current reporting cycle	Number of facilities brought into compliance in the current reporting year	Number of facilities brought into compliance in current reporting cycle	Total number of enforcement actions since permit adoption (by category)

Facilities by category	Number of Warning letters	Number of NOVs	Number of Referral	Number of Other

Comments/Explanation/Conclusion:

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5. Program Implementation Effectiveness Assessment

Please give a brief assessment of the implementation of the program in removing pollutants from the storm water discharges. Please provide an explanation. Suggested improvements or adjustments based on the knowledge gained through this reporting period activities must be reflected in a change in the SQMP, if warranted.

Highly Effective ☐ Somewhat Effective ☐ Non-effective ☐

Comments/Explanation/Conclusion:

6. You must also submit a quarterly electronic submittal of your Industrial/Commercial Facilities Program activities.

C. Development Planning Program (Part 4.D)

1. Does your agency have a process to minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies in accordance with requirements under CEQA, Section 404 of the CWA, local ordinances, and other legal authorities? Yes ☐ No ☐
   Attach examples showing how storm water quality impacts were addressed in environmental documents for projects over the past year.

2. Does your agency have procedures to include the following requirements in all priority development and redevelopment projects:

   a) Maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground? Yes ☐ No ☐

   b) Minimize the quantity of storm water directed to impermeable surfaces and the MS4? Yes ☐ No ☐

   c) Minimize pollution emanating from parking lots through the use of appropriate treatment control BMPs and good housekeeping practices? Yes ☐ No ☐

   d) Provide for appropriate permanent measures to reduce storm water pollutant loads from the development site? Yes ☐ No ☐

3. List the types and numbers of BMPs that your agency required for priority projects to meet the requirements described above.

4. Describe the status of the development or implementation of peak flow controls in natural drainage systems.

5. Has your agency amended codes and/or ordinances to give legal effect to the SUSMP changes required in the Permit? Yes ☐ No ☐

6. Describe the process your agency uses to include SUSMP design standards in new development and redevelopment project approvals.

7. How many of each of the following projects did your agency review and condition to meet SUSMP requirements last year?

   a) Residential

   b) Commercial

   c) Industrial

   d) Automotive service facilities

   e) Retail gasoline outlets

   f) Restaurants

   g) Parking lots

   h) Projects located in or directly adjacent to or discharging directly to an environmentally sensitive area

   i) Total number of permits issued to priority projects

8. What is the percentage of total development projects that were conditioned to meet SUSMP requirements? %

9. How has your agency prepared to reduce the SUSMP threshold for industrial/commercial facilities to 1 acre from 100,000 square feet in 2003?

10. After 2003, how many additional projects per year will require/did require implementation of SUSMP requirements as a result of the lower threshold?

11. Does your agency participate in an approved regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements for new development? Yes ☐ No ☐

12. Has your agency modified its planning procedures for preparing and reviewing CEQA documents to consider potential storm water quality impacts and provide for appropriate mitigation? Yes ☐ No ☐

If no, provide an explanation and an expected date of completion.

13. Did your agency update any of the following General Plan elements in the past year?

a) Land Use Yes ☐ No ☐

b) Housing Yes ☐ No ☐

c) Conservation Yes ☐ No ☐

d) Open Space Yes ☐ No ☐

If yes, please describe how watershed and storm water quality and quantity management considerations were included.

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14. How many targeted staff were trained last year?

15. How many targeted staff are trained annually?

16. What percentage of total staff are trained annually? %

17. Has your agency developed and made available development planning guidelines? Yes ☐ No ☐

18. If no, what is the expected date that guidelines will be developed and available to developers?

19. What is the status of completion of the technical manual for siting and design of BMPs for the development community?

D. Development Construction Program

1. Describe your agency's program to control runoff from construction activity at all construction sites within its jurisdiction.

2. Does your agency require the preparation, submittal, and implementation of a Local Storm Water Pollution Prevention Plan (Local SWPPP) prior to the issuance of a grading permit for all sites that meet one or all of the following criteria?

   a) Will result in soil disturbance of one acre or greater Yes ☐ No ☐

   b) Is within, directly adjacent to, or is discharging directly to an environmentally sensitive area Yes ☐ No ☐

   c) Is located in a hillside area Yes ☐ No ☐

3. Attach one example of a local SWPPP

4. Describe the process your agency uses to require proof of filing a Notice of Intent for coverage under the State General Construction Activity Storm Water permit and a certification that a SWPPP has been prepared prior to issuing a grading permit?

5. How many building/grading permits were issued to sites requiring Local SWPPPs last year?

6. How many building/grading permits were issued to sites requiring coverage under the General Construction Activities Storm Water Permit last year?

7. How many building/grading permits were issued to construction site less than one acre in size last year?

8. How many construction sites were inspected during the last wet season?

9. Complete the table below.

Type of Violation	# of Violations	% of Total Inspections	# of Follow-up Inspections	# of Enforcement Actions
Off-site discharge of sediment				
Off-site discharge of other pollutants				
No or inadequate SWPPP				
Inadequate BMP/SWPPP implementation				

10. Describe the process for taking enforcement actions against construction site violations, including the types of actions that are taken.

11. Describe the system that your agency uses to track the issuance of grading permits.

E. Public Agency Activities (Part 4.F)

1. Sewage System Maintenance, Overflow, and Spill Prevention (only applicable to agencies that own and/or operate a sanitary sewer system)

a) Has your agency developed and implemented a response plan for sanitary sewer overflows that includes the requirements in Order 01-182? Yes ☐ No ☐

b) How many sanitary sewer overflows occurred within your jurisdiction?

c) How many did your agency respond to?

d) Did your agency investigate all complaints received? Yes ☐ No ☐

e) How many complaints were received?

f) Upon notification, did your agency immediately respond to overflows by containment? Yes ☐ No ☐

g) Did your agency notify appropriate sewer and public health agencies when a sewer overflowed to the MS4? Yes ☐ No ☐

h) Did your agency implement a program to prevent sewage spills or leaks from sewage facilities from entering the MS4? Yes ☐ No ☐

If so, describe the program:

i) Did your agency implement a program to identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4? Yes ☐ No ☐

If so, describe the program:

2. Public Construction Activities Management

a) What percentage of public construction sites 5 acres or greater in size did your agency obtain coverage under the State of California General Construction Activities Storm Water Discharge Permit ? ☐ %

b) Give an explanation for any sites greater than 5 acres that were not covered:

c) What is the total number of active public construction sites?

How many were 5 acres or greater in size?

d) (After March, 2003) Did your agency obtain coverage under the State of California General Construction Activities Storm Water Discharge Permit coverage for public construction sites for sites one acre or greater? Yes ☐ No ☐

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Did your agency implement pollution prevention plans for each public vehicle maintenance facility, material storage facility, and corporation yard? Yes ☐ No ☐

b) Briefly describe how your agency implements the following, and any additional, BMPs to minimize pollutant discharges in storm water:

(1) Good housekeeping practices

(2) Material storage control

(3) Vehicle leaks and spill control

(4) Illicit discharge control

c) Are all Permittee owned and/or operated vehicle/equipment wash areas self-contained, covered, equipped with a clarifier, and properly connected to the sanitary sewer? Yes ☐ No ☐

If not, what is the status of implementing this requirement?

d) How many Permittee owned and/or operated vehicle/equipment wash areas are scheduled to be redeveloped to include the BMPs listed above?

4. Landscape and Recreational Facilities Management

a) Has your agency developed a standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers? Yes ☐ No ☐

Briefly describe this protocol:

b) How does your agency ensure that there is no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied?

c) Are any banned pesticides, herbicides, fungicides, or rodenticides stored or applied in your agency's jurisdiction that you know of? Yes ☐ No ☐

If so, list them:

d) What percentage of your agency's staff that apply pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator?

e) Describe procedures your agency has implemented to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs:

5. Storm Drain Operation and Management

a) Did your agency designate catch basin inlets within its jurisdiction as Priority A; Priority B; and Priority C? Yes ☐ No ☐

b) How many of each designation exist in your jurisdiction?

Priority A:
Priority B:
Priority C:

c) Is your city subject to a trash TMDL? Yes ☐ No ☐

d) If yes, describe the activities and/or implementation measures that your agency conducted pursuant to the TMDL and any other trash reduction efforts that occurred.

e) How many times were all Priority A basins cleaned last year?

f) How many times were all Priority B basins cleaned last year?

g) How many times were all Priority C basins cleaned last year?

h) How much total waste was collected in tons from catch basin clean-outs last year?

i) Attach a record of all catch basins in your jurisdiction. This shall identify each basin as City or County owned, and Priority A, B, or C. For all basins that are owned and operated by your agency, include dates that each was cleaned out over the past year.

j) Did your agency place and maintain trash receptacles at all transit stops within its jurisdiction. Yes ☐ No ☐

k) How many new trash receptacles were installed last year?

l) Did your agency place special conditions for events that generated substantial quantities of trash and litter including provisions that:

(1) Provide for the proper management of trash and litter generated from the event? Yes ☐ No ☐

(2) Arrange for temporary screens to be placed on catch basins? Yes ☐ No ☐

(3) Or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain? Yes ☐ No ☐

m) Did your agency inspect the legibility of the catch basin stencil or labels? Yes ☐ No ☐

What percentage of stencils were legible?

n) Were illegible stencils recorded and re-stenciled or re-labeled within 180 days of inspection? Yes ☐ No ☐

o) Did your agency visually monitor Permittee-owned open channel storm drains and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection? Yes ☐ No ☐

Is the prioritization attached? Yes ☐ No ☐

p) Did your agency review its maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality? Yes ☐ No ☐

What changes have been made?

q) Did your agency remove trash and debris from open channel storm drains a minimum of once per year before the storm season? Yes ☐ No ☐

r) How did your agency minimize the discharge of contaminants during MS4 maintenance and clean outs?

s) Where is removed material disposed of?

6. Streets and Roads Maintenance

a) Did your agency designate streets and/or street segments within its jurisdiction as one of the following:

(1) Priority A – streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or litter? Yes ☐ No ☐

(2) Priority B - streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or litter? Yes ☐ No ☐

(3) Priority C – streets and/or street segments that are designated as generating low volumes of trash and/or litter? Yes ☐ No ☐

b) Did your agency perform all street sweeping in compliance with the permit and according to the following schedule:

(1) Priority A – These streets and/or street segments shall be swept at least two times per month? Yes ☐ No ☐

(2) Priority B - Each Permittee shall ensure that each streets and/or street segments is cleaned at least once per month? Yes ☐ No ☐

(3) Priority C – These streets and/or street segments shall be cleaned as necessary but in no case less than once per year? Yes ☐ No ☐

c) Did your agency require that saw cutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain? Yes ☐ No ☐

d) Did your agency require that concrete and other street and road maintenance materials and wastes be managed to prevent pollutant discharges? Yes ☐ No ☐

e) Did your agency require that the washout of concrete trucks and chutes only occur in designated areas and never into storm drains, open ditches, streets, or catch basins leading to the storm drain system? Yes ☐ No ☐

f) Did your agency train its employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water? and Yes ☐ No ☐

(2) Identify and select appropriate BMPs? Yes ☐ No ☐

7. Parking Facilities Management

a) Did your agency ensure that Permittee-owned parking lots be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. Yes ☐ No ☐

b) Were any Permittee-owned parking lots cleaned less than once a month? Yes ☐ No ☐

How many?

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8. Public Industrial Activities Management

   a) Did your agency, for all municipal activity considered an industrial activity under USEPA Phase I storm water regulations, obtain separate coverage under the State of California General Industrial Activities Storm Water Discharge Permit no later than December 31, 2001? Yes ☐ No ☐

   b) Does your agency serve a population of less than 100,000 people? Yes ☐ No ☐

9. Emergency Procedures

   a) In case of real emergencies, did your agency repair essential public services and infrastructure in a manner to minimize environmental damage? Yes ☐ No ☐

   b) Were BMPs implemented to the extent that measures did not compromise public health and safety? Yes ☐ No ☐

10. Feasibility Study

   a) Did your agency cooperate with the County Sanitation Districts of Los Angeles County to prepare a study which investigates the possible diversion of dry weather flows or the use of alternative treatment control BMPs? Yes ☐ No ☐

   b) Did your agency review its individual prioritized list and create a watershed based priority list of drains for potential diversion and submit a listing of priority diversions to the Regional Board Executive Officer? Yes ☐ No ☐

F. Illicit Connections and Illicit Discharges (IC/ID) Elimination Program (Part 4.G)

1. Attach a copy of your agency's IC/ID Elimination Implementation Program (Part 4.G.1.a.).

2. Attach a map of your storm drain system showing all permitted connections (if available), and the locations of all illicit connections and discharges that occurred last year (Part 4.G.1.b). If your agency has not completed this requirement, describe the status of the development of a baseline map, including an expected completion date.

3. Describe your enforcement procedures for eliminating illicit discharges and terminating illicit connections.

4. Describe your record keeping system to document all illicit connections and discharges.

5. What is the total length of open channel that your agency owns and operates?

6. What length was screened last year for illicit connections?

7. What is the total length of closed storm drain that your agency owns and operates?

8. What length was screened last year for illicit connections?

9. Describe the method used to screen your storm drains.

10. Provide the reporting data for illicit connections as suggested in the following table (you may submit a spreadsheet from your database that contains the information).

Year	Total # reported/ identified	Total # investigated	# that conveyed exempt discharges or NPDES permitted	# that conveyed illicit discharges that were terminated	# that were removed	# that resulted in enforcement action	# that resulted in *other* actions
01/02							
02/03							
03/04							
04/05							
05/06							

11. Explain any *other* actions that occurred in the last year.

12. What is the average time it takes your agency to initiate an illicit connection investigation after it is reported?

    a) Were all identified connections terminated within 180 days? Yes ☐ No ☐

    b) If not, explain why.

13. Provide the reporting data for illicit discharges as suggested in the following table (you may submit a spreadsheet from you database that contains this information).

Year	Total # reported	Total # that were discontinued/ cleaned up voluntarily through enforcement and the source was identified	# that were cleaned up but the source could not be identified	# that resulted in no evidence of discharge	# that were determined to be conditionally exempt	# that were exempt or in compliance and the source identified	# that resulted in enforcement action
01/02							
02/03							
03/04							
04/05							
05/06							

14. What is the average response time after an illicit discharge is reported?

    a) Did any response times exceed 72 hours? Yes ☐ No ☐

    b) If yes, explain why.

15. Describe the your agency's spill response procedures.

16. What would you do differently to improve your agency's IC/ID Elimination Program?

17. Attach a list of all permitted connections to your storm sewer system.

V. Monitoring

Briefly describe any storm water monitoring activities that are not required by Order No. 01-182 that your municipality conducted, participated in, or received funding to conduct in the past fiscal year. These activities should correspond with the dollar amount you listed in Table 3.

VI. Assessment of Program Effectiveness

A. Attach a summary of the effectiveness of your storm water management program. This summary should include, at a minimum, the following:

1. An assessment of your agency's compliance with permit requirements, based on your responses to the questions in this form;
2. Descriptions of any evaluation methods that your agency uses to determine the effectiveness of your storm water management program;
3. A summary of the strengths and weaknesses of your agency's storm water management program;
4. A list of specific program highlights and accomplishments;
5. A description of water quality improvements or degradation in your watershed over the past fiscal year;
6. Interagency coordination between cities to improve the storm water management program;
7. Future plans to improve your agency's storm water management program; and
8. Suggestions to improve the effectiveness of your program or the County model programs.

B. On a scale of 1 to 10 (10 being full implementation of requirements by their deadlines), rate your municipality's level of compliance with Order No. 01-182.

C. List any suggestions your agency has for improving program reporting and assessment.

VII. Certification Statement

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility, of a fine and imprisonment for knowing violations.

Executed on the ___ day of _____ , 20_,

at _____.

Printed Name _____ Title _____

(Signature) _____

Signature by duly authorized representative

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
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JAMES A. NOYES, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: AS-0

March 6, 2003

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43

MAR 18 2003

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

MAINTENANCE PROGRAM FOR BUS SHELTERS, BUS BENCHES, AND TRASH RECEPTACLES AT DESIGNATED TRANSIT STOPS IN THE UNINCORPORATED NORTH AND SOUTH AREAS OF THE COUNTY OF LOS ANGELES
ALL SUPERVISORIAL DISTRICTS
3 VOTES

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the contract work is exempt from the provisions of the California Environmental Quality Act (CEQA).

2. Find that these services can be more economically performed by an independent contractor than by County employees.

3. Award the contracts for "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated North Area of the County of Los Angeles" and "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated South Area of the County of Los Angeles" to ShelterCLEAN, Inc., located in Burbank, California. These contracts will be for an initial period of three years commencing upon Board approval with two 1-year renewal options not to exceed a total of five years.

4. Authorize the contractor to proceed with the work in accordance with the contracts' specifications, terms, conditions, and requirements.

5. Authorize Public Works to encumber and disburse an annual amount not to exceed $1,027,923.10 ($889,546.90 for the South Area and $138,376.20 for the North Area) per year during the initial three-year term and two optional extension years, plus an additional 25 percent of these annual amounts to cover anticipated expansion of transit shelters, plus additional amounts in each option year to cover cost of living adjustments, if any. Funds are available in the Transit Enterprise Fund administered by Public Works for Fiscal Year 2002-03.

6. Delegate authority to the Director of Public Works to renew these contracts for the renewal options, if, in the opinion of the Director, renewal is warranted.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Public Works requires maintenance and trash collection services at designated transit stops throughout the unincorporated North and South Areas of the County of Los Angeles. These are new services being provided by the County. The work to be accomplished includes the maintenance of bus shelters, solar panels and associated apparatus, and bus stop benches, as well as the collection, transportation, and disposal of waste from transit stop trash receptacles at transit stops.

Public Works also anticipates that in Fiscal Year 2003-04, we will install approximately 70 nonadvertising shelters in the Fifth Supervisorial District and possibly some nonadvertising benches in the Second Supervisorial District. Furthermore, we may be asked, under the Clean Water Act, to collect trash and maintain trash receptacles at transit stops in the Los Angeles River Watershed.

The 2001 Municipal National Pollutant Discharge Elimination System (NPDES) permit Part 4.F.5.(c).(3), which is required under the Federal Clean Water Act, requires the County to prevent debris and trash from entering into the storm drain system. As part of this permit, Public Works is required to purchase, install, and maintain trash receptacles at all transit stops in the unincorporated areas of the County. At this time, the NPDES requirement applies only to four of the six watersheds in the County but may be extended to the Los Angeles River Watershed next fiscal year. Ballona Creek Watershed maybe added in subsequent years.

Implementation of Strategic Plan Goals

This action is consistent with the County's Strategic Plan Goals of Fiscal Responsibility, Organizational Effectiveness, and Children and Families' Well Being. These contracts will improve internal operations through the utilization of this contractor's expertise to effectively provide these services in a timely, responsive, and cost-effective manner, as well as improve the quality of life in the County.

FISCAL IMPACT/FINANCING

These contracts are for an annual amount not to exceed $1,027,923.10 and will commence upon Board approval for an initial period of three years. During the initial three-year term, annual contract payments for the North County Area may not exceed $105,097.20 for maintenance and trash collection services and $33,279 for as-needed replacement, removal, and relocation of transit stop amenities, for a total amount of $138,376.20. The South County annual contract payments may not exceed $724,474.40 for maintenance and trash collection services and $165,072.50 for as-needed replacement, removal, and relocation services, for a total amount of $889,546.90.

These annual sums may be increased at the Director's discretion by up to 25 percent to cover the cost of maintenance and trash collection at anticipated (and unanticipated) new transit stops and the removal, relocation, and replacement of existing amenities based on the contractor's unit prices. Furthermore, the contractor may receive cost of living adjustments in each option year in accordance with the County's policy established by the Chief Administrative Office.

With your Board's delegated authority, the Director may renew these contracts from year to year for a total contract period not to exceed five years. In any event, these contracts may be cancelled or terminated together or individually at any time by the County, without cause, upon the giving of at least 30 days' written notice to the contractor.

The "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated North Area of the County of Los Angeles" and "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated South Area of the County of Los Angeles" will be financed from all five Supervisorial Districts' allocations of Proposition A Local Return Transit Funds available in the Transit Enterprise Fund administered by Public Works for Fiscal Year 2002-03. The Los Angeles County Metropolitan Transportation Authority has approved this project as eligible for Proposition A Local Return Transit funding. There will be no impact on net County cost.

Public Works has calculated the cost-effectiveness of contracting for these services. Based on the cost calculations, Public Works had determined that these services can be more economically performed by an independent contractor than by County employees. The Auditor-Controller has reviewed and approved these calculations.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The contractor has properly executed the contracts and County Counsel has approved them as to form.

This work is being contracted in accordance with procedures authorized under County Charter Section 44.7, Part 3, and Chapter 2.121 (Contracting with Private Business) of the Los Angeles County Code. The mandatory requirements for contracting set forth in County Code Section 2.121.380 have been met.

Public Works has evaluated and determined that the contractor complies with the requirements of the Living Wage Program (Los Angeles County Code Chapter 2.201) and agrees to pay its full-time employees providing these services a living wage.

ENVIRONMENTAL DOCUMENTATION

These services are categorically exempt from CEQA as specified in Class 1 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, Synopsis 57.

CONTRACTING PROCESS

On October 31, 2002, Public Works solicited proposals from 361 independent contractors and community business organizations to accomplish these works. Also, notice of proposal availability was placed on the County's bid website (Enclosure A) and an advertisement was placed in the Los Angeles Times.

On November 27, 2002, one proposal was received for each area from the same proposer. These proposals were first reviewed to ensure they met the mandatory requirements outlined in the Requests for Proposals (RFPs). Both proposals, having met these requirements, were then evaluated by an evaluation committee consisting of Public Works' staff. The committee's evaluation was based on criteria described in the RFPs which included experience, work plan of action/approach/staffing, references, financial resources, and price. Based on this evaluation, Public Works is recommending that these contracts be awarded to ShelterCLEAN, Inc., located in Burbank, California, which was found to be

a responsive and responsible proposer who can provide these services at a reasonable price.

Public Works accessed available resources to review and assess the proposed contractor's past performance, history of labor law violations, and any negative experiences with County contracts. Our review found no reported claims.

Enclosure B reflects the proposer's minority participation. The contractor was selected upon final analysis and consideration without regard to race, creed, gender, or color.

These contracts contain Board-approved contract terms and conditions regarding current and new employee notification of the Federal-earned income tax credit, agreement to maximize to the extent possible the use of recycled-content paper products, contractor responsibility and debarment, jury service requirements, and nonpayment for services received after expiration or termination of the contracts.

Public Works has confirmed that the Child Support Services Department has received the contractor's Principal Owner Information Form in compliance with Los Angeles County Code Chapter 2.200 (Child Support Compliance Program).

Proof of the required Comprehensive General and Automobile Liability insurance policies, naming the County as additional insured, and evidence of Workers' Compensation insurance will be obtained from the contractor before any work is assigned.

As requested by your Board, the contractor has submitted a safety record which, in our opinion, reflects that activities conducted by the contractor in the past have been according to reasonable standards of safety.

In accordance with the Chief Administrative Officer's June 15, 2001, instructions, this is Public Works' assurance that this contractor will not be requested to perform services which will exceed each contract's approved amount, scope of work, and/or terms.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The award of these contracts will not result in the displacement of any County employees, as these services are for a newly created program.

CONCLUSION

Please have the original and one copy of each of these contracts signed by the Chair. Please return the signed copies for the contractor to Public Works, together with the conformed copies for Public Works' file. The fully executed originals should be retained for your files.

One approved copy of this letter is requested.

Respectfully submitted,

Donald L Wolfe

JAMES A. NOYES
Director of Public Works

AM
P:\ASPUB\CONTRACT\AM\TRANSITSTOP\BDLTR.WPD

Enc. 8

cc: Chief Administrative Office
County Counsel
Auditor-Controller (DeWitt Roberts)(w/o enc.)
Office of Affirmative Action Compliance (Robert Valdez)

1400

DEPARTMENT CONFORM

AGREEMENT

This AGREEMENT, made and entered into this 18th day of March, 2003, by and between the COUNTY OF LOS ANGELES, a subdivision of the State of California, a body corporate and politic, hereinafter referred to as "COUNTY," and SHELTERCLEAN, INC., a California corporation, hereinafter referred to as "CONTRACTOR."

WITNESSETH

FIRST: That the Contractor, for the consideration hereinafter set forth and the acceptance by the Board of Supervisors of said County of the Contractor's Proposal filed with the County on the 27th day of November, 2002, hereby agrees to provide maintenance and trash collection services throughout the unincorporated northern portion of the County to the satisfaction of the Director of Public Works, as described in the attached Specifications for "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated North Area of the County of Los Angeles."

SECOND: The Contract Specifications, the Contractor's Proposal, negotiated documents, and the Standard Terms and Conditions of Los Angeles County Services Contracts, all attached hereto; Addenda to the Request for Proposals; and the insurance certifications are incorporated herein, and are agreed by the County and the Contractor to constitute an integral part of the Contract documents.

THIRD: The County agrees, in consideration of satisfactory performance of the foregoing services in strict accordance with the Contract's Specifications to the satisfaction of the Director of Public Works, to pay the Contractor pursuant to Part I, Section 6, Schedule of Prices, as set forth in the Contractor's Proposal, an annual amount not to exceed $105,097.20 for the maintenance of bus shelters and amenities, bus benches, solar powered lighting and apparatus, and trash receptacles, as well as for the collection, transportation, and disposal of waste; plus an annual amount not to exceed $33,279 for as-needed replacement, relocation, and removal of bus shelters and amenities, bus benches, solar powered lighting and apparatus, and trash receptacles; or, such greater amounts as the Board may approve.

FOURTH: The Contractor agrees in strict accordance with the Contract Specifications and Conditions to meet the County's requirements.

FIFTH: In the event that terms and conditions which may be listed in the Contractor's proposal conflict with the County's Specifications, Requirements, Terms, and Conditions, herein, the County's Specifications, Requirements, Terms, and Conditions shall control and be binding.

SIXTH: Notwithstanding any other provision, the County and the Contractor agree that should the County request and the Contractor provide additional services, the Contractor's compensation shall be in accordance with the number of additional units serviced at the unit prices quoted in the Schedule of Prices, Part I, Section 6.

SEVENTH: This Contract constitutes the entire agreement between the County and the Contractor with respect to the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings.

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IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused these presents to be subscribed by the Chair of said Board and the seal of said Board to be affixed and attested by the Clerk thereof, and the Contractor has subscribed its name by and through its duly authorized officers, as of the day, month, and year first written above.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43 MAR 18 2003

_____
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

SHELTERCLEAN, INC.,
a California corporation

By _____
Sandra S. Williams, Vice President

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
ADMINISTRATIVE SERVICES DIVISION

ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles

On January 28, 2003 before me Pamela Jo Duran-Garvin, Notary Public,
NAME, TITLE OF OFFICE - e.g. "Jane Doe, Notary Public"

personally appeared Sandra S. Williams
NAME(S) OF SIGNER(S)

☒ personally know to me -OR- ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

Witness my hand and official seal.

Pamela Jo Duran-Garvin
COMM. # 1227574
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
COMM. EXP. JULY 3, 2003

Pamela Jo Duran-Garvin
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☒ CORPORATE OFFICER(~~S~~)
Vice President
TITLE(S), AND
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GRARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF ~~PERSON(S)~~ OR ENTITY(~~IES~~)
Shelter CLEAN, Inc.

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document County of Los Angeles Agreement Signature Page

Number of Pages ONE Date of Document

Signer(s) Other Than Named Above

4-0072 DPW Rev. 6/02

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

SHELTERCLEAN, INC.,
a California corporation

By Sandra S. Williams
Sandra S. Williams, Vice President

SECTION 6

SCHEDULE OF PRICES

FOR

MAINTENANCE CONTRACT FOR THE NORTHERN REGION OF THE

UNINCORPORATED AREAS OF THE COUNTY OF LOS ANGELES

==========

In accordance with Specifications, the undersigned Proposer is herewith submitting the following Proposal for the performance of the work as described in these Specifications, subject to the Proposer furnishing all labor, supervision, materials, equipment, taxes, shipping and handling, and all other applicable charges. Using the examples given below calculate your maintenance, replacement, relocation, and removal costs for bus shelters, solar panels and apparatus; bus benches; and trash receptacles. **Costs must also be submitted for trash collection, transportation, and disposal of waste at designated trash receptacles.** The Unit Count given is the current unit count for the respective amenities located at the designated transit stops in the unincorporated areas of the County of Los Angeles, but may be revised in accordance with Part I, Section 2.E, Work Location of Bus Shelters and Amenities, Bus Benches, and Trash Receptacles.

I. **MAINTENANCE, REPLACEMENT, OR RELOCATION OF SELECTED BUS SHELTERS, SOLAR PANELS AND APPARATUS; BUS BENCHES; AND TRASH RECEPTACLES**

A. **ROUTINE MAINTENANCE**

EXAMPLE				
Unit Count	Monthly Unit Rate	Monthly Payment Rate	Months	Annual Proposed Amount
3059	X $7.4724	= $22,858.07	X 12	= $274,296.85

Two hundred seventy-four thousand two hundred ninety-six dollars and eighty-five cents.

Using the example above, please calculate your costs for maintenance of the existing facilities:

1. Maintenance of the Bus Shelters and Amenities (each shelter includes a bench, a trash receptacle, and is either hard wired or has solar panels on top of the shelter or attached to a stand-alone pole)

Once-a-week maintenance of the bus shelters, including but not limited to, shelter, bench, and trash receptacle structural repairs, electrical repairs, solar panel and apparatus repairs, at designated transit stops located in the unincorporated areas of the County of Los Angeles, as specified in Appendix A.

Sites may include one and/or more shelters, benches, or trash receptacles.

a: **Proposed maintenance cost for bus shelter with solar panel attached to top of the shelter**

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
3*	X	$ 8.65	=	$ 25.95	X	52	=	$ 1,349.40

*Locations are marked "Y" under the "SOLAR" column in Appendix A.

One thousand, three hundred forty dollars and forty cents

Proposed annual amount for maintenance of bus shelter with solar panel attached to top of the shelter at transit stops. (write out in full)

b: **Proposed maintenance cost for bus shelter with solar panel attached to a stand-alone pole**

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
1*	X	$ 8.65	=	$ 8.65	X	52	=	$ 449.80

*Locations are marked "N" under the "SOLAR" column in Appendix A.

Four hundred forty nine dollars and eighty cents

Proposed annual amount for maintenance of bus shelters with solar panels attached to a stand-alone pole at transit stops. (write out in full)

c: Proposed maintenance cost for bus shelter with electrical hard wired lighting

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
2*	X	$ 8.65	=	$ 17.30	X	52	=	$899.60

*Locations are marked "N" under the "SOLAR" column in Appendix A.

Eight hundred, ninety nine dollars and sixty cents

Proposed annual amount for maintenance of bus shelters with solar panels attached to a stand-alone pole at transit stops. (write out in full)

2. **Maintenance of the Solar Panels Attached to Stand-Alone Light Poles**

Once a week maintenance of the solar panels attached to stand-alone light poles, including but not limited to, the repair of both the solar panels and apparatus, as specified in Appendix C.

Proposed maintenance cost for the solar panels attached to stand-alone light poles.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
5*	X	$ 5.20	=	$ 26.00	X	52	=	$ 1,352.00

*Locations in Appendix C.

One thousand, three hundred fifty two dollars and zero cents

Proposed Annual amount for the maintenance cost of the solar panels attached to stand-alone light poles. (write out in full)

3. **Maintenance of Bus Benches**

Once a week maintenance of the bus benches, including but not limited to bench structural repairs and mounting materials at designated transit stops, as specified in Appendix B.

Sites may include one and/or more benches or trash receptacles.

Proposed cost for bus bench maintenance.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
1*	X	$ 5.20	=	$ 5.20	X	52	=	$270.40

*Currently there are no stand-alone benches to be maintained in the North County area. Submitted rate is for benches which may be installed in the future.

Two hundred seventy dollars and forty cents

Proposed Annual amount for bus bench maintenance. (write out in full)

4. **Maintenance of Trash Receptacles**

Once-a-week maintenance, including but not limited to, trash receptacle structure repairs and mounting materials, at designated transit stops where there are no shelters, as specified in Appendix B.

Proposed cost for trash receptacle maintenance.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
81*	X	$ 3.25	=	$ 263.25	X	52	=	$13,689.00

*Locations in Appendix B.

Thirteen Thousand, six hundred eighty nine dollars and zero dollars

Proposed annual amount for trash receptacle maintenance (write out in full)

B. REPLACEMENT

1. Replacement of Bus Shelter Structures.

Upon request or necessity for replacement of bus shelter structures.

Replacement of bus shelter structures				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	*$9,126.00	=	$ 9,126.00

*Prices does not include bench & trash can but does include solar system.

Nine thousand, one hundred twenty six dollars and zero cents

Proposed annual amount for replacement of bus shelter structures at transit stops. (write out in full)

2. Replacement of Solar Powered Lighting and Apparatus.

Upon request or necessity for replacement of the solar panels either attached to the shelter or on stand-alone poles.

a: Replacement of solar panels attached to top of the shelters				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$848.00	=	$ 848.00

Eight hundred forty eight dollars and zero cents

Proposed annual amount for replacement of solar panels attached to top of the shelters at transit stops. (write out in full)

b: Replacement of stand-alone solar powered lights and poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 2,152.00	=	$ 2,152.00

Two thousand, one hundred fifty two dollars and zero cents

Proposed annual amount for replacement of solar powered lights and poles. (write out in full)

c: Replacement of solar panels ONLY attached to stand-alone poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 848.00	=	$ 848.00

Eight hundred forty eight dollars and zero cents

Proposed annual amount for replacement of solar panels ONLY attached to stand-alone poles. (write out in full)

d: Replacement of stand-alone poles ONLY for solar powered lighting				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 273.00	=	$ 273.00

Two hundred seventy three dollars and zero cents

Proposed annual amount for replacement of stand-alone poles ONLY for solar powered lighting. (write out in full)

3. Replacement of Bus Benches

Upon request or necessity for replacement of bus benches, including but not limited to, bench and mounting materials.

Replacement of bus benches				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 1,000.00	=	$ 1,000.00

One thousand dollars and zero cents

Proposed annual amount for replacement of bus benches. (write out in full)

4. Replacement of Trash Receptacles

Upon request or necessity for replacement for either part of or the entire trash receptacle, including but not limited to, exterior frame, inner liner, dome cover, and mounting materials.

a: Replacement of entire trash receptacle				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 954.00	=	$ 4,770.00

Four thousand seven hundred seventy dollars and zero cents

Proposed annual amount for entire trash receptacle replacement. (write out in full)

Four thousand, seven hundred seventy dollars

b: Replacement of trash receptacle exterior frame ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
10	X	$ 852.00	=	$ 8,520.00

Eight thousand, five hundred twenty dollars and zero cents

Proposed annual amount for replacement of trash receptacle exterior frame ONLY. (write out in full)

c: Replacement of trash receptacle hard liner (container) ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
10	X	$ 80.00	=	$ 800.00

Eight hundred dollars and zero cents

Proposed annual amount for replacement of trash receptacle hard liner (container) ONLY. (write out in full)

d: Replacement of trash receptacle dome cover ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
10	X	$ 134.00	=	$ 1,340.00

One thousand, three hundred forty dollars and zero cents

Proposed annual amount for replacement of trash receptacle dome cover ONLY. (write out in full)

C. RELOCATION

1. Relocation of Bus Shelters and Amenities

Upon request or necessity for relocation of bus shelters and amenities, including but not limited to, shelter, amenities, solar panels and apparatus, and the restoration of site to original condition.

a: Relocation of bus shelter and amenities (including one bus bench, one trash receptacle, and one solar panel attached to top of the shelter)				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 800.00	=	$ 800.00

Eight hundred dollars and zero cents

Proposed annual amount for relocation of bus shelters with solar panels attached on the top of the bus shelter at transit stops. (write out in full)

b: Relocation of bus shelter and amenities (including one bus bench, one trash receptacle, and one solar panel attached on stand-alone pole)				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$ 800.00	=	$ 800.00

Eight hundred dollars and zero cents

Proposed annual amount for relocation of bus shelters with solar panels attached on stand-alone poles at transit stops. (write out in full)

2. **Relocation of Stand-Alone Solar Powered Lights and Poles**

Upon request or necessity for relocation of the solar panels attached to stand-alone light poles, including but not limited to, solar panels and apparatus, and the restoration of site to original condition.

Relocation of stand-alone solar powered lights and poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$162.00	=	$162.00

One hundred sixty two dollars and zero cents

Proposed Annual amount for relocation of solar powered lights and poles. (write out in full)

3. **Relocation of Bus Benches**

Upon request or necessity for relocation of bus benches, including but not limited to, bench, mounting materials and the restoration of site to original condition.

Relocation of bus benches				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
1	X	$113.00	=	$113.00

One hundred thirteen dollars and zero cents

Proposed Annual amount for bus bench relocation. (write out in full)

4. Relocation of Trash Receptacles

Upon request or necessity for relocation of trash receptacles, including but not limited to, trash receptacle, mounting materials and the restoration of site to original condition.

Relocation of trash receptacle				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 48.75	=	$243.75

Two hundred forty three dollars and seventy five cents

Proposed Annual amount for trash receptacle relocation. (write out in full)

D. REMOVAL

1. Removal of Bus Shelters and Amenities

a: Upon request or necessity, including but not limited to removal and disposal of the shelters and amenities, solar powered lights and panels attached with shelters, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus shelter site is:

= $ 640.00 .

b: Upon request or necessity, including but not limited to removal and disposal of the shelters and amenities, stand-alone solar powered lights and poles, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus shelter site is:

= $640.00 .

Note: Prices do not include concrete work other than patching small holes. Extensive concrete work will be done by ND Electrical Construction on a time and materials basis.

2. Removal of Stand-Alone Solar Powered Lights and Poles

Upon request or necessity, including but not limited to removal and disposal of a stand-alone solar powered light and pole, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a stand-alone solar powered light and pole site is:

= $108.00.

3. Removal of Bus Benches

Upon request or necessity, including but not limited to, removal and disposal of a bus bench, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus bench site is:

= $ 48.00.

4. Removal of Trash Receptacles

Upon request or necessity, including but not limited to, the removal and disposal of a trash receptacle, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a trash receptacle site is:

= $ 48.00.

II COLLECTION, TRANSPORTATION, AND DISPOSAL OF WASTE

Collection, transportation and disposal of waste once a day, five days a week, Monday through Friday, at designated transit stops located in the unincorporated northern area of the County, as specified in Appendices A and B.

County reserves the right to reduce or increase collection frequency of any unit on any route at any time during the Contract period.

Proposed price for waste collection, transportation, and disposal at permitted materials recovery facility (MRF).

Unit Count		Unit Rate Per day		Daily Subtotals		Days	Annual Proposed Amount
87*	X	$ 3.85	=	$334.95	X	260	$87,087.00

*Locations in Appendices A and B.

Eighty seven thousand, eighty seven dollars and zero cents
Proposed Annual price for collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday. (write out in full)

TOTAL PROPOSED ANNUAL PRICE

Total proposed annual price for once-a-week maintenance of bus shelters, solar powered lighting, bus benches, and trash receptacles (excluding replacement, relocation, and removal); and the collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday is:

$105,097.20.

One hundred five thousand, ninety seven dollars and twenty cents
Proposed annual price for once-a-week maintenance of bus shelters, solar powered lighting, bus benches, and trash receptacles; and the collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday. (write out in full)

ShelterCLEAN, Inc.
Complete Legal Name of Proposer (Print or Type)

Sandra D. Williams — 11/21/02 — 805534
Signature — Date — Required License Number

2514 N. Naomi St
Address

Burbank — 91504 — 818-846-1300
City — Zip Code — Telephone

74390

DEPARTMENT CONFORM

AGREEMENT

This AGREEMENT, made and entered into this 18th day of March, 2003, by and between the COUNTY OF LOS ANGELES, a subdivision of the State of California, a body corporate and politic, hereinafter referred to as "COUNTY," and SHELTERCLEAN, INC., a California corporation, hereinafter referred to as "CONTRACTOR."

WITNESSETH

FIRST: That the Contractor, for the consideration hereinafter set forth and the acceptance by the Board of Supervisors of said County of the Contractor's Proposal filed with the County on the 27th day of November, 2002, hereby agrees to provide maintenance and trash collection services throughout the unincorporated southern portion of the County to the satisfaction of the Director of Public Works, as described in the attached Specifications for "Maintenance Program for Bus Shelters, Bus Benches, and Trash Receptacles at Designated Transit Stops in the Unincorporated South Area of the County of Los Angeles."

SECOND: The Contract Specifications, the Contractor's Proposal, negotiated documents, and the Standard Terms and Conditions of Los Angeles County Services Contracts, all attached hereto; Addenda to the Request for Proposals; and the insurance certifications are incorporated herein, and are agreed by the County and the Contractor to constitute an integral part of the Contract documents.

THIRD: The County agrees, in consideration of satisfactory performance of the foregoing services in strict accordance with the Contract's Specifications to the satisfaction of the Director of Public Works, to pay the Contractor pursuant to Part I, Section 6, Schedule of Prices, as set forth in the Contractor's Proposal, an annual amount not to exceed $724,474.40 for the maintenance of bus shelters and amenities, bus benches, solar powered lighting and apparatus, and trash receptacles, as well as for the collection, transportation, and disposal of waste; plus an annual amount not to exceed $165,072.50 for as-needed replacement, relocation, and removal of bus shelters and amenities, bus benches, solar powered lighting and apparatus, and trash receptacles; or, such greater amounts as the Board may approve.

FOURTH: The Contractor agrees in strict accordance with the Contract Specifications and Conditions to meet the County's requirements.

FIFTH: In the event that terms and conditions which may be listed in the Contractor's proposal conflict with the County's Specifications, Requirements, Terms, and Conditions, herein, the County's Specifications, Requirements, Terms, and Conditions shall control and be binding.

SIXTH: Notwithstanding any other provision, the County and the Contractor agree that should the County request and the Contractor provide additional services, the Contractor's compensation shall be in accordance with the number of additional units serviced at the unit prices quoted in the Schedule of Prices, Part I, Section 6

<u>SEVENTH</u>: This Contract constitutes the entire agreement between the County and the Contractor with respect to the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings.

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IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused these presents to be subscribed by the Chair of said Board and the seal of said Board to be affixed and attested by the Clerk thereof, and the Contractor has subscribed its name by and through its duly authorized officers, as of the day, month, and year first written above.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

43 MAR 18 2003

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

SHELTERCLEAN, INC.,
a California corporation

By _____
Sandra S. Williams, Vice President

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
ADMINISTRATIVE SERVICES DIVISION

ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of LOS ANGELES

On January 28, 2003 before me Pamela Jo Duran-Garvin, Notary Public
NAME, TITLE OF OFFICE - e.g. "Jane Doe, Notary Public"

personally appeared Sandra S. Williams
NAME(S) OF SIGNER(S)

☒ personally know to me -OR- ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Pamela Jo Duran-Garvin
COMM. # 1227574
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
COMM. EXP. JULY 3, 2003

SIGNATURE OF NOTARY

MGC1

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☒ CORPORATE OFFICER(S)
Vice-President, AND
TITLE(S)
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GRARDIAN/CONSERVATOR
☐ OTHER:

SIGNER IS REPRESENTING:
NAME OF ~~PERSON(S) OR~~ ENTITY(IES)
ShelterCLEAN, Inc.

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document County of Los Angeles Agreement Signature Page

Number of Pages ONE Date of Document

Signer(s) Other Than Named Above

14-0072 DPW Rev. 6/02

LLOYD W. PELLMAN
County Counsel

By _____
Deputy

SHELTERCLEAN, INC.,
a California corporation

By Sandra S. Williams
Sandra S. Williams, Vice President

SECTION 6

SCHEDULE OF PRICES

FOR

MAINTENANCE CONTRACT FOR THE SOUTHERN REGION OF THE

UNINCORPORATED AREAS OF THE COUNTY OF LOS ANGELES

==========

In accordance with Specifications, the undersigned Proposer is herewith submitting the following Proposal for the performance of the work as described in these Specifications, subject to the Proposer furnishing all labor, supervision, materials, equipment, taxes, shipping and handling, and all other applicable charges. Using the examples given below calculate your maintenance, replacement, relocation, and removal costs for bus shelters, solar panels and apparatus; bus benches; and trash receptacles. **Costs must also be submitted for trash collection, transportation, and disposal of waste at designated trash receptacles.** The Unit Count given is the current unit count for the respective amenities located at the designated transit stops in the unincorporated areas of the County of Los Angeles, but may be revised in accordance with Part I, Section 2.E, Work Location of Bus Shelters and Amenities, Bus Benches, and Trash Receptacles.

I. **MAINTENANCE, REPLACEMENT, OR RELOCATION OF SELECTED BUS SHELTERS, SOLAR PANELS AND APPARATUS; BUS BENCHES; AND TRASH RECEPTACLES**

A. **ROUTINE MAINTENANCE**

EXAMPLE

Unit Count		Monthly Unit Rate		Monthly Payment Rate	Months		Annual Proposed Amount
3059	X	$7.4724	=	$22,858.07	X 12	=	$274,296.85

Two hundred seventy-four thousand two hundred ninety-six dollars and eighty-five cents.

Using the example above, please calculate your costs for maintenance of the existing facilities:

1. **Maintenance of the Bus Shelters and Amenities (each shelter includes a bench, a trash receptacle, and is either hard wired or has solar panels on top of the shelter or attached to a stand-alone pole)**

Once-a-week maintenance of the bus shelters, including but not limited to, shelter, bench, and trash receptacle structural repairs, electrical repairs, solar panel and apparatus repairs, at designated transit stops located in the unincorporated areas of the County of Los Angeles, as specified in Appendix A.

Sites may include one and/or more shelters, benches, or trash receptacles.

a: Proposed maintenance cost for bus shelter with solar panel attached to top of the shelter

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
150*	X	$ 8.65	=	$ 1297.50	X	52	=	$ 67,470.

Locations are marked "Y" and "N" under the "SOLAR" column in Appendix A.

Sixty seven thousand, four hundred seventy dollars and zero cents

Proposed annual amount for maintenance of bus shelter with solar panel attached to top of the shelter at transit stops. (write out in full)

b: Proposed maintenance cost for bus shelter with solar panel attached to a stand-alone pole

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
15*	X	$ 8.65	=	$ 129.75	X	52	=	$ 6747.

*Locations are marked "N" under the "SOLAR" column in Appendix A.

Six thousand, forty seven dollars and zero cents

Proposed annual amount for maintenance of bus shelters with solar panels attached to a stand-alone pole at transit stops. (write out in full)

c: **Proposed maintenance cost for bus shelter with electrical hard wired lighting**

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
7*	X	$ 8.65	=	$ 60.55	X	52	=	$ 3148.60

*Locations are marked "N" under the "SOLAR" column in Appendix A.

Three thousand, one hundred forty eight dollars and sixty cents
Proposed annual amount for maintenance of bus shelters with solar panels attached to a stand-alone pole at transit stops. (write out in full)

2. **Maintenance of the Solar Panels Attached to Stand-Alone Light Poles**

Once a week maintenance of the solar panels attached to stand-alone light poles, including but not limited to, the repair of both the solar panels and apparatus, as specified in Appendix D.

Proposed maintenance cost for the solar panels attached to stand-alone light poles.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
189*	X	$ 5.20	=	$ 982.80	X	52	=	$ 51,105.60

*Locations in Appendix D.

Fifty one thousand,one hundred five dollars and sixty cents
Proposed Annual amount for the maintenance cost of the solar panels attached to stand-alone light poles. (write out in full)

3. **Maintenance of Bus Benches**

Once a week maintenance of the bus benches, including but not limited to bench structural repairs and mounting materials at designated transit stops, as specified in Appendix B.

Sites may include one and/or more benches or trash receptacles.

Proposed cost for bus bench maintenance.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
53*	x	$ 5.20	=	$ 275.60	x	52	=	$ 14,331.20

*Locations in Appendix B.

Fourteen thousand, three hundred thirty three dollars and twenty cen
Proposed Annual amount for bus bench maintenance. (write out in full)

4. **Maintenance of Trash Receptacles**

Once-a-week maintenance, including but not limited to, trash receptacle structure repairs and mounting materials, at designated transit stops where there are no shelters, as specified in Appendix C.

Proposed cost for trash receptacle maintenance.

Unit Count		Unit Rate Per Visit		Visit Subtotals		Estimated Weeks		Annual Proposed Amount
350*	x	$ 3.25	=	$ 1,137.50	x	52	=	$ 59,150.00

*Locations in Appendix C.

Fifty nine thousand, one hundred fifty dollars and zero cents
Proposed annual amount for trash receptacle maintenance (write out in full)

B. REPLACEMENT

1. Replacement of Bus Shelter Structures.

Upon request or necessity for replacement of bus shelter structures.

Replacement of bus shelter structures				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$9,126.00*	=	$45,630.00

*Price does not include bench and trash receptacle but ~~does include solar lighting system.~~

Forty five thousand, six hundred thirty dollars and zero cents
Proposed annual amount for replacement of bus shelter structures at transit stops. (write out in full)

2. Replacement of Solar Powered Lighting and Apparatus.

Upon request or necessity for replacement of the solar panels either attached to the shelter or on stand-alone poles.

a: Replacement of solar panels attached to top of the shelters				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$848.00	=	$4,240.00

Four thousand, two hundred forty dollars and zero cents
Proposed annual amount for replacement of solar panels attached to top of the shelters at transit stops. (write out in full)

b: Replacement of stand-alone solar powered lights and poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$2,152.00	=	$10,760.00

Ten thousand, seven hundred sixty dollars and zero cents
Proposed annual amount for replacement of solar powered lights and poles. (write out in full)

c: Replacement of solar panels ONLY attached to stand-alone poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$848.00	=	$4,240.00

Four thousand, two hundred forty dollars and zero dollars

Proposed annual amount for replacement of solar panels ONLY attached to stand-alone poles. (write out in full)

d: Replacement of stand-alone poles ONLY for solar powered lighting				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$273.00	=	$1,365.00

One thousand, three hundred sixty five dollars and zero cents

Proposed annual amount for replacement of stand-alone poles ONLY for solar powered lighting. (write out in full)

3. Replacement of Bus Benches

Upon request or necessity for replacement of bus benches, including but not limited to, bench and mounting materials.

Replacement of bus benches				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$1,000.00	=	$5,000.00

Five thousand dollars and zero cents

Proposed annual amount for replacement of bus benches. (write out in full)

4. Replacement of Trash Receptacles

Upon request or necessity for replacement for either part of or the entire trash receptacle, including but not limited to, exterior frame, inner liner, dome cover, and mounting materials.

a: Replacement of entire trash receptacle				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
30	X	$ 954.00	=	$ 28,620.00

Twenty eight thousand, six hundred twenty dollars and zero cents
Proposed annual amount for entire trash receptacle replacement. (write out in full)

b: Replacement of trash receptacle exterior frame ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
30	X	$ 852.00	=	$ 25,560.00

Twenty five thousand, five hundred sixty dollars and zero cents
Proposed annual amount for replacement of trash receptacle exterior frame ONLY. (write out in full)

c: Replacement of trash receptacle hard liner (container) ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
100	X	$ 80.00	=	$ 8,000.00

Eight thousand dollars and zero cents
Proposed annual amount for replacement of trash receptacle hard liner (container) ONLY. (write out in full)

d: Replacement of trash receptacle dome cover ONLY				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
100	X	$ 134.00	=	$ 13,400.00

Thirteen thousand, four hundred dollars and zero cents

Proposed annual amount for replacement of trash receptacle dome cover ONLY. (write out in full)

C. RELOCATION

1. Relocation of Bus Shelters and Amenities

Upon request or necessity for relocation of bus shelters and amenities, including but not limited to, shelter, amenities, solar panels and apparatus, and the restoration of site to original condition.

a: Relocation of bus shelter and amenities (including one bus bench, one trash receptacle, and one solar panel attached to top of the shelter)				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 800.00	=	$ 4,000.00

Four thousand dollars and zero cents

Proposed annual amount for relocation of bus shelters with solar panels attached on the top of the bus shelter at transit stops. (write out in full)

b: Relocation of bus shelter and amenities (including one bus bench, one trash receptacle, and one solar panel attached on stand-alone pole)				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 800.00	=	$ 4,000.00

Four thousand dollars and zero cents

Proposed annual amount for relocation of bus shelters with solar panels attached on stand-alone poles at transit stops. (write out in full)

2. Relocation of Stand-Alone Solar Powered Lights and Poles

Upon request or necessity for relocation of the solar panels attached to stand-alone light poles, including but not limited to, solar panels and apparatus, and the restoration of site to original condition.

Relocation of stand-alone solar powered lights and poles				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 162.00	=	$ 810.00

Eight hundred, ten dollars and zero cents

Proposed Annual amount for relocation of solar powered lights and poles. (write out in full)

3. Relocation of Bus Benches

Upon request or necessity for relocation of bus benches, including but not limited to, bench, mounting materials and the restoration of site to original condition.

Relocation of bus benches				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
5	X	$ 113.00	=	$ 565.00

Five hundred, sixty five dollars and zero cents

Proposed Annual amount for bus bench relocation. (write out in full)

4. Relocation of Trash Receptacles

Upon request or necessity for relocation of trash receptacles, including but not limited to trash receptacle, mounting materials and the restoration of site to original condition.

Relocation of trash receptacle				
Estimated Units per Year		Unit Rate		Annual Proposed Amount
30	X	$48.75	=	$ 1,462.50

One thousand, four hundred sixty two dollars and fifty cents
Proposed Annual amount for trash receptacle relocation. (write out in full)

D. REMOVAL

1. Removal of Bus Shelters and Amenities

a: Upon request or necessity, including but not limited to removal and disposal of the shelters and amenities, solar powered lights and panels attached with shelters, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus shelter site is:

5 X $ 640.00 = $3,200.00.

b: Upon request or necessity, including but not limited to removal and disposal of the shelters and amenities, stand-alone solar powered lights and poles, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus shelter site is:

5 X $ 640.00 = $3,200.00.

Note: Prices do not include any concrete work other than the patching of small holes. Any extensive concrete restoration will be performed by ND Electrical Construction on a time and materia basis.

2. Removal of Stand-Alone Solar Powered Lights and Poles

Upon request or necessity, including but not limited to removal and disposal of a stand-alone solar powered light and pole, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a stand-alone solar powered light and pole site is:

5 X $ 108.00 = $ 540.00 .

3. Removal of Bus Benches

Upon request or necessity, including but not limited to removal and disposal of a bus bench, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a bus bench site is:

5 X $ 48.00 = $ 240.00 .

4. Removal of Trash Receptacles

Upon request or necessity, including but not limited to the removal and disposal of a trash receptacle, and the restoration of the premises to original condition.

The price for removal, disposal, and restoration of a trash receptacle site is:

5 X $ 48.00 = $ 240.00 .

II COLLECTION, TRANSPORTATION, AND DISPOSAL OF WASTE

Collection, transportation and disposal of waste once a day, five days a week, Monday through Friday, at designated transit stops located in the unincorporated southern area of the County, as specified in Appendices A and C.

County reserves the right to reduce or increase collection frequency of any unit on any route at any time during the Contract period.

Part I - Specifications and Conditions

Proposed price for waste collection, transportation, and disposal at permitted materials recovery facility (MRF).

Unit Count		Unit Rate Per day		Daily Subtotals		Days	Annual Proposed Amount
522*	X	$ 3.85	=	$2,009.70	X	260	$522,522.00

*Locations in Appendices A and C.

Five hundred twenty-two thousand, five hundred twenty-two dollars and zero cents
Proposed Annual price for collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday. (write out in full)

TOTAL PROPOSED ANNUAL PRICE

Total proposed annual price for once-a-week maintenance of bus shelters, solar powered lighting, bus benches, and trash receptacles (excluding replacement, relocation, and removal); and the collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday is:

$724,474.40

Seven hundred twenty four thousand, four hundred seventy four dollars and forty cents
Proposed annual price for once-a-week maintenance of bus shelters, solar powered lighting, bus benches, and trash receptacles; and the collection, transportation, and disposal of waste once a day, five days a week, Monday through Friday. (write out in full)

ShelterCLEAN, Inc.
Complete Legal Name of Proposer (Print or Type)

Signature | 11/21/02 Date | 805534 Required License Number

2514 N. Naomi St.,
Address

Burbank City | 91504 Zip Code | 818-846-1300 Telephone

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS

AGREEMENT

EN0054 77

PIN TRN0000001
Placement of Bus Shelters, Benches, and Trash Receptacles
at Various Locations in All Supervisorial Districts
Federal Aid Project STPLER-5953(339)

THIS AGREEMENT, made and entered into this 13th day of January, 20 05, by and between the COUNTY OF LOS ANGELES, State of California, hereinafter called the County and LNI CUSTOM MANUFACTURING, INC., a corporation, 12536 Chadron Avenue, Hawthorne, California 90250, (800) 338-3387, hereinafter called the Contractor.

WITNESSETH:

FIRST: That the Contractor, in consideration of the promises of the County hereinafter set forth, hereby agrees to furnish all tools, equipment, labor and material (except as provided in the specifications hereinafter referred to), necessary to perform and complete in a good and workmanlike manner the furnishing and installation of bus shelters, benches, and trash receptacles at various bus stops; and other incidental and appurtenant work for Placement of Bus Shelters, Benches, and Trash Receptacles at Various Locations in all Supervisorial Districts in the vicinities of City Terrace, Athens, Willowbrook, Florence, Topanga, and the Antelope Valley under PIN TRN0000001 with 120 working days completion time, and said work to be performed and completed in accordance with the plans, specifications, notice to bidders and the notice inviting bids prepared by the Department of Public Works of the County, and the bid of the Contractor, all of which are incorporated herein as though fully set forth, and are agreed by the parties to constitute the contract documents.

SECOND: Additional work may be ordered by the Director of Public Works without the approval of the Board of Supervisors provided that such work shall not exceed 10 percent of the original contract amount for contracts over $50,000.00 and not exceed a net total addition of $10,000.00.

THIRD: That the Contractor agrees to be bound by and to comply with all the provisions of the Labor Code of the State of California in the performance of all work under this contract.

FOURTH: That this contract shall not be assigned without the consent of the Board of Supervisors of the County first given, such consent to be authorized by resolution entered on the minutes of said Board.

FIFTH: (a) That the County agrees, in consideration of the performance of this contract, to pay to said Contractor, and the Contractor agrees to accept in full satisfaction of the wo done hereunder, the following amounts:

S ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
SCHEDULE OF PRICES

PROJECT ID NO. TRN0000001

PLACEMENT OF BUS SHELTERS, BENCHES, AND TRASH RECEPTACLES AT VARIOUS LOCATIONS IN ALL SUPERVISORIAL DISTRICTS

Item No.	Item	Unit of Measure	Approx. Quantity	Unit Price (In Dollars)	Total (In Dollars)
1	Furnish and Install Benches in the Florence and Walnut Park Area	EA	45	966.13	43,475.85
2	Furnish and Install Solar Powered Bus Shelter Including Bench and Trash Receptacle	EA	153	9,145.40	1,399,246.20
3	Furnish and Install Trash Receptacle	EA	465	584.71	271,890.15
4	4" Thick Concrete Pad for Trash Receptacle (Unimproved Sites)	SF	612	13.48	8,249.76

GRAND TOTAL $1,722,861.96

FIFTH: (b) That the Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of Title 49 of the Code of Federal Regulations Part 26 in the award and administration of FHWA assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

FIFTH: (c) That the Contractor specifically agrees to comply with the applicable provisions of Section 1777.5 of the Labor Code relating to the employment by Contractor and any subcontractor under him, of journeymen or apprentices, or workmen, in any apprenticeable craft or trade.

FIFTH: (d) By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

FIFTH: (e) That it is agreed the improvement contemplated in the performance of this contract is a FEDERAL-AID improvement over which the State of California shall exercise general supervision; and, the State of California therefore shall have the right to assume full and direct control over this contract whenever the State of California, at its sole discretion, shall determine that its responsibility to the United States so requires.

FIFTH: (f) That the Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Contractor receives from the County. The Contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

FIFTH (g) That the Contractor specifically agrees to comply with the provisions of Section 1775 of the Labor Code relating to the payment of prevailing wages by contractor and any subcontractor under him.

FIFTH (h) That the Contractor specifically agrees to comply with the provisions of Section 1776 of the Labor Code relating to payroll records and will be responsible for compliance by any subcontractor under him.

FIFTH: (i) That the Contractor specifically agrees to the assignment of antitrust claims in compliance with Section 7103.5 of the Public Contract Code as follows:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties".

SIXTH: That it is agreed that each calendar month a payment for work performed during the previous calendar month, less any deductions, in accordance with the specifications, will be made to the Contractor upon receipt by the Board of Supervisors of a certified estimate by the County Director of Public Works. It is further agreed that the balance due on said contract, subject to all deductions from the contract price resulting from changes in the work, and subject to additions to the contract price resulting from changes in the work when all such changes are completed within the original time for completion of the contract, will be paid to the Contractor on his written demand upon completion of the contract work and acceptance of the same by the Board of Supervisors; provided, that in the event the time for completion is extended by the Board of Supervisors as a result of changes in the work which causes additions to the contract price, the balance due on the contract work completed within the original time for completion will be paid upon completion of said work, and the balance due on the work included under such changes will be paid upon completion of such work involved and acceptance of the contract work by the Board of Supervisors.

SEVENTH: Should Contractor require additional or replacement personnel after the effective date of this Agreement, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program who meet Contractor's minimum qualifications for the open position. The County will refer GAIN participants by job category to the Contractor.

NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT: Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM: The Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT: The Contractor acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Contractor understands that it is County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at Contractor's place of business. County's District Attorney will supply Contractor with the poster to be used.

TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM: Failure of Contractor to maintain compliance with the requirements set forth in "Contractor's Warranty of Adherence to County's Child Support Compliance Program" shall constitute a default by Contractor under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure to cure such default within 90 days of notice by the Los Angeles County District Attorney shall be grounds upon which the County Board of Supervisors may terminate this contract pursuant to the same remedies against Contractor as it could pursue in the event of default by the Contractor.

PROHIBITION AGAINST USE OF CHILD LABOR: The Contractor shall not knowingly supply to County any products, goods, supplies or other personal property produced or manufactured in violation of child labor standards set by the International Labor Organization through its 1973 Convention Concerning Minimum Age for Employment.

The Contractor shall upon request by County, identify the country/countries of origin of any products, goods, supplies or other personal property supplied to County.

The Contractor shall upon request by County, provide to County the manufacturer's certification of compliance with all international child labor conventions.

Should County discover that any products, goods, supplies or other personal property supplied by Contractor to County are produced in violation of any international child labor conventions, Contractor shall immediately provide an alternative, compliant source of supply.

Failure by Contractor to comply with the provisions of this clause will be grounds for immediate termination of this Agreement and award to an alternative contractor.

CONTRACTOR RESPONSIBILITY AND DEBARMENT: A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the Contractor from bidding on County contracts for a specified period of time not to exceed 3 years, and terminate any or all existing contracts the Contractor may have with the County.

The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated any term of a contract with the County, (2) committed any act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. If the Contractor fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Contractor may be deemed to have waived all rights of appeal.

A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

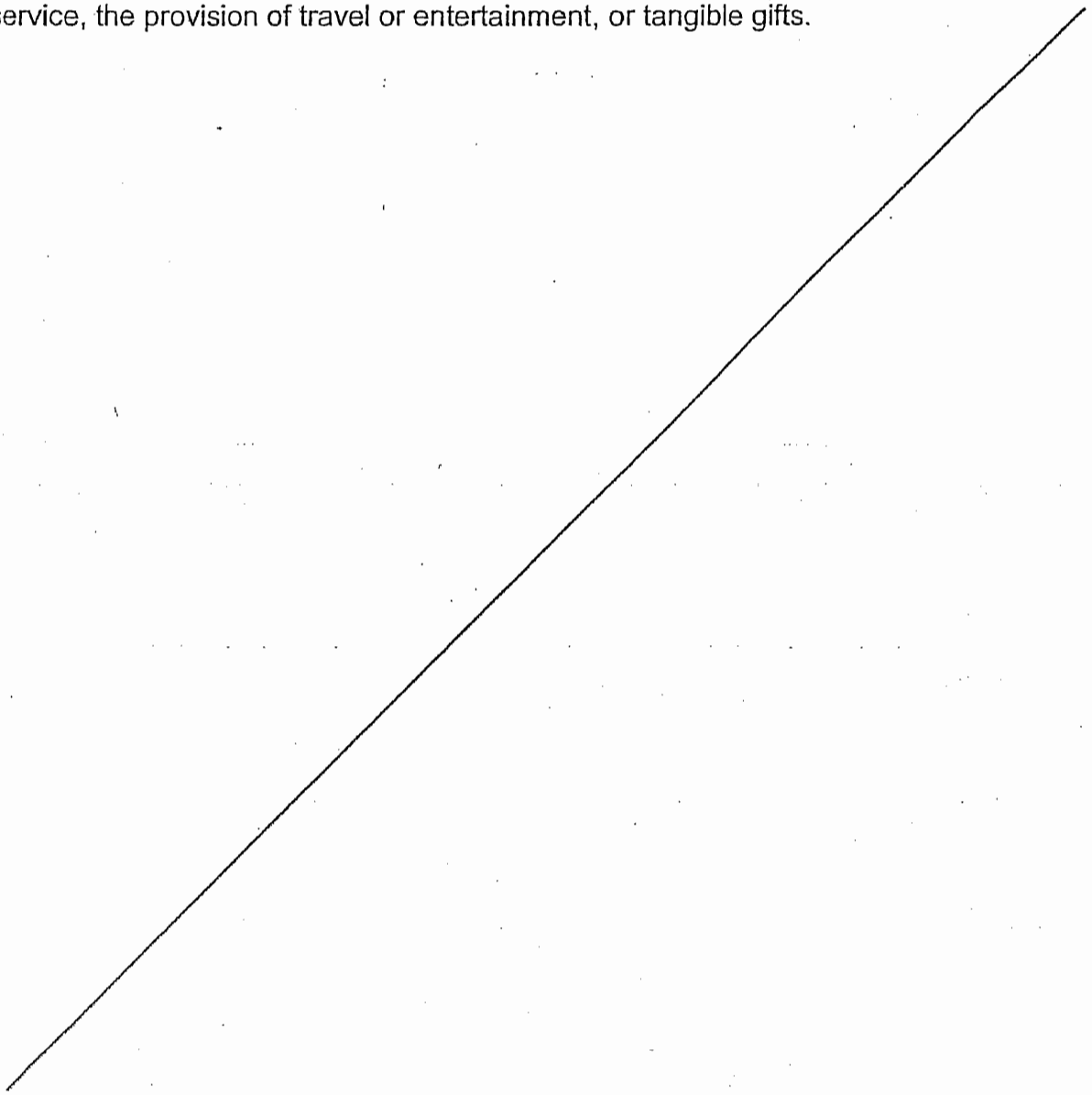
These terms shall also apply to subcontractors of County Contractors.

RECYCLED BOND PAPER: Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on the Project.

TERMINATION FOR IMPROPER CONSIDERATION: the County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to the Contractor's performance pursuant to the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by the Contractor.

Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.



IN WITNESS WHEREOF, the County has, by order of its Board of Supervisors, caused this contract to be signed by the County Director of Public Works or his designee and the Contractor has signed the same on the day, month, and year hereinabove first written.

JAMES A. NOYES
DIRECTOR OF PUBLIC WORKS
COUNTY OF LOS ANGELES

By _____
Deputy Director

Approved as to Form
LLOYD W. PELLMAN
County Counsel

By _____
Deputy County Counsel

LNI CUSTOM MANUFACTURING, INC.,
a corporation

By _____
President

By _____
Secretary

ssa:12/11/2002
ALL SIGNATURES MUST BE WITNESSED BY NOTARY
(Attach appropriate acknowledgment)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On DECEMBER 12, 2002 (Date) before me, ARMANDO CHICA, NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared SCOTT BLAKELY (Name(s) of Signer(s))

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

ARMANDO CHICA
Commission # 1319922
Notary Public - California
Los Angeles County
My Comm. Expires Sep 25, 2005

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: SURETY INFORMATION FORM

Document Date: 12/11/02 Number of Pages: 11

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: SCOTT BLAKELY

☐ Individual
☒ Corporate Officer — Title(s): PRESIDENT, SECRETARY
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing: LNI CUSTOM MANUFACTURING INC.

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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PREMIUM IS FOR THE CONTRACT TERM AND IS SUBJECT TO ADJUSTMENT BASED ON FINAL CONTRACT PRICE

Executed in four originals

Bond No. 834304P
Premium: $34,457.00

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, LNI CUSTOM MANUFACTURING, INC., a corporation, 12536 Chadron Avenue, Hawthorne, California 90250, (800) 338-3387, as principal, and Indemnity Company of California 17780 Fitch, Suite 200 Irvine, Ca 92614 949-263-3300 as surety, are held and firmly bound unto the COUNTY OF LOS ANGELES, State of California, in the sum of ONE MILLION SEVEN HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED SIXTY-ONE AND 96/100 Dollars ($1,722,861.96), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas said principal will be awarded and is about to enter into a written contract with the County of Los Angeles for the work described in PIN TRN0000001, Placement of Bus Shelters, Benches, and Trash Receptacles at Various Locations in all Supervisorial Districts, which is attached hereto, made a part hereof, and to which reference is hereby made for all particulars, and is required by said County to give this bond in connection with the execution of said contract;

NOW, THEREFORE, If the said principal shall well and truly do and perform all of the covenants and obligations of said contract on principal's part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect. No premature payment by said County to said principal shall exonerate any surety unless the Board of Supervisors of said County shall have actual notice that such payment is premature at the time it is ordered by said Board, and then only to the extent that such payment shall result in loss to such surety, but in no event more than the amount of such premature payment.

It is agreed, that any alterations in the work to be done, or increase or decrease of the material to be furnished, which may be made pursuant to the terms of said contract shall not in any way release either the principal or surety hereunder, nor shall any extensions of time granted under the provisions of said contract release either the principal or surety, and notice of such alterations or extensions of the contract is hereby waived by the surety.

WITNESS our hands this 30th day of December, 20 02.

LNI CUSTOM MANUFACTURING, INC.,
a corporation

By _____
President

Indemnity Company of California
Surety

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
Certificate Form for County Counsel

"I HEREBY CERTIFY:

That INDEMNITY COMPANY OF CALIFORNIA has been certified by the State Insurance Commission as an admitted surety insurer and that such authority is in full force and effect.

Conny B. McCormack
County Clerk

Dated: Jan. 13, 2003

335
By _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On JANUARY 10, 2003 (Date), before me, ARMANDO CHICA NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared SCOTT BLAKELY (Name(s) of Signer(s))

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is~~/are~~ subscribed to the within instrument and acknowledged to me that he/she~~/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

ARMANDO CHICA
Commission # 1319922
Notary Public - California
Los Angeles County
My Comm. Expires Sep 25, 2005

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LA. COUNTY DEPT. OF PUBLIC WORKS BOND...

Document Date: DEC. 30/02 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☒ Corporate Officer — Title(s): PRESIDENT
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: LNI CUSTOM MANUFACTURING

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Orange

On December 30, 2002 (DATE) before me Quyen Pham, Notary Public (NAME, TITLE OF OFFICER)
personally appeared Mark Richardson (NAME(S) OF SIGNER(S))

☑ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

QUYEN PHAM
COMM. # 1384040
Notary Public-California
Orange County
My Comm. Expires
NOVEMBER 9, 2006

WITNESS my hand and official seal.

Quyen Pham
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document..

CAPACITY CLAIMED BY SIGNER

Signer's Name:_____

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) - ☐ LIMITED
☐ GENERAL
☑ ATTORNEY-IN- FACT
☐ TRUSTEE
☐ GUARDIAN OR CONSERVATOR
☐ OTHER:_____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE DOCUMENT

_____
NUMBER OF PAGES

_____
DOCUMENT DATE

_____
SIGNER(S) OTHER THAN NAMED ABOVE

Executed in four originals

Bond No. 834304P
Premiun included in Performance Bond

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
PAYMENT BOND
(FOR LABOR AND MATERIAL)

KNOW ALL MEN BY THESE PRESENTS:

That we, LNI CUSTOM MANUFACTURING, INC., a corporation, 12536 Chadron Avenue, Hawthorne, California 90250, (800) 338-3387, as principal, and Indemnity Company of California 17780 Fitch, Suite 200 Irvine, Ca 92614 949-263-3300 as surety, are held and firmly bound unto the COUNTY OF LOS ANGELES, State of California, in the sum of ONE MILLION SEVEN HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED SIXTY-ONE AND 96/100 Dollars ($1,722,861.96), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas said principal will be awarded and is about to enter into a written contract with the County of Los Angeles for the work described in PIN TRN0000001, Placement of Bus Shelters, Benches, and Trash Receptacles at Various Locations in all Supervisorial Districts, which is attached hereto, made a part hereof, and to which reference is hereby made for all particulars, and is required by said County to give this bond in connection with the execution of said contract;

NOW, THEREFORE, If said principal, as Contractor in said contract, or principal's subcontractor, fails to pay any of the persons referred to in Section 3181 of the Civil Code of the State of California for labor performed, skills or other necessary services bestowed, site improvement made, equipment leased, or appliances, equipment implements, machinery, materials, power, provender, provisions, teams, or trucks furnished or used in, upon, for, or about the performance of the work contracted to be done, or for amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, said surety shall pay for the same, in an amount not exceeding the sum specified above; and if suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond is executed pursuant to the provisions of Ch 7 of Div 3, Pt 4, Tit 15, of the Civil Code of the State of California, and shall inure to the benefit of any of the persons referred to in said Civil Code Section 3181, as it now exists or may hereafter be amended, so as to give a right of action to such persons or their assigns in any suit brought upon this bond. No premature payment by said County to said principal shall exonerate any surety unless the Board of Supervisors of said County shall have actual notice that such payment is premature at the time and it is ordered by said Board, and then only to the extent that such payment shall result in loss to such surety, but in no event more than the amount of such

President

to be done, or increase or decrease of the material to be furnished, which may be made pursuant to the terms of said contract, shall not in any way release either the principal or surety hereunder, nor shall any extensions of time granted under the provisions of said contract release either the principal or surety, and notice of such alterations or extensions of the contract is hereby waived by the surety.

WITNESS our hands this 30th day of December, 20 02.

LNI CUSTOM MANUFACTURING, INC.,
a corporation

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
Certificate Form for County Counsel

"I HEREBY CERTIFY:

That **INDEMNITY COMPANY OF CALIFORNIA** has been certified by the State Insurance Commission as an admitted surety insurer and that such authority is in full force and effect.

Conny B. McCormack
County Clerk

338

Dated: Jan. 13, 2003

By

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES } ss.

On JANUARY 10, 2003 (Date), before me, ARMANDO CHICA NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared SCOTT BLAKELY (Name(s) of Signer(s)),

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

ARMANDO CHICA
Commission # 1319922
Notary Public - California
Los Angeles County
My Comm. Expires Sep 25, 2005

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LA COUNTY DEPT. OF PUBLIC WORKS BOND

Document Date: DEC. 30/02 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☒ Corporate Officer — Title(s): PRESIDENT
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: LNI CUSTOM MANUFACTURING

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Orange

On December 30, 2002 (DATE) before me Quyen Pham, Notary Public (NAME, TITLE OF OFFICER)
personally appeared Mark Richardson (NAME(S) OF SIGNER(S))

☑ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

SMI14 QUYEN PHAM COMM. # 1384040 Notary Public-California Orange County My Comm. Expires NOVEMBER 9, 2006 SMI14

WITNESS my hand and official seal.

Quyen Pham
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document..

CAPACITY CLAIMED BY SIGNER

Signer's Name:_____

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) - ☐ LIMITED ☐ GENERAL
☑ ATTORNEY-IN- FACT
☐ TRUSTEE
☐ GUARDIAN OR CONSERVATOR
☐ OTHER:_____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE DOCUMENT

_____
NUMBER OF PAGES

_____
DOCUMENT DATE

_____
SIGNER(S) OTHER THAN NAMED ABOVE

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA

PO BOX 19725, IRVINE, CA 92623 • (949) 263-3300

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each, hereby make, constitute and appoint:

Eric Lowey, Mark Richardson, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective Executive Vice President and attested by their respective Secretary this 8th day of January, 2002.

David H. Rhodes, Executive Vice President

By: _____
Walter A. Crowell, Secretary

DEVELOPERS SURETY AND INDEMNITY COMPANY CORPORATE OCT. 10 1936 IOWA

INDEMNITY COMPANY OF CALIFORNIA INCORPORATED OCT. 5 1967 CALIFORNIA

STATE OF CALIFORNIA)
)SS.
COUNTY OF ORANGE)

On January 8, 2002, before me, Antonio Alvarado, personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

WMD1 ANTONIO ALVARADO COMM. # 1300303 Notary Public - California ORANGE COUNTY My Comm. Expires APRIL 10, 2005 WMD1

CERTIFICATE

The undersigned, as Chief Operating Officer of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 30th day of December, 2002.

By _____
David G. Lane, Chief Operating Officer

Los Angeles County Department of Public Works

Engineer's Monthly Estimate No. **5** for period ending **07/15/2003**

PROGRESS PAYMENT

Project Name

PLACEMENT OF BUS SHELTERS, BENCHES, AND TRASH RECEPTACLES AT VARIOUS LOCATIONS IN ALL SUPERVISORIAL DISTRICTS

Project ID **TRN0000001**

PCA **X3003087**

(5 of 5)

Contractor

LNI CUSTOM MANUFACTURING, INC
12536 CHADRON AVENUE
HAWTHORNE, CA 90250

Original Contract Amount **$235,701.95**

Encumbranced Ref. No. **EN005477**

Awarded **01/07/2003**

tem lo.	Description	Authorized Quantity Units	Total Qty	Previous Qty	Current Qty	Unit Price	Total to Date	Current Amount
		DEDUCTION DETAIL						
)-OT	OVERTIME INSPECTION	HOUR	0.00	0.00	0.00	($52.50)	$0.00	$0.00
)-LD	LIQUIDATED DAMAGES	DAY	0.00	0.00	0.00	($1,500.00)	$0.00	$0.00
)-LC	LABOR COMPLIANCE	VIOLATION	0.00	0.00	0.00	$0.00	$0.00	$0.00
)-AA	AFFIRMATIVE ACTION	VIOLATION	0.00	0.00	0.00	($200.00)	$0.00	$0.00
)-BMP	BEST MANAGEMENT PRACTICE	VIOLATION	0.00	0.00	0.00	($1,000.00)	$0.00	$0.0

FINANCIAL SUMMARY

	Total	Previous	Current
Earned	$230,755.58	$226,661.58	**$4,094.00**
Retained	$23,075.56	$22,666.16	**$409.40**
Deducted	$0.00	$0.00	**$0.00**
Due	$207,680.02	$203,995.42	**$3,684.60**

APPROVALS

Prepared by	**Elizabeth N. Ajaelo**	Date
Reviewed by	**Michael H. Semon**	Date
Approved by	**Ken Swanson**	Date

Los Angeles County Department of Public Works

Engineer's Monthly Estimate No. **5** for period ending **07/15/2003**

PROGRESS PAYMENT

Project Name

PLACEMENT OF BUS SHELTERS, BENCHES, AND TRASH RECEPTACLES AT VARIOUS LOCATIONS IN ALL SUPERVISORIAL DISTRICTS

Project ID **TRN0000001**

PCA **X3003087**

(5 of 5)

Contractor

LNI CUSTOM MANUFACTURING, INC
12536 CHADRON AVENUE
HAWTHORNE, CA 90250

Original Contract Amount **$235,701.95**

Encumbranced Ref. No. **EN005477**

Awarded **01/07/2003**

Item No.	Description	Authorized Quantity	Units	Total Qty	Previous Qty	Current Qty	Unit Price	Total to Date	Current Amount
03	FURNISH AND INSTALL TRASH RECEPTACLES	389.00	EA	366.00	366.00	0.00	$584.710	$214,003.86	$0.00
04	FURNISH AND INSTALL 4" THICK CONCRETE PAD FOR NPDES TRASH RECEPTACLE (UNIMPROVED SITE)	939.00	SF	939.00	939.00	0.00	$13.480	$12,657.72	$0.00
5-01	CONSTRUCT PCC SIDEWALK	676.00	SF	356.00	0.00	356.00	$11.500	$4,094.00	$4,094.00

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

RECEIVED
OCT 18 2007
COMMISSION ON
STATE MANDATES

September 26, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. and b.
Inspection of Industrial/Commercial Facilities

We submit and enclose herewith a test claim to obtain timely and complete reimbursement for performing the State mandated inspection duties imposed upon the County of Los Angeles under the subject law.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916)323-3562
CSM 1 (12/89)

For Official Use Only
Claim No. 03-TC-19

TEST CLAIM FORM

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person	**Telephone No.**
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Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of " costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	**Telephone No.**
J. Tyler McCauley Auditor-Controller	(213) 974-8301

Signature of Authorized Representative	**Date**
J. Tyler McCauley	9/26/03

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. and b.
Inspection of Industrial/Commercial Facilities

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Notice of Filing

The County of Los Angeles filed the referenced test claim on September 26, 2003 with the Commission on State Mandates of the State of California at the Commission's Office at 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. and b.
Inspection of Industrial/Commercial Facilities

Brief

The California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached herein as Exhibit 3), Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Facilities] and b. [Phase I Facilities], expressly mandates [1], on Permit pages 29-31, that:

> **"2. Inspect Critical Sources**
>
> Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.
>
> a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

[1] California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Facilities] and b. [Phase I Facilities], is hereafter also referred to as the 'test claim legislation'.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials form parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first

inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;

- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;

- is aware that washdown of facility area to the storm drain is prohibited;

- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;

- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;

- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and

- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase 1 Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase 1 facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in

between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP." [Emphasis added.]

It should be noted that Los Angeles County was not required to conduct the [above] inspections under prior law.

For example, prior to the test claim legislation, it was the obligation of the Regional Water Quality Control Board to enforce Regional Board Resolution No. 98-08 and the Stormwater Quality Management Plan, as they applied to restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships.

Likewise, prior to the test claim legislation, it was the obligation of the Regional Water Quality Control Board to inspect facilities and sites for compliance with the state-issued General Industrial and General Construction Stormwater permits. In this regard certain industrial facilities are required to obtain either an individual permit issued by the Regional Water Quality Control Board, or a General Industrial Stormwater Permit issued by the State Water Resources Control Board pursuant to the State Water Resources Control Board Order No. 97-03-DWQ. Owners or developers of certain construction sites are required to obtain a General Construction Stormwater Permit from the State Water Resources Control Board pursuant to the State Water Resources Control Board Order No. 99-08-DWQ.

The Regional Water Quality Control Board has the obligation to enforce the General Industrial and General Construction Stormwater permits. The General Industrial Stormwater Permit specifically states that "(f)ollowing adoption of this general permit, the Regional Water Board shall enforce its provisions." Order No. 97-03-DWQ. Finding 13. The General Construction Stormwater Permit, specifically states [f]ollowing adoption of this general permit, the RWQCBs shall enforce the provisions herein including the monitoring and reporting requirements . . . . State Board Order No. 99-08-DWQ, Finding 11.

Under Order No. 01-182, the Regional Water Quality Control Board has mandated that the County and other permittees now perform the Regional Board's obligations. The County is now required to inspect for compliance with (1) "State law . . . [California Regional Water Quality Control Board] Resolution 98-08, and the Stormwater Quality Management Plan" (restaurants); (2) "[Regional Water Quality Control Board] Resolution 98-08 and the Stormwater Quality Management Plan" (automotive service facilities); (3) "The Stormwater Quality Management Plan, [Regional Water Quality Control Board] Resolution 98-08, and the Guide for RGOs" (retail gasoline outlets and automotive dealerships); (4) "[Regional Water Quality Control Board] Resolution 98-08, the Stormwater Quality Management Plan," and compliance with state-issued general industrial storm water permits

(Phase I Facilities); and (5) "storm water quality requirements" including state-issued general construction permits (construction sites).

It should be noted that the State Water Resources Control Board and Regional Water Quality Control Board receive substantial permit fees from the facilities that are issued the General Industrial and General Construction Stormwater permits. These fees are specifically assessed to pay for the costs of implementing the stormwater permit programs. Water Code § 13260(d). The State currently receives an annual fee of $700 from every industrial facility and construction site that is required to have a general industrial or construction stormwater permit. 23 CCR § 2200 (a)(2)(B). The State is proposing to increase these fees and has provided such notice on their State Water Resources Control Board website. www.swrcb.ca.gov. The state shares none of these fees-industrial or construction-with the County or other parties who are required to perform inspections of these sites under the test claim legislation.

Federal Law

The inspection obligations imposed by Order No. 01-182 are not found in federal law. Federal law does not require the County, or other municipal stormwater permittees, to inspect restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships for compliance with Regional Water Quality Control Board orders or programs. Federal law does not require municipal permittees such as the County to inspect facilities that hold state-issued general industrial or general construction stormwater permits for compliance with those permits.

The federal regulations governing the contents of applications for municipal stormwater permits are very clear: Municipalities are only required to inspect certain federally-mandated categories of industrial facilities. Title 40 CFR § 122.26(d)(2)(iv)(C) requires municipalities to inspect only municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and industrial facilities that the municipality has determined are contributing a "substantial" pollutant

loading to the municipal storm sewer system. See also 40 CFR § 122.26(d)(2)(iv)(D) (construction sites). The federal regulations do not, however, require municipalities to inspect industrial facilities or construction sites in general, including the entire subset of facilities required to obtain a General Industrial or General Construction Stormwater Permit. 40 CFR § 122.26(d)(2)(iv)(C) and (D). The regulations clearly contemplate that facilities that hold a General Industrial or General Construction Stormwater Permit are a category separate and different than the facilities specifically identified in Section 122.26(d)(2)(iv)(C) and (D). Otherwise these facilities would have been explicitly mentioned in those regulations.

Moreover, even if the obligation to inspect industrial and construction sites is derived from the requirements of a federal program, these are obligations that are imposed on the state, and in the past have been carried out by the Regional Water Quality Control Board. The Regional Water Quality Control Board's shifting of these obligations to the County and other permittees under the test claim legislation is a choice that the Regional Water Quality Control Board freely made as a means of implementing the Regional Water Quality Control Board's obligations under federal and state law, and thus still creates a reimbursable mandate under the holding of *Hayes v. Commission on State Mandates,* 11 Cal.App.4th 1564 (1992), attached here as Exhibit 4.

No Other Funding

No other funding is available to comply with the subject State mandated program. In this regard, Shari Afshari, Assistant Deputy Director, in the Environmental Programs Division of Los Angeles County's Department of Public Works, states in his declaration [attached as Exhibit 1], on page 5, that:

> "... Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.)."

Mr. Afshari, also indicates, on page 5 of his declaration, that:

"... Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.)."

Therefore, no user fees or other funding is available to comply with the subject State mandated program.

5. State Funding Disclaimers Are Not Applicable

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

(a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as no federal law or regulation is implemented in the subject law as previously discussed .

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments as previously discussed.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature as previously discussed.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached herein as Exhibit 3), Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Facilities] and b. [Phase I Facilities], as these disclaimers are all not applicable to the subject claim.

Scope of Work

Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached herein as Exhibit 3), Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Facilities] and b. [Phase I Facilities], and is unavoidably incurring substantial costs.

Shari Afshari, Assistant Deputy Director, in the Environmental Programs Division of Los Angeles County's Department of Public Works, states in his declaration [attached as Exhibit 1], on page 6, that:

> "... the [above inspection] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C.2.a. and b.), and cost the County of Los Angeles in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a)."

Regarding the County's costs in performing the [above] duties, Mr Afshari has prepared a pertinent cost schedule, attached here as pages 7-8 of his declaration [found in Exhibit 1]. These costs are detailed as follows:

"December 13, 2001 – September 15, 2003

1. Identify all and inspect all restaurants within the jurisdiction:

   Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections).

   1744 restaurant facilities identified
   Inspection by Field Inspection Unit $234,931.83

December 13, 2001 – September 15, 2003

2. Identify and inspect all automotive service facilities within the jurisdiction:

   Job codes: W0005522 and W0005536

   (Industrial/Commercial Facility stormwater inspections):

   1110 automotive service facilities identified
   Inspection by Field Inspection Unit $149,526.36

December 13, 2001 – September 15, 2003

3. Identify and inspect all retail gasoline outlets and automotive dealerships within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

249 retail gasoline outlets and automotive dealerships identified Inspection by Field Inspection Unit $33,542.45

December 13, 2001 – September 15, 2003

4. Identify and inspect all Phase I (Tier 1 and Tier 2) facilities within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

387 Tier 1 (including 96 facilities subject to General or Site specific NPDES permit) facilities identified,

543 Tier 2 (including 31 facilities subject to General or Site specific NPDES permit) facilities identified,

Inspection by the Field Inspection Unit	**$125,155.31**
Total	**$543,155.95"**

Therefore, the [above] costs, incurred by the County in complying with the subject law or 'test claim legislation' are well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a). Moreover, such costs are also reimbursable "costs mandated by the State".

Costs Mandated by the State

The County's costs in performing new duties under the test claim legislation, as illustrated in the attached declarations[2], are reimbursable "costs mandated by the State" under Section 6 of Article XIII B of the California Constitution and Section 17500 et. seq. of the Government Code.

The County was required to provide a new State-mandated program and thus incur reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Accordingly, for the County's costs to be reimbursable "costs mandated by the State", three requirements must be met:

1. There are increased costs which a local agency is required to incur after July 1, 1980; and

2. The costs are incurred pursuant to executive orders promulgated on or after January 1, 1975; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

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[2] These declarations are attached as Exhibits 1-2 hereto.

All three of the [above] requirements for finding costs mandated by the State are met here.

First, local government has been incurring costs in implementing the executive order, test claimed herein, since December 13, 2001, well after July 1, 1980.

Second, the executive order, test claimed herein, was issued on December 13, 2001, well after January 1, 1975.

Third, the test claim legislation, as previously discussed, has imposed new duties on local government, not found in prior law.

Accordingly, "a new program or higher level of service..." has been enacted in the test claim legislation.

Therefore, reimbursement of the County's "costs mandated by the State", incurred in implementing the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Facilities] and b. [Phase I Facilities], is required as claimed herein.

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. And b.
Inspection of Industrial/Commercial Facilities

Declaration of Shari Afshari

Shari Afshari makes the following declaration and statement under oath:

I, Shari Afshari, Assistant Deputy Director, in the Environmental Programs Division of Los Angeles County's Department of Public Works, am responsible for implementing the subject law.

I declare that it is my information or belief that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached to the subject test claim), Part 4 [Special Provisions], Section C. [Industrial/Commercial Facilities Control Program], 2. [Inspect Critical Sources], a. [Commercial Services], and b. [Phase I Facilities] requires, (on Permit pages 29 through 31), that:

> "Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.
>
> a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08,

and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials form parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;

- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;

- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase 1 Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase 1 facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP." [Emphasis added.]

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a.), requiring Los Angeles County to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships, was not required under prior federal or state law to the extent mandated by the California Regional Water Quality Control Board.

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. b.), requires Los Angeles County to perform all or portions of inspections for Phase I facilities, which are also subject to general or site-specific state-issued NPDES permits and for which the State collects an annual fee, and, therefore, requires the County to perform or duplicate inspection effort without compensation.

I declare that it is my information or belief that Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.).

I declare that it is my information or belief that Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.).

I declare that it is my information or belief that Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.), to inspect restaurants, automotive service facilities, retail

gasoline outlets and automotive dealerships, and Phase I facilities within the County's jurisdiction.

I declare that it is my information or belief that the above duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.), and cost the County of Los Angeles in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that the attached schedule details costs incurred by Los Angeles County in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section C. 2. a. and b.).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the test claim legislation as amended herein require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

September 25, 2003, Alhambra, Ca
Date and Place

Signature

Cost Schedule Attachment
Declaration of Shari Afshari

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. And b.
Inspection of Industrial/Commercial Facilities

December 13, 2001 – September 15, 2003

1. Identify all and inspect all restaurants within the jurisdiction:

   Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections).

   1744 restaurant facilities identified
   Inspection by Field Inspection Unit $234,931.83

December 13, 2001 – September 15, 2003

2. Identify and inspect all automotive service facilities within the jurisdiction:

   Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

   1110 automotive service facilities identified
   Inspection by Field Inspection Unit $149,526.36

December 13, 2001 – September 15, 2003

3. Identify and inspect all retail gasoline outlets and automotive dealerships within the jurisdiction:

   Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

   249 retail gasoline outlets and automotive dealerships identified
   Inspection by Field Inspection Unit $ 33,542.45

December 13, 2001 – September 15, 2003

4. Identify and inspect all Phase I (Tier 1 and Tier 2) facilities within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

387 Tier 1 (including 96 facilities subject to General or Site specific NPDES permit) facilities identified,	
543 Tier 2 (including 31 facilities subject to General or Site specific NPDES permit) facilities identified,	
Inspection by the Field Inspection Unit	$125,155.31
Total	$543,155.95

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
California Regional Water Quality Control Board Executive Order Number 01-182, December 13, 2001 Permit Number CAS004001, Part 4, Section C. 2. a. and b.
Inspection of Industrial/Commercial Facilities

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's&G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim after consulting with County of Los Angeles/Department of Public Works officials and attorneys.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> **" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."**

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

9/26/03; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. Existing Permit

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. Nature of Discharges and Sources of Pollutant

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of internal combustion engine

operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment, of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions, (i) a focus on setting contaminant limits rather than programmatic evaluations, (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., [*Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight*, Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Haile, R.W. et al. (1999); *Huntington Beach Closure Investigation: Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight*, Rachel T. Noble *et al.* (2001); *Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001)].

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water nor remove pollutants, and thus the natural purification characteristics are

lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In, Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B., (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization: Water Resources Research*, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System–Impacts, Solutions and Prognoses*: The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*: Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979); Dubuque, Iowa, Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

Source Selection and Monitoring Report, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list, contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry; Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp., California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al.*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1993); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al.* editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, , L.L. Tiefenthaler *et al.* Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil Grit Separators in Suburban MD*, Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff from Impervious Surfaces in Four Urban Catchments of Different*

Landuse, Ranabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI, March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) - (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   Public Information and Participation
   Development Planning
   Development Construction
   Public Agency Activities
   Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline-monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing*, Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an 'Interpretative Policy Memorandum on Reapplication Requirements' for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 – 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p) provides that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000,* on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-08), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*, (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

- The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.

- The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

Malibu Creek and Rural Santa Monica Bay WMA
Ballona Creek and Urban Santa Monica Bay WMA
Los Angeles River WMA
San Gabriel River WMA
Dominguez Channel/Los Angeles Harbor WMA, and
Santa Clara River WMA

Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th. Cir, 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999)

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways. (*Headwaters, Inc. vs. Talent Irrigation District,* 243 F.3d. 526 (9th Cir., 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. **Implementation**

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or

2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

   c) Category C - Flows incidental to urban activities:

      (1) Reclaimed and potable landscape irrigation runoff;

      (2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

      (3) Drains for foundations, footings, and crawl spaces;

      (4) Air conditioning condensate;

      (5) Dechlorinated/debrominated swimming pool discharges;

      (6) Dewatering of lakes and decorative fountains;

      (7) Non-commercial car washing by residents or by non-profit organizations; and

      (8) Sidewalk rinsing.

The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;
2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;
3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;
4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;
5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;
6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;
7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and
8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;
2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;
3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. **Watershed Management Committees (WMCs)**

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

a) "No Dumping" Message

Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

b) Countywide Hotline

The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002, and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1.	
Watershed	***Target Pollutants for Outreach***
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances ;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industrial/ Commercial*, (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. Development Construction Program

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1. above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:

A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:

For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

   a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

      (1) Investigation of any complaints received;

      (2) Upon notification, immediate response to overflows for containment; and

      (3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

   b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A:	Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
Priority B:	Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
Priority C:	Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A:	A minimum of three times during the wet season and once during the dry season every year.
Priority B:	A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations, "water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"Authorized Discharge" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"Automotive Service Facilities" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"Basin Plan" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"Beneficial Uses" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"Best Management Practices (BMPs)" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"Commercial Development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
   a) Vehicle or equipment fueling areas;
   b) Vehicle or equipment maintenance areas, including washing and repair;
   c) Commercial or industrial waste handling or storage;
   d) Outdoor handling or storage of hazardous materials;
   e) Outdoor manufacturing areas;
   f) Outdoor food handling or processing;
   g) Outdoor animal care, confinement, or slaughter; or
   h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint;

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1]
Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.html#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage of wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.

2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.

3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).

2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].

2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. **Duty to Mitigate [40 CFR 122.41 (d)]**

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. **Inspection and Entry [40 CFR 122.41(i), CWC § 13267]**

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and,

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. **Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]**

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. **Signatory Requirements [40 CFR 122.41(k) & 122.22]**

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. **Reopener and Modification [40 CFR 122.41(f) & 122.62]**

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][4]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][5]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

   a) Criminal Penalties for:

[5] *Supra*. See footnote number 3.

(1) Negligent Violations:

The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:

The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

- The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. **Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]**

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. **Rescission**

Regional Board Order No. 96-054 is hereby rescinded.

S. **Expiration**

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

_____

Dennis A. Dickerson
Executive Officer

December 13, 2001

ATTACHMENT A
LIST OF PERMITTEES BY WATERSHED MANAGEMENT AREAS

Santa Monica Bay

Malibu Creek and Other Rural
Agoura Hills
*Calabasas
Los Angeles County Flood Control
Los Angeles County
Malibu
Westlake Village

Ballona Creek and Other Urban
Beverly Hills
Culver City
El Segundo
Hermosa Beach
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Manhattan Beach
Palos Verdes Estates
Rancho Palos Verdes
Redondo Beach
Rolling Hills
Rolling Hills Estates

*Santa Monica
West Hollywood

Dominguez Channel/ Los Angeles Harbor Drainage

Carson
Gardena
Hawthorne
Inglewood
Lawndale
Lomita
Los Angeles (City of)
Los Angeles County Flood Control

Los Angeles (County of)
*Torrance

Los Angeles River

Alhambra
Arcadia
Bell
Bell Gardens
Burbank
Commerce
Compton
Cudahy
El Monte
*Glendale
Hidden Hills
Huntington Park
La Canada Flintridge
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Lynwood
Maywood
Monrovia
Montebello
Monterey Park
Paramount

Pasadena
Rosemead
San Fernando
San Gabriel
San Marino
Sierra Madre
Signal Hill
South El Monte
South Gate
South Pasadena
Temple City
Vernon

San Gabriel River

Artesia
Azusa
Baldwin Park
Bellflower
Bradbury
Cerritos
Claremont
Covina
Diamond Bar
Downey
Duarte
Glendora
Hawaiian Gardens
Industry
Irwindale
La Habra Heights
La Mirada
La Puente
La Verne
Lakewood
*Long Beach[1]
Los Angeles County Flood Control
Los Angeles (County of)
Norwalk
Pomona
Pico Rivera
San Dimas
Santa Fe Springs
Walnut
West Covina
Whittier

Santa Clara River

*Santa Clarita
Los Angeles County Flood Control
Los Angeles (County of)

*Italicized agencies are present in more than one Watershed Management Area. *Indicates City with the largest watershed population other than County of Los Angeles and the City of Los Angeles.*

[1] *The City of Long Beach is covered under order No. 99-060*

ATTACHMENT B
Critical Sources Categories[1]

Tier 1 Categories

Municipal Landfills (SIC 4953)

Hazardous Waste Treatment, Disposal and Recovery Facilities[2]

Facilities Subject to SARA Title III (also known as EPCRA)[2]

Restaurants[3]

Wholesale trade (scrap, auto dismantling) (SIC 50)

Automotive service facilities[3]

Fabricated metal products (SIC 34)

Motor freight (SIC 42)

Chemical/allied products (SIC 28)

Automotive Dealers/Gas Stations (SIC 55)

Primary Metals Products (SIC 33)

Tier 2 Categories

Electric/Gas/Sanitary (SIC 49)

Air Transportation (SIC 45)

Rubbers/Miscellaneous Plastics (SIC 30)

Local/Suburban Transit (SIC 41)

Railroad Transportation (SIC 40)

Oil & Gas Extraction (SIC 13)

Lumber/Wood Products (SIC 24)

Machinery Manufacturing (SIC 35)

Transportation Equipment (SIC 37)

Stone, Clay, Glass, Concrete (SIC 32)

Leather/Leather Products (SIC 31)

Miscellaneous Manufacturing (SIC 39)

Food and kindred Products (SIC 20)

Mining of Nonmetallic Minerals (SIC 14)

Printing and Publishing (SIC 27)

Electric/Electronic (SIC 36)

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[1] Italicized categories belong to Phase 1 facilities
[2] Various categories subject to these requirements
[3] See Definition in Part 5. of the permit

Paper and Allied Products (SIC 26)

Furniture and Fixtures (SIC 25)

Laundries *(SIC 72)*

Instruments (SIC 38)

Textile Mills Products (SIC 22)

Apparel (SIC 23)

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
MONITORING AND REPORTING PROGRAM - CI 6948
FOR
ORDER No. 01-182
NPDES No. CAS004001
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES, EXCEPT THE CITY OF LONG BEACH

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I. Program Reporting Requirements

The Principal Permittee shall submit, no later than October 15 of each year beginning in the year 2002, a Unified Annual Storm Water Report (Unified Annual Report) documenting the progress of Permittees' implementation of the SQMP and the requirements of this Order. The Unified Annual Report shall contain a section covering common activities conducted collectively by the Permittees, and an integrated summary of the Monitoring Program results. Each Permittee shall submit an Individual Annual Report to the Principal Permittee, by the date determined by the Principal Permittee, to be included in the Unified Annual Report. The Unified Annual Reports shall cover each fiscal year from July 1 through June 30. The first Unified Annual Report, to be submitted on October 15, 2002, shall report for the period from July 1, 2001 through June 30, 2002. Specific requirements that must be addressed in the Annual Reports are listed below.

A. Unified Annual Report

The Principal Permittee shall include the following in the Unified Annual Report:

1. A compilation of Permittee Individual Annual Reports.

2. Proposed changes to the SQMP, as recommended by the WMCs.

3. An assessment of the effectiveness of SQMP requirements to reduce storm water pollution. This assessment shall be comprised of a compilation of watershed-wide assessments conducted by each WMC. Assessments shall be based upon the specific record-keeping information requirement in each section of the permit, monitoring data, summaries of program effectiveness from each Permittee, and any other information related to program effectiveness. The program assessment shall include summaries of the following:

   a) Summary of common activities conducted by all Permittees;

   b) WMA BMP implementation;

   c) Identification of management measures proven to be effective and/or ineffective at reducing urban runoff pollutants and flow;

   d) Permittee level of effort, as indicated in their Individual Annual Report self evaluations (Attachment U-4, section VI); and

   e) Integrated summary of Monitoring Program results, including the identification of water quality improvements or degradation, and recommendations for improvements to the SQMP (including proposed BMPs) based on the results from the Monitoring Program.

4. Pursuant to Part 2 of this Order, after a determination by either a Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, a Receiving Water Limitations (RWL) Compliance Report shall be attached to the subsequent Unified Annual Report. A status RWL Compliance Report shall be submitted every alternate year following the submittal of the first Report. The RWL Compliance Report shall include the following:

   a) A plan to comply with the RWL (Part 2 of this Order);

   b) Changes to the SQMP to eliminate water quality exceedances;

   c) Enhanced monitoring to demonstrate compliance; and

   d) Results of implementation.

   After all water quality exceedances have been abated, a RWL Compliance Report is not required.

B. Individual Annual Reports

Each Individual Annual Report shall document and describe all activities conducted by a Permittee to meet all requirements of this Order, during the completed annual reporting period. Individual Annual Reports shall use the attached form (Attachment U-4), or create another reporting format that includes all items on the attached form. Each Permittee shall complete the form in its entirety, except for those requirements applicable only to the Principal Permittee, as indicated on the form. Status of compliance with permit requirements including implementation dates for all time-specific deadlines should be included for each program area. If permit deadlines are not met, Permittees shall report the reasons why the requirement was not met and how the requirements will be met in the future, including projected implementation dates. A comparison of program implementation results to performance standards established in this Order and in the SQMP shall be included for each program area.

C. Monitoring Program Management

The Principal Permittee shall submit a Storm Water Monitoring Report (Monitoring Report) on August 15, 2002, and annually on August 15, thereafter. The Monitoring Report to be submitted on August 15, 2002 shall include the results of monitoring from July 1, 2001 through June 30, 2002. Each Monitoring Report shall include:

1. Status of implementation of the Monitoring Program.

2. Data, results, methods of evaluating the data, graphical summaries of the data, and an explanation/discussion of the data for each component of the monitoring program, including any specific reporting requirements included in Section II. Monitoring Program.

3. An analysis of the findings of each Monitoring Program component. The analysis shall identify and prioritize water quality problems. Based on the identification and prioritization of water quality problems, the analysis shall identify potential sources of the problems, and recommend future

monitoring and BMP implementation measures for identifying and addressing the sources. The analysis shall also include an evaluation of the effectiveness of existing control measures.

4. Identification and analysis of any long-term trends in storm water or receiving water quality.

5. An estimation of total pollutant loads due to storm water/urban runoff for each mass emission station.

6. A comparison to the applicable Water Quality Standards for each component of the Monitoring Program. The lowest applicable standard from the Basin Plan, the Ocean Plan, or the CTR shall be used for comparison. Constituents that exceed applicable Water Quality Standards shall be highlighted. When data indicate that discharges are causing or contributing to exceedances of applicable Water Quality Standards, a discussion of possible pollutant sources shall be included in the Monitoring Report and a RWL Compliance Report (Section I.A.4) shall be submitted with the subsequent Unified Annual Report.

7. For each monitoring component, maps of all monitoring station locations and descriptions of each location.

8. All Monitoring Reports shall be submitted in both electronic and paper formats.

D. Integrated Receiving Water Impacts Report

The Principal Permittee shall, not later than August 15, 2005, prepare and submit an Integrated Receiving Water Impacts Report, which may also serve as the fourth-year Monitoring Report. The Report shall include, but not be limited to, a comprehensive analysis of the results of the data from each component of the Monitoring Program, and other pertinent studies available, and feasible environmental indicators. It should also include a budget summary for each monitoring requirement and recommendations on future monitoring requirements. This report will be an integral part of the next ROWD.

E. Certification

All applications, reports, or information submitted to the Regional Board shall be signed and certified pursuant to US EPA regulations at 40 CFR 122.41 (k). Each report shall contain the following completed declaration:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility, of a fine and imprisonment for knowing violations.

Executed on the ___ day of _____, 20_,

at _____.

(Signature)_____ (Title) _____";

Permittee submittals to the Principal Permittee shall also be signed and certified pursuant to USEPA regulations 40 CFR 122.41 (k).

The Principal Permittee shall submit the original of each Unified Annual Report to:

INFORMATION TECHNOLOGY
CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD - LOS ANGELES REGION
320 W. 4TH STREET, SUITE 200
LOS ANGELES, CA 90013

A copy of the Unified Annual Report shall also be mailed to:

REGIONAL ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105

II. Monitoring Program

The primary objectives of the Monitoring Program include, but are not limited to:

- Assessing compliance with this Order;
- Measuring and improving the effectiveness of the SQMPs;
- Assessing the chemical, physical, and biological impacts of receiving waters resulting from urban runoff;
- Characterization of storm water discharges;
- Identifying sources of pollutants; and
- Assessing the overall health and evaluating long-term trends in receiving water quality.

Ultimately, the results of the monitoring requirements outlined below should be used to refine the SQMP for the reduction of pollutant loadings and the protection and enhancement of the beneficial uses of the receiving waters in Los Angeles County.

The Principal Permittee and Permittees shall implement the Monitoring Program as follows:

CORE MONITORING

A. Mass Emissions

The Principal Permittee shall monitor mass emissions to accomplish the following objectives:

- Estimate the mass emissions from the MS4;
- Assess trends in the mass emissions over time; and
- Determine if the MS4 is contributing to exceedances of Water Quality Standards by comparing results to applicable standards in the Basin Plan, the Ocean Plan, or the CTR, and with emissions from other dischargers.

1. The Principal Permittee shall monitor mass emissions from the following seven mass emission stations: Ballona Creek, Malibu Creek, Los Angeles River, San Gabriel River, Coyote Creek, Dominguez Channel, and the Santa Clara River. The Principal Permittee shall monitor the first storm event and a minimum of 2 additional storm events for each season. A minimum of two dry weather samples per year at each mass emission station shall also be analyzed. Sampling at all stations shall begin no later than February 1, 2002, except for sampling in the Santa Clara River, which will begin no later than October 15, 2002.

2. All storms events, in addition to those required above, that result in at least 0.25 inches of rainfall shall be sampled and analyzed for TSS. Results shall be used to assess the variability of storm water constituents and provide a more accurate estimate of mass emissions (pollutant correlation with TSS). This requirement does not apply to manual sampling stations.

3. Samples for mass emission monitoring may be taken with the same type of automatic sampler used under Order 96-054. Grab samples shall be taken for pathogen indicators and oil and grease. The samplers shall be set to monitor storms that produce 0.25 inches or greater of rainfall.

Samples taken at mass emission stations during the first storm event of the wet season shall be analyzed for all constituents listed in Attachment U-1.

4. Manual samples shall be collected from mass emission stations where it is not feasible to install an automatic sampler (Santa Clara River). Manual samples shall be flow-weighted composites, collected during the first 3 hours, or for the duration of the storm if it is less than 3 hours. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[1], unless the Regional Board Executive Officer approves an alternate protocol.

5. Samples from mass emission stations shall be analyzed for all constituents listed in Attachment U-1. If a constituent is not detected at the method detection limit for its respective test method listed in Attachment U-1 in more than 75 percent of the first 48 sampling events, it need not be further analyzed unless the observed occurrences show concentrations greater than state water quality standards. The Principal Permittee will also conduct annual confirmation sampling for non-detected constituents during the first storm of the wet season every year at each station.

6. The Principal Permittee shall perform an annual analysis, to be included in the Monitoring Report, of the correlation between pollutants of concern (including but not limited to metals and PAHs) and TSS loadings for the sampling events that are analyzed for the complete list of constituents.

B. Water Column Toxicity Monitoring

The Principal Permittee shall analyze mass emission samples for toxicity to evaluate the extent and causes of toxicity in receiving waters and to modify and utilize the SQMP to implement practices that eliminate or reduce sources of toxicity in storm water.

1. The Principal Permittee shall analyze samples from two storm events (including the first storm of each year) and two dry weather events from each mass emission station for toxicity every year. A minimum of one freshwater and one marine species shall be used for toxicity testing for each station event. Specifically, *Ceriodaphnia dubia* (water flea) 7-day survival/reproduction and *Strongylocentrotus purpuratus* (sea urchin) fertilization tests shall be used. These tests should include a dilution series (0.5x steps) that ranges from the undiluted sample (or the highest concentration that can be tested within the limitations of the test methods or sample type) to less than or equal to 6% sample.

2. Toxicity Identification Evaluations (TIE)

The Principal Permittee shall begin a Phase I TIE immediately on all samples that are substantially toxic (greater than or equal to 1 Toxic Unit)

[1] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

to either test species.[2] If a sample is substantially toxic to both species, a TIE shall be performed for both species. The Phase I TIE shall include the following treatments and corresponding blanks:

a) Baseline toxicity;

b) Particle removal by centrifugation;

c) Solid phase extraction of the centrifuged sample using C18 media;

d) Complexation of metals using ethylenediaminetetraacetic acid (EDTA) addition to the raw sample;

e) Neutralization of oxidants/metals using sodium thiosulfate addition to the raw sample; and

f) Inhibition of organo-phosphate (OP) pesticide activation using piperonyl butoxide addition to the raw sample (crustacean toxicity tests only).

3. Toxicity Reduction Evaluations (TRE)

a) When the same pollutant or class of pollutants is identified through the TIE process as causing at least 50% of the toxic responses in at least 3 samples at a sampling location, a TRE shall be performed for that identified toxic pollutant. TRE development shall be performed by a neutral third party (retained by the Principal Permittee), with input from Permittees and Regional Board staff. The TRE shall include all reasonable steps to identify the source(s) of toxicity and discuss appropriate BMPs to eliminate the causes of toxicity. Once the source of toxicity and appropriate BMPs are identified, the Principal Permittee shall submit the TRE to the Regional Board Executive Officer for approval. At a minimum, it shall include a discussion of the following items:

(1) The potential sources of pollutant(s) causing toxicity;

(2) A list of municipalities that may have jurisdiction over sources of pollutant(s) causing toxicity;

(3) Recommended BMPs to reduce the pollutant(s) causing toxicity;

(4) Proposed changes to the SQMP to reduce the pollutant(s) causing toxicity; and

(5) Suggested follow-up monitoring to demonstrate that toxicity has been removed.

[2] Substantial toxicity means the amount of toxicity necessary to successfully conduct a Phase I TIE. Toxic Units are calculated by dividing 100 by the calculated median test response value (e.g., LC50 or EC50). For example, a LC50 of 50% sample equals 2 Toxic Units. Ceriodaphnia TIEs require at least 50% mortality in undiluted sample (1 Toxic Unit) at any time during the 7-day duration of the initial chronic bioassay (SCCWRP).

b) Since the Phase I TIEs may only identify a broad category of toxicants (e.g., nonpolar organics), additional TIE analyses may be required in order to identify or confirm the identity of the pollutants causing toxicity before the TRE can be completed.

c) If TRE implementation for a specific pollutant coincides with TMDL implementation for that pollutant, the efforts may be coordinated.

d) Upon approval by the Regional Board Executive Officer, the Permittee(s) having jurisdiction over sources causing or contributing to toxicity shall implement the recommended BMPs and take all reasonable steps necessary to eliminate toxicity.

e) The Principal Permittee shall be responsible for the development of a maximum of two TREs per year. If applicable, the Principal Permittee may use the same TRE for the same toxic pollutant or pollutant class in different watersheds. The TRE process shall be coordinated with TMDL development and implementation (ie. If a TMDL for zinc is being implemented when a TRE for zinc is required, the efforts shall be coordinated to avoid overlap).

f) The Principal Permittee shall report on the development, implementation, and results for each TRE in the annual Monitoring Report, beginning the year following the identification of each pollutant or pollutant class causing toxicity.

C. Tributary Monitoring

The Principal Permittee shall monitor tributaries to identify sub-watersheds where storm water discharges are causing or contributing to exceedances of Water Quality Standards, and to prioritize drainage and sub-drainage areas that need management actions.

1. The Principal Permittee shall develop and implement a watershed-based tributary monitoring program, in which a minimum of six tributaries per year will be monitored, based on the schedule described below:

a) Monitoring station locations will be rotated so that a minimum total of six tributaries will be monitored per year. Each tributary shall be monitored for a minimum period of one year. If no exceedances of applicable water quality standards occur during one year of monitoring at a single tributary station, the Principal Permittee may move that monitoring station to another tributary, subject to the approval of the Regional Board Executive Officer. When an applicable water quality standard is exceeded in three out of four sampling events in a given monitoring year, the Permittees shall initiate a focused effort to identify sources of pollutants within that subwatershed.

b) Tributary monitoring shall begin in the Los Angeles River WMA, and shall be rotated to locations in other watersheds as monitoring at each station is complete, as approved by the Regional Board Executive Officer. The Principal Permittee shall include a

description and explanation of each proposed station location and a summary of the prior year's results of the tributary monitoring program in the annual Monitoring Report.

c) Monitoring shall begin at the following tributaries:

(1) Aliso Creek;
(2) Bull Creek;
(3) Arroyo Seco Channel;
(4) Rio Hondo Channel;
(5) Burbank West; and
(6) Verdugo Wash.

2. Tributary monitoring shall begin October 15, 2002.

3. The Principal Permittee shall monitor the first storm event and at least 3 additional storm events during each storm season. At least one dry weather flow per year will also be sampled at each station.

4. Samples shall be flow-weighted composites, collected during the first 3 hours or for the duration of the storm if it is less than 3 hours. Samples may be collected manually or automatically. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[3], unless the Regional Board Executive Officer approves an alternate protocol. Samples shall be taken just upstream of the tributary's confluence with the mainstem. Constituents to be analyzed for each location shall include the following:

a) pH, dissolved oxygen, temperature, conductivity, and total suspended solids;

b) Indicator bacteria;

c) All priority pollutants (Attachment U-1) for the first storm of the year;

d) All constituents for which the water body is impaired downstream of the monitoring station;[4]

e) All constituents that caused toxicity or exceeded any applicable water quality criteria at the associated mass emission station the previous year (these constituents shall be listed in each Monitoring Report); and

f) Flow (flow may be estimated using EPA methods[5] at sites where flow measurement devices are not in place).

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[3] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

[4] The 1998 California 303(d) List and TMDL Priority Schedule lists pollutants for which each water body is impaired, www.swrcb.ca.gov/tmdl/docs/303d98.pdf#reg4

[5] NPDES Storm Water Sampling Guidance Document. EPA 833-B-92-001, Jul; 1992

D. Shoreline Monitoring

The City of Los Angeles shall monitor shoreline stations to evaluate the impacts to coastal receiving waters and the loss of recreational beneficial uses resulting from storm water/urban runoff. This component shall be integrated and coordinated with similar monitoring programs in the region.

1. The City of Los Angeles shall monitor eighteen water quality sampling stations along the shoreline of the Pacific Ocean within the Santa Monica Bay to determine compliance with the California's bathing water standards for public beaches and ocean water-contact sport areas[6], and the related impacts of discharges from storm drains and piers. The shoreline monitoring program shall be implemented as follows:

   a) The eighteen established shoreline water quality stations listed in Attachment U-2 shall be monitored. Station locations may be modified based on recommendations from the Santa Monica Bay Restoration Project (SMBRP) and approval from the Regional Board Executive Officer;

   b) Three indicator groups shall be tested for using either membrane filtration, multiple tube fermentation, or chromogenic substrate test kits. Monitoring shall include the following types and frequencies of sampling:

Parameter	Units	Sample Frequency
Total coliforms	CFU or MPN/100 ml	6/week (Mon-Sat)[7]
Fecal coliform[8]	CFU or MPN/100 ml	6/week (Mon-Sat)[5]
Enterococcus	CFU or MPN/100 ml	6/week (Mon-Sat)[5]

   c) Shoreline monitoring shall occur during daylight hours. Samples may be omitted in the event of hazardous weather;

   d) Shoreline monitoring frequencies at certain stations may be modified based on the use of the adjacent beaches and their proximity to storm drains, as recommended by the SMBRP's Technical Advisory Committee and the Los Angeles County Department of Health Services (LA County DHS).

   e) Data collected shall be transmitted daily to the LA County DHS. The City of Los Angeles will annually assess the data and submit it to the Principal Permittee for inclusion in the Monitoring Report;

   f) When exceedances of public health standards for bacteria occur, the LA County DHS shall take the appropriate action, as described in the Regulations for Public Beaches and Ocean Water-Contact Sports Areas.[9]

[6] California Department of Health Services, Health and Safety Code §115880 (Assembly Bill 411, Statutes of 1997, Chapter 765

[7] Samples will be collected on Sundays preceding Monday holidays

[8] *Escherichia Coli (E. Coli)* may be substituted for Fecal Coliform if chromogenic substrate test kits are used

[9] Regulations for Public Beaches and Ocean Water-Contact Sports Areas, Title 17 CCR Group 10, developed in response to Health and Safety Code §115880

g) The City of Los Angeles will continue to conduct all monitoring, testing, and data transferring actions as part of the SMBRP regional program for the Santa Monica Bay.

E. Trash Monitoring

To assess the quantities of trash in receiving waters after storm events and to identify areas impaired for trash, the Principal Permittee shall conduct visual observations of trash and take a minimum of one photograph at each mass emission station after the first storm event and 3 additional storm events per year.

1. The Principal Permittee and Permittees in the Los Angeles River and Ballona Creek WMAs (listed in Permit Attachment A) shall develop and implement a trash monitoring program for the Los Angeles River and Ballona Creek watersheds no later than October 15, 2002. The monitoring program and schedule shall be consistent with and pursuant to CWC §13267 "Request for Trash Monitoring", issued by the Regional Board on December 21, 2001. For the first two years of monitoring, either of the following formats for monitoring plans may be used:

   a) For each watershed, the group of Permittees in that watershed will capture and quantify trash from an area no less than 10% of the total land area over which they have jurisdiction. The monitoring areas shall represent 10% of every land use the group of Permittees has jurisdiction over. If storm drain configuration versus land use make the representation of 10% of a land use infeasible, the Permittees can choose areas that represent their land uses as accurately as possible, as long as the extent of the surface being monitored represents 10%. This monitoring shall use full capture devices. During wet weather, all sampling devices will be emptied within 72 hours of every rain event of 0.25 inch or greater. During dry weather, sampling devices will be emptied and analyzed every three months in the absence of precipitation.

   b) For each watershed, the group of Permittees in that watershed will sample a minimum of ten representative sites for each land use monitored. For each sampling site, a minimum of five catch basins will be fitted with inserts, for a total of not less than 50 catch basin inserts per land use monitored. The existing litter removal practices that the cities implement will remain in place, so that monitoring will evaluate how much trash is washed into the system under current practices. A structural full capture device shall be installed downstream of at least one sampling site for each land use monitored. For this sampling site, all of the catch basins that are upstream of the full capture-monitoring device must be fitted with inserts. This configuration will provide information on the relative effectiveness of the catch basin inserts as opposed to the full capture systems in varying land uses and under varying weather conditions. During wet weather, all sampling devices will be emptied within 72 hours of every rain event of 0.25 inch or greater. During dry weather, sampling

devices will be emptied and analyzed every three months in the absence of precipitation.

2. Permittees shall report data in a single unit of measure that is reproducible and measures the amount of trash, irrespective of water content (e.g. compacted volume based on a standardized compaction rate, or dry weight). Permittees may select the unit, but all Permittees must use the same unit of measure.

3. Following the first two years of data collection, Permittees shall conduct compliance monitoring, which involves calculating trash loading as a running three-year average (estimated total load discharged from 2003-2006, divided by three).

4. All trash collected shall be disposed of in compliance with all applicable State, federal, and local regulations.

REGIONAL MONITORING

The Principal Permittee shall participate on regional monitoring committees to help establish on-going regional programs that address public health concerns, monitor trends in natural resources and nearshore habitats, and assess regional impacts from all pollutant sources. Regional Monitoring participation shall include, but not necessarily be limited to, the efforts described below.

F. Estuary Sampling

The Southern California Coastal Waters Research Project (SCCWRP), in conjunction with the USEPA, the State Board, three Regional Boards, and participating dischargers, has organized an effort to implement a regional monitoring program for the southern California bight. Previous studies (in 1994 and 1998) included microbiology, water quality, sediment chemistry, sediment toxicity testing, benthic infauna, demersal fish, and bioaccumulation. A similar bight-wide monitoring effort is planned to be conducted in 2003. The Principal Permittee shall participate on the Steering Committee for this bight-wide monitoring project, and complete the estuary sampling requirement described below in parallel with this effort.

In addition to participation in the Bight-wide study, the goal of this requirement is to sample estuaries for sediment chemistry, sediment toxicity, and benthic macroinvertibrate community to determine the spatial extent of sediment fate from storm water, and the magnitude of its effects. A map of each estuary which depicts the impacted areas shall be produced. The maps shall provide the information necessary to conduct effective sediment monitoring to determine trends and accumulation, as a future permit requirement.

1. The Principal Permittee shall sample a maximum of 25 sites in each estuary/mouth (Ballona Creek, Malibu Creek, Los Angeles River, San Gabriel River, and Dominguez Channel) once during the permit term. Sediment samples shall be taken at each station by means of a 0.1m^2 (1.1 ft^2) modified Van Veen sediment grab sampler.

2. The Principal Permittee shall also sample a total of 25 sites outside of the direct outfalls to assess cumulative effects.

3. All samples shall be analyzed for the following:
   a) Sediment Chemistry (priority pollutants)
   b) Total Organic Carbon (TOC)
   c) Grain size
   d) Sediment Toxicity
      (1) Amphipod survival bioassays shall be conducted on each sediment sample. Toxicity shall be indicated by an amphipod survival rate of 70% or less in a single test.
      (2) Phase I TIEs of interstitial water, using the amphipod test species, shall be conducted for samples from stations identified to be toxic in a single amphipod survival bioassay.
   e) Benthic Macroinvertibrates
      (1) All sediment samples shall be passed through a 1.0mm (0.039 in) screen to retrieve the benthic organisms. Benthic epifauna and infauna shall be analyzed to determine the structure of the benthic community.
      (2) The Principal Permittee shall identify all organisms to lowest possible taxon.
      (3) The Principal Permittee shall determine the Total Biomass of:
         (i) Mollusks;
         (ii) Echinoderms;
         (iii) Annelids/polychaetes
         (iv) Crustaceans; and
         (v) All other macroinvertebrates.
      (4) The Principal Permittee shall determine the community structure analysis, including wet weight of each taxonomic group (listed above), number of species, number of individuals per species, total numerical abundance, species abundance per grab, species richness, species diversity, species evenness and dominance, similarity analysis, cluster analyses, or other appropriate multivariate statistical techniques approved by the Regional Board Executive Officer, and the Infaunal Index[10].

4. The Principal Permittee shall create a map of each estuary depicting degraded areas and the spatial distribution of sediment from storm water. In the Integrated Monitoring Report, the Principal Permittee shall suggest appropriate locations for regular sediment monitoring, based on the results of this study.

[10] Benthic Response Index for Assessing Infaunal Communities on the Mainland Shelf of Southern California, the SCCWRP

G. Bioassessment

The Principal Permittee shall continue participation in the Stormwater Monitoring Coalition (SMC), as well as coordinate with the Surface Water Ambient Monitoring Program (SWAMP) being developed by the State Board to complete the bioassessment requirement. The Regional Board anticipates that the SMC will organize an effort to evaluate the biological index approach for southern California and to design a research project for developing an Index of Biological Integrity (IBI) for this region. The SWAMP has begun work on a statewide effort to determine how to identify reference sites with the goal of IBI development.

The purpose of the bioassessment requirement is to detect biological trends in receiving waters and to collect data for the development of an IBI for southern California. The ultimate goals of bioassessment are to assess the biological integrity of receiving waters, to detect biological responses to pollution, and to identify probable causes of impairment not detected by chemical and physical water quality analysis.

1. The Principal Permittee shall coordinate with the SMC and SWAMP to identify the most appropriate locations for bioassessment stations within Los Angeles County.

2. Station selection shall be complete within one year from the date this Order is adopted, and sampling shall begin no later than October of 2003.

3. The Principal Permittee shall monitor a minimum of 20 bioassessment stations in October of each year, beginning in 2003. A minimum of three replicate samples shall be collected at each station during each sampling event.

4. A professional environmental laboratory shall perform all laboratory, quality assurance, and analytical procedures. The Principal Permittee may collect samples when properly trained in CSBP methods. The Principal Permittee shall develop Standard Operation Procedures (SOPs) for the Bioassessment Monitoring Program that describes all procedures and responsible parties. The SOPs must contain step-by-step field, laboratory and data entry procedures, as well as, related QA/QC procedures. There must also be specific information about the bioassessment program including: assessment program description, its organization and the responsibilities of all its personnel; assessment project description and objectives; qualifications of all personnel; and the type of training each member has received. A copy of the SOPs shall be available to the Regional Board Executive Officer upon request.

5. Field sampling must conform to the SOP established for the California Stream Bioassessment Procedure (CSBP) when appropriate. For sampling of aquatic environments where the CSBP is not appropriate (i.e., an estuary or unwadable stream), California Department of Fish and Game and the Regional Board Executive Officer shall be consulted in order to determine the most appropriate protocol to be implemented. Field crews shall be trained on aspects of the protocol and appropriate safety issues. All field data and sample Chain of Custody (COC) forms must be examined for completion and gross errors by the field crews, the

receiving laboratory, and the Principal Permittee. These forms shall be available to California Department of Fish and Game or the Regional Board Executive Officer upon request. Field inspections should be planned with random visits and should be performed by the Principal Permittee, if properly trained in CSBP methods, or an independent auditor. These visits should report on all aspects of the field procedure with corrective action occurring immediately.

6. Taxonomic identification laboratories process the biological samples that usually consist of subsampling organisms, enumerating and identifying taxonomic groups and entering the information into an electronic format. There should be intra-laboratory QA/QC results for subsampling, taxonomic validation and corrective actions. Biological laboratories should also maintain reference collections, vouchered specimens (the Principal Permittee can request return of their sample voucher collections) and remnant collections. Biological laboratories shall participate in an inter-laboratory (external) taxonomic validation program at a recommended level of 20% for the first two years of the program. If there are no substantial QA/QC problems, the level of external validation may be decreased to 10% in year three upon approval from the Regional Board. External QA/QC should be arranged through the California Department of Fish and Game's Aquatic Bioassessment Laboratory in Rancho Cordova.

7. Sampling, laboratory, quality assurance, and analysis procedures shall follow the standardized "Non-point Source Bioassessment Sampling Procedures" for professional bioassessment as set forth in the California Department of Fish and Game California Stream Bioassessment Procedure (CSBP)[11]. The following results and information shall be included in the annual Monitoring Report:

   a) All physical, chemical and biological data collected in the assessment;

   b) Photographs and GPS locations of all stations;

   c) Documentation of quality assurance and control procedures;

   d) Analysis that shall include calculation of the metrics used in the CSBP;

   e) Comparison of mean biological and habitat assessment metric values between stations and year-to-year trends;

   f) Electronic data formatted to the California Department of Fish and Game Aquatic Bioassessment Laboratory for inclusion in the Statewide Access Bioassessment Database; and

   g) Copies of all QA/AC documents from laboratories.

[11] California Stream Bioassessment Procedure (Protocol Brief for Biological and Physical/Habitat Assessment in Wadeable Streams), California Department of Fish and Game - Aquatic Bioassessment Laboratory, May 1999. Located at www.dfg.ca.gov/cabw/protocols.html.

SPECIAL STUDIES

H. New Development Impacts Study in the Santa Clara Watershed

The Principal Permittee, with support from the City of Santa Clarita, shall monitor tributaries in the Santa Clara watershed to determine impacts from new development and to compare storm water quality between subwatersheds with and without SUSMPs.

1. The Principal Permittee, in cooperation with the City of Santa Clarita, shall select one station that is representative of a subwatershed in which the majority of development has occurred without SUSMP implementation, and one station (SUSMP station) in a subwatershed in which the majority of the development has/will include SUSMP implementation. Other inputs to runoff, such as septic systems, in the two subwatersheds should be similar.

2. The Principal Permittee shall coordinate with the City of Santa Clarita and the Regional Board to develop a proposed study design, including a description of the drainage areas to be monitored and sampling locations, no later than August 1, 2002. If appropriate, this study may be conducted in conjunction with the Peak Discharge Impact Study, described below.

3. The Principal Permittee shall monitor the first storm event and at least 2 additional storm events during each storm season. At least one dry weather event per year will also be sampled at each station.

4. Samples shall be flow-weighted composites, collected during the first 3 hours, or for the duration of the storm if it is less than 3 hours. Samples may be collected manually or automatically. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge[12], unless the Regional Board Executive Officer approves alternate protocol. Constituents to be analyzed for each location shall include the following:

   a) pH, dissolved oxygen, temperature, conductivity, chloride, nitrogen, and TSS;

   b) Metals: aluminum, arsenic, beryllium, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, silver, and zinc;

   c) Pathogen Indicators (Coliform);

   d) PAHs; and

   e) Flow (flow may be estimated using EPA methods at sites where flow measurement devices are not in place).

5. The Principal Permittee shall submit an analysis of the data, including a description of each subwatershed, year-to-year changes compared to the amount of development that occurred in each, comparisons between

[12] Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

stations, and an analysis of SUSMP effectiveness, with the fourth year Monitoring Report.

I. Peak Discharge Impact Study

The Principal Permittee shall conduct a study to evaluate peak flow control and to determine numeric criteria to prevent or minimize erosion of natural stream channels and banks caused by urbanization.[13] The Principal Permittee may partner with the Ventura County Flood Control District to expand the stream erosion study to the Santa Clara River watershed. The study shall begin no later than August 1, 2002.

J. BMP Effectiveness Study

The Principal Permittee shall conduct or participate in studies to evaluate the effectiveness of structural and treatment control BMPs. The objective of this study shall include the following:

- Monitor the reduction of pollutants of concern in storm water (including, but not limited to: trash, suspended sediment, pathogen indicators, nutrients, heavy metals, and oil and grease) from five or more different types of BMPs that have been properly installed within the year preceding monitoring. Monitoring shall be continued until the effectiveness of the BMP can be determined.
- Evaluate the requirements, feasibility and cost of maintenance for each BMP.
- Develop recommendations for appropriate BMPs for the reduction of pollutants of concern in storm water in Los Angeles County.

The Principal Permittee may participate in the SMBRP's, "Performance Evaluation of Structural BMPs for Storm Water Pollution Control in the Santa Monica Bay Watershed" study to meet this requirement. Participation includes collaboration and fund contribution to cover the scope of the proposed study.

K. Standard Monitoring Provisions

All monitoring activities shall meet the following requirements:

1. Monitoring and Records [40 CFR 122.41(j)(1)]
   Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Monitoring and Records [40 CFR 122.41(j)(2)] [CWC §13383(a)]
   The Principal Permittee and Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the Report of Waste Discharge and application for this Order, for a period of at least five (5) years from

[13] Permit, Part 4.D.2 (Development Planning Program) requires the development of numerical criteria for peak flow control in natural drainage systems.

the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Board or USEPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge.

3. Monitoring and Records [40 CFR 122.21(j)(3)]
Records of monitoring information shall include:

a) The date, exact place, and time of sampling or measurements;

b) The individual(s) who performed the sampling or measurements;

c) The date(s) analyses were performed;

d) The individual(s) who performed the analyses;

e) The analytical techniques or methods used; and,

f) The results of such analyses.

4. Monitoring and Records [40 CFR 122.21(j)(4)]
All sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this Order.

5. Monitoring and Records [40 CFR 122.21(j)(5)]
The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both.

6. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by an appropriate governmental regulatory agency.

7. For priority toxic pollutants that are identified in the CTR (65 *Fed. Reg.* 31682), the MLs published in Appendix 4 of the SIP shall be used for all analyses, unless otherwise specified. The MLs from the SIP are incorporated into the Constituent List (Attachment U-1).

8. The Monitoring Report shall specify the analytical method used, the MDL and the ML for each pollutant. For the purpose of reporting compliance with numerical limitations, performance goals, and receiving water limitations, analytical data shall be reported with one of the following methods, as appropriate:

a) An actual numerical value for sample results greater than or equal to the ML;

b) "Not-detected (ND)" for sample results less than the laboratory's MDL with the MDL indicated for the analytical method used; or

c) "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML. The estimated chemical concentration of the sample shall also be reported. This is the concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

9. For priority toxic pollutants, if the Principal Permittee or Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Principal Permittee must submit documentation from the laboratory to the Regional Board Executive Officer for approval prior to raising the ML for any constituent.

10. Monitoring Reports [40 CFR 122.41(l)(4)(ii)]

If the Principal Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136, unless otherwise specified in the Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual Monitoring Reports.

11. Monitoring Reports [40 CFR 122.41(l)(4)(iii)]

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order.

12. If no flow occurred during the reporting period, the Monitoring Report shall so state.

13. The Regional Board Executive Officer or the Regional Board, consistent with 40 CFR 122.41, may approve changes to the Monitoring Program, after providing the opportunity for public comment, either:

a) By petition of the Principal Permittee or by petition of interested parties after the submittal of the annual Monitoring Report. Such petition shall be filed not later than 60 days after the Monitoring Report submittal date, or

b) As deemed necessary by the Regional Board Executive Officer following notice to the Principal Permittee.

Ordered by:

Dennis A. Dickerson
Executive Officer
Date: December 13, 2001

ATTACHMENT U-1
LIST OF CONSTITUENTS FOR THE STORM WATER MONITORING PROGRAM AND ASSOCIATED MINIMUM LEVELS (MLs)[1]

CONSTITUENTS	MLs
CONVENTIONAL POLLUTANTS	**mg/L**
Oil and Grease	5
Total Phenols	0.1
Cyanide	0.005
pH	0 - 14
Temperature	None
Dissolved Oxygen	Sensitivity to 5 mg/L
BACTERIA	
Total coliform	<20mpn/100ml
Fecal coliform	<20mpn/100ml
Enterococcus (marine waters)	<20mpn/100ml
E. coli (fresh waters)	
GENERAL	**mg/L**
Dissolved Phosphorus	0.05
Total Phosphorus	0.05
Turbidity	0.1NTU
Total Suspended Solids	2
Total Dissolved Solids	2
Volatile Suspended Solids	2
Total Organic Carbon	1
Total Petroleum Hydrocarbon	5
Biochemical Oxygen Demand	2
Chemical Oxygen Demand	20-900
Total Ammonia-Nitrogen	0.1
Total Kjeldahl Nitrogen	0.1
Nitrate-Nitrite	0.1
Alkalinity	2
Specific Conductance	1umho/cm
Total Hardness	2
MBAS	0.5
Chloride	2
Fluoride	0.1
Methyl tertiary butyl ether (MTBE)	1

[1] For Priority Pollutants, the MLs represent the lowest value listed in Appendix 4 of SIP. MDLs must be lower than or equal to the ML value. If a particular ML is not attainable in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure may be used instead.

METALS	µg/L
Aluminum	100
Antimony	0.5
Arsenic	1
Beryllium	0.5
Cadmium	0.25
Chromium (total)	0.5
Copper	0.5
Hex. Chromium	5
Iron	100
Lead	0.5
Mercury	0.5
Nickel	1
Selenium	1
Silver	0.25
Thallium	1
Zinc	1
SEMIVOLATILE ORGANIC COMPOUNDS	µg/L
Acids	
2-Chlorophenol	2
2, 4-Dichlorophenol	1
2,4-Dimethylphenol	2
2, 4-Dinitrophenol	5
2-Nitrophenol	10
4-Nitrophenol	5
4-Chloro-3-methylphenol	1
Pentachlorophenol	2
Phenol	1
2,4,6-Trichlorophenol	10
BASE/NEUTRAL	µg/L
Acenaphthene	1
Acenaphthylene	2
Anthracene	2
Benzidine	5
1,2 Benzanthracene	5
Benzo(a)pyrene	2
Benzo(g,h,i)perylene	5
3,4 Benzoflouranthene	10
Benzo(k)flouranthene	2
Bis(2-Chloroethoxy) methane	5
Bis(2-Chloroisopropyl) ether	2
Bis(2-Chloroethyl) ether	1
Bis(2-Ethylhexl) phthalate	5
4-Bromophenyl phenyl ether	5

Butyl benzyl phthalate	10
2-Chloroethyl vinyl ether	1
2-Chloronaphthalene	10
4-Chlorophenyl phenyl ether	5
Chrysene	5
Dibenzo(a,h)anthracene	0.1
1,3-Dichlorobenzene	1
1,4-Dichlorobenzene	1
1,2-Dichlorobenzene	1
3,3-Dichlorobenzidine	5
Diethyl phthalate	2
Dimethyl phthalate	2
di-n-Butyl phthalate	10
2,4-Dinitrotoluene	5
2,6-Dinitrotoluene	5
4,6 Dinitro-2-methylphenol	5
1,2-Diphenylhydrazine	1
di-n-Octyl phthalate	10
Fluoranthene	0.05
Fluorene	0.1
Hexachlorobenzene	1
Hexachlorobutadiene	1
Hexachloro-cyclopentadiene	5
Hexachloroethane	1
Indeno(1,2,3-cd)pyrene	0.05
Isophorone	1
Naphthalene	0.2
Nitrobenzene	1
N-Nitroso-dimethyl amine	5
N-Nitroso-diphenyl amine	1
N-Nitroso-di-n-propyl amine	5
Phenanthrene	0.05
Pyrene	0.05
1,2,4-Trichlorobenzene	1
CHLORINATED PESTICIDES	**µg/L**
Aldrin	0.005
alpha-BHC	0.01
beta-BHC	0.005
delta-BHC	0.005
gamma-BHC (lindane)	0.02
alpha-chlordane	0.1
gamma-chlordane	0.1
4,4'-DDD	0.05
4,4'-DDE	0.05
4,4'-DDT	0.01
Dieldrin	0.01
alpha-Endosulfan	0.02

beta-Endosulfan	0.01
Endosulfan sulfate	0.05
Endrin	0.01
Endrin aldehyde	0.01
Heptachlor	0.01
Heptachlor Epoxide	0.01
Toxaphene	0.5
Polychlorinated Biphenyls	**µg/L**
Aroclor-1016	0.5
Aroclor-1221	0.5
Aroclor-1232	0.5
Aroclor-1242	0.5
Aroclor-1248	0.5
Aroclor-1254	0.5
Aroclor-1260	0.5
ORGANOPHOSPHATE PESTICIDES	**µg/L**
Chlorpyrifos	0.05
Diazinon	0.01
Prometryn	2
Atrazine	2
Simazine	2
Cyanazine	2
Malathion	1
HERBICIDES	**µg/L**
Glyphosate	5
2,4-D	0.02
2,4,5-TP-SILVEX	0.2

ATTACHMENT U-2
SHORELINE MONITORING STATIONS

Station	Location[1]	Latitude	Longitude
S1	Surfrider Beach, Malibu, 50 yds E. of breech	34.03500	118.67833
S2	Topanga Point, Malibu, seaward of lifeguard station	34.03833	118.58083
S3	Pulga storm drain, Pacific Palisades, 50 yds E. of drain	34.03361	118.53417
S4	Santa Monica Canyon storm drain, Pacific Palisades, 50 yds E. of drain	34.02639	118.51861
S5	Santa Monica Pier, Santa Monica, 50 yds S. of pier	34.00833	118.49667
S6	Pico-Kenter storm drain, Santa Monica, 50 yds S. of drain	34.00583	118.49250
S7	Ashland storm drain, Santa Monica, 50 yds S. of drain	33.99639	118.48472
S8	Windward storm drain, Los Angeles, 50 yds S. of drain	33.98778	118.47750
S9	Marina Del Rey Beach, Marina Del Rey, at lifeguard tower.	33.98139	118.45833
S10	Ballona Creek, Playa Del Rey, 50 yds S. of south jetty	33.96083	118.45611
S11	Culver Blvd., extended, Playa Del Rey, N side of Culver storm drain	33.95639	118.45167
S12	Imperial Hwy. Storm drain, Playa Del Rey, 50 yds S. of drain	33.93028	118.43722
S13	El Porto, Manhattan Beach, 40th St. extended	33.90389	118.42250
S14	Manhattan Beach Pier, Manhattan Beach, 50 yds S. of pier	33.88360	118.41278
S15	Hermosa Beach Pier, Hermosa Beach, 50 yds S. of pier	33.86111	118.40278
S16	Redondo Pier, Redondo Beach, 50 yds S. of pier	33.83833	118.39111
S17	Ave. I storm drain, Redondo Beach, Ave. I extended, 50 yds S. of drain	33.81889	118.39111
S18	Malaga Cove, Palos Verdes Estates, Arroyo Circle extended	33.80500	118.39467

[1] Station locations from *Ocean Water Regulatory & Monitoring Protocol*, County of Los Angeles, Department of Health Services, May 5, 1999.

Attachment U-3
Total Maximum Daily Loads Scheduled for Implementation in Los Angeles County within 10 Years

Watershed	*TMDL*
Malibu	Coliform, Nutrients
Malibu Creek Lakes and Tributaries	Metals
Ballona Creek	Trash, Coliform, Historic Pesticides, Metals, TBT
Dominguez Channel/LA Harbor	Coliform, PAHs, Historic Pesticides, PCBs, DDT, Metals, Nutrients, Trash
Los Angeles River	Trash, Nutrients, Coliform, Chlorpyrifos, Metals
San Gabriel River	Nutrients, Coliform, Metals, Trash
San Gabriel Lakes	Coliform
Santa Monica Bay Beaches	Coliform, Metals, Chlordane, Historic PCBs and Pesticides
Santa Clara River	Historic Pesticides, Chloride, Coliform, Nitrogen, Eutrophication, Trash
Los Cerritos Channel	Metals, Ammonia, Coliform

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This form summarizes the requirements in Order No. 01-182. Each Permittee must complete this form in its entirety, except for those requirements applicable only to the Principal Permittee. Only report activities that were performed during the previous fiscal year. Upon completion, this form shall be submitted to the Principal Permittee, by the date specified by the Principal Permittee, for inclusion in the unified Annual Storm Water Program Report. Attachments should be included where necessary to provide sufficient information on program implementation.

The goals of this Report are to: 1) concisely document implementation of the Storm Water Quality Management Program (SQMP) during the past fiscal year; 2) evaluate program results for continuous improvement; 3) to determine compliance with Order 01-182; and 4) to share this information with other Permittees, municipal decision makers, and the public.

!	YOU MUST FILL OUT ALL THE INFORMATION REQUESTED *Do not leave any of the sections blank.*
N/A	If the question does not apply to your municipality, please indicate N/A in the space provided and provide a brief explanation
U	If the information requested is currently unavailable, please indicate U in the space provided and give a brief explanation.

This Report Form consists of the following sections:

SECTION	PAGE
I. Program Management	2-4
II. Receiving Water Limitations	5
III. SQMP Implementation	5-7
IV. Special Provisions	8
IV.A. Public Information and Participation Program	8-14
IV.B. Industrial/Commercial Facilities Program	15-17
IV.C. Development Planning Program	18-21
IV.D. Development Construction Program	22-23
IV.E. Public Agency Activities Program	24-33
IV.F. IC/ID Elimination Program	34-37
V. Monitoring	38
VI. Assessment of Program Effectiveness	38
VII. Certification	39

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Reporting Year 200__ - 200__

I. Program Management

A. Permittee Name: _____

B. Permittee Program Supervisor: _____
Title:
Address:
City: Zip Code:
Phone: Fax:

C. In the space below, briefly describe how the storm water program is coordinated within your agency's departments and divisions. Include a description of any problems with coordination between departments. To facilitate this, complete the Table 1.

TABLE 1 - Program Management

Storm Water Management Activity	Division/Department	# of Individuals Responsible for Implementing
1. Outreach & Education		
2. Industrial/Commercial Inspections		
3. Construction Permits/Inspections		
4. IC/ID Inspections		
5. Street sweeping		
6. Catch Basin Cleaning		
7. Spill Response		
8. Development Planning (project/SUSMP review and approval)		
9. Trash Collection		

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D. Staff and Training

Attach a summary of staff training over the last fiscal year. This shall include the staff name, department, type of training, and date of training.

E. Budget Summary

1. Does your municipality have a storm water utility? Yes ☐ No ☐

If no, describe the funding source(s) used to implement the requirements of Order No. 01-182.

2. Are the existing financial resources sufficient to accomplish all required activities? Yes ☐ No ☐

3. Complete Table 2 to the extent that accurate information is available (indicate U in the spaces where the information is unavailable), and report any supplemental dedicated budgets for the same categories on the lines below the table.

4. List any additional state/federally funded projects related to storm water.

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TABLE 2

Program Element	Expenditures in Previous Fiscal Year	Estimated Amount Needed to implement Order 01-XXX
1. Program management a. Administrative costs b. Capital costs		
2. Public Information and Participation a. Public Outreach/Education b. Employee Training c. Corporate Outreach d. Business Assistance		
3. Industrial/Commercial inspection/ site visit activities		
4. Development Planning		
5. Development Construction a. Construction inspections		
6. Public Agency Activities a. Maintenance of structural and treatment control BMPs b. Municipal street sweeping c. Catch basin cleaning d. Trash collection/recycling e. Capital costs f. Other		
7. IC/ID Program a. Operations and Maintenance b. Capitol Costs		
8. Monitoring		
9. Other		
10. TOTAL		

List any supplemental dedicated budgets for the above categories:

List any activities that have been contracted out to consultants/other agencies:

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II. Receiving Water Limitations (Part 2)

A. Are you aware, or have you been notified, of any discharges from your MS4 that cause or contribute to a condition of nuisance or to the violation of any applicable water quality standards? Yes ☐ No ☐

B. Has the Regional Board notified you that discharges from your MS4 are causing or contributing to an exceedance of water quality standards? Yes ☐ No ☐

C. If you answered Yes to either of the above questions, you must attach a Receiving Water Limitations (RWL) Compliance Report. The Report must include the following:

1. A description of the pollutants that are in exceedance and an analysis of possible sources;
2. A plan to comply with the RWL (Permit, Part 2);
3. Changes to the SQMP to eliminate water quality exceedances;
4. Enhanced monitoring to demonstrate compliance; and
5. Results of implementation.

III. SQMP Implementation (Part 3)

A. Has your agency implemented the SQMP and any additional controls necessary to reduce the discharges of pollutants in storm water to the maximum extent practicable? Yes ☐ No ☐

B. If your agency has implemented additional or different controls than described in the countywide SQMP, has your agency developed a local SQMP that reflects the conditions in its jurisdiction and specifies activities being implemented under the appropriate elements described in the countywide SQMP? Yes ☐ No ☐

C. Describe the status of developing a local SQMP in the box below.

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D. If applicable, describe an additional BMP, in addition to those in the countywide SQMP, that your city has implemented to reduce pollutants in storm water to the maximum extent practicable.

E. Watershed Management Committees (WMCs)

1. Which WMC are you in?
2. Who is your designated representative to the WMC?
3. How many WMC meetings did you participate in last year?
4. Describe specific improvements to your storm water management program as a result of WMC meetings.
5. Attach any comments or suggestions regarding your WMC.

F. Storm Water Ordinance

1. Have you adopted a storm water and urban runoff ordinance to enforce all requirements of Order 01-182? Yes ☐ No ☐
   If not, describe the status of adopting such an ordinance.
2. If yes, have you already submitted a copy of the ordinance to the Regional Board? Yes ☐ No ☐
   If not, please attach a copy to this Report.

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3. Were any amendments made to your storm water ordinance during the last fiscal year? Yes ☐ No ☐
   If yes, attach a copy of amendments to this Report.

G. Discharge Prohibitions

1. List any non-storm water discharges you feel should be further regulated:

2. List any non-storm water discharges you feel should be exempt, and provide an explanation for each:

IV. Special Provisions (Part 4)

A. Public Information and Participation (Part 4.B)

In addition to answering the following questions, attach a summary of all storm water education activities that your agency conducted or participated in last year.

1. No Dumping Message

a) How many storm drain inlets does your agency own?

b) How many storm drain inlets were marked with a no dumping message in the last fiscal year?

c) What is the total number of storm drain inlets that are legibly marked with a no dumping message?

If this number is less than the number in question 1.b, describe why all inlets have not been marked, the process used to implement this requirement, and the expected completion date.

d) How many public access points to creeks, channels, and other water bodies within your jurisdiction have been posted with no dumping signage in the past year?

Describe your agency's status of implementing this requirement by the date required in Order No. 01-182.

2. Reporting Hotline

a) Has your agency established its own hotline for reporting and for general storm water management information? Yes ☐ No ☐

b) If so, what is the number?

c) Is this information listed in the government pages of the telephone book? Yes ☐ No ☐

d) If no, is your agency coordinated with the countywide hotline? Yes ☐ No ☐

e) Do you keep record of the number of calls received and how they were responded to? Yes ☐ No ☐

f) How many calls were received in the last fiscal year?

g) Describe the process used to respond to hotline calls.

h) Have you provided the Principal Permittee with your current reporting contact information? Yes ☐ No ☐

i) Have you compiled a list of the general public reporting contacts for all Permittees and posted it on the www.888CleanLA.com web site *(Principal Permittee only)?* Yes ☐ No ☐

If not, when is this scheduled to occur?

3. Outreach and Education

a) Describe the strategy developed to provide outreach and bilingual materials to target ethnic communities. Include an explanation of why each community was chosen as a target, how program effectiveness will be determined, and status of implementation. *(Principal Permittee only)*

b) Did the Principal Permittee organize quarterly Public Outreach Strategy meetings that you were aware of? Yes ☐ No ☐

How many Public Outreach Strategy meetings did your agency participate in last year?

Explain why your agency did not attend any or all of the organized meetings.

Identify specific improvements to your storm water education program as a result of these meetings:

List suggestions to increase the usefulness of quarterly meetings:

If quarterly Public Outreach Strategy meetings were not organized, explain why not and when this requirement will be implemented *(Principal Permittee only)*.

c) Approximately how many impressions were made last year on the general public about storm water quality via print, local TV, local radio, or other media?

d) Describe efforts your agency made to educate local schools on storm water pollution.

e) Did you provide all schools within each school district in Los Angeles County with materials necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution *(Principal Permittee only)*? Yes ☐ No ☐

If not, explain why.

f) Describe the strategy developed to measure the effectiveness of in-school educational programs, including assessing students' knowledge of storm water pollution problems and solutions before and after educational efforts *(Principal Permittee only)*.

For Permit Years 2-5, attach an assessment of the effectiveness of in-school storm water education programs.

g) What is the behavioral change target that was developed based on sociological data and other studies *(Principal Permittee only)?*

If no target has been developed, explain why and describe the status of developing a target.

What is the status of meeting the target by the end of Year 5?

4. Pollutant-Specific Outreach

a) Attach a description of each watershed-specific outreach program that your agency developed *(Principal Permittee only)*. All pollutants listed in Table 1 (Section B.1.d.) must be included.

b) Did your agency cooperate with the Principal Permittee to develop specific outreach programs to target pollutants in your area? Yes ☐ No ☐

c) Did your agency help distribute pollutant-specific materials in your city? Yes ☐ No ☐

d) Describe how your agency has made outreach material available to the general public, schools, community groups, contractors and developers, etc...

5. Businesses Program

a) Briefly describe the Corporate Outreach Program that has been developed to target gas stations and restaurant chains *(Principal Permittee only)*.

b) How many corporate managers did your agency *(Principal Permittee only)* reach last year?

c) What is the total number of corporations to be reached through this program *(Principal Permittee only)*?

d) Is your agency meeting the requirement of reaching all gas station and restaurant corporations once every two years *(Principal Permittee only)*? Yes ☐ No ☐

If not, describe measures that will be taken to fully implement this requirement.

e) Has your agency developed and/or implemented a Business Assistance Program? Yes ☐ No ☐

If so, briefly describe your agency's program, including the number of businesses assisted, the type of assistance, and an assessment of the program's effectiveness.

6. Did you encourage local radio stations and newspapers to use public service announcements? Yes ☐ No ☐

How many media outlets were contacted?

Which newspapers or radio stations ran them?

Who was the audience?

7. Did you supplement the County's media purchase by funding additional media buys? Yes ☐ No ☐

Estimated dollar value/in-kind contribution:

Type of media purchased:

Frequency of the buys:

Did another agency help with the purchase? Yes ☐ No ☐

8. Did you work with local business, the County, or other Permittees to place non-traditional advertising? Yes ☐ No ☐

If so, describe the type of advertising.

9. Did you establish local community partnerships to distribute educational storm water pollution prevention material? Yes ☐ No ☐

Describe the materials that were distributed:

Who were the key partners?

Who was the audience (businesses, schools, etc.)?

10. Did you participate in or publicize workshops or community events to discuss storm water pollution? Yes ☐ No ☐

How many events did you attend?

11. Does your agency have a website that provides storm water pollution prevention information? Yes ☐ No ☐

If so, what is the address?

12. Has awareness increased in your community regarding storm water pollution? Yes ☐ No ☐

Do you feel that behaviors have changed? Yes ☐ No ☐

Explain the basis for your answers. Include a description of any evaluation methods that are used to determine the effectiveness of your agency's outreach.

13. How would you modify the storm water public education program to improve it on the City or County level?

B. Industrial/Commercial Facilities Program

1. Critical Source Inventory Database

Did you (individually or jointly) update the Database for Critical Sources Inventory? Yes ☐ No ☐

Comments/Explanation/Conclusion:

2. Inspection Program

Provide the reporting data as suggested in the following tables.

Category	Initial Number of Facilities at the start of cycle proposed for inspection by categories (after the initial year, the updated number based on the new data)	Number of facilities inspected in the current reporting year	% Completed at the time of this report for present cycle (from the initial value, and from the updated value after first cycle)	Total number since permit adoption
Landfills				
TSDF				
...				

Comments/Explanation/Conclusion:

3. BMPs Implementation

Provide the reporting data as suggested in the following table.

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Category	Number of facilities inspected by category in this reporting year	Number of facilities identified as adequately implementing BMPs as specified in this reporting year	% adequately implementing out of total in this reporting year	Number of facilities required to implement or upgrade in this reporting year	Number of facilities inspected by category in this reporting cycle	Number of facilities identified as adequately implementing BMPs as specified in this reporting cycle	% adequately implementing out of total in this reporting cycle	Number of facilities required to implement or upgrade in this reporting cycle	Total Number during this permit adequately implementing	Total Number during this permit required to implement or upgrade
Landfills										
...										

Comments/Explanation/Conclusion:

4. Enforcement Activities

Provide the reporting data as suggested in the following tables.

Enforcement Actions by categories (e.g. Warning letter, NOV, referral to D.A., etc.)	Number of facilities issued enforcement actions in the current reporting year	Number of facilities issued enforcement actions in the current reporting cycle	Number of facilities (re)inspected due to enforcement actions in current reporting year	Number of facilities (re)inspected due to enforcement actions in current reporting cycle	Number of facilities brought into compliance in the current reporting year	Number of facilities brought into compliance in current reporting cycle	Total number of enforcement actions since permit adoption (by category)

Facilities by category	Number of Warning letters	Number of NOVs	Number of Referral	Number of Other

Comments/Explanation/Conclusion:

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5. Program Implementation Effectiveness Assessment

Please give a brief assessment of the implementation of the program in removing pollutants from the storm water discharges. Please provide an explanation. Suggested improvements or adjustments based on the knowledge gained through this reporting period activities must be reflected in a change in the SQMP, if warranted.

Highly Effective ☐ Somewhat Effective ☐ Non-effective ☐

Comments/Explanation/Conclusion:

6. You must also submit a quarterly electronic submittal of your Industrial/Commercial Facilities Program activities.

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C. Development Planning Program (Part 4.D)

1. Does your agency have a process to minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies in accordance with requirements under CEQA, Section 404 of the CWA, local ordinances, and other legal authorities? Yes ☐ No ☐
   Attach examples showing how storm water quality impacts were addressed in environmental documents for projects over the past year.

2. Does your agency have procedures to include the following requirements in all priority development and redevelopment projects:

   a) Maximize the percentage of permeable surfaces to allow more percolation of storm water into the ground? Yes ☐ No ☐

   b) Minimize the quantity of storm water directed to impermeable surfaces and the MS4? Yes ☐ No ☐

   c) Minimize pollution emanating from parking lots through the use of appropriate treatment control BMPs and good housekeeping practices? Yes ☐ No ☐

   d) Provide for appropriate permanent measures to reduce storm water pollutant loads from the development site? Yes ☐ No ☐

3. List the types and numbers of BMPs that your agency required for priority projects to meet the requirements described above.

4. Describe the status of the development or implementation of peak flow controls in natural drainage systems.

5. Has your agency amended codes and/or ordinances to give legal effect to the SUSMP changes required in the Permit? Yes ☐ No ☐

6. Describe the process your agency uses to include SUSMP design standards in new development and redevelopment project approvals.

7. How many of each of the following projects did your agency review and condition to meet SUSMP requirements last year?

   a) Residential

   b) Commercial

   c) Industrial

   d) Automotive service facilities

   e) Retail gasoline outlets

   f) Restaurants

   g) Parking lots

   h) Projects located in or directly adjacent to or discharging directly to an environmentally sensitive area

   i) Total number of permits issued to priority projects

8. What is the percentage of total development projects that were conditioned to meet SUSMP requirements? %

9. How has your agency prepared to reduce the SUSMP threshold for industrial/commercial facilities to 1 acre from 100,000 square feet in 2003?

10. After 2003, how many additional projects per year will require/did require implementation of SUSMP requirements as a result of the lower threshold?

11. Does your agency participate in an approved regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements for new development? Yes ☐ No ☐

12. Has your agency modified its planning procedures for preparing and reviewing CEQA documents to consider potential storm water quality impacts and provide for appropriate mitigation? Yes ☐ No ☐

If no, provide an explanation and an expected date of completion.

13. Did your agency update any of the following General Plan elements in the past year?

a) Land Use Yes ☐ No ☐

b) Housing Yes ☐ No ☐

c) Conservation Yes ☐ No ☐

d) Open Space Yes ☐ No ☐

If yes, please describe how watershed and storm water quality and quantity management considerations were included.

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14. How many targeted staff were trained last year?

15. How many targeted staff are trained annually?

16. What percentage of total staff are trained annually? %

17. Has your agency developed and made available development planning guidelines? Yes ☐ No ☐

18. If no, what is the expected date that guidelines will be developed and available to developers?

19. What is the status of completion of the technical manual for siting and design of BMPs for the development community?

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D. Development Construction Program

1. Describe your agency's program to control runoff from construction activity at all construction sites within its jurisdiction.

2. Does your agency require the preparation, submittal, and implementation of a Local Storm Water Pollution Prevention Plan (Local SWPPP) prior to the issuance of a grading permit for all sites that meet one or all of the following criteria?

   a) Will result in soil disturbance of one acre or greater ☐ Yes ☐ No

   b) Is within, directly adjacent to, or is discharging directly to an environmentally sensitive area ☐ Yes ☐ No

   c) Is located in a hillside area ☐ Yes ☐ No

3. Attach one example of a local SWPPP

4. Describe the process your agency uses to require proof of filing a Notice of Intent for coverage under the State General Construction Activity Storm Water permit and a certification that a SWPPP has been prepared prior to issuing a grading permit?

5. How many building/grading permits were issued to sites requiring Local SWPPPs last year?

6. How many building/grading permits were issued to sites requiring coverage under the General Construction Activities Storm Water Permit last year?

7. How many building/grading permits were issued to construction site less than one acre in size last year?

8. How many construction sites were inspected during the last wet season?

9. Complete the table below.

Type of Violation	# of Violations	% of Total Inspections	# of Follow-up Inspections	# of Enforcement Actions
Off-site discharge of sediment				
Off-site discharge of other pollutants				
No or inadequate SWPPP				
Inadequate BMP/SWPPP implementation				

10. Describe the process for taking enforcement actions against construction site violations, including the types of actions that are taken.

11. Describe the system that your agency uses to track the issuance of grading permits.

E. Public Agency Activities (Part 4.F)

1. Sewage System Maintenance, Overflow, and Spill Prevention (only applicable to agencies that own and/or operate a sanitary sewer system)

a) Has your agency developed and implemented a response plan for sanitary sewer overflows that includes the requirements in Order 01-182? Yes ☐ No ☐

b) How many sanitary sewer overflows occurred within your jurisdiction?

c) How many did your agency respond to?

d) Did your agency investigate all complaints received? Yes ☐ No ☐

e) How many complaints were received?

f) Upon notification, did your agency immediately respond to overflows by containment? Yes ☐ No ☐

g) Did your agency notify appropriate sewer and public health agencies when a sewer overflowed to the MS4? Yes ☐ No ☐

h) Did your agency implement a program to prevent sewage spills or leaks from sewage facilities from entering the MS4? Yes ☐ No ☐

If so, describe the program:

i) Did your agency implement a program to identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4? Yes ☐ No ☐

If so, describe the program:

2. Public Construction Activities Management

a) What percentage of public construction sites 5 acres or greater in size did your agency obtain coverage under the State of California General Construction Activities Storm Water Discharge Permit ? ☐ %

b) Give an explanation for any sites greater than 5 acres that were not covered:

c) What is the total number of active public construction sites?

How many were 5 acres or greater in size?

d) (After March, 2003) Did your agency obtain coverage under the State of California General Construction Activities Storm Water Discharge Permit coverage for public construction sites for sites one acre or greater? Yes ☐ No ☐

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Did your agency implement pollution prevention plans for each public vehicle maintenance facility, material storage facility, and corporation yard? Yes ☐ No ☐

b) Briefly describe how your agency implements the following, and any additional, BMPs to minimize pollutant discharges in storm water:

(1) Good housekeeping practices

(2) Material storage control

(3) Vehicle leaks and spill control

(4) Illicit discharge control

c) Are all Permittee owned and/or operated vehicle/equipment wash areas self-contained, covered, equipped with a clarifier, and properly connected to the sanitary sewer? Yes ☐ No ☐

If not, what is the status of implementing this requirement?

d) How many Permittee owned and/or operated vehicle/equipment wash areas are scheduled to be redeveloped to include the BMPs listed above?

4. Landscape and Recreational Facilities Management

a) Has your agency developed a standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers? Yes ☐ No ☐

Briefly describe this protocol:

b) How does your agency ensure that there is no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied?

c) Are any banned pesticides, herbicides, fungicides, or rodenticides stored or applied in your agency's jurisdiction that you know of? Yes ☐ No ☐

If so, list them:

d) What percentage of your agency's staff that apply pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator?

e) Describe procedures your agency has implemented to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs:

5. Storm Drain Operation and Management

a) Did your agency designate catch basin inlets within its jurisdiction as Priority A; Priority B; and Priority C? Yes ☐ No ☐

b) How many of each designation exist in your jurisdiction?

Priority A:
Priority B:
Priority C:

c) Is your city subject to a trash TMDL? Yes ☐ No ☐

d) If yes, describe the activities and/or implementation measures that your agency conducted pursuant to the TMDL and any other trash reduction efforts that occurred.

e) How many times were all Priority A basins cleaned last year?

f) How many times were all Priority B basins cleaned last year?

g) How many times were all Priority C basins cleaned last year?

h) How much total waste was collected in tons from catch basin clean-outs last year?

i) Attach a record of all catch basins in your jurisdiction. This shall identify each basin as City or County owned, and Priority A, B, or C. For all basins that are owned and operated by your agency, include dates that each was cleaned out over the past year.

j) Did your agency place and maintain trash receptacles at all transit stops within its jurisdiction. Yes ☐ No ☐

k) How many new trash receptacles were installed last year?

l) Did your agency place special conditions for events that generated substantial quantities of trash and litter including provisions that:

(1) Provide for the proper management of trash and litter generated from the event? Yes ☐ No ☐

(2) Arrange for temporary screens to be placed on catch basins? Yes ☐ No ☐

(3) Or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain? Yes ☐ No ☐

m) Did your agency inspect the legibility of the catch basin stencil or labels? Yes ☐ No ☐

What percentage of stencils were legible?

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n) Were illegible stencils recorded and re-stenciled or re-labeled within 180 days of inspection? Yes ☐ No ☐

o) Did your agency visually monitor Permittee-owned open channel storm drains and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection? Yes ☐ No ☐

Is the prioritization attached? Yes ☐ No ☐

p) Did your agency review its maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality? Yes ☐ No ☐

What changes have been made?

q) Did your agency remove trash and debris from open channel storm drains a minimum of once per year before the storm season? Yes ☐ No ☐

r) How did your agency minimize the discharge of contaminants during MS4 maintenance and clean outs?

s) Where is removed material disposed of?

6. Streets and Roads Maintenance

a) Did your agency designate streets and/or street segments within its jurisdiction as one of the following:

(1) Priority A – streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or litter? Yes ☐ No ☐

(2) Priority B - streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or litter? Yes ☐ No ☐

(3) Priority C – streets and/or street segments that are designated as generating low volumes of trash and/or litter? Yes ☐ No ☐

b) Did your agency perform all street sweeping in compliance with the permit and according to the following schedule:

(1) Priority A – These streets and/or street segments shall be swept at least two times per month? Yes ☐ No ☐

(2) Priority B - Each Permittee shall ensure that each streets and/or street segments is cleaned at least once per month? Yes ☐ No ☐

(3) Priority C – These streets and/or street segments shall be cleaned as necessary but in no case less than once per year? Yes ☐ No ☐

c) Did your agency require that saw cutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain? Yes ☐ No ☐

d) Did your agency require that concrete and other street and road maintenance materials and wastes be managed to prevent pollutant discharges? Yes ☐ No ☐

e) Did your agency require that the washout of concrete trucks and chutes only occur in designated areas and never into storm drains, open ditches, streets, or catch basins leading to the storm drain system? Yes ☐ No ☐

f) Did your agency train its employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water? and Yes ☐ No ☐

(2) Identify and select appropriate BMPs? Yes ☐ No ☐

7. Parking Facilities Management

a) Did your agency ensure that Permittee-owned parking lots be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. Yes ☐ No ☐

b) Were any Permittee-owned parking lots cleaned less than once a month? Yes ☐ No ☐

How many?

8. Public Industrial Activities Management

a) Did your agency, for all municipal activity considered an industrial activity under USEPA Phase I storm water regulations, obtain separate coverage under the State of California General Industrial Activities Storm Water Discharge Permit no later than December 31, 2001? Yes ☐ No ☐

b) Does your agency serve a population of less than 100,000 people? Yes ☐ No ☐

9. Emergency Procedures

a) In case of real emergencies, did your agency repair essential public services and infrastructure in a manner to minimize environmental damage? Yes ☐ No ☐

b) Were BMPs implemented to the extent that measures did not compromise public health and safety? Yes ☐ No ☐

10. Feasibility Study

a) Did your agency cooperate with the County Sanitation Districts of Los Angeles County to prepare a study which investigates the possible diversion of dry weather flows or the use of alternative treatment control BMPs? Yes ☐ No ☐

b) Did your agency review its individual prioritized list and create a watershed based priority list of drains for potential diversion and submit a listing of priority diversions to the Regional Board Executive Officer? Yes ☐ No ☐

F. Illicit Connections and Illicit Discharges (IC/ID) Elimination Program (Part 4.G)

1. Attach a copy of your agency's IC/ID Elimination Implementation Program (Part 4.G.1.a.).

2. Attach a map of your storm drain system showing all permitted connections (if available), and the locations of all illicit connections and discharges that occurred last year (Part 4.G.1.b). If your agency has not completed this requirement, describe the status of the development of a baseline map, including an expected completion date.

3. Describe your enforcement procedures for eliminating illicit discharges and terminating illicit connections.

4. Describe your record keeping system to document all illicit connections and discharges.

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5. What is the total length of open channel that your agency owns and operates?

6. What length was screened last year for illicit connections?

7. What is the total length of closed storm drain that your agency owns and operates?

8. What length was screened last year for illicit connections?

9. Describe the method used to screen your storm drains.

10. Provide the reporting data for illicit connections as suggested in the following table (you may submit a spreadsheet from your database that contains the information).

Year	Total # reported/ identified	Total # investigated	# that conveyed exempt discharges or NPDES permitted	# that conveyed illicit discharges that were terminated	# that were removed	# that resulted in enforcement action	# that resulted in *other* actions
01/02							
02/03							
03/04							
04/05							
05/06							

11. Explain any *other* actions that occurred in the last year.

12. What is the average time it takes your agency to initiate an illicit connection investigation after it is reported?

a) Were all identified connections terminated within 180 days? Yes ☐ No ☐

b) If not, explain why.

13. Provide the reporting data for illicit discharges as suggested in the following table (you may submit a spreadsheet from you database that contains this information).

Year	Total # reported	Total # that were discontinued/ cleaned up voluntarily through enforcement and the source was identified	# that were cleaned up but the source could not be identified	# that resulted in no evidence of discharge	# that were determined to be conditionally exempt	# that were exempt or in compliance and the source identified	# that resulted in enforcement action
01/02							
02/03							
03/04							
04/05							
05/06							

14. What is the average response time after an illicit discharge is reported?

a) Did any response times exceed 72 hours? Yes ☐ No ☐

b) If yes, explain why.

15. Describe the your agency's spill response procedures.

16. What would you do differently to improve your agency's IC/ID Elimination Program?

17. Attach a list of all permitted connections to your storm sewer system.

V. Monitoring

Briefly describe any storm water monitoring activities that are not required by Order No. 01-182 that your municipality conducted, participated in, or received funding to conduct in the past fiscal year. These activities should correspond with the dollar amount you listed in Table 3.

VI. Assessment of Program Effectiveness

A. Attach a summary of the effectiveness of your storm water management program. This summary should include, at a minimum, the following:

1. An assessment of your agency's compliance with permit requirements, based on your responses to the questions in this form;
2. Descriptions of any evaluation methods that your agency uses to determine the effectiveness of your storm water management program;
3. A summary of the strengths and weaknesses of your agency's storm water management program;
4. A list of specific program highlights and accomplishments;
5. A description of water quality improvements or degradation in your watershed over the past fiscal year;
6. Interagency coordination between cities to improve the storm water management program;
7. Future plans to improve your agency's storm water management program; and
8. Suggestions to improve the effectiveness of your program or the County model programs.

B. On a scale of 1 to 10 (10 being full implementation of requirements by their deadlines), rate your municipality's level of compliance with Order No. 01-182.

C. List any suggestions your agency has for improving program reporting and assessment.

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VII. Certification Statement

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility, of a fine and imprisonment for knowing violations.

Executed on the ___ day of _____ , 20_,

at _____.

Printed Name _____ Title _____

(Signature) _____

Signature by duly authorized representative

Court of Appeal, Third District, California.

Thomas William **HAYES,** as Director. etc., Plaintiff and Respondent
v.
COMMISSION ON STATE MANDATES,
Defendant, Cross-defendants and Respondent;
Dale S. HOLMES, Superintendent, etc., Real Party in Interest, Cross-complaint
And Appellant;
William Cirone, Superintendent, etc., Real Party in Interest and Respondent;
State of California et al., Cross-defendants and Respondents.

No. C009519.

Dec. 30, 1992.
Review Denied April 1, 1993.

Court of Appeal, Third District, California.

Thomas William **HAYES**, as Director, etc., Plaintiff and Respondent,
v.
COMMISSION ON STATE MANDATES, Defendant, Cross-defendants and Respondent;
Dale S. HOLMES, Superintendent, etc., Real Party in Interest, Cross-complainant and Appellant;
William Cirone, Superintendent, etc., Real Party in Interest and Respondent;
State of California et al., Cross-defendants and Respondents.

No. C009519.

Dec. 30, 1992.
Review Denied April 1, 1993.

County school superintendents filed claims with Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. Board of Control found special education costs were state mandated and thus subject to state reimbursement. Appeal was taken. The Superior Court, Sacramento County, No. 352795, Eugene T. Gualco, J., issued writ of administrative mandate to set aside administrative decision and reconsider. School superintendents appealed. The Court of Appeal, Sparks, Acting P.J., held that: (1) the Federal Education of the Handicapped Act constitutes a federal mandate so far as state is concerned for purposes of constitutional state subvention requirement, and (2) **Commission on State Mandates** is proper body to consider question of whether new special education costs were imposed upon local school districts by federal mandate or by state choice in implementation of federal program.

Affirmed.

West Headnotes

[1] **States** 111
360k111 Most Cited Cases

"Subvention" under constitutional provision concerning reimbursement to local government for state-mandated programs generally means grant of financial aid or assistance, or subsidy. West's Ann.Cal. Const. Art. 13B, § 6.

[2] **States** 111
360k111 Most Cited Cases

Constitutional rule of state subvention which requires state to pay for new governmental programs imposed on local governments does not require state to reimburse local agencies for any incidental cost that may result from enactment of state law; rather, subvention requirement is restricted to governmental services which local agency is required by state law to provide to its residents. West's Ann.Cal. Const. Art. 13B, § 6.

[3] **States** 111
360k111 Most Cited Cases

Constitutional rule of state subvention which requires state to reimburse local government for implementing required governmental programs is intended to prevent state from transferring costs of government from self to local agencies. West's Ann.Cal. Const. Art. 13B, § 6.

[4] **States** 111
360k111 Most Cited Cases

Under constitutional rule of state subvention which requires state to reimburse local government for governmentally imposed programs, reimbursement is required when state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb. West's Ann.Cal. Const. Art. 13B, § 6.

[5] **States** 111
360k111 Most Cited Cases

To determine whether federal government has mandated program for purposes of determining which level of government is responsible for costs of compliance under constitutional rule of state subvention, tests for determining whether there is a federal mandate is whether compliance with federal standards is a matter of choice, that is, whether participation in federal program is truly voluntary. West's Ann.Cal. Const. Art. 13B, § 6.

[6] **Administrative Law and Procedure** 229
15Ak229 Most Cited Cases

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[6] **Schools** 155.5(3)
345k155.5(3) Most Cited Cases

As result of exclusive nature of Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the Act before resorting to judicial intervention. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Individuals with Disabilities Education Act, § 615(e)(2), (e)(4)(B), as amended, 20 U.S.C.A. § 1415(e)(2), (e)(4)(B); 42 U.S.C.A. § 1983.

[7] **Administrative Law and Procedure** 753
15Ak753 Most Cited Cases

[7] **Schools** 155.5(2.1)
345k155.5(2.1) Most Cited Cases
(Formerly 345k155.5(2))

On review of administrative decision concerning appropriate placement of handicapped child after exhaustion of administrative remedies under Education of the Handicapped Act, court independently examines evidence but its role is restricted to that of review of local decision and court is not free to substitute its view of sound educational policy for that of local authority. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794; Individuals with Disabilities Education Act, § 615(e)(2), (e)(4)(B), as amended, 20 U.S.C.A. § 1415(e)(2), (e)(4)(B); 42 U.S.C.A. § 1983.

[8] **Civil Rights** 1309
78k1309 Most Cited Cases
(Formerly 78k194)

[8] **Schools** 155.5(1)
345k155.5(1) Most Cited Cases

Because Education of the Handicapped Act provides exclusive remedy for addressing handicapped child's right to an appropriate education, party cannot pursue cause of action for constitutional violations, either directly or under Civil Rights Act, nor can party proceed under Rehabilitation Act of 1973 if Education of Handicapped Act applies. Individuals with Disabilities Education Act, § 612(1), as amended, 20 U.S.C.A. § 1412(1); 42 U.S.C.A. § 1983; Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C.A. § 794.

[9] **Schools** 17
345k17 Most Cited Cases

Under constitutional state subvention provision which requires state to pay for governmental programs imposed on local governments, for purposes of determining which level of government would be responsible for paying for compliance with Education of the Handicapped Act, Act constituted federal mandate because alternative to compliance with Act was barrage of litigation by handicapped students and their parents with no real defense and ultimately state would have been compelled to accommodate educational needs of handicapped children in any event. Individuals with Disabilities Education Act, § 612(1), as amended, 20 U.S.C.A. § 1412(1).

[10] **States** 111
360k111 Most Cited Cases

When federal government imposes costs on local agency for federally mandated program, those costs are not mandated by state and, thus, do not generally require state subvention so long as state had no true choice in manner of implementation of federal mandate. West's Ann.Cal. Const. Art. 13B, § 6.

[11] **States** 111
360k111 Most Cited Cases

If state freely chooses to impose costs of federal program upon local agency as means of implementing federal program, then costs are result of a reimbursable state mandate for purposes of constitutional state subvention requirement, regardless whether costs were imposed upon state by federal government. West's Ann.Cal. Const. Art. 13B, § 6.

[12] **Schools** 17
345k17 Most Cited Cases

Under constitutional rule of state subvention which requires state to pay for new governmental programs imposed on local government, costs of programs implemented under federal Education of the Handicapped Act are state mandated and subject to subvention to the extent that the state implemented the Act by freely choosing to impose the new programs or higher levels of service upon local school districts. Individuals with Disabilities Education Act, § § 612, 613, 615(c, d), as amended, 20 U.S.C.A. § § 1412, 1413, 1415(c, d); West's Ann.Cal. Const. Art. 13B, § 6.

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[13] **Constitutional Law** 14
92k14 Most Cited Cases

[13] **Statutes** 212.6
361k212.6 Most Cited Cases

As a general rule and unless context clearly requires otherwise, meaning of term of phrase is assumed to be consistent throughout entire act or constitutional article of which it is part.

[14] **States** 111
360k111 Most Cited Cases

Definition of "federal mandate" is not different with respect to constitutional requirement of state subvention which provides that state is to pay for governmental programs imposed on local governments than with respect to taxing and spending limitations; test in either instance is the same--whether participation in federal program was truly voluntary choice. West's Ann.Cal. Const. Art. 13B, § 6.

****549 *1569** Biddle & Hamilton, W. Craig Biddle, Christian M. Keiner and F. Richard Ruderman, Sacramento, for real party in interest, cross-complainant and appellant.

***1570** Breon, O'Donnell, Miller, Brown & Dannis, Emi R. Uyehara, San Francisco, as amici curiae on behalf of real party in interest, cross- complainant and appellant.

No appearance for real party in interest and respondent.

****550** Daniel L. Lungren, Atty. Gen., N. Eugene Hill, Sr. Asst. Atty. Gen., Cathy Christian, Associate Supervising Deputy Atty. Gen., Marsha A. Bedwell, Deputy Atty. Gen., and Daniel G. Stone, for plaintiff and respondent.

Gary D. Hori, Sacramento, for defendant, cross-defendants and respondent.

Richard J. Chivaro and Patricia A. Cruz, Sacramento, for cross- defendants and respondents.

SPARKS, Acting Presiding Justice.

This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that "[w]henever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ.Proc., § 1094.5), directing the **Commission on State Mandates** (the successor to the Board of ***1571** Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522; and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ.Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the **Commission on State Mandates** on remand and affirm the judgment.

I. The Parties

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

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The **Commission** on **State Mandates** (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov.Code, § 17525.) In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov.Code, § 17630.) The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

**551 The Santa Barbara County Superintendent of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and, although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. *1572 Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross-defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

II. Factual and Procedural Background

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, at pages 71 and 72, 222 Cal.Rptr. 750, we described these procedures as follows (with footnotes deleted): "Section 2250 [Rev. & Tax.Code] and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.) For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.)

*1573 "At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain

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an appropriation sufficient to pay for the estimated costs of the mandates. (**552 § 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

"Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the **Commission on State Mandates** and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov.Code, § 17525.) 'Costs mandated by the state' are defined as 'any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which *1574 mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.' (Gov.Code, § 17514.) The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov.Code, § 17500 et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov.Code, § 17630; [Rev. & Tax.Code,] § 2239.)"

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by the Statutes of 1977, chapter 1247, and the Statutes of 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the "mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child." Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). [FN1] Santa**553 Barbara's initial claim was for $10,500 in state-mandated costs for the 1979- 1980 fiscal year.

FN1. Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, title V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, title I, § § 119, 122(d)(2) (Nov. 6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978]; Pub.L. No. 99-506, title I, § 103(d)(2)(B), title X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100- 259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, title II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to

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section 504 will refer to title 29, United States Code, section 794.

During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of $520,000 for the cost of these services during the 1979-1980 fiscal year.

***1575** Also during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.) [FN2]

FN2. The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, title VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, title IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, title IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

The Board of Control adopted a decision denying Santa Barbara's claim. The Board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of $474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of the statutes of 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according to Riverside, "mandates a 10% cap on ratio of students served by special education and within that 10% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of the statutes of 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already "locked into" providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae. [FN3]

FN3. The 1980 legislation required that a local agency adopt an annual budget plan for special education services. (Ed.Code, § 56200.) Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed.Code, § § 56760, 56761.) In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed.Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of nine percent. (Ed.Code, § 56195.8.) The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state

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funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state mandated costs or must be addressed in some other manner.

**554 The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of *1576 Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under the statutes of 1977, chapter 1247, and statutes of 1980, chapter 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of $2 billion. Riverside's claim for reimbursement for the 1980- 1981 fiscal year was now in excess of $7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985-1986 fiscal years failed to pass in the Legislature. (Sen.Bill No. 1082 (1985-1986 Reg.Sess.).) A separate bill which would have appropriated funds to reimburse Riverside *1577 for its 1980-1981 claim also failed to pass. (Sen.Bill No. 238 (1987-1988 Reg.Sess.).)

At this point Huff, as Director of the Department of Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the Supreme Court in *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 203 Cal.Rptr. 258. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a peremptory writ of mandate directing the **Commission on State Mandates** to set aside **555 the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state- mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

III. Principles of Subvention

[1] "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

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[2][3][4] Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by *1578 state law to provide to its residents. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 70, 266 Cal.Rptr. 139, 785 P.2d 522.) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, 266 Cal.Rptr. 139, 785 P.2d 522, emphasis in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill 90, hereafter SB 90). (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 188, 203 Cal.Rptr. 258.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented the state from imposing the cost of new programs or higher levels of service upon local governments. (*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax.Code, former § 2162, Stats.1972, ch. 1406, § 14.7, p. 2961.) [FN4] The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax.Code, former § 2164.3, Stats.1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

FN4. In addition to requiring subventions for new state programs and higher levels of service, SB 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (Gov.Code, § 16101, Stats.1972, ch. 1406, § 5, p. 2953.)

**556 SB 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs. [FN5] (Rev. & Tax.Code, former § 2164.3, Stats.1972, ch. 1406, § 14.7, *1579 pp. 2962-2963.) In fact, at that time methods of financing education in this state wereundergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592, 96 Cal.Rptr. 601, 487 P.2d 1241.) In *Serrano,* the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619, 96 Cal.Rptr. 601, 487 P.2d 1241.) A major portion of SB 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano.* (Stats.1972, ch. 1406, § § 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest* (1976) 18 Cal.3d 728, 736-737, 135 Cal.Rptr. 345, 557 P.2d 929.) [FN6]

FN5. A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California*

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Teachers Assn. v. Huff (1992) 5 Cal.App.4th 1513, 1524, 7 Cal.Rptr.2d 699.) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525, 7 Cal.Rptr.2d 699.) The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523- 1524, 7 Cal.Rptr.2d 699.)

FN6. After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34, 48-56, 61-62, 93 S.Ct. 1278, 36 L.Ed.2d 16; 42-43, 51-56, 59-60.) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 761-766, 135 Cal.Rptr. 345, 557 P.2d 929.) The court concluded that SB 90 and Assembly Bill 1267, enacted the following year (Stats.1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 776-777, 135 Cal.Rptr. 345, 557 P.2d 929.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed.Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699.)

The provisions of SB 90 were amended and refined in legislation enacted the following year. (Stats.1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. (Rev. & Tax.Code, § 2231, subd. (d), added by Stats.1973, ***1580** ch. 358, § 3, p. 783and repealed by Stats.1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax.Code, former § 2207.5, added by Stats.1977, ch. 1135, § 5, p. 3646 and amended by Stats.1980, ch. 1256, § 5, pp. 4248-4249.)

****557** In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 71, fn. 17, 266 Cal.Rptr. 139, 785 P.2d 522.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the

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term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.) [FN7] The appropriations subject to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." (Cal. Const., art. XIII B, § 9, subd. (b).)

> FN7. As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699.)

Like its statutory predecessor, the constitutional initiative measure includes a provision designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836, 244 Cal.Rptr. 677, 750 P.2d 318.) Section 6 of article XIII B of the state Constitution provides: "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the ***1581** State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Although article XIII B of the state Constitution requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. (Cal. Const., art. XIII B, § 10.) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at pp. 190-193, 203 Cal.Rptr. 258.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

[5] The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state ****558** subvention is not required when the federal government imposes new costs on local governments. (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 188, 203 Cal.Rptr. 258; see also *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 543, 234 Cal.Rptr. 795.) In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198, 203 Cal.Rptr. 258.)

In its *City of Sacramento* opinion, [FN8] the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73, 266 Cal.Rptr. 139, 785 P.2d 522.) However, "certain regulatory standards imposed by the federal government ***1582** under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id.* at pp. 73-74, 266 Cal.Rptr. 139, 785 P.2d 522.) The test for determining whether there is a federal mandate is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." (*Id.* at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.) The court went on to say: "Given the variety of cooperative

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federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Ibid.*)

FN8. The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60, 266 Cal.Rptr. 139, 785 P.2d 522.)

IV. Special Education

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See *Smith v. Robinson* (1984) 468 U.S. 992, 1010, 104 S.Ct. 3457, 3467, 82 L.Ed.2d 746, 763.) Two federal district court cases, *Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa.* (E.D.Pa.1972) 343 F.Supp. 279 (see also *Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa.* (E.D.Pa.1971) 334 F.Supp. 1257), and *Mills v. Board of Education of District of Columbia* (D.C.1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 180, fn. 2, 102 S.Ct. 3034, 3037, fn. 2, 73 L.Ed.2d 690, 695.)

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. *Pennsylvania Ass'n Retard. Child. v. Commonwealth of Pa., supra,* 343 F.Supp. at p. 282. The matter was assigned to a three-judge panel which heard evidence on the plaintiffs' due-process and equal-protection claims. (*Id.* at p. 285.) The parties **559 then agreed to resolve the litigation by means of a consent *1583 judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to re-evaluate placement decisions periodically, and to accord due-process hearings to parents who are dissatisfied with placement decisions. (*Id.* at pp. 303-306.) It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, emphasis deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal-protection and due-process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (*Pennsylvania Ass'n Retard. Child. v. Commonwealth of Pa., supra,* 343 F.Supp. at p. 291. The court said that it was convinced the due- process and equal-protection claims were colorable. (*Id.* at pp. 295-296.)

In the *Mills* case, an action was brought on behalf of a number of school- age children with exceptional needs who were excluded from the Washington, D.C., public school system. (*Mills v. Board of Education of District of Columbia, supra,* 348 F.Supp. at p. 868.) The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.) The court said: "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly

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supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, ***1584** shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." (29 U.S.C. § 794, Pub.L. No. 93-112, title V, § 504 (Sept. 26, 1973) 87 Stat. 394.) [FN9] Since federal assistance to education is pervasive (see, e.g., Ed.Code, § § 12000-12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

FN9. In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, title I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.) This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624, 635-636, 104 S.Ct. 1248, 1255, 79 L.Ed.2d 568, 577-578.)

The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 ****560** by educational agencies. [FN10] The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Penn.1978) 446 F.Supp. 1295, 1323.) Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y.1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex.1978) 459 F.Supp. 1190, 1192.) It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handicapped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free ***1585** public education for the handicapped child." (*Doe v. Marshall, supra,* 459 F.Supp. at p. 1191. See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex.1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra,* 446 F.Supp. at p. 1323.)

FN10. HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.C.1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45, Code of Federal Regulations, part 84, and are now located in title 34, Code of Federal Regulations, part

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104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4, 99 S.Ct. 2361, 60 L.Ed.2d 980, 987; *N.M. Ass'n for Retarded Citizens v. State of N.M.* (10th Cir.1982) 678 F.2d 847, 852.)

Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra,* 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980, has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a post-secondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively and substantially. (442 U.S. at pp. 409-410, 99 S.Ct. at p. 2369, 60 L.Ed.2d at pp. 990-991.)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized post-secondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413, 99 S.Ct. at p. 2370, 60 L.Ed.2d at pp. 992-993.) The court did not hold that a primary or secondary ****561** educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301, 105 S.Ct. 712, 720, 83 L.Ed.2d 661, 672.)

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 765-766, 135 Cal.Rptr. 345, 557 P.2d 929.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate ***1586** the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1, which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate, supra,* 469 U.S. at pp. 295-297, 105 S.Ct. at pp. 716-718, 83 L.Ed.2d at pp. 668-669, the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis, supra,* 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed.2d 980 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made...." (*Alexander v. Choate, supra,* 469 U.S. at p. 301, 105 S.Ct. at p. 720, 83 L.Ed.2d at p. 672, fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. (*N.M. Ass'n for Retarded Citizens v. State of N.M., supra,* 678 F.2d at pp. 852-853; *Tatro v. State of*

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Texas (5th Cir.1980) 625 F.2d 557, 564.) [FN11] We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action.

> FN11. Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, supra, eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 104 S.Ct. 3371, 82 L.Ed.2d 664.) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.

***1587** In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 180, 102 S.Ct. at p. 3037, 73 L.Ed.2d at p. 695.) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient ****562** states to adopt a goal of providing full educational opportunities to all handicapped children. (*Ibid.* 458 U.S. at p. 180, 102 S.Ct. at p. 3037, 73 L.Ed.2d at pp. 695-696.) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. (*Ibid.* 458 U.S. at p. 180, 102 S.Ct. at p. 3037, 73 L.Ed.2d at p. 696.)

Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson, supra,* 468 U.S. at p. 1010, 104 S.Ct. at p. 3467, 82 L.Ed.2d at p. 764.) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 194, 102 S.Ct. at p. 3045, 73 L.Ed.2d at p. 704.) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1016-1017, 104 S.Ct. at p. 3471, 82 L.Ed.2d at p. 768.) The Supreme Court has noted that Congress intended the act to establish " 'a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.' " (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 200, 102 S.Ct. at p. 3047, 73 L.Ed.2d at p. 708 citing the House of Representatives Report.) [FN12]

> FN12. Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local ***1588** educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;" and "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).) [FN13]

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FN13. That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223, 231-232, 109 S.Ct. 2397, 2402, 105 L.Ed.2d 181, 189-191, the court noted that Congress has the power under section 5 of the 14th Amendment to abrogate a state's 11th Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

**563 In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at pp. 73-74, 266 Cal.Rptr. 139, 785 P.2d 522; *City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 195, 203 Cal.Rptr. 258.) As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. § § 1411, 1412.) For example, the administrative record indicates that for fiscal year 1979- 1980, the base year for Santa Barbara's claim, California received $71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received $79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. Congress intended the act to serve as a means by which state and *1589 local educational agencies could fulfill their obligations under the equal-protection and due-process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1009, 1013, 1019, 104 S.Ct. at pp. 3467, 3468, 3472, 82 L.Ed.2d at pp. 763, 766, 769.) [FN14]

FN14. In *Smith v. Robinson, supra,* the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)

[6][7][8] As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson, supra,* 468 U.S. at p. 1011, 104 S.Ct. at p. 3468, 82 L.Ed.2d at p. 764.) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at pp. 206-207, 102 S.Ct. at p. 3051, 73 L.Ed.2d at p. 712.) And since the act provides the exclusive remedy for

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addressing a handicapped child's right to an appropriate education, where the act applies a party cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1013, 1020, 104 S.Ct. at pp. 3468, 3472, 82 L.Ed.2d at pp. 766, 770.)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184, 102 S.Ct. at p. 3039, 73 L.Ed.2d at p. 698.) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's failure to adopt the Education ****564** of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act.

***1590** In *N.M. Ass'n for Retarded Citizens v. State of N.M.* (D.N.M.1980) 495 F.Supp. 391, a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.) The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.) [FN15] The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. (*Id.* at pp. 398-399.)

> FN15. The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)

After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N.M. Ass'n for Retarded Citizens v. State of N.M., supra,* 678 F.2d 847.) The Court of Appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.) The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (*Id.* at p. 854.) The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (*Ibid.*) However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped ***1591** children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp, Buss, and Kuriloff, *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115. As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs of the handicapped. (*Id.* at pp. 97-110.) Individuals and organized groups, such as the California Association for the Retarded

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and the California Association for Neurologically Handicapped Children, were exerting pressure through political and other means at every level of the educational system. (*Ibid.*) Litigation was becoming so prevalent **565 that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.) [FN16]

> FN16. Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.) In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp, Buss, and Kuriloff, *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. at p. 111.) In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats.1974, ch. 1532, § 1, p. 3441, enacting Ed.Code, § 7001.) In 1977 the Legislature acted to further implement the master plan. (Stats.1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed.Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the expressed intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats.1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed.Code § 56000.)

As this history demonstrates, in determining whether to adopt the requirements of the Education of the Handicapped Act as amended in 1975, our *1592 Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal-protection right to a free public education appropriate to their needs and due-process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal-protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

[9] Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522. The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far **566 as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

V. Subvention for Special Education

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to

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the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California, supra,* 50 Cal.3d at pp. 66-70, 266 Cal.Rptr. 139, 785 P.2d 522, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general ***1593** application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71, 266 Cal.Rptr. 139, 785 P.2d 522.) It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day...." (*Id.* at p. 71, fn. 16, 266 Cal.Rptr. 139, 785 P.2d 522.) The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

[10] The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax.Code, former § § 2164.3 [Stats.1972, ch. 1406, § 14.7, pp. 2962- 2963], 2231 [Stats.1973, ch. 358, § 3, pp. 783-784], 2207 [Stat.1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [Stats.1977, ch. 1135, § 5, pp. 3646-3647.].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

[11] This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which ***1594** is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed ****567** upon the state by the federal government.

[12] The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. § § 1412, 1413.) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835-836, 244 Cal.Rptr. 677, 750 P.2d 318.) The

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Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c)(d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the ***1595** extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of Sacramento v. State of California, supra,* 156 Cal.App.3d 182, 203 Cal.Rptr. 258, and concluded that the Education of the Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the **Commission on State Mandates** for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed *on local districts* by federal mandate or by the state's voluntary choice in its implementation of the federal program.

VI. Riverside's Objections

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

[13][14] Riverside asserts that the California Supreme Court opinion in *City of Sacramento* is not on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different ****568** with respect to state subvention than with respect to taxing and spending limitations. As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823, 285 Cal.Rptr. 777.) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in ***1596** the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary

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result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37, 196 Cal.Rptr. 704, 672 P.2d 110.) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (*Ibid.* See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953-954, 148 Cal.Rptr. 379, 582 P.2d 970; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680- 681, 312 P.2d 680.) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by state choice in the implementation of the federal program. The issues were not addressed by the parties or the Board of Control in this light. The ***1597 Commission on State Mandates** is the entity with the responsibility for considering the issues in ****569** the first instance and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation of powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See *Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at pp. 538-541, 234 Cal.Rptr. 795.)

DISPOSITION

The judgment is affirmed.

DAVIS and SCOTLAND, JJ., concur.

15 Cal.Rptr.2d 547, 11 Cal.App.4th 1564, 79 Ed. Law Rep. 924

END OF DOCUMENT

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September 29, 2003

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VIA OVERNITE EXPRESS

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
Attn: Clerk of the Commission on State Mandates

Re: Test Claim for Unfunded Mandates imposed under the Los Angeles County Municipal NPDES Permit

Dear Sir or Madam:

Enclosed herewith please find a Test Claim seeking reimbursement of funds for carrying out various State mandated programs, as mandated pursuant to the California Regional Water Quality Control Board, Los Angeles Region, Municipal NPDES Permit for Los Angeles County and all Cities within the County of Los Angeles, except the City of Long Beach. This Test Claim is being submitted on behalf of a number of Cities within Los Angeles County who are identified as Permittees under such Municipal NPDES Permit.

The following documents are included herewith:

1. Test Claim dated September 29, 2003;
2. Declaration of Richard Montevideo in Support of Test Claim;
3. Exhibit "A," Narrative Statement;
4. Exhibit "B," – Los Angeles County Municipal NPDES Permit dated December 13, 2001;
5. Exhibit "C" – State General Permit for Discharges of Stormwater Associated with Industrial Activities;

6. Exhibit "D" – A Study prepared by the University of Southern California, entitled, "Economic Impact Evaluation of Proposed Strom Water Treatment for Los Angeles County" dated November 2002.

Please do not hesitate to contact the undersigned if you have any questions or need additional information. Thank you for your attention and consideration of this matter.

Sincerely,

RUTAN & TUCKER, LLP

Richard Montevideo

RM:kmh
Enclosure

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

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COMMISSION ON STATE MANDATES

Claim No. 03-TC-21

TEST CLAIM FORM

Local Agency or School District Submitting Claim
Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina

Contact Person
Richard Montevideo, Esq.
Rutan & Tucker, LLP

Telephone No.
(714) 641-5100

Address
611 Anton Boulevard, Suite 1400
Post Office Box 1950
Costa Mesa, CA 92628-1950

Representative Organization to be Notified
Not applicable.

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6 of Article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section (s) within the chaptered bill, if applicable. Various terms of the executive order adopted as California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, NPDES Permit (CAS004001), dated December 13, 2001, and specifically, Parts 1 & 2, pages 16-18; Part 4C & E, pages 27-34, and pages 42-45; and Part 4F (5) & (6), pages 48-51.

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative
Richard Montevideo, Esq.
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Post Office Box 1950
Costa Mesa, CA 92628-1950

Telephone No.
(714) 641-5100

Signature of Authorized Representative

Richard Montevideo, Esq.

Date
September 29, 2003

436691

DECLARATION OF RICHARD MONTEVIDEO IN SUPPORT OF TEST CLAIM

I, Richard Montevideo, declare as follows:

1. I am an attorney at law with the law firm of Rutan & Tucker, LLP and am a member in good standing of the State Bar of California. I make this Declaration in support of the test claim filed by the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina (hereinafter collectively "City") relating to various mandates contained within the stormwater permit issued by the Los Angeles Regional Water Quality Control Board as Order No. 01-182 effective December 12, 2001 (the "Permit"). On information provided to me by the City, I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Through my experience in representing these public entities in relation to stormwater issues, and, in particular, in regard to federal and State regulations of municipalities' separate storm water sewer systems, I am familiar with the City's storm water control requirements, including the general measures required to be taken by the City to comply with the new mandates.

3. As a result of investigations conducted by personnel employed by the City, I am informed and believe that the cities referenced herein have incurred or will incur costs to comply with the certain requirements identified in the stormwater permit, including placing and maintaining "trash receptacles at all transit stops within its jurisdiction" and/or taking such other measures as increased street sweeping, catch basin cleaning, installing and maintaining other treatment devices and/or implementing Best Management Practices, to address trash, as set forth

below. (See Exh. "B," Part 4F (5) & (6), pages 48-51.) This mandate is a new requirement imposed on the City.

Permittee	**Estimated Trash Receptacles, Catch Basin, and/or Other Treatment Devices - Capital and Installation Costs**	**Estimated Annual Maintenance Costs**	**Estimated Total Annual Costs for First Year**
City of Arcadia	To be determined.	To be determined.	To be determined.
City of Baldwin Park	To be determined.	$30,000 (bus shelter locations only) plus additional amounts to be determined.	$38,000 plus additional amounts to be determined.
City of Bellflower	To be determined.	To be determined.	$44,900 plus additional amounts to be determined.
City of Cerritos	To be determined.	$9,883.29 plus additional amounts to be determined.	$9,883.29 plus additional amounts to be determined.
City of Covina	$60,779.16 plus additional amounts to be determined.	To be determined.	$60,779.16 plus additional amounts to be determined.
City of Downey	$19,663 plus additional amounts to be determined.	$25,000 plus additional amounts to be determined.	$44,663 plus additional amounts to be determined.
City of Monterey Park	To be determined.	To be determined.	To be determined
City of Pico Rivera	To be determined.	To be determined.	$7,500 plus additional amounts to be determined.
City of Signal Hill	To be determined.	$10,000 plus additional amounts to be determined.	$10,000 plus additional amounts to be determined.
City of South Pasadena	To be determined.	To be determined.	$15,207 plus additional amounts to be determined.
City of West Covina	To be determined.	To be determined.	$14,300, plus additional amounts to be determined.

4. Further, as a result of investigations conducted by personnel employed by the City, I am informed and believe that the City currently estimates that they have incurred costs to comply with the new industrial and construction inspection mandates imposed on them for industrial and construction facilities and sites that are already regulated or to be regulated by the State under a State permit for such discharges. The estimated costs resulting from the mandate of inspecting State regulated construction sites for each City is to be determined, with such additional information to be provided subsequently. (See Exh. "B," Stormwater Permit, p. 42-45.) The estimated costs to the City for the inspection of State permitted or to be permitted industrial facilities are as follows:

Permittee	**Estimated Number of State Permitted Industrial Facilities with Existing Permits**	**Estimated Cost of Inspection Per Facility**	**Estimated Inspection Costs for State Permitted or to be Permitted Industrial Facilities**
City of Arcadia	4	$85 per inspection.	$340 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Baldwin Park	To be determined.	To be determined.	$31,000 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Bellflower	312	To be determined.	$109,150 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.

City of Covina	6	$105 per inspection	$630 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Downey	21	$85 per inspection	$1,785 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Monterey Park	To be determined	$100 per inspection ($80 per follow-up inspection estimated for 10% of the facilities.)	$8,856 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Pico Rivera	25	To be determined.	$7,500 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of Signal Hill	6	$85	$510 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of South Pasadena	1	$85	$85 plus other costs to be incurred for future inspections and other facilities required to be permitted by the State of California.
City of West Covina	To be determined.	To be determined.	To be determined.

5. I am informed and believe that the City will likely need to increase the number of inspections to be conducted of industrial discharges, including inspections of facilities that should be governed by a State permit but that are not currently being regulated by the State, which will increase the cost of inspections for the City. The prior stormwater requirements did not require these inspections by the City.

6. The annual maintenance costs for maintaining the mandated trash receptacles and taking such other trash collection measures, as well as increased street sweeping, will continue annually and indefinitely into the future. The inspection costs for State industrial and construction permitted facilities will similarly continue into the future, as inspections continue to be required on these facilities under the terms of the Storm Water Permit.

7. In addition to the above costs, as a result of the requirements of Parts 1 and 2 of the Stormwater Permit and other terms of the Permit, if enforced and read to literarily to require the City to prevent any and all exceedances from urban runoff of all water quality standards or water quality objectives, the University of Southern California has prepared a report analyzing the potential costs of complying with these Stormwater Permit requirements and other stormwater regulations, which show the costs to all of the cities in the County of Los Angeles over the course of the next twenty years, costing of billions of dollars, including billions of dollars as may be necessary for the design, installation, construction and maintenance of waste water treatment facilities throughout the County. A true and correct copy of the USC Study dated November, 2002 and entitled "An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County, November 2002," is attached hereto and marked Exhibit "D." The USC Study contains a breakdown of the estimated costs to comply with various requirements of the Stormwater Permit and other stormwater related regulatory requirements on

a per city basis. These estimated costs are costs that are largely, if not entirely, new programs or expanded programs that have not been funded by the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that based on information and belief, that the Test Claim is true and complete to the best of the information available to this Declarant.

Executed on September 29, 2003, at Costa Mesa, California.

Richard Montevideo

NARRATIVE STATEMENT IN SUPPORT OF TEST CLAIM REGARDING THE LOS ANGELES COUNTY MUNICIPAL NPDES PERMIT

(Title 2 Cal. Code Regs. § 1183(d)(3))

EXHIBIT "A" TO TEST CLAIM

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Exhibit "A"

NARRATIVE STATEMENT

(Title 2 Cal. Code Regs. § 1183(d)(3))

I. INTRODUCTION

The Cities herein (collectively "City") bring this test claim to obtain reimbursement and funding to pay for costs it has incurred and/or will continue to incur in order to comply with: (1) receiving water mandates under the Stormwater Permit, potentially resulting in the design, installation, construction and maintenance of various wastewater-type treatment facilities; (2) inspection mandates (of State regulated industrial and construction discharges); and (3) land use mandates (regarding trash and Best Management Practices, and trash receptacles and other measures to address trash, including but not limited to catch basins, and other trash treatment devices and street sweeping) all contained within the storm water pollution controls imposed by the State Water Resources Control Board ("State Board") and the Los Angeles Regional Water Quality Control Board ("Regional Board"), and other mandates arising from the terms of the Stormwater Permit described below.[1]

Within the City, there is a storm drain infrastructure known as the "municipal separate storm sewer system" or "MS4." The Regional Board, with State Board oversight, and at times with federal Environmental Protection Agency oversight, has sought to regulate the City and its MS4 purportedly pursuant to the Federal Clean Water Act and California's Porter-Cologne

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[1] The Cities have brought this Test Claim as a joint effort under Title II California Code of Regulations Section 1183, Subdivision (h) because the Claimants:
(1) each allege the state-mandated costs result from the same executive order;
(2) agree on all issues of the Test Claim; and
(3) have designated a single contact person to act as the resource for information regarding the Test Claim.

Water Quality Control Act ("Porter-Cologne Act"). At issue in this test claim are the discharge prohibition and receiving water limitation mandates, and the inspection and land use mandates that the Regional Board has sought to impose on the City wrongfully, under the guise of a storm water control permit adopted on December 13, 2001, that purports to govern discharges from the City's MS4 (Exh. "B," hereafter the "Stormwater Permit").[2]

A. Background of The Stormwater Permit

The Regional Board adopted the Stormwater Permit on December 13, 2003, purporting to act under Section 402(p) of the Clean Water Act (33 U.S.C. §§ 1251-1387) and Article 4, Division 7 of the California Water Code (Water Code § 13260 et seq.). By its terms, the Stormwater Permit purports to be both a "waste discharge requirement" under the Porter-Cologne Act, and a discharge permit under the Clean Water Act's "National Pollution Discharge Elimination System," i.e. an "NPDES Permit." With the terms of the Stormwater Permit, the Regional Board seeks to impose broad obligations on the City, some of which directly involve storm water runoff and others which do not, including: (1) discharge prohibitions; (2) receiving water limitations requirements which seem to mandate that the City prevent any and all exceedances of a water quality standard or objective that may arise from urban runoff within its jurisdiction, including taking measures to adopt Best Management Practices ("BMPs") that would result in the treatment of urban runoff; (3) the use of various BMPs to reduce pollution from "nonpoint" sources (i.e., diffuse runoff from land areas as opposed to discharges from discernable "point sources" such as drain pipes); (4) mandated land use controls, including conducting inspections of State permitted facilities that are required to be conducted by the State;

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[2] The Storm Water Permit attached hereto as Exhibit "B," is officially entitled "California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, NPDES Permit (CAS004001), Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, And The Incorporated Cities Therein, Except The City of Long Beach, dated December 13, 2001."

(5) various requirements governing public agencies activities, including a requirement that the City place and maintain trash receptacles at all transit stops within the City's jurisdiction and/or utilizing a combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles or other BMPs for trash collection; (6) various education outreach programs; and (7) various other mandate programs as identified in the Stormwater Permit, Exhibit "B."

B. Pending Legal Challenges To The Stormwater Permit

Numerous local governments governed by the permit ("Permittees") have filed lawsuits that are currently pending in Los Angeles Superior Court, challenging the validity and proprietary of the Regional Board's Actions. A petition for writ of mandate and complaint for injunctive relief was filed by the Cities of Arcadia, Baldwin Park, Bell, Bell Gardens, Bellflower, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Hawthorne, Irwindale, La Mirada, Montebello, Paramount, Pico Rivera, Pomona, Rosemead, San Gabriel, San Marino, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Temple City, Vernon, Walnut, West Covina, and Whittier. (See *In Re Los Angeles County Municipal Stormwater Permit Litigation*, LASC Case No. BS 080548.)

In the Superior Court case, the City and the other municipalities, including the County of Los Angeles, have challenged the Regional Board's actions, in part, on the grounds said party has imposed an unfunded mandates for which a subvention of funds must be provided under the California Constitution and under California law.

II. NEW PROGRAMS REQUIRED BY THE STORMWATER PERMIT THAT WERE NOT REQUIRED BY THE PRIOR PERMIT.

The City specifically requests a subvention of funds for at least three categories of costs mandated by certain terms contained in the Stormwater Permit: (1) Expenditures as may be

necessary to design, construct and maintain treatment facilities to address pollutants in urban runoff as necessary to comply with discharge probations and water quality standards and objections (Exh. "B," Parts 1 & 2, pgs. 16-18); (2) Expenditures necessitated by the Regional Board's requirement that the Permittees place and maintain trash receptacles at all transit stops within its jurisdiction and/or to carry out other measures to control trash such as installing, cleaning and maintaining catch basins and installing and maintaining other treatment devices and trash receptacles or other BMPs, and the requirement of increased street sweeping (Exh. "B," Part 4F (5) & (6), p. 48-51); and (3) Expenditures necessitated by the Regional Board's requirement that the Permittees conduct inspections of various facilities that are to be regulated by the State for certain industrial facilities and construction sites. (Exh. "C," Part 4C pp. 27-34; and Part 4E, pp. 42-45.)

The State had not previously required these mandates, and the City is not able to impose fees to recover funds to recover the costs of such mandates.[3]

III. THE INCREASED COSTS MANDATED BY THE STORMWATER PERMIT

First, in order to comply with the new mandate imposed under the Stormwater Permit of implementing best management practices so as to either avoid or remedy any exceedance of a discharge prohibition or water quality standard or water quality objective, as set forth in Part 1 & 2 of the Permit entitled, "Discharge Prohibitions" and "Receiving Water Limitations," (Exh. "B" pp. 16-18), the City contends the only way to fully comply with this mandate may be to construct and maintain significant waste water treatment facilities throughout the County. A study conducted by the University of Southern California which in part, considered the impacts of this

[3] Significantly, the City believes it cannot rightfully impose all inspection fees for inspections of facilities governed by the State general permit for industrial discharges and for construction site discharges, because the State already collects a fee from such dischargers. (See e.g. Exh. "C.")

provisions in the Stormwater Permit, concluded that major wastewater treatment facilities would be required to strictly comply with such requirements, thereby resulting in the need to expend billions, if not hundreds of billions of dollars to comply with these and other related State mandates. A true and correct copy of this report is attached hereto and marked as Exhibit "D." This study shows that the subject Permit may add tens of billions, if not hundreds of billions of dollars in mandates on municipalities throughout the County of Los Angeles, including the cities referenced herein, over the course of the next twenty years and continuing thereafter.

Second, to comply with the Regional Board's requirement that the City place and maintain "trash receptacles at all transit stops within its jurisdiction, the City has installed numerous trash receptacles at transit stops throughout the City, and must expend funds annually for the maintenance of each of these transit stops. In addition, the City has or may be installing additional catch basin inserts and other related devices to collect and recover trash within the City, as well as taking other measures such as increased street sweeping, and the possible installation of other treatment devices and trash receptacles or other BMPs.

Third, in inspecting industrial facilities already subject or to be subject to a State stormwater facilities permit, the City will incur costs, without reimbursement from the State, as the State is refusing to even provide those funds it collects to perform such inspections, even for those facilities it will ***not*** be inspecting. Yet, for example, the State General Industrial Permit ***expressly*** requires that the ***State***, not the Permittees, inspect these sites. (Exh. "C," Section F(1)(a), pp. 9-10; also see the State General Construction Activities Stormwater Permit.) Thus, the State is expressly attempting to transfer a mandated program, regarding inspections of State regulated facilities, down to the City, which the State itself presently has an obligation to carry out.

IV. THE STORMWATER PERMIT IMPOSES MANDATES ON THE CITY THAT MUST BE FUNDED BY THE STATE

The Regional Board has violated Article XIII B, Section 6 of the California Constitution because the Regional Board improperly shifted onto the City, and the other Permittees, the financial responsibility for preventing and abating exceedances in urban runoff, carrying out inspections of State regulated facilities, and the placing and maintaining of trash receptacles at all transit stops, and/or taking other measures to address the collection of trash. Article XIII B, Section 6 provides in relevant part:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service . . . .

This reimbursement requirement provides permanent protection for taxpayers from excessive taxation and requires discipline in tax spending at both state and local levels. (*County of Fresno v. State* (1991) 53 Cal.3d 482, 487; see also *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1570.)

Significantly, the unfunded mandates imposed by the Regional Board are underscored by Proposition 218's severe limitations on the City's ability to impose fees upon residents as a means to alleviate the enormous compliance costs imposed. (*Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App.4th 1351, 1353-1354, 1358-59.) There, the Court struck down the City of Salinas's "Stormwater Management Utility Fee" because it was not enacted by a required majority vote of affected property owners. (*Id.*)

Proposition 218 shares identical purposes with Proposition 4, which resulted in the constitutional amendment prohibiting unfunded mandates in 1979. (See *County of Fresno*, 53 Cal.3d at 486.) The Regional Board's attempt to transfer the State mandates down to

municipalities, who in turn necessarily must attempt to recoup costs from taxpayers, violates the California Constitution.

1. The State Cannot Rely On Government Code Section 17516 Because That Statute Violates The California Constitution And It Does Not Apply To The Challenged Mandates.

First, the State has argued that Government Code Section 17516 exempts these unfunded mandates because they were included in the Stormwater Permit. That statute provides that an "executive order" governed by the California Constitution's unfunded mandates provisions, "does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13200) of the Water Code." (Govt. Code § 17516, subd. (c).) This "exemption," however, provides the State no excuse here, however, because the subject mandates are not appropriately a part of the Stormwater Permit, and secondly, because this exemption is unconstitutional. Thirdly, for enforcement orders resulting in the construction of major wastewater treatment facilities, the State was to have provided financial assistance under the Clean Water Bond Act of 1970 and 1974.

It is axiomatic that constitutional provisions prevail over conflicting statutory law. It has long been the law that "courts have inherent authority to determine whether statutes enacted by the legislature transcend the limits imposed by either federal or state Constitutions." (*Byers v. Board of Supervisors* (1968) 262 Cal.App.2d 148, 157.) Article XIII B, Section 6 of the California Constitution prohibits all unfunded mandates that do not fall within one of three categories. Unfunded mandates are excepted only if they are: 1) requested by the local agency affected; 2) define a new crime or change an existing definition of a crime; or 3) were enacted prior to January 1, 1975 or initially implement legislation enacted prior to that date. (Cal. Const., art. XIII B, § 6 subds. (a), (b), & (c).) No exception is provided for rules or regulations issued by

the State or Regional Board. Furthermore, the article does not give the legislature authority to create additional exceptions. (See Cal. Const., art. XIII B, § 6.)

Although the Legislature is free to interpret or clarify ambiguous constitutional provisions through legislation, it "cannot expand the meaning of (a constitutional provision) by subsequent legislation, since such an expansion would be equivalent to a constitutional amendment." (*Nunes Turfgrass, Inc. v. County of Kern* (1980) 111 Cal.App.3d 855, 862.) Like the provision at issue in *Nunes*, Article XIII B, § 6 is unambiguous in its scope. It clearly prohibits all unfunded mandates that are not specifically exempted by the article itself. Thus, the exemption in Government Code Section 17516 for "any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7" plainly exceeds the authority of the Legislature by exempting a category of mandates that was not intended to be excluded from Article XIII B, Section 6 when that provision was enacted.

Further, with respect to the costs identified in Exhibit "D," i.e. the USC Study, and the potential construction of major wastewater treatment facilities throughout the County, Gov. Code Section 17516(c) specifically provides that in such instances where the executive order is an enforcement order that results in the construction of major wastewater treatment facilities or major additions to existing facilities, the State was specifically required to provide financial assistance to the municipalities, pursuant to the 1970 and 1974 Clean Water Bond Acts. In this case, no financial assistance has been identified by the State, and said section of the Government Code has been violated, as have the provisions of Article XIII B, Section 6 of the California Constitution.

2. The Unfunded Mandates Are Not Mandates Properly Included in the Stormwater Permit.

Second, the mandated programs do not fall within the statutory exception in any event. Under its authority to issue Waste Discharge Requirements, the State can regulate pollutants that could be discharged from the City's MS4. (Water Code § 13263 ["The regional board . . . shall prescribe requirements as to the nature of any proposed discharge . . .].) For example, requiring the installation of trash receptacles and other trash collection devices, and increased street sweeping, and the inspection by the City of State-regulated facilities, are mandates that unlawfully extend far beyond the State's regulatory authority "pursuant to Division 7 (commencing with Section 13000) of the Water Code," and are mandates that not only were improperly included in the subject Stormwater Permit, they are mandates that the State had no authority to impose in the first instance. Accordingly, the mandates alleged herein, are requirements that are not covered by Government Code Section 17516.

3. The Regional Board Exercised Discretion To Establish Additional Requirements Of The Stormwater Permit That Exceed The Requirements Of Federal Law.

Third, the State has contended it has not violated the California Constitution because it was acting under a federal mandate in adopting the Stormwater Permit, in that it also constitutes an NPDES permit under the Clean Water Act. The contention is incorrect. If a state agency exercises its discretion to impose requirements beyond that required by federal law, a subvention of funds must be provided. (*Hayes,* 11 Cal.App.4th at 1570, 1593.) The State must fund obligations placed on local agencies where, as here, the manner of implementation of the federal program is left to the State's discretion. **"If the state freely chose to impose the cost upon the local agency as a means of implementing a federal program, then the costs are the result of**

a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Id.* at 1593.)

It is apparent that here, the State had a "true choice" in establishing the mandated programs on the City. (See *id.* at 1593-94.) The State cannot point to any provision of the Clean Water Act or related regulations that require the programs at issue in this claim. In fact, the Regional Board repeatedly asserted that it possessed discretion to impose such requirements by relying on the decision in *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1166-1167 [holding that the "maximum extent practicable" standard was the appropriate standard for municipal discharges].) The Regional Board unilaterally chose to impose the challenged programs on the City. As such, the State must fund the compliance programs.

Further, as discussed above, as Government Code Section 17516(c) specifically requires the State to identify financial assistance under the Clean Water Bond Acts of 1970 and 1974, where major wastewater treatment facilities are to be constructed, and in light of the significant costs identified in the attached USC Study, funding should have been provided pursuant to said Bond Acts. Yet, the State has failed to identify such available funding.

V. CONCLUSION

By greatly expanding the obligations that the City must impose and/or comply with, the State has required that the City carry out additional programs and expend additional funds that will go unreimbursed. Because the State has not provided any funding for these new programs, a subvention of funds must be found, and the State should be ordered to reimburse the City for these unfunded mandates.

Respectfully Submitted,
RUTAN & TUCKER, LLP

Dated: September 29, 2003

Richard Montevideo

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EXHIBIT "B"

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

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lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In, Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B., (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization: Water Resources Research*, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System--Impacts, Solutions and Prognoses*: The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*: Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979); Dubuque, Iowa, Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline-monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing,* Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).

   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an 'Interpretative Policy Memorandum on Reapplication Requirements' for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 – 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p) provides that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000,* on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-08), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*, (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

    - The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.

    - The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

    Malibu Creek and Rural Santa Monica Bay WMA
    Ballona Creek and Urban Santa Monica Bay WMA
    Los Angeles River WMA
    San Gabriel River WMA
    Dominguez Channel/Los Angeles Harbor WMA, and
    Santa Clara River WMA

    Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th. Cir, 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999)

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways. (*Headwaters, Inc. vs. Talent Irrigation District,* 243 F.3d. 526 (9th Cir., 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. Implementation

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or

2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

   c) Category C - Flows incidental to urban activities:

      (1) Reclaimed and potable landscape irrigation runoff;

      (2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

      (3) Drains for foundations, footings, and crawl spaces;

      (4) Air conditioning condensate;

      (5) Dechlorinated/debrominated swimming pool discharges;

      (6) Dewatering of lakes and decorative fountains;

      (7) Non-commercial car washing by residents or by non-profit organizations; and

      (8) Sidewalk rinsing.

   The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;

2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;

3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;

4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;

5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;

6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;

7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and

8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;

2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;

3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

   The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

   a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

   b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

   c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1.	
Watershed	***Target Pollutants for Outreach***
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities

- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]

- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:

- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances ;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industrial/ Commercial,* (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq*.

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. Development Construction Program

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1. above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:

A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:

For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

   a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

      (1) Investigation of any complaints received;

      (2) Upon notification, immediate response to overflows for containment; and

      (3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

   b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

   a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

   b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

   c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

   a) Screening for Illicit Connections

      (1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

         (i) Open channels: No later than February 3, 2003;

         (ii) Underground pipes in priority areas: No later than February 1, 2005; and

         (iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

      Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations, "water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"Authorized Discharge" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"Automotive Service Facilities" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"Basin Plan" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"Beneficial Uses" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"Best Management Practices (BMPs)" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"Commercial Development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:

    a) Vehicle or equipment fueling areas;
    b) Vehicle or equipment maintenance areas, including washing and repair;
    c) Commercial or industrial waste handling or storage;
    d) Outdoor handling or storage of hazardous materials;
    e) Outdoor manufacturing areas;
    f) Outdoor food handling or processing;
    g) Outdoor animal care, confinement, or slaughter; or
    h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint;

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1]
Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.html#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage of wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.

2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.

3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).

2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].

2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. Duty to Mitigate [40 CFR 122.41 (d)]

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. Inspection and Entry [40 CFR 122.41(i), CWC § 13267]

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and,

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. Signatory Requirements [40 CFR 122.41(k) & 122.22]

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. Reopener and Modification [40 CFR 122.41(f) & 122.62]

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][4]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][5]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

   a) Criminal Penalties for:

[5] *Supra.* See footnote number 3.

(1) Negligent Violations:

The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:

The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. Rescission

Regional Board Order No. 96-054 is hereby rescinded.

S. Expiration

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

_____

Dennis A. Dickerson
Executive Officer

EXHIBIT "C"

Winston H. Hickox
Secretary for Environmental Protection

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5538
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977
FAX (916) 341-5543 • Internet Address: http://www.swrcb.ca.gov

Gray Davis
Governo

To: STORM WATER DISCHARGER

SUBJECT: CHECKLIST FOR SUBMITTING A NOTICE OF INTENT

In order for the State Water Resources Control Board to expeditiously process your Notice of Intent (NOI), the following items must be submitted to either of the addresses indicated below:

1._____ NOI (please keep a copy for your files) with all applicable sections completed and original signature of the facility operator;

2._____ Check made out to the "State Water Resources Control Board" with the appropriate fee. The regular fee is **$700.00**. Dairy farms pay a one time fee of $2000.00; and

3. _____ Site Map of the facility (see NOI instructions). DO NOT SEND BLUEPRINTS

U.S. Postal Service Address

State Water Resources Control Board
Division of Water Quality
Attn: Storm Water Section
P.O. Box 1977
Sacramento, CA 95812-1977

Overnight Mailing Address

State Water Resources Control Board
Division Of Water Quality
Attn: Storm Water, 15th Floor
1001 I Street
Sacramento, CA 95814

NOIs are processed in the order they are received. A NOI receipt letter will be mailed to the facility operator within approximately two weeks. Incomplete NOI submittals will be returned to the facility operator within the same timeframe and will specify the reason(s) for return. If you need a receipt letter by a specific date (for example, to provide to a local agency), we advise that you submit your NOI thirty (30) days prior to the date the receipt letter is needed.

Please do not call us to verify your NOI status. A copy of your NOI receipt letter will be available on our web page within twenty-four (24) hours of processing. Go to: http://esmr.swrcb.ca.gov:7778/dwq/IndReceiptLetter.asp to retrieve an electronic copy of your NOI receipt letter. If you have any questions regarding this matter, please contact us at (916) 341-5538.

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WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

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FOR

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
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FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

BACKGROUND

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (U.S. EPA) published final regulations that establish application requirements for storm water permits. The regulations require that storm water associated with industrial activity (storm water) that discharges either directly to surface waters or indirectly through municipal separate storm sewers must be regulated by an NPDES permit.

U.S. EPA developed a four-tier permit issuance strategy for storm water discharges associated with industrial activity as follows:

Tier I, Baseline Permitting--One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.

Tier II, Watershed Permitting--Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III, Industry-Specific Permitting--Specific industry categories will be targeted for individual or Industry-specific general permits.

Tier IV, Facility-Specific Permitting--A variety of factors will be used to target specific facilities for individual permits.

The regulations allow authorized states to issue general permits or individual permits to regulate storm water discharges.

Consistent with Tier I, Baseline Permitting, of the U.S. EPA permitting strategy, the State Water Board issued a statewide General Permit on November 19, 1991 that applied to all storm water discharges requiring a permit except construction activity. The monitoring requirements of this General Permit were amended September 17, 1992. A separate statewide general permit has been issued for construction activity.

To obtain authorization for continued and future storm water discharge under this General Permit, each facility operator must submit a Notice of Intent (NOI). This approach is consistent with the four-tier permitting strategy described in Federal regulations, i.e., Tier 1, Baseline Permitting. Tier 1, Baseline Permitting, enables the State to begin reducing pollutants in industrial storm water in the most efficient manner possible.

This General Permit generally requires facility operators to:

1. Eliminate unauthorized non-storm water discharges;
2. Develop and implement a storm water pollution prevention plan (SWPPP); and
3. Perform monitoring of storm water discharges and authorized non-storm water discharges.

TYPES OF STORM WATER DISCHARGES COVERED BY THIS GENERAL PERMIT

This General Permit is intended to cover all new or existing storm water discharges and authorized non-storm water discharges from facilities required by Federal regulations to obtain a permit including those (1) facilities previously covered by the San Francisco Bay Regional Water Quality Control Board Order No. 92-011 (as amended by Order No. 92-116), (2) facilities designated by the Regional Water Quality Control Boards (Regional Water Boards), (3) facilities whose operators seek coverage under this General Permit, (4) and facilities required by future U.S. EPA storm water regulations.

The General Permit is intended to cover all facilities described in Attachment 1, whether the facility is primary or is auxiliary

to the facility operator's function. For example, although a school district's primary function is education, a facility that it operates for vehicle maintenance of school buses is a transportation facility that is covered by this General Permit.

The definition of "storm water associated with industrial activity" is provided in Attachment 4, Definition 9, of this General Permit. Facilities that discharge storm water associated with industrial activity requiring a General Permit are listed by category in 40 Code of Federal Regulations (CFR) Section 122.26(b)(14) (Federal Register, Volume 55 on

Pages 48065-66) and in Attachment 1 of this General Permit. The facilities can be publicly or privately owned. General descriptions of these categories are:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N);

2. Manufacturing facilities;

3. Mining/oil and gas facilities;

4. Hazardous waste treatment, storage, or disposal facilities;

5. Landfills, land application sites, and open dumps that receive industrial waste;

6. Recycling facilities such as metal scrap yards, battery reclaimers, salvage yards, automobile yards;

7. Steam electric generating facilities;

8. Transportation facilities that conduct any type of vehicle maintenance such as fueling, cleaning, repairing, etc.;

9. Sewage treatment plants;

10. Construction activity (covered by a separate general permit); and

11. Certain facilities (often referred to as "light industry") where industrial materials, equipment, or activities are exposed to storm water.

For the most part, these facilities are identified in the Federal regulations by a Standard Industrial Classification (SIC).

Category 1 Dischargers

The following categories of facilities currently have storm water effluent limitation guidelines for at least one of their subcategories. They are cement manufacturing (40 CFR Part 411); feedlots (40 CFR Part 412); fertilizer manufacturing (40 CFR Part 418); petroleum refining (40 CFR Part 419); phosphate manufacturing (40 CFR Part 422); steam electric power generation (40 CFR Part 423); coal mining (40 CFR Part 434); mineral mining and processing (40 CFR Part 436); ore mining and dressing (40 CFR Part 440); and asphalt emulsion (40 CFR Part 443). A facility operator whose facility falls into one of these general categories should examine the effluent guidelines to determine if the facility is categorized in one of the subcategories that have storm water effluent guidelines. If a facility is classified as one of those subcategories, that facility is subject to the standards listed in the CFR for that category and is subject to this General Permit. This General Permit contains additional requirements (see Section B.6.) for facilities with storm water effluent limitations guidelines.

Category 5 Dischargers

Inactive or closed landfills, land application sites, and open dumps that have received industrial wastes (Category 5) may be subject to this General Permit unless the storm water discharges from the sites are already regulated by an NPDES permit issued by the appropriate Regional Water Board. Facility operators of closed landfills that are regulated by waste discharge requirements (WDRs) may be required to comply with this General Permit. In some cases, it may be appropriate for closed landfills to be covered by the State Water Board's General Permit during closure activities. The Construction Activities General Permit should cover new landfill construction. Facility operators should contact their Regional Water Board to determine the appropriate permit coverage.

Category 10 Dischargers

Facility operators of Category 10 (light industry) facilities are not subject to this General Permit if they can certify that the following minimum conditions at their facilities are met:

1. All prohibited non-storm water discharges have been eliminated or otherwise permitted.

2. All areas of past exposure have been inspected and cleaned, as appropriate.

3. All materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

4. All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

5. There is no exposure of materials associated with industrial activity through other direct or indirect pathways such as particulates from stacks and exhaust systems.

6. There is periodic re-evaluation of the facility to ensure Conditions 1, 3, 4, and 5 are continuously met.

Currently, facility operators that can certify that the above conditions are met are not required to notify the State Water

Board or Regional Water Board. These facility operators are advised to retain such certification documentation on site.

The Ninth Circuit Court of Appeals invalidated the exemption granted by U.S. EPA for storm water discharges from facilities in Category 11 that do not have exposure and remanded the regulation to U.S. EPA for further action. The State Water Board, at this time, is not requiring storm water discharges from facilities in Category 11 that do not have exposure to be covered by this General Permit. Instead, the State Water Board will await future U.S. EPA or court action clarifying the types of storm water discharges that must be permitted. If necessary, the State Water Board will reopen the General Permit to accommodate such a clarification.

Section 1068 of the Intermodal Surface Transportation Act of 1991 exempts municipal agencies serving populations of less than 100,000 from Phase I permit requirements for most facilities they operate (uncontrolled sanitary landfills, power plants, and

airports are still required to be permitted in Phase I). Phase II of the Permit Program scheduled to begin August 7, 2001 will cover the facilities that are exempt from Phase I permit requirements.

TYPES OF DISCHARGES NOT COVERED BY THIS GENERAL PERMIT

1. CONSTRUCTION ACTIVITY: Discharges from construction activity of five acres or more, including clearing, grading, and excavation. A separate general permit was adopted on August 20, 1992 for this industrial category.

2. FACILITIES WHICH HAVE NPDES PERMITS CONTAINING STORM WATER PROVISIONS: Some storm water discharges may be regulated by other individual or general NPDES permits issued by the State Water Board or the Regional Water Boards. This General Permit shall not regulate these discharges. When the individual or general NPDES permits for such discharges expire, the State Water Board or Regional Water Board may authorize coverage under this General Permit or another general NPDES permit, or may issue a new individual NPDES permit consistent with the Federal and State storm water regulations. Interested parties may petition the State Water Board or appropriate Regional Water Board to issue individual or General NPDES Permits. General Permits may be issued for a particular industrial group or watershed area.

3. FACILITIES DETERMINED INELIGIBLE BY REGIONAL WATER BOARDS: Regional Water Boards may determine that discharges from a facility or groups of facilities, otherwise eligible for coverage under this General Permit, have potential water quality impacts that may not be appropriately addressed by this General Permit. In such cases, a Regional Water Board may require such discharges to be covered by an individual or general NPDES permit. Interested persons may petition the appropriate Regional Water Board to issue individual NPDES permits. The applicability of this General Permit to such discharges will be terminated upon adoption of an individual NPDES permit or a different general NPDES permit.

4. FACILITIES WHICH DO NOT DISCHARGE STORM WATER TO WATERS OF THE UNITED STATES: The discharges from the following facilities are not required to be permitted:

   a. FACILITIES THAT DISCHARGE STORM WATER TO MUNICIPAL SANITARY SEWER SYSTEMS: Facilities that discharge storm

water to municipal sanitary sewer systems or combined sewer systems are not required by Federal regulations to be covered by an NPDES storm water permit or to submit an NOI to comply with this General Permit. (It should be noted that many municipalities have sewer use ordinances that prohibit storm drain connections to their sanitary sewers.)

b. FACILITIES THAT DO NOT DISCHARGE STORM WATER TO SURFACE WATERS OR SEPARATE STORM SEWERS: Storm water that is captured and treated and/or disposed of with the facility's NPDES permitted process wastewater and storm water that is disposed of to evaporation ponds, percolation ponds, or combined sewer systems are not required to obtain a storm water permit. To avoid liability, the facility operator should be certain that no discharge of storm water to surface waters would occur under any circumstances.

5. MOST SILVICULTURAL ACTIVITIES: Storm water discharges from most silvicultural activities such as thinning, harvesting operations, surface drainage, or road construction and maintenance are exempt from this permit. Log sorting or log storage facilities that fall within SIC 2411 are required to be permitted.

6. MINING AND OIL AND GAS FACILITIES: Oil and gas facilities that have not released storm water resulting in a discharge of a reportable quantity (RQ) for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 19, 1987 are not required to be permitted unless the industrial storm water discharge contributed to a violation of a water quality standard. Mining facilities that discharge storm water that does not come into contact with any overburden, raw materials, intermediate product, finished product, by-product, or waste product located at the facility are not required to be permitted. These facilities must be permitted if they have a new release of storm water resulting in a discharge of an RQ.

7. FACILITIES ON INDIAN LANDS: the U.S. EPA will regulate Discharges from facilities on Indian lands.

NOTIFICATION REQUIREMENTS

Storm water discharges from facilities described in the section titled "Types of Storm Water Discharges Covered by This General

Permit" must be covered by an NPDES permit. An NOI must be submitted by the facility operator for each individual facility to obtain coverage. Certification of the NOI signifies that the facility operator intends to comply with the provisions of the General Permit. Facility operators who have filed NOIs for the State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-011 (as amended by Order No. 92-116) will be sent an abbreviated NOI soon after adopting this General Permit that must be completed and returned within 45 days of receipt. Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. A landowner may also file an NOI for a facility if the landowner, rather than the facility operator(s), is responsible for compliance with this General Permit.

A facility operator that does not submit an NOI for a facility must submit an application for an individual NPDES permit. U.S. EPA's regulations [40 CFR 122.21 (a)] exclude facility operators covered by a general permit from requirements to submit an individual permit application unless required by the Regional Water Board. The NOI requirements of this General Permit are intended to establish a mechanism which can be used to establish a clear accounting of the number of facility operators complying with the General Permit, their identities, the nature of operations at the facilities, and location.

All facility operators filing an NOI after the adoption of this General Permit must comply with this General Permit. Existing facility operators who have filed NOIs prior to the adoption of this General Permit shall continue to complete the requirements of the previous General Permit through June 30, 1997 including submitting annual reports to the Regional Water Boards by July 1, 1997. Group Leaders are required to submit a 1996-97 Group Evaluation Report by August 1, 1997.

DESCRIPTION OF GENERAL PERMIT CONDITIONS

Prohibitions

This General Permit authorizes storm water and authorized non-storm water discharges from facilities that are required to be covered by a storm water permit. This General Permit prohibits discharges of material other than storm water (non-storm water discharges) that are not authorized by the General Permit and discharges containing hazardous substances in storm water in excess of reportable quantities established at 40 CFR 117.3 and 40 CFR 302.4. Authorized non-storm water discharges are addressed in the Special Conditions of the General Permit.

Effluent Limitations

NPDES Permits for storm water discharges must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to prevent and reduce pollutants and any more stringent controls necessary to meet water quality standards.

U.S. EPA regulations (40 CFR Subchapter N) establish effluent limitation guidelines for storm water discharges from facilities in ten industrial categories. For these facilities, compliance with the effluent limitation guidelines constitutes compliance with BAT and BCT for the specified pollutants and must be met to comply with this General Permit.

For storm water discharges from facilities not among the ten industrial categories listed in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. The reasons why establishment of numeric effluent limitations is not feasible are discussed in detail in State Water Board Orders No. WQ 91-03 and WQ 91-04. Therefore, this General Permit allows the facility operator to implement best management practices (BMPs) to comply with the requirements of this General Permit. This approach is consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits".

Receiving Water Limitations

Storm water discharges shall not cause or contribute to a violation of an applicable water quality standard. The General Permit requires facility operators to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges through the development and implementation of

BMPs which constitutes compliance with BAT and BCT and, in most cases, compliance with water quality standards. If receiving water quality standards are exceeded, facility operators are required to submit a written report providing additional BMPs that will be implemented to achieve water quality standards.

Storm Water Pollution Prevention Plans (SWPPPs)

All facility operators must prepare, retain on site, and implement an SWPPP. The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges.

This General Permit requires development and implementation of an SWPPP emphasizing BMPs. This approach provides the flexibility necessary to establish appropriate BMPs for different types of industrial activities and pollutant sources. As this General Permit covers vastly different types of facilities, the State Water Board recognizes that there is no single best way of developing or organizing an SWPPP. The SWPPP requirements contain the essential elements that all facility operators must consider and address in the SWPPP. This General Permit's SWPPP requirements are more detailed than the previous general permit's SWPPP requirements, and the suggested order of the SWPPP elements have been rearranged (1) to correspond more closely with other storm water permits in effect throughout the country, and (2) to generally follow a more logical path. Facility operators that have already developed and implemented SWPPPs under previous general permits are required to review the SWPPP's requirements contained in this General Permit and then review their existing SWPPP for adequacy. If the existing SWPPP adequately identifies and assesses all potential sources of pollutants and describes the appropriate BMPs necessary to reduce or prevent pollutants, the facility operator is not required to revise the existing SWPPP.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to the facility's storm drain system. Unauthorized non-storm water discharges can be generated from a wide variety of potential pollutant sources. They include waters from the rinsing or washing of vehicles, equipment, buildings, or pavement; materials that have been improperly disposed of or dumped, and spilled; or leaked materials. Unauthorized non-storm water discharges can

contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping can often be addressed through BMPs. Unauthorized non-storm water discharges may enter the storm drain system via conveyances such as floor drains. All conveyances should be evaluated to determine whether they convey unauthorized non-storm water discharges to the storm drain system. Unauthorized non-storm water discharges (even when commingled with storm water) shall be eliminated or covered by a separate NPDES Permit.

There are many non-storm water discharges that, under certain conditions, should not contain pollutants associated with industrial activity (i.e., air conditioning condensate, potable water line testing, landscaping overflow, etc.). Item D, Special Conditions, provides the conditions where certain listed non-storm water discharges are authorized by this General Permit.

Monitoring Program

The General Permit requires development and implementation of a monitoring program. The objectives of the monitoring program are to (1) demonstrate compliance with the General Permit, (2) aid in the implementation of the SWPPP, and (3) measure the effectiveness of the BMPs in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

All facility operators (with the exception of inactive mining operations) are required to:

1. Perform visual observations of storm water discharges and authorized storm water discharges.

2. Collect and analyze samples of storm water discharges. Analysis must include pH, total suspended solids (TSS), total organic carbon (TOC), specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities, and those parameters listed in Table D of this General Permit. The Table D parameters are those listed in the U.S. EPA Multi-Sector General Permit. Facility operators subject to Federal storm water effluent limitation guidelines in 40 CFR Subchapter N must also sample and analyze for any pollutant specified in the appropriate category of 40 CFR Subchapter N.

Facility operators are not required to collect samples or perform visual observations during adverse climatic conditions. Sample collection and visual observations are required only during

scheduled facility operating hours. Visual observations are required only during daylight hours. Facility operators that are unable to collect any of the required samples or visual observations because of the above circumstances must provide documentation to the Regional Water Board in their annual report.

Facility operators may be exempt from performing sampling and analysis if they: (1) do not have areas of industrial activity exposed to storm water, (2) receive an exemption from a local agency which has jurisdiction over the storm sewer system, or (3) receive an exemption from the appropriate Regional Water Board. Facility operators must always perform sampling and analysis for any pollutant specified in storm water effluent limitation guidelines.

This General Permit contains a new procedure where facility operators, if they meet certain minimum conditions, may certify compliance with the General Permit and reduce the number of sampling events required to be sampled for the remaining term of the General Permit. Each Regional Water Board may develop instructions, guidance, and checklists to assist facility operators to complete sampling reduction requests.

Local agencies that wish to provide sampling and analysis exemptions or reductions to facility operators within their jurisdiction shall develop a certification program that clearly indicates the certification procedures and criteria used by the local agency. At a minimum, these programs should include site inspections, a review of the facility operator's SWPPP, and a review of other records such as monitoring data, receiving water data, etc. The certification program shall be approved by the local Regional Water Board before implementation.

Alternative Monitoring

Facility operators are required to develop a facility-specific monitoring program that satisfies both the minimum monitoring program requirements and the objectives of the monitoring program. Some facility operators have indicated that cost-effective alternative monitoring programs can be developed that provide equivalent or more accurate indicators of pollutants and/or BMP performance than a monitoring program based upon the minimum monitoring program requirements. An example of such an alternative monitoring program would be one that identifies sample locations at or near pollutant sources rather than sampling an entire drainage area where the storm water discharge

has been diluted with storm water from areas with little or no industrial activity.

The State Water Board does not want to preclude facility operators from developing better, and perhaps more cost-effective, monitoring programs. This General Permit allows facility operators to submit alternative monitoring programs for approval by the Regional Water Board. For individual facilities, these proposals must be facility specific and demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness. Facility operators with similar industrial activities may also propose alternative monitoring programs for approval by the Regional Water Boards. These proposals must demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness for all of the participating facilities.

Facility operators shall continue to comply with the existing monitoring program requirements until receiving approval by the Regional Water Board.

Group Monitoring

Each facility operator may either perform sampling and analysis individually or participate in a group monitoring program. A group monitoring program may be developed either by a group leader representing a group of similar facilities or by a local agency which holds a storm water permit for a municipal separate storm sewer system for industrial facilities within its jurisdiction. The group leader or local agency responsible for the group monitoring program must schedule all participating facilities to sample two storm events over the life of this General Permit. Facility operators subject to Federal effluent limitations guidelines in 40 CFR Subchapter N must individually sample and analyze for pollutants listed in the appropriate Federal regulations.

Participants within a group may be located within the jurisdiction of more than one Regional Water Board. Multi-Regional Water Board groups must receive the approval of the State Water Board Executive Director (with the concurrence of the appropriate Regional Water Boards).

Each group leader or local agency responsible for group sampling must: (1) provide guidance or training so that the monitoring is done correctly, (2) recommend appropriate BMPs to reduce or

prevent pollutants in storm water discharges and authorized non-storm water discharges from group participants, (3) evaluate and report the monitoring data to the State Water Board and/or the appropriate Regional Water Board(s), and (4) conduct two on-site inspections at each facility over the five year term of this General Permit to evaluate facility compliance and recommend BMPs to achieve compliance with this General Permit. The group leader or local agency may designate, hire, or train inspectors to conduct these inspections that are or are not directly affiliated with the group leader or local agency. It is the group leader's or local agency's responsibility to select inspectors that are capable of evaluating each facility's compliance with the General Permit and can recommend appropriate BMPs. All group monitoring plans are subject to State Water Board and/or Regional Water Board(s) review. Consistent with the four-tier permitting strategy described in the Federal regulations, the Regional Water Board(s) may evaluate the data and results from group monitoring to establish future permitting decisions. As appropriate, the State Water Board and/or the Regional Water Board(s) may terminate or require substantial amendment to the group monitoring plans. The State Water Board and/or the Regional Water Board(s) may terminate a facility's participation in group monitoring or require additional monitoring activities.

Retention of Records

The facility operator is required to retain records of all monitoring information, copies of all reports required by this General Permit, and records of all data used to complete the NOI for a period of five years from the date of measurement, report, or monitoring activity. This period may be extended by the State and/or Regional Water Boards. All records are public documents and must be provided to the Regional Water Boards on request.

Watershed Management

The State and Regional Water Boards are undertaking a focussed effort in watershed management throughout the State. In reissuing this General Permit, the State Water Board recognizes both the evolving nature of watershed management and the long-term desirability of structuring monitoring programs to support the Watershed Management Initiative. Therefore, the amended monitoring and reporting provisions provide flexibility for individual facility operators or groups of facility operators to propose and participate in, subject to Regional Water Board approval, watershed monitoring programs in lieu of some or all of the monitoring requirements contained in this General Permit.

Facility Operator Compliance Responsibilities

This General Permit has been written to encourage individual facility operators to develop their own SWPPP and monitoring programs. Many facility operators, however, choose to obtain compliance assistance either by hiring a consultant on an individual basis or by participating in a group monitoring plan. Regardless of how a facility operator chooses to pursue compliance, it is the facility operator that is responsible for compliance with this General Permit.

The State Water Board recognizes that industrial activities and operating conditions at many facilities change over time. In addition, new and more effective BMPs are being developed by various facility operators and by industrial groups. The SWPPP and monitoring program requirements include various inspections, reviews, and observations all of which recognize, encourage, and mandate an iterative self-evaluation process that is necessary to consistently comply with this General Permit. In general, facility operators that develop and implement SWPPPs that comply with this General Permit should not be penalized when discovering minor violations through this iterative self-evaluation process. The General Permit provides facility operators up to 90 days to revise and implement the SWPPP to correct such violations.

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3 instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water

discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an

exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:

   a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.

   b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

   a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;

   b. Submit a report that is approved by the Regional Water Board; or

   c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

   a. The following non-storm water discharges are authorized by this General Permit provided that they

satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.

b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:

i. The non-storm water discharges are in compliance with Regional Water Board requirements.

ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.

iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.

iv. The non-storm water discharges do not contain significant quantities of pollutants.

v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

vi. The non-storm water discharges are reported and described annually as part of the annual report.

c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.

d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.

2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.

3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in accordance with Section B of this General Permit when industrial activities begin.

4. Facility operators of feedlots as defined in 40 CFR Part 412 that are in full compliance with Section 2560 to Section 2565, Title 23, California Code of Regulations (Chapter 15) will be in compliance with all effluent limitations and prohibitions contained in this General Permit. Facility operators of feedlots that comply with Chapter 15, however, must perform monitoring in compliance with the requirements of Section B.4.d. and B.14. of this General Permit. Facility operators of feedlots must also comply with any Regional Water Board WDRs or NPDES general permit regulating their storm water discharges.

5. All facility operators must comply with lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding storm water discharges and non-storm water discharges entering storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the Regional Water Boards to local agencies.

6. All facility operators must comply with the standard provisions and reporting requirements for each facility covered by this General Permit contained in Section C, Standard Provisions.

7. Facility operators that operate facilities with co-located industrial activities (facilities that have industrial activities that meet more than one of the descriptions in Attachment 1) that are contiguous to one another are authorized to file a single NOI to comply with the General Permit. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities are authorized if the SWPPP and Monitoring Program addresses each co-located industrial activity.

8. Upon reissuance of a successor NPDES general permit by the State Water Board, the facility operators subject to this reissued General Permit may be required to file an NOI.

9. Facility operators may request to terminate their coverage under this General Permit by filing a Notice of Termination (NOT) with the Regional Water Board. The NOT shall provide all documentation requested by the Regional Water Board. The facility operator will be notified when

the NOT has been approved. Should the NOT be denied, facility operators are responsible for continued compliance with the requirements of this General Permit.

10. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall:

    a. Complete the 1996-97 activities required by those general permits. These include, but are not limited to, conducting any remaining visual observations, sample collection, annual site inspection, annual report submittal, and (for group monitoring leaders) Group Evaluation Reports; and

    b. Comply with the requirements of this General Permit no later than August 1, 1997.

11. If the Regional Water Board determines that a discharge may be causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, the Regional Water Board may order the facility operator to comply with the requirements described in Receiving Water Limitation C.3. The facility operator shall comply with the requirements within the time schedule established by the Regional Water Board.

12. If the facility operator determines that its storm water discharges or authorized non-storm water discharges are causing or contributing to an exceedance of any applicable water quality standards, the facility operator shall comply with the requirements described in Receiving Water Limitation C.3.

13. State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) and San Francisco Bay Regional Water Board Order No. 91-011 (as amended by Order No. 92-116) are hereby rescinded.

F. REGIONAL WATER BOARD AUTHORITIES

1. Following adoption of this General Permit, Regional Water Boards shall:

a. Implement the provisions of this General Permit, including, but not limited to, reviewing SWPPPs, reviewing annual reports, conducting compliance inspections, and taking enforcement actions.

b. Issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities, or facility operators in a watershed or geographic area. Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.

2. Regional Water Boards may provide guidance to facility operators on the SWPPP and the Monitoring Program and reporting implementation.

3. Regional Water Boards may require facility operators to conduct additional SWPPP and Monitoring Program and reporting activities necessary to achieve compliance with this General Permit.

4. Regional Water Boards may approve requests from facility operators whose facilities include co-located industrial activities that are not contiguous within the facilities (e.g., some military bases) to comply with this General Permit under a single NOI. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities and from other sources within the facility that may generate significant quantities of pollutants are authorized provided the SWPPP and Monitoring Program addresses each co-located industrial activity and other sources that may generate significant quantities of pollutants.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1997.

AYE: John P. Caffrey
John W. Brown
James M. Stubchaer
Marc Del Piero
Mary Jane Forster

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché
Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. *Implementation Schedule*

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.

b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.

2. *Objectives*

The SWPPP has two major objectives: (a) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and (b) to identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. BMPs may include a variety of pollution prevention measures or other low-cost and pollution control measures. They are generally categorized as non-structural BMPs (activity schedules, prohibitions of practices, maintenance procedures, and other low-cost measures) and as structural BMPs (treatment measures, run-off controls, over-head coverage.) To achieve these objectives, facility operators should consider the five phase process for SWPPP development and implementation as shown in Table A.

The SWPPP requirements are designed to be sufficiently flexible to meet the needs of various facilities. SWPPP requirements that are not applicable to a facility should not be included in the SWPPP.

A facility's SWPPP is a written document that shall contain a compliance activity schedule, a description of industrial activities and pollutant sources, descriptions of BMPs, drawings, maps, and relevant copies or references of parts of other plans. The SWPPP shall be revised whenever appropriate and shall be readily available for review by facility employees or Regional Water Board inspectors.

3. *Planning and Organization*

a. *Pollution Prevention Team*

The SWPPP shall identify a specific individual or individuals and their positions within the facility organization as members of a storm water pollution prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP implementation and revision, and conducting all monitoring program activities required in Section B of this General Permit. The SWPPP shall clearly identify the General Permit related responsibilities, duties, and activities of each team member. For small facilities, storm water pollution prevention teams may consist of one individual where appropriate.

b. *Review Other Requirements and Existing Facility Plans*

The SWPPP may incorporate or reference the appropriate elements of other regulatory requirements. Facility operators should review all local, State, and Federal requirements that impact, complement, or are consistent with the requirements of this General Permit. Facility operators should identify any existing facility plans that contain storm water pollutant control measures or relate to the requirements of this General Permit. As examples, facility operators whose facilities are subject to Federal Spill Prevention Control and Countermeasures' requirements should already have instituted a plan to control spills of certain hazardous materials. Similarly, facility operators whose facilities are subject to air quality related permits and regulations may already have evaluated industrial activities that generate dust or particulates.

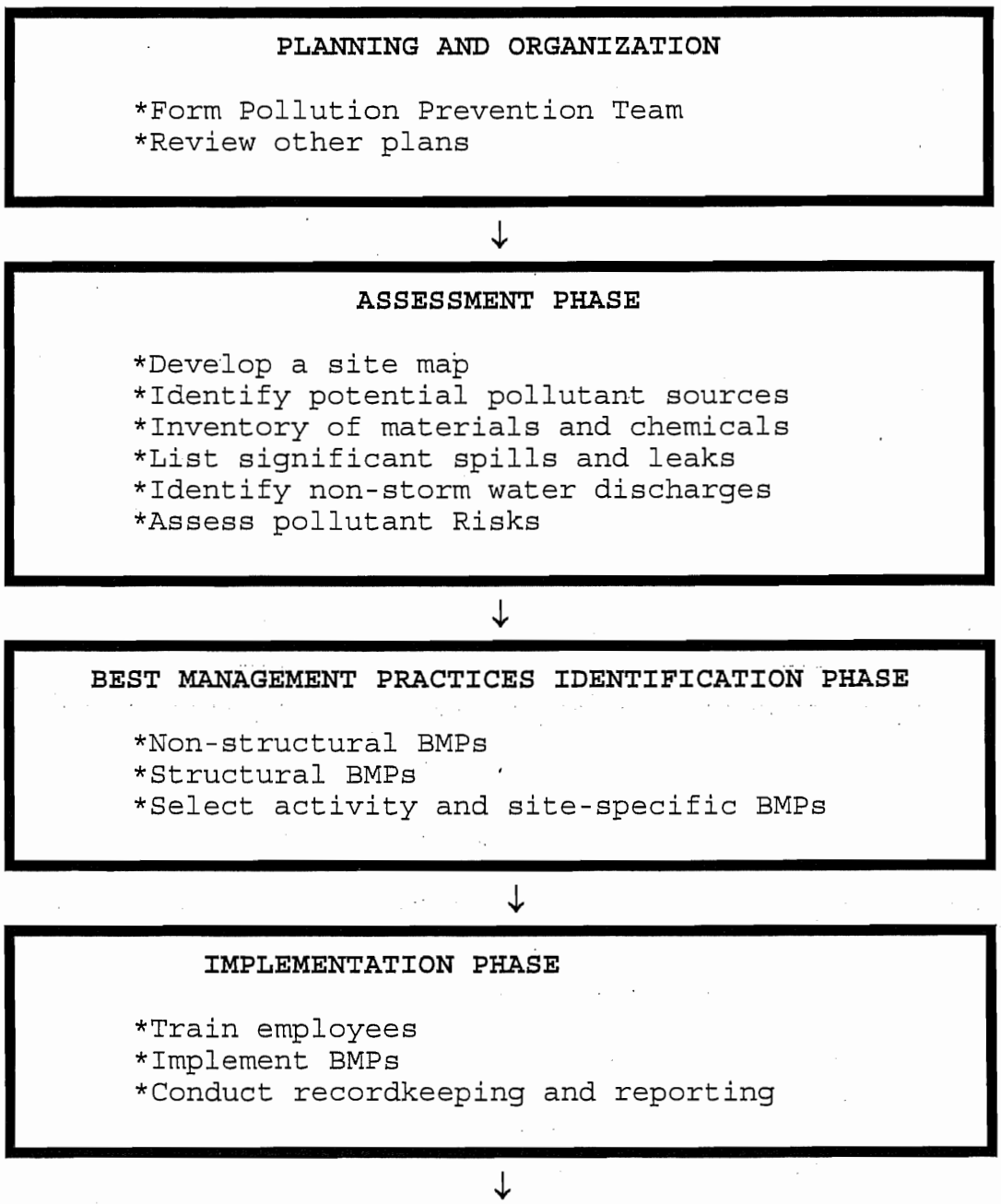
4. *Site Map*

The SWPPP shall include a site map. The site map shall be provided on an 8-½ x 11 inch or larger sheet and include

notes, legends, and other data as appropriate to ensure that the site map is clear and understandable. If necessary, facility operators may provide the required information on multiple site maps.

TABLE A

FIVE PHASES FOR DEVELOPING AND IMPLEMENTING INDUSTRIAL STORM WATER POLLUTION PREVENTION PLANS



EVALUATION / MONITORING

*Conduct annual site evaluation
*Review monitoring information
*Evaluate BMPs
*Review and revise SWPPP

The following information shall be included on the site map:

a. The facility boundaries; the outline of all storm water drainage areas within the facility boundaries; portions of the drainage area impacted by run-on from surrounding areas; and direction of flow of each drainage area, on-site surface water bodies, and areas of soil erosion. The map shall also identify nearby water bodies (such as rivers, lakes, and ponds) and municipal storm drain inlets where the facility's storm water discharges and authorized non-storm water discharges may be received.

b. The location of the storm water collection and conveyance system, associated points of discharge, and direction of flow. Include any structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on. Examples of structural control measures are catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers, etc.

c. An outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures.

d. Locations where materials are directly exposed to precipitation and the locations where significant spills or leaks identified in Section A.6.a.iv. below have occurred.

e. Areas of industrial activity. This shall include the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources.

5. *List of Significant Materials*

The SWPPP shall include a list of significant materials handled and stored at the site. For each material on the list, describe the locations where the material is being

stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials shall include raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials.

6. *Description of Potential Pollutant Sources*

a. The SWPPP shall include a narrative description of the facility's industrial activities, as identified in Section A.4.e above, associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. At a minimum, the following items related to a facility's industrial activities shall be considered:

i. Industrial Processes

Describe each industrial process, the type, characteristics, and quantity of significant materials used in or resulting from the process, and a description of the manufacturing, cleaning, rinsing, recycling, disposal, or other activities related to the process. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

ii. Material Handling and Storage Areas

Describe each handling and storage area, type, characteristics, and quantity of significant materials handled or stored, description of the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

iii. Dust and Particulate Generating Activities

Describe all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and

particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle.

iv. Significant Spills and Leaks

Describe materials that have spilled or leaked in significant quantities in storm water discharges or non-storm water discharges since April 17, 1994. Include toxic chemicals (listed in 40 CFR, Part 302) that have been discharged to storm water as reported on U.S. Environmental Protection Agency (U.S. EPA) Form R, and oil and hazardous substances in excess of reportable quantities (see 40 Code of Federal Regulations [CFR], Parts 110, 117, and 302).

The description shall include the type, characteristics, and approximate quantity of the material spilled or leaked, the cleanup or remedial actions that have occurred or are planned, the approximate remaining quantity of materials that may be exposed to storm water or non-storm water discharges, and the preventative measures taken to ensure spill or leaks do not reoccur. Such list shall be updated as appropriate during the term of this General Permit.

v. Non-Storm Water Discharges

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse

water, wash water, etc.). Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

vi. Soil Erosion

Describe the facility locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges.

b. The SWPPP shall include a summary of all areas of industrial activities, potential pollutant sources, and potential pollutants. This information should be summarized similar to Table B. The last column of Table B, "Control Practices", should be completed in accordance with Section A.8. below.

7. *Assessment of Potential Pollutant Sources*

a. The SWPPP shall include a narrative assessment of all industrial activities and potential pollutant sources as described in A.6. above to determine:

i. Which areas of the facility are likely sources of pollutants in storm water discharges and authorized non-storm water discharges, and

ii. Which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. Facility operators shall consider and evaluate various factors when performing this assessment such as current storm water BMPs; quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources.

b. Facility operators shall summarize the areas of the facility that are likely sources of pollutants and the corresponding pollutants that are likely to be present in storm water discharges and authorized non-storm water discharges.

Facility operators are required to develop and implement additional BMPs as appropriate and necessary to prevent or reduce pollutants associated with each pollutant source. The BMPs will be narratively described in Section 8 below.

8. *Storm Water Best Management Practices*

The SWPPP shall include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source identified in the site assessment phase (Sections A.6. and 7. above). The BMPs shall be developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Each pollutant and its source may require one or more BMPs. Some BMPs may be implemented for multiple pollutants and their sources, while other BMPs will be implemented for a very specific pollutant and its source.

TABLE B
EXAMPLE
ASSESSMENT OF POTENTIAL POLLUTION SOURCES AND CORRESPONDING BEST MANAGEMENT PRACTICES
SUMMARY

Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Vehicle & Equipment Fueling	Fueling	Spills and leaks during delivery	fuel oil	- Use spill and overflow protection - Minimize run-on of storm water into the fueling area - Cover fueling area - Use dry cleanup methods rather than hosing down area - Implement proper spill prevention control program - Implement adequate preventative maintenance program to preventive tank and line leaks - Inspect fueling areas regularly to detect problems before they occur - Train employees on proper fueling, cleanup, and spill response techniques.
		Spills caused by topping off fuel tanks	fuel oil	
		Hosing or washing down fuel area	fuel oil	
		Leaking storage tanks	fuel oil	
		Rainfall running off fueling area, and rainfall running onto	fuel oil	

		and off fueling area	

The description of the BMPs shall identify the BMPs as (1) existing BMPs, (2) existing BMPs to be revised and implemented, or (3) new BMPs to be implemented. The description shall also include a discussion on the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. The SWPPP shall provide a summary of all BMPs implemented for each pollutant source. This information should be summarized similar to Table B.

Facility operators shall consider the following BMPs for implementation at the facility:

a. Non-Structural BMPs

Non-structural BMPs generally consist of processes, prohibitions, procedures, schedule of activities, etc., that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures. Facility operators should consider all possible non-structural BMPs options before considering additional structural BMPs (see Section A.8.b. below). Below is a list of non-structural BMPs that should be considered:

i. Good Housekeeping

Good housekeeping generally consist of practical procedures to maintain a clean and orderly facility.

ii. Preventive Maintenance

Preventive maintenance includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

iii. Spill Response

This includes spill clean-up procedures and necessary clean-up equipment based upon the quantities and locations of significant materials that may spill or leak.

iv. Material Handling and Storage

This includes all procedures to minimize the

potential for spills and leaks and to minimize exposure of significant materials to storm water and authorized non-storm water discharges.

v. Employee Training

This includes training of personnel who are responsible for (1) implementing activities identified in the SWPPP, (2) conducting inspections, sampling, and visual observations, and (3) managing storm water. Training should address topics such as spill response, good housekeeping, and material handling procedures, and actions necessary to implement all BMPs identified in the SWPPP. The SWPPP shall identify periodic dates for such training. Records shall be maintained of all training sessions held.

vi. Waste Handling/Recycling

This includes the procedures or processes to handle, store, or dispose of waste materials or recyclable materials.

vii. Recordkeeping and Internal Reporting

This includes the procedures to ensure that all records of inspections, spills, maintenance activities, corrective actions, visual observations, etc., are developed, retained, and provided, as necessary, to the appropriate facility personnel.

viii. Erosion Control and Site Stabilization

This includes a description of all sediment and erosion control activities. This may include the planting and maintenance of vegetation, diversion of run-on and runoff, placement of sandbags, silt screens, or other sediment control devices, etc.

ix. Inspections

This includes, in addition to the preventative maintenance inspections identified above, an inspection schedule of all potential pollutant

sources. Tracking and follow-up procedures shall be described to ensure adequate corrective actions are taken and SWPPPs are made.

x. Quality Assurance

This includes the procedures to ensure that all elements of the SWPPP and Monitoring Program are adequately conducted.

b. Structural BMPs

Where non-structural BMPs as identified in Section A.8.a. above are not effective, structural BMPs shall be considered. Structural BMPs generally consist of structural devices that reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Below is a list of structural BMPs that should be considered:

i. Overhead Coverage

This includes structures that provide horizontal coverage of materials, chemicals, and pollutant sources from contact with storm water and authorized non-storm water discharges.

ii. Retention Ponds

This includes basins, ponds, surface impoundments, bermed areas, etc. that do not allow storm water to discharge from the facility.

iii. Control Devices

This includes berms or other devices that channel or route run-on and runoff away from pollutant sources.

iv. Secondary Containment Structures

This generally includes containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills.

v. Treatment

This includes inlet controls, infiltration devices, oil/water separators, detention ponds, vegetative swales, etc. that reduce the pollutants in storm water discharges and authorized non-storm water discharges.

9. Annual Comprehensive Site Compliance Evaluation

The facility operator shall conduct one comprehensive site compliance evaluation (evaluation) in each reporting period (July 1-June 30). Evaluations shall be conducted within 8-16 months of each other. The SWPPP shall be revised, as appropriate, and the revisions implemented within 90 days of the evaluation. Evaluations shall include the following:

a. A review of all visual observation records, inspection records, and sampling and analysis results.

b. A visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system.

c. A review and evaluation of all BMPs (both structural and non-structural) to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed. A visual inspection of equipment needed to implement the SWPPP, such as spill response equipment, shall be included.

d. An evaluation report that includes, (i) identification of personnel performing the evaluation, (ii) the date(s) of the evaluation, (iii) necessary SWPPP revisions, (iv) schedule, as required in Section A.10.e, for implementing SWPPP revisions, (v) any incidents of non-compliance and the corrective actions taken, and (vi) a certification that the facility operator is in compliance with this General Permit. If the above certification cannot be provided, explain in the evaluation report why the facility operator is not in compliance with this General Permit. The evaluation report shall be submitted as part of the annual report, retained for at least five years, and signed and certified in accordance with Standard Provisions 9. and 10. of Section C. of this General Permit.

10. *SWPPP General Requirements*

a. The SWPPP shall be retained on site and made available upon request of a representative of the Regional Water Board and/or local storm water management agency (local agency) which receives the storm water discharges.

b. The Regional Water Board and/or local agency may notify the facility operator when the SWPPP does not meet one or more of the minimum requirements of this Section. As requested by the Regional Water Board and/or local agency, the facility operator shall submit an SWPPP revision and implementation schedule that meets the minimum requirements of this section to the Regional Water Board and/or local agency that requested the SWPPP revisions. Within 14 days after implementing the required SWPPP revisions, the facility operator shall provide written certification to the Regional Water Board and/or local agency that the revisions have been implemented.

c. The SWPPP shall be revised, as appropriate, and implemented prior to changes in industrial activities which (i) may significantly increase the quantities of pollutants in storm water discharge, (ii) cause a new area of industrial activity at the facility to be exposed to storm water, or (iii) begin an industrial activity which would introduce a new pollutant source at the facility.

d. Other than as provided in Provisions B.11, B.12, and E.2 of the General Permit, the SWPPP shall be revised and implemented in a timely manner, but in no case more than 90 days after a facility operator determines that the SWPPP is in violation of any requirement(s) of this General Permit.

e. When any part of the SWPPP is infeasible to implement by the deadlines specified in Provision E.2 or Sections A.1, A.9, A.10.c, and A.10.d of this General Permit due to proposed significant structural changes, the facility operator shall submit a report to the Regional Water Board prior to the applicable deadline that (i) describes the portion of the SWPPP that is infeasible to implement by the deadline, (ii) provides

justification for a time extension, (iii) provides a schedule for completing and implementing that portion of the SWPPP, and (iv) describes the BMPs that will be implemented in the interim period to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Such reports are subject to Regional Water Board approval and/or modifications. Facility operators shall provide written notification to the Regional Water Board within 14 days after the SWPPP revisions are implemented.

f. The SWPPP shall be provided, upon request, to the Regional Water Board. The SWPPP is considered a report that shall be available to the public by the Regional Water Board under Section 308(b) of the Clean Water Act.

SECTION B. MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. *Implementation Schedule*

Each facility operator shall develop a written monitoring program for each facility covered by this General Permit in accordance with the following schedule:

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement a monitoring program no later than October 1, 1992. Facility operators beginning operations after October 1, 1992 shall develop and implement a monitoring program when the industrial activities begin.

b. Facility operators that submitted a Notice Of Intent (NOI) pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing monitoring program and implement any necessary revisions to their monitoring program in a timely manner, but in no case later than August 1, 1997. These facility operators may use the monitoring results conducted in accordance with those expired general permits to satisfy the pollutant/parameter reduction requirements in Section B.5.c., Sampling and Analysis Exemptions and Reduction certifications in Section B.12., and Group Monitoring Sampling credits in B.15.k. For facilities beginning industrial activities after the adoption of this General Permit, the monitoring program shall be developed and implemented when the facility begins the industrial activities.

2. *Objectives*

The objectives of the monitoring program are to:

a. Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit.

b. Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-

storm water discharges are evaluated and revised to meet changing conditions.

c. Aid in the implementation and revision of the SWPPP required by Section A of this General Permit.

d. Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water discharges and authorized non-storm water discharges. Much of the information necessary to develop the monitoring program, such as discharge locations, drainage areas, pollutant sources, etc., should be found in the Storm Water Pollution Prevention Plan (SWPPP). The facility's monitoring program shall be a written, site-specific document that shall be revised whenever appropriate and be readily available for review by employees or Regional Water Board inspectors.

3. *Non-storm Water Discharge Visual Observations*

a. Facility operators shall visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges;

b. Facility operators shall visually observe the facility's authorized non-storm water discharges and their sources;

c. The visual observations required above shall occur quarterly, during daylight hours, on days with no storm water discharges, and during scheduled facility operating hours[1]. Quarterly visual observations shall be conducted in each of the following periods: January-March, April-June, July-September, and October-December. Facility operators shall conduct quarterly visual observations within 6-18 weeks of each other.

d. Visual observations shall document the presence of any discolorations, stains, odors, floating materials,

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[1] "Scheduled facility operating hours" are the time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed.

etc., as well as the source of any discharge. Records shall be maintained of the visual observation dates, locations observed, observations, and response taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

4. *Storm Water Discharge Visual Observations*

a. With the exception of those facilities described in Section B.4.d. below, facility operators shall visually observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These visual observations shall occur during the first hour of discharge and at all discharge locations. Visual observations of stored or contained storm water shall occur at the time of release.

b. Visual observations are only required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days[2] without storm water discharges and that occur during scheduled facility operating hours.

c. Visual observations shall document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants. Records shall be maintained of observation dates, locations observed, observations, and response taken to reduce or prevent pollutants in storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

d. Feedlots (subject to Federal effluent limitations guidelines in 40 Code of Federal Regulations [CFR] Part 412) that are in compliance with Sections 2560 to 2565, Article 6, Chapter 15, Title 23, California Code of

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[2] Three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm water discharges occur during the three (3) working days and the non-working days.

Regulations, and facility operators with storm water containment facilities shall conduct monthly inspections of their containment areas to detect leaks and ensure maintenance of adequate freeboard. Records shall be maintained of the inspection dates, observations, and any response taken to eliminate leaks and to maintain adequate freeboard.

5. *Sampling and Analysis*

a. Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled. Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.

b. Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least (3) three working days without storm water discharge.

c. The samples shall be analyzed for:

i. Total suspended solids (TSS) pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC; and

ii. Toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. If these pollutants are not detected in significant quantities after two consecutive sampling events, the facility operator may eliminate the pollutant from future sample analysis until the pollutant is likely to be present again; and

iii. Other analytical parameters as listed in Table D (located at the end of this Section). These parameters are dependent on the facility's standard industrial classification (SIC) code. Facility operators are not required to analyze a parameter

listed in Table D when the parameter is not already required to be analyzed pursuant to Section B.5.c.i. and ii. or B.6 of this General Permit, and either of the two following conditions are met: (1) the parameter has not been detected in significant quantities from the last two consecutive sampling events, or (2) the parameter is not likely to be present in storm water discharges and authorized non-storm water discharges in significant quantities based upon the facility operator's evaluation of the facilities industrial activities, potential pollutant sources, and SWPPP. Facility operators that do not analyze for the applicable Table D parameters shall certify in the Annual Report that the above conditions have been satisfied.

iv. Other parameters as required by the Regional Water Board.

6. *Facilities Subject to Federal Storm Water Effluent Limitation Guidelines*

Facility operators with facilities subject to Federal storm water effluent limitation guidelines, in addition to the requirements in Section B.5. above, must complete the following:

a. Collect and analyze two samples for any pollutant specified in the appropriate category of 40 CFR Subchapter N. The sampling and analysis exemptions and reductions described in Section B.12. of this General Permit do not apply to these pollutants.

b. Estimate or calculate the volume of storm water discharges from each drainage area;

c. Estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 CFR Subchapter N; and

d. Identify the individual(s) performing the estimates or calculations in accordance with Subsections b. and c. above.

7. *Sample Storm Water Discharge Locations*

a. Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.

b. If the facility's storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event.

c. If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event.

d. Facility operators that determine that the industrial activities and BMPs within two or more drainage areas are substantially identical may either (i) collect samples from a reduced number of substantially identical

drainage areas, or (ii) collect samples from each substantially identical drainage area and analyze a combined sample from each substantially identical drainage area. Facility operators must document such a determination in the annual report.

8. *Visual Observation and Sample Collection Exceptions*

Facility operators are required to be prepared to collect samples and conduct visual observations at the beginning of the wet season (October 1) and throughout the wet season until the minimum requirements of Sections B.4. and B.5. are completed with the following exceptions:

a. A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required

during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual Report why the sampling or visual observations could not be conducted.

b. A facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied. The facility operator shall include an explanation in the Annual Report why the visual observations and sample collection should be conducted after the first hour of discharge.

9. *Alternative Monitoring Procedures*

Facility operators may propose an alternative monitoring program that meets Section B.2 monitoring program objectives for approval by the Regional Water Board. Facility operators shall continue to comply with the monitoring requirements of this Section and may not implement an alternative monitoring plan until the alternative monitoring plan is approved by the Regional Water Board. Alternative monitoring plans are subject to modification by the Regional Water Boards.

10. *Monitoring Methods*

a. Facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of Section B.2. This shall include:

i. Rationale and description of the visual observation methods, location, and frequency.

ii. Rationale and description of the sampling methods, location, and frequency; and

iii. Identification of the analytical methods and corresponding method detection limits used to detect pollutants in storm water discharges. This shall include justification that the method

detection limits are adequate to satisfy the objectives of the monitoring program.

b. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association). All monitoring instruments and equipment (including a facility operator's own field instruments for measuring pH and Electro Conductivity) shall be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements. All laboratory analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this General Permit or by the Regional Water Board. All metals shall be reported as total metals. With the exception of analysis conducted by facility operators, all laboratory analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Facility operators may conduct their own sample analyses if the facility operator has sufficient capability (qualified employees, laboratory equipment, etc.) to adequately perform the test procedures.

11. *Inactive Mining Operations*
Inactive mining operations are defined in Attachment 1 of this General Permit. Where comprehensive site compliance evaluations, non-storm water discharge visual observations, storm water discharge visual observations, and storm water sampling are impracticable, facility operators of inactive mining operations may instead obtain certification once every three years by a Registered Professional Engineer that an SWPPP has been prepared for the facility and is being implemented in accordance with the requirements of this General Permit. By means of these certifications, the Registered Professional Engineer having examined the facility and being familiar with the provisions of this General Permit shall attest that the SWPPP has been prepared in accordance with good engineering practices. Facility operators of mining operations who cannot obtain a certification because of noncompliance must notify the appropriate Regional Water Board and, upon request, the local agency which receives the storm water discharge.

12. *Sampling and Analysis* Exemptions and Reductions

A facility operator who qualifies for sampling and analysis exemptions, as described below in Section B.12.a.i., or who qualifies for reduced sampling and analysis, as described below in Section B.12.b., must submit the appropriate certifications and required documentation to the Regional Water Boards prior to the wet season (October 1) and recertify as part of the Annual Report submittal. A facility operator that qualifies for either the Regional Water Board or local agency certification programs, as described below in Section B.12.a.ii. and iii., shall submit certification and documentation in accordance with the requirements of those programs. Facility operators who provide certifications in accordance with this Section are still required to comply with all other monitoring program and reporting requirements. Facility operators shall prepare and submit their certifications using forms and instructions provided by the State Water Board, Regional Water Board, or local agency or shall submit their information on a form that contains equivalent information. Facility operators whose facility no longer meets the certification conditions must notify the Regional Water Boards (and local agency) within 30 days and immediately comply with the Section B.5. sampling and analysis requirements. Should a Regional Water Board (or local agency) determine that a certification does not meet the conditions set forth below, facility operators must immediately comply with the Section B.5. sampling and analysis requirements.

a. Sampling and Analysis Exemptions

A facility operator is not required to collect and analyze samples in accordance with Section B.5. if the facility operator meets all of the conditions of one of the following certification programs:

i. No Exposure Certification (NEC)

This exemption is designed primarily for those facilities where all industrial activities are conducted inside buildings and where all materials stored and handled are not exposed to storm water. To qualify for this exemption, facility operators must certify that their facilities meet all of the following conditions:

(1) All prohibited non-storm water discharges have been eliminated or otherwise permitted.

(2) All authorized non-storm water discharges have been identified and addressed in the SWPPP.

(3) All areas of past exposure have been inspected and cleaned, as appropriate.

(4) All significant materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

(5) All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

(6) There is no exposure of storm water to significant materials associated with industrial activity through other direct or indirect pathways such as from industrial activities that generate dust and particulates.

(7) There is periodic re-evaluation of the facility to ensure conditions (1), (2), (4), (5), and (6) above are continuously met. At a minimum, re-evaluation shall be conducted once a year.

ii. Regional Water Board Certification Programs

The Regional Water Board may grant an exemption to the Section B.5. Sampling and Analysis Requirements if it determines a facility operator has met the conditions set forth in a Regional Water Board certification program. Regional Water Board certification programs may include conditions to (1) exempt facility operators whose facilities infrequently discharge storm water to waters of the United States, and (2) exempt facility operators that demonstrate compliance with the terms and conditions of this General Permit.

iii. Local Agency Certifications

A local agency may develop a local agency certification program. Such programs must be

approved by the Regional Water Board. An approved local agency program may either grant an exemption

from the Section B.5. Sampling and Analysis Requirements or reduce the frequency of sampling if it determines that a facility operator has demonstrated compliance with the terms and conditions of this General Permit.

b. Sampling and Analysis Reduction

i. A facility operator may reduce the number of sampling events required to be sampled for the remaining term of this General Permit if the facility operator provides certification that the following conditions have been met:

(1) The facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;

(2) All prohibited non-storm water discharges have been eliminated or otherwise permitted;

(3) The facility operator demonstrates compliance with the terms and conditions of the General Permit for the previous two years (i.e., completed Annual Reports, performed visual observations, implemented appropriate BMPs, etc.);

(4) The facility operator demonstrates that the facility's storm water discharges and authorized non-storm water discharges do not contain significant quantities of pollutants; and

(5) Conditions (2), (3), and (4) above are expected to remain in effect for a minimum of one year after filing the certification.

ii. Unless otherwise instructed by the Regional Water Board, facility operators shall collect and analyze samples from two additional storm events (or one additional storm event when certification filed for the wet season beginning October 1, 2001) during the remaining term of this General Permit in accordance with Table C below. Facility operators shall collect samples of the first

storm event of the wet season. Facility operators that do not collect samples from the first storm event of the wet season shall collect samples from another storm event during the same wet season. Facility operators that do not collect a sample in a required wet season shall collect the sample from another storm event in the next wet season. Facility operators shall explain in the Annual Report why the first storm event of a wet season was not sampled or a sample was not taken from any storm event in accordance with the Table C schedule.

Table C
REDUCED MONITORING SAMPLING SCHEDULE

Facility Operator Filing Sampling Reduction Certification By	Samples Shall be Collected and Analyzed in These Wet Seasons	
	Sample 1	Sample 2
Oct. 1, 1997	Oct. 1, 1997-May 31, 1998	Oct. 1, 1999-May 31, 2000
Oct. 1, 1998	Oct. 1, 1998-May 31, 1999	Oct. 1, 2000-May 31, 2001
Oct. 1, 1999	Oct. 1, 1999-May 31, 2000	Oct. 1, 2001-May 31, 2002
Oct. 1, 2000	Oct. 1, 2000-May 31, 2001	Oct. 1, 2001-May 31, 2002
Oct. 1, 2001	Oct. 1, 2001-May 31, 2002	-

13. *Records*

Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years. These records shall include:

a. The date, place, and time of site inspections, sampling, visual observations, and/or measurements;

b. The individual(s) who performed the site inspections, sampling, visual observations, and or measurements;

c. Flow measurements or estimates (if required by Section B.6);

d. The date and approximate time of analyses;

e. The individual(s) who performed the analyses;

f. Analytical results, method detection limits, and the analytical techniques or methods used;

g. Quality assurance/quality control records and results;

h. Non-storm water discharge inspections and visual observations and storm water discharge visual observation records (see Sections B.3. and 4.);

i. Visual observation and sample collection exception records (see Section B.5.a, 7.d, 8, and 12.b.ii.);

j. All calibration and maintenance records of on-site instruments used;

k. All Sampling and Analysis Exemption and Reduction certifications and supporting documentation (see Section B.12);

l. The records of any corrective actions and follow-up activities that resulted from the visual observations.

14. *Annual Report*

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).

The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit." The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

15. *Group Monitoring*

Facility operators may participate in group monitoring as described below. A facility operator that participates in group monitoring shall develop and implement a written site-specific SWPPP and monitoring program in accordance with the General Permit and must satisfy any group monitoring requirements. Group monitoring shall be subject to the following requirements:

a. A group monitoring plan (GMP) shall be developed and implemented by a group leader representing a group of similar facility operators regulated by this General Permit or by a local agency which holds an NPDES permit (local agency permittee) for a municipal separate storm sewer system. GMPs with participants that discharge storm water within the boundaries of a single Regional Water Board shall be approved by that Regional Water Board. GMPs with participants that discharge storm water within the boundaries of multiple Regional Water Boards shall be approved by the State Water Board. The State Water Board and/or Regional Water Board(s) may disapprove a facility's participation in a GMP or require a GMP participant to conduct additional monitoring activities.

b. Each GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5. over the five-year period of this General Permit. The two storm event minimum applies to new and existing members. The group leader or local agency permittee shall schedule sampling to meet the following conditions: (i) to evenly distribute the sample collection over the five-year term of this General Permit, and (ii) to collect samples from the two storm events at each participant's facility in different and non-consecutive wet seasons. New participants who join in Years 4 and 5 of this General Permit are not subject to Condition (ii) above. Group leaders shall explain in the annual Group Evaluation Report why any scheduled samples were not collected and reschedule the sampling so that all required samples are collected during the term of this General Permit.

c. The group leader or local agency permittee must have the appropriate resources to develop and implement the GMP. The group leader or local agency permittee must also have the authority to terminate any participant who is not complying with this General Permit and the GMP.

d. The group leader or local agency permittee is responsible for:

i. Developing, implementing, and revising the GMP;

ii. Developing and submitting an annual Group Evaluation Report to the State Water Board and/or Regional Water Board by August 1 of each year that includes:

(1) An evaluation and summary of all group monitoring data,

(2) An evaluation of the overall performance of the GMP participants in complying with this General Permit and the GMP,

(3) Recommended baseline and site-specific BMPs that should be considered by each participant based upon Items (1) and (2) above, and

(4) A copy of each evaluation report and recommended BMPs as required in Section B.15.d.v. below.

iii. Recommending appropriate BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges;

iv. Assisting each participant in completing their Annual Comprehensive Site Compliance Evaluation and Annual Report;

v. Conducting a minimum of two on-site inspections of each participant's facility (it is recommended that these inspections be scheduled during the Annual Comprehensive Site Compliance Evaluation) during the term of this General Permit to evaluate the participant's compliance with this General Permit and the GMP, and to recommend any additional BMPs necessary to achieve compliance with this General Permit. Participants that join in Years 4 and 5 shall be scheduled for one evaluation. A copy of the evaluation and recommended BMPs shall be provided to the participants;

vi. Submitting a GMP (or revisions, as necessary), to the appropriate Regional Water Board(s) and State

Water Board no later than September 1, 1997 (or August 1 in subsequent years). Once approved, a group leader or local agency permittee shall submit a letter of intent by August 1 of each year to continue the approved GMP. The letter of intent must include a roster of participants, participant's Waste Discharge Identification number (WDID#), updated sampling schedules, and any other revisions to the GMP;

vii. Revising the GMP as instructed by the Regional Water Board or the State Water Board; and

viii. Providing the State Water Board and/or Regional Water Board with quarterly updates of any new or deleted participants and corresponding changes in the sampling and inspection schedule.

e. The GMP shall:

i. Identify the participants of the GMP by name, location, and WDID number;

ii. Include a narrative description summarizing the industrial activities of participants of the GMP and explain why the participants, as a whole, have sufficiently similar industrial activities and BMPs to be covered by a group monitoring plan;

iii. Include a list of typical potential pollutant sources associated with the group participant's facilities and recommended baseline BMPs to prevent or reduce pollutants associated with industrial activity in the storm water discharges and authorized non-storm water discharges;

iv. Provide a five-year sampling and inspection schedule in accordance with Subsections b. and d.v. above.

v. Identify the pollutants associated with industrial activity that shall be analyzed at each participant's facility in accordance with Section B.5. The selection of these pollutants shall be based upon an assessment of each facility's potential pollutant sources and likelihood that pollutants associated with industrial activity will be present in storm water discharges and authorized

non-storm water discharges in significant quantities.

f. Sampling and analysis shall be conducted in accordance with the applicable requirements of this Section.

g. Unless otherwise instructed by the Regional Water Board or the State Water Board Executive Director, the GMPs shall be implemented at the beginning of the wet season (October 1).

h. All participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section including the submittal of an Annual Report by July 1 of each year to the appropriate Regional Water Board.

i. GMP participants subject to Federal storm water effluent limitation guidelines must perform the monitoring described in Section B.6. and submit the results of the monitoring to the appropriate Regional Water Board within the facility operator's Annual Report.

j. GMPs and Group Evaluation Reports should be prepared in accordance with State Water Board (or Regional Water Board) guidance.

k. GMP participants may receive Sampling and Analysis Reduction sampling credit in accordance with the following conditions:

   i. Current or prior participants (group participants) of approved GMPs, who have not collected and analyzed samples from six storm events as required in Section B.7.b.i.(1), may substitute credit earned through participation in a GMP for up to four of the six required storm events. Credits for GMP participation shall be calculated as follows:

      (1) Credit may only be earned in years of participation where the GMP participant was not scheduled to sample and the GMP was approved.

      (2) One credit will be earned for each year of valid GMP participation.

(3) One additional credit may be earned for each year the overall GMP sample collection performance is greater than 75 percent.

ii. GMP participants substituting credit as calculated above shall provide proof of GMP participation and certification that all the conditions in Section B.12.b.i. have been met. GMP participants substituting credit in accordance with Section B.15.k.i.(3) shall also provide GMP sample collection performance documentation.

iii. GMP participants that qualify for Sampling and Analysis Reduction and have already sampled a storm event after October 1, 1997 shall only be required to sample one additional storm event during the remainder of this General Permit in accordance with the "Sample 2" schedule (or "Sample 1" schedule when certification filed for the wet season beginning October 1, 2001) in Table C of this Section.

n. Group leaders shall furnish, within 60 days of receiving a request from the State Water Board or Regional Water Board, any GMP information and documentation necessary to verify the Section B.15.k. sampling credits. Group leaders may also provide this information and documentation to the group participants.

16. *Watershed Monitoring Option*

Regional Water Boards may approve proposals to substitute watershed monitoring for some or all of the requirements of this Section if the Regional Water Board finds that the watershed monitoring will provide substantially similar monitoring information in evaluating facility operator compliance with the requirements of this General Permit.

TABLE D
ADDITIONAL ANALYTICAL PARAMETERS

Subsector	SIC	Activity Represented	Parameters
ECTOR A. TIMBER PRODUCTS			
A1	2421	General Sawmills and Planing Mills	**COD;TSS;Zn**
2	2491	Wood Preserving	**As;Cu**
3	2411	Log Storage and Handling	**TSS**
A4	2426	Hardwood Dimension and Flooring Mills	**Error! No table of authorities entries found.**

Section C: STANDARD PROVISIONS

1. Duty to Comply

The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for (a) enforcement action for (b) General Permit termination, revocation and reissuance, or modification or (c) denial of a General Permit renewal application.

The facility operator shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the facility operator for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition, and the facility operator so notified.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a facility operator in an enforcement action that it would have been necessary to halt or reduce the general permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The facility operator shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The facility operator at all times shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the facility operator to achieve compliance with the conditions of this General Permit and with the requirements of storm water pollution prevention plans (SWPPPs). Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a facility operator when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The facility operator shall furnish the Regional Water Quality Control Board (Regional Water Board), State Water Resources Control Board (State Water Board), U.S. Environmental Protection Agency (U.S. EPA), or local storm water management agency, within a reasonable time specified by the agencies, any requested information to determine compliance with this General Permit. The facility operator shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The facility operator shall allow the Regional Water Board, State Water Board, U.S. EPA, and local storm water management agency, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the facility operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;

b. Have access to and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized non-storm water discharge; and

d. Conduct monitoring activities at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notices of Intent (NOIs) submitted to the State Water Board shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

b. All reports, certifications, or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be attached to the SWPPP prior to submittal of any reports, certifications, or information signed by the authorized representative.

10. Certification

Any person signing documents under Provision 9. above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Reporting Requirements

a. Planned changes: The facility operator shall give advance notice to the Regional Water Board and local storm water management agency of any planned physical alteration or additions to the general permitted facility. Notice is required under this provision only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

b. Anticipated noncompliance: The facility operator will give advance notice to the Regional Water Board and local storm water management agency of any planned changes at the permitted facility which may result in noncompliance with General Permit requirements.

c. Compliance schedules: Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this General Permit shall be submitted no later than 14 days following each scheduled date.

d. Noncompliance reporting: The facility operator shall report any noncompliance at the time monitoring reports are submitted. The written submission shall contain (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce and prevent recurrence of the noncompliance.

12. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the facility operator from any responsibilities, liabilities, or penalties to which the facility operator is or may be subject under Section 311 of the CWA.

13. Severability

The provisions of this General Permit are severable; and if any provision of this General Permit or the application of

any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

14. Reopener Clause

This General Permit may be modified, revoked, and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5. This General Permit may be reopened to modify the provisions regarding authorized non-storm water discharges specified in Section D. Special Conditions.

15. Penalties for Violations of General Permit Conditions.

a. Section 309 of the CWA provides significant penalties for any person who violates a General Permit condition implementing Sections 301, 302, 306, 307 308, 318, or 405 of the CWA, or any General Permit condition or limitation implementing any such section in a General Permit issued under Section 402. Any person who violates any General Permit condition of this General Permit is subject to a civil penalty not to exceed $25,000 per day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties in some cases greater than those under the CWA.

16. Availability

A copy of this General Permit shall be maintained at the facility and be available at all times to the appropriate facility personnel and to Regional Water Board and local agency inspectors.

17. Transfers

This General Permit is not transferable from one facility operator to another facility operator nor may it be transferred from one location to another location. A new facility operator of an existing facility must submit an NOI

in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit.

18. Continuation of Expired General Permit

This General Permit continues in force and effect until a new general permit is issued or the State Water Board rescinds the General Permit. Facility operators authorized to discharge under the expiring general permit are required to file an NOI to be covered by the reissued General Permit.

19. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both.

FACILITIES COVERED BY THIS GENERAL PERMIT

Industrial facilities include Federal, State, municipally owned, and private facilities from the following categories:

1. FACILITIES SUBJECT TO STORM WATER EFFLUENT LIMITATIONS GUIDELINES, NEW SOURCE PERFORMANCE STANDARDS, OR TOXIC POLLUTANT EFFLUENT STANDARDS (40 Code of Federal Regulations (CFR) SUBCHAPTER N). Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443).

2. MANUFACTURING FACILITIES: Standard Industrial Classifications (SICs) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441, and 373.

3. OIL AND GAS/MINING FACILITIES: SICs 10 through 14 including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l) because of performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for area of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990); oil and gas exploration, production, processing, or treatment operations; or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mined sites that are not being actively mined but which have an identifiable facility operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: Includes those operating under interim status or a general

permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act (RCRA).

5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: Sites that receive or have received industrial waste from any of the facilities covered by this General Permit, sites subject to regulation under Subtitle D of RCRA, and sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).

6. RECYCLING FACILITIES: SICs 5015 and 5093. These codes include metal scrapyards, battery reclaimers, salvage yards, motor vehicle dismantlers and wreckers, and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc.

7. STEAM ELECTRIC POWER GENERATING FACILITIES: Includes any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.

8. TRANSPORTATION FACILITIES: SICs 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.

9. SEWAGE OR WASTEWATER TREATMENT WORKS: Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of one million gallons per day or more or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.

10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE EXPOSED TO STORM WATER: SICs 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225.

STORM WATER CONTACTS FOR THE STATE AND REGIONAL WATER BOARDS

See Storm Water Contacts at:
http://www.swrcb.ca.gov/stormwtr/contact.html

NOTICE OF INTENT (NOI) INSTRUCTIONS

TO COMPLY WITH STATE WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER NO. 97-03-DWQ NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT NO. CAS000001

Who Must Submit

The facility operator must submit an NOI for each industrial facility that is required by U.S. Environmental Protection Agency (U.S.EPA) regulations to obtain a storm water permit. The required industrial facilities are listed in Attachment 1 of the General Permit and are also listed in 40 Code of Federal Regulations Section 122.26(b)(14).

The facility operator is typically the owner of the business or operation where the industrial activities requiring a storm water permit occur. The facility operator is responsible for all permit related activities at the facility.

Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. Landowners may also file an NOI for a facility if the landowner, rather than the facility operator, is responsible for compliance with this General Permit.

How and Where to Apply

The completed NOI form, a site map, and appropriate fee must be mailed to the State Water Resources Control Board (State Water Board) at the following address:

State Water Resources Control Board
Division of Water Quality
P.O. Box 1977
Sacramento, CA 95812-1977
Attn: Storm Water Permitting Unit

Please Note: Do not send the original or copies of the NOI submittal to the Regional Water Quality Control Board (Regional Water Board). The original NOI will be forwarded to the Regional Water Board after processing.

Do not send a copy of your Storm Water Pollution Prevention Plan (SWPPP) with your NOI submittal. Your SWPPP is to be kept on site and made available for review upon request.

When to Apply

Facility operators of existing facilities must file an NOI in accordance with these instructions by March 30, 1992. Facility

operators of new facilities (those beginning operations after March 30, 1992) must file an NOI in accordance with these instructions at least 14 days prior to the beginning of operations.

Once the completed NOI, site map, and appropriate fee have been submitted to the State Water Board, your NOI will be processed and you will be issued a receipt letter with a Waste Discharge Identification (WDID) Number. Please refer to this number when you contact either the State or Regional Water Boards.

Fees

The annual fee is $700. Feedlots pay a one time fee of $2,000 fee. Checks should be made payable to: SWRCB

Change of Information

If the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form. Section I of the line-by-line instructions includes information regarding changes to the NOI.

Questions

If you have any questions completing the NOI, please call the appropriate Regional Water Board (Attachment 2) or the State Water Board at (916) 341-5538.

NOI LINE-BY-LINE INSTRUCTIONS

Please type or print your responses on the NOI. Please complete the NOI form in its entirety and sign the certification.

Section I--NOI STATUS

Check box "A" if this is a new NOI registration.

Check box "B" if you are reporting changes to the NOI (e.g., new contact person, phone number, mailing address). Include the facility WDID #. Highlight all the information that has been changed.

Please note that a change of information **does not** apply to a change of facility operator or a change in the location of the facility. These changes require a Notice of Termination (NOT) and submittal of a new NOI and annual fee. Contact the State Water Board or Regional Water Boards for more information on the NOT Form and instructions.

Regardless of whether you are submitting a new or revised NOI, you must complete the NOI in its entirety and the NOI must be signed.

Section II--Facility Operator Information

Part A: The facility operator is the legal entity that is responsible for all permit related compliance activities at the facility. In most cases, the facility operator is the owner of the business or operation where the industrial activity occurs. Give the legal name and the address of the person, firm, public organization, or any other entity that is responsible for complying with the General Permit.

Part B: Check the box that indicates the type of operation.

Section III--Facility Site Information

Part A: Enter the facility's official or legal name and provide the address. Facilities that do not have a street address must provide cross-streets or parcel numbers. Do not include a P.O. Box address in Part A.

Part B: Enter the mailing address of the facility if different than Part A. This address may be a P.O. Box.

The contact person should be the plant or site manager who is familiar with the facility and responsible for overseeing compliance of the General Permit requirements.

Part C: Enter the total size of the facility in either acres or square feet. Also include the percentage of the site that is impervious (areas that water cannot soak into the ground, such as concrete, asphalt, and rooftops).

Part D: Determine the Standard Industrial Classification (SIC) code which best identifies the industrial activity that is taking place at the facility. This information can be obtained by referring to the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget which is available at public libraries. The code you determine should identify the industrial activity that requires you to submit the NOI. (For example, if the business is high school education and the activity is school bus maintenance, the code you choose would be bus maintenance, not education.) Most facilities have only one code; however,

additional spaces are provided for those facilities that have more than one activity.

Part E: Identify the title of the industrial activity that requires you to submit the NOI (e.g., the title of SIC Code 2421 is Sawmills and Planing Mills, General). If you cannot identify the title, provide a description of the regulated activity(s).

Section IV--Address for Correspondence

Correspondence relative to the permit will be mailed occasionally. Check the box which indicates where you would like such correspondence delivered. If you want correspondence sent to another contact person or address different than indicated in Section II or Section III then include the information on an extra sheet of paper.

Section V--Billing Address Information

To continue coverage under the General Permit, the annual fee must be paid. Use this section to indicate where the annual fee invoices should be mailed. Enter the billing address if different than the address given in Sections II or III.

Section VI--Receiving Water Information

Provide the name of the receiving water where storm water discharge flows from your facility. A description of each option is included below.

1. Directly to waters of the United States: Storm water discharges directly from the facility to a river, creek, lake, ocean, etc. Enter the name of the receiving water (e.g., Boulder Creek).

2. Indirectly to waters of the United States: Storm water discharges over adjacent properties or right-of-ways prior to discharging to waters of the United States. Enter the name of the closest receiving water (e.g., Clear Creek).

Section VII--Implementation of Permit Requirements

Parts A and B: Check the boxes that best describe the status of the Storm Water Pollution Prevention Plan (SWPPP) and the Monitoring Program.

Part C: Check yes or no to questions 1 through 4. If you answer no to any question, you need to assign a person to these tasks immediately.

As a permit holder you are required to have an SWPPP and Monitoring Program in place prior to the beginning of facility operations.

Failure to do so is in direct violation of the General Permit. Do not send a copy of your SWPPP with your NOI submittal.

Please refer to Sections A and B of the General Permit for additional information regarding the SWPPP and Monitoring Program.

Section VIII--Site Map

Provide a "to scale" drawing of the facility and its immediate surroundings. Include as much detail about the site as possible. At a minimum, indicate buildings, material handling and storage areas, roads, names of adjacent streets, storm water discharge points, sample collection points, and a north arrow. Whenever possible limit the map to a standard size sheet of paper (8.5" x 11" or 11" x 17"). **Do not send blueprints** unless you are sending one page and it meets the size limits as defined above.

A location map may also be included, especially in cases where the facility is difficult to find, but are not to be submitted as a substitute for the site map. The location map can be created from local street maps and U.S. Geological Survey (USGS) quadrangle maps, etc.

A revised site map must be submitted whenever there is a significant change in the facility layout (e.g., new building, change in storage locations, boundary change, etc.).

Section IX--Certification

This section should be read by the facility operator. The certification provides assurances that the NOI and site map were completed by the facility operator in an accurate and complete fashion and with the knowledge that penalties exist for providing false information. It also requires the Responsible Party to certify that the provisions in the General Permit will be complied with.

The NOI must be signed by:

For a Corporation: a responsible corporate officer (or authorized individual).

For a Partnership or Sole Proprietorship: a general partner or the proprietor, respectively.

For a Municipality, State, or other non-Federal Public Agency: either a principal executive officer or ranking elected official.

For a Federal Agency: either the chief or senior executive officer of the agency.

State of California
State Water Resources Control Board

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE
GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH **INDUSTRIAL ACTIVITY** (WQ ORDER No. 97-03-DWQ)
(*Excluding Construction Activities*)

SECTION I. NOI STATUS (please check only one box)

A. [ ] New Permittee B. [ ] Change of Information WDID # |__|__|__|__|__|__|__|__|__|__|__|__|

SECTION II. FACILITY OPERATOR INFORMATION (See Instructions)

A. NAME: | Phone: |__|__|__|--|__|__|__|--|__|__|__|__|

Mailing Address:

City: | State: | Zip Code:

Contact Person:

B. OPERATOR TYPE:
(*check one*) 1.[ ] Private 2.[ ]City 3.[ ]County 4.[ ]State 5.[ ]Federal 6.[ ]Special District 7.[ ]Gov. Combo

SECTION III. FACILITY SITE INFORMATION

A. FACILITY NAME | Phone:

Facility Location: | County:

City: | State: CIA | Zip Code:

B. MAILING ADDRESS:

City: | State: | Zip Code:

Contact Person:

C. FACILITY INFORMATION (check one)
Total Size of Site: Acres [ ] Sq. Ft. [ ] | Percent of Site Impervious (*including rooftops*) %

D. SIC CODE(S) OF REGULATED ACTIVITY: E. REGULATED ACTIVITY (*describe each SIC code*):

1.

2.

3.

FOR STATE USE ONLY:

SECTION IV. ADDRESS FOR CORRESPONDENCE

|_| Facility Operator Mailing Address (Section II) |_| Facility Mailing Address (Section III, B.) |_| Both

TION V. BILLING ADDRESS INFORMATION

SEND BILL TO: [ ]Facility Operator Mailing Address (Section II) [ ]Facility Mailing Address (Section III, B.) [ ]Other (*enter information below*)

Name:	Phone: |_|_|_|--|_|_|_|--|_|_|_|_|
Mailing Address:	
City:	State: __| Zip Code: |_|_|_|_|_|--|_|_|_|_|
Contact Person:	

SECTION VI. RECEIVING WATER INFORMATION

Your facility's storm water discharges flow: (*check one*) [ ] Directly OR [ ] Indirectly to waters of the United States.

Name of receiving water: ______________________________
(river, lake, stream, ocean, etc.)

SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (*check one*)
[ ] A SWPPP has been prepared for this facility and is available for review.
[ ] A SWPPP will be prepared and ready for review by (enter date): ____/____/____.

IONITORING PROGRAM (check one)
. Monitoring Program has been prepared for this facility and is available for review.
[ ] A Monitoring Program will be prepared and ready for review by (enter date): ____/____/____.

C. PERMIT COMPLIANCE RESPONSIBILITY
Has a person been assigned responsibility for:
1. Inspecting the facility throughout the year to identify any potential pollution problems? .... ____YES ____NO
2. Collecting storm water samples and having them analyzed? .... ____YES ____NO
3. Preparing and submitting an annual report by July 1 of each year?........ ____YES ____NO
4. Eliminating discharges other than storm water (*such as equipment or vehicle wash-water*) into the storm drain?........ ____YES ____NO

SECTION VIII. SITE MAP

I HAVE ENCLOSED A SITE MAP YES[ ] A new NOI submitted without a site map will be rejected.

SECTION IX. CERTIFICATION

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with."

Printed Name:

Signature: ______________________________ Date

Title:

DEFINITIONS

1. "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment measures, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may include any type of pollution prevention and pollution control measure necessary to achieve compliance with this General Permit.

2. Clean Water Act (CWA) means the Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; 33 USC. 1251 et seq.

3. "Facility" is a collection of industrial processes discharging storm water associated with industrial activity within the property boundary or operational unit.

4. "Non-Storm Water Discharge" means any discharge to storm sewer systems that is not composed entirely of storm water.

5. "Significant Materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA); any chemical the facility is required to report pursuant to Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

6. "Significant Quantities" is the volume, concentrations, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance; adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable water quality standards for the receiving water.

7. "Significant Spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 CFR 110.10 and 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

8. "Storm water" means storm water runoff, snow melt runoff, and storm water surface runoff and drainage. It excludes infiltration and runoff from agricultural land.

9. "Storm Water Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the facilities identified in Categories 1 through 9 of Attachment 1 of this General Permit, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials; manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

   For the facilities identified in Category 10 of Attachment 1 of this General Permit, the term only includes storm water discharges from all areas listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery <u>are exposed to storm water</u>.

   Material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph) include those facilities designated under 40 CFR 122.26(a)(1)(v).

ACRONYM LIST

BAT	Best Available Technology Economically Achievable
BCT	Best Conventional Pollutant Control Technology
BMPs	Best Management Practices
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Federal Superfund)
CFR	Code of Federal Regulations
CWA	Clean Water Act
General Permit	General Industrial Activities Storm Water Permit
GMP	Group Monitoring Plan
NEC	No Exposure Certification
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
O&G	Oil and Grease
RCRA	Resource, Conservation, and Recovery Act
Regional Water Board	Regional Water Quality Control Board
RQ	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act of 1986
SIC	Standard Industrial Classification
SMCRA	Surface Mining Control and Reclamation Act
SPCC	Spill Prevention Control and Countermeasures
State Water Board	State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
TOC	Total Organic Carbon
TSS	Total Suspended Solids
U.S. EPA	U.S. Environmental Protection Agency
WDID	Waste Discharger Identification
WDRs	Waste Discharge Requirements

EXHIBIT "D"

USC

UNIVERSITY OF SOUTHERN CALIFORNIA

An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County

by

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with the assistance of

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November 2002

The findings and views expressed in this report are solely those of the authors and not of the officers or the Board of Trustees of the University of Southern California.

EXHIBIT D

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STUDY OVERVIEW

A. Introduction

This study is the most comprehensive analysis to date of the potential costs required to meet new and emerging storm water regulations in the Los Angeles area. It confirms that advanced treatment of storm flows will likely be required to meet current and anticipated federal and state water quality standards. Such treatment will be extremely costly and will generate significantly negative economic consequences for our region. The principal study case, which contemplates 65 treatment plants to accommodate regional storm water requirements, shows that:

- The capital costs required to build new collection and treatment facilities range from $43.7 billion to treat flows from about 70% of the historic average annual storm events to $283.9 billion for 97% of the expected storm events.

- The net employment impacts depend on the period studied, a 15-year construction period, or a subsequent period of operations. In the first period, losses range from over 22,000 full-time jobs per year to treat 70% of the annual storm events to 139,000 full-time jobs per year to achieve 97% storm event coverage. The corresponding annual job losses for post-construction plant operations and maintenance range from 59,000 jobs to over 382,000.

- The present value (cost) of the net economic impacts from the project over 20 years ranges from −$25 billion to treat storms that drop ½ inch per day or less (70% of storms or 22 days per year) to −$156 billion for 97% coverage, or a six fold increase in costs to treat an average of nine additional days of runoff per year.

- Over 20 years, the present value (cost) of the net economic impacts to El Monte will range from –$399 million to –$2.56 billion, –$492 million to –$3.17 billion for Inglewood, –$737 million to –$4.66 billion for Pasadena, –$321 million to –$2.2 billion for Pomona, and –$1.2 billion to –$7.7 billion for Torrance.

- The 20 year present value (cost) of the net economic impacts to each L.A. County household for these required storm water facilities ranges from about –$6,670 to treat the smallest 70% of storms to –$41,760 to treat 97% of the expected annual storm events.

B. Background

Largely in response to lawsuits brought by environmental advocacy groups, state and federal regulators have dramatically expanded the scope of regional water quality controls to include storm water flows. Municipal Separate Storm Sewer System (MS4) permit provisions issued under the National Pollutant Discharge Elimination System (NPDES) program, together with issuance of the California Toxics Rule and the continuing expansion of the Los Angeles region's list of "impaired" waterbodies are greatly increasing the magnitude and scope of water quality regulations. Considering these developments, this study concludes that:

> ***"It is quite feasible, indeed likely, that the ultimate public policy result to these simultaneous requirements will be advanced treatment of storm water and urban runoff."***

Rainfall is naturally infrequent in the semi-arid Los Angeles area. On average, the basin experiences no rainfall, and thus no storm flows, for approximately 333 of 365 days per year (about 91% of the time). On the remaining 32 days per year, rain falling on natural canyons, residential areas, shopping centers, roads and other surfaces infiltrates into the ground or drains into catch basins, pipes, and flood control channels that eventually empty into the ocean. Previous protection programs recognized that there was no rationale for constructing facilities to divert and treat intermittent storm flows and focused on improving regional water quality without such drastic measures.

New state and federal programs, however, are generating numerous stringent water quality standards that even temporary rain-driven storm flows usually exceed. Many of these storm water standards, in fact, are more stringent than those for existing sewage treatment plants. To meet the new requirements, the Los Angeles region must build and maintain a very large network of new collection and treatment facilities, most of which will be idle for the 91% of each year during which no rain falls.

Several studies have estimated the costs of building these facilities, including a widely cited 1998 study for the California Department of Transportation, conducted by the water treatment and environmental engineering firm of Brown & Caldwell. This study found that construction of approximately 480 facilities to divert and treat flows from about 90% of the annual expected storm events would cost approximately $53.6 billion. The Los Angeles County Sanitation District, which operates most of the region's water treatment plants, subsequently reviewed the Brown & Caldwell study and concluded that the costs were more likely to be in the range of $65 billion.

Given the magnitude of these cost estimates, a multidisciplinary team of experts from USC was asked to provide an independent, comprehensive assessment of the regulatory requirements and projected storm water treatment costs in the Los Angeles region. The team was composed of environmental, engineering, planning, and economics professionals and employed the following approach:

(1) 70 years of daily rainfall data from 76 local rain gauge stations were analyzed to determine storm patterns and the volume of storm-related flows that would require treatment.

(2) The rainfall data were divided into three "scenarios" that approximate the 70%, 90% and 97% (22, 29, and 31 of 32 rainfall days respectively) cumulative distribution of the region's historic annual storm frequency.

(3) For each of the three rainfall scenarios, the 20-year capital and operations and maintenance (O&M) costs required to meet the new storm water regulations were estimated for three facility construction "cases." These cases include: (a) the Brown & Caldwell approach of using similar-size, regionally dispersed plants; (b) siting hydrology-sized plants in each of the 65 regional sub-basins (the study's "highlighted" or base case); and (c) a "political equity" approach that would site 130 hydrology-sized plants among each watershed and political jurisdiction.

(4) Net employment impacts resulting from treatment facility construction and O&M spending and offsetting household income reductions (largely attributable to associated increased taxes) were estimated for the region and most of the communities in the region.

(5) The present value of the net economic output generated by facility construction and O&M spending offset by reduced household spending was estimated for the region and most of the communities in the region.

(6) The present value of the net economic output generated by facility construction and O&M spending offset by reduced household spending was estimated for municipalities within and adjacent to Los Angeles County – highlighted for the examples of El Monte, Inglewood, Pasadena, Pomona and Torrance.

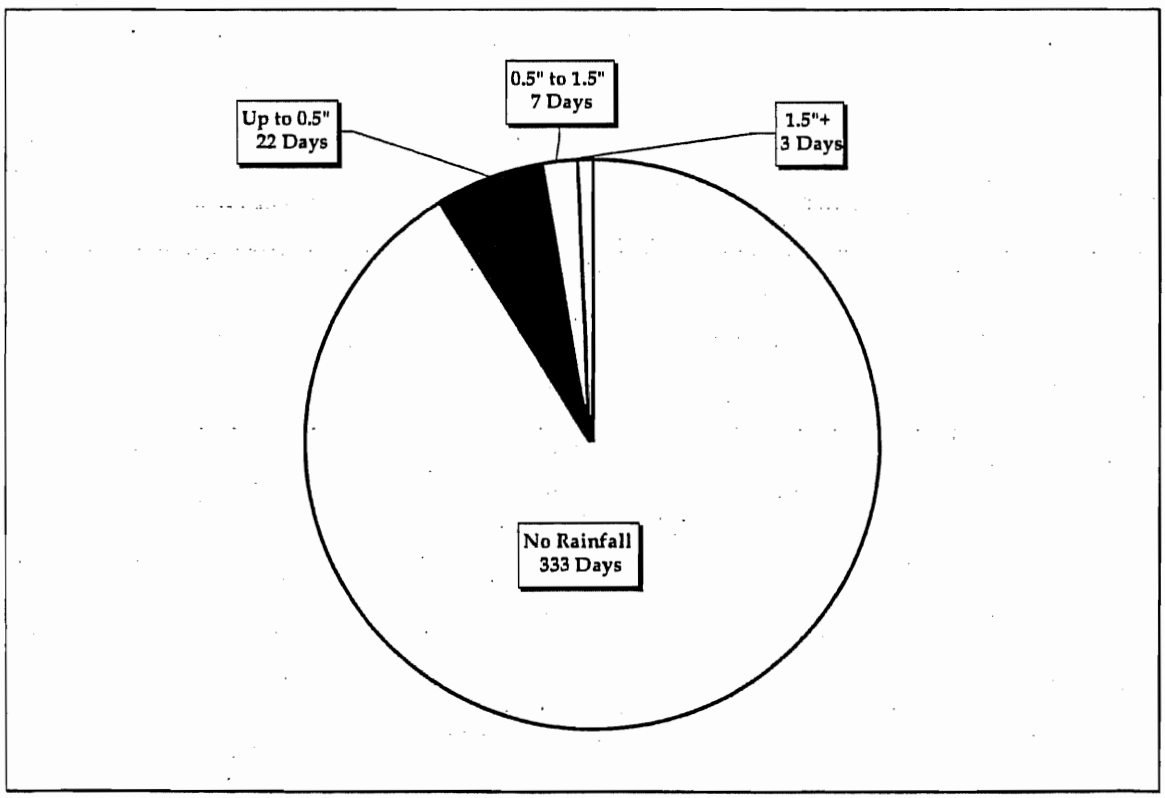
(7) The present values of the average net economic impacts to each Los Angeles County household for facility construction and operation in each of the construction and rainfall scenarios were estimated.

C. Key Findings

This study confirms that the advanced level of treatment required to meet new and emerging storm water regulations will impose very large burdens on the regional economy. This study's treatment facility capital cost estimate based on the Brown & Caldwell approach is over $102 billion, which is considerably higher than either the Brown & Caldwell ($53.6 billion) or the Los Angeles County Sanitation District ($65 billion) estimate for comparable treatment capacities. Much of the increase is due to this study's use of higher current land costs. Even if land costs are excluded, the study still projects that the Brown & Caldwell treatment case will cost approximately $64.9 billion to construct.

The study also demonstrates that storm water treatment costs and economic impacts greatly increase with the capacity of the facilities to treat rare, large storm events. On average, the Los Angeles area experiences about 32 days of rainfall per annum. Typically, 22 (70%) of these wet days result in 0-0.5 inches of rain, 0.5-1.5 inches fall on about 7 (20%) wet days, from 1.5 to 2.25 inches are recorded on an average of only 2 (7%) days each year, and more than 2.25" falls about 1 day (3%) per year. Rain-driven storm water treatment facilities are basically idle for approximately 333 of 365 days, or over 91% of the average year (see Chart 1).

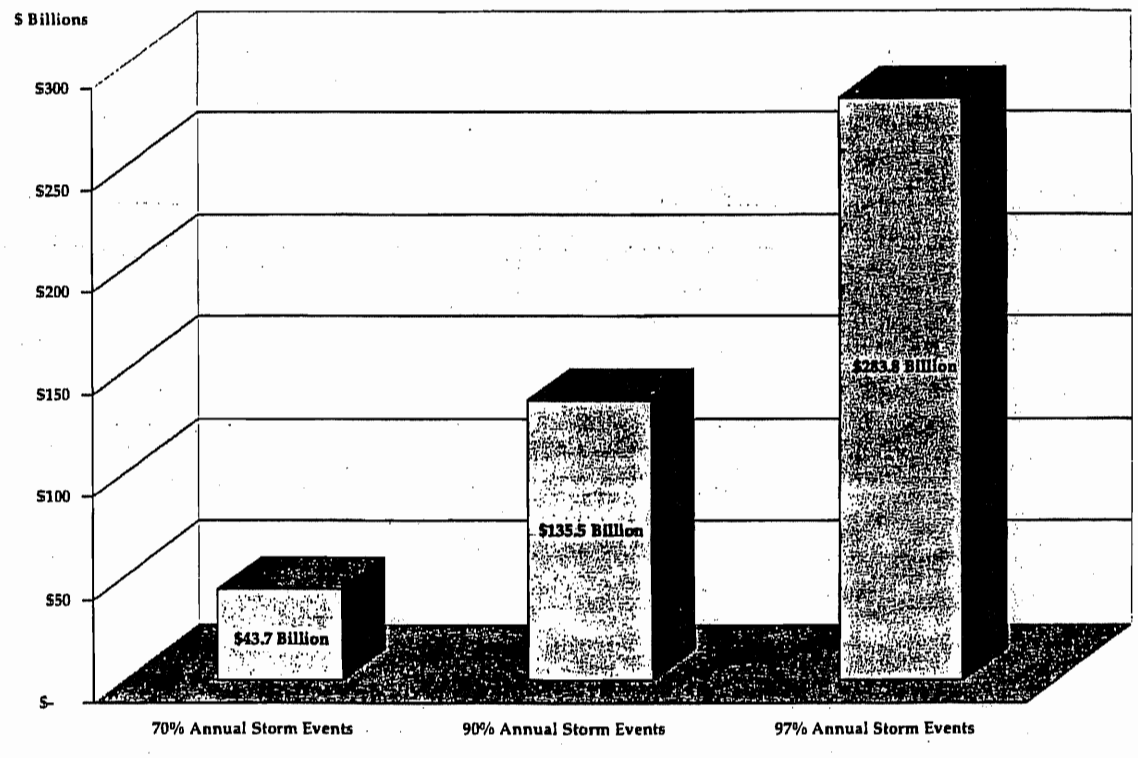
Chart 1
Average Annual Los Angeles Region Rainfall Over the Last 70 Years



The study examines the compliance costs and impacts associated with treatment of storm flows produced by 0-0.5" of rain (22 of 32 wet days, or 70% of the rain events per year), 0-1.25" of rain (the Brown & Caldwell assumption that corresponds to about 29 of 32 wet days or about 90% of the average rain events per year) and a 2.25" one-day storm (statistically about 97% of the average annual storm events). Costs and impacts were found to increase dramatically as storm water treatment capacity approaches the full annual rain event coverage.

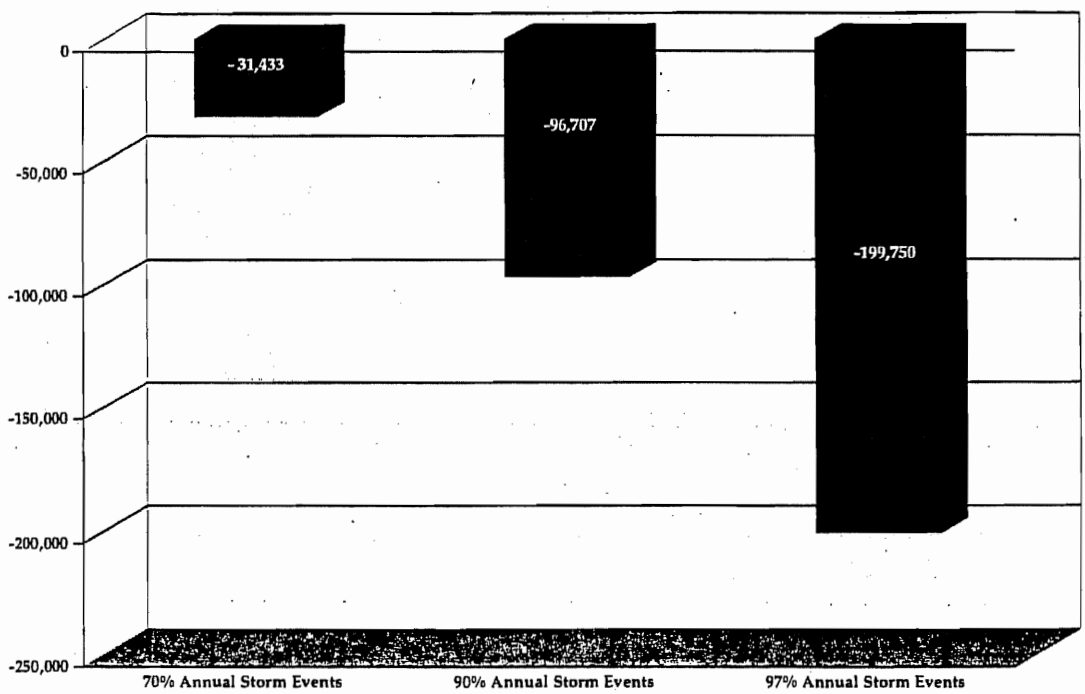
The study highlights the case of 65 plants, one in each major drainage sub-basin of the Los Angeles area, as a reasonably plausible engineering approach to address the region's new storm water discharge standards and requirements. To build a 65-plant system, the study estimates that the region would have to invest $43.7 billion for new collection and treatment capacity to accommodate the 22 days of flows generated by storms of less than 0.5 inch per day. These capital expenses increase to a total of $135.5 billion to build the capacity to accommodate the additional seven storm events per year that produce 0.5 –1.25 inches of rain per day. The cost of facilities that can treat 97% of the average daily rainfall drainage rises to nearly $283.9 billion. Even assuming that flows from fewer than 70% of the region's annual storm events are treated, advanced facilities will be very costly to construct (see Chart 2).

Chart 2
Collection and Treatment Facility Capital Costs
by Storm Event Scenario for the 65-Plant Case



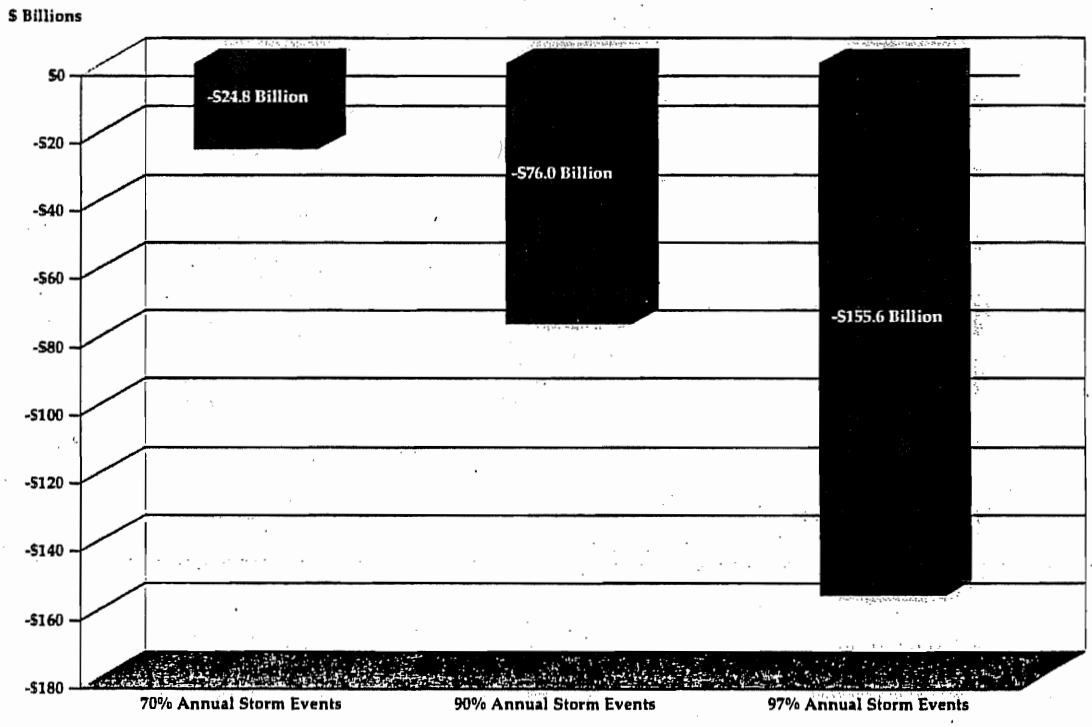
Expenditures of this magnitude will substantially affect the regional economy. The study estimates that the net employment impacts associated with the construction and operation of 65 treatment plants will be strongly negative. Any short-term positive employment stimulus will be more than offset by the long-term household income reductions necessary to pay for the new facilities. During the two decades of analysis, job losses will be larger in years 16-20, after the capital spending for new facilities in years 1-15 is completed. Taking a weighted average of the years from the two periods, the annual full-time equivalent ("person year") job losses will range from approximately 31,400 in the event that flows from 70% of the annual storm events are treated to 199,750 to achieve 97% coverage (see Chart 3).

Chart 3
Annual Net Full-Time Equivalent Employment Impacts by Storm Event Scenario for the 65-Plant Case



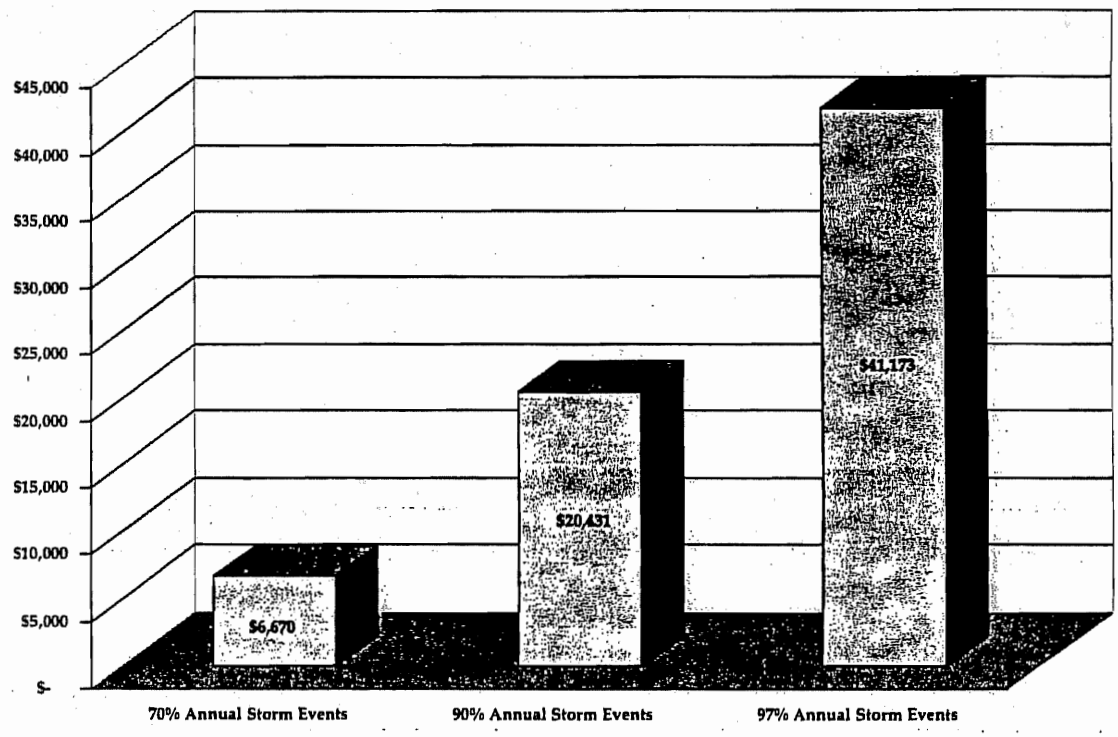
The study also estimates that the present value of the 20-year economic impacts associated with the 65-plant base case is strongly negative, again due primarily to higher taxes and lower household income and spending. The magnitude of these losses is predicted to range from a present value of –$24.8 billion to build facilities that can treat flows from 70% of the annual storm events to –$155.6 billion for 97% storm event coverage (see Chart 4).

Chart 4
Present Value of 20-Year Net Output Losses Generated by Storm Event Scenario for the 65-Plant Case



About 80% of the predicted economic impacts associated with storm water treatment facilities will be focused in Los Angeles County. According to the 2000 census, the County was home to approximately 3 million households.. This study estimates that each County household will "pay" (experience a negative economic impact) of about $6,670 over 20 years to build facilities that can treat 70% of the expected storms and about $42,000 to achieve 97% storm coverage (see Chart 5).

Chart 5
Present Value of the 20-Year Cost Burden per L.A. County Household by Storm Event Scenario for the 65-Plant Case



The study's analysis of the dispersed, Brown & Caldwell plant siting approach and 130-plant construction cases is largely consistent with the 65-plant case assessment. In each instance, costs and impacts increase substantially as the storm water treatment capacity approaches full annual storm flow coverage (see Chart 6).

Chart 6
Summary of Study Findings by Construction Case And Level of Treatment

Construction Case	Treatment Capacity: 70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Collection & Treatment Facility Capital Costs ($ Bil)			
Dispersed (B&C Approach)	$37	$102	$192
65 Larger Plants	$44	$136	$284
130 Smaller Plants	$48	$148	$326
Present Value of 20-Year Regional Net Output Losses ($ Bil)			
Dispersed (B&C Approach)	-$23	-$64	-$122
65 Larger Plants	-$25	-$76	-$156
130 Smaller Plants	-$26	-$80	-$170
Present Value of 20-Year Cost per LA County Household			
Dispersed (B&C Approach)	$6,089	$17,269	$32,881
65 Larger Plants	$6,674	$20,432	$41,763
130 Smaller Plants	$7,064	$21,469	$45,605
Average Annual Full Time Equivalent Job Losses			
Dispersed (B&C Approach)	-26,776	-74,899	-141,783
65 Larger Plants	-31,433	-96,707	-199,750
130 Smaller Plants	-32,605	-99,313	-214,463

The study analyzes the net fiscal impact of the three treatment plant cases and three rainfall scenarios for most municipalities in Los Angeles County and in neighboring areas. Most municipalities will experience significant negative economic impacts over 20 years due to the costs of constructing, operating, and financing the required storm water treatment facilities. This result is illustrated in the study with specific reference to five geographically distinct communities, El Monte, Inglewood, Pasadena, Pomona and Torrance (see Chart 7).

Chart 7
Summary of Present Value of Net Economic Losses Over 20 Years by Community, Construction Case, and Level of Treatment ($ Millions)

	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Dispersed (B&C Approach)			
El Monte	-$225	-$548	-$1,069
Inglewood	-$180	-$489	-$1,392
Pasadena	-$458	-$1,626	-$3,252
Pomona	-$10	-$133	-$499
Torrance	-$561	-$2,470	-$4,485
65 Larger Plants			
El Monte	-$399	-$1,232	-$2,569
Inglewood	-$492	-$1,522	-$3,174
Pasadena	-$737	-$2,188	-$4,664
Pomona	-$321	-$1,061	-$2,230
Torrance	-$1,201	-$3,714	-$7,745
130 Smaller Plants			
El Monte	-$238	-$915	-$2,064
Inglewood	-$427	-$1,428	-$3,143
Pasadena	-$942	-$2,978	-$6,483
Pomona	-$167	-$854	-$1,887
Torrance	-$1,075	-$3,382	-$7,497

D. Conclusion

This study is consistent with previous analyses of Los Angeles County storm water cost burdens. It demonstrates that the collection and treatment of storm flows would very likely have enormous economic and policy consequences for our region. While the impact on the greater Southern California region is described in detail in Appendix A of this study, Charts 8, 9, and 10 summarize the consequences for each MS4 Permit city, the Los Angeles County unincorporated area, and many communities within the permit jurisdiction. Chart 8 is based on the results for the principal 65 treatment plant analysis, while Chart 9 summarizes the 130 treatment plant analysis, and Chart 10 is based on assumptions similar to those used in the 1998 Brown and Caldwell report for the California Department of Transportation.

- New regulations and standards increasingly require, for the first time, that communities throughout Los Angeles County collect and treat intermittent storm flows with advanced, expensive technology. ***Despite considerable population gains, regional water quality has been improving over time without such requirements.***

- To meet these new mandates, communities in the greater Los Angeles and surrounding areas must construct, maintain and operate a very large network of collection and treatment plants and facilities that presently does not exist. ***Most of these new facilities will remain idle for more than 90% of the time each year.***

- The cost and size of the new collection and treatment facilities increase substantially as they are designed to accommodate a larger number of expected annual rain events. ***It will cost about six times more to build a system that can handle 97% versus 70% of the region's annual average storm days, or to achieve about 9 additional days of storm event coverage.***

- Over the twenty-year period analyzed in the report, most communities in the greater Los Angeles area will experience very significant employment and net economic losses caused by the new storm water regulations. ***The region as a whole is projected to lose from 27,000 to 214,000 full time jobs per year and suffer a net economic loss of from $23 billion to $170 billion to collect and treat intermittent storm flows.***

Chart 8

NET ECONOMIC IMPACT IN LOS ANGELES COUNTY BY CITY AND CDP, YEARS 1-20

65 SMALLER PLANTS

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Acton	-$58,536	-$377,647	-$825,425
Agoura Hills	-$20,178,314	-$100,646,676	-$232,085,757
Alhambra	-$366,577,816	-$1,133,077,137	-$2,362,102,206
Alondra Park	-$19,742,466	-$61,038,797	-$127,311,488
Altadena	-$102,904,071	-$318,186,490	-$663,788,483
Arcadia	-$367,695,271	-$1,137,180,717	-$2,371,699,940
Artesia	-$135,587,368	-$419,203,608	-$874,356,212
Avocado Heights	-$70,208,320	-$216,906,214	-$451,682,050
Azusa	$1,419,948,688	$4,669,061,039	$10,283,191,920
Baldwin Park	-$173,306,074	-$536,095,302	-$1,118,251,375
Bell	-$131,945,553	-$407,848,009	-$850,266,664
Bellflower	-$253,509,284	-$783,851,463	-$1,635,179,255
Bell Gardens	-$108,655,082	-$335,969,696	-$700,890,412
Beverly Hills	-$561,880,841	-$1,736,176,437	-$3,616,973,383
Bradbury	-$5,573,746	-$17,256,587	-$35,987,456
Burbank	-$650,627,462	-$2,010,966,543	-$4,191,783,190
Calabasas	$12,417,334	$297,817	-$32,277,444
Carson	-$406,589,609	-$1,256,045,981	-$2,615,420,637
Cerritos	-$316,216,099	-$977,353,178	-$2,037,215,929
Charter Oak	-$35,188,709	-$108,824,200	-$227,102,310
Citrus	-$19,546,643	-$60,452,326	-$126,166,610
Claremont	-$97,090,427	-$365,108,012	-$802,796,288
Commerce	-$201,606,058	-$622,345,846	-$1,293,978,132
Compton	-$276,514,908	-$854,675,971	-$1,781,606,932
Covina	-$303,009,404	-$937,030,571	-$1,954,684,721
Cudahy	-$56,668,591	-$175,243,436	-$365,671,625
Culver City	-$484,142,453	-$1,496,752,173	-$3,121,436,691
Del Aire	-$48,137,206	-$148,785,384	-$310,148,668
Diamond Bar	-$96,039,610	-$334,625,486	-$700,654,464
Downey	-$417,548,584	-$1,290,561,844	-$2,690,105,232
Duarte	-$52,123,981	-$154,466,817	-$309,024,614
East Compton	-$9,490,971	-$29,342,488	-$61,195,741
East La Mirada	$17,759,367	-$54,908,194	-$114,527,038
East Los Angeles	-$264,853,793	-$818,335,578	-$1,704,646,929
East Pasadena	-$103,337,722	-$319,625,942	-$667,206,980
East San Gabriel	-$63,461,996	-$196,298,234	-$409,802,202
El Monte	-$398,658,472	-$1,232,230,196	-$2,568,760,027
El Segundo	$705,854,813	$2,129,079,443	$4,269,428,470
Florence-Graham	-$92,409,679	-$285,631,218	-$595,432,112

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Gardena	-$324,601,630	-$1,003,600,452	-$2,093,294,791
Glendale	-$1,020,336,069	-$3,159,794,904	-$6,646,513,484
Glendora	-$133,384,161	-$395,528,141	-$791,625,672
Hacienda Heights	-$148,625,031	-$459,517,049	-$958,448,555
Hawaiian Gardens	-$33,400,030	-$103,253,630	-$215,314,673
Hawthorne	-$308,563,416	-$954,072,751	-$1,990,239,062
Hermosa Beach	-$160,161,692	-$495,298,598	-$1,033,562,537
Hidden Hills	-$6,324,301	-$19,500,851	-$40,453,889
Huntington Park	-$232,234,227	-$718,038,792	-$1,497,761,126
Industry	-$339,035,437	-$1,112,864,892	-$2,300,801,567
Inglewood	-$492,288,935	-$1,521,964,606	-$3,174,115,672
Irwindale	$23,460,475	$11,041,421	-$33,688,226
La Canada Flintridge	-$99,418,311	-$307,232,191	-$641,070,936
La Crescenta-Montrose	-$74,908,595	-$231,642,699	-$483,329,614
Ladera Heights	-$26,948,069	-$83,278,991	-$173,541,933
La Habra Heights	$64,240,434	$151,623,481	$319,764,598
Lakewood	-$391,503,458	-$1,210,712,325	-$2,526,394,885
La Mirada	-$127,903,450	-$395,100,735	-$822,625,496
La Puente	-$102,693,555	-$317,584,488	-$662,738,355
La Verne	$85,854,733	$179,359,824	$346,705,316
Lawndale	-$118,403,168	-$366,150,177	-$764,016,107
Lennox	-$57,091,337	-$176,525,575	-$368,236,270
Lomita	-$114,802,906	-$355,045,717	-$740,965,425
Long Beach	$1,237,469,238	$3,880,108,741	$8,230,316,918
Los Angeles	-$9,958,406,520	-$29,837,656,414	-$61,552,800,902
Lynwood	-$131,659,211	-$407,020,916	-$848,791,302
Malibu	$240,678,433	$497,397,993	$868,215,926
Manhattan Beach	-$285,044,946	-$881,704,996	-$1,840,549,945
Marina del Rey	-$106,451,514	-$329,053,901	-$686,147,315
Mayflower Village	-$9,421,386	-$29,135,404	-$60,797,072
Maywood	-$70,155,384	-$216,825,395	-$451,914,934
Monrovia	-$140,490,768	-$536,004,592	-$1,065,512,788
Montebello	-$306,899,880	-$949,301,777	-$1,980,725,983
Monterey Park	-$245,365,944	-$758,457,245	-$1,581,301,876
North El Monte	-$8,048,714	-$24,875,082	-$51,842,700
Norwalk	-$280,994,426	-$868,695,985	-$1,811,561,942
Palos Verdes Estates	-$28,164,084	-$87,034,330	-$181,354,607
Paramount	-$144,131,424	-$445,411,887	-$928,146,470
Pasadena	-$736,509,128	-$2,187,569,594	-$4,664,167,914
Pico Rivera	$2,204,838,494	$6,800,529,265	$14,188,392,616
Pomona	-$321,254,696	-$1,060,623,305	-$2,229,806,257
Rancho Palos Verdes	-$150,423,099	-$465,245,084	-$971,110,323
Redondo Beach	-$392,037,256	-$1,212,166,333	-$2,528,615,198

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Rolling Hills	-$2,962,542	-$9,158,307	-$19,097,125
Rolling Hills Estates	-$47,019,722	-$145,433,221	-$303,587,641
Rosemead	-$165,983,590	-$513,011,954	-$1,069,195,335
Rowland Heights	-$187,576,442	-$579,910,857	-$1,209,416,029
San Dimas	-$66,480,841	-$290,243,744	-$588,495,245
San Fernando	$191,100,455	$604,512,811	$1,137,541,074
San Gabriel	-$193,913,821	-$599,625,469	-$1,251,048,909
San Marino	-$43,964,435	-$135,875,472	-$283,190,267
Santa Clarita	$3,044,177,510	$10,867,146,045	$25,293,923,794
Santa Fe Springs	-$151,393,580	-$466,887,269	-$968,831,124
Santa Monica	-$927,352,193	-$2,866,209,766	-$5,974,246,103
Sierra Madre	-$42,866,728	-$132,540,689	-$276,474,313
Signal Hill	-$78,821,236	-$243,369,988	-$506,232,893
South El Monte	-$60,190,653	-$185,848,376	-$386,601,443
South Gate	-$252,475,412	-$780,576,631	-$1,628,011,287
South Pasadena	-$128,019,914	-$395,729,888	-$825,081,697
South San Gabriel	-$18,463,116	-$57,078,705	-$119,032,146
South San Jose Hills	-$21,624,542	-$66,868,512	-$139,515,617
South Whittier	-$104,530,034	-$323,163,257	-$673,955,392
Temple City	-$138,787,412	-$429,177,228	-$895,492,871
Torrance	-$1,201,424,130	-$3,714,032,033	-$7,744,554,176
Valinda	-$50,091,383	-$154,921,719	-$323,342,242
Val Verde	$1,304,330	$4,049,084	$7,981,178
Vernon	-$112,764,628	-$347,548,285	-$720,322,609
View Park-Windsor Hills	-$34,095,044	-$105,385,140	-$219,687,706
Vincent	-$58,318,124	-$180,360,023	-$376,398,698
Walnut	-$60,597,796	-$187,563,706	-$390,782,153
Walnut Park	-$35,958,412	-$111,191,259	-$231,986,664
West Athens	-$17,678,731	-$54,644,346	-$113,916,192
West Carson	-$87,643,603	-$270,893,461	-$564,684,416
West Compton	-$24,319,366	-$75,008,865	-$155,685,581
West Covina	-$449,892,865	-$1,391,230,859	-$2,902,883,619
West Hollywood	-$425,358,337	-$1,314,821,457	-$2,741,202,536
Westlake Village	$20,845,414	$20,161,544	-$2,682,856
Westmont	-$51,990,031	-$160,754,176	-$335,348,175
West Puente Valley	-$20,895,443	-$64,584,460	-$134,625,532
West Whittier-Los Nietos	-$65,576,299	-$202,760,833	-$422,965,362
Whittier	-$297,661,026	-$938,649,143	-$1,956,281,331
Willowbrook	-$64,626,418	-$199,646,389	-$415,710,877
LOS ANGELES - UNINCOR	$2,019,749,885	$5,041,152,264	$9,814,300,143
Total	-$18,776,308,256	-$57,436,098,900	-$117,227,732,638

Source: Table A25

Chart 9

NET ECONOMIC IMPACT IN LOS ANGELES COUNTY BY CITY AND CDP, YEARS 1-20

130 SMALLER PLANTS

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Acton	-$190,607	-$738,710	-$1,791,204
Agoura Hills	-$30,583,528	-$127,608,263	-$311,024,970
Alhambra	-$348,696,221	-$1,121,189,624	-$2,495,853,499
Alondra Park	$121,687,214	$212,258,121	$468,362,890
Altadena	-$112,274,592	-$342,937,266	-$751,689,103
Arcadia	-$284,555,689	-$976,160,249	-$2,182,880,494
Artesia	-$147,563,856	-$451,054,674	-$988,691,143
Avocado Heights	-$76,199,427	-$232,996,658	-$509,377,822
Azusa	-$179,013,647	-$546,844,224	-$1,198,158,587
Baldwin Park	-$180,979,110	-$562,241,769	-$1,234,745,276
Bell	-$52,079,548	-$263,524,164	-$626,995,276
Bellflower	-$275,778,659	-$843,221,275	-$1,847,985,719
Bell Gardens	-$82,228,460	-$292,306,577	-$677,596,487
Beverly Hills	-$609,722,976	-$1,863,631,130	-$4,076,779,846
Bradbury	-$6,101,660	-$18,636,994	-$40,849,680
Burbank	-$557,798,042	-$1,757,971,765	-$3,881,483,007
Calabasas	$36,573,401	$43,193,812	$58,802,100
Carson	-$233,098,438	-$760,485,146	-$1,781,548,888
Cerritos	-$49,266,778	-$480,747,875	-$1,013,988,906
Charter Oak	-$38,411,324	-$117,336,767	-$257,325,019
Citrus	-$20,072,352	-$61,872,535	-$135,818,269
Claremont	-$169,418,516	-$517,515,854	-$1,133,177,568
Commerce	-$139,945,648	-$515,997,782	-$1,129,005,959
Compton	-$248,102,048	-$818,269,103	-$1,847,998,254
Covina	-$109,445,885	-$444,089,711	-$994,204,757
Cudahy	-$60,257,927	-$185,880,442	-$408,503,754
Culver City	-$527,921,266	-$1,612,355,726	-$3,532,420,048
Del Aire	-$52,452,444	-$160,177,567	-$350,688,077
Diamond Bar	-$78,850,537	-$289,762,486	-$647,769,689
Downey	-$353,243,112	-$1,193,909,677	-$2,711,652,150
Duarte	-$64,440,868	-$237,073,448	-$561,425,251
East Compton	-$9,481,302	-$29,952,301	-$66,560,576
East La Mirada	-$19,369,802	-$59,161,030	-$129,642,309
East Los Angeles	-$208,052,776	-$725,059,273	-$1,594,076,044
East Pasadena	-$112,072,628	-$342,572,697	-$751,829,703
East San Gabriel	$224,205,154	$624,657,151	$1,287,022,746
El Monte	-$237,577,213	-$914,953,560	-$2,063,928,943
El Segundo	-$108,165,792	-$387,614,269	-$892,461,845
Florence-Graham	-$100,138,804	-$306,448,615	-$671,572,759

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Gardena	-$292,755,651	-$962,644,806	-$2,120,862,833
Glendale	-$1,299,020,953	-$3,968,567,196	-$8,694,861,728
Glendora	-$254,380,067	-$776,982,881	-$1,702,962,650
Hacienda Heights	-$162,119,743	-$495,161,141	-$1,085,042,789
Hawaiian Gardens	-$36,049,696	-$110,507,400	-$242,140,792
Hawthorne	-$308,588,234	-$973,716,061	-$2,124,316,540
Hermosa Beach	-$110,931,299	-$408,162,429	-$941,946,852
Hidden Hills	$1,620,908	-$4,505,056	-$18,221,742
Huntington Park	-$253,317,808	-$773,718,792	-$1,695,623,282
Industry	-$259,757,617	-$937,616,006	-$2,088,134,092
Inglewood	-$427,401,840	-$1,427,949,647	-$3,142,728,627
Irwindale	$96,688,934	$141,797,695	$276,409,496
La Canada Flintridge	-$108,697,612	-$332,186,833	-$727,972,339
La Crescenta-Montrose	-$81,749,722	-$249,712,937	-$547,496,269
Ladera Heights	-$29,345,962	-$89,607,258	-$196,089,950
La Habra Heights	-$17,612,157	-$58,328,822	-$131,906,724
Lakewood	-$282,263,713	-$1,026,365,263	-$2,319,385,610
La Mirada	-$139,134,008	-$424,740,597	-$928,239,976
La Puente	-$52,787,183	-$224,867,323	-$548,311,951
La Verne	-$137,152,289	-$419,769,832	-$920,605,971
Lawndale	-$91,647,500	-$321,210,784	-$735,215,976
Lennox	-$62,281,292	-$190,247,387	-$416,971,351
Lomita	-$124,876,886	-$381,976,729	-$838,200,071
Long Beach	$4,132,207,785	$13,536,333,692	$30,550,648,495
Los Angeles	-$12,141,945,399	-$36,972,850,382	-$79,875,809,304
Lynwood	-$141,985,997	-$435,424,141	-$955,559,116
Malibu	$273,088,211	$751,869,036	$1,577,559,337
Manhattan Beach	-$227,261,994	-$788,339,976	-$1,788,995,571
Marina del Rey	-$116,446,290	-$355,610,331	-$778,681,569
Mayflower Village	$2,146,766	-$7,829,375	-$32,626,373
Maywood	-$25,195,250	-$136,637,876	-$361,603,910
Monrovia	-$240,823,679	-$747,484,814	-$1,649,416,065
Montebello	-$349,100,779	-$1,066,991,957	-$2,338,041,485
Monterey Park	-$188,027,600	-$662,988,142	-$1,459,891,106
North El Monte	$29,792,684	$63,716,023	$134,747,437
Norwalk	-$304,357,432	-$930,444,455	-$2,038,745,149
Palos Verdes Estates	$49,273,613	$62,726,552	$66,238,529
Paramount	-$49,098,828	-$83,417,279	-$251,242,591
Pasadena	-$941,843,317	-$2,977,709,897	-$6,483,083,765
Pico Rivera	$1,322,779	-$35,586,317	-$11,200,269
Pomona	-$167,382,539	-$854,342,508	-$1,886,823,351
Rancho Palos Verdes	-$37,890,384	-$254,584,236	-$665,897,252
Redondo Beach	-$375,440,036	-$1,203,684,730	-$2,684,701,189

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Rolling Hills	-$1,469,957	-$6,421,212	-$15,561,076
Rolling Hills Estates	-$51,275,326	-$156,724,173	-$343,916,561
Rosemead	$2,601,693	-$197,152,880	-$521,632,621
Rowland Heights	-$204,552,573	-$624,740,420	-$1,368,748,837
San Dimas	-$93,394,404	-$364,466,150	-$812,028,268
San Fernando	-$157,016,818	-$479,565,735	-$1,050,749,366
San Gabriel	-$152,719,891	-$528,994,112	-$1,200,851,013
San Marino	-$41,831,769	-$129,265,845	-$284,726,051
Santa Clarita	$4,536,851,743	$17,715,433,393	$42,549,462,108
Santa Fe Springs	-$18,205,510	-$104,606,279	-$261,891,536
Santa Monica	-$1,008,919,994	-$3,082,514,161	-$6,747,169,557
Sierra Madre	-$46,523,030	-$142,361,383	-$312,151,955
Signal Hill	-$85,361,896	-$260,822,064	-$569,482,420
South El Monte	-$17,500,275	-$107,811,371	-$265,449,106
South Gate	-$168,639,876	-$636,481,597	-$1,506,693,193
South Pasadena	-$139,431,789	-$425,915,120	-$932,858,487
South San Gabriel	-$20,131,095	-$61,482,954	-$134,693,161
South San Jose Hills	-$8,066,588	-$41,404,544	-$88,926,868
South Whittier	-$113,990,823	-$348,150,624	-$762,748,439
Temple City	-$119,226,780	-$386,997,900	-$852,725,661
Torrance	-$1,074,550,213	-$3,381,605,512	-$7,497,063,527
Valinda	-$54,690,049	-$167,070,070	-$366,460,365
Val Verde	-$63,378	-$193,417	-$422,005
Vernon	-$121,783,817	-$371,288,016	-$805,821,883
View Park-Windsor Hills	-$37,154,707	-$113,463,150	-$248,426,613
Vincent	-$61,329,965	-$189,984,123	-$416,763,164
Walnut	-$64,667,574	-$199,002,283	-$435,472,280
Walnut Park	-$39,236,089	-$119,848,010	-$262,738,823
West Athens	-$19,265,071	-$58,832,190	-$128,819,486
West Carson	-$95,500,089	-$291,634,650	-$638,490,782
West Compton	-$26,340,298	-$80,339,259	-$174,736,166
West Covina	-$316,523,971	-$1,154,725,148	-$2,526,766,030
West Hollywood	-$463,208,503	-$1,415,018,830	-$3,098,979,844
Westlake Village	$24,234,310	$22,692,651	-$1,370,119
Westmont	-$56,721,853	-$173,252,544	-$379,735,667
West Puente Valley	$146,703,455	$367,110,940	$756,701,596
West Whittier-Los Nietos	-$71,547,945	-$218,536,295	-$478,962,976
Whittier	-$300,511,734	-$986,402,329	-$2,221,186,060
Willowbrook	-$70,347,037	-$214,759,141	-$469,374,571
LOS ANGELES - UNINCOR	$1,439,855,107	$5,011,597,587	$11,748,122,399
Total	-$19,826,871,709	-$60,232,245,005	-$127,641,574,464

Source: Table A25

Chart 10

NET ECONOMIC IMPACT IN LOS ANGELES COUNTY BY CITY AND CDP, YEARS 1-20

Dispersed (B & C) Approach

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Acton	$3,266,993	$9,050,739	$14,226,237
Agoura Hills	-$34,223,169	$39,226,958	$59,218,563
Alhambra	-$314,567,802	-$552,439,929	-$1,109,025,349
Alondra Park	$98,580,146	-$46,684,620	-$87,859,344
Altadena	-$88,165,294	-$242,674,035	-$264,309,908
Arcadia	-$75,237,112	-$764,673,985	-$1,239,296,804
Artesia	-$116,223,749	-$317,071,331	-$497,679,512
Avocado Heights	-$60,632,049	$56,008,475	-$27,212,396
Azusa	-$140,780,786	-$38,778,311	-$608,586,731
Baldwin Park	$88,309,368	$14,706,310	-$449,076,335
Bell	-$113,274,865	-$204,053,557	-$215,589,326
Bellflower	$20,563,054	-$176,775,874	-$816,878,351
Bell Gardens	-$93,090,057	-$153,769,678	-$276,244,480
Beverly Hills	-$483,325,277	-$1,335,700,807	-$2,404,697,684
Bradbury	$1,564,980	-$1,997,990	$182,309,991
Burbank	-$557,010,167	-$805,729,811	-$2,380,667,043
Calabasas	$84,871,262	$245,004,675	$368,718,713
Carson	-$350,492,189	-$797,843,362	-$1,075,976,072
Cerritos	-$33,266,744	-$217,042,577	-$479,918,835
Charter Oak	-$30,114,612	$8,645,550	-$7,572,205
Citrus	-$15,848,786	-$12,239,881	$60,984,933
Claremont	-$41,760,497	-$58,612,064	$39,377,861
Commerce	-$53,694,386	-$376,467,740	-$774,179,311
Compton	-$237,004,761	-$166,322,052	-$484,094,937
Covina	-$28,241,680	-$132,057,527	-$890,230,264
Cudahy	-$48,515,058	-$130,896,320	-$145,952,195
Culver City	-$414,936,146	-$1,015,826,736	-$2,151,114,189
Del Aire	-$41,192,229	-$114,135,823	-$214,701,188
Diamond Bar	-$111,440,386	-$229,402,706	-$226,730,397
Downey	-$122,436,799	-$351,049,921	-$929,683,604
Duarte	$144,592,657	$74,876,114	$6,450,454
East Compton	-$8,137,796	-$22,452,747	$22,651,080
East La Mirada	-$15,222,514	-$41,993,211	-$78,992,173
East Los Angeles	$126,477,115	-$219,056,074	-$457,676,161
East Pasadena	-$88,358,849	-$242,728,977	-$457,673,687
East San Gabriel	$33,174,020	-$149,445,949	-$179,260,981
El Monte	-$225,058,903	-$548,440,937	-$1,069,047,771
El Segundo	-$129,075,304	-$233,285,967	-$676,561,730
Florence-Graham	$41,212,913	$93,567,088	$88,224,371

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Gardena	-$278,265,536	-$427,442,090	-$1,337,853,647
Glendale	-$534,927,237	-$2,171,535,570	-$4,256,823,239
Glendora	$27,942,202	$79,193,608	-$261,474,907
Hacienda Heights	-$127,419,504	$69,227,664	-$69,718,281
Hawaiian Gardens	-$4,530,188	-$78,695,154	-$1,680,935
Hawthorne	-$251,537,010	-$684,993,837	-$935,022,718
Hermosa Beach	-$137,085,894	-$377,443,434	-$710,397,462
Hidden Hills	-$5,006,030	$49,331,906	$33,646,051
Huntington Park	-$199,029,991	-$443,042,672	-$700,070,111
Industry	-$338,128,258	-$839,537,707	-$1,412,764,853
Inglewood	-$179,923,074	-$489,047,765	-$1,391,568,948
Irwindale	-$26,444,473	-$83,543,110	-$53,392,420
La Canada Flintridge	$174,030,919	-$112,209,814	-$115,822,894
La Crescenta-Montrose	$144,149,956	$5,566,922	-$253,726,877
Ladera Heights	-$23,160,671	-$63,937,239	-$10,339,228
La Habra Heights	$96,013,430	$69,181,178	-$21,748,155
Lakewood	-$233,845,344	-$375,930,581	-$630,777,799
La Mirada	-$110,258,788	-$98,767,144	-$39,280,038
La Puente	$27,039,842	-$27,431,838	$78,410,680
La Verne	$98,572,373	-$240,598,224	-$14,511,341
Lawndale	-$100,037,976	-$279,470,977	-$211,547,842
Lennox	$54,401,166	-$29,372,024	-$5,253,369
Lomita	-$98,240,666	-$269,521,572	-$403,431,158
Long Beach	-$523,113,360	-$834,128,180	-$1,069,302,477
Los Angeles	-$9,800,604,653	-$25,196,415,687	-$48,507,165,695
Lynwood	$7,457,113	$12,747,776	-$379,917,199
Malibu	-$8,392,094	$41,124,983	$106,425,951
Manhattan Beach	-$246,944,554	-$427,133,511	-$734,964,772
Marina del Rey	-$91,725,913	-$253,223,178	-$476,028,208
Mayflower Village	-$8,065,756	-$22,179,039	-$28,206,433
Maywood	-$60,277,586	-$61,403,067	-$119,460,841
Monrovia	-$187,865,437	-$527,483,334	-$555,391,872
Montebello	-$274,861,609	-$440,739,579	-$1,216,676,850
Monterey Park	-$30,296,351	$580,260,206	-$258,535,299
North El Monte	-$6,916,961	-$19,104,550	$595,935
Norwalk	-$4,074,235	-$237,526,051	-$116,007,385
Palos Verdes Estates	-$24,123,213	$54,515,720	$200,763,248
Paramount	-$3,257,780	-$124,101,229	-$92,309,041
Pasadena	-$458,095,835	-$1,626,499,474	-$3,252,448,668
Pico Rivera	-$166,774,348	-$37,258,110	-$138,574,203
Pomona	-$10,391,182	-$133,339,475	-$499,319,676
Rancho Palos Verdes	-$128,648,011	$94,476,317	-$402,399,713
Redondo Beach	-$211,281,981	-$925,665,708	-$1,408,616,036

City and CDP	70% Annual Storm Events	90% Annual Storm Events	97% Annual Storm Events
Rolling Hills	-$2,541,440	-$5,300,201	-$10,638,039
Rolling Hills Estates	-$40,201,697	-$66,422,486	$20,134,458
Rosemead	-$142,914,073	-$389,595,784	-$331,935,847
Rowland Heights	-$42,025,444	-$230,217,693	-$624,359,586
San Dimas	-$5,848,421	-$104,340,903	-$509,935,046
San Fernando	-$123,452,678	-$340,607,580	-$637,172,535
San Gabriel	-$166,071,158	-$425,648,437	-$552,278,183
San Marino	-$37,200,174	-$104,047,467	-$89,397,800
Santa Clarita	$1,112,113,071	$2,408,232,864	$4,344,382,431
Santa Fe Springs	-$42,339,287	-$239,178,893	-$375,270,676
Santa Monica	-$669,169,695	-$1,814,980,094	-$3,919,782,108
Sierra Madre	-$36,116,716	$3,432,382	-$86,052,834
Signal Hill	-$66,327,490	-$187,169,813	-$252,170,143
South El Monte	$9,590,384	-$34,555,984	-$133,069,392
South Gate	-$215,671,073	-$384,532,598	-$700,903,309
South Pasadena	-$108,802,223	-$197,708,235	-$362,176,844
South San Gabriel	-$15,744,852	-$43,693,108	-$82,238,110
South San Jose Hills	-$18,518,651	-$34,690,079	$113,602,486
South Whittier	$171,906,517	-$45,095,863	$201,584,477
Temple City	-$85,691,006	-$222,127,181	-$585,891,041
Torrance	-$561,063,814	-$2,469,627,537	-$4,485,106,148
Valinda	-$42,852,578	-$104,014,932	-$5,364,233
Val Verde	$394,829	$999,485	$1,915,696
Vernon	-$98,541,915	-$68,988,901	-$393,987,119
View Park-Windsor Hills	-$28,756,740	-$80,830,181	-$151,916,981
Vincent	-$40,753,944	-$16,825,296	-$213,897,272
Walnut	-$51,004,229	-$143,354,244	-$251,808,712
Walnut Park	-$30,795,120	-$82,677,730	$151,149,185
West Athens	-$15,177,270	-$36,919,789	$25,755,321
West Carson	-$75,263,735	-$205,978,318	-$179,154,449
West Compton	-$21,179,764	-$58,639,872	$32,252,357
West Covina	-$40,916,681	-$418,885,863	-$680,418,757
West Hollywood	-$365,081,309	-$1,003,100,721	-$1,792,831,264
Westlake Village	$279,541,398	$235,154,034	$533,090,517
Westmont	-$44,548,646	-$120,834,391	-$19,138,610
West Puente Valley	-$14,299,901	$27,573,224	$25,266,106
West Whittier-Los Nietos	-$55,314,393	-$66,087,826	-$64,167,813
Whittier	-$41,230,695	-$270,536,674	-$815,846,946
Willowbrook	$65,467,839	-$31,893,890	$26,703,795
LOS ANGELES - UNINCOR	$2,044,055,068	$5,471,978,073	$10,400,806,666
Total	-$17,294,414,960	-$49,123,918,352	-$93,586,595,355

Source: Table A25

SUMMARY OF FINDINGS

- The NPDES (National Pollutant Discharge Elimination System) requires advanced treatment of storm water. This study provides new estimates to compare with the results of earlier studies under a wide variety of "what if" combinations of cases and scenarios.

- Capital costs and operating and maintenance costs vary widely among nine combinations of rainfall scenarios and construction cases. Cases I, II and III refer to three alternative treatment plant facility allocations: 480 plants (each with 42.5 million gallons capacity; 65 plants (one for each sub-basin); and 130 plants (one for each city and unincorporated area, with more than one for cities straddling sub-basins. Rainfall Scenarios are: I. 1.25" of precipitation in 24 hours; II. 0.5" precipitation in 24 hours; and III. 2.25" of precipitation in 24 hours with a three-day runoff period. The range of costs over 20 years (expressed in net present value terms) is between $22.6 and $169.9 billion. The approximate mid-point of $100 billion is equivalent to a cost of $33,000 to each Los Angeles County household.

- The study focuses on one of the low-cost combinations (Case II, Scenario II). This would not handle all the storm water in all circumstances because the facilities could only cope with a 0.5" storm. In other words, a waiver would be needed to implement this program. However, over the past 50 years there have been an average of only 10 days per year when this rainfall level has been exceeded. This rainfall scenario and construction case combination has a capital cost of $43.74 billion and operating and maintenance costs of $127 million.

- To evaluate economic impacts, the study assumes that the system would be built over fifteen years. The total economic impacts are estimated over twenty years. It is assumed that the total costs are financed via a four percent, 20-year bond.

- On the one hand, there is a construction stimulus that varies by location; on the other hand, the tax impact reduces consumer expenditures. The study uses an input-output model of the southern California area (IMPLAN) to calculate the aggregate net economic impacts, and then uses a spatially disaggregated economic impact model (SCPM) to allocate these impacts by individual city. Annual job losses of the conservative Scenario II, Case II (II, II) combination highlighted in this report are about 22,000 jobs during the construction phase, rising to almost 60,000 thereafter. The range of job losses across all combinations is 20,000 to 400,000 annual jobs. The net present value of the twenty-year costs of Scenario II, Case II are $24.851 billion. Los Angeles county's share would be approximately $20.02, or approximately $6,670 per household.

- Almost all cities in the county experience net job losses. In the last five years of the 20-year planning period, the annual net economic losses of the (II, II) combination in five example cities (El Monte, Inglewood, Pasadena, Pomona and Torrance) ranged from $321.3 million in Pomona to $1.2 billion in Torrance. Under the most costly combination (III, III), Torrance's net economic losses amount to $7.5 billion.

- The study makes no attempt to estimate the benefits from this degree of storm water treatment. However, it does show that achieving advanced treatment is very costly, especially if the region is required to accommodate the worst-case storms.

I. INTRODUCTION

In 2000, the US Environmental Protection Agency (USEPA) established numerical criteria for priority toxic pollutants in the State of California in the form of the California Toxics Rule (CTR), filling a policy gap in water quality standards that was created in 1994 when a State court overturned California's water quality control plans. State policy makers have used the stringent CTR discharge limits to create a variety of State water quality standards, and will presumably refer to the numerical criteria in the CTR as new State and regional rules are promulgated

The Water Quality Act of 1987 requires the USEPA to establish National Pollutant Discharge Elimination System (NPDES) requirements. The federal Clean Water Act (CWA) authorizes States to serve as the NPDES permitting authority in lieu of the USEPA, and the State of California exercises such in-lieu authority.

The California State Water Resources Control Board and nine Regional Water Quality Control Boards are responsible for protecting water quality in California. The overarching objectives of the plans and policies developed by the Los Angeles Regional Water Quality Control Board (LARWQCB) are

> "... to preserve and enhance water quality and protect the beneficial uses of all regional waters."
> (LARWQCB, 1995, p. 1-1)

The definition of "beneficial uses" includes agriculture, aquatic life, recreational uses such as fishing and swimming, and drinking water. The key enforcement mechanism for ensuring that Los Angeles County municipalities take active steps to ensure that storm water discharges and urban runoff into California waterbodies support the designated beneficial uses are the LARWQCB's

- Water Quality Control Plan, Los Angeles Region (Basin Plan, 1995), and

- National Pollutant Discharge Elimination System Permit No. CAS004001 (2001).

NPDES Permit No. CAS004001 defines the waste discharge requirements for municipal storm water and urban runoff discharges with the County of Los Angeles and 84 cities operating municipal separate storm sewer systems (MS4s) located within the Los Angeles County Flood Control District.

Storm water treatment is conventionally classified into three, cumulative levels.

- Level I (physical treatment) focuses on settling and removing suspended solids and particulates. Techniques and procedures include screening and grinding, grit removal, influent chemical systems, and primary sedimentation.

- Level II (disinfectant treatment) focuses on filtering and disinfecting to remove biological contaminants. Techniques and procedures include physical treatment plus chlorination, dechlorination, effluent filtration, effluent screening, and defoament. Disinfectant treatment of storm water is consistent with recreational beneficial uses.

- Level III (advanced treatment) focuses on removal of small concentrations of priority toxics and heavy metals. The only standard technique is secondary treatment plus reverse osmosis. Advanced treatment of storm water eliminates virtually all pollutants and renders it appropriate for beneficial use as water for groundwater augmentation.

USEPA policies require that MS4 communities reapply for an NPDES permit for five-year terms. The NPDES Permit for Los Angeles County and its incorporated

cities was first issued in 1990, reissued in 1996, and most recently reissued December 13, 2001. During this period, the focus of the permit has shifted from requiring municipalities to engage in best management practices (BMPs) to requiring municipalities to plan for the implementation of Total Maximum Daily Loads (TMDLs) of pollutants.

Many California bodies of water do not yet meet applicable water quality standards. Section 303(d) of the federal CWA requires each State to list waterbodies that have been identified as "impaired" for (not achieving) one or more designated beneficial uses. Placing a waterbody on the 303(d) list triggers an LARWQCB planning process to establish the TDMLs of pollutants that these water bodies can receive that will protect the imparied beneficial uses. The USEPA entered a consent decree with several litigants requiring that LARWQCB adopt all such TDMLs by 2012. Presumably the NPDES Permit process will be used to implement load allocations for municipal storm water discharges.

The draft 2002 update to the 1998 303(d) list for Los Angeles (California Region 4) includes 175 waterbodies. The draft 2002 list is adds 104 waterbodies to the 1998 list and removes 73 for a net increase of 31 impairment listings. The draft 2002 list includes virtually all of the major Los Angeles water bodies, including beaches and conveyances such as rivers. An analysis of the treatment responses necessary to eliminate the impairment identified for the waterbodies on the draft 2002 list appears in Appendix B. In a few cases, best management practices (BMPs) are all that is required, but the vast majority of cases will require treating discharges to at least secondary levels. In the majority of the cases, the combination of contaminants and beneficial use objectives will require advanced, level III treatment.

The joint implications of the recent California Toxics Rule, the steadily increasing demands associated with NPDES Permit requirements (driven in part by the USEPA consent decree), and the growing number of major Los Angeles

waterbodies appearing on the 303(d) list are collectively a source of concern to the Los Angeles municipalities that will be responsible for achieving the resulting regulatory goals. It is quite feasible, indeed likely, that the ultimate public policy result to these simultaneous requirements will be advanced treatment of storm water and urban runoff.

Most, if not all, of Los Angeles county's cities and communities would be significantly affected by such treatment plans. Recent reports (Brown and Caldwell, 1998; Hoffman Associates, 1998; Los Angeles County Sanitation District, 2002) place 10-year county-wide costs in the range of $53.6 - $65 billion, including almost $200 million in annual operations and maintenance costs. These studies envision 480 new storm water treatment plants of approximately 29 acres each, occupying a total of 13,950 acres.

Several questions motivate this study:

1. How robust and how plausible are the previous capital cost estimates for achieving advanced storm flow treatment?
2. What are the annualized capital cost equivalents for various plausible alternative combinations of cases and scenarios?
3. What are annual operations and maintenance costs for alternative combinations of cases and scenarios?
4. What are the net present values of twenty-year costs (capital and operations and maintenance) for various combinations of cases and scenarios?
5. For each of these, how are the various costs distributed throughout the metropolitan area?
6. How are they distributed by economic sector?
7. How are various cities expected to be impacted?

This report does not account for any additional benefits from storm water treatment. Our focus is on the magnitude and distribution of costs associated with mandated treatments in light of rainfall and construction cost data. Most decision makers would agree that any benefits should meet or exceed these costs.

There are major uncertainties as to the course of natural events and/or policy directions to be taken. It is, therefore, appropriate to elaborate alternative options. In the following sections, we discuss our choice of scenarios, rainfall assumptions and data, present capital and operations and maintenance costs for various cases (and their justifications) and test the economic impacts of each combination of scenario and case. The latter are investigated using a spatially disaggregated regional input-output model of the southern California (five-county) economy.

- We find that the twenty-year compliance costs are significant, with net present values for the region in the range of $22.6 - $169.9 billion – depending on the combination of case and scenario. The mid-point of this range is almost $100 billion. Most of these costs accrue to LA county households, of which there were slightly more than three million in 2000. Using round numbers, the average household liability is $33,333. This is a substantial amount anywhere and especially controversial in a semi-arid region.

- Investigating impacts on a city-by-city basis, shows that a few cities would experience twenty-year net benefits for some combinations of cases and scenarios because significant construction stimulus would take place within their borders; yet, overwhelmingly, there are net losses for most municipalities -- in the range of $6.5-$7.5 billion for some cities.

- Of the many scenarios and cases studied, a conservative combination places one treatment plant in each of the region's 65 sub-basins. Each such plant is built to handle the runoff from a one-half inch rainstorm (all runoff calculations in this report consider water losses due to interception and infiltration, as appropriate for the various scenarios). This is the most likely precipitation event -- but one which requires that regulators accept the fact that there will be pollution standard exceedance in the event of larger storms. That combination requires capital costs of $43.7 billion and annual operating costs of $127 million.

- Annual job losses, due to household spending diverted to finance these expenditures, range from over 22,000 jobs per year for the first 15 years, while the plants are being built, to almost 60,000 per year thereafter when the economic stimulus from construction is no longer in effect. The net present value of the twenty-year costs of the conservative combination of case and scenario are $24.851 billion. Los Angeles county's share of this sum is expected to be $20.022 billion, or approximately $6,670 per household.

II. ESTIMATING COSTS FOR CASES AND SCENARIOS

We study nine combinations of cases and scenarios. There are three alternative prototypical levels of rainfall accumulation combined with three scales of treatment plants. Each scale of treatment plant also has associated siting options around Los Angeles county. Advanced treatment capacity is assumed in all cases.

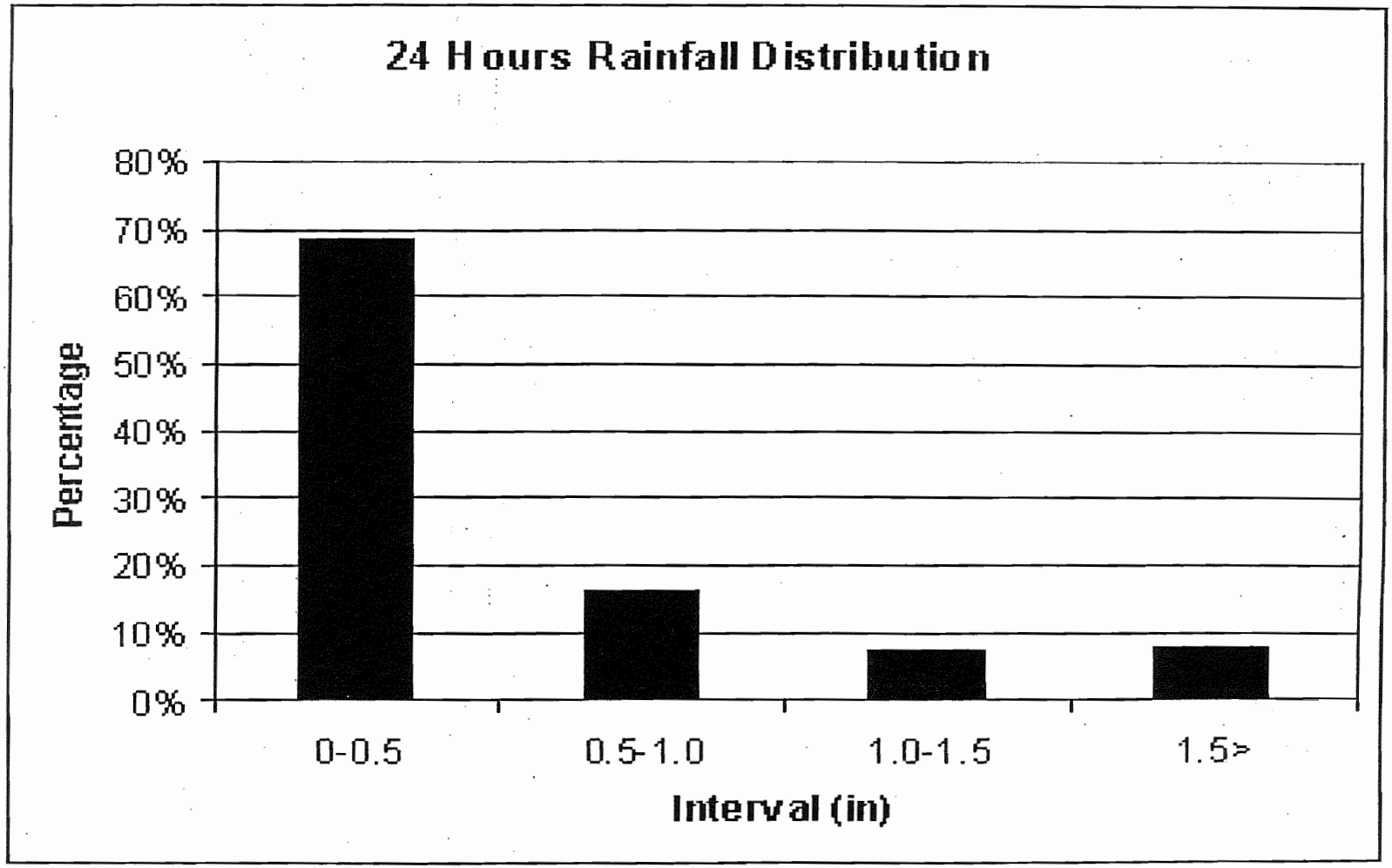
II.1 Rainfall Scenarios

The Brown and Caldwell (1998) study assumed a 1.25" 24-hour storm. We have retained this default assumption as Scenario I. The other rainfall scenarios are based on our study of county rainfall data. We analyzed daily precipitation data at seventy-six representative stations throughout the entire monitoring area. These data were kept by the Los Angeles County Department of Public Works. Many of these stations have records of precipitation for over seventy years. Out of the total 1,484,090 station-days we found that only 132,299 station days had any trace of rainfall. Thus, 91.1 percent of the time there was no precipitation at all.

Figure 1 summarizes the distribution of rainfall during the 24-hr period from the 132,299 station-day data. These are the periods during which rainfall occurred. The data show that:

- 69 percent of the time, 24-hr rainfall was between 0 and 0.5",
- 16 percent of the time, it was between 0.5" and 1.0",
- 7 percent of the time, it was between 1.0" and 1.5", and
- rainfall was above 1.5" the remaining 8 percent of the time.

Figure 1. 24 Hours of Rainfall Distribution



In the interests of being conservative and because the great majority of the 24-hr rainfall data were below 0.5", we chose the 0.5" rainfall as Scenario II. We also calculated the average rainfall that occurred during continuous three-day periods in which precipitation occurred. The observed average *total* for these three-day storms was 2.25". This 2.25" value is also the 97th percentile for observed 24-hr rainfall. Thus, 2.25" with a three-day runoff period was chosen as the design rainfall for Scenario III.

II.2 Construction Cases

We studied three treatment plant siting and sizing cases for each rainfall scenario. The 45.2 (average) million-gallon plants assumed in the Brown and Caldwell study constitute Case I. Because plant sizes are fixed for this case, the number of Case I plants varies with the rainfall scenario. This produces a relatively large number of treatment facilities, which we sited relatively uniformly throughout the region. Case II places one large treatment plant in each of the county's sub-basins for a total of 65 plants regardless of rainfall scenario. Case II plant sizes vary with rainfall. Case III is based on political "equity" with one treatment plant in each of the county's cities. There are 87 cities but many straddle more than one sub-basin. Drainage requirements dictate that such cities accommodate one plant per-sub basin. Census Designated Places (CDPs) include both incorporated and unincorporated communities. Unincorporated CDPs in Los Angeles county were added to adjacent cities for the purposes of this study. This produced a total of 123 sub-basin-CDP combinations in Los Angeles county. There are also seven residual basin areas that are neither incorporated nor designated as a CDP but which certainly experience rainfall. Case III then places a treatment plant in each one of these 130 areas with the plant sized to treat the runoff from each area.

II.2.1 ENR Construction Cost Index

The analysis in Tables 2-4 assumes an Engineering News Record (ENR) Construction Cost Index (CCI; 1913 = 100) of 7420.88 for Los Angeles as of July 5, 2002. The Brown and Caldwell and LACSD review study both used a twenty-city average ENR CCI of 6710. Using the Los Angeles index provides a correction that brings the project to the current time and correct location. Note, however, that for the most accurate budget estimate, specific cost indices should be used based upon:

- specific planned expenditures for every project, and
- a projection of when the project is to be built.

In contrast, the ENR CCI is based upon

- 200 hours of common labor,
- 25cwt of standard structural steel shapes,
- 1.128 tons of Portland cement, and
- 1,088 board-ft of 2x4 lumber.

Thus, the components of the CCI are consistent with the materials included in treatment plants.

II.2.2 Real estate costs

The Brown and Caldwell and LACSD review study both used a real estate cost of $914,760 per acre. This figure significantly underestimates real estate costs for

most basin areas in this study. We have constructed weighted costs based on the distribution of residential, non-residential, and vacant land values. These improved estimates of land costs used were derived from a record of all 2001 Los Angeles county real property transactions as reported by DataQuick Information Systems. These data were for various land uses, by city, including transactions labeled "vacant land." Because there is no way to tell exactly where plants will be sited, we computed a composite land cost index by weighting the DataQuick transactions data by the amount of land by general land use type in each city. Land use data were provided by the Southern California Association of Governments. Note that these values are specific to each basin, sub-basin, or City/CDP depending on the particular facility case.

The various siting assumptions have implications for Collection System costs. Plant size is function of the design flow for the plant with 0.2455 acres of plant land needed per MG of flow. This figure determines the maximum and minimum plant acreage requirements of all nine combinations of cases and scenarios. Acres per plant is defined to mean how much land is needed to construct each individual treatment plant. The land requirements therefore vary with plant capacity (millions of gallons treated). In Case II and Case III, the plant sizes are determined based on required flow treatments (and hence drainage areas) of each individual sub-basin or individual City/CDP, and the plant sizes vary across rainfall scenarios. In the Case I scenarios, the plant size is fixed and the number of plants varies based on required flow treatments of each basin (because of different rainfall assumptions). Hence, given the nine different combinations of cases scenarios, there is a blending of costs across hundreds of different size plants.

In some combinations, the required individual plant capacities may be quite small for a small city, e.g., Case III, Scenario II. Consequently, the required plant size can be very small, perhaps less than one acre. Consistent with the 9-combinations approach, the plant construction cost for such small (and arguably

unlikely) projects is included in the total cost for each combination. In some combinations, the required individual plant capacities may be quite large, e.g., a large basin in Case II, Scenario III. In these cases, the required plant size is very large, perhaps over one thousand acres. Again, in keeping with the 9-combination approach, the plant construction cost for even such large (and arguably unlikely) project is included in the total combination cost. Given the large number of plants and the large variety of sizes, the total cost difference across the combinations is not large.

In the interests of conservatism, we have assumed that vacant land parcels would be available in Case III (the City/CDP option), and used the "vacant land" real estate costs as opposed to the weighted costs for unincorporated areas added to each basin. The weighted cost estimates were used in all other cases.

II.2.3 Engineering soft costs

The Brown and Caldwell and LACSD studies both assumed a 20 percent "Engineering/Legal/Administrative" soft cost to account for additional project costs other than the land and physical construction costs. Most projects experience a much higher soft cost share of 25 percent to 50 percent, but normally do not include land in the value from which the percentage is taken. To correct this, we have applied an "Engineering/Legal/Administrative" soft cost of 25 percent instead of 20 percent to the base construction value, and applied a 10 percent soft cost to the corrected land values.

II.2.4 Construction costs

Treatment plant cost will vary with size of the plant, but not as significantly as expected. All plants are assumed to be the same 45.2 million gallons (MG) size in Case I, and the Brown and Caldwell cost capacity equation was used to compute the plant costs, subject to the data corrections identified above. The

Brown and Caldwell typical plant size of 45.2 MG was then used to treat the different flow amounts for Case I.

In contrast, Cases II and III require construction of treatment plants with a wide variety of capacities. For plants up to 100 MG, we used Brown and Caldwell's cost capacity equation. For plants larger than 100 to 150 MG, we used $2.2 M per MG of runoff to be treated. For plants from 150 to 250 MG, we used $2.4 M per MG of runoff to be treated. For plants of more than 250, we used $2.5 M per MG of runoff to be treated. These costs are consistent with both the Brown and Caldwell and with the LACSD studies.

The cost capacity equation is

$$C = K \times [Q^{0.6}], \qquad (1.)$$

where

C = cost of construction in million of dollars,
K = cost capacity constant of 11,237,200, and
Q = design flow in millions of gallons.

Table 1 gives construction costs for plant sizes representative of the hundreds in the study. These costs are based on tertiary treatment. Corrections for real estate costs based on specific plant location are applied to each of these values for each plant in every combination of case and scenario. Note that plant real estate costs constitute a large portion of the total cost of all combinations.

Although Brown and Caldwell and LACSD effectively agree on the total plant costs, they disagree on exact breakdown for the three levels of treatment. This disagreement is likely based on specific methods used in each process and into which level of treatment each process is assigned. We calculated the breakdown based on the total project cost where 31.36 percent is the cost for the Level I

(primary) treatment, 14.98 percent is the cost for the Level II (secondary) treatment, and 53.66 percent is the cost for the Level III (tertiary) treatment.

Table 1: Representative Treatment Plant Construction Costs

Plant Design Capacity	Construction Cost
1 MG plant	$ 11,237,200
25 MG plant	$ 77,521,491
45.2 MG plant (Brown and Caldwell Model)	$ 110,596,446
100 MG plant	$ 178,097,618
200 MG plant	$ 480,000,000
500 MG plant	$ 1,250,000,000
1,000MG plant	$ 2,500,000,000
2,500 MG plant	$ 6,250,000,000

The costs of this study are based upon the following assumptions concerning treatment processes.

- Level I treatment includes sewage pumping, screening and grinding, grit removal, influent chemical systems, and primary sedimentation.

- Level II treatment includes chlorination, scrubbers, dechlorination, effluent filtration, effluent screening, effluent pumping/disposal, and defoament.

- Level III treatment includes reverse osmosis.

These processes are typical use in the industry today and are consistent with the Brown and Caldwell and LACSD studies.

II.2.5 Collection system costs

Collection system costs are a function of the area of land to be treated by a plant and the amount of flow, which is in turn a function of runoff. For example, two basins of the same size (a fixed amount of land) with varying flows would have different collection system costs. Similarly, two basins of the same flow, but with different land areas would also have different collection system costs. This method is consistent with the methods used by Brown and Caldwell and by LACSD.

The equation to calculate the collection system cost is

$$C = K \times [(A \times Q)^{0.5}] \qquad (2.)$$

Where

C = cost of collection system in million of dollars,

$K = 0.0001318 \times Q + 0.0594214$, (2.a)

A = drainage area in acres, and

Q = design flow of in millions of gallons.

II.2.6 Operations and maintenance costs

Annual operations and maintenance (O&M) costs were calculated on a percentage basis with a different percentage for each level of treatment. This method is consistent with the methods used by Brown and Caldwell and by LACSD.

The O& M cost equation is

$$C = M \div F, \qquad (3.)$$

where

C = cost of operations and maintenance in million of dollars;

M = capital cost for each functional element of the plant (collection system, level I treatment, level II treatment, and level III treatment), in million of dollars; and

F = factor based on plant function, where

$F_{collection} = 1220.30$,

$F_{level\ I} = 484.66$,

$F_{level\ II} = 333.19$, and

$F_{level\ III} = 269.56$.

II.3 Summary of Cost Estimates

Tables 2-4 summarize runoff and cost information for the nine combinations of rainfall scenarios and plant siting cases. Data are presented for the county's seven watersheds as well as county totals. The volume of storm water runoff was computed using modified coefficients of runoff with consideration of antecedent conditions. The runoff coefficients for the seven watersheds in each of the three rainfall scenarios are represented in Column 2 of Tables 2-4. In computing the total runoff volume it was also assumed that the first 0.06" of the design rainfall was assumed to fill the local depression areas and, therefore, did not contribute to runoff. The computed total runoff values for the seven drainage basins under each of the scenarios are shown in Column 4 of Tables 2-4.

Economic impact analysis requires particular attention to the columns headed "Collection System" and "Level III plus Levels I and II." These entries include land costs. As noted above, Level I (physical) treatment consists of equalization and sedimentation. Level II (disinfection) treatment consists of disinfection and dechlorination. Level III (advanced) treatment is the most ambitious and conventionally consists of reverse osmosis to remove heavy metals.

Table 2. Plants Case I – "480" PLANTS PER SUB-BASIN (45.2 MG PLANTS)

Rainfall Scenario I – 24-hour, 1.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.599	69,091	1,337	27	628	1,954	2,887	6,231	2,022	4,209	0.5	2.4	5.2	14.0
Upper Los Angeles River	0.452	522,061	7,572	173	4,111	10,379	15,335	33,097	9,916	23,181	3.4	13.8	29.7	79.2
Malibu	0.299	98,729	956	20	635	1,535	2,269	4,896	1,754	3,142	0.5	1.7	3.7	10.0
San Gabriel	0.403	370,468	4,774	107	2,749	6,345	9,375	20,233	5,809	14,425	2.3	8.7	18.7	49.9
Santa Ana	0.423	15,680	214	5	120	249	368	794	182	613	0.1	0.4	0.8	2.2
Santa Clara	0.294	491,947	4,641	104	3,124	4,244	6,270	13,532	1,355	12,177	2.6	8.5	18.2	48.5
Santa Monica Bay	0.504	134,429	2,190	44	1,122	3,479	5,140	11,094	3,932	7,162	0.9	4.0	8.6	22.9
Total		1,702,404	21,684	480	12,489	28,185	41,845	89,877	24,968	64,909	10	40	85	227

Rainfall Scenario II – 24-hour, 0.50 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.539	69,091	445	10	363	650	961	2,074	673	1,401	0.3	0.8	1.7	4.7
Upper Los Angeles River	0.407	522,061	2,538	56	2,380	3,479	5,140	11,093	3,324	7,770	2.0	4.6	10.0	26.5
Malibu	0.269	98,729	317	7	366	509	752	1,624	582	1,042	0.3	0.6	1.2	3.3
San Gabriel	0.363	370,468	1,606	36	1,595	2,134	3,154	6,807	1,954	4,853	1.3	2.9	6.3	16.8
Santa Ana	0.381	15,680	71	2	69	83	122	263	60	203	0.1	0.1	0.3	0.7
Santa Clara	0.265	491,947	1,557	34	1,809	1,424	2,104	4,540	455	4,085	1.5	2.8	6.1	16.3
Santa Monica Bay	0.454	134,429	729	16	647	1,158	1,711	3,693	1,309	2,384	0.5	1.3	2.9	7.6
Total		1,702,404	7,263	161	7,228	9,437	13,944	30,094	8,356	21,738	6	13	28	76

Rainfall Scenario III – 24-hour, 2.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.629	69,091	2,584	57	874	3,776	5,580	12,043	3,907	8,136	0.7	4.7	10.1	27.0
Upper Los Angeles River	0.475	522,061	14,750	326	5,737	20,218	29,873	64,471	19,316	45,155	4.7	26.9	57.8	154.3
Malibu	0.314	98,729	1,843	41	882	2,960	4,374	9,439	3,381	6,058	0.7	3.4	7.2	19.3
San Gabriel	0.423	370,468	9,316	206	3,841	12,384	18,299	39,492	11,338	28,154	3.1	17.0	36.5	97.5
Santa Ana	0.444	15,680	414	9	167	482	712	1,536	351	1,186	0.1	0.8	1.6	4.3
Santa Clara	0.309	491,947	9,039	200	4,360	8,265	12,212	26,356	2,639	23,717	3.6	16.5	35.4	94.5
Santa Monica Bay	0.529	134,429	4,228	94	1,559	6,716	9,924	21,417	7,591	13,827	1.3	7.7	16.6	44.2
Total		1,702,404	42,176	933	17,419	54,802	80,973	174,754	48,522	126,232	14	77	165	441

Reviewing all possible combinations of scenarios and cases, capital costs (including land) were lowest for Plant Case I, Rainfall Scenario II ($37 billion) and highest for Plant Case III, Rainfall Scenario III ($325.54 billion). Annual operations and maintenance costs were lowest for Plant Cases I and II and Rainfall Scenario II ($76 million) and were highest for Plant Case II, Rainfall Scenario III ($755 million). Collection System costs were added to these respective totals to define the basis for economic impact modeling.

Table 3. Plants Case II – ONE PLANT PER SUB-BASIN (65 PLANTS)

Rainfall Scenario 1 – 24 hour, 1.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.599	73,925	1,337	2	1,547	1,980	2,925	6,314	2,023	4,291	1.3	6.0	18.9	24.0
Upper Los Angeles River	0.452	527,446	7,572	9	17,147	10,390	15,352	33,132	9,700	23,432	14.1	31.7	99.4	125.7
Malibu	0.299	99,662	956	24	668	1,625	2,401	5,182	1,895	3,287	0.5	5.0	15.6	19.7
San Gabriel	0.403	377,505	4,774	10	9,655	6,233	9,210	19,876	5,498	14,378	7.9	19.0	59.7	75.4
Santa Ana	0.423	16,634	214	5	133	263	389	839	197	642	0.1	0.8	2.5	3.2
Santa Clara	0.294	498,500	4,841	9	14,208	4,246	6,274	13,541	1,313	12,228	11.6	12.9	40.6	51.4
Santa Monica Bay	0.504	136,878	2,190	6	2,049	3,527	5,211	11,246	3,931	7,315	1.7	10.8	33.8	42.7
Total		1,730,549	21,884	65	45,407	28,264	41,762	90,129	24,556	65,573	37	86	271	342

Rainfall Scenario 2 – 24 hour, 0.50 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.539	73,925	445	2	524	853	965	2,084	673	1,410	0.4	2.0	6.3	7.9
Upper Los Angeles River	0.407	527,446	2,538	9	4,773	3,455	5,105	11,017	3,251	7,765	3.9	10.5	33.1	41.8
Malibu	0.269	99,662	317	24	351	673	994	2,145	628	1,517	0.3	2.1	6.4	8.1
San Gabriel	0.363	377,505	1,606	10	2,855	2,133	3,152	6,802	1,849	4,952	2.3	6.5	20.4	25.8
Santa Ana	0.381	16,634	71	5	68	112	165	356	65	290	0.1	0.3	1.1	1.3
Santa Clara	0.265	498,500	1,557	9	3,861	1,433	2,117	4,569	441	4,128	3.2	4.4	13.7	17.3
Santa Monica Bay	0.454	136,878	729	6	790	1,111	1,642	3,543	1,308	2,235	0.6	3.4	10.6	13.4
Total		1,730,549	7,263	65	13,222	9,569	14,139	30,515	8,317	22,298	11	29	92	116

Rainfall Scenario 3 – 24 hour, 0.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.629	73,925	2,584	2	3,390	3,827	5,654	12,202	3,909	8,293	2.8	11.7	36.6	48.3
Upper Los Angeles River	0.475	527,446	14,750	9	41,651	20,291	29,982	64,706	18,894	45,812	34.1	61.9	194.2	245.5
Malibu	0.314	99,662	1,843	24	1,042	3,013	4,452	9,606	3,654	5,954	0.9	9.2	28.6	36.5
San Gabriel	0.423	377,505	9,318	10	22,972	12,263	18,120	39,106	10,731	28,378	18.8	37.4	117.4	148.4
Santa Ana	0.444	16,634	414	5	211	495	731	1,578	381	1,198	0.2	1.5	4.7	6.0
Santa Clara	0.309	498,500	9,039	9	34,840	8,379	12,381	26,720	2,558	24,163	28.6	25.5	80.2	101.4
Santa Monica Bay	0.529	136,878	4,228	6	4,167	6,803	10,052	21,694	7,589	14,105	3.4	20.7	65.1	82.3
Total		1,730,549	42,176	65	108,272	55,072	81,372	175,616	47,716	127,900	89	168	527	668

Throughout this report, we afford special attention to the 65 Plants Case (II), which places one treatment plant in each sub-basin. In the interests of remaining conservative we will highlight the one-half-inch storm, Scenario II. The caveat, of course, is the implication that regulators will have to allow for pollution exceedance in periods of larger storms. For simplicity, we will occasionally refer to the highlighted combination as simply (II, II). Table 3 shows that capital costs for (II, II) are $43.7 billion while annual operating costs are $127 million.

Table 4 - Plants Case III - ONE PLANT PER CITY/CDP (130 PLANTS)

Rainfall Scenario I - 24-hour - 1.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.599	72,036	1,337	18	803	1,916	2,832	6,111	1,975	4,136	0.7	2.4	5.2	13.8
Upper Los Ang	0.452	519,639	7,572	44	18,025	10,267	15,170	32,739	9,650	23,089	14.8	13.6	29.2	78.0
Malibu	0.299	98,026	956	7	1,227	1,486	2,195	4,737	1,636	3,102	1.0	1.7	3.6	9.7
San Gabriel	0.403	371,403	4,774	37	8,487	6,116	9,037	19,505	5,610	13,895	7.0	8.3	17.8	47.4
Santa Ana	0.423	16,365	214	4	129	218	322	694	176	518	0.1	0.4	0.8	2.1
Santa Clara	0.294	490,288	4,641	4	27,880	4,018	5,937	12,812	789	12,023	22.8	8.5	18.3	48.8
Santa Monica	0.504	134,647	2,190	16	3,611	3,439	5,061	10,965	3,855	7,110	3.0	4.0	8.5	22.7
Total		1,702,404	21,684	130	60,162	27,459	40,573	87,563	23,889	63,873	49	39	83	222

Rainfall Scenario II - 24-hour - 1.50 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.539	72,036	445	18	377	737	1,089	2,349	857	1,592	0.3	0.9	2.0	5.2
Upper Los Ang	0.407	519,639	2,538	44	4,921	3,790	5,600	12,066	3,234	8,832	4.0	4.9	10.5	28.0
Malibu	0.269	98,026	317	7	454	545	805	1,738	542	1,195	0.4	0.6	1.2	3.2
San Gabriel	0.363	371,403	1,606	37	2,611	2,314	3,419	7,379	1,887	5,492	2.1	2.8	6.1	16.2
Santa Ana	0.381	16,365	71	4	67	104	154	333	58	274	0.1	0.1	0.3	0.9
Santa Clara	0.265	490,288	1,557	4	6,500	1,327	1,960	4,231	265	3,966	5.3	2.8	6.1	16.3
Santa Monica	0.454	134,647	729	16	1,083	1,309	1,934	4,175	1,283	2,892	0.9	1.5	3.2	8.6
Total		1,702,404	7,263	130	16,013	10,126	14,962	32,290	7,928	24,363	13	14	29	78

Rainfall Scenario III - 24-hour - 2.25 inch storm

Drainage Basin	Runoff Information			Number of Treatment Plants Required	Treatment Costs, Millions of Dollars									
					Capital Costs						O & M Costs			
	Runoff Coefficient	Drainage Area, Acres	Total Runoff, Million Gallons		Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2	Land Costs (Levels 1 & 2)	Level 3 without Land	Collection System	Level 1	Level 2 plus Level 1	Level 3 plus Levels 1 & 2
Dominguez	0.629	72,036	2,584	18	1,408	3,864	5,709	12,320	3,818	8,502	1.2	4.8	9.8	26.2
Upper Los Ang	0.475	519,639	14,750	44	44,114	20,826	30,771	66,410	18,797	47,613	36.2	26.8	57.1	152.3
Malibu	0.314	98,026	1,843	7	2,549	2,965	4,411	9,519	3,153	6,366	2.1	3.3	7.2	19.2
San Gabriel	0.423	371,403	9,318	37	19,841	12,573	18,578	40,095	10,949	29,145	16.3	17.0	36.5	97.3
Santa Ana	0.444	16,365	414	4	205	481	711	1,534	341	1,193	0.2	0.7	1.6	4.3
Santa Clara	0.309	490,288	9,039	4	72,062	7,779	11,494	24,806	1,536	23,270	59.1	16.6	35.6	95.1
Santa Monica	0.529	134,647	4,228	16	8,379	6,993	10,333	22,301	7,442	14,859	6.9	7.8	16.3	43.5
Total		1,702,404	42,176	130	148,558	55,501	82,007	176,985	46,037	130,949	122	76	164	438

III. ECONOMIC IMPACTS

III.1 Annual Economic Impacts

Building and operating a system of treatment plants of the scales described in Tables 2-4 involves large expenditures, many with stimulative secondary economic effects. Paying for these expenditures requires levels of taxation that often have opposite (and usually greater) depressive economic effects.

Because construction staging information is not known at this point of the discussion, we assume that capital costs are evenly spread over fifteen years of construction activity. Operations and maintenance costs start small and reach full scale in year 16. This is a twenty-year analysis that combines a Year 1-Year 15 construction and operations period; a Year 16-Year 20 full operations period and a Year 1-Year 20 financing period.

We assume households throughout Los Angeles county are taxed for twenty years to repay four-percent twenty-year bonds (including 10 percent of underwriting costs). The depressive economic effects of this financing scheme are calculated by reducing households' expenditures by the amount of the annual tax needed to service this debt.

Two economic models were used to study the full impacts of all of these activities (see Cho, et al 2000 and 2001 for a detailed discussion of our modeling approaches). The first is IMPLAN (http://www.implan.com/products/products.htm), a 528-sector input-output model describing the economy of the five-county Southern California region. Costs from Tables 2-4 were processed to generate specific changes in regional final demands. See Table A1 and accompanying description. Input-output models calculate all *indirect* and *induced* effects after subtracting leakages. In this context, *direct* effects include the construction of new facilities and the reductions

in household expenditures due to increased taxes. Direct effects are actual project expenditures from Tables 2-4. Not all of these expenditures are made in the five-county region and the model makes an allowance for direct expenditures that accrue to firms outside the region. These leakages are usually small quantities. Indirect effects consist of impacts on vendors from whom constructors purchase materials. Each such indirect impact creates additional but attenuating indirect impacts. A vendor who supplies more of his own product purchases additional inputs from his own vendors, and so forth. Labor is an especially important production input and *induced* impacts consist of the impacts specific to the labor sector.

The IMPLAN model calculates all indirect effects (activities induced by vendors that supply goods and services to firms directly involved) and all induced effects (the result of changes in household sector expenditures) associated with the direct effects from construction and financing new treatment facilities.

IMPLAN was applied 27 times for this study:

- once for each of nine combinations of cases and scenarios for an average prototypical year in the interval of Years 1-15 (stimulus from construction and limited operations and maintenance);

- once for each of nine combinations for a standard year in the period of Years 16-20 (stimulus from full operations and maintenance, but no construction)

- and once for each of nine combinations for a standard year in the full period in Years 1-20 (uniform household expenditure reductions associated with financing the project)

The first two sets of simulations, estimate the stimulative economic effects produced when households receive and spend cash payments for rendering any services associated with these projects. This includes payments to labor by any associated vendors. The exception is land acquisition costs. The household sector has to pay for these as part of the financing of overall bond obligations but these transactions are not a stimulus. Eminent domain ensures that activities that are displaced in Cases I and II receive a cash payment for the loss of their land but we assume that these households and firms use these funds to purchase a new location. Many of these incremental activities spill over outside the region and, in any event, are not thought to be a major stimulant to the real estate market.

Tables 5-7 summarize the 27 applications of the IMPLAN model. Each of the 27 panels shows results aggregated to the level of ten one-digit SIC sectors. The entries in the first column in each panel are in terms of jobs (person-years). The entries in the second column of each table summarize income (output) multiplier effects. In column(s) two, direct-plus-leakage sums are derived from Tables 2-4. (See worksheet in Table A1). All impacts on all ten sectors are shown as well as the sum of indirect and induced effects. The "multiplier" shown in each column is the ratio of direct effects to total effects. All output multipliers are in the range of 1.71 - 1.86.

Table 5. Economic Impacts of Construction, Land Acquisition, and Operating & Management Costs for years 1-15

		Case I : 45.2 MG Plant Scenario (480, 161, 933 Plants)						Case II : One Plant per Sub-Basin Scenario (65 Plants)						Case III : One Plant per City-Basin Intersection Scenario (130 Plants)					
Rainfall Scenario		Employment	Output	Value Added	Labor Income	Property Income	Ind.Bus. Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind.Bus. Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind.Bus. Taxes
Scenario 1 : 24H, 1.25"	Agriculture	433	20.01	11.86	8.11	3.30	0.45	819	28.80	16.95	11.59	4.72	0.84	686	31.64	18.78	12.82	5.22	0.71
	Mining	126	34.29	23.07	8.55	12.23	2.26	180	49.11	33.03	12.25	17.52	3.27	200	54.85	36.78	13.63	19.49	3.63
	Construction	23,774	2,440.87	1,369.53	1,173.19	123.81	72.53	34,182	3,508.91	1,968.31	1,686.58	177.72	104.01	37,819	3,889.88	2,180.90	1,868.87	197.85	116.17
	Manufacturing	2,933	887.00	226.14	137.34	81.45	7.36	4,197	954.83	323.70	196.57	118.80	10.53	4,662	1,060.98	359.55	218.36	129.48	11.71
	TCPU	2,078	412.82	227.66	115.00	68.93	23.94	3,012	603.83	333.71	167.56	130.96	35.17	3,172	818.41	339.87	173.72	130.73	35.42
	Wholesale Trade	3,828	429.31	304.83	177.30	84.19	63.14	5,193	614.88	436.30	253.94	91.94	90.43	5,772	683.41	484.84	282.25	102.19	100.51
	Retail Trade	8,331	419.78	320.52	196.70	85.83	57.99	11,891	599.28	457.60	280.81	93.99	82.80	13,148	662.51	505.88	310.44	103.91	91.53
	FIRE	8,928	1,267.97	886.17	382.81	421.68	81.68	8,130	1,748.04	1,222.27	520.78	587.22	114.29	8,922	1,920.37	1,342.91	570.87	646.37	125.68
	Services	32,165	2,550.29	1,491.99	1,317.88	140.62	93.49	46,012	3,649.58	2,134.59	1,885.36	201.34	47.89	51,122	4,058.91	2,372.54	2,095.77	223.80	53.17
	Government	645	81.80	42.86	34.78	8.07	-	777	118.35	61.09	49.58	11.51	-	859	128.56	67.49	54.78	12.71	-
	Other	481	5.48	5.48	5.48	-	-	657	7.79	7.79	7.79	-	-	726	8.62	8.62	8.62	-	-
	Leakage	-	1,554.28	-	-	-	-	-	2,203.84	-	-	-	-	-	2,449.82	-	-	-	-
	Direct Effect	36,884	4,477.36	2,494.09	1,983.78	370.88	139.44	55,315	6,381.91	3,548.82	2,879.11	521.27	198.45	61,293	7,042.09	3,909.85	3,129.71	562.78	217.38
	Indirect Effect	16,799	1,838.82	997.86	727.02	208.61	92.04	23,982	2,340.19	1,423.89	1,037.18	298.05	88.66	26,466	2,585.93	1,572.36	1,144.41	329.81	98.13
	Induced Effect	24,942	2,213.40	1,418.13	845.94	430.84	141.58	35,574	3,156.88	2,022.85	1,206.53	614.20	201.92	39,327	3,489.89	2,236.02	1,333.80	878.99	223.22
	Total Effect	80,395	8,329.38	4,910.10	3,556.72	1,010.33	343.05	114,852	11,878.98	6,995.36	5,072.81	1,433.52	489.03	127,086	13,117.92	7,718.22	5,607.93	1,571.58	536.73
	Multiplier	2.078	1.860	1.969	1.793	2.724	2.480	2.078	1.861	1.971	1.793	2.750	2.464	2.073	1.863	1.974	1.792	2.793	2.478
Scenario 2 : 24H, 0.5"	Agriculture	182	7.48	4.42	3.02	1.23	0.17	199	8.17	5.43	3.71	1.51	0.21	223	10.31	6.31	4.16	1.70	0.23
	Mining	47	12.81	8.62	3.20	4.57	0.85	58	15.73	10.58	3.92	5.61	1.05	65	17.79	11.97	4.44	6.35	1.18
	Construction	8,880	912.13	511.67	438.23	46.30	27.14	10,954	1,123.44	630.63	540.43	56.91	33.29	12,318	1,266.81	710.30	608.06	64.42	37.82
	Manufacturing	1,095	249.14	64.46	51.29	30.42	2.75	1,345	305.87	103.70	62.97	37.35	3.37	1,518	345.53	117.10	71.11	42.17	3.81
	TCPU	787	151.78	83.89	42.37	32.54	8.78	971	195.19	107.98	54.12	42.47	11.39	1,097	202.47	111.32	58.83	42.68	11.81
	Wholesale Trade	1,355	180.39	113.81	66.24	23.98	23.59	1,664	198.95	139.78	81.34	29.45	28.97	1,880	222.56	157.92	91.91	33.28	32.73
	Retail Trade	3,105	156.47	119.48	73.32	24.54	21.62	3,813	192.14	148.71	90.03	30.14	26.55	4,283	215.85	184.82	101.18	33.85	29.82
	FIRE	2,183	487.78	326.98	140.82	156.03	30.32	2,815	582.09	393.01	187.84	188.68	36.71	2,912	629.88	438.23	188.34	210.83	41.05
	Services	12,012	952.72	557.24	492.17	52.57	12.50	14,740	1,168.99	683.79	603.94	64.51	15.34	16,849	1,321.78	772.68	682.51	72.83	17.32
	Government	203	30.40	15.97	12.96	3.01	-	249	37.31	19.59	15.90	3.69	-	280	41.80	21.99	17.85	4.14	-
	Other	172	2.04	2.04	2.04	-	-	211	2.50	2.50	2.50	-	-	237	2.81	2.81	2.81	-	-
	Leakage	-	579.19	-	-	-	-	-	708.27	-	-	-	-	-	798.04	-	-	-	-
	Direct Effect	14,434	1,667.47	928.06	730.39	136.86	51.81	17,728	2,048.84	1,138.55	907.03	187.81	63.72	19,966	2,294.84	1,274.33	1,019.69	183.77	70.68
	Indirect Effect	8,251	810.79	371.80	270.61	77.65	23.14	7,663	750.33	456.60	332.83	95.55	28.42	8,673	842.56	512.35	372.93	107.45	31.97
	Induced Effect	9,295	824.85	528.49	315.25	160.48	52.78	11,406	1,012.29	648.53	386.85	196.93	64.74	12,814	1,137.09	728.58	434.59	221.23	72.73
	Total Effect	29,980	3,103.10	1,828.36	1,326.45	375.19	127.71	36,817	3,809.37	2,243.89	1,626.51	480.29	156.88	41,453	4,274.48	2,515.23	1,827.20	512.45	175.58
	Multiplier	2.077	1.861	1.970	1.793	2.741	2.465	2.077	1.861	1.971	1.793	2.743	2.462	2.074	1.863	1.974	1.792	2.789	2.477
Scenario 3 : 24H, 2.25"	Agriculture	805	37.19	22.04	15.07	6.13	0.83	1,315	80.70	35.98	24.80	10.02	1.38	1,541	71.11	42.18	28.82	11.74	1.60
	Mining	234	63.89	42.84	15.89	22.72	4.24	383	104.39	70.22	26.04	37.24	6.94	451	123.00	82.74	30.68	43.86	8.18
	Construction	44,185	4,533.38	2,543.82	2,179.33	229.86	134.81	72,808	7,452.85	4,182.14	3,582.89	377.94	221.32	85,065	8,754.94	4,907.77	4,200.43	445.57	261.78
	Manufacturing	5,449	1,239.05	420.11	255.13	151.31	13.67	8,918	2,026.99	687.78	417.87	247.74	22.38	10,487	2,387.15	808.89	491.25	291.30	26.34
	TCPU	3,875	772.54	426.54	214.94	156.74	44.86	6,340	1,264.62	698.43	351.77	273.19	73.47	7,073	1,372.55	753.54	386.33	286.84	78.37
	Wholesale Trade	6,735	787.43	565.85	329.33	119.24	117.28	11,037	1,308.72	927.24	539.67	195.39	192.18	12,990	1,537.87	1,091.26	635.14	229.95	226.18
	Retail Trade	15,490	780.51	595.95	365.72	122.41	107.82	25,232	1,271.62	971.00	595.66	199.45	175.89	29,529	1,488.18	1,136.35	697.33	233.41	205.61
	FIRE	11,078	2,368.33	1,656.09	715.62	786.60	152.66	17,135	3,587.56	2,578.66	1,096.11	1,240.92	241.83	19,846	4,278.93	2,991.23	1,286.78	1,443.21	281.23
	Services	59,758	4,737.18	2,771.67	2,447.81	261.64	62.23	97,783	7,758.41	4,535.88	4,008.42	427.73	101.73	115,002	9,133.43	5,337.78	4,715.26	502.92	119.58
	Government	1,014	151.75	79.70	64.69	15.01	-	1,649	248.82	129.59	105.18	24.41	-	1,926	288.87	151.54	123.00	28.54	-
	Other	857	10.18	10.18	10.18	-	-	1,304	16.54	16.54	16.54	-	-	1,631	19.35	19.35	19.35	-	-
	Leakage	-	2,890.22	-	-	-	-	-	4,877.47	-	-	-	-	-	5,501.95	-	-	-	-
	Direct Effect	71,895	8,328.26	4,840.95	3,888.83	602.88	259.84	117,458	13,533.79	7,521.85	6,003.21	1,099.35	420.10	137,791	16,806.98	8,770.19	7,029.69	1,253.49	487.01
	Indirect Effect	31,179	3,048.80	1,855.72	1,352.19	388.21	115.32	50,843	4,965.44	3,020.47	2,199.71	632.55	188.21	59,449	6,806.52	3,530.73	2,569.23	740.97	220.53
	Induced Effect	46,381	4,115.92	2,637.12	1,573.06	800.79	263.27	75,478	8,697.82	4,291.37	2,559.84	1,303.12	428.41	88,321	7,837.87	5,021.89	2,995.48	1,524.89	501.32
	Total Effect	149,455	15,490.97	9,133.79	6,813.88	1,861.88	638.23	243,775	25,197.04	14,833.49	10,762.75	3,034.02	1,036.72	285,562	29,453.17	17,322.80	12,594.39	3,519.36	1,208.85
	Multiplier	2.079	1.860	1.966	1.793	2.717	2.458	2.075	1.862	1.972	1.793	2.782	2.488	2.072	1.863	1.975	1.792	2.808	2.482

* All units except employment are in Millions of $ 1999.
** Employment impacts are in person-year.

Table 6. Economic Impacts of Operating and Management Costs for years 16 - 20

		Case I : 45.2 MG Plant Scenario (480, 161, 933 Plants)						Case II : One Plant per Sub-Basin Scenario (65 Plants)						Case III : One Plant per City-Basin Intersection Scenario (130 Plants)					
Rainfall Scenario		Employment	Output	Value Added	Labor Income	Property Income	Ind,Busi, Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind,Busi, Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind Busi, Taxes
Scenario 1 : 24H, 1.25"	Agriculture	48	2.28	1.30	0 90	0.35	0 05	68	3 22	1 88	1 28	0 51	0 07	82	3 02	1 74	1 20	0 47	0 07
	Mining	8	1.66	1.12	0 41	0 60	0.11	9	2.37	1 60	0.59	0 85	0 16	8	2 22	1 49	0 55	0 79	0 15
	Construction	1,250	97.23	61.59	58 84	2.52	0 24	1,964	154 01	97 76	93 29	4 00	0 38	1,451	113 14	71 44	68 25	2 92	0 27
	Manufacturing	208	42 77	15 40	9 34	5 59	0 47	296	61.10	22 01	13 33	8 01	0 67	277	56 92	20 49	12 45	7 41	0 63
	TCPU	715	196 48	115 08	48 45	53.24	13 39	1,111	307 71	180 41	75 81	83 77	21 03	856	232 32	135 92	57 80	62 54	15 78
	Wholesale Trade	206	24 35	17 28	10 08	3 94	3.58	296	35 04	24 87	14 47	5 24	5 15	271	32 12	22.78	13 26	4 80	4 72
	Retail Trade	1,127	56.13	42 66	28.26	8 75	7 87	1,592	79 38	60.39	37 15	12 36	10 88	1,518	75 57	57 43	35 35	11 77	10 32
	FIRE	3,552	667 85	475 73	263 98	179.33	32.44	4,738	918 57	635 41	351.12	240 89	43 81	5,092	984 20	680 58	379 18	255 29	48 12
	Services	2,332	154 38	101 54	87.35	11 42	2 77	3,299	218 32	143 80	123 59	18 10	3 91	3,138	207 82	136 88	117 61	15 44	3 73
	Government	85	12 27	8 81	6.36	1.26	-	119	17 25	9.28	7.51	1 77	-	115	18 84	8 97	7.28	1.71	-
	Other	68	0.79	0.79	0.79	-	-	93	1.10	1.10	1.10	-	-	90	1.07	1.07	1.07	-	-
	Leakage	-	251.22	-	-	-	-	-	336.35	-	-	-	-	-	358 52	-	-	-	-
	Direct Effect	3,810	739 04	487.75	276.37	178 05	33.34	5,423	1,040 13	683.23	387 34	248 65	47.24	5,090	1,000 25	663 82	375 78	243 08	44 78
	Indirect Effect	2,126	218 87	147 34	113 84	26 69	7 02	3,135	310 43	208 31	160 75	37 59	9 97	2,924	293 08	196 39	152 92	36 09	9 39
	Induced Effect	3,588	318.44	204.03	121.71	61.96	20.37	5,043	447.53	286.74	171.04	87.07	28.63	4,865	431.89	276 59	164 99	83 99	27 61
	Total Effect	9,594	1,276.16	839.12	511.71	266.69	60.72	13,601	1,798.08	1,178.28	719.13	373.30	85.84	12,879	1,725.02	1,136.80	693.88	363.13	81.78
	Multiplier	2.518	1.727	1.720	1.852	1.498	1.821	2.508	1.729	1.725	1.857	1.501	1.817	2.530	1.725	1.716	1.848	1.494	1.826
Scenario 2 : 24H, 0.5"	Agriculture	17	0.81	0.47	0.32	0.13	0 02	22	1 05	0 61	0.42	0.17	0 02	20	1.00	0 57	0 40	0 16	0 02
	Mining	2	0 59	0 40	0 15	0 21	0 04	3	0 78	0 52	0 19	0 28	0.05	3	0 73	0 49	0 18	0 26	0 05
	Construction	433	33.70	21.33	20 38	0.87	0.08	682	51 34	32 80	31 14	1.33	0.13	488	38 03	24 02	22 85	0 96	0 09
	Manufacturing	74	15.28	5 50	3.34	2.00	0.17	97	20 01	7.21	4.36	2 62	0.22	91	18.79	6 76	4 11	2 45	0 21
	TCPU	249	68 33	40 01	16 87	18.49	4 65	369	102 39	60.04	25.14	27.90	7.00	297	77 91	45 59	19.30	20 99	5 29
	Wholesale Trade	73	8.68	6.16	3 59	1.30	1 28	97	11.49	8 15	4.75	1 72	1.69	90	10 82	7.53	4 38	1 59	1 56
	Retail Trade	404	20.12	15.29	0 41	3.13	2.75	520	25.95	19 74	12 14	4 05	3 65	501	24 92	18 94	11 68	3 68	3 40
	FIRE	1,293	250.24	173.06	96.13	65.19	11 78	1,530	296 93	205 40	113 41	77 88	14.11	1,666	372 13	222 76	124 05	83 81	15 11
	Services	836	55.32	36.38	31.30	4.10	0.99	1,078	71 38	48 93	40.40	5.28	1.28	1,035	68 52	45 07	38 75	5 09	1 23
	Government	31	4 41	2.37	1.92	0.45	-	39	5.63	3 03	2.45	0.58	-	38	6 48	2 95	2 39	0.56	-
	Other	24	0.28	0.28	0.28	-	-	30	0.36	0.36	0.36	-	-	30	0 35	0.35	0.35	-	-
	Leakage	-	91.33	-	-	-	-	-	108.78	-	-	-	-	-	117.38	-	-	-	-
	Direct Effect	1,363	265.18	175.24	99.28	64 02	11.94	1,774	339.65	222 91	128 39	81 08	15.45	1,660	329 58	218 52	123 75	80 00	14 77
	Indirect Effect	785	78 28	52 80	40 72	9 57	2 51	1,027	101 53	68 06	52 54	12.28	3 28	965	96 66	65 41	50 42	11 89	3 10
	Induced Effect	1,288	114.31	73.24	43.69	22.94	7.31	1,648	146.10	93.81	55.84	28 43	9.35	1,603	142.21	91.12	54.35	27.67	9.10
	Total Effect	3,436	457.78	301.27	183.68	96.53	21.78	4,447	587.29	384.80	234.77	121.78	28.05	4,248	568.47	375.04	228.52	119.56	26 96
	Multiplier	2.521	1.728	1.719	1.850	1.497	1.823	2.506	1.729	1.725	1.858	1.502	1.818	2.529	1.725	1.718	1.847	1.495	1.826
Scenario 3 : 24H, 2.25"	Agriculture	88	4.28	2 47	1.70	0 67	0 09	138	6 61	3.81	2.63	1.04	0 14	133	6 52	3.75	2 58	1.02	0 14
	Mining	12	3.15	2 12	0.78	1.13	0 21	18	4 87	3.27	1 20	1.74	0 33	17	4 78	3.22	1.18	1.71	0 32
	Construction	2,400	186 57	118.21	112 92	4.83	0.45	3,959	307 43	195 05	186.33	7 98	0.75	2,999	234 06	147 83	141.04	6 03	0 57
	Manufacturing	393	81.01	29.17	17 69	10.59	0 89	608	125 31	45 13	27 34	16 41	1.38	597	122 73	44 17	26 85	15 97	1 35
	TCPU	1,369	378.40	220 52	92 79	102.08	25 87	2,229	615.98	381 07	181 50	167 49	42.08	1,788	483 21	282 58	120 02	129 79	32 77
	Wholesale Trade	390	46.16	32.75	19 06	8.90	8 79	606	71.72	50 89	29 62	10 72	10.55	584	69 08	49 02	28 53	10.33	10 18
	Retail Trade	2,131	106.19	80.75	49 69	18.55	14 52	3,274	163 24	124.16	76.39	25 45	22.33	3,296	163 47	124 23	76 47	25 45	22 31
	FIRE	8,874	1,292.55	893 97	495.79	337 17	81.01	8,900	1,919.30	1,327 59	734 48	502 18	90.95	11,201	2,164 15	1,496 45	834 81	560 81	101 23
	Services	4,412	292.04	192 08	165 25	21.60	5.24	6,784	448 94	295.28	254.11	33.14	8.04	6,789	449 58	295 67	254 17	33 42	8 08
	Government	181	23.20	12.50	10.11	2.38	-	248	35 53	19.13	15.47	3.65	-	250	36 06	19.45	15.75	3 70	-
	Other	125	1.49	1.49	1.49	-	-	192	2.28	2.28	2.28	-	-	193	2.31	2.31	2.31	-	-
	Leakage	-	472.21	-	-	-	-	-	702.27	-	-	-	-	-	787.82	-	-	-	-
	Direct Effect	7,212	1,397.24	921.83	522 24	336.31	63 08	11,131	2,141.88	1,408 83	798 47	513 07	97.09	10,969	2,187 03	1,439 80	815 18	527 82	98 81
	Indirect Effect	4,159	413 84	278 71	214 97	50.46	13 28	8,431	837 68	478 39	330 54	77 37	20 48	8,306	833 23	429 20	330 78	78 17	20 27
	Induced Effect	8,783	801.95	365.87	230 06	117.11	38 50	10,386	921.85	590 84	352.32	179.35	58.96	10,644	935.86	599 49	357 80	182.04	59.85
	Total Effect	18,154	2,413.03	1,566.02	967.27	503.88	114.87	27,950	3,701.21	2,427.68	1,481.32	769.80	178.54	27,839	3,735.93	2,488.49	1,503.52	788 03	178.94
	Multiplier	2.517	1.727	1.721	1.852	1.498	1.821	2.511	1.728	1.723	1.855	1.500	1.818	2.533	1.724	1.714	1.844	1.493	1.828

* All units except employment are in Millions of $ 1999.

** Employment Impacts are in person-year.

Table 7. Economic Impacts of Household Expenditure Reductions for years 1 - 20

		Case I : 45.2 MG Plant Scenario (480, 161, 933 Plants)						Case II : One Plant per Sub-Basin Scenario (65 Plants)						Case III : One Plant per City-Basin Intersection Scenario (130 Plants)					
Rainfall Scenario	Industry	Employment	Output	Value Added	Labor Income	Property Income	Ind.Busi. Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind.Busi. Taxes	Employment	Output	Value Added	Labor Income	Property Income	Ind.Busi. Taxes
Scenario 1 : 24H, 1.25"	Agriculture	1,147	58 87	33 39	23 26	8 93	1 18	1,524	78 24	44 37	30 94	11 86	1 57	1,849	84 65	48 01	33 48	12 83	1 70
	Mining	185	50 84	34 09	12 48	18 20	3 41	248	67 30	45 31	16 58	24 19	4 53	268	72 82	49 02	17 94	26 18	4 90
	Construction	2,297	224 59	108 49	103 91	4 14	0 45	3,052	299 45	144 17	138 08	5 50	0 59	3,303	322 93	156 00	149 41	5 95	0 64
	Manufacturing	4,850	1,054 45	378 67	223 10	141 98	11 57	6,445	1,401 24	500 54	296 47	188 69	15 38	6,974	1,516 20	541 61	320 78	204 17	16 64
	TCPU	3,972	774 21	428 78	218 45	182 27	48 06	5,212	1,026 82	567 14	287 63	215 84	63 87	5,640	1,113 23	613 67	311 23	233 33	69 11
	Wholesale Trade	8,347	751 47	533 24	310 35	112 36	110 52	8,435	998 81	708 80	412 42	149 32	146 87	9,127	1,080 54	766 74	446 26	161 57	158 92
	Retail Trade	42,960	2,139 83	1,828 36	1,002 55	333 36	292 45	57,115	2,843 57	2,183 89	1,332 26	443 00	388 63	61,800	3,078 86	2,341 42	1,441 87	479 34	420 51
	FIRE	9,230	2,506 71	1,791 89	481 02	1,104 03	226 84	12,269	3,333 78	2,381 19	612 84	1,467 11	301 44	13,272	3,602 26	2,578 65	662 90	1,587 48	326 17
	Services	62,101	3,882 24	2,506 12	2,148 81	283 91	72 81	82,524	5,159 01	3,330 32	2,856 58	377 28	96 49	89,294	5,582 27	3,603 55	3,090 92	408 23	104 40
	Government	1,645	295 06	142 56	106 24	34 32	-	2,186	392 10	189 44	143 83	45 61	-	2,368	424 27	204 98	155 63	49 35	-
	Other	2,890	34 28	34 28	34 28	-	-	3,841	45 56	45 56	45 56	-	-	4,158	49 30	49 30	49 30	-	-
	Leakage	-	1,596 33	-	-	-	-	-	2,121 32	-	-	-	-	-	2,295 36	-	-	-	-
	Direct Effect	86,037	8,837 35	4,526 41	2,709 19	1,323 21	496 01	114,332	8,085 98	6,017 68	3,600 17	1,758 38	659 13	123,712	9,831 42	6,511 40	3,895 54	1,902 65	713 21
	Indirect Effect	18,981	2,048 19	1,235 26	831 24	317 87	86 17	25,224	2,719 13	1,641 53	1,104 61	422 41	114 51	27,293	2,942 22	1,776 21	1,195 24	457 08	123 90
	Induced Effect	32,578	2,890 82	1,852 18	1,104 84	562 43	184 91	43,269	3,841 53	2,461 32	1,468 19	747 40	245 72	46,841	4,158 71	2,663 25	1,588 85	808 72	265 88
	Total Effect	137,594	11,774 36	7,615 87	4,645 27	2,203 52	767 08	182,846	15,646 85	10,120 53	6,172 98	2,928 20	1,019 36	197,847	16,930 35	10,950 86	6,679 43	3,168 44	1,102 99
	Multiplier	1.599	1.722	1.682	1.715	1.685	1.547	1.599	1.722	1.682	1.715	1.685	1.547	1.599	1.722	1.682	1.715	1.685	1.547
Scenario 2 : 24H, 0.5"	Agriculture	418	21 45	12 16	8 48	3 25	0 43	492	25 26	14 33	9 99	3 83	0 51	539	27 69	15 70	10 95	4 20	0 56
	Mining	67	18 45	12 42	4 55	6 63	1 24	79	21 73	14 63	5 36	7 81	1 46	87	23 82	16 04	5 87	8 56	1 60
	Construction	837	81 81	39 52	37 85	1 51	0 16	986	96 38	46 56	44 59	1 78	0 19	1,080	105 64	51 03	48 87	1 95	0 21
	Manufacturing	1,767	384 09	137 20	81 27	51 72	4 22	2,081	452 50	161 64	95 74	60 93	4 97	2,281	495 87	177 17	104 94	66 79	5 44
	TCPU	1,429	282 01	155 48	78 84	59 11	17 51	1,683	332 24	183 14	92 89	69 63	20 62	1,845	364 15	200 74	101 81	76 32	22 61
	Wholesale Trade	2,312	273 73	194 24	113 05	40 93	40 28	2,724	322 48	228 83	133 18	48 22	47 43	2,986	353 48	250 81	145 98	52 85	51 96
	Retail Trade	15,858	779 45	593 14	365 19	121 43	109 53	18,444	910 27	696 78	430 23	143 06	129 50	20,218	1,006 49	785 91	471 58	156 80	137 56
	FIRE	3,382	913 82	652 71	187 93	402 15	82 83	3,981	1,076 57	768 98	197 84	473 77	97 34	4,341	1,180 00	842 83	216 85	519 29	106 70
	Services	22,821	1,414 14	912 87	783 01	103 42	26 45	26,849	1,665 09	1,075 48	922 48	121 83	31 18	29,210	1,826 04	1,179 78	1,011 09	133 54	34 15
	Government	599	107 48	51 93	38 43	12 50	-	706	126 62	61 18	48 45	14 73	-	774	138 79	67 05	50 91	16 14	-
	Other	1,053	12 49	12 49	12 49	-	-	1,240	14 71	14 71	14 71	-	-	1,359	16 13	16 13	16 13	-	-
	Leakage	-	581 47	-	-	-	-	-	685 03	-	-	-	-	-	750 85	-	-	-	-
	Direct Effect	31,340	2,490 56	1,649 51	966 84	481 99	180 87	36,921	2,934 13	1,943 29	1,162 80	557 63	212 85	40,488	3,218 01	2,129 88	1,274 29	622 38	233 30
	Indirect Effect	8,914	745 34	449 06	302 79	115 79	31 39	8,148	878 09	530 10	356 71	136 41	36 98	8,928	962 44	581 02	390 98	149 51	40 53
	Induced Effect	11,866	1,053 00	674 87	402 45	204 87	67 35	13,979	1,240 54	794 83	474 12	241 36	79 35	15,322	1,359 72	871 19	519 87	284 55	86 97
	Total Effect	50,120	4,288 90	2,774 14	1,692 07	802 85	279 42	59,048	5,052 76	3,268 21	1,993 43	945 80	329 18	64,718	5,538 17	3,582 19	2,184 94	1,036 44	360 80
	Multiplier	1.599	1.722	1.682	1.715	1.665	1.547	1.599	1.722	1.682	1.715	1.665	1.547	1.599	1.722	1.682	1.715	1.665	1.547
Scenario 3 : 24H, 2.25"	Agriculture	2,154	110 57	62 70	43 73	16 76	2 22	3,189	163 70	92 83	64 74	24 82	3 28	3,631	186 38	105 70	73 71	28 26	3 74
	Mining	347	95 11	64 03	23 44	34 19	6 40	514	140 81	94 80	34 70	50 62	9 48	588	160 32	107 94	39 51	57 63	10 80
	Construction	4,314	421 79	203 78	195 15	7 78	0 84	6,387	624 46	301 67	288 92	11 51	1 24	7,272	710 99	343 47	328 95	13 11	1 41
	Manufacturing	9,109	1,980 35	707 41	418 00	266 68	21 73	13,486	2,931 91	1,047 32	620 32	394 82	32 18	15,355	3,338 17	1,192 44	706 28	449 52	36 64
	TCPU	7,366	1,454 02	801 53	406 51	304 75	90 26	10,906	2,152 88	1,186 66	601 83	451 19	133 64	12,417	2,450 87	1,351 09	685 23	513 71	152 15
	Wholesale Trade	11,921	1,411 32	1,001 48	582 87	211 03	207 58	17,649	2,089 48	1,482 66	862 94	312 43	307 30	20,094	2,378 98	1,688 11	982 51	355 72	349 88
	Retail Trade	80,719	4,018 77	3,058 19	1,882 87	626 06	549 24	119,505	5,949 80	4,527 66	2,787 59	926 91	813 15	136,084	6,774 24	5,155 04	3,173 85	1,055 35	925 93
	FIRE	17,335	4,711 56	3,365 31	865 64	2,073 45	428 02	25,664	6,975 47	4,982 34	1,281 87	3,069 74	630 72	29,220	7,942 04	5,672 72	1,459 50	3,495 11	718 12
	Services	116,830	7,291 18	4,708 70	4,037 13	533 20	136 36	172,870	10,794 56	6,968 27	5,976 98	789 41	201 88	196,597	12,290 32	7,933 83	6,805 18	898 79	229 86
	Government	3,090	554 15	267 73	203 26	64 48	-	4,575	820 42	396 38	300 95	95 43	-	5,209	934 10	451 31	342 68	108 85	-
	Other	5,428	64 39	64 39	64 39	-	-	8,036	95 32	95 32	95 32	-	-	9,150	108 53	108 53	108 53	-	-
	Leakage	-	2,996 03	-	-	-	-	-	4,436 58	-	-	-	-	-	5,053 82	-	-	-	-
	Direct Effect	181,584	12,841 09	8,504 71	5,088 07	2,485 10	931 54	238,225	19,011 24	12,591 23	7,532 89	3,679 19	1,379 15	272,374	21,645 56	14,335 65	8,578 70	4,189 00	1,570 25
	Indirect Effect	35,849	3,842 91	2,319 95	1,581 13	596 98	181 84	52,778	5,869 44	3,434 89	2,311 26	863 84	239 80	60,091	6,477 80	3,910 63	2,631 52	1,006 31	272 80
	Induced Effect	61,180	5,429 19	3,478 54	2,074 98	1,058 30	347 27	90,577	8,037 91	5,149 99	3,072 01	1,563 86	514 13	103,128	9,151 70	5,863 80	3,497 89	1,780 54	585 37
	Total Effect	258,413	22,113 19	14,303 21	8,724 18	4,138 38	1,440 64	382,581	32,738 59	21,175 91	12,916 16	6,126 88	2,132 87	435,594	37,275 08	24,110 18	14,705 91	6,975 85	2,428 42
	Multiplier	1.599	1.722	1.682	1.715	1.665	1.547	1.599	1.722	1.682	1.715	1.665	1.547	1.599	1.722	1.682	1.715	1.665	1.547

* All units except employment are in Millions of $ 1999.
** Employment impacts are in person-year.

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Combining data where possible, there are two periods to consider. Years 1-15 each combine a construction stimulus effect with simultaneous reductions in household expenditures. Years 16-20 combine the stimulus from full-scale operations and maintenance expenditures with continued reductions in household expenditures. This is why Table 8, which summarizes net job impacts contains mostly negative entries. There are more jobs lost than gained and there are extraordinarily large net losses in the last interval when the stimulative effects of construction are over. There are, to be sure, gains in construction sector employment in Years 1-15, but these are more than offset by losses in all of the other industrial sectors. Depending on the combination of case and scenario, aggregate regional job losses range from an average of just over 20,000 (Rainfall Scenario II, Plant Case I) for each of the first fifteen years to over 150,000 (Rainfall Scenario III, Plant Case III) in the same interval. In the post-construction interval, these losses grow substantially from almost 47,000 to over 400,000 jobs per year for the same two bookend combinations. Job losses for combination (II, II) are more than 22,000 in each of Years 1-15 and almost 60,000 in each of the last five years.

The other model used in this study is a proprietary model developed at USC, the Southern California Planning Model (SCPM) which has the unique capability to allocate all of the IMPLAN outputs to the various cities and communities throughout the five-county southern California metropolitan areas. SCPM has been used by our group for a variety of impact studies over the last twenty years. Its data components have continuously been updated.

Table 8. Net Annual Employment Impacts by Scenario by Period

(Person-Year)

Construction Period	Industry	CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Year 1 - Year 15	Agriculture	-714	-256	-1,349	-905	-294	-1,874	-963	-316	-2,090
	Mining	-59	-20	-114	-66	-22	-131	-66	-22	-134
	Construction	21,477	8,043	39,851	31,129	9,968	66,221	34,516	11,238	77,813
	Manufacturing	-1,918	-672	-3,661	-2,248	-737	-4,568	-2,313	-763	-4,868
	TCPU	-1,846	-662	-3,491	-2,200	-712	-4,566	-2,468	-808	-5,344
	Wholesale Trade	-2,721	-957	-5,185	-3,241	-1,060	-6,611	-3,354	-1,106	-7,104
	Retail Trade	-34,649	-12,550	-65,229	-45,223	-14,631	-94,273	-48,654	-15,933	-106,536
	FIRE	-3,304	-1,179	-6,259	-4,136	-1,346	-8,529	-4,350	-1,429	-9,374
	Services	-29,936	-10,609	-56,874	-36,512	-11,909	-74,907	-38,173	-12,560	-81,595
	Government	-1,100	-396	-2,076	-1,409	-457	-2,926	-1,507	-494	-3,281
	Other	-2,429	-881	-4,571	-3,184	-1,030	-6,642	-3,429	-1,123	-7,518
	Direct Effect	-47,352	-16,905	-89,689	-59,017	-19,194	-121,770	-62,420	-20,503	-134,583
	Indirect Effect	-2,213	-664	-4,470	-1,262	-462	-1,936	-827	-305	-642
	Induced Effect	-7,634	-2,571	-14,799	-7,715	-2,573	-15,101	-7,514	-2,509	-14,807
	Total Effect	-57,199	-20,140	-108,958	-67,994	-22,229	-138,806	-70,761	-23,316	-150,032
Year 16 - Year 20	Agriculture	-1,100	-401	-2,066	-1,524	-492	-3,189	-1,587	-519	-3,497
	Mining	-179	-65	-336	-246	-79	-514	-258	-84	-568
	Construction	-1,047	-404	-1,915	-3,052	-986	-6,387	-1,852	-593	-4,273
	Manufacturing	-4,643	-1,693	-8,716	-6,445	-2,081	-13,486	-6,697	-2,190	-14,758
	TCPU	-3,207	-1,179	-5,997	-5,212	-1,683	-10,906	-4,783	-1,558	-10,628
	Wholesale Trade	-6,142	-2,239	-11,531	-8,435	-2,724	-17,649	-8,855	-2,896	-19,511
	Retail Trade	-41,853	-15,252	-78,588	-57,115	-18,444	-119,505	-60,282	-19,715	-132,778
	FIRE	-5,678	-2,069	-10,661	-12,266	-3,961	-25,664	-8,180	-2,675	-18,019
	Services	-59,768	-21,785	-112,218	-82,524	-26,649	-172,670	-86,156	-28,175	-189,808
	Government	-1,560	-569	-2,929	-2,186	-706	-4,575	-2,250	-736	-4,958
	Other	-2,824	-1,029	-5,303	-3,841	-1,240	-8,036	-4,066	-1,330	-8,955
	Direct Effect	-82,227	-29,977	-154,372	-114,332	-36,921	-239,225	-118,622	-38,788	-261,385
	Indirect Effect	-16,785	-6,129	-31,490	-25,224	-8,146	-52,778	-24,369	-7,963	-53,785
	Induced Effect	-28,988	-10,578	-54,397	-43,289	-13,979	-90,577	-41,976	-13,720	-92,585
	Total Effect	-128,000	-46,684	-240,259	-182,846	-59,046	-382,581	-184,968	-60,471	-407,755

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Selected SCPM results expressed in terms of total output effects (direct plus indirect plus induced, in 1999 millions of dollars) are shown in Tables 9 and 10. The associated direct, indirect and induced effects are shown in Appendix Tables A2-A7. Tables 9 and 10 show total impacts for a representative year in the intervals of Years 1-15 and Years 16-20 respectively. Just as in the case of regional job impacts, Tables 9 and 10 show both stimulative effects (top panels) resulting from construction and depressive effects (middle panels) resulting from financing. Net impacts are shown in the third panel of each table. Now, however, the results are reported for the five counties in the Southern California metropolitan area, as regional total and for sub-areas of Los Angeles county constituting SCAG sub-regional planning areas. Whereas most of the direct effects are located within Los Angeles county, the five-county area is an integrated metropolitan economy making it quite likely that indirect and induced effects will be felt in neighboring counties.

For the region, net annual losses in the first interval range from $1.186 billion (Rainfall Scenario II, Plant Case I) to $7.823 billion (Rainfall Scenario III, Plant Case III). All five of the counties also show net losses for these years. Within Los Angeles county, there are economic winners as well as losers. North Los Angeles county, for example shows some net gains for some of the combinations of cases and scenarios. This is because while expenditures may be funneled there, there are few households and thus relatively low taxation impacts. For the conservative combination (II, II), net annual losses are $1.242 billion for the region, most of which is expected to fall on Los Angeles county.

In the second interval, the construction stimulus is removed and there are net losses for all areas, for all combinations. Net annual losses for the region range from $3.830 billion (Rainfall Scenario II, Plant Case I) to $33.530 billion (Rainfall Scenario III, Plant Case III). For the (II, II) combination, net annual losses are expected to be $4.464 billion.

Table 9. Annual Total Impacts for years 1 - 15

(Millions of $ 1999)

Scenario			Los Angeles County													
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	355.5	2,382.5	391.6	776.6	1,145.8	432.9	176.1	1,130.2	6,791.3	791.6	262.1	301.2	179.5	8,325.7
		Scenario II	156.1	810.5	163.6	344.8	366.6	151.0	60.0	476.7	2,529.4	295.0	97.7	112.2	67.1	3,101.4
		Scenario III	568.5	4,358.9	718.2	1,515.6	2,124.0	826.0	282.2	2,237.4	12,630.8	1,471.9	487.4	560.0	333.7	15,483.8
	CASE II	Scenario I	339.3	3,576.9	1,168.8	1,003.1	1,928.2	520.4	187.1	961.3	9,685.1	1,129.2	374.1	429.8	255.9	11,874.0
		Scenario II	106.8	1,134.0	335.9	330.9	622.8	169.0	60.0	346.5	3,105.9	362.1	119.9	137.8	82.1	3,807.8
		Scenario III	701.7	7,539.4	2,668.5	2,152.5	4,055.0	1,081.2	397.0	1,947.3	20,542.5	2,395.7	793.6	911.8	542.8	25,186.5
	CASE III	Scenario I	304.4	3,404.7	1,786.6	770.6	2,491.9	550.4	207.5	1,176.5	10,692.6	1,248.1	413.4	474.9	282.6	13,111.5
		Scenario II	103.8	1,113.8	473.9	307.7	829.1	206.0	67.7	383.2	3,485.3	406.7	134.7	154.7	92.1	4,273.5
		Scenario III	680.8	7,627.9	4,248.6	1,662.2	5,508.7	1,168.5	466.0	2,640.2	24,003.1	2,803.0	928.4	1,066.6	634.7	29,435.7
Impacts of Household Expenditure Reduction	CASE I	Scenario I	662.6	3,871.7	345.9	1,114.3	1,403.5	903.6	529.3	729.8	9,560.8	1,141.8	346.6	457.5	262.6	11,769.3
		Scenario II	241.4	1,410.3	126.0	405.9	511.2	329.1	192.8	265.8	3,482.6	415.9	126.3	166.6	95.7	4,287.0
		Scenario III	1,244.4	7,271.3	649.7	2,092.8	2,636.0	1,697.1	994.1	1,370.7	17,956.0	2,144.3	650.9	859.2	493.2	22,103.6
	CASE II	Scenario I	880.5	5,144.9	459.7	1,480.8	1,865.1	1,200.8	703.4	969.8	12,705.1	1,517.2	460.6	607.9	349.0	15,639.9
		Scenario II	284.4	1,661.5	148.5	478.2	602.3	387.8	227.1	313.2	4,102.9	490.0	148.7	196.3	112.7	5,050.6
		Scenario III	1,842.4	10,765.1	961.9	3,098.4	3,902.5	2,512.5	1,471.7	2,029.3	26,583.9	3,174.6	963.7	1,272.1	730.2	32,724.5
	CASE III	Scenario I	952.8	5,567.1	497.4	1,602.3	2,018.1	1,299.3	761.1	1,049.4	13,747.5	1,641.7	498.4	657.8	377.6	16,923.0
		Scenario II	311.7	1,821.1	162.7	524.1	660.2	425.0	249.0	343.3	4,497.0	537.0	163.0	215.2	123.5	5,535.8
		Scenario III	2,097.7	12,256.8	1,095.2	3,527.7	4,443.3	2,860.7	1,675.6	2,310.5	30,267.5	3,614.5	1,097.3	1,448.3	831.4	37,259.0
Net Impacts	CASE I	Scenario I	-307.1	-1,489.2	45.6	-337.7	-257.7	-470.7	-353.1	400.4	-2,769.5	-350.2	-84.5	-156.3	-83.1	-3,443.6
		Scenario II	-85.2	-599.7	37.6	-61.1	-144.6	-178.1	-132.8	210.8	-953.2	-120.9	-28.6	-54.4	-28.6	-1,185.6
		Scenario III	-676.0	-2,912.4	68.5	-577.2	-511.9	-871.1	-711.8	866.8	-5,325.2	-672.4	-163.5	-299.2	-159.5	-6,619.8
	CASE II	Scenario I	-541.2	-1,568.0	709.0	-477.7	63.1	-680.4	-516.3	-8.5	-3,020.0	-388.1	-86.5	-178.2	-93.1	-3,765.9
		Scenario II	-177.6	-527.5	187.5	-147.3	20.5	-218.8	-167.1	33.3	-997.0	-127.9	-28.8	-58.5	-30.6	-1,242.8
		Scenario III	-1,140.7	-3,225.7	1,706.5	-945.9	152.4	-1,431.3	-1,074.7	-82.0	-6,041.4	-778.9	-170.1	-360.2	-187.3	-7,537.9
	CASE III	Scenario I	-648.3	-2,162.4	1,289.2	-831.7	473.7	-748.9	-553.6	127.1	-3,054.9	-393.7	-85.0	-182.9	-95.0	-3,811.6
		Scenario II	-207.9	-707.2	311.2	-216.4	169.0	-219.0	-181.2	39.9	-1,011.7	-130.4	-28.3	-60.4	-31.4	-1,262.3
		Scenario III	-1,416.9	-4,628.9	3,153.4	-1,865.5	1,065.4	-1,692.1	-1,209.6	329.7	-6,264.4	-811.6	-168.9	-381.7	-196.7	-7,823.2

Table 10. Annual Total Impacts for years 16 - 20

(Millions of $ 1999)

Scenario			Los Angeles County													
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	56.3	374.5	59.1	122.3	178.4	66.1	26.4	176.1	1,059.2	112.7	37.0	42.3	24.4	1,275.6
		Scenario II	24.1	122.0	23.9	52.8	54.2	22.1	8.5	72.3	379.9	40.4	13.3	15.2	8.8	457.5
		Scenario III	90.7	695.6	110.3	243.4	335.8	128.3	41.9	356.7	2,002.7	213.1	70.0	80.0	46.2	2,412.0
	CASE II	Scenario I	53.8	565.2	153.0	148.6	316.7	78.9	26.1	150.0	1,492.2	158.8	52.2	59.7	34.5	1,797.4
		Scenario II	17.1	182.6	45.5	49.9	104.0	26.0	8.5	53.8	487.3	51.9	17.1	19.5	11.3	587.1
		Scenario III	108.7	1,155.2	339.1	310.4	646.5	159.2	53.8	298.8	3,071.7	326.8	107.5	122.9	70.9	3,699.8
	CASE III	Scenario I	41.0	461.9	218.8	110.8	340.8	75.3	25.3	158.7	1,432.6	152.4	49.9	57.0	32.8	1,724.6
		Scenario II	14.0	152.5	60.1	43.9	114.9	28.2	8.3	52.6	474.5	50.2	16.4	18.8	10.8	570.8
		Scenario III	88.4	993.3	506.7	230.5	726.9	152.7	54.8	342.9	3,096.2	330.1	107.9	123.3	71.0	3,728.5
Impacts of Household Expenditure Reduction	CASE I	Scenario I	662.6	3,871.7	345.9	1,114.3	1,403.5	903.6	529.3	729.8	9,560.8	1,141.8	346.6	457.5	262.6	11,769.3
		Scenario II	241.4	1,410.3	126.0	405.9	511.2	329.1	192.8	265.8	3,482.6	415.9	126.3	166.6	95.7	4,287.0
		Scenario III	1,244.4	7,271.3	649.7	2,092.8	2,636.0	1,697.1	994.1	1,370.7	17,956.0	2,144.3	650.9	859.2	493.2	22,103.6
	CASE II	Scenario I	880.5	5,144.9	459.7	1,480.8	1,865.1	1,200.8	703.4	969.8	12,705.1	1,517.2	460.6	607.9	349.0	15,639.9
		Scenario II	284.4	1,661.5	148.5	478.2	602.3	387.8	227.1	313.2	4,102.9	490.0	148.7	196.3	112.7	5,050.6
		Scenario III	1,842.4	10,765.1	961.9	3,098.4	3,902.5	2,512.5	1,471.7	2,029.3	26,583.9	3,174.6	963.7	1,272.1	730.2	32,724.5
	CASE III	Scenario I	952.8	5,567.1	497.4	1,602.3	2,018.1	1,299.3	761.1	1,049.4	13,747.5	1,641.7	498.4	657.8	377.6	16,923.0
		Scenario II	311.7	1,821.1	162.7	524.1	660.2	425.0	249.0	343.3	4,497.0	537.0	163.0	215.2	123.5	5,535.8
		Scenario III	2,097.7	12,256.8	1,095.2	3,527.7	4,443.3	2,860.7	1,675.6	2,310.5	30,267.5	3,614.5	1,097.3	1,448.3	831.4	37,259.0
Net Impacts	CASE I	Scenario I	-606.3	-3,497.1	-286.8	-992.1	-1,225.2	-837.6	-502.9	-553.7	-8,501.6	-1,029.0	-309.6	-415.2	-238.2	-10,493.7
		Scenario II	-217.3	-1,268.3	-102.2	-353.1	-457.0	-307.1	-184.3	-193.5	-3,102.7	-375.5	-113.0	-151.5	-86.9	-3,829.5
		Scenario III	-1,153.8	-6,575.7	-539.4	-1,849.4	-2,300.1	-1,568.8	-952.2	-1,013.9	-15,953.3	-1,931.2	-581.0	-779.2	-447.0	-19,691.7
	CASE II	Scenario I	-826.7	-4,579.8	-306.7	-1,332.2	-1,548.4	-1,121.9	-677.2	-819.9	-11,213.0	-1,358.5	-408.4	-548.2	-314.5	-13,842.5
		Scenario II	-267.3	-1,478.9	-103.0	-428.3	-498.3	-361.8	-218.6	-259.4	-3,615.5	-438.1	-131.7	-176.8	-101.4	-4,463.5
		Scenario III	-1,733.7	-9,810.0	-622.8	-2,788.0	-3,256.0	-2,353.3	-1,417.9	-1,730.5	-23,512.1	-2,847.8	-856.3	-1,149.2	-659.3	-29,024.7
	CASE III	Scenario I	-911.8	-5,105.2	-278.6	-1,491.5	-1,677.3	-1,224.0	-735.8	-890.7	-12,314.9	-1,489.3	-448.5	-600.9	-344.8	-15,198.4
		Scenario II	-297.6	-1,668.6	-102.6	-480.2	-545.3	-396.9	-240.6	-290.7	-4,022.5	-486.8	-146.6	-196.4	-112.7	-4,965.0
		Scenario III	-2,009.3	-11,263.5	-588.5	-3,297.3	-3,716.4	-2,707.9	-1,620.9	-1,967.6	-27,171.3	-3,284.4	-989.3	-1,325.0	-760.4	-33,530.5

All of these effects were computed for all cities and CDPs in the five-county area. Results are shown in Tables A8-A15. These annual tables correspond to the typical years in each of the two intervals. Tables A8, A10, A12, and A14, correspond to Years 1-15; and Tables A9, A11, A13, and A15 correspond to Years 16-20. The first Tables (A8 and A9) summarize total effects, while the following table pairs detail direct, indirect, and induced effects, respectively. Each of the eight tables lists stimulus effects for the nine combinations of cases and scenarios. These are the first nine columns. Household expenditure reduction effects appear in the next nine columns and net effects appear in the last nine columns.

It is obviously cumbersome to discuss all of these results for hundreds of cities. Consider just some of the county's cities, namely El Monte, Inglewood, Pasadena, Pomona and Torrance. Tables 11 and 12 are laid out like Tables 9 and 10. In Years 1-15, there are occasional economic winners. Pomona wins in two of the nine combinations of cases and scenarios. But overwhelmingly there are cities that are losers year after year. The four other cities show substantial losses for each combination of case and scenario. In Years 15-20, the stimulus associated with construction will have passed and all five of the cities experience substantial losses. Pomona's annual net losses are as "small" as $28.8 million per year (Rainfall Scenario II, Plants Case I) whereas Torrance's losses go as high as $777.4 million per year. Four of the five cities experience losses in Years 1-15, Pomona's being the occasional exception. Pomona's advantage disappears in Years 16-20; once the construction stimulus is past, there are net losses for all these cities.

Tables A16 - A21 in Appendix A summarize the direct, indirect and induced effects evaluated in this report. Direct costs always refer to the expenditures actually made in each city. Detailed plant site decisions are not predictable. Our approach is to site hypothetical plants at the lowest topographic elevations consistent with each plants case. In the 65-plant case, this means that there are direct expenditures in some cities, but not in others.

Table 11. Annual Total Impacts for years 1 - 15 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	55.4	81.6	112.5	101.7	91.1
		Scenario II	18.0	29.6	52.7	40.4	62.6
		Scenario III	100.5	112.1	194.0	169.3	184.3
	CASE II	Scenario I	29.9	32.8	147.1	58.4	83.7
		Scenario II	9.6	10.5	44.9	20.7	26.8
		Scenario III	63.5	69.7	300.4	121.4	177.7
	CASE III	Scenario I	68.8	54.6	106.7	88.9	146.1
		Scenario II	27.9	21.3	37.7	38.9	50.6
		Scenario III	147.3	120.5	241.6	195.5	317.7
Impacts of Household Expenditure Reduction	CASE I	Scenario I	87.2	105.1	214.9	95.9	258.7
		Scenario II	31.8	38.3	78.3	34.9	94.2
		Scenario III	163.7	197.3	403.6	180.2	485.9
	CASE II	Scenario I	115.9	139.6	285.6	127.5	343.8
		Scenario II	37.4	45.1	92.2	41.2	111.0
		Scenario III	242.4	292.2	597.6	266.8	719.4
	CASE III	Scenario I	125.4	151.1	309.0	138.0	372.0
		Scenario II	41.0	49.4	101.1	45.1	121.7
		Scenario III	276.0	332.7	680.4	303.7	819.1
Net Impacts	CASE I	Scenario I	-31.8	-23.5	-102.4	5.8	-167.6
		Scenario II	-13.8	-8.7	-25.6	5.5	-31.6
		Scenario III	-63.2	-85.2	-209.6	-10.9	-301.6
	CASE II	Scenario I	-85.9	-106.8	-138.5	-69.1	-260.1
		Scenario II	-27.8	-34.6	-47.3	-20.5	-84.2
		Scenario III	-178.9	-222.5	-297.1	-145.4	-541.7
	CASE III	Scenario I	-56.6	-96.4	-202.3	-49.0	-225.9
		Scenario II	-13.1	-28.1	-63.4	-6.3	-71.1
		Scenario III	-128.7	-212.1	-438.7	-108.2	-501.4

Table 12. Annual Total Impacts for years 16 - 20 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	8.5	13.0	17.6	16.0	13.5
		Scenario II	2.6	4.6	8.1	6.2	9.6
		Scenario III	15.6	17.8	30.7	27.0	28.1
	CASE II	Scenario I	3.9	4.3	23.5	9.1	11.2
		Scenario II	1.3	1.4	7.2	3.2	3.7
		Scenario III	8.0	8.9	47.1	18.6	23.0
	CASE III	Scenario I	9.7	7.2	14.2	12.7	20.0
		Scenario II	3.9	2.9	5.1	5.5	6.9
		Scenario III	20.1	15.4	31.0	27.3	41.7
Impacts of Household Expenditure Reduction	CASE I	Scenario I	87.2	105.1	214.9	95.9	258.7
		Scenario II	31.8	38.3	78.3	34.9	94.2
		Scenario III	163.7	197.3	403.6	180.2	485.9
	CASE II	Scenario I	115.9	139.6	285.6	127.5	343.8
		Scenario II	37.4	45.1	92.2	41.2	111.0
		Scenario III	242.4	292.2	597.6	266.8	719.4
	CASE III	Scenario I	125.4	151.1	309.0	138.0	372.0
		Scenario II	41.0	49.4	101.1	45.1	121.7
		Scenario III	276.0	332.7	680.4	303.7	819.1
Net Impacts	CASE I	Scenario I	-78.7	-92.0	-197.3	-79.9	-245.2
		Scenario II	-29.1	-33.7	-70.2	-28.8	-84.7
		Scenario III	-148.1	-179.6	-373.0	-153.1	-457.8
	CASE II	Scenario I	-112.0	-135.3	-262.1	-118.3	-332.6
		Scenario II	-36.1	-43.7	-85.0	-37.9	-107.4
		Scenario III	-234.4	-283.3	-550.5	-248.2	-696.4
	CASE III	Scenario I	-115.6	-143.9	-294.8	-125.2	-352.0
		Scenario II	-37.1	-46.6	-96.0	-39.6	-114.8
		Scenario III	-255.9	-317.3	-649.3	-276.4	-777.4

III.2 Net Present Values

There are several reasons to present our results in net present value terms rather than in annual terms. First, there is the standard rationale that gains or losses further in the future have less consequence than those occurring in the near term. The second is related to the first: There are two distinct intervals in the twenty-year study period. Most of the pain is felt in the years 16-20, when the stimulative effects are substantially reduced. Outcomes across these two intervals are best combined when proper account is given to which of these takes place first. A four-percent discount rate is used throughout for net present value calculations. This is consistent with the interest rate used in this study's bond cost calculations.

Table 13 shows net present values for the region, the five counties and the Los Angeles county sub-areas introduced earlier. Regional present values range from losses of $22.649 billion (Rainfall Scenario II, Plants Case I) to losses of $169.866 billion (Rainfall Scenario III, Plants Case III). As might be expected, the brunt of the cost is borne by Los Angeles county with losses ranging from an $18.267 billion to a $136.815 billion loss. The city of Los Angeles incurs the greatest costs. These range from $9.853 billion to $79.308 billion. The highlighted (II, II) combination includes $24.851 billion of losses for the region, $20.022 billion for the Los Angeles county, of which $9.5 billion accrues to LA city. The direct, indirect and induced effects that make up these totals are itemized in Tables A22-A24 of Appendix A.

Table 13. Present Value of Net Total Impacts by County by Scenario

(Millions of $ 1999)

County		CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Los Angeles County	Arroyo Verdugo	-4,913.7	-1,484.8	-10,367.9	-8,061.3	-2,634.9	-16,968.6	-9,462.4	-3,046.8	-20,720.3
	City of Los Angeles	-25,201.6	-9,852.6	-48,635.5	-28,754.9	-9,520.5	-59,619.8	-36,661.9	-11,987.7	-79,308.4
	North Los Angeles County	-201.6	165.9	-572.2	7,125.1	1,829.9	17,434.6	13,645.2	3,206.1	33,606.2
	San Gabriel Valley	-6,206.8	-1,552.1	-10,988.6	-8,604.6	-2,696.9	-17,408.2	-12,934.5	-3,593.3	-28,891.8
	Southeast Los Angeles County	-5,893.5	-2,737.6	-11,377.5	-3,126.2	-1,003.7	-6,353.7	1,120.8	530.6	2,659.5
	South Bay	-7,304.2	-2,739.5	-13,563.2	-10,337.9	-3,326.6	-21,731.1	-11,352.6	-3,416.1	-25,507.2
	Westside Cities	-5,169.6	-1,932.5	-10,267.9	-7,414.0	-2,398.7	-15,453.9	-7,973.5	-2,609.8	-17,455.3
	Other Los Angeles County	3,083.3	1,865.7	7,130.7	-2,121.5	-270.5	-5,189.3	-788.5	-275.1	-1,197.5
	Los Angeles County Total	-51,807.7	-18,267.5	-98,642.2	-61,295.3	-20,022.0	-125,289.9	-64,407.3	-21,191.9	-136,814.8
Orange County		-6,436.8	-2,272.2	-12,249.4	-7,672.6	-2,504.9	-15,699.8	-8,058.2	-2,652.9	-17,141.9
Riverside County		-1,704.6	-596.9	-3,254.3	-1,971.4	-645.6	-4,007.8	-2,054.0	-677.5	-4,323.6
San Bernardino County		-2,764.6	-979.5	-5,253.2	-3,336.0	-1,087.6	-6,845.7	-3,518.8	-1,157.4	-7,519.1
Ventura County		-1,512.5	-532.4	-2,878.3	-1,812.4	-591.0	-3,712.6	-1,908.9	-628.2	-4,066.4
Total		-64,226.2	-22,648.6	-122,277.5	-76,087.7	-24,851.2	-155,555.8	-79,947.3	-26,308.0	-169,865.9

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Because annual costs are available for all cities of the region, for all rainfall scenarios, net present values are also available for each combination of scenario and case. Tables A25-A28 of Appendix A show these results. Once again, these detailed model outputs are best highlighted by focusing on the five representative cities mentioned earlier. The top panel of Table 14 summarizes net present value of total economic effects. The net present values of direct, indirect and induced effects appear in the lower panels. Looking at the top panel of total net effects, all of the selected cities show substantial losses for all of the combinations of cases and scenarios. Most losses are expected to accrue to Torrance, where losses range from just over $561 million to $7.497 billion. Pasadena's losses are slightly lower but also substantial. Inglewood can expect net present value losses, ranging from almost $180 million to $3.174 billion. El Monte's losses are slightly greater, from just over $225 million to almost $2.569 billion. The (II, II) combination also means losses for all of the cities, ranging from $321 million for Pomona to $1.201 billion for Torrance.

Table 14. Present Value of Net Impacts by Scenario for Selected Cities (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Impacts	City	CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Net Total Impacts	El Monte	-548.4	-225.1	-1,069.0	-1,232.2	-398.7	-2,568.8	-915.0	-237.6	-2,063.9
	Inglewood	-489.0	-179.9	-1,391.6	-1,522.0	-492.3	-3,174.1	-1,427.9	-427.4	-3,142.7
	Pasadena	-1,626.5	-458.1	-3,252.4	-2,187.6	-736.5	-4,664.2	-2,977.7	-941.8	-6,483.1
	Pomona	-133.3	-10.4	-499.3	-1,060.6	-321.3	-2,229.8	-854.3	-167.4	-1,886.8
	Torrance	-2,469.6	-561.1	-4,485.1	-3,714.0	-1,201.4	-7,744.8	-3,381.8	-1,074.6	-7,497.1
Net Direct Impacts	El Monte	-431.6	-184.4	-845.3	-1,100.6	-355.4	-2,302.9	-779.1	-192.7	-1,781.0
	Inglewood	-358.3	-134.4	-1,141.3	-1,374.1	-443.7	-2,875.2	-1,275.1	-376.9	-2,823.9
	Pasadena	-1,363.0	-367.4	-2,745.9	-1,901.6	-642.2	-4,091.7	-2,686.0	-845.2	-5,884.4
	Pomona	18.2	42.6	-209.7	-886.7	-264.3	-1,877.0	-673.6	-107.7	-1,507.6
	Torrance	-2,144.6	-448.1	-3,862.6	-3,347.7	-1,081.1	-7,004.7	-3,004.1	-949.7	-6,710.5
Net Indirect Impacts	El Monte	-38.5	-13.2	-74.2	-41.4	-13.7	-82.7	-42.1	-14.0	-86.1
	Inglewood	-38.4	-13.2	-73.8	-41.4	-13.7	-82.9	-42.3	-14.0	-86.7
	Pasadena	-88.3	-29.4	-171.7	-84.0	-28.2	-162.6	-82.0	-27.5	-158.1
	Pomona	-53.3	-18.6	-101.9	-60.7	-19.9	-123.0	-63.1	-20.8	-132.2
	Torrance	-118.0	-40.6	-226.9	-127.7	-42.2	-255.5	-129.9	-43.0	-266.0
Net Induced Impacts	El Monte	-78.3	-27.4	-149.6	-90.2	-29.6	-183.2	-93.7	-30.9	-196.8
	Inglewood	-92.4	-32.3	-176.5	-106.4	-34.9	-216.1	-110.5	-36.5	-232.2
	Pasadena	-175.3	-61.3	-334.8	-201.9	-66.2	-409.9	-209.7	-69.2	-440.6
	Pomona	-98.3	-34.4	-187.7	-113.2	-37.1	-229.9	-117.6	-38.8	-247.1
	Torrance	-207.1	-72.4	-395.6	-238.6	-78.2	-484.4	-247.8	-81.8	-520.6

IV. DISCUSSION

The results depicted in this study are not a standard cost-benefit analysis. No attempt has been made to quantify the benefits of storm water treatment. Rather, this is an impact study that acknowledges and accounts for both the stimulative and depressive economic effects associated with constructing new storm water treatment plants. We pose a number of if-then combinations of cases and scenarios, and investigate the implications of these in some detail, other things equal. A massive public works projects will be a bonanza for some sectors of the economy, but the costs of such projects have to come from somewhere and we have tried to account for these. We have explored a wide range of empirical and policy-relevant assumptions and our results bracket the dollar costs suggested in earlier studies.

Our contributions to the discussion include carefully assessed inputs in terms of plausible rainfall and runoff assumptions as well as carefully researched treatment plant construction and operations data. We have also applied spatial economic models that describe the consequences of building and paying for these projects by industry as well as by city and community.

Our combinations of cases and scenarios provide a range of results. Yet, which rainfall scenario and which plants case are the most relevant and deserving of special attention? We have highlighted a conservative combination, one that places one treatment plant in each of the region's 65 sub-basins and built to handle the runoff from a one-half inch rainstorm, the most likely precipitation event -- but one which requires that regulators accept the fact that there will be pollution standard exceedance in the event of larger storms. That combination requires capital costs of $43.7 billion and annual operating costs of $127 million. Annual job losses, due to household spending diverted to finance these expenditures, range from over 22,000 jobs per year for the first 15 years, while the plants are being built, to almost 60,000 per year thereafter when the

economic stimulus from construction is no longer in effect. The net present value of the twenty-year costs of the conservative combination are $24.851 billion. Los Angeles county's share of this sum is expected to be $20.022 billion, or approximately $6,670 per household (using the 2000 census count of approximately 3 million LA county households).

The requirements imposed by advanced treatment constitute a large component of a large cost. This requirement, therefore, requires further discussion. Advanced treatment requirements may be contested administratively and legally. In a few years, it is reasonable to suppose that technology improvements may reduce advanced treatment costs to the point that the administrative discussions are resolved. In light of the very large costs involved, and the pace of technological change, it is possible that very large costs will have been incurred for facilities that are unnecessary.

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Appendix A:
Worksheet and Supporting Economic Model Outputs

Table A1. Annual Total Stimulus and Annual Total Household Expenditure Reduction by Scenario

Millions of $ 1999

Case I : 480, 161, 933 Plants				
		Scenario 1 : 24h, 1.25"	Scenario 2 : 24h, 0.5"	Scenario 3 : 24h, 2.25"
Capital Costs	a) Collection System	12,489	7,228	17,419
	b) Land Costs (Levels1 & 2)	24,968	8,356	48,522
	c) Level 3 without Land	64,909	21,738	126,232
Annual Costs W/O Land Costs (A)	= (a+c)/15	5,160	1,931	9,577
Annualized Total Capital Costs with Land Costs (B)	= (a+b+c)/13.5903	7,532	2,746	14,140
Annualized Underwriting Costs (C)	= [(a+b+c)*0.1]/13.5903	753	275	1,414
O & M Costs	d) Collection System	10	6	14
	e) Level 3 plus Levels 1 & 2	227	76	441
Annual Total O & M Costs (D)	= d+e	237	82	455
Annual Total Stimulus for years 1 - 15	= A+C+D/2	6,032	2,247	11,218
Annual Total Stimulus for years 16 - 20	= C+D	990	357	1,869
Annual Total Household Expenditure Reduction for years 1 - 2(	= B+C+(5D+15D/2)/20	8,434	3,072	15,839

Case II : 65 Plants				
		Scenario 1 : 24h, 1.25"	Scenario 2 : 24h, 0.5"	Scenario 3 : 24h, 2.25"
Capital Costs	a) Collection System	45,407	13,222	108,272
	b) Land Costs (Levels1 & 2)	24,556	8,217	47,716
	c) Level 3 without Land	65,573	22,298	127,900
Annual Costs W/O Land Costs (A)	= (a+c)/15	7,399	2,368	15,745
Annualized Total Capital Costs with Land Costs (B)	= (a+b+c)/13.5903	9,973	3,218	20,889
Annualized Underwriting Costs (C)	= [(a+b+c)*0.1]/13.5903	997	322	2,089
O & M Costs	d) Collection System	37	11	89
	e) Level 3 plus Levels 1 & 2	342	116	666
Annual Total O & M Costs (D)	= d+e	379	127	755
Annual Total Stimulus for years 1 - 15	= A+C+D/2	8,586	2,753	18,211
Annual Total Stimulus for years 16 - 20	= C+D	1,376	448	2,844
Annual Total Household Expenditure Reduction for years 1 - 2(	= B+C+(5D+15D/2)/20	11,207	3,619	23,450

Case III : 130 Plants				
		Scenario 1 : 24h, 1.25"	Scenario 2 : 24h, 0.5"	Scenario 3 : 24h, 2.25"
Capital Costs	a) Collection System	60,162	16,013	148,558
	b) Land Costs (Levels1 & 2)	23,690	7,928	46,037
	c) Level 3 without Land	63,873	24,363	130,94
Annual Costs W/O Land Costs (A)	= (a+c)/15	8,269	2,692	18,63
Annualized Total Capital Costs with Land Costs (B)	= (a+b+c)/13.5903	10,870	3,554	23,954
Annualized Underwriting Costs (C)	= [(a+b+c)*0.1]/13.5903	1,087	355	2,395
O & M Costs	d) Collection System	49	13	122
	e) Level 3 plus Levels 1 & 2	222	78	438
Annual Total O & M Costs (D)	= d+e	272	92	559
Annual Total Stimulus for years 1 - 15	= A+C+D/2	9,492	3,093	21,309
Annual Total Stimulus for years 16 - 20	= C+D	1,359	447	2,955
Annual Total Household Expenditure Reduction for years 1 - 2(	= B+C+(5D+15D/2)/20	12,127	3,967	26,699

NOTES:

Entries a, b, c, d, e Refer to the relevant cells of Tables 1-3.

A = (a+c)/15 Refers to the spreading out of capital costs over 15 years.

B = (a+b+c)/13.5903 Refers to the 20-year 4% annuitized value of capital costs, including land.

C = (a+b+c)*0.1/13.5903 Refers to the 20-year 4% annuitized value of underwriting costs.

A + C + D/2 Refers to annual capital cost stimulus plus annualized stimulus of underwriting costs plus average start-up O & M costs for Years 1-15.

C + D Refers to annualized underwriting costs plus full annual O & M costs for Years 16-20.

B + C + (5D +15D/2)/20 Annual household expenditure reduction, Years 1-20, is annual cost of all bonded indebtedness associated with the project, including capital, underwriting and O & M costs.

Table A2. Annual Direct Impacts for years 1 - 15

(Millions of $ 1999)

Scenario			Los Angeles County									Orange County	Riverside County	San Bernardino County	Ventura County	Total
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total					
Stimulus Effect	CASE I	Scenario I	194.8	1,401.7	342.2	514.9	793.3	225.7	45.0	958.9	4,476.5	0.1	0.0	0.0	0.5	4,477.1
		Scenario II	96.2	445.0	145.2	247.3	235.2	73.8	11.1	412.8	1,666.7	0.0	0.0	0.0	0.3	1,667.1
		Scenario III	269.6	2,535.1	626.3	1,029.0	1,468.5	440.7	38.3	1,918.8	8,326.5	0.2	0.0	0.0	0.8	8,327.5
	CASE II	Scenario I	110.1	2,177.3	1,098.3	629.7	1,424.8	224.6	0.0	716.7	6,381.5	0.0	0.0	0.0	0.3	6,381.8
		Scenario II	33.3	685.2	313.3	211.1	461.4	74.2	0.0	268.1	2,046.6	0.0	0.0	0.0	0.1	2,046.8
		Scenario III	215.5	4,569.9	2,518.9	1,360.3	2,986.7	453.5	0.0	1,428.2	13,533.0	0.1	0.0	0.1	0.5	13,533.6
	CASE III	Scenario I	51.1	1,857.8	1,708.8	357.8	1,935.3	223.3	0.7	906.1	7,041.0	0.0	0.0	0.0	0.0	7,041
		Scenario II	21.3	609.8	448.5	173.2	647.8	99.5	0.3	295.1	2,295.5	0.0	0.0	0.0	0.0	2,295.6
		Scenario III	112.0	4,153.6	4,073.7	735.3	4,258.5	433.9	1.5	2,032.9	15,801.4	0.1	0.0	0.1	0.1	15,801.6
Impacts of Household Expenditure Reduction	CASE I	Scenario I	458.5	2,619.9	281.9	772.4	949.2	643.2	367.2	507.9	6,600.4	132.1	7.9	66.3	30.1	6,836.7
		Scenario II	167.0	954.3	102.7	281.3	345.8	234.3	133.8	185.0	2,404.2	48.1	2.9	24.1	11.0	2,490.3
		Scenario III	861.1	4,920.4	529.5	1,450.6	1,782.8	1,208.0	689.6	954.0	12,396.0	248.1	14.8	124.5	56.5	12,839.9
	CASE II	Scenario I	609.3	3,481.5	374.7	1,026.4	1,261.4	854.8	488.0	675.0	8,771.0	175.5	10.5	88.1	40.0	9,085.1
		Scenario II	196.8	1,124.3	121.0	331.5	407.4	276.0	157.6	218.0	2,832.4	56.7	3.4	28.4	12.9	2,933.9
		Scenario III	1,274.9	7,284.6	784.0	2,147.6	2,639.4	1,788.5	1,021.0	1,412.4	18,352.3	367.3	21.9	184.3	83.7	19,009.5
	CASE III	Scenario I	659.3	3,767.1	405.4	1,110.6	1,364.9	924.9	528.0	730.4	9,490.6	189.9	11.3	95.3	43.3	9,830.5
		Scenario II	215.7	1,232.3	132.6	363.3	446.5	302.5	172.7	238.9	3,104.5	62.1	3.7	31.2	14.2	3,215.7
		Scenario III	1,451.6	8,294.0	892.6	2,445.2	3,005.1	2,036.3	1,162.4	1,608.1	20,895.3	418.2	25.0	209.9	95.3	21,643.6
Net Impacts	CASE I	Scenario I	-263.8	-1,218.2	60.2	-257.4	-155.9	-417.5	-322.2	450.9	-2,123.9	-132.0	-7.9	-66.3	-29.6	-2,359.6
		Scenario II	-70.8	-509.3	42.5	-34.1	-110.6	-160.5	-122.7	227.8	-737.6	-48.1	-2.9	-24.1	-10.6	-823.3
		Scenario III	-591.6	-2,385.3	96.8	-421.6	-314.2	-767.3	-651.3	964.9	-4,069.5	-247.9	-14.8	-124.5	-55.8	-4,512.4
	CASE II	Scenario I	-499.2	-1,304.2	723.6	-396.7	163.4	-630.1	-488.0	41.7	-2,389.6	-175.5	-10.5	-88.1	-39.7	-2,703.3
		Scenario II	-163.5	-439.1	192.4	-120.3	54.1	-201.9	-157.6	50.1	-785.8	-56.7	-3.4	-28.4	-12.8	-887.0
		Scenario III	-1,059.5	-2,714.7	1,735.0	-787.3	347.3	-1,335.0	-1,021.0	15.9	-4,819.3	-367.2	-21.9	-184.3	-83.2	-5,475.9
	CASE III	Scenario I	-608.2	-1,909.4	1,303.3	-752.7	570.4	-701.6	-527.3	175.8	-2,449.7	-189.9	-11.3	-95.3	-43.2	-2,789.5
		Scenario II	-194.4	-622.5	315.9	-190.0	201.3	-203.1	-172.4	56.2	-809.0	-62.1	-3.7	-31.2	-14.1	-920.1
		Scenario III	-1,339.6	-4,140.4	3,181.1	-1,709.8	1,253.4	-1,602.4	-1,161.0	424.8	-5,093.8	-418.1	-25.0	-209.8	-95.2	-5,841.9

Table A3. Annual Direct Impacts for years 16 - 20

(Millions of $ 1999)

Scenario			Los Angeles County												
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	32.6	237.1	52.1	85.3	132.2	38.7	7.8	153.0	738.9	0.0	0.0	0.0	0.1	739.0
		Scenario II	15.6	72.7	21.3	39.6	37.7	12.3	1.9	64.0	265.0	0.0	0.0	0.0	0.1	265.1
		Scenario III	45.9	435.7	97.0	173.6	248.5	76.6	6.7	312.9	1,396.9	0.0	0.0	0.0	0.1	1,397.1
	CASE II	Scenario I	20.5	371.2	143.1	96.6	251.3	40.2	0.0	117.2	1,040.0	0.0	0.0	0.0	0.1	1,040.1
		Scenario II	6.2	119.2	42.2	32.9	82.6	13.3	0.0	43.1	339.6	0.0	0.0	0.0	0.0	339.6
		Scenario III	40.1	756.2	318.7	203.2	512.1	79.7	0.0	231.4	2,141.5	0.0	0.0	0.0	0.1	2,141.6
	CASE III	Scenario I	8.8	276.4	209.4	60.9	278.8	38.5	0.1	127.5	1,000.5	0.0	0.0	0.0	0.0	1,000.5
		Scenario II	3.4	91.4	57.0	27.5	94.4	16.0	0.1	42.3	332.1	0.0	0.0	0.0	0.0	332.1
		Scenario III	18.7	591.8	486.1	122.5	592.9	73.2	0.3	275.5	2,161.0	0.0	0.0	0.0	0.0	2,161.0
Impacts of Household Expenditure Reduction	CASE I	Scenario I	458.5	2,619.9	281.9	772.4	949.2	643.2	367.2	507.9	6,600.4	132.1	7.9	66.3	30.1	6,836.7
		Scenario II	167.0	954.3	102.7	281.3	345.8	234.3	133.8	185.0	2,404.2	48.1	2.9	24.1	11.0	2,490.3
		Scenario III	861.1	4,920.4	529.5	1,450.6	1,782.8	1,208.0	689.6	954.0	12,396.0	248.1	14.8	124.5	56.5	12,839.9
	CASE II	Scenario I	609.3	3,481.5	374.7	1,026.4	1,261.4	854.8	488.0	675.0	8,771.0	175.5	10.5	88.1	40.0	9,085.1
		Scenario II	196.8	1,124.3	121.0	331.5	407.4	276.0	157.6	218.0	2,832.4	56.7	3.4	28.4	12.9	2,933.9
		Scenario III	1,274.9	7,284.6	784.0	2,147.6	2,639.4	1,788.5	1,021.0	1,412.4	18,352.3	367.3	21.9	184.3	83.7	19,009.5
	CASE III	Scenario I	659.3	3,767.1	405.4	1,110.6	1,364.9	924.9	528.0	730.4	9,490.6	189.9	11.3	95.3	43.3	9,830.5
		Scenario II	215.7	1,232.3	132.6	363.3	446.5	302.5	172.7	238.9	3,104.5	62.1	3.7	31.2	14.2	3,215.7
		Scenario III	1,451.6	8,294.0	892.6	2,445.2	3,005.1	2,036.3	1,162.4	1,608.1	20,895.3	418.2	25.0	209.9	95.3	21,643.6
Net Impacts	CASE I	Scenario I	-425.9	-2,382.8	-229.8	-687.0	-817.0	-604.5	-359.4	-355.0	-5,861.5	-132.1	-7.9	-66.3	-30.0	-6,097.7
		Scenario II	-151.5	-881.6	-81.4	-241.8	-308.1	-222.0	-131.9	-121.0	-2,139.2	-48.1	-2.9	-24.1	-10.9	-2,225.2
		Scenario III	-815.3	-4,484.7	-432.5	-1,277.0	-1,534.2	-1,131.4	-682.9	-641.0	-10,999.0	-248.1	-14.8	-124.5	-56.4	-11,442.8
	CASE II	Scenario I	-588.8	-3,110.3	-231.6	-929.8	-1,010.1	-814.6	-488.0	-557.8	-7,731.0	-175.5	-10.5	-88.1	-39.9	-8,045.0
		Scenario II	-190.6	-1,005.0	-78.8	-298.6	-324.7	-262.7	-157.6	-174.9	-2,492.8	-56.7	-3.4	-28.4	-12.9	-2,594.2
		Scenario III	-1,234.8	-6,528.4	-465.2	-1,944.4	-2,127.2	-1,708.7	-1,021.0	-1,181.0	-16,210.7	-367.3	-21.9	-184.3	-83.6	-16,867.9
	CASE III	Scenario I	-650.5	-3,490.8	-196.0	-1,049.7	-1,086.1	-886.4	-527.9	-602.8	-8,490.1	-189.9	-11.3	-95.3	-43.3	-8,830.0
		Scenario II	-212.2	-1,140.9	-75.7	-335.8	-352.1	-286.5	-172.7	-196.6	-2,772.4	-62.1	-3.7	-31.2	-14.2	-2,883.6
		Scenario III	-1,432.9	-7,702.2	-406.4	-2,322.6	-2,412.3	-1,963.1	-1,162.2	-1,332.6	-18,734.3	-418.2	-25.0	-209.9	-95.3	-19,482.6

Table A4. Annual Indirect Impacts for years 1 - 15

(Millions of $ 1999)

Scenario			Los Angeles County												
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	72.6	443.0	16.1	105.0	151.8	90.3	59.2	74.8	1,012.6	362.9	87.0	102.8	73.0	1,638.4
		Scenario II	27.0	165.1	6.0	39.1	56.6	33.7	22.1	27.9	377.5	135.3	32.4	38.3	27.2	610.7
		Scenario III	134.9	823.7	30.0	195.2	282.2	167.8	110.1	139.0	1,882.8	674.9	161.9	191.2	135.7	3,046.5
	CASE II	Scenario I	103.4	632.5	23.0	149.9	217.1	129.1	84.5	106.9	1,446.4	518.0	124.4	146.9	104.3	2,339.9
		Scenario II	33.2	202.8	7.4	48.1	69.6	41.4	27.1	34.3	463.7	166.1	39.9	47.1	33.4	750.2
		Scenario III	219.4	1,342.1	48.9	318.0	460.8	273.9	179.3	226.8	3,069.0	1,098.9	263.9	311.7	221.4	4,964.9
	CASE III	Scenario I	114.3	698.9	25.4	165.6	240.0	142.7	93.4	118.1	1,598.4	572.4	137.3	162.2	115.3	2,585
		Scenario II	37.2	227.7	8.3	53.9	78.2	46.5	30.4	38.5	520.8	186.5	44.7	52.9	37.6	842.5
		Scenario III	256.7	1,569.8	57.1	371.9	539.4	320.7	209.8	265.3	3,590.6	1,285.5	308.4	364.4	259.0	5,807.9
Impacts of Household Expenditure Reduction	CASE I	Scenario I	89.0	549.3	20.6	137.2	192.1	107.7	68.1	95.7	1,259.7	450.0	110.1	132.2	94.0	2,046.0
		Scenario II	32.4	200.1	7.5	50.0	70.0	39.2	24.8	34.9	458.9	163.9	40.1	48.2	34.2	745.3
		Scenario III	167.1	1,031.7	38.6	257.8	360.8	202.3	128.0	179.8	2,365.9	845.1	206.7	248.3	176.5	3,842.5
	CASE II	Scenario I	118.2	730.0	27.3	182.4	255.3	143.1	90.5	127.2	1,674.0	598.0	146.3	175.7	124.9	2,718.8
		Scenario II	38.2	235.7	8.8	58.9	82.4	46.2	29.2	41.1	540.6	193.1	47.2	56.7	40.3	878.0
		Scenario III	247.3	1,527.4	57.2	381.6	534.1	299.5	189.4	266.1	3,502.7	1,251.1	306.0	367.6	261.3	5,688.8
	CASE III	Scenario I	127.9	789.9	29.6	197.3	276.2	154.9	98.0	137.6	1,811.4	647.0	158.3	190.1	135.1	2,941.9
		Scenario II	41.8	258.4	9.7	64.6	90.4	50.7	32.0	45.0	592.5	211.6	51.8	62.2	44.2	962.3
		Scenario III	281.6	1,739.0	65.1	434.5	608.1	341.0	215.7	303.0	3,988.1	1,424.5	348.4	418.5	297.5	6,477.1
Net Impacts	CASE I	Scenario I	-16.4	-106.4	-4.4	-32.3	-40.3	-17.4	-8.9	-21.0	-247.1	-87.0	-23.0	-29.4	-21.0	-407.5
		Scenario II	-5.4	-35.0	-1.5	-10.9	-13.4	-5.6	-2.7	-7.0	-81.4	-28.6	-7.6	-9.8	-7.0	-134.5
		Scenario III	-32.1	-208.0	-8.6	-62.6	-78.6	-34.5	-17.9	-40.8	-483.1	-170.2	-44.8	-57.1	-40.8	-796.0
	CASE II	Scenario I	-14.8	-97.5	-4.3	-32.5	-38.2	-14.1	-6.0	-20.3	-227.7	-80.0	-21.9	-28.8	-20.6	-378.
		Scenario II	-5.0	-32.9	-1.4	-10.8	-12.8	-4.8	-2.1	-6.8	-76.9	-27.0	-7.4	-9.6	-6.9	-127.7
		Scenario III	-27.9	-185.3	-8.3	-63.7	-73.3	-25.6	-10.2	-39.4	-433.7	-152.2	-42.2	-55.9	-39.9	-723.9
	CASE III	Scenario I	-13.6	-91.0	-4.1	-31.8	-36.2	-12.2	-4.6	-19.6	-212.9	-74.6	-20.9	-27.9	-19.8	-356.2
		Scenario II	-4.6	-30.7	-1.4	-10.6	-12.2	-4.2	-1.6	-6.6	-71.7	-25.2	-7.0	-9.3	-6.6	-119.9
		Scenario III	-24.9	-169.2	-8.0	-62.6	-68.8	-20.3	-5.9	-37.8	-397.5	-139.0	-40.0	-54.2	-38.5	-669.2

Table A5. Annual Indirect Impacts for years 16 - 20

(Millions of $ 1999)

Scenario			Los Angeles County									Orange County	Riverside County	San Bernardino County	Ventura County	Total
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total					
Stimulus Effect	CASE I	Scenario I	11.0	60.1	2.2	14.4	17.3	10.5	8.2	9.3	133.0	51.1	11.8	13.7	9.1	218.6
		Scenario II	4.0	21.5	0.8	5.1	6.2	3.8	3.0	3.3	47.6	18.3	4.2	4.9	3.2	78.3
		Scenario III	20.8	113.6	4.2	27.2	32.7	19.9	15.6	17.6	251.6	96.6	22.3	26.0	17.2	413.8
	CASE II	Scenario I	15.5	85.2	3.2	20.4	24.8	15.0	11.6	13.2	188.8	72.1	16.8	19.6	13.0	310.4
		Scenario II	5.0	27.9	1.0	6.7	8.1	4.9	3.8	4.3	61.8	23.6	5.5	6.4	4.2	101.5
		Scenario III	31.9	175.0	6.5	41.9	50.8	30.8	23.9	27.2	387.9	148.3	34.5	40.3	26.6	637
	CASE III	Scenario I	15.0	80.6	3.0	19.3	22.8	14.0	11.1	12.3	178.1	68.8	15.7	18.3	12.1	293.0
		Scenario II	4.9	26.6	1.0	6.4	7.5	4.6	3.7	4.1	58.8	22.7	5.2	6.0	4.0	96.7
		Scenario III	32.5	174.2	6.5	41.7	49.2	30.2	24.1	26.5	384.7	149.0	33.9	39.4	26.1	633.2
Impacts of Household Expenditure Reduction	CASE I	Scenario I	89.0	549.3	20.6	137.2	192.1	107.7	68.1	95.7	1,259.7	450.0	110.1	132.2	94.0	2,046.0
		Scenario II	32.4	200.1	7.5	50.0	70.0	39.2	24.8	34.9	458.9	163.9	40.1	48.2	34.2	745.3
		Scenario III	167.1	1,031.7	38.6	257.8	360.8	202.3	128.0	179.8	2,365.9	845.1	206.7	248.3	176.5	3,842.5
	CASE II	Scenario I	118.2	730.0	27.3	182.4	255.3	143.1	90.5	127.2	1,674.0	598.0	146.3	175.7	124.9	2,718.8
		Scenario II	38.2	235.7	8.8	58.9	82.4	46.2	29.2	41.1	540.6	193.1	47.2	56.7	40.3	878.0
		Scenario III	247.3	1,527.4	57.2	381.6	534.1	299.5	189.4	266.1	3,502.7	1,251.1	306.0	367.6	261.3	5,688.8
	CASE III	Scenario I	127.9	789.9	29.6	197.3	276.2	154.9	98.0	137.6	1,811.4	647.0	158.3	190.1	135.1	2,941.9
		Scenario II	41.8	258.4	9.7	64.6	90.4	50.7	32.0	45.0	592.5	211.6	51.8	62.2	44.2	962.3
		Scenario III	281.6	1,739.0	65.1	434.5	608.1	341.0	215.7	303.0	3,988.1	1,424.5	348.4	418.5	297.5	6,477.1
Net Impacts	CASE I	Scenario I	-77.9	-489.3	-18.3	-122.9	-174.8	-97.2	-59.9	-86.5	-1,126.8	-398.9	-98.3	-118.5	-84.9	-1,827.3
		Scenario II	-28.4	-178.6	-6.7	-44.8	-63.8	-35.5	-21.9	-31.6	-411.3	-145.6	-35.9	-43.2	-31.0	-667.0
		Scenario III	-146.2	-918.0	-34.4	-230.6	-328.1	-182.4	-112.4	-162.2	-2,114.3	-748.5	-184.4	-222.3	-159.3	-3,428
	CASE II	Scenario I	-102.7	-644.8	-24.1	-162.0	-230.5	-128.1	-78.9	-114.0	-1,485.2	-525.8	-129.4	-156.0	-111.9	-2,408.
		Scenario II	-33.1	-207.9	-7.8	-52.2	-74.3	-41.3	-25.4	-36.7	-478.8	-169.5	-41.7	-50.3	-36.1	-776.5
		Scenario III	-215.4	-1,352.4	-50.6	-339.7	-483.4	-268.7	-165.6	-239.0	-3,114.8	-1,102.8	-271.5	-327.3	-234.7	-5,051.2
	CASE III	Scenario I	-112.9	-709.3	-26.6	-178.1	-253.4	-140.9	-86.8	-125.3	-1,633.3	-578.2	-142.5	-171.8	-123.0	-2,648.8
		Scenario II	-36.9	-231.8	-8.7	-58.2	-82.8	-46.0	-28.4	-41.0	-533.8	-189.0	-46.6	-56.1	-40.2	-865.7
		Scenario III	-249.1	-1,564.9	-58.6	-392.8	-559.0	-310.8	-191.6	-276.5	-3,603.3	-1,275.5	-314.5	-379.1	-271.4	-5,843.9

Table A6. Annual Induced Impacts for years 1 - 15

(Millions of $ 1999)

Scenario			Los Angeles County												
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	88.2	537.8	33.3	156.7	200.7	116.9	72.0	96.6	1,302.2	428.5	175.1	198.3	106.1	2,210.2
		Scenario II	32.9	200.4	12.4	58.4	74.8	43.6	26.8	36.0	485.3	159.7	65.2	73.9	39.5	823.6
		Scenario III	163.9	1,000.1	61.9	291.5	373.3	217.4	133.8	179.6	2,421.5	796.9	325.6	368.8	197.2	4,109.9
	CASE II	Scenario I	125.7	767.1	47.4	223.6	286.3	166.7	102.6	137.8	1,857.3	611.2	249.7	282.8	151.3	3,152.3
		Scenario II	40.3	246.0	15.2	71.7	91.8	53.5	32.9	44.2	595.5	196.0	80.1	90.7	48.5	1,010.7
		Scenario III	266.8	1,627.5	100.7	474.3	607.5	353.8	217.7	292.3	3,940.5	1,296.7	529.8	600.1	321.0	6,688.0
	CASE III	Scenario I	139.0	848.0	52.4	247.1	316.5	184.3	113.4	152.3	2,053.2	675.7	276.0	312.7	167.2	3,484.8
		Scenario II	45.3	276.3	17.1	80.5	103.1	60.1	37.0	49.6	669.0	220.1	89.9	101.9	54.5	1,135
		Scenario III	312.2	1,904.5	117.8	555.0	710.9	414.0	254.8	342.0	4,611.1	1,517.4	619.9	702.2	375.6	7,826.2
Impacts of Household Expenditure Reduction	CASE I	Scenario I	115.1	702.4	43.4	204.7	262.2	152.7	94.0	126.2	1,700.7	559.7	228.7	259.0	138.5	2,886.6
		Scenario II	41.9	255.9	15.8	74.6	95.5	55.6	34.2	46.0	619.5	203.9	83.3	94.3	50.5	1,051.5
		Scenario III	216.2	1,319.2	81.6	384.5	492.4	286.8	176.5	236.9	3,194.1	1,051.1	429.4	486.4	260.2	5,421.3
	CASE II	Scenario I	153.0	933.4	57.7	272.0	348.4	202.9	124.9	167.6	2,260.1	743.7	303.9	344.2	184.1	3,835.9
		Scenario II	49.4	301.4	18.6	87.8	112.5	65.5	40.3	54.1	729.8	240.2	98.1	111.1	59.4	1,238.7
		Scenario III	320.1	1,953.1	120.8	569.2	729.0	424.6	261.3	350.8	4,728.9	1,556.2	635.8	720.1	385.2	8,026.2
	CASE III	Scenario I	165.6	1,010.0	62.5	294.4	377.0	219.6	135.1	181.4	2,445.5	804.8	328.8	372.4	199.2	4,150.6
		Scenario II	54.2	330.4	20.4	96.3	123.3	71.8	44.2	59.3	800.0	263.3	107.6	121.8	65.2	1,357.7
		Scenario III	364.5	2,223.8	137.5	648.1	830.0	483.4	297.5	399.4	5,384.1	1,771.8	723.9	819.9	438.5	9,138.3
Net Impacts	CASE I	Scenario I	-27.0	-164.6	-10.2	-48.0	-61.4	-35.8	-22.0	-29.6	-398.5	-131.2	-53.6	-60.7	-32.5	-676.4
		Scenario II	-9.1	-55.4	-3.4	-16.2	-20.7	-12.1	-7.4	-10.0	-134.2	-44.2	-18.0	-20.4	-10.9	-227.8
		Scenario III	-52.3	-319.1	-19.7	-93.0	-119.1	-69.4	-42.7	-57.3	-772.6	-254.3	-103.9	-117.7	-62.9	-1,311.4
	CASE II	Scenario I	-27.3	-166.4	-10.3	-48.5	-62.1	-36.2	-22.3	-29.9	-402.8	-132.6	-54.2	-61.3	-32.8	-683.6
		Scenario II	-9.1	-55.5	-3.4	-16.2	-20.7	-12.1	-7.4	-10.0	-134.3	-44.2	-18.1	-20.5	-10.9	-228
		Scenario III	-53.4	-325.6	-20.1	-94.9	-121.5	-70.8	-43.6	-58.5	-788.4	-259.5	-106.0	-120.1	-64.2	-1,338.1
	CASE III	Scenario I	-26.6	-162.0	-10.0	-47.2	-60.5	-35.2	-21.7	-29.1	-392.3	-129.1	-52.7	-59.7	-32.0	-665.8
		Scenario II	-8.9	-54.1	-3.3	-15.8	-20.2	-11.8	-7.2	-9.7	-131.0	-43.1	-17.6	-19.9	-10.7	-222.3
		Scenario III	-52.3	-319.3	-19.7	-93.1	-119.2	-69.4	-42.7	-57.3	-773.1	-254.4	-103.9	-117.7	-63.0	-1,312.1

Table A7. Annual Induced Impacts for years 16 - 20

(Millions of $ 1999)

Scenario			Los Angeles County													
			Arroyo Verdugo	City of Los Angeles	North Los Angeles County	San Gabriel Valley	Southeast Los Angeles County	South Bay	Westside Cities	Other Los Angeles County	Los Angeles County Total	Orange County	Riverside County	San Bernardino County	Ventura County	Total
Stimulus Effect	CASE I	Scenario I	12.7	77.4	4.8	22.6	28.9	16.8	10.4	13.9	187.3	61.7	25.2	28.5	15.3	318.0
		Scenario II	4.6	27.8	1.7	8.1	10.4	6.0	3.7	5.0	67.2	22.1	9.0	10.2	5.5	114.1
		Scenario III	24.0	146.3	9.0	42.6	54.6	31.8	19.6	26.3	354.1	116.5	47.6	53.9	28.8	601.1
	CASE II	Scenario I	17.8	108.7	6.7	31.7	40.6	23.6	14.5	19.5	263.3	86.6	35.4	40.1	21.4	446.9
		Scenario II	5.8	35.5	2.2	10.3	13.3	7.7	4.7	6.4	86.0	28.3	11.6	13.1	7.0	145.9
		Scenario III	36.7	224.0	13.9	65.3	83.6	48.7	30.0	40.2	542.3	178.5	72.9	82.6	44.2	920.5
	CASE III	Scenario I	17.2	104.9	6.5	30.6	39.2	22.8	14.0	18.8	254.0	83.6	34.1	38.7	20.7	431.1
		Scenario II	5.7	34.6	2.1	10.1	12.9	7.5	4.6	6.2	83.7	27.5	11.2	12.7	6.8	142
		Scenario III	37.3	227.4	14.1	66.3	84.9	49.4	30.4	40.8	550.5	181.2	74.0	83.8	44.8	934.3
Impacts of Household Expenditure Reduction	CASE I	Scenario I	115.1	702.4	43.4	204.7	262.2	152.7	94.0	126.2	1,700.7	559.7	228.7	259.0	138.5	2,886.6
		Scenario II	41.9	255.9	15.8	74.6	95.5	55.6	34.2	46.0	619.5	203.9	83.3	94.3	50.5	1,051.5
		Scenario III	216.2	1,319.2	81.6	384.5	492.4	286.8	176.5	236.9	3,194.1	1,051.1	429.4	486.4	260.2	5,421.3
	CASE II	Scenario I	153.0	933.4	57.7	272.0	348.4	202.9	124.9	167.6	2,260.1	743.7	303.9	344.2	184.1	3,835.9
		Scenario II	49.4	301.4	18.6	87.8	112.5	65.5	40.3	54.1	729.8	240.2	98.1	111.1	59.4	1,238.7
		Scenario III	320.1	1,953.1	120.8	569.2	729.0	424.6	261.3	350.8	4,728.9	1,556.2	635.8	720.1	385.2	8,026.2
	CASE III	Scenario I	165.6	1,010.0	62.5	294.4	377.0	219.6	135.1	181.4	2,445.5	804.8	328.8	372.4	199.2	4,150.6
		Scenario II	54.2	330.4	20.4	96.3	123.3	71.8	44.2	59.3	800.0	263.3	107.6	121.8	65.2	1,357.7
		Scenario III	364.5	2,223.8	137.5	648.1	830.0	483.4	297.5	399.4	5,384.1	1,771.8	723.9	819.9	438.5	9,138.3
Net Impacts	CASE I	Scenario I	-102.5	-625.1	-38.7	-182.2	-233.3	-135.9	-83.6	-112.3	-1,513.4	-498.0	-203.5	-230.5	-123.3	-2,568.6
		Scenario II	-37.4	-228.1	-14.1	-66.5	-85.1	-49.6	-30.5	-41.0	-552.3	-181.7	-74.2	-84.1	-45.0	-937.3
		Scenario III	-192.3	-1,173.0	-72.5	-341.8	-437.8	-255.0	-156.9	-210.7	-2,840.0	-934.6	-381.8	-432.5	-231.3	-4,820.2
	CASE II	Scenario I	-135.2	-824.7	-51.0	-240.3	-307.8	-179.3	-110.3	-148.1	-1,996.8	-657.1	-268.5	-304.1	-162.6	-3,389.0
		Scenario II	-43.6	-265.9	-16.4	-77.5	-99.3	-57.8	-35.6	-47.8	-643.9	-211.9	-86.6	-98.1	-52.4	-1,092
		Scenario III	-283.4	-1,729.1	-106.9	-503.9	-645.4	-375.9	-231.3	-310.5	-4,186.5	-1,377.7	-562.9	-637.5	-341.0	-7,105.7
	CASE III	Scenario I	-148.4	-905.1	-56.0	-263.8	-337.8	-196.8	-121.1	-162.6	-2,191.5	-721.2	-294.6	-333.7	-178.5	-3,719.6
		Scenario II	-48.5	-295.8	-18.3	-86.2	-110.4	-64.3	-39.6	-53.1	-716.3	-235.7	-96.3	-109.1	-58.3	-1,215.7
		Scenario III	-327.2	-1,996.4	-123.5	-581.8	-745.2	-434.0	-267.1	-358.5	-4,833.7	-1,590.7	-649.9	-736.1	-393.7	-8,204.0

Table A8. Annual Total Impacts (Year 1-Year 15)

(Millions of $ 1999)

Stimulus Effects

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.86	0.31	1.37	0.06	0.03	0.13	0.04	0.02	0.07
Agoura Hills	18.58	2.58	33.59	11.41	4.78	22.01	10.78	4.50	21.15
Alhambra	48.70	7.19	81.46	27.48	8.81	58.32	38.93	14.31	83.44
Alondra Park	0.89	10.35	1.66	1.27	0.41	2.70	25.49	12.90	56.28
Altadena	4.41	1.83	24.86	8.23	2.00	13.22	8.89	2.24	15.48
Arcadia	26.34	27.26	66.50	24.53	7.88	52.04	48.65	16.95	104.32
Artesia	8.53	2.32	20.74	8.88	2.85	18.83	9.88	3.22	22.12
Avocado Heights	24.45	1.88	34.41	7.22	2.31	15.31	8.00	2.62	17.95
Azusa	37.98	2.64	24.80	481.87	141.38	1012.14	12.04	3.93	27.05
Baldwin Park	45.28	23.72	43.67	11.98	3.85	25.40	14.57	5.02	32.39
Bell	18.28	2.58	45.09	9.79	3.14	20.77	28.06	11.50	53.34
Bellflower	47.60	24.74	47.32	15.66	5.02	33.22	17.44	5.71	39.17
Bell Gardens	13.54	1.72	28.50	6.58	2.11	13.96	13.33	5.53	28.41
Beverly Hills	35.41	13.19	75.48	50.47	16.18	107.06	58.12	18.34	125.96
Bradbury	1.23	0.65	18.43	0.38	0.12	0.77	0.40	0.13	0.90
Burbank	99.25	13.32	111.12	50.40	16.16	108.93	90.98	31.28	199.58
Calabasas	28.09	9.67	44.82	9.12	4.02	16.24	13.63	6.42	28.87
Carson	42.87	10.37	116.67	39.76	12.75	84.38	95.18	32.51	200.41
Cerritos	63.63	27.19	113.17	24.82	7.96	52.66	78.93	34.59	173.43
Charter Oak	9.28	0.49	15.35	1.89	0.61	4.02	2.09	0.68	4.70
Citrus	3.66	0.35	14.15	1.04	0.33	2.20	1.43	0.48	3.19
Claremont	35.28	11.10	79.19	21.96	8.90	42.60	13.20	4.31	29.64
Commerce	26.99	17.09	44.83	25.30	8.11	53.69	41.13	15.97	91.27
Compton	57.14	5.53	92.37	21.01	6.74	44.59	32.07	12.20	68.65
Covina	83.91	25.03	64.28	16.88	8.06	40.06	69.85	25.99	152.55
Cudahy	2.47	0.83	13.29	3.17	1.02	6.73	3.77	1.28	8.37
Culver City	34.28	8.81	43.28	32.88	10.54	69.72	38.32	11.84	81.58
Del Aire	2.53	0.96	4.72	3.81	1.18	7.87	4.00	1.30	8.98
Desert View Highlands	0.13	0.05	0.23	0.18	0.06	0.38	0.20	0.08	0.44
Diamond Bar	14.54	2.88	45.00	16.74	6.45	35.00	24.46	9.39	53.03
Downey	78.24	29.01	123.44	32.53	10.43	69.03	52.91	20.58	109.38
Duarte	29.08	20.79	41.83	18.67	5.18	38.15	11.95	5.05	22.90
East Compton	0.44	0.16	6.44	0.62	0.20	1.33	0.83	0.30	1.79
East La Mirada	0.81	0.30	1.50	1.15	0.37	2.44	1.27	0.41	2.85
East Los Angeles	52.19	36.94	93.96	23.68	7.59	50.22	39.80	15.49	87.48
East Pasadena	3.56	1.30	6.53	4.99	1.60	-10.60	6.71	1.67	12.79
East San Gabriel	2.06	8.37	12.70	2.97	0.95	8.30	75.77	28.55	159.35
El Monte	55.35	17.99	100.52	29.92	9.59	63.50	88.78	27.68	147.27
El Segundo	28.29	6.49	32.45	248.58	61.84	504.44	36.29	13.49	78.59
Florence-Graham	31.93	12.28	52.35	6.88	2.21	14.61	7.71	2.53	17.26
Gardena	44.09	5.45	38.41	20.66	6.69	44.26	33.35	12.84	73.38
Glendale	112.74	63.35	198.14	125.65	40.63	260.47	89.16	29.06	200.21
Glendora	64.88	23.58	66.21	42.90	13.35	92.99	18.08	5.24	36.12
Hacienda Heights	43.28	2.53	63.92	9.68	3.10	20.54	10.70	3.49	24.02
Hawaiian Gardens	1.85	2.70	15.77	2.31	0.74	4.91	2.62	0.88	5.87
Hawthorne	17.23	6.11	62.77	19.11	6.13	40.55	25.65	9.32	58.66
Hermosa Beach	6.25	2.31	11.59	6.85	2.64	18.78	20.68	6.73	41.79
Hidden Hills	6.39	0.34	6.87	1.11	0.38	2.37	2.85	1.14	5.12
Huntington Park	19.46	3.83	47.97	14.88	4.70	31.11	16.21	5.28	36.41
Industry	31.77	8.78	73.85	42.44	15.47	91.27	69.25	28.75	150.53
Inglewood	81.55	29.58	112.11	32.83	10.53	69.66	54.64	21.34	120.53
Irwindale	7.85	3.14	23.33	20.73	6.42	38.45	33.77	15.44	71.30
La Canada Flintridge	15.35	24.26	37.04	6.69	2.14	14.17	7.29	2.38	18.37
La Crescenta-Montrose	18.88	19.22	12.51	4.34	1.39	9.20	4.79	1.56	10.77
Ladera Heights	1.57	0.58	12.45	2.24	0.72	4.74	2.47	0.81	5.55
La Habra Heights	10.91	10.13	11.10	19.63	7.67	41.30	2.01	0.78	4.12
Lake Los Angeles	0.10	0.04	0.18	0.14	0.04	0.29	0.15	0.05	0.34
Lakewood	62.91	14.53	124.62	21.94	7.03	48.54	48.42	20.50	101.52
La Mirada	26.87	3.35	69.92	12.83	4.11	27.22	14.18	4.62	31.85
Lancaster	17.22	8.45	32.17	24.35	7.81	51.66	26.91	8.77	60.44
La Puente	22.57	11.45	53.64	5.62	1.80	11.92	18.40	7.16	31.51
La Verne	10.43	19.98	57.49	57.08	20.87	118.97	8.64	2.84	19.35
Lawndale	4.71	1.67	35.97	6.71	2.15	14.24	13.78	5.68	27.94
Lennox	11.65	9.90	26.20	3.58	1.15	7.59	3.95	1.29	8.88
Littlerock	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.11
Lomita	4.40	1.60	17.16	6.12	1.98	12.99	6.64	2.24	15.33
Long Beach	339.63	104.83	680.60	883.05	283.63	1859.29	1778.50	555.01	3960.55
Los Angeles	2329.00	795.38	4268.76	3411.73	1072.92	7222.57	3299.90	1074.96	7407.18
Lynwood	34.35	12.77	29.47	8.89	2.85	18.88	10.09	3.34	22.50
Malibu	12.34	2.47	25.69	54.32	24.52	98.73	77.94	27.68	165.04
Manhattan Beach	33.27	4.21	68.27	17.02	5.47	38.02	32.80	13.40	67.68
Marina del Rey	5.58	2.08	10.44	8.07	2.59	17.11	8.61	2.87	19.79
Mayflower Village	0.37	0.14	6.75	0.52	0.17	1.11	2.63	1.27	4.45
Maywood	12.96	1.43	23.96	5.50	1.78	11.67	14.49	6.44	26.62
Monrovia	12.77	5.03	61.70	31.25	12.93	70.30	19.41	6.67	42.45
Montebello	42.75	5.88	46.53	25.28	8.13	53.42	24.01	7.65	53.89
Monterey Park	13.04	25.74	96.52	18.44	5.91	39.12	33.69	13.54	74.24
North El Monte	0.45	0.17	4.01	0.65	0.21	1.37	8.58	3.58	18.38
Norwalk	50.85	25.63	123.69	19.35	6.20	41.05	21.85	7.15	49.02
Palmdale	34.87	12.93	84.29	19.31	6.34	40.85	20.57	6.82	45.79
Palos Verdes Estates	12.28	0.68	31.52	2.47	0.79	5.25	18.27	7.83	29.62
Paramount	27.24	13.58	79.34	11.89	8.81	25.23	47.48	22.19	98.71
Pasadena	112.49	52.69	194.01	147.10	44.88	300.43	106.74	37.72	241.62
Pico Rivera	46.89	3.80	62.07	654.55	212.01	1367.48	75.25	23.74	158.06
Pomona	101.71	40.41	189.32	58.41	20.71	121.38	88.95	38.87	195.48
Quartz Hill	0.75	0.28	1.39	1.06	0.34	2.26	1.18	0.38	2.64
Rancho Palos Verdes	44.21	1.98	32.79	7.58	2.43	16.08	29.77	13.70	58.45
Redondo Beach	17.09	17.15	60.84	24.29	7.79	51.54	35.74	13.28	75.76
Rolling Hills	0.30	0.05	0.49	0.21	0.07	0.44	0.53	0.23	1.04
Rolling Hills Estates	5.45	0.60	22.78	2.29	0.74	4.87	2.55	0.63	5.71
Rosemead	10.46	3.73	54.27	14.30	4.59	30.33	46.55	21.08	95.01
Rowland Heights	27.35	13.61	34.68	12.58	4.03	26.70	13.91	4.53	31.24
San Dimas	29.46	13.54	28.07	25.91	10.74	55.88	23.81	10.04	51.65
San Fernando	6.68	2.49	12.76	100.61	32.14	199.51	10.55	3.44	23.69
San Gabriel	10.85	3.00	41.79	11.48	3.68	24.37	22.84	9.24	47.20
San Marino	2.53	0.98	13.94	3.57	1.15	7.58	5.42	1.61	11.93
Santa Clarita	339.50	144.26	821.72	1125.09	321.60	2575.95	1739.18	458.31	4142.40
Santa Fe Springs	28.30	14.21	59.53	24.70	7.92	52.43	61.58	21.55	132.97

Impacts of Household Expenditure Reduction

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.06	0.02	0.11	0.06	0.03	0.17	0.09	0.03	0.19
Agoura Hills	12.87	4.69	24.17	17.10	5.52	35.79	18.51	8.05	40.74
Alhambra	80.17	29.20	150.57	108.54	34.40	222.91	115.28	37.71	253.80
Alondra Park	4.19	1.53	7.86	5.58	1.80	11.64	8.02	1.97	13.28
Altadena	21.57	7.86	40.50	28.68	9.25	59.97	31.01	10.14	68.28
Arcadia	78.58	28.62	147.58	104.42	33.72	218.49	112.99	36.96	248.76
Artesia	28.85	10.51	54.19	38.34	12.38	80.23	41.49	13.57	91.35
Avocado Heights	16.59	6.04	31.16	22.05	7.12	48.13	23.85	7.80	52.52
Azusa	35.00	12.75	65.74	46.51	15.02	97.32	50.33	16.46	110.81
Baldwin Park	37.27	13.58	70.00	49.53	16.00	103.64	53.60	17.53	118.00
Bell	28.79	10.49	54.08	38.25	12.35	80.04	41.39	13.54	91.13
Bellflower	53.34	19.43	100.18	70.88	22.89	148.31	76.70	25.09	168.87
Bell Gardens	22.77	8.30	42.77	30.26	9.77	63.32	32.75	10.71	72.10
Beverly Hills	128.24	46.71	240.84	170.41	55.03	356.57	184.39	60.32	405.97
Bradbury	1.19	0.43	2.23	1.58	0.51	3.31	1.71	0.56	3.76
Burbank	143.32	52.20	269.16	190.45	61.50	398.49	206.07	67.41	453.71
Calabasas	5.82	2.12	10.93	7.74	2.50	16.19	8.37	2.74	18.43
Carson	94.87	34.46	177.80	125.81	40.63	263.23	136.13	44.53	299.71
Cerritos	69.89	25.46	131.26	92.88	29.99	194.33	100.50	32.87	221.26
Charter Oak	7.23	2.63	13.57	9.60	3.10	20.09	10.39	3.40	22.88
Citrus	4.01	1.46	7.52	5.32	1.72	11.14	5.76	1.88	12.68
Claremont	34.19	12.45	64.22	45.44	14.67	95.07	49.17	16.08	108.25
Commerce	50.42	18.36	94.69	67.00	21.64	140.18	72.49	23.71	159.61
Compton	60.61	22.08	113.84	80.55	26.01	168.53	87.16	28.51	191.89
Covina	63.68	23.27	119.97	84.69	27.41	177.62	91.65	30.05	202.23
Cudahy	11.71	4.27	22.00	15.58	5.03	32.57	16.84	5.51	37.06
Culver City	103.74	37.79	194.84	137.86	44.52	288.48	149.17	48.80	328.43
Del Aire	10.52	3.83	19.76	13.98	4.52	29.28	15.13	4.95	33.31
Desert View Highlands	1.20	0.44	2.25	1.59	0.51	3.33	1.72	0.56	3.79
Diamond Bar	29.19	10.63	54.82	38.79	12.53	81.16	41.97	13.73	92.41
Downey	92.10	33.55	172.97	122.39	39.52	258.09	132.43	43.32	291.57
Duarte	19.14	6.97	35.95	25.43	8.21	53.22	27.52	9.00	60.59
East Compton	2.02	0.74	3.79	2.68	0.87	5.62	2.90	0.95	6.40
East La Mirada	3.77	1.37	7.08	5.01	1.62	10.48	5.42	1.77	11.93
East Los Angeles	60.28	21.96	113.21	80.10	25.87	167.60	86.67	28.35	190.83
East Pasadena	20.87	7.60	39.19	27.73	8.96	58.03	30.01	9.82	66.07
East San Gabriel	12.76	4.65	23.96	16.95	5.48	35.47	18.35	6.00	40.39
El Monte	87.18	31.76	163.74	115.85	37.41	242.41	125.36	41.01	278.00
El Segundo	40.89	14.93	76.97	54.46	17.59	113.96	58.93	19.28	129.75
Florence-Graham	20.17	7.35	37.88	26.80	8.65	56.08	29.00	9.49	63.85
Gardena	68.79	25.06	129.19	91.41	29.52	191.28	98.91	32.36	217.77
Glendale	255.30	93.00	479.48	339.28	109.58	709.87	367.10	120.08	808.23
Glendora	49.18	17.91	92.34	65.33	21.10	136.70	70.69	23.13	155.85
Hacienda Heights	31.59	11.51	59.33	41.98	13.56	87.83	45.42	14.86	100.00
Hawaiian Gardens	7.18	2.62	13.49	9.55	3.08	19.98	10.33	3.38	22.74
Hawthorne	64.95	23.66	121.97	86.31	27.87	180.58	93.39	30.55	205.60
Hermosa Beach	33.05	12.04	62.06	43.92	14.18	91.89	47.52	15.54	104.62
Hidden Hills	1.79	0.65	3.36	2.38	0.77	4.97	2.57	0.84	5.66
Huntington Park	49.06	17.87	92.13	65.19	21.05	136.40	70.54	23.07	155.30
Industry	88.58	32.26	166.32	117.69	38.00	246.24	127.34	41.68	280.36
Inglewood	105.08	38.28	197.34	139.63	45.09	292.17	151.09	49.42	332.65
Irwindale	12.67	4.61	23.79	16.83	5.44	35.22	18.21	5.96	40.10
La Canada Flintridge	21.30	7.76	40.00	28.30	9.14	59.22	30.62	10.02	67.42
La Crescenta-Montrose	15.58	5.68	29.27	20.71	6.69	43.33	22.41	7.33	49.34
Ladera Heights	6.03	2.20	11.32	8.01	2.59	16.77	8.67	2.84	19.09
La Habra Heights	4.16	1.52	7.82	5.53	1.79	11.57	5.98	1.96	13.18
Lake Los Angeles	0.66	0.24	1.24	0.88	0.28	1.84	0.95	0.31	2.09
Lakewood	80.97	29.49	152.07	107.60	34.75	225.13	116.43	38.08	256.33
La Mirada	30.00	10.93	56.34	39.87	12.87	83.41	43.14	14.11	94.97
Lancaster	124.35	45.30	233.55	165.25	53.36	345.76	178.81	58.49	393.68
La Puente	21.15	7.70	39.72	28.10	9.08	58.81	30.41	9.95	66.95
La Verne	26.52	9.66	49.81	35.24	11.38	73.74	38.14	12.47	83.96
Lawndale	24.54	8.94	46.08	32.61	10.53	68.22	35.28	11.54	77.68
Lennox	12.04	4.39	22.61	16.00	5.17	33.48	17.31	5.66	38.12
Littlerock	0.19	0.07	0.35	0.25	0.08	0.52	0.27	0.09	0.59
Lomita	23.65	8.58	44.22	31.29	10.10	65.47	33.88	11.08	74.54
Long Beach	349.03	127.14	655.51	463.82	149.78	970.49	501.88	164.17	1104.97
Los Angeles	3825.91	1393.62	7185.36	5084.15	1641.62	10637.93	5501.27	1799.55	12111.99
Lynwood	28.16	10.26	52.89	37.42	12.09	78.31	40.50	13.25	89.16
Malibu	7.45	2.71	13.98	9.89	3.20	20.70	10.71	3.50	23.57
Manhattan Beach	59.83	21.72	111.99	79.24	25.59	165.80	85.74	28.05	188.77
Marina del Rey	23.34	8.50	43.84	31.02	10.02	64.90	33.58	10.98	73.89
Mayflower Village	1.95	0.71	3.65	2.58	0.83	5.41	2.80	0.91	6.16
Maywood	15.48	5.64	29.07	20.57	6.64	43.05	22.28	7.28	49.01
Monrovia	49.57	18.08	93.10	65.88	21.27	137.84	71.28	23.32	156.94
Montebello	68.62	24.99	128.87	91.18	29.45	190.79	98.66	32.27	217.22
Monterey Park	53.75	19.58	100.95	71.43	23.07	149.46	77.29	25.28	170.17
North El Monte	1.79	0.65	3.35	2.37	0.77	4.97	2.57	0.84	5.65
Norwalk	60.37	21.99	113.38	80.23	25.91	187.86	86.81	28.40	191.12
Palmdale	111.69	40.68	209.75	148.42	47.93	310.54	160.59	52.53	353.57
Palos Verdes Estates	6.40	2.33	12.02	8.50	2.75	17.79	9.20	3.01	20.26
Paramount	32.18	11.72	60.43	42.76	13.81	89.47	46.27	15.13	101.86
Pasadena	214.91	78.28	403.62	285.59	92.22	597.58	309.02	101.08	680.36
Pico Rivera	42.45	15.46	79.73	56.41	18.22	118.04	61.04	19.97	134.39
Pomona	85.94	34.95	160.18	127.49	41.17	268.76	137.95	45.13	303.72
Quartz Hill	4.24	1.54	7.96	5.63	1.82	11.78	6.09	1.99	13.41
Rancho Palos Verdes	30.58	11.14	57.44	40.64	13.12	85.04	43.98	14.39	96.82
Redondo Beach	82.52	30.06	154.98	109.66	35.41	229.44	118.65	38.81	261.24
Rolling Hills	0.64	0.23	1.20	0.85	0.27	1.78	0.92	0.30	2.03
Rolling Hills Estates	9.51	3.47	17.87	12.64	4.08	26.45	13.68	4.47	30.12
Rosemead	37.51	13.66	70.45	49.85	16.10	104.31	53.94	17.64	118.76
Rowland Heights	40.09	14.60	75.29	53.27	17.20	111.47	57.65	18.86	126.92
San Dimas	32.63	11.88	61.28	43.36	14.00	90.72	46.91	15.35	103.29
San Fernando	30.70	11.18	57.65	40.79	13.17	85.35	44.14	14.44	97.17
San Gabriel	40.50	14.75	78.06	53.82	17.38	112.81	58.24	19.05	128.22
San Marino	9.80	3.57	18.41	13.02	4.21	27.25	14.09	4.61	31.02
Santa Clarita	109.91	40.04	206.42	146.06	47.17	305.61	158.04	51.70	347.95
Santa Fe Springs	41.40	15.06	77.75	55.02	17.77	115.12	59.53	19.47	131.07

Net Impacts

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.80	0.29	1.28	-0.02	0.00	-0.04	-0.05	-0.01	-0.12
Agoura Hills	5.69	-2.13	9.42	-5.70	-0.77	-13.77	-7.72	-1.55	-19.60
Alhambra	-33.47	-22.01	-89.11	-78.05	-25.59	-164.59	-78.34	-23.40	-170.37
Alondra Park	-3.29	8.83	-8.20	-4.29	-1.39	-8.94	19.47	10.93	43.02
Altadena	-17.16	-8.23	-15.64	-22.43	-7.28	-46.74	-24.12	-7.90	-52.80
Arcadia	-52.24	-1.37	-81.06	-79.89	-25.64	-168.45	-84.33	-18.01	-144.44
Artesia	-22.32	-8.19	-33.45	-29.47	-9.54	-61.40	-31.63	-10.35	-69.23
Avocado Heights	7.88	-4.18	3.25	-14.83	-4.80	-30.82	-15.65	-5.19	-34.57
Azusa	2.98	-9.91	-40.94	415.38	126.38	914.81	-38.29	-12.54	-83.78
Baldwin Park	8.01	10.14	-28.34	-37.55	-12.14	-78.24	-39.03	-12.51	-85.62
Bell	-12.51	-7.93	-8.98	-28.47	-9.22	-59.27	-15.34	-2.04	-37.79
Bellflower	-5.74	5.31	-52.86	-55.23	-17.87	-115.10	-59.26	-19.38	-129.69
Bell Gardens	-9.24	-8.58	-18.27	-23.88	-7.68	-49.38	-19.42	-5.19	-45.69
Beverly Hills	-92.83	-33.52	-165.38	-119.95	-38.85	-249.51	-128.27	-41.97	-279.99
Bradbury	0.04	0.21	16.20	-1.22	-0.39	-2.53	-1.31	-0.43	-2.87
Burbank	-44.07	-38.88	-158.04	-140.05	-45.34	-291.56	-115.09	-36.13	-254.13
Calabasas	22.27	7.75	33.88	1.39	1.52	0.05	5.25	3.68	8.44
Carson	-52.01	-24.12	-81.13	-88.05	-27.88	-178.86	-40.95	-12.02	-99.30
Cerritos	-8.26	1.73	-18.09	-68.05	-22.03	-141.87	-23.57	1.72	-47.83
Charter Oak	2.05	-2.14	1.78	-7.71	-2.49	-16.08	-8.30	-2.72	-18.18
Citrus	-0.34	-1.11	6.63	-4.29	-1.39	-8.94	-4.33	-1.40	-9.49
Claremont	1.09	-1.38	14.97	-23.48	-5.77	-52.48	-35.98	-11.78	-78.60
Commerce	-23.43	-1.28	-49.85	-41.70	-13.53	-86.49	-31.38	-7.74	-68.34
Compton	-3.48	-16.55	-21.47	-59.54	-19.28	-123.95	-55.08	-18.31	-125.24
Covina	0.03	1.78	-55.69	-68.01	-21.36	-137.56	-22.00	-4.05	-49.68
Cudahy	-9.24	-3.44	-8.71	-12.40	-4.01	-25.84	-13.07	-4.23	-28.71
Culver City	-89.47	-29.18	-151.58	-105.00	-33.98	-218.74	-112.65	-36.96	-248.85
Del Aire	-7.99	-2.88	-15.04	-10.37	-3.36	-21.59	-11.13	-3.65	-24.33
Desert View Highlands	-1.07	-0.39	-2.02	-1.41	-0.48	-2.95	-1.53	-0.50	-3.35
Diamond Bar	-14.64	-7.75	-9.82	-22.05	-8.08	-46.18	-17.52	-4.34	-39.37
Downey	-13.88	-4.53	-49.54	-80.88	-29.09	-187.06	-79.53	-22.78	-182.20
Duarte	9.94	13.82	5.89	-8.77	-3.03	-17.07	-15.57	-3.95	-37.69
East Compton	-1.58	-0.57	2.64	-2.08	-0.87	-4.29	-2.07	-0.65	-4.61
East La Mirada	-2.96	-1.07	-5.58	-3.86	-1.25	-8.04	-4.15	-1.36	-9.08
East Los Angeles	-8.09	14.99	-19.25	-58.44	-18.28	-117.39	-47.07	-12.86	-103.35
East Pasadena	-17.31	-8.30	-32.86	-22.74	-7.35	-47.43	-24.30	-7.95	-53.27
East San Gabriel	-10.87	3.72	-11.26	-13.98	-4.52	-29.17	57.42	20.55	118.96
El Monte	-31.83	-13.77	-63.22	-85.93	-27.82	-178.91	-58.58	-13.12	-128.73
El Segundo	-12.70	-8.44	-44.52	194.12	64.28	390.48	-22.84	-5.78	-53.18
Florence-Graham	11.78	4.92	14.47	-19.92	-6.45	-41.48	-21.29	-8.96	-48.59
Gardena	-24.70	-19.61	-92.78	-70.55	-22.83	-147.00	-65.58	-19.52	-144.39
Glendale	-142.58	-29.65	-283.33	-213.42	-68.92	-449.39	-277.94	-91.00	-608.02
Glendora	15.71	5.87	-8.13	-22.43	-7.75	-43.71	-54.61	-17.88	-119.52
Hacienda Heights	11.89	-8.98	4.59	-32.30	-10.45	-87.30	-34.72	-11.37	-75.98
Hawaiian Gardens	-5.53	0.08	2.28	-7.23	-2.34	-15.07	-7.71	-2.51	-16.87
Hawthorne	-47.72	-17.55	-59.20	-87.19	-21.74	-140.03	-87.54	-21.23	-148.94
Hermosa Beach	-28.80	-9.72	-50.47	-35.08	-11.34	-73.10	-28.88	-8.81	-82.83
Hidden Hills	4.60	-0.32	3.52	-1.28	-0.41	-2.60	0.08	0.30	-0.54
Huntington Park	-29.59	-14.04	-44.16	-50.53	-16.35	-105.29	-54.33	-17.79	-118.89
Industry	-56.79	-23.48	-92.48	-75.25	-22.53	-154.97	-58.09	-14.90	-129.84
Inglewood	-23.52	-8.89	-85.24	-106.80	-34.57	-222.50	-96.45	-28.09	-212.12
Irwindale	-5.02	-1.48	-0.46	3.69	2.99	3.23	15.56	9.48	31.20
La Canada Flintridge	-5.95	18.50	-2.96	-21.61	-7.00	-45.05	-23.33	-7.64	-51.06
La Crescenta-Montrose	3.28	13.54	-16.76	-18.37	-5.30	-34.13	-17.61	-5.77	-38.57
Ladera Heights	-4.46	-1.61	1.12	-5.78	-1.87	-12.02	-6.20	-2.03	-13.54
La Habra Heights	6.75	6.61	3.28	14.10	5.89	29.73	-3.96	-1.17	-9.06
Lake Los Angeles	-0.56	-0.20	-1.06	-0.74	-0.24	-1.54	-0.80	-0.28	-1.75
Lakewood	-18.06	-14.96	-27.45	-85.86	-27.71	-178.59	-88.01	-17.58	-154.81
La Mirada	-3.13	-7.58	13.58	-27.04	-8.78	-58.20	-28.96	-9.49	-83.12
Lancaster	-107.14	-38.65	-201.38	-140.90	-45.58	-294.10	-151.90	-49.72	-333.24
La Puente	1.43	3.75	13.92	-22.49	-7.28	-46.89	-14.01	-2.77	-35.45
La Verne	-16.09	10.32	7.68	21.83	9.49	43.22	-29.50	-9.64	-64.62
Lawndale	-19.83	-7.07	-10.11	-25.89	-8.38	-53.98	-21.50	-5.88	-49.74
Lennox	-0.39	5.51	3.58	-12.43	-4.02	-25.89	-13.36	-4.38	-29.24
Littlerock	-0.18	-0.08	-0.29	-0.21	-0.07	-0.43	-0.22	-0.07	-0.48
Lomita	-19.15	-8.98	-27.06	-25.17	-8.14	-52.48	-27.01	-8.83	-59.22
Long Beach	-9.40	-22.30	25.09	419.22	133.85	888.80	1274.62	390.83	2875.58
Los Angeles	-1498.91	-598.24	-2918.60	-1872.42	-588.90	-3415.36	-2201.37	-724.57	-4704.81
Lynwood	6.16	2.51	-23.42	-28.54	-9.24	-59.45	-30.41	-9.91	-88.65
Malibu	4.89	-0.24	11.70	44.43	21.32	78.03	67.24	24.38	141.47
Manhattan Beach	-28.38	-17.51	-43.71	-82.22	-20.12	-129.78	-52.94	-14.84	-121.09
Marina del Rey	-17.76	-8.42	-33.40	-22.95	-7.43	-47.79	-24.75	-8.11	-54.11
Mayflower Village	-1.57	-0.57	3.10	-2.08	-0.67	-4.30	-0.17	0.35	-1.71
Maywood	-2.52	-4.20	-5.11	-15.08	-4.88	-31.38	-7.77	-0.84	-22.39
Monrovia	-38.80	-13.03	-31.40	-34.62	-8.34	-87.53	-51.87	-18.65	-114.48
Montebello	-25.67	-19.33	-82.34	-65.91	-21.32	-137.36	-74.65	-24.43	-183.33
Monterey Park	-40.71	8.16	-4.43	-52.99	-17.15	-110.34	-43.60	-11.75	-95.93
North El Monte	-1.33	-0.48	0.86	-1.73	-0.56	-3.60	5.99	2.74	12.73
Norwalk	-9.72	3.64	10.30	-60.88	-19.70	-126.81	-84.95	-21.25	-142.10
Palmdale	-78.82	-27.75	-145.46	-129.10	-41.59	-269.89	-140.02	-45.71	-307.78
Palos Verdes Estates	5.86	-1.88	19.50	-8.03	-1.95	-12.54	7.07	4.82	9.36
Paramount	-4.93	1.88	18.91	-30.87	-10.00	-84.24	1.19	7.05	-3.16
Pasadena	-102.42	-25.59	-209.61	-138.49	-47.35	-297.12	-202.28	-63.36	-438.73
Pico Rivera	4.44	-11.67	2.34	598.14	193.79	1249.44	14.21	3.77	23.67
Pomona	5.77	5.46	-10.86	-69.08	-20.48	-145.38	-49.00	-6.25	-108.25
Quartz Hill	-3.49	-1.27	-8.57	-4.57	-1.48	-9.52	-4.92	-1.61	-10.77
Rancho Palos Verdes	13.63	-9.16	-24.65	-33.08	-10.69	-68.96	-14.21	-0.69	-40.37
Redondo Beach	-85.42	-12.91	-94.34	-85.37	-27.82	-177.90	-82.92	-25.53	-185.48
Rolling Hills	-0.34	-0.16	-0.71	-0.64	-0.21	-1.34	-0.39	-0.07	-0.96
Rolling Hills Estates	-4.08	-2.87	4.92	-10.35	-3.35	-21.58	-11.13	-3.64	-24.40
Rosemead	-27.08	-9.94	-16.18	-35.55	-11.51	-73.97	-7.39	3.44	-23.75
Rowland Heights	-12.74	-1.00	-40.61	-40.69	-13.17	-84.77	-43.74	-14.32	-95.67
San Dimas	-3.17	1.65	-33.20	-17.45	-3.26	-34.84	-23.10	-5.30	-51.64
San Fernando	-24.01	-8.69	-44.88	59.82	18.97	114.18	-33.59	-11.00	-73.48
San Gabriel	-29.65	-11.75	-34.28	-42.34	-13.70	-88.25	-35.40	-9.81	-81.02
San Marino	-7.27	-2.59	-4.47	-9.45	-3.08	-19.67	-8.67	-2.80	-19.09
Santa Clarita	229.59	104.23	415.30	979.03	274.83	2270.34	1581.12	406.82	3794.44
Santa Fe Springs	-13.10	-0.87	-18.23	-30.32	-9.85	-82.69	2.05	2.06	1.91

(Millions of $ 1999)

City and CDP	Stimulus Effects: CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III	Impacts of Household Expenditure Reduction: CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III	Net Impacts: CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Santa Monica	84.25	30.03	113.90	72.68	23.30	154.20	80.80	28.31	181.08	204.80	74.60	384.63	272.16	87.89	569.45	294.48	96.33	648.36	-120.55	-44.57	-270.73	-199.48	-64.59	-415.25	-213.88	-70.02	-487.27
Sierra Madre	10.98	0.78	12.60	2.71	0.87	5.74	3.03	1.00	6.80	9.08	3.30	17.01	12.04	3.89	25.18	13.02	4.26	28.67	1.93	-2.54	-4.41	-9.33	-3.02	-19.44	-9.99	-3.28	-21.87
Signal Hill	8.85	2.58	21.09	9.30	2.98	19.74	10.33	3.37	23.18	19.35	7.05	38.34	25.71	8.30	53.80	27.82	9.10	61.26	-12.70	-4.48	-15.25	-16.41	-5.32	-34.06	-17.50	-5.73	-38.08
South El Monte	14.34	7.18	21.01	6.93	2.22	14.70	15.82	8.68	31.97	14.66	5.34	27.53	19.48	8.29	40.75	21.07	6.89	46.40	-0.32	1.82	-8.52	-12.55	-4.07	-26.05	-5.48	-0.24	-14.43
South Gate	30.09	4.41	58.32	16.82	5.33	35.27	36.11	15.28	70.41	53.78	19.58	100.97	71.44	23.07	149.48	77.30	25.29	170.20	-23.67	-15.17	-42.64	-54.82	-17.74	-114.21	-41.19	-10.03	-99.78
South Pasadena	15.84	2.51	30.15	9.28	2.97	19.66	10.28	3.35	23.04	27.79	10.12	52.20	36.93	11.93	77.28	39.96	13.07	87.99	-12.15	-7.81	-22.04	-27.87	-8.98	-57.82	-29.70	-8.73	-84.95
South San Gabriel	0.88	0.34	1.84	1.28	0.40	2.87	1.39	0.45	3.13	3.86	1.44	7.44	5.26	1.70	11.01	5.69	1.86	12.54	-3.08	-1.11	-5.80	-4.00	-1.30	-8.34	-4.30	-1.41	-9.41
South San Jose Hills	2.30	0.33	19.81	1.25	0.40	-2.66	4.03	1.60	9.09	4.50	1.64	8.45	5.98	1.93	12.50	6.47	2.12	14.24	-2.20	-1.31	11.36	-4.72	-1.53	-9.84	-2.43	-0.32	-5.14
South Whittier	22.47	24.55	67.00	7.03	2.26	14.93	7.78	2.53	17.47	22.35	8.14	41.98	29.70	9.59	62.15	32.14	10.51	70.78	0.12	18.41	25.02	-22.87	-7.34	-47.22	-24.36	-7.98	-53.29
Temple City	14.73	4.98	13.04	7.97	2.55	16.90	15.37	5.67	33.81	28.82	10.50	54.13	38.30	12.37	80.14	41.45	13.56	91.25	-14.09	-5.54	-41.10	-30.34	-9.81	-63.24	-28.08	-7.89	-57.44
Torrance	81.13	62.60	184.31	83.74	26.85	177.68	148.14	50.58	317.65	258.74	94.25	485.93	343.83	111.03	719.42	372.04	121.70	819.10	-187.61	-31.64	-301.81	-260.09	-84.19	-541.73	-225.90	-71.12	-501.45
Valinda	3.04	0.68	22.18	2.60	0.83	5.51	2.87	0.93	6.44	10.23	3.73	19.21	13.59	4.39	28.44	14.71	4.81	32.38	-7.19	-3.05	2.97	-11.00	-3.58	-22.93	-11.84	-3.88	-25.94
Val Verde	0.10	0.04	0.20	0.38	0.12	0.74	0.01	0.00	0.02	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.05	0.09	0.04	0.17	0.36	0.11	0.70	-0.01	0.00	-0.03
Vernon	32.32	5.41	37.74	20.77	6.66	44.11	22.99	7.49	51.68	32.30	11.77	60.66	42.92	13.86	89.81	46.44	15.19	102.25	0.02	-8.35	-22.92	-22.15	-7.20	-45.70	-23.46	-7.70	-50.57
View Park-Windsor Hills	1.82	0.72	3.41	2.60	0.83	5.51	2.87	0.94	6.45	7.48	2.73	14.06	9.94	3.21	20.81	10.76	3.52	23.69	-5.66	-2.00	-10.65	-7.35	-2.38	-15.30	-7.69	-2.58	-17.24
Vincent	12.88	1.61	7.96	3.12	1.00	6.63	3.64	1.33	8.60	11.97	4.36	22.48	15.90	5.14	33.28	17.21	5.63	37.89	0.69	-2.75	-14.51	-12.78	-4.13	-26.65	-13.37	-4.30	-29.29
Walnut	3.60	1.42	8.27	5.04	1.63	10.71	5.82	1.94	13.07	13.58	4.95	25.51	18.05	5.83	37.77	19.53	6.39	43.00	-9.98	-3.53	-17.24	-13.01	-4.20	-27.06	-13.71	-4.45	-29.84
Walnut Park	1.87	0.55	29.70	2.11	0.68	4.48	2.33	0.78	5.24	7.50	2.73	14.06	9.96	3.22	20.84	10.78	3.53	23.73	-5.82	-2.18	15.62	-7.85	-2.54	-18.36	-8.44	-2.77	-18.49
West Athens	1.35	0.34	10.77	1.31	0.42	2.77	1.45	0.47	3.25	3.85	1.40	7.23	5.12	1.65	10.71	5.54	1.81	12.19	-2.51	-1.06	3.53	-3.81	-1.23	-7.94	-4.09	-1.34	-8.95
West Carson	4.82	1.74	27.03	8.65	2.13	14.12	7.38	2.40	16.53	19.21	7.00	38.08	25.53	8.24	53.42	27.62	9.04	60.82	-14.39	-5.26	-9.05	-18.88	-6.11	-39.30	-20.27	-6.64	-44.29
West Compton	2.72	1.01	17.44	3.88	1.24	8.23	4.28	1.40	9.83	6.59	2.40	12.38	8.78	2.83	18.33	9.48	3.10	20.87	-3.87	-1.39	5.06	-4.88	-1.59	-10.10	-5.19	-1.70	-11.24
West Covina	73.92	36.68	147.98	25.85	8.29	54.85	58.42	24.45	130.15	93.46	34.05	175.53	124.20	40.11	259.88	134.39	43.96	295.89	-19.55	2.61	-27.58	-98.35	-31.82	-205.03	-75.97	-19.51	-185.74
West Hollywood	22.20	8.13	49.60	31.11	9.97	68.01	34.47	11.24	77.39	92.51	33.70	173.75	122.94	39.70	257.23	133.02	43.51	292.87	-70.31	-25.57	-124.14	-91.83	-29.73	-191.22	-96.58	-32.27	-215.48
Westlake Village	25.55	28.14	55.87	8.61	4.03	14.11	9.43	4.55	18.31	4.39	1.60	8.25	5.84	1.89	12.22	6.32	2.07	13.91	21.18	24.54	47.62	2.77	2.14	1.89	3.11	2.48	2.40
Westmont	2.41	0.83	22.52	3.19	1.02	8.76	3.52	1.15	7.91	10.92	3.98	20.51	14.51	4.69	30.38	15.70	5.14	34.57	-8.51	-3.15	2.01	-11.33	-3.68	-23.60	-12.18	-3.99	-26.88
West Puente Valley	7.80	0.73	12.34	1.59	0.51	3.37	39.62	15.29	82.82	4.58	1.67	8.60	6.09	1.97	12.73	6.58	2.15	14.50	3.22	-0.94	3.74	-4.50	-1.48	-9.38	33.03	13.14	68.32
West Whittier-Los Nietos	10.81	1.18	25.12	4.13	1.33	8.77	4.57	1.49	10.26	13.85	5.05	26.02	18.41	5.95	38.52	19.92	6.52	43.86	-3.24	-3.89	-0.90	-14.28	-4.82	-29.75	-15.35	-5.03	-33.60
Whittier	59.80	26.79	85.58	29.22	9.91	81.88	34.28	13.14	71.23	70.57	25.71	132.54	93.78	30.28	196.22	101.47	33.19	223.41	-10.77	1.08	-48.98	-64.58	-20.37	-134.36	-87.20	-20.05	-157.18
Willowbrook	15.09	12.20	35.84	8.43	2.06	13.65	7.11	2.32	15.98	15.12	5.51	28.41	20.10	6.49	42.05	21.75	7.11	47.88	-0.03	6.89	7.44	-13.68	-4.43	-28.40	-14.64	-4.80	-31.92
Aliso Viejo	7.45	2.78	13.85	10.63	3.41	22.55	11.75	3.83	26.39	9.73	3.55	18.28	12.94	4.18	27.07	14.00	4.58	30.82	-2.28	-0.77	-4.43	-2.31	-0.77	-4.52	-2.25	-0.75	-4.43
Anaheim	78.80	28.55	142.43	109.38	35.08	232.03	120.85	39.37	271.43	115.49	42.07	218.91	153.48	49.58	321.13	166.07	54.32	365.63	-38.90	-13.52	-74.48	-44.12	-14.50	-89.10	-45.22	-14.95	-94.19
Brea	12.74	4.75	23.69	18.18	5.82	38.52	20.07	6.54	45.08	20.57	7.49	38.63	27.33	8.83	57.19	29.57	9.67	65.11	-7.83	-2.75	-14.93	-9.17	-3.00	-18.67	-9.50	-3.13	-20.05
Buena Park	17.18	6.39	31.91	24.50	7.88	51.99	27.08	8.82	60.83	32.99	12.02	61.95	43.84	14.18	91.72	47.43	15.52	104.43	-15.83	-5.82	-30.04	-19.34	-6.30	-39.73	-20.35	-6.69	-43.60
Costa Mesa	55.71	20.78	103.80	79.47	25.48	168.61	87.85	28.82	197.31	73.44	26.75	137.93	97.59	31.52	204.20	105.60	34.54	232.50	-17.73	-5.99	-34.33	-18.12	-6.04	-35.59	-17.75	-5.92	-35.19
Coto de Caza	0.90	0.34	1.68	1.29	0.41	2.74	1.43	0.46	3.20	1.21	0.44	2.27	1.61	0.52	3.37	1.74	0.57	3.83	-0.31	-0.10	-0.59	-0.32	-0.11	-0.63	-0.32	-0.11	-0.63
Cypress	13.92	5.19	25.89	19.83	6.36	42.06	21.92	7.14	49.21	25.73	9.37	48.32	34.19	11.04	71.53	36.99	12.10	81.45	-11.81	-4.18	-22.43	-14.38	-4.68	-29.47	-15.07	-4.96	-32.24
Dana Point	9.37	3.49	17.42	13.37	4.29	28.36	14.77	4.81	33.17	12.04	4.39	22.61	16.00	5.17	33.47	17.31	5.66	38.11	-2.87	-0.89	-5.19	-2.83	-0.88	-6.11	-2.54	-0.85	-4.94
Foothill Ranch	0.15	0.06	0.28	0.21	0.07	0.45	0.24	0.08	0.53	0.22	0.08	0.42	0.29	0.09	0.61	0.32	0.10	0.70	-0.07	-0.02	-0.14	-0.08	-0.03	-0.16	-0.08	-0.03	-0.17
Fountain Valley	16.77	6.25	31.19	23.92	7.67	50.75	26.44	8.61	59.37	24.03	8.75	45.13	31.93	10.31	66.81	34.55	11.30	78.07	-7.28	-2.50	-13.94	-8.01	-2.64	-16.06	-8.11	-2.89	-18.69
Fullerton	33.98	12.67	63.18	48.50	15.55	102.91	53.62	17.47	120.44	58.96	20.75	106.98	75.70	24.45	158.39	81.91	26.79	180.34	-22.99	-8.08	-43.80	-27.20	-8.90	-55.48	-28.29	-9.32	-59.90
Garden Grove	33.11	12.34	61.57	47.27	15.16	100.29	52.24	17.02	117.35	49.98	18.20	93.86	66.41	21.45	138.96	71.86	23.51	158.22	-18.88	-5.88	-32.29	-19.15	-6.29	-38.67	-19.62	-6.48	-40.87
Huntington Beach	45.71	17.04	84.99	65.22	20.91	138.39	72.10	23.49	161.94	65.86	23.99	123.68	87.52	28.26	183.12	94.70	30.98	208.49	-20.15	-8.95	-38.89	-22.29	-7.35	-44.73	-22.60	-7.49	-48.55
Irvine	69.21	25.79	128.70	98.75	31.66	209.50	109.11	35.55	245.03	84.59	30.81	158.87	112.41	36.30	235.20	121.63	39.79	267.79	-15.38	-5.02	-30.18	-13.88	-4.64	-25.70	-12.52	-4.24	-22.78
Laguna Beach	10.10	3.76	18.78	14.40	4.62	30.54	15.91	5.18	35.71	13.40	4.88	25.17	17.81	5.75	37.27	19.27	6.30	42.43	-3.30	-1.12	-8.39	-3.41	-1.14	-8.73	-3.37	-1.12	-8.72
Laguna Hills	9.59	3.57	17.84	13.67	4.38	29.01	15.11	4.92	33.93	12.47	4.54	23.42	16.57	5.35	34.68	17.93	5.87	39.48	-2.88	-0.97	-5.58	-2.90	-0.97	-5.87	-2.82	-0.94	-5.55
Laguna Niguel	13.25	4.94	24.65	18.90	6.06	40.10	20.89	6.81	48.92	17.42	6.34	32.71	23.14	7.47	48.42	25.04	8.19	55.13	-4.18	-1.40	-8.08	-4.24	-1.41	-8.33	-4.15	-1.38	-8.22
Laguna Woods	6.16	2.29	11.46	8.78	2.81	18.62	9.70	3.16	21.78	8.24	3.00	15.47	10.94	3.53	22.90	11.84	3.87	28.07	-2.08	-0.71	-4.01	-2.17	-0.72	-4.28	-2.14	-0.71	-4.30
La Habra	12.62	4.71	23.45	18.01	5.77	38.22	19.93	6.49	44.77	27.96	10.18	52.51	37.15	12.00	77.73	40.20	13.15	88.51	-15.34	-6.47	-29.05	-19.14	-6.22	-39.51	-20.27	-6.66	-43.74
Lake Forest	15.40	5.74	28.63	21.96	7.05	46.63	24.30	7.92	54.57	19.86	7.23	37.30	26.39	8.52	55.22	28.55	9.34	62.87	-4.48	-1.49	-8.67	-4.41	-1.48	-8.58	-4.28	-1.42	-8.29
La Palma	4.40	1.64	8.18	6.26	2.01	13.29	6.97	2.28	15.65	7.79	2.84	14.63	10.35	3.34	21.66	11.20	3.66	24.86	-3.39	-1.20	-6.45	-4.09	-1.34	-8.37	-4.24	-1.39	-9.01
Las Flores	0.33	0.12	0.62	0.48	0.15	1.01	0.53	0.17	1.18	0.44	0.16	0.83	0.59	0.19	1.23	0.63	0.21	1.40	-0.11	-0.04	-0.21	-0.11	-0.04	-0.22	-0.11	-0.04	-0.22
Los Alamitos	5.80	2.16	10.78	8.28	2.65	17.57	9.15	2.98	20.56	10.71	3.90	20.11	14.23	4.59	29.77	15.39	5.04	33.89	-4.91	-1.74	-9.32	-5.95	-1.94	-12.20	-6.24	-2.05	-13.33
Mission Viejo	17.87	6.66	33.24	25.47	8.17	54.03	28.15	9.17	63.19	23.68	8.62	44.47	31.46	10.16	65.83	34.05	11.14	74.96	-5.80	-1.97	-11.23	-6.00	-1.99	-11.61	-5.90	-1.97	-11.78
Newport Beach	46.96	17.50	87.38	66.96	21.47	142.04	74.01	24.11	168.17	60.09	21.89	112.84	79.85	25.78	167.07	86.40	28.28	190.22	-13.10	-4.38	-25.47	-12.89	-4.31	-25.02	-12.39	-4.15	-24.04
Newport Coast	0.83	0.31	1.54	1.18	0.38	2.50	1.30	0.42	2.93	1.14	0.42	2.14	1.52	0.49	3.17	1.64	0.54	3.61	-0.32	-0.11	-0.61	-0.34	-0.11	-0.67	-0.34	-0.11	-0.69
Orange	45.25	16.86	84.16	64.55	20.70	136.94	71.33	23.24	160.19	64.43	23.47	121.01	85.63	27.65	179.16	92.65	30.31	203.99	-19.18	-6.61	-38.88	-21.08	-6.95	-42.23	-21.32	-7.06	-43.79
Placentia	8.95	3.34	16.63	12.78	4.10	27.12	14.13	4.60	31.73	13.23	4.82	24.85	17.58	5.68	36.79	19.03	6.22	41.89	-4.29	-1.48	-8.22	-4.60	-1.58	-9.87	-4.90	-1.62	-10.18
Portola Hills	0.06	0.02	0.12	0.09	0.03	0.19	0.10	0.03	0.22	0.09	0.03	0.17	0.12	0.04	0.26	0.13	0.04	0.29	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07	-0.03	-0.01	-0.07
Rancho Santa Margarita	2.90	1.08	5.39	4.14	1.33	8.78	4.57	1.49	10.27	3.88	1.41	7.28	5.15	1.66	10.78	5.57	1.82	12.27	-0.98	-0.33	-1.89	-1.01	-0.34	-2.00	-1.00	-0.33	-2.00
Rossmoor	1.10	0.41	2.05	1.56	0.51	3.34	1.74	0.57	3.91	2.41	0.88	4.52	3.20	1.03	6.70	3.48	1.13	7.82	-1.30	-0.47	-2.47	-1.82	-0.53	-3.35	-1.72	-0.57	-3.71
San Clemente	13.68	5.10	25.45	19.53	6.28	41.44	21.57	7.03	48.45	18.33	6.68	34.43	24.36	7.87	50.97	26.36	8.62	58.04	-4.65	-1.58	-8.98	-4.83	-1.60	-9.54	-4.79	-1.59	-9.59
San Joaquin Hills	0.29	0.11	0.54	0.42	0.13	0.89	0.46	0.15	1.04	0.41	0.15	0.76	0.54	0.17	1.13	0.59	0.19	1.29	-0.11	-0.04	-0.22	-0.12	-0.04	-0.25	-0.12	-0.04	-0.25
San Juan Capistrano	9.52	3.55	17.70	13.58	4.35	28.81	14.99	4.89	33.67	13.22	4.82	24.83	17.57	5.67	36.78	19.01	6.22	41.85	-3.70	-1.27	-7.13	-3.99	-1.32	-7.95	-4.07	-1.33	-8.18
Santa Ana	78.64	28.58	142.51	109.37	36.07	232.05	120.90	39.39	271.55	104.82	38.18	196.85	139.29	44.98	291.44	150.71	49.30	331.82	-28.17	-9.62	-54.34	-29.92	-9.91	-59.39	-29.81	-9.91	-60.28
Seal Beach	6.95	2.59	12.92	9.92	3.18	21.06	10.97	3.58	24.65	13.50	4.92	25.36	17.95	5.80	37.55	19.42	8.35	42.75	-6.55	-2.33	-12.44	-8.02	-2.81	-18.49	-8.44	-2.78	-18.10
Stanton	6.17	2.30	11.48	8.81	2.83	18.70	9.74	3.17	21.89	9.70	3.53	18.22	12.89	4.18	26.97	13.95	4.58	30.70	-3.53	-1.23	-8.74	-4.08	-1.34	-8.27	-4.20	-1.39	-8.81
Tustin	23.80	8.87	44.27	33.94	10.88	72.00	37.51	12.22	84.23	32.23	11.74	60.53	42.83	13.83	89.61	48.34	15.18	102.03	-8.43	-2.87	-16.28	-8.60	-2.95	-17.81	-8.83	-2.94	-17.80
Tustin Foothills	3.29	1.22	8.11	4.88	1.50	9.92	5.17	1.68	11.60	4.46	1.62	8.37	5.92	1.91	12.39	6.41	2.10	14.11	-1.17	-0.40	-2.26	-1.25	-0.41	-2.47	-1.24	-0.41	-2.51
Villa Park	0.85	0.32	1.58	1.21	0.39	2.57	1.34	0.44	3.00	1.24	0.45	2.32	1.64	0.53	3.44	1.78	0.58	3.92	-0.39	-0.13	-0.75	-0.43	-0.14	-0.87	-0.44	-0.15	-0.91
Westminster	21.08	7.86	39.21	30.07	9.64	63.80	33.24	10.83	74.85	33.48	12.19	62.88	44.49	14.37	93.09	48.14	15.75	105.99	-12.39	-4.34	-23.67	-14.42	-4.73	-29.29	-14.90	-4.92	-31.34
Yorba Linda	7.93	2.96	14.78	11.30	3.82	23.98	12.48	4.07	28.04	11.90	4.34	22.35	15.82	5.11	33.09	17.11	5.80	37.88	-3.97	-1.38	-7.60	-4.51	-1.48	-9.12	-4.63	-1.53	-9.64
Banning	2.74	1.02	5.10	3.91	1.25	8.30	4.32	1.41	8.71	3.81	1.31	6.78	4.80	1.55	10.03	5.19	1.70	11.42	-0.87	-0.29	-1.68	-0.88	-0.29	-1.73	-0.87	-0.29	-1.71
Beaumont	1.82	0.68	3.39	2.60	0.83	5.52	2.87	0.94	6.45	2.37	0.86	4.45	3.15	1.02	6.58	3.41	1.11	7.50	-0.55	-0.18	-1.06	-0.55	-0.18	-1.07	-0.53	-0.18	-1.04
Bermuda Dunes	0.36	0.14	0.68	0.52	0.17	1.10	0.57	0.19	1.29	0.50	0.18	0.94	0.66	0.21	1.38	0.72	0.23	1.58	-0.13	-0.05	-0.26	-0.14	-0.05	-0.29	-0.14	-0.05	-0.29
Cabazon	0.14	0.05	0.28	0.20	0.07	0.43	0.22	0.07	0.51	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58	-0.04	-0.01	-0.06	-0.04	-0.01	-0.08	-0.04	-0.01	-0.07
Calimesa	0.93	0.35	1.73	1.33	0.43	2.81	1.48	0.48	3.29	1.22	0.44	2.29	1.62	0.52	3.39	1.75	0.57	3.86	-0.29	-0.10	-0.56	-0.29	-0.10	-0.57	-0.29	-0.10	-0.57
Canyon Lake	0.32	0.12	0.60	0.48	0.15	0.97	0.50	0.16	1.13	0.41	0.15	0.76	0.54	0.17	1.13	0.59	0.19	1.29	-0.09	-0.03	-0.17	-0.08	-0.03	-0.16	-0.08	-0.03	-0.15
Cathedral City	7.90	2.94	14.88	11.27	3.81	23.92	12.48	4.06	27.98	10.15	3.70	19.06	13.49	4.36	28.22	14.59	4.77	32.13	-2.25	-0.75	-4.38	-2.22	-0.74	-4.30	-2.14	-0.72	-4.15
Cherry Valley	0.28	0.10	0.48	0.36	0.12	0.77	0.40	0.13	0.90	0.33	0.12	0.61	0.43	0.14	0.91	0.47	0.15	1.03	-0.07	-0.02	-0.14	-0.07	-0.02	-0.13	-0.07	-0.02	-0.13
Coachella	2.86	1.07	5.32	4.08	1.31	8.67	4.51	1.47	10.13	3.98	1.45	7.48	5.29	1.71	11.07	5.72	1.87	12.60	-1.12	-0.38	-2.18	-1.21	-0.40	-2.40	-1.21	-0.40	-2.47
Corona	20.20	7.53	37.56	28.64	8.25	61.19	31.87	10.38	71.57	27.87	10.15	52.35	37.04	11.96	77.50	40.08	13.11	88.24	-7.67	-2.62	-14.79	-8.20	-2.71	-18.31	-8.21	-2.73	-18.67
Desert Hot Springs	1.31	0.49	2.43	1.86	0.80	3.98	2.06	0.67	4.63	1.66	0.61	3.12	2.21	0.71	4.62	2.39	0.78	5.28	-0.36	-0.12	-0.69	-0.34	-0.12	-0.67	-0.33	-0.11	-0.64
East Hemet	2.07	0.77	3.85	2.95	0.95	6.28	3.28	1.06	7.33	2.69	0.98	5.05	3.57	1.15	7.48	3.87	1.26	8.51	-0.62	-0.21	-1.20	-0.62	-0.21	-1.22	-0.80	-0.20	-1.19
El Cerrito	0.29	0.11	0.55	0.42	0.13	0.80	0.46	0.15	1.04	0.42	0.15	0.79	0.56	0.18	1.17	0.61	0.20	1.34	-0.13	-0.04	-0.25	-0.14	-0.05	-0.28	-0.14	-0.05	-0.30
Glen Avon	2.46	0.92	4.58	3.52	1.13	7.48	3.89	1.27	8.73	3.82	1.32	6.80	4.81	1.55	10.06	5.20	1.70	11.45	-1.18	-0.40	-2.22	-1.29	-0.43	-2.60	-1.32	-0.44	-2.72
Hemet	10.80	4.02	20.06	15.40	4.94	32.88	17.02	5.55	38.22	14.16	5.18	26.60	18.82	6.06	39.38	20.37	6.66	44.84	-3.37	-1.14	-6.52	-3.42	-1.14	-8.71	-3.35	-1.12	-8.62
Highgrove	0.25	0.09	0.47	0.36	0.12	0.78	0.40	0.13	0.89	0.31	0.11	0.58	0.41	0.13	0.86	0.45	0.15	0.98	-0.06	-0.02	-0.12	-0.05	-0.02	-0.10	-0.05	-0.02	-0.09
Home Gardens	0.82	0.31	1.53	1.17	0.38	2.49	1.29	0.42	2.90	1.21	0.44	2.28	1.61	0.52	3.37	1.74	0.57	3.84	-0.39	-0.14	-0.75	-0.44	-0.14	-0.89	-0.45	-0.15	-0.94
Homeland	0.12	0.05	0.23	0.17	0.06	0.37	0.19	0.06	0.43	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58	-0.08	-0.02	-0.11	-0.07	-0.02	-0.13	-0.07	-0.02	-0.14
Idyllwild-Pine Cove	0.04	0.01	0.07	0.05	0.02	0.11	0.06	0.02	0.13	0.04	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.12	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Indian Wells	2.97	1.11	5.52	4.24	1.36	9.00	4.69	1.53	10.53	3.30	1.20	6.20	4.38	1.42	9.17	4.74	1.55	10.44	-0.33	-0.09	-0.67	-0.14	-0.06	-0.17	-0.08	-0.02	0.09
Indio	6.89	2.57	12.82	9.83	3.15	20.86	10.87	3.54	24.41	9.18	3.35	17.28	12.22	3.94	25.56	13.22	4.32	29.10	-2.30	-0.78	-4.45	-2.38	-0.78	-4.70	-2.35	-0.78	-4.69
Lake Elsinore	4.85	1.81	9.01	6.91	2.22	14.87	7.64	2.49	17.16	6.48	2.35	12.13	8.59	2.77	17.96	9.29	3.04	20.45	-1.81	-0.55	-3.12	-1.67	-0.55	-3.29	-1.65	-0.55	-3.29
Lakeland Village	0.34	0.13	0.83	0.48	0.15	1.03	0.53	0.17	1.20	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48	-0.13	-0.04	-0.25	-0.14	-0.05	-0.28	-0.14	-0.05	-0.28
Lakeview	0.12	0.04	0.22	0.17	0.05	0.35	0.18	0.06	0.41	0.19	0.07	0.36	0.25	0.08	0.53	0.27	0.09	0.60	-0.07	-0.03	-0.14	-0.09	-0.03	-0.18	-0.09	-0.03	-0.19
La Quinta	2.58	0.95	4.76	3.65	1.17	7.78	4.04	1.32	9.08	2.86	1.05	5.42	3.83	1.24	8.02	4.15	1.36	9.13	-0.33	-0.10	-0.66	-0.18	-0.07	-0.27	-0.11	0.04	0.06
March AFB	0.20	0.07	0.37	0.28	0.09	0.60	0.31	0.10	0.71	0.27	0.10	0.50	0.36	0.11	0.74	0.36	0.13	0.85	-0.07	-0.02	-0.13	-0.07	-0.02	-0.14	-0.07	0.02	-0.14
Mecca	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.04	0.02	0.01	0.03	0.02	0.01	0.05	0.02	0.01	0.05	-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Mira Loma	1.82	0.61	3.02	2.32	0.74	4.92	2.58	0.83	5.75	2.37	0.86	4.44	3.14	1.02	6.58	3.40	1.11	7.49	-0.74	-0.26	-1.42	-0.83	-0.27	-1.66	-0.84	0.78	-1.74

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction										Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III				CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	15.52	5.78	28.87	22.14	7.10	46.96	24.47	7.97	54.96	20.29	7.39	38.10	28.96	8.71	58.40	28.17	8.54	64.22		-4.76	-1.60	-9.23	-4.82	-1.81	-9.43	-4.69	-1.57	-9.26
Murrieta	3.45	1.29	6.42	4.93	1.58	10.46	5.45	1.78	12.24	4.58	1.67	8.61	6.09	1.97	12.75	6.59	2.18	14.51		-1.13	-0.38	-2.19	-1.16	-0.39	-2.28	-1.14	-0.38	-2.27
Murrieta Hot Springs	0.10	0.04	0.19	0.15	0.05	0.31	0.18	0.05	0.37	0.14	0.05	0.26	0.18	0.06	0.38	0.20	0.06	0.43		-0.03	-0.01	-0.06	-0.03	-0.01	-0.07	-0.03	-0.01	-0.07
Norco	4.88	1.74	8.70	6.69	2.14	14.19	7.39	2.41	16.61	5.73	2.09	10.76	7.82	2.48	15.93	8.24	2.70	18.14		-1.05	-0.34	-2.06	-0.93	-0.32	-1.74	-0.85	-0.29	-1.54
Nuevo	0.21	0.08	0.38	0.30	0.09	0.63	0.33	0.11	0.73	0.33	0.12	0.62	0.44	0.14	0.91	0.47	0.15	1.04		-0.12	-0.04	-0.23	-0.14	-0.05	-0.29	-0.15	-0.05	-0.31
Palm Desert	15.96	5.95	29.89	22.77	7.30	48.30	25.15	8.20	56.48	21.11	7.89	39.64	28.05	9.06	58.88	30.35	9.83	66.81		-5.14	-1.74	-9.95	-5.28	-1.76	-10.38	-5.12	-1.73	-10.33
Palm Springs	18.24	6.80	33.91	26.03	8.35	55.22	28.76	9.37	64.60	22.85	8.32	42.92	30.37	9.81	63.54	32.86	10.75	72.34		-4.81	-1.53	-9.00	-4.34	-1.46	-8.32	-4.09	-1.38	-7.74
Perris	1.59	0.59	2.95	2.27	0.73	4.81	2.50	0.82	5.62	2.24	0.82	4.20	2.97	0.96	6.22	3.22	1.05	7.06		-0.65	-0.22	-1.25	-0.71	-0.23	-1.42	-0.72	-0.24	-1.46
Perris	4.96	1.85	9.23	7.09	2.27	15.03	7.83	2.55	17.59	6.39	2.33	11.99	8.49	2.74	17.76	9.18	3.00	20.22		-1.42	-0.48	-2.78	-1.40	-0.47	-2.72	-1.35	-0.45	-2.63
Quail Valley	0.09	0.03	0.17	0.13	0.04	0.27	0.14	0.05	0.31	0.11	0.04	0.21	0.15	0.05	0.31	0.16	0.05	0.35		-0.02	-0.01	-0.04	-0.02	-0.01	-0.04	-0.02	-0.01	-0.04
Rancho Mirage	5.57	2.07	10.35	7.94	2.55	18.86	8.76	2.86	19.73	8.58	2.40	12.36	8.74	2.82	18.29	9.48	3.09	20.83		-1.01	-0.32	-2.01	-0.80	-0.28	-1.44	-0.68	-0.23	-1.10
Riverside	64.37	23.99	119.71	91.83	29.45	194.82	101.48	33.07	227.91	85.79	31.35	161.13	114.01	36.82	238.55	123.36	40.35	271.61		-21.42	-7.26	-41.42	-22.18	-7.37	-43.73	-21.88	-7.29	-43.70
Romoland	0.26	0.10	0.48	0.37	0.12	0.79	0.41	0.13	0.92	0.32	0.12	0.60	0.42	0.14	0.89	0.48	0.15	1.01		-0.06	-0.02	-0.12	-0.05	-0.02	-0.10	-0.05	-0.02	-0.09
Rubidoux	2.35	0.87	4.36	3.35	1.07	7.10	3.70	1.21	8.31	3.24	1.18	6.08	4.31	1.39	9.01	4.68	1.52	10.26		-0.89	-0.31	-1.72	-0.96	-0.32	-1.91	-0.96	-0.32	-1.95
San Jacinto	2.48	0.92	4.81	3.54	1.13	7.51	3.91	1.27	8.78	3.33	1.21	6.26	4.43	1.43	9.27	4.79	1.57	10.55		-0.85	-0.29	-1.65	-0.89	-0.30	-1.76	-0.88	-0.29	-1.77
Sedco Hills	0.58	0.21	1.04	0.80	0.26	1.70	0.88	0.29	1.98	0.72	0.26	1.36	0.96	0.31	2.01	1.04	0.34	2.29		-0.18	-0.05	-0.32	-0.16	-0.05	-0.32	-0.16	-0.05	-0.31
Sun City	2.97	1.11	5.53	4.24	1.36	9.00	4.69	1.53	10.53	4.02	1.48	7.55	5.34	1.72	11.17	5.78	1.89	12.72		-1.04	-0.36	-2.02	-1.10	-0.36	-2.18	-1.09	-0.38	-2.19
Sunnyslope	0.18	0.07	0.34	0.26	0.08	0.55	0.29	0.09	0.65	0.25	0.09	0.46	0.34	0.11	0.71	0.37	0.12	0.80		-0.07	-0.02	-0.14	-0.08	-0.03	-0.15	-0.08	-0.03	-0.16
Temecula	8.51	3.17	15.83	12.15	3.90	25.78	13.42	4.37	30.15	11.25	4.10	21.13	14.95	4.83	31.28	16.18	5.29	35.62		-2.74	-0.93	-5.30	-2.80	-0.93	-5.50	-2.75	-0.92	-5.47
Thousand Palms	0.14	0.05	0.26	0.20	0.06	0.42	0.22	0.07	0.50	0.18	0.06	0.33	0.23	0.08	0.49	0.25	0.06	0.56		-0.04	-0.01	-0.07	-0.03	-0.01	-0.07	-0.03	-0.01	-0.06
Valle Vista	0.53	0.20	0.98	0.75	0.24	1.60	0.83	0.27	1.87	0.68	0.25	1.28	0.91	0.29	1.90	0.98	0.32	2.17		-0.15	-0.05	-0.30	-0.15	-0.05	-0.30	-0.15	-0.05	-0.29
Wildomar	1.37	0.51	2.54	1.95	0.63	4.14	2.15	0.70	4.84	1.78	0.65	3.34	2.36	0.76	4.94	2.58	0.84	5.83		-0.41	-0.14	-0.80	-0.41	-0.14	-0.81	-0.40	-0.13	-0.79
Winchester	0.39	0.15	0.73	0.58	0.18	1.18	0.62	0.20	1.38	0.55	0.20	1.04	0.73	0.24	1.54	0.79	0.26	1.75		-0.18	-0.06	-0.31	-0.18	-0.06	-0.35	-0.18	-0.06	-0.37
Woodcrest	1.40	0.52	2.60	1.99	0.64	4.23	2.20	0.72	4.95	1.81	0.66	3.40	2.40	0.78	5.03	2.60	0.85	5.72		-0.41	-0.14	-0.80	-0.41	-0.14	-0.80	-0.40	-0.13	-0.77
Camarillo	12.50	4.66	23.24	17.83	5.72	37.83	19.71	6.42	44.27	16.35	5.96	30.71	21.73	7.02	45.47	23.52	7.69	51.77		-3.86	-1.30	-7.48	-3.90	-1.30	-7.84	-3.80	-1.27	-7.50
Casa Conejo	0.44	0.18	0.81	0.62	0.20	1.32	0.69	0.22	1.55	0.53	0.23	1.19	0.64	0.27	1.77	0.91	0.30	2.01		-0.20	-0.07	-0.38	-0.22	-0.07	-0.44	-0.22	-0.07	-0.46
Channel Islands Beach	0.74	0.28	1.38	1.06	0.34	2.25	1.17	0.38	2.63	0.88	0.36	1.84	1.30	0.42	2.72	1.41	0.48	3.10		-0.24	-0.08	-0.46	-0.24	-0.08	-0.48	-0.24	-0.08	-0.47
El Rio	0.94	0.35	1.75	1.35	0.43	2.86	1.49	0.48	3.34	1.23	0.45	2.30	1.63	0.53	3.41	1.78	0.58	3.88		-0.28	-0.10	-0.55	-0.28	-0.09	-0.55	-0.28	-0.09	-0.54
Fillmore	0.95	0.35	1.78	1.35	0.43	2.87	1.50	0.49	3.36	1.24	0.45	2.32	1.64	0.53	3.44	1.78	0.58	3.91		-0.29	-0.10	-0.58	-0.29	-0.10	-0.57	-0.28	-0.09	-0.55
Mohawk Oaks	0.49	0.18	0.91	0.70	0.23	1.49	0.78	0.25	1.74	0.63	0.23	1.18	0.83	0.27	1.74	0.90	0.29	1.96		-0.13	-0.04	-0.26	-0.13	-0.04	-0.25	-0.12	-0.04	-0.24
Mira Monte	1.23	0.46	2.28	1.75	0.56	3.71	1.93	0.63	4.34	1.56	0.58	2.97	2.10	0.68	4.39	2.27	0.74	5.00		-0.35	-0.12	-0.68	-0.35	-0.12	-0.68	-0.34	-0.11	-0.66
Moorpark	3.17	1.18	5.90	4.53	1.45	9.61	5.01	1.63	11.25	4.59	1.87	8.62	6.10	1.97	12.76	6.60	2.18	14.53		-1.42	-0.49	-2.72	-1.57	-0.52	-3.15	-1.59	-0.53	-3.28
Oak Park	0.03	0.01	0.05	0.04	0.01	0.09	0.04	0.01	0.10	0.07	0.02	0.13	0.09	0.03	0.19	0.10	0.03	0.22		-0.04	-0.01	-0.08	-0.05	-0.02	-0.10	-0.05	-0.02	-0.12
Oak View	0.49	0.18	0.91	0.69	0.22	1.47	0.77	0.25	1.73	0.62	0.23	1.17	0.83	0.27	1.73	0.90	0.29	1.96		-0.14	-0.05	-0.27	-0.13	-0.04	-0.26	-0.13	-0.04	-0.25
Ojai	1.08	0.40	2.01	1.54	0.49	3.27	1.71	0.56	3.83	1.35	0.49	2.54	1.80	0.58	3.76	1.95	0.64	4.28		-0.27	-0.09	-0.53	-0.25	-0.09	-0.49	-0.24	-0.08	-0.45
Oxnard	28.73	10.71	53.42	41.02	13.15	87.03	45.34	14.77	101.84	37.82	13.78	71.03	50.28	16.23	105.16	54.38	17.79	119.73		-9.09	-3.07	-17.81	-9.24	-3.09	-18.13	-9.04	-3.02	-17.89
Piru	0.01	0.00	0.02	0.02	0.00	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.08		-0.01	0.00	-0.02	-0.02	-0.01	-0.03	-0.02	-0.01	-0.04
Port Hueneme	3.04	1.13	5.66	4.34	1.39	9.21	4.80	1.58	10.78	3.96	1.44	7.43	5.26	1.70	11.00	5.69	1.86	12.52		-0.91	-0.31	-1.77	-0.91	-0.31	-1.79	-0.89	-0.30	-1.74
San Buenaventura (Ventura)	28.47	10.81	52.93	40.88	13.04	86.29	44.98	14.65	101.00	36.41	13.28	68.38	48.38	15.62	101.23	52.35	17.12	115.28		-7.94	-2.85	-15.44	-7.72	-2.59	-14.95	-7.39	-2.48	-14.28
Santa Paula	3.95	1.47	7.35	5.64	1.81	11.96	6.23	2.03	13.99	5.52	2.01	10.36	7.33	2.37	15.34	7.93	2.60	17.47		-1.57	-0.54	-3.02	-1.69	-0.56	-3.36	-1.70	-0.57	-3.47
Simi Valley	21.89	8.16	40.73	31.20	10.01	66.19	34.47	11.23	77.41	34.72	12.85	65.21	46.14	14.90	96.54	49.92	16.33	109.92		-12.83	-4.48	-24.48	-14.94	-4.89	-30.35	-15.45	-5.10	-32.51
Thousand Oaks	39.18	14.69	72.90	55.73	17.88	118.22	61.58	20.07	138.29	69.61	25.36	130.73	92.50	29.87	193.55	100.09	32.74	220.36		-30.42	-10.68	-57.83	-36.77	-11.99	-75.32	-38.50	-12.67	-82.07
Adelanto	1.17	0.44	2.18	1.68	0.54	3.56	1.85	0.60	4.18	1.69	0.62	3.18	2.25	0.73	4.71	2.44	0.80	5.36		-0.52	-0.18	-1.00	-0.57	-0.19	-1.15	-0.56	-0.19	-1.20
Apple Valley	4.99	1.86	9.28	7.12	2.28	15.10	7.86	2.56	17.68	6.75	2.48	12.67	8.97	2.90	18.76	9.70	3.17	21.36		-1.76	-0.60	-3.39	-1.85	-0.61	-3.56	-1.84	-0.61	-3.70
Barstow	3.87	1.37	6.83	5.25	1.68	11.13	5.80	1.89	13.02	4.56	1.66	8.57	6.07	1.96	12.69	6.58	2.15	14.45		-0.89	-0.29	-1.74	-0.82	-0.26	-1.56	-0.78	-0.26	-1.43
Big Bear City	0.05	0.02	0.09	0.07	0.02	0.15	0.08	0.03	0.18	0.07	0.02	0.13	0.09	0.03	0.19	0.10	0.03	0.22		-0.02	-0.01	-0.03	-0.02	-0.01	-0.04	-0.02	-0.01	-0.04
Big Bear Lake	1.90	0.71	3.53	2.70	0.87	5.73	2.98	0.97	6.70	2.37	0.86	4.45	3.15	1.02	6.59	3.41	1.11	7.50		-0.47	-0.16	-0.93	-0.45	-0.15	-0.88	-0.42	-0.14	-0.80
Bloomington	2.23	0.83	4.15	3.18	1.02	6.76	3.52	1.15	7.91	3.00	1.09	5.63	3.98	1.29	8.33	4.31	1.41	9.49		-0.77	-0.26	-1.48	-0.80	-0.27	-1.58	-0.79	-0.26	-1.58
Chino	15.11	5.63	28.09	21.57	6.92	45.77	23.84	7.77	53.56	26.31	9.58	49.41	34.96	11.29	73.15	37.83	12.37	83.28		-11.20	-3.95	-21.32	-13.39	-4.37	-27.37	-13.98	-4.81	-29.72
Chino Hills	4.26	1.58	7.92	6.07	1.95	12.87	6.71	2.19	15.06	9.43	3.44	17.72	12.54	4.05	26.23	13.56	4.44	29.86		-5.17	-1.85	-9.79	-6.47	-2.10	-13.36	-6.86	-2.25	-14.80
Colton	10.13	3.77	18.84	14.45	4.63	30.66	15.97	5.20	35.86	13.52	4.82	25.39	17.97	5.80	37.59	19.44	6.36	42.80		-3.39	-1.15	-6.58	-3.51	-1.17	-8.93	-3.47	-1.18	-8.94
Crestline	0.56	0.21	1.04	0.80	0.26	1.68	0.88	0.29	1.97	0.76	0.28	1.42	1.01	0.32	2.10	1.09	0.36	2.39		-0.20	-0.07	-0.38	-0.21	-0.07	-0.42	-0.21	-0.07	-0.42
Fontana	17.15	6.39	31.89	24.49	7.85	51.96	27.06	8.82	60.78	23.36	8.51	43.87	31.04	10.03	64.96	33.59	10.99	73.96		-6.21	-2.12	-11.99	-6.58	-2.17	-13.00	-6.53	-2.17	-13.17
Grand Terrace	5.64	2.17	10.85	8.32	2.87	17.66	9.20	3.00	20.66	7.86	2.86	14.77	10.45	3.37	21.87	11.31	3.70	24.90		-2.03	-0.89	-3.92	-2.13	-0.71	-4.20	-2.11	-0.70	-4.23
Hesperia	8.53	2.43	12.14	9.32	2.99	19.77	10.29	3.35	23.12	8.69	3.18	16.31	11.54	3.73	24.15	12.49	4.09	27.50		-2.16	-0.73	-4.17	-2.23	-0.74	-4.38	-2.20	-0.73	-4.38
Highland	3.71	1.38	6.89	5.29	1.89	11.22	5.84	1.90	13.13	5.15	1.87	9.87	6.84	2.21	14.31	7.40	2.42	16.29		-1.44	-0.49	-2.77	-1.55	-0.51	-3.09	-1.56	-0.52	-3.17
Joshua Tree	0.10	0.04	0.19	0.14	0.05	0.30	0.16	0.05	0.35	0.13	0.05	0.24	0.17	0.06	0.36	0.19	0.06	0.41		-0.03	-0.01	-0.06	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06
Lake Arrowhead	0.88	0.33	1.83	1.25	0.40	2.65	1.38	0.45	3.10	0.93	0.34	1.75	1.24	0.40	2.59	1.34	0.44	2.95		-0.06	-0.01	-0.12	0.01	0.00	0.06	0.04	0.01	0.15
Lenwood	0.07	0.03	0.14	0.11	0.03	0.23	0.12	0.04	0.27	0.06	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27		-0.01	0.00	-0.02	-0.01	0.00	-0.01	0.00	0.00	0.00
Loma Linda	2.42	0.90	4.50	3.45	1.11	7.32	3.81	1.24	8.56	3.21	1.17	6.03	4.26	1.38	8.92	4.61	1.51	10.16		-0.79	-0.27	-1.53	-0.81	-0.27	-1.60	-0.80	-0.27	-1.60
Mentone	0.35	0.13	0.66	0.51	0.18	1.07	0.56	0.18	1.25	0.52	0.19	0.97	0.69	0.22	1.44	0.75	0.24	1.64		-0.17	-0.06	-0.32	-0.18	-0.06	-0.37	-0.19	-0.06	-0.39
Montclair	14.53	5.42	27.02	20.73	6.65	43.99	22.92	7.47	51.48	38.00	13.84	71.37	50.50	16.31	105.87	54.65	17.88	120.31		-23.47	-8.43	-44.35	-29.77	-9.66	-61.88	-31.73	-10.41	-68.83
Morongo Valley	0.02	0.01	0.03	0.02	0.01	0.05	0.03	0.01	0.06	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07		-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Mountain View Acres	0.57	0.21	1.06	0.81	0.26	1.73	0.90	0.29	2.02	0.83	0.30	1.58	1.10	0.36	2.31	1.20	0.39	2.63		-0.26	-0.09	-0.50	-0.29	-0.10	-0.58	-0.29	-0.10	-0.61
Muscoy	0.83	0.31	1.54	1.18	0.38	2.49	1.30	0.42	2.91	1.27	0.48	2.38	1.68	0.54	3.52	1.82	0.60	4.01		-0.44	-0.15	-0.84	-0.51	-0.17	-1.03	-0.52	-0.17	-1.10
Nebo Center	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.10		-0.01	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Ontario	40.18	14.98	74.71	57.38	18.40	121.78	63.42	20.68	142.48	83.11	22.99	118.52	83.88	27.08	175.47	90.74	29.68	199.79		-22.93	-8.01	-43.82	-26.48	-8.68	-53.71	-27.32	-9.02	-57.33
Rancho Cucamonga	23.74	8.85	44.15	33.87	10.86	71.85	37.42	12.19	84.03	33.97	12.37	63.78	45.14	14.58	94.44	48.84	15.98	107.53		-10.22	-3.53	-19.64	-11.27	-3.72	-22.59	-11.42	-3.78	-23.49
Redlands	14.89	5.55	27.69	21.24	6.81	45.07	23.48	7.65	52.74	19.06	8.95	35.83	25.35	8.19	53.05	27.43	8.97	60.40		-4.19	-1.40	-8.14	-4.11	-1.36	-7.97	-3.95	-1.32	-7.66
Rialto	10.04	3.74	18.68	14.34	4.60	30.42	15.84	5.18	35.58	13.51	4.82	25.37	17.95	5.80	37.57	19.43	6.35	42.77		-3.47	-1.18	-8.70	-3.62	-1.20	-7.15	-3.58	-1.18	-7.19
Running Springs	0.19	0.07	0.35	0.27	0.09	0.56	0.29	0.10	0.66	0.18	0.06	0.30	0.21	0.07	0.45	0.23	0.08	0.51		0.03	0.01	0.04	0.05	0.02	0.12	0.06	0.02	0.15
San Antonio Heights	0.21	0.08	0.40	0.31	0.10	0.65	0.34	0.11	0.76	0.37	0.13	0.69	0.49	0.16	1.02	0.53	0.17	1.16		-0.15	-0.05	-0.29	-0.18	-0.06	-0.37	-0.19	-0.06	-0.41
San Bernardino	42.64	15.69	79.29	60.84	19.51	129.06	67.23	21.91	150.99	56.85	20.83	106.39	75.28	24.31	157.51	81.45	26.64	179.33		-14.01	-4.74	-27.09	-14.43	-4.80	-28.42	-14.22	-4.74	-28.35
Twentynine Palms	1.42	0.53	2.63	2.02	0.85	4.29	2.23	0.73	5.01	1.85	0.67	3.48	2.46	0.80	5.15	2.68	0.87	5.87		-0.44	-0.15	-0.85	-0.44	-0.15	-0.87	-0.43	-0.14	-0.85
Twentynine Palms Base	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02		0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Upland	16.26	6.06	30.24	23.18	7.43	49.18	25.62	8.35	57.53	29.80	10.78	55.58	39.33	12.70	82.29	42.58	13.92	93.70		-13.53	-4.72	-25.34	-16.15	-5.27	-33.11	-16.93	-5.57	-36.16
Victorville	14.81	5.52	27.53	21.13	6.77	44.81	23.33	7.60	52.39	21.18	7.71	39.78	28.14	9.09	58.89	30.45	9.96	67.05		-8.37	-2.29	-12.24	-7.02	-2.31	-14.07	-7.12	-2.36	-14.85
Wrightwood	0.32	0.12	0.60	0.46	0.15	0.98	0.51	0.17	1.15	0.35	0.13	0.66	0.46	0.15	0.97	0.50	0.18	1.10		-0.03	-0.01	-0.05	0.00	0.00	0.01	0.01	0.00	0.04
Yucaipa	4.15	1.55	7.72	5.92	1.90	12.56	6.54	2.13	14.69	5.57	2.03	10.46	7.40	2.39	15.48	8.01	2.62	17.83		-1.42	-0.48	-2.74	-1.48	-0.49	-2.93	-1.47	-0.49	-2.94
Yucca Valley	1.73	0.65	3.22	2.47	0.79	5.24	2.73	0.89	6.13	2.22	0.81	4.17	2.85	0.95	6.18	3.20	1.05	7.04		-0.49	-0.16	-0.96	-0.48	-0.18	-0.94	-0.47	-0.18	-0.91
LOS ANGELES - UNINCOR	734.43	272.27	1389.14	781.11	286.38	1571.33	811.68	247.88	1851.35	218.89	79.73	411.09	290.87	93.93	608.62	314.74	102.98	692.95		515.54	192.54	978.05	490.24	192.45	962.71	496.94	144.92	1158.39
ORANGE - UNINCOR	27.00	10.06	50.12	38.41	12.32	81.47	42.42	13.82	95.27	38.41	13.99	72.13	51.04	18.48	108.79	55.23	18.07	121.59		-11.41	-3.93	-22.01	-12.63	-4.18	-25.32	-12.81	-4.25	-26.32
RIVERSIDE - UNINCOR	30.99	11.55	57.83	44.25	14.19	93.88	48.89	15.93	109.81	42.28	15.40	79.41	56.19	18.14	117.56	60.80	19.89	133.85		-11.29	-3.85	-21.78	-11.94	-3.96	-23.68	-11.90	-3.96	-24.04
SAN BERNARDINO - UNINCOR	33.48	12.47	62.23	47.81	15.33	101.43	52.81	17.21	118.62	51.34	18.70	96.42	68.22	22.03	142.74	73.82	24.15	162.52		-17.86	-6.23	-34.18	-20.41	-6.70	-41.32	-21.01	-6.93	-43.91
VENTURA - UNINCOR	32.19	12.08	59.70	45.81	14.73	97.14	50.36	16.41	113.18	45.28	16.49	85.04	60.17	19.43	125.91	65.11	21.30	143.35		-13.09	-4.42	-25.34	-14.37	-4.71	-28.78	-14.73	-4.88	-30.17
Total	8325.72	3101.41	15483.84	11874.03	3807.79	25188.54	13111.49	4273.46	29435.74	11769.28	4287.05	22103.85	15630.89	5050.58	32724.47	16923.05	5535.78	37258.97		-3443.57	-1185.64	-6619.80	-3765.87	-1242.79	-7537.92	-3811.55	-1262.32	-7823.23

Table A9. Annual Total Impacts (Year 16 -Year 20)

(Millions of $ 1999)

City and CDP	Stimulus Effects CASE I Scenario I	Stimulus Effects CASE I Scenario II	Stimulus Effects CASE I Scenario III	Stimulus Effects CASE II Scenario I	Stimulus Effects CASE II Scenario II	Stimulus Effects CASE II Scenario III	Stimulus Effects CASE III Scenario I	Stimulus Effects CASE III Scenario II	Stimulus Effects CASE III Scenario III	Impacts of Household Expenditure Reduction CASE I Scenario I	Impacts of Household Expenditure Reduction CASE I Scenario II	Impacts of Household Expenditure Reduction CASE I Scenario III
Acton	0.13	0.05	0.21	0.01	0.00	0.02	0.01	0.00	0.01	0.06	0.02	0.11
Agoura Hills	3.13	0.40	5.75	2.01	0.81	3.85	1.62	0.67	3.07	12.87	4.69	24.17
Alhambra	7.24	0.95	12.76	3.72	1.22	7.66	5.09	1.89	10.40	80.17	29.20	150.57
Alondra Park	0.12	1.70	0.23	0.17	0.06	0.35	4.31	2.04	9.23	4.19	1.53	7.86
Altadena	0.58	0.21	3.94	0.81	0.27	1.67	0.77	0.25	1.67	21.57	7.86	40.50
Arcadia	4.19	4.33	10.90	3.72	1.22	7.68	7.45	2.65	15.37	78.58	28.62	147.58
Artesia	0.98	0.33	3.30	1.30	0.42	2.68	1.27	0.42	2.75	28.65	10.51	54.19
Avocado Heights	3.90	0.24	5.52	1.00	0.33	2.04	0.90	0.30	1.94	16.59	6.04	31.16
Azusa	8.02	0.35	3.66	87.12	21.11	142.60	1.32	0.44	2.85	35.00	12.75	85.74
Baldwin Park	7.21	3.68	6.79	1.55	0.51	3.18	1.88	0.59	3.59	37.27	13.58	70.00
Bell	2.50	0.33	7.24	1.30	0.42	2.67	3.77	1.65	7.46	28.79	10.49	54.06
Bellflower	7.83	3.86	7.48	2.19	0.71	4.51	2.13	0.70	4.61	53.34	19.43	100.18
Bell Gardens	2.11	0.22	4.21	0.87	0.28	1.79	1.85	0.77	3.49	22.77	8.30	42.77
Beverly Hills	5.40	1.94	11.90	7.56	2.46	15.59	7.43	2.45	18.12	128.24	46.71	240.84
Bradbury	0.21	0.11	3.13	0.07	0.02	0.14	0.07	0.02	0.15	1.19	0.43	2.23
Burbank	15.57	1.77	16.92	8.86	2.24	14.11	12.58	4.28	26.52	143.32	52.20	269.16
Calabasas	4.78	1.61	7.70	1.61	0.66	2.89	2.21	0.99	4.24	5.82	2.12	10.93
Carson	5.63	1.17	17.46	4.71	1.54	9.68	12.67	4.28	25.65	94.67	34.48	177.80
Cerritos	10.23	4.23	18.48	3.59	1.17	7.40	12.01	5.22	28.19	89.89	25.48	131.26
Charter Oak	1.50	0.07	2.52	0.26	0.08	0.53	0.25	0.08	0.53	7.23	2.63	13.57
Citrus	0.59	0.05	2.36	0.15	0.05	0.31	0.20	0.07	0.42	4.01	1.46	7.52
Claremont	5.58	1.68	12.80	3.32	1.35	6.34	1.56	0.51	3.37	34.19	12.45	64.22
Commerce	3.50	2.39	5.72	2.79	0.92	5.72	4.80	1.93	10.24	50.42	18.38	94.69
Compton	6.97	0.65	14.55	2.58	0.85	5.30	3.88	1.52	7.61	80.81	22.08	113.84
Covina	10.34	3.91	10.34	2.72	0.89	5.60	11.17	4.01	23.48	63.88	23.27	119.97
Cudahy	0.34	0.11	2.13	0.42	0.14	0.87	0.45	0.15	0.96	11.71	4.27	22.00
Culver City	5.25	1.19	6.32	4.64	1.52	9.56	4.47	1.47	9.69	103.74	37.79	194.84
Del Aire	0.30	0.11	0.57	0.43	0.14	0.88	0.40	0.13	0.87	10.52	3.83	19.78
Desert View Highlands	0.02	0.01	0.04	0.03	0.01	0.05	0.03	0.01	0.05	1.20	0.44	2.25
Diamond Bar	2.28	0.40	7.24	2.81	1.00	5.35	3.53	1.34	7.44	29.19	10.63	54.82
Downey	12.41	4.41	19.68	4.48	1.48	9.16	7.14	2.80	14.06	92.10	33.55	172.97
Duarte	4.72	3.32	6.85	2.37	0.78	4.99	1.64	0.70	3.01	19.14	6.97	35.95
East Compton	0.06	0.02	1.06	0.06	0.03	0.16	0.10	0.04	0.20	2.02	0.74	3.79
East La Mirada	0.11	0.04	0.22	0.16	0.05	0.33	0.16	0.05	0.34	3.77	1.37	7.06
East Los Angeles	8.03	5.71	14.64	2.92	0.95	5.99	5.09	2.02	10.81	60.28	21.96	113.21
East Pasadena	0.51	0.18	0.95	0.71	0.23	1.45	0.71	0.23	1.54	20.67	7.60	39.19
East San Gabriel	0.31	1.34	2.09	0.44	0.14	0.91	12.77	4.29	25.96	12.78	4.65	23.96
El Monte	6.47	2.63	15.62	3.87	1.27	7.96	9.72	3.92	20.07	67.18	31.76	163.74
El Segundo	3.73	0.68	3.51	42.66	14.12	84.80	3.95	1.53	7.80	40.99	14.93	78.97
Florence-Graham	5.12	1.90	6.48	0.83	0.27	1.70	0.79	0.26	1.70	20.17	7.35	37.88
Gardena	6.97	0.69	5.26	2.74	0.89	5.62	4.37	1.71	9.24	88.79	25.06	129.19
Glendale	18.05	9.94	31.81	20.90	6.79	42.36	11.78	3.88	25.57	255.30	93.00	479.48
Glendora	10.54	3.69	14.12	6.21	1.98	13.06	2.00	0.66	4.32	49.18	17.91	92.34
Hacienda Heights	7.01	0.34	10.48	1.35	0.44	2.78	1.29	0.43	2.80	31.59	11.51	59.33
Hawaiian Gardens	0.23	0.42	2.58	0.32	0.10	0.65	0.32	0.11	0.68	7.16	2.62	13.49
Hawthorne	2.47	0.64	10.00	2.57	0.84	5.28	3.26	1.20	7.16	64.95	23.66	121.97
Hermosa Beach	0.90	0.32	1.69	1.25	0.41	2.57	3.19	1.31	8.18	33.05	12.04	62.08
Hidden Hills	1.06	0.05	1.15	0.16	0.05	0.32	0.39	0.17	0.72	1.79	0.65	3.36
Huntington Park	2.93	0.50	7.55	1.97	0.64	4.05	1.88	0.62	4.08	49.08	17.87	92.13
Industry	4.36	1.07	10.75	5.95	2.21	12.50	9.32	3.61	19.60	88.58	32.26	166.32
Inglewood	13.04	4.59	17.77	4.33	1.41	8.89	7.23	2.86	15.37	105.08	38.26	197.34
Irwindale	1.44	0.57	4.26	3.80	1.49	7.06	5.60	2.44	11.60	12.87	4.81	23.79
La Canada Flintridge	2.05	3.95	6.45	1.21	0.39	2.50	1.19	0.39	2.58	21.30	7.78	40.00
La Crescenta-Montrose	3.10	3.08	2.02	0.64	0.21	1.31	0.61	0.20	1.33	15.58	5.68	29.27
Ladera Heights	0.22	0.06	2.09	0.31	0.10	0.63	0.30	0.10	0.64	8.03	2.20	11.32
La Habra Heights	1.79	1.61	1.84	3.45	1.30	7.22	0.28	0.11	0.55	4.18	1.52	7.82
Lake Los Angeles	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.04	0.86	0.24	1.24
Lakewood	10.10	2.20	20.35	3.10	1.01	6.38	7.10	2.97	14.35	80.97	29.49	152.07
La Mirada	4.13	0.42	11.17	1.65	0.54	3.39	1.56	0.51	3.37	30.00	10.93	58.34
Lancaster	2.45	0.88	4.66	3.43	1.12	7.05	3.28	1.06	7.10	124.35	45.30	233.55
La Puente	3.64	1.79	8.85	0.78	0.25	1.60	2.46	1.06	4.57	21.15	7.70	39.72
La Verne	1.57	3.13	9.38	9.60	3.42	19.60	1.01	0.34	2.17	26.52	9.66	49.81
Lawndale	0.68	0.26	8.00	0.95	0.31	1.96	2.04	0.63	3.96	24.54	8.94	46.06
Lennox	1.90	1.60	4.37	0.48	0.16	0.98	0.45	0.15	0.97	12.04	4.39	22.61
Littlerock	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.19	0.07	0.35
Lomita	0.83	0.22	2.74	0.86	0.28	1.77	0.84	0.28	1.81	23.55	8.58	44.22
Long Beach	53.87	15.64	110.08	147.86	48.36	302.28	244.82	77.90	530.02	349.03	127.14	655.51
Los Angeles	365.75	119.65	680.53	535.61	172.04	1098.93	445.81	146.82	960.29	3825.91	1393.62	7185.36
Lynwood	5.50	1.97	4.55	1.12	0.37	2.31	1.11	0.37	2.39	28.16	10.26	52.80
Malibu	2.06	0.39	4.41	11.29	4.67	20.96	12.45	4.32	25.48	7.45	2.71	13.96
Manhattan Beach	5.40	0.57	11.28	2.41	0.79	4.94	4.93	1.96	9.67	59.63	21.72	111.99
Marina del Rey	0.77	0.28	1.47	1.11	0.36	2.28	1.04	0.34	2.26	23.34	8.50	43.84
Mayflower Village	0.05	0.02	1.12	0.07	0.02	0.14	0.39	0.19	0.64	1.95	0.71	3.65
Maywood	1.99	0.17	3.74	0.68	0.22	1.36	1.95	0.88	3.43	15.48	5.64	29.07
Monrovia	1.70	0.65	9.65	4.76	1.96	10.55	2.21	0.78	4.61	49.57	18.06	93.10
Montebello	8.68	0.74	7.01	3.56	1.17	7.34	2.79	0.92	6.04	68.62	24.99	128.87
Monterey Park	2.12	4.14	16.29	2.93	0.96	6.05	5.18	2.05	11.04	53.75	19.58	100.95
North El Monte	0.06	0.02	0.65	0.06	0.03	0.17	1.39	0.55	2.91	1.79	0.65	3.35
Norwalk	8.00	3.95	20.10	2.82	0.86	5.38	2.56	0.85	5.53	60.37	21.99	113.38
Palmdale	5.19	1.65	9.73	2.75	0.92	5.66	2.54	0.85	5.44	111.69	40.68	209.75
Palos Verdes Estates	2.10	0.11	5.51	0.41	0.13	0.85	2.78	1.26	4.96	6.40	2.33	12.02
Paramount	4.18	2.05	12.71	1.43	0.47	2.93	7.16	3.27	14.42	32.18	11.72	60.43
Pasadena	17.59	6.06	30.66	23.53	7.23	47.10	14.21	5.07	31.04	214.91	78.28	403.62
Pico Rivera	7.40	0.47	13.13	117.18	38.54	238.02	11.50	3.53	23.40	42.45	15.46	79.73
Pomona	18.03	6.17	27.05	9.14	9.24	18.60	12.74	5.54	27.30	95.94	34.95	180.16
Quartz Hill	0.10	0.04	0.19	0.14	0.05	0.29	0.13	0.04	0.29	4.24	1.54	7.96
Rancho Palos Verdes	7.52	0.29	5.51	1.14	0.37	2.36	4.91	2.15	9.02	30.58	11.14	57.44
Redondo Beach	2.32	2.64	9.45	3.25	1.06	6.69	4.66	1.76	9.40	82.52	30.06	154.98
Rolling Hills	0.05	0.01	0.08	0.03	0.01	0.06	0.08	0.03	0.16	0.64	0.23	1.20
Rolling Hills Estates	0.91	0.09	3.90	0.35	0.11	0.72	0.34	0.11	0.75	9.51	3.47	17.87
Rosemead	1.60	0.54	8.96	2.20	0.72	4.50	7.41	3.23	14.58	37.51	13.66	70.45
Rowland Heights	4.28	2.06	5.37	1.71	0.58	3.51	1.63	0.54	3.53	40.09	14.60	75.29
San Dimas	4.67	2.06	4.33	4.41	1.78	9.33	3.37	1.42	7.08	32.63	11.88	61.28
San Fernando	0.90	0.32	1.76	16.29	6.17	32.08	1.21	0.40	2.62	30.70	11.18	57.65
San Gabriel	1.66	0.43	6.81	1.67	0.55	3.44	3.45	1.37	6.82	40.50	14.75	78.06
San Marino	0.41	0.15	2.34	0.56	0.18	1.16	0.81	0.27	1.72	9.80	3.57	18.41
Santa Clarita	51.49	21.13	95.94	148.81	43.42	326.40	213.03	58.14	494.13	109.91	40.04	206.42
Santa Fe Springs	3.57	1.86	7.93	2.52	0.63	5.15	7.86	2.76	16.55	41.40	15.06	77.75

City and CDP	Impacts of Household Expenditure Reduction CASE II Scenario I	Impacts of Household Expenditure Reduction CASE II Scenario II	Impacts of Household Expenditure Reduction CASE II Scenario III	Impacts of Household Expenditure Reduction CASE III Scenario I	Impacts of Household Expenditure Reduction CASE III Scenario II	Impacts of Household Expenditure Reduction CASE III Scenario III	Net Impacts CASE I Scenario I	Net Impacts CASE I Scenario II	Net Impacts CASE I Scenario III	Net Impacts CASE II Scenario I	Net Impacts CASE II Scenario II	Net Impacts CASE II Scenario III	Net Impacts CASE III Scenario I	Net Impacts CASE III Scenario II	Net Impacts CASE III Scenario III
Acton	0.08	0.03	0.17	0.09	0.03	0.19	0.07	0.02	0.10	-0.07	-0.02	-0.15	-0.08	-0.03	-0.18
Agoura Hills	17.10	5.52	35.79	18.51	6.05	40.74	-9.74	-4.28	-18.42	-15.10	-4.72	-31.94	-16.89	-5.39	-37.67
Alhambra	108.54	34.40	222.91	115.28	37.71	253.80	-72.93	-28.25	-137.81	-102.82	-33.19	-215.25	-110.19	-35.82	-243.40
Alondra Park	5.58	1.80	11.64	6.02	1.97	13.26	-4.07	0.18	-7.64	-5.39	-1.74	-11.29	-1.71	0.07	-4.03
Altadena	28.68	9.25	59.97	31.01	10.14	68.28	-20.98	-7.85	-38.57	-27.65	-8.99	-58.29	-30.24	-9.89	-68.61
Arcadia	104.42	33.72	218.49	112.99	36.96	248.78	-74.38	-24.30	-136.88	-100.70	-32.51	-210.80	-105.54	-34.11	-233.39
Artesia	38.34	12.38	80.23	41.49	13.57	91.35	-27.87	-10.18	-50.89	-37.04	-11.96	-77.55	-40.22	-13.15	-88.80
Avocado Heights	22.05	7.12	46.13	23.85	7.80	52.52	-12.89	-5.80	-25.63	-21.05	-6.79	-44.09	-22.95	-7.50	-50.58
Azusa	46.51	15.02	97.32	50.33	16.46	110.81	-26.98	-12.40	-62.07	20.60	6.09	45.27	-49.01	-16.03	-107.96
Baldwin Park	49.53	16.00	103.64	53.60	17.53	118.00	-30.07	-9.90	-63.21	-47.98	-15.49	-100.46	-51.92	-16.94	-114.42
Bell	38.25	12.35	80.04	41.39	13.54	91.13	-26.29	-10.18	-46.83	-36.98	-11.93	-77.37	-37.62	-11.69	-83.67
Bellflower	70.88	22.89	148.31	76.70	25.09	168.87	-45.71	-15.57	-92.70	-68.70	-22.18	-143.81	-74.57	-24.38	-164.25
Bell Gardens	30.26	9.77	63.32	32.75	10.71	72.10	-20.68	-8.07	-38.58	-29.39	-9.49	-61.53	-30.90	-9.94	-68.60
Beverly Hills	170.41	55.03	356.57	184.39	60.32	405.97	-122.83	-44.77	-228.95	-162.68	-52.57	-340.98	-178.96	-57.86	-389.86
Bradbury	1.58	0.51	3.31	1.71	0.58	3.78	-0.98	-0.33	0.90	-1.51	-0.49	-3.17	-1.64	-0.54	-3.62
Burbank	190.45	61.50	398.40	206.07	67.41	453.71	-127.75	-50.44	-252.24	-183.59	-59.28	-384.38	-193.51	-63.13	-427.18
Calabasas	7.74	2.50	16.19	8.37	2.74	18.43	-1.07	-0.51	-3.23	-6.12	-1.82	-13.29	-6.16	-1.75	-14.19
Carson	125.61	40.63	263.23	136.13	44.53	289.71	-68.65	-33.31	-160.34	-121.09	-39.08	-253.58	-123.46	-40.24	-274.06
Cerritos	92.88	29.99	194.33	100.50	32.87	221.26	-59.87	-21.23	-112.80	-89.26	-28.82	-186.93	-88.48	-27.65	-195.07
Charter Oak	9.60	3.10	20.09	10.39	3.40	22.88	-5.73	-2.57	-11.06	-9.35	-3.02	-19.56	-10.14	-3.32	-22.34
Citrus	5.32	1.72	11.14	5.76	1.88	12.68	-3.41	-1.41	-5.16	-5.17	-1.67	-10.83	-5.58	-1.82	-12.28
Claremont	45.44	14.67	95.07	49.17	16.08	106.25	-28.61	-10.80	-51.41	-42.11	-13.33	-88.74	-47.81	-15.57	-104.87
Commerce	67.00	21.64	140.18	72.49	23.71	159.61	-46.91	-15.97	-88.96	-64.20	-20.72	-134.46	-67.69	-21.78	-149.37
Compton	80.55	26.01	168.53	87.16	28.51	191.89	-51.64	-21.42	-89.29	-77.98	-25.17	-163.23	-83.26	-26.99	-184.27
Covina	84.80	27.41	177.62	91.85	30.05	202.23	-53.54	-19.36	-109.63	-82.17	-26.53	-172.02	-80.68	-26.04	-178.78
Cudahy	15.58	5.03	32.57	16.84	5.51	37.08	-11.37	-4.16	-19.87	-15.14	-4.89	-31.70	-16.39	-5.35	-36.12
Culver City	137.86	44.52	288.46	149.17	48.80	328.43	-98.49	-36.60	-186.52	-133.22	-43.00	-278.69	-144.70	-47.32	-318.73
Del Aire	13.98	4.52	29.26	15.13	4.95	33.31	-10.22	-3.72	-19.19	-13.55	-4.38	-28.36	-14.73	-4.82	-32.44
Desert View Highlands	1.59	0.51	3.33	1.72	0.58	3.79	-1.18	-0.43	-2.21	-1.57	-0.51	-3.28	-1.70	-0.58	-3.74
Diamond Bar	38.79	12.53	81.16	41.97	13.73	92.41	-28.93	-10.23	-47.58	-36.18	-11.52	-75.81	-38.44	-12.39	-84.96
Downey	122.39	39.52	258.09	132.43	43.32	291.57	-79.89	-29.14	-153.29	-117.93	-38.07	-248.91	-125.29	-40.52	-277.49
Duarte	25.43	8.21	53.22	27.52	9.00	60.59	-14.42	-3.66	-29.09	-23.06	-7.46	-48.23	-25.88	-8.30	-57.58
East Compton	2.68	0.87	5.62	2.90	0.95	6.40	-1.96	-0.72	-2.73	-2.61	-0.84	-5.45	-2.81	-0.91	-8.19
East La Mirada	5.01	1.62	10.48	5.42	1.77	11.93	-3.85	-1.33	-6.86	-4.85	-1.56	-10.15	-5.26	-1.72	-11.60
East Los Angeles	80.10	25.87	167.60	86.67	28.35	190.63	-52.25	-18.25	-98.57	-77.19	-24.91	-161.61	-81.59	-26.33	-180.02
East Pasadena	27.73	8.96	58.03	30.01	9.82	66.07	-20.38	-7.42	-38.24	-27.03	-8.73	-56.58	-29.30	-9.58	-64.53
East San Gabriel	16.95	5.48	35.47	18.35	6.00	40.39	-12.45	-3.31	-21.87	-16.52	-6.33	-34.57	-5.57	-1.71	-14.43
El Monte	115.65	37.41	242.41	125.36	41.01	276.00	-78.71	-29.13	-148.12	-111.98	-36.15	-234.45	-115.64	-37.09	-255.93
El Segundo	54.48	17.59	113.98	58.93	19.28	129.75	-37.25	-14.27	-73.46	-11.80	-3.48	-29.18	-54.98	-17.75	-121.95
Florence-Graham	26.80	8.65	56.08	29.00	9.49	63.85	-15.05	-5.45	-29.40	-25.97	-8.36	-54.38	-28.21	-9.22	-62.14
Gardena	91.41	29.52	191.26	98.91	32.38	217.77	-61.82	-24.36	-123.93	-88.87	-28.62	-185.64	-94.54	-30.65	-208.53
Glendale	339.26	109.56	709.87	367.10	120.08	808.23	-237.25	-83.06	-447.87	-318.38	-102.78	-667.51	-355.32	-118.20	-782.66
Glendora	85.33	21.10	136.70	70.89	23.13	155.65	-38.63	-14.22	-78.21	-59.12	-19.12	-123.84	-66.70	-22.47	-151.32
Hacienda Heights	41.98	13.56	87.83	45.42	14.86	100.00	-24.58	-11.16	-48.66	-40.62	-13.11	-85.05	-44.13	-14.43	-97.21
Hawaiian Gardens	9.55	3.06	19.98	10.33	3.38	22.74	-6.95	-2.20	-10.92	-9.23	-2.96	-19.32	-10.02	-3.27	-22.06
Hawthorne	86.31	27.87	180.58	93.39	30.55	205.60	-62.47	-22.82	-111.97	-83.74	-27.03	-175.30	-90.12	-29.35	-198.45
Hermosa Beach	43.92	14.18	91.89	47.52	15.54	104.62	-32.15	-11.72	-60.38	-42.67	-13.77	-89.32	-44.32	-14.23	-98.48
Hidden Hills	2.38	0.77	4.97	2.57	0.84	5.66	-0.73	-0.60	-2.20	-2.22	-0.72	-4.65	-2.18	-0.68	-4.94
Huntington Park	65.19	21.05	136.40	70.54	23.07	155.30	-46.12	-17.37	-84.58	-63.22	-20.41	-132.35	-68.65	-22.45	-151.22
Industry	117.69	38.00	246.24	127.34	41.66	280.36	-84.20	-31.19	-155.58	-111.74	-35.80	-233.75	-118.02	-38.05	-260.76
Inglewood	139.63	45.09	292.17	151.09	49.42	332.65	-92.04	-33.68	-179.57	-135.31	-43.68	-283.27	-143.86	-48.56	-317.26
Irwindale	18.63	5.44	35.22	18.21	5.96	40.10	-11.23	-4.05	-19.54	-13.04	-3.95	-28.14	-12.62	-3.51	-28.50
La Canada Flintridge	28.30	9.14	59.22	30.62	10.02	67.42	-18.64	-3.61	-33.54	-27.09	-8.75	-58.72	-29.44	-9.63	-64.84
La Crescenta-Montrose	20.71	6.69	43.33	22.41	7.33	49.34	-12.48	-2.59	-27.25	-20.07	-6.48	-42.02	-21.79	-7.13	-48.01
Ladera Heights	8.01	2.59	16.77	8.67	2.84	19.09	-5.81	-2.12	-9.24	-7.71	-2.49	-16.13	-8.37	-2.74	-18.45
La Habra Heights	5.53	1.79	11.57	5.98	1.96	13.18	-2.37	0.10	-5.98	-2.08	-0.49	-4.35	-5.70	-1.85	-12.62
Lake Los Angeles	0.88	0.28	1.84	0.95	0.31	2.09	-0.85	-0.24	-1.22	-0.86	-0.28	-1.60	-0.93	-0.31	-2.06
Lakewood	107.80	34.75	225.13	116.43	38.06	256.33	-70.87	-27.30	-131.72	-104.50	-33.73	-218.75	-109.32	-35.11	-241.96
La Mirada	39.87	12.87	83.41	43.14	14.11	94.97	-25.87	-10.51	-45.17	-38.22	-12.33	-80.03	-41.58	-13.60	-91.61
Lancaster	165.25	53.38	345.78	178.61	58.49	393.68	-121.90	-44.41	-228.89	-181.62	-52.24	-338.72	-175.53	-57.41	-386.56
La Puente	28.10	9.08	58.81	30.41	9.95	66.95	-17.51	-5.91	-30.87	-27.33	-8.82	-57.21	-27.95	-8.89	-62.38
La Verne	35.24	11.38	73.74	38.14	12.47	83.96	-24.96	-6.53	-40.43	-25.84	-7.96	-54.15	-37.13	-12.14	-81.79
Lawndale	32.61	10.53	68.22	35.28	11.54	77.68	-23.86	-8.68	-40.09	-31.65	-10.22	-66.28	-33.24	-10.71	-73.72
Lennox	18.00	5.17	33.48	17.31	5.66	38.12	-10.14	-2.78	-18.24	-15.52	-5.01	-32.50	-16.86	-6.51	-37.15
Littlerock	0.25	0.08	0.52	0.27	0.09	0.59	-0.18	-0.07	-0.34	-0.24	-0.08	-0.51	-0.26	-0.09	-0.58
Lomita	31.29	10.10	65.47	33.86	11.08	74.54	-22.92	-8.38	-41.48	-30.43	-9.82	-63.70	-33.02	-10.80	-72.74
Long Beach	483.82	149.78	970.49	501.88	164.17	1104.97	-295.18	-111.30	-545.43	-315.94	-101.42	-688.21	-257.05	-86.27	-574.94
Los Angeles	5084.15	1641.82	10637.93	5501.27	1799.55	12111.99	-3480.18	-1273.97	-8504.83	-4548.34	-1489.78	-9539.00	-5055.66	-1852.93	-11151.70
Lynwood	37.42	12.09	78.31	40.50	13.25	89.16	-22.66	-8.28	-48.34	-38.30	-11.72	-75.99	-39.38	-12.87	-86.77
Malibu	9.89	3.20	20.70	10.71	3.50	23.57	-5.37	-2.32	-9.58	1.40	1.47	0.27	1.74	0.82	1.89
Manhattan Beach	79.24	25.58	165.80	85.74	28.05	188.77	-54.23	-21.15	-100.71	-78.83	-24.80	-160.85	-80.81	-26.07	-178.10
Marina del Rey	31.02	10.02	64.90	33.58	10.98	73.89	-22.57	-8.23	-42.37	-29.91	-9.65	-62.62	-32.52	-10.83	-71.83
Mayflower Village	2.58	0.83	5.41	2.80	0.91	6.16	-1.89	-0.89	-2.54	-2.51	-0.81	-5.26	-2.41	-0.73	-5.51
Maywood	20.57	6.64	43.05	22.26	7.26	49.01	-13.49	-5.47	-25.33	-19.91	-6.43	-41.68	-20.31	-6.40	-45.58
Monrovia	65.88	21.27	137.84	71.28	23.32	158.94	-47.87	-17.40	-83.45	-61.12	-19.31	-127.29	-69.07	-22.54	-152.33
Montebello	91.18	29.45	190.79	98.66	32.27	217.22	-81.94	-24.25	-121.85	-87.60	-28.27	-183.45	-95.87	-31.35	-211.18
Monterey Park	71.43	23.07	149.46	77.29	25.28	170.17	-51.64	-15.44	-84.66	-68.50	-22.11	-143.40	-72.11	-23.24	-159.13
North El Monte	2.37	0.77	4.97	2.57	0.84	5.65	-1.73	-0.63	-2.71	-2.29	-0.74	-4.80	-1.18	-0.29	-2.75
Norwalk	80.23	25.91	167.86	86.81	28.40	191.12	-52.37	-18.04	-93.28	-77.61	-25.05	-162.48	-84.25	-27.55	-185.60
Palmdale	148.42	47.93	310.54	160.59	52.53	353.57	-106.50	-38.83	-200.07	-145.66	-47.01	-304.88	-158.06	-51.68	-348.14
Palos Verdes Estates	8.50	2.75	17.79	9.20	3.01	20.26	-4.30	-2.22	-6.51	-6.09	-2.61	-16.94	-6.42	-1.75	-15.30
Paramount	42.76	13.81	89.47	46.27	15.13	101.86	-28.02	-9.67	-47.72	-41.33	-13.34	-86.54	-39.11	-11.87	-87.44
Pasadena	285.59	92.22	597.56	309.02	101.06	680.36	-197.32	-70.22	-372.96	-282.06	-84.99	-550.45	-294.81	-96.02	-649.32
Pico Rivera	56.41	18.22	118.04	61.04	19.97	134.39	-35.05	-15.00	-86.60	60.77	20.32	119.98	-49.54	-16.44	-110.99
Pomona	127.49	41.17	266.78	137.95	45.13	303.72	-79.91	-28.77	-153.13	-118.35	-37.93	-248.16	-125.21	-39.59	-278.42
Quartz Hill	5.63	1.82	11.78	6.09	1.99	13.41	-4.14	-1.51	-7.77	-5.49	-1.77	-11.49	-5.96	-1.95	-13.12
Rancho Palos Verdes	40.64	13.12	85.04	43.98	14.39	96.82	-23.07	-10.85	-51.93	-39.50	-12.75	-82.68	-39.07	-12.23	-87.81
Redondo Beach	109.66	35.41	229.44	118.65	38.81	261.24	-80.20	-27.42	-145.52	-106.40	-34.35	-222.75	-113.09	-37.06	-251.83
Rolling Hills	0.85	0.27	1.78	0.92	0.30	2.03	-0.59	-0.23	-1.12	-0.82	-0.26	-1.72	-0.84	-0.27	-1.87
Rolling Hills Estates	12.64	4.08	26.45	13.68	4.47	30.12	-8.61	-3.38	-13.96	-12.29	-3.97	-25.73	-13.34	-4.36	-29.37
Rosemead	49.85	16.10	104.31	53.94	17.64	118.76	-35.91	-13.12	-61.49	-47.85	-15.38	-99.81	-48.53	-14.41	-104.19
Rowland Heights	53.27	17.20	111.47	57.65	18.86	126.92	-35.61	-12.52	-69.92	-51.57	-16.65	-107.96	-58.01	-18.32	-123.39
San Dimas	43.38	14.00	90.72	46.91	15.35	103.29	-27.96	-9.80	-56.95	-38.95	-12.22	-81.38	-43.54	-13.93	-96.21
San Fernando	40.79	13.17	85.35	44.14	14.44	97.17	-29.79	-10.66	-55.86	-24.51	-8.00	-53.29	-42.93	-14.04	-94.56
San Gabriel	53.82	17.38	112.61	58.24	19.05	128.22	-38.84	-14.33	-69.25	-52.15	-16.84	-109.17	-54.78	-17.68	-121.40
San Marino	13.02	4.21	27.25	14.09	4.61	31.02	-9.39	-3.42	-18.06	-12.48	-4.02	-26.09	-13.28	-4.34	-29.31
Santa Clarita	146.06	47.17	305.61	158.04	51.70	347.95	-58.42	-18.91	-110.49	0.75	-3.75	20.79	54.99	8.45	146.18
Santa Fe Springs	55.02	17.77	115.12	59.53	19.47	131.07	-37.83	-13.22	-69.82	-52.50	-16.84	-109.96	-51.55	-16.71	-114.52

(Millions of $ 1999)

City and CDP	Stimulus Effects CASE I Scenario I	Stimulus Effects CASE I Scenario II	Stimulus Effects CASE I Scenario III	Stimulus Effects CASE II Scenario I	Stimulus Effects CASE II Scenario II	Stimulus Effects CASE II Scenario III	Stimulus Effects CASE III Scenario I	Stimulus Effects CASE III Scenario II	Stimulus Effects CASE III Scenario III	Impacts of Household Expenditure Reduction CASE I Scenario I	Impacts of Household Expenditure Reduction CASE I Scenario II	Impacts of Household Expenditure Reduction CASE I Scenario III	Impacts of Household Expenditure Reduction CASE II Scenario I	Impacts of Household Expenditure Reduction CASE II Scenario II	Impacts of Household Expenditure Reduction CASE II Scenario III	Impacts of Household Expenditure Reduction CASE III Scenario I	Impacts of Household Expenditure Reduction CASE III Scenario II	Impacts of Household Expenditure Reduction CASE III Scenario III	Net Impacts CASE I Scenario I	Net Impacts CASE I Scenario II	Net Impacts CASE I Scenario III	Net Impacts CASE II Scenario I	Net Impacts CASE II Scenario II	Net Impacts CASE II Scenario III	Net Impacts CASE III Scenario I	Net Impacts CASE III Scenario II	Net Impacts CASE III Scenario III
Santa Monica	12.78	4.36	16.62	9.88	3.23	20.33	9.50	3.14	20.56	204.80	74.60	384.63	272.18	87.89	569.45	294.48	96.33	648.36	-192.03	-70.24	-368.01	-262.27	-84.68	-549.12	-284.99	-93.19	-627.79
Sierra Madre	1.78	0.10	2.04	0.37	0.12	0.78	0.38	0.12	0.78	9.08	3.30	17.01	12.04	3.89	25.18	13.02	4.26	28.67	-7.27	-3.20	-14.97	-11.66	-3.77	-24.42	-12.68	-4.14	-27.89
Signal Hill	0.77	0.29	2.94	1.06	0.35	2.20	1.00	0.33	2.15	19.35	7.05	38.34	25.71	8.30	53.80	27.82	9.10	61.26	-18.58	-6.75	-33.40	-24.64	-7.95	-51.60	-26.82	-8.77	-59.11
South El Monte	2.10	1.05	3.01	0.74	0.24	1.51	2.00	0.66	3.90	14.66	5.34	27.53	19.48	6.29	40.75	21.07	6.89	46.40	-12.55	-4.29	-24.51	-18.74	-6.05	-39.24	-19.07	-6.02	-42.50
South Gate	4.67	0.58	9.23	2.24	0.73	4.61	5.09	2.16	9.49	53.76	19.58	100.97	71.44	23.07	149.48	77.30	25.29	170.20	-49.09	-19.00	-91.73	-69.20	-22.34	-144.86	-72.21	-23.13	-160.71
South Pasadena	2.46	0.35	4.82	1.30	0.42	2.67	1.26	0.42	2.73	27.79	10.12	52.20	36.93	11.93	77.28	39.96	13.07	87.99	-25.34	-9.78	-47.37	-35.64	-11.50	-74.60	-38.70	-12.66	-85.25
South San Gabriel	0.12	0.05	0.23	0.17	0.06	0.36	0.17	0.06	0.36	3.96	1.44	7.44	5.26	1.70	11.01	5.69	1.86	12.54	-3.84	-1.40	-7.20	-5.09	-1.64	-10.65	-5.53	-1.81	-12.17
South San Jose Hills	0.35	0.04	3.29	0.17	0.05	0.34	0.66	0.28	1.40	4.50	1.64	8.45	5.98	1.93	12.50	8.47	2.12	14.24	-4.14	-1.60	-5.16	-5.81	-1.88	-12.16	-5.81	-1.84	-12.84
South Whittier	3.57	3.87	10.99	0.93	0.30	1.91	0.66	0.29	1.90	22.35	8.14	41.98	29.70	9.59	62.15	32.14	10.51	70.78	-18.79	-4.28	-30.99	-28.77	-9.29	-60.24	-31.28	-10.22	-68.86
Temple City	2.33	0.75	1.96	1.13	0.37	2.32	2.18	0.80	4.84	28.82	10.50	54.13	38.30	12.37	80.14	41.45	13.56	91.25	-26.49	-9.75	-52.17	-37.16	-12.00	-77.83	-39.27	-12.78	-86.61
Torrance	13.54	9.59	28.12	11.20	3.68	23.04	20.00	6.88	41.66	258.74	94.25	485.93	343.83	111.03	719.42	372.04	121.70	819.10	-245.20	-84.66	-457.80	-332.63	-107.37	-696.37	-352.04	-114.82	-777.44
Valinda	0.47	0.10	3.67	0.38	0.12	0.77	0.36	0.12	0.79	10.23	3.73	19.21	13.59	4.39	28.44	14.71	4.81	32.38	-9.78	-3.63	-15.53	-13.22	-4.27	-27.66	-14.34	-4.69	-31.59
Val Verde	0.02	0.01	0.03	0.05	0.02	0.11	0.00	0.00	0.00	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.05	0.00	0.00	0.00	0.04	0.01	0.07	-0.02	-0.01	-0.04
Vernon	4.32	0.48	4.37	1.94	0.64	3.97	1.74	0.58	3.73	32.30	11.77	60.66	42.92	13.86	89.81	46.44	15.19	102.25	-27.98	-11.29	-56.29	-40.98	-13.22	-85.84	-44.70	-14.62	-98.52
View Park-Windsor Hills	0.26	0.10	0.49	0.36	0.12	0.75	0.35	0.11	0.76	7.48	2.73	14.06	9.94	3.21	20.81	10.76	3.52	23.69	-7.23	-2.63	-13.56	-9.58	-3.09	-20.06	-10.41	-3.41	-22.94
Vincent	2.04	0.24	1.23	0.43	0.14	0.88	0.47	0.17	1.02	11.97	4.38	22.48	15.90	5.14	33.28	17.21	5.63	37.89	-9.93	-4.12	-21.25	-15.48	-5.00	-32.40	-16.73	-5.48	-36.87
Walnut	0.48	0.19	1.18	0.67	0.22	1.38	0.68	0.23	1.48	13.58	4.95	25.51	18.05	5.83	37.77	19.53	6.39	43.00	-13.10	-4.78	-24.33	-17.38	-5.61	-36.39	-18.85	-6.16	-41.52
Walnut Park	0.24	0.07	4.97	0.29	0.09	0.60	0.28	0.09	0.60	7.50	2.73	14.08	9.98	3.22	20.84	10.78	3.53	23.73	-7.26	-2.66	-9.11	-9.67	-3.12	-20.25	-10.50	-3.43	-23.13
West Athens	0.19	0.04	1.78	0.16	0.05	0.33	0.15	0.05	0.33	3.85	1.40	7.23	5.12	1.65	10.71	5.54	1.81	12.19	-3.87	-1.36	-5.46	-4.96	-1.60	-10.38	-5.39	-1.76	-11.87
West Carson	0.62	0.21	4.31	0.85	0.28	1.74	0.80	0.26	1.74	19.21	7.00	36.08	25.53	8.24	53.42	27.62	9.04	60.82	-18.59	-6.78	-31.77	-24.68	-7.97	-51.68	-26.82	-8.77	-59.08
West Compton	0.27	0.09	2.85	0.39	0.13	0.79	0.34	0.11	0.73	8.59	2.40	12.38	8.78	2.83	18.33	9.48	3.10	20.87	-8.32	-2.31	-9.73	-8.37	-2.70	-17.54	-9.14	-2.99	-20.14
West Covina	11.92	5.74	24.31	3.75	1.22	7.73	8.98	3.66	19.17	93.48	34.05	175.53	124.20	40.11	259.88	134.39	43.96	295.89	-81.54	-28.31	-151.23	-120.45	-38.88	-252.15	-125.43	-40.30	-278.72
West Hollywood	2.95	1.03	7.04	4.07	1.33	8.36	3.89	1.28	8.41	92.51	33.70	173.75	122.94	39.70	257.23	133.02	43.51	292.87	-89.56	-32.67	-166.71	-118.87	-38.37	-248.87	-129.14	-42.23	-284.47
Westlake Village	4.37	4.29	8.72	1.55	0.68	2.62	1.50	0.70	2.58	4.39	1.60	8.25	5.64	1.69	12.22	6.32	2.07	13.91	-0.03	2.89	1.47	-4.29	-1.20	-9.60	-4.61	-1.37	-11.33
Westmont	0.32	0.11	3.71	0.42	0.14	0.86	0.40	0.13	0.88	10.92	3.98	20.51	14.51	4.69	30.36	15.70	5.14	34.57	-10.60	-3.87	-16.80	-14.09	-4.55	-29.50	-15.31	-5.01	-33.71
West Puente Valley	1.24	0.10	1.98	0.19	0.06	0.39	8.53	2.40	13.32	4.58	1.67	8.60	6.09	1.97	12.73	8.58	2.15	14.50	-3.34	-1.57	-8.62	-5.90	-1.90	-12.35	-0.05	0.25	-1.18
West Whittier-Los Nietos	1.70	0.16	4.12	0.59	0.19	1.22	0.57	0.19	1.23	13.85	5.05	26.02	18.41	5.95	38.52	19.92	6.52	43.86	-12.15	-4.88	-21.90	-17.82	-5.75	-37.30	-19.35	-6.33	-42.63
Whittier	9.59	4.16	13.80	4.42	1.51	9.15	4.68	1.81	9.32	70.57	25.71	132.54	93.78	30.28	196.22	101.47	33.19	223.41	-60.98	-21.54	-118.74	-89.36	-28.77	-187.06	-96.80	-31.38	-214.10
Willowbrook	2.36	1.90	5.75	0.80	0.26	1.63	0.73	0.24	1.57	15.12	5.51	28.41	20.10	6.49	42.05	21.75	7.11	47.88	-12.76	-3.61	-22.65	-19.30	-6.23	-40.42	-21.02	-6.87	-46.31
Aliso Viejo	1.06	0.38	2.00	1.49	0.49	3.07	1.43	0.47	3.10	9.73	3.55	18.28	12.94	4.18	27.07	14.00	4.58	30.82	-8.66	-3.17	-18.28	-11.45	-3.69	-24.00	-12.57	-4.11	-27.72
Anaheim	10.44	3.74	19.78	14.79	4.84	30.40	14.04	4.63	30.35	115.49	42.07	216.91	153.48	49.58	321.13	166.07	54.32	365.63	-105.05	-38.33	-197.15	-138.69	-44.73	-290.73	-152.03	-49.69	-335.27
Brea	1.95	0.70	3.68	2.73	0.89	5.63	2.85	0.87	5.75	20.57	7.49	38.63	27.33	8.83	57.19	29.57	9.67	65.11	-18.62	-6.79	-34.94	-24.60	-7.94	-51.58	-26.92	-8.80	-59.38
Buena Park	2.23	0.80	4.22	3.18	1.03	6.49	2.98	0.98	6.44	32.99	12.02	61.95	43.84	14.16	91.72	47.43	15.52	104.43	-30.76	-11.22	-57.74	-40.67	-13.12	-85.23	-44.45	-14.53	-97.99
Costa Mesa	7.93	2.65	14.99	11.15	3.64	22.97	10.74	3.54	23.26	73.44	26.75	137.93	97.59	31.52	204.20	105.60	34.54	232.50	-65.51	-23.91	-122.94	-86.44	-27.87	-181.24	-94.87	-31.01	-209.24
Coto de Caza	0.13	0.05	0.25	0.16	0.06	0.38	0.18	0.06	0.38	1.21	0.44	2.27	1.61	0.52	3.37	1.74	0.57	3.83	-1.08	-0.39	-2.03	-1.43	-0.46	-2.99	-1.58	-0.51	-3.45
Cypress	2.20	0.79	4.18	3.07	1.00	6.35	3.01	0.99	6.54	25.73	9.37	48.32	34.19	11.04	71.53	36.99	12.10	81.45	-23.52	-8.58	-44.16	-31.11	-10.04	-65.19	-33.98	-11.11	-74.91
Dana Point	1.33	0.48	2.51	1.88	0.61	3.86	1.79	0.59	3.88	12.04	4.39	22.61	16.00	5.17	33.47	17.31	5.66	38.11	-10.71	-3.91	-20.10	-14.12	-4.55	-29.61	-15.52	-5.07	-34.24
Foothill Ranch	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.06	0.22	0.08	0.42	0.29	0.09	0.61	0.32	0.10	0.70	-0.20	-0.07	-0.38	-0.27	-0.09	-0.58	-0.29	-0.10	-0.64
Fountain Valley	2.44	0.88	4.62	3.44	1.12	7.07	3.31	1.09	7.17	24.03	8.75	45.13	31.93	10.31	66.81	34.55	11.30	78.07	-21.58	-7.68	-40.51	-28.49	-9.19	-59.73	-31.24	-10.21	-68.90
Fullerton	4.60	1.65	8.71	6.50	2.12	13.37	6.21	2.05	13.44	58.96	20.75	108.98	75.70	24.45	158.39	81.91	26.79	180.34	-52.36	-19.10	-98.27	-69.20	-22.32	-145.01	-75.70	-24.75	-166.89
Garden Grove	4.54	1.63	8.58	6.41	2.09	13.18	6.11	2.01	13.22	49.98	18.20	93.86	66.41	21.45	138.98	71.86	23.51	158.22	-45.44	-16.58	-85.28	-60.00	-19.35	-125.78	-65.75	-21.49	-145.00
Huntington Beach	8.37	2.28	12.04	8.96	2.93	18.47	8.60	2.83	18.62	65.86	23.99	123.68	87.52	28.26	183.12	94.70	30.98	208.49	-59.49	-21.71	-111.65	-78.54	-25.33	-164.64	-86.10	-28.14	-189.87
Irvine	9.87	3.58	18.86	14.07	4.60	28.95	13.48	4.44	29.14	84.59	30.81	158.87	112.41	36.30	235.20	121.63	39.79	267.79	-74.82	-27.24	-140.01	-98.34	-31.70	-206.26	-108.17	-35.35	-238.65
Laguna Beach	1.56	0.56	2.94	2.18	0.71	4.50	2.11	0.70	4.58	13.40	4.88	25.17	17.81	5.75	37.27	19.27	6.30	42.43	-11.85	-4.32	-22.23	-15.63	-5.04	-32.77	-17.18	-5.61	-37.85
Laguna Hills	1.47	0.53	2.78	2.06	0.67	4.24	2.00	0.66	4.34	12.47	4.54	23.42	16.57	5.35	34.68	17.93	5.87	39.48	-11.00	-4.02	-20.65	-14.52	-4.68	-30.44	-15.93	-5.21	-35.14
Laguna Niguel	1.94	0.70	3.67	2.73	0.89	5.62	2.63	0.87	5.71	17.42	6.34	32.71	23.14	7.47	48.42	25.04	8.19	55.13	-15.47	-5.65	-29.04	-20.41	-6.58	-42.80	-22.41	-7.32	-49.42
Laguna Woods	0.97	0.35	1.83	1.35	0.44	2.79	1.32	0.43	2.86	8.24	3.00	15.47	10.94	3.53	22.90	11.84	3.87	26.07	-7.27	-2.65	-13.64	-9.59	-3.09	-20.11	-10.52	-3.44	-23.21
La Habra	1.59	0.57	3.00	2.23	0.73	4.59	2.14	0.71	4.64	27.98	10.18	52.51	37.15	12.00	77.73	40.20	13.15	88.51	-26.37	-9.61	-49.51	-34.92	-11.27	-73.14	-38.06	-12.44	-83.86
Lake Forest	2.09	0.75	3.95	2.95	0.96	6.07	2.82	0.93	6.09	19.86	7.23	37.30	26.39	8.52	55.22	28.55	9.34	62.87	-17.77	-6.48	-33.34	-23.44	-7.56	-49.15	-25.74	-8.41	-56.77
La Palma	0.52	0.18	0.98	0.72	0.24	1.49	0.70	0.23	1.52	7.79	2.84	14.63	10.35	3.34	21.66	11.20	3.66	24.66	-7.27	-2.65	-13.65	-9.63	-3.11	-20.17	-10.50	-3.43	-23.14
Las Flores	0.05	0.02	0.09	0.07	0.02	0.14	0.06	0.02	0.14	0.44	0.16	0.83	0.59	0.19	1.23	0.63	0.21	1.40	-0.39	-0.14	-0.74	-0.52	-0.17	-1.09	-0.57	-0.19	-1.26
Los Alamitos	0.77	0.28	1.46	1.09	0.36	2.24	1.04	0.34	2.26	10.71	3.90	20.11	14.23	4.59	29.77	15.39	5.04	33.89	-9.93	-3.62	-18.65	-13.14	-4.24	-27.53	-14.35	-4.69	-31.64
Mission Viejo	2.78	1.00	5.26	3.90	1.27	8.04	3.79	1.25	8.23	23.68	8.62	44.47	31.46	10.16	65.83	34.05	11.14	74.96	-20.89	-7.62	-39.21	-27.57	-8.89	-57.80	-30.25	-9.89	-68.73
Newport Beach	7.22	2.59	13.64	10.11	3.30	20.84	9.83	3.24	21.33	60.09	21.89	112.84	79.85	25.78	187.07	86.40	28.28	190.22	-52.87	-19.29	-99.20	-69.74	-22.49	-146.23	-76.57	-25.02	-168.88
Newport Coast	0.12	0.04	0.22	0.17	0.05	0.34	0.16	0.05	0.35	1.14	0.42	2.14	1.52	0.49	3.17	1.64	0.54	3.61	-1.02	-0.37	-1.92	-1.35	-0.44	-2.83	-1.48	-0.48	-3.27
Orange	8.61	2.37	12.49	9.29	3.03	19.14	8.95	2.95	19.39	64.43	23.47	121.01	85.63	27.65	179.16	92.65	30.31	203.99	-57.83	-21.10	-108.52	-76.33	-24.62	-160.02	-83.70	-27.36	-184.60
Placentia	1.16	0.41	2.19	1.64	0.54	3.38	1.55	0.51	3.35	13.23	4.82	24.85	17.58	5.68	36.79	19.03	6.22	41.89	-12.07	-4.41	-22.66	-15.94	-5.14	-33.42	-17.47	-5.71	-38.54
Portola Hills	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.02	0.09	0.03	0.17	0.12	0.04	0.26	0.13	0.04	0.29	-0.08	-0.03	-0.16	-0.11	-0.04	-0.23	-0.12	-0.04	-0.27
Rancho Santa Margarita	0.42	0.15	0.79	0.59	0.19	1.21	0.57	0.19	1.22	3.88	1.41	7.28	5.15	1.66	10.78	5.57	1.82	12.27	-3.46	-1.26	-6.49	-4.56	-1.47	-9.57	-5.01	-1.64	-11.05
Rossmoor	0.16	0.06	0.30	0.23	0.07	0.47	0.22	0.07	0.47	2.41	0.88	4.52	3.20	1.03	6.70	3.46	1.13	7.62	-2.25	-0.82	-4.22	-2.97	-0.96	-6.23	-3.24	-1.06	-7.15
San Clemente	1.96	0.70	3.71	2.78	0.91	5.71	2.64	0.87	5.71	18.33	6.68	34.43	24.36	7.87	50.97	26.36	8.62	58.04	-18.37	-6.97	-30.72	-21.56	-6.96	-45.26	-23.72	-7.75	-52.33
San Joaquin Hills	0.04	0.02	0.08	0.06	0.02	0.12	0.06	0.02	0.12	0.41	0.15	0.76	0.54	0.17	1.13	0.59	0.19	1.29	-0.37	-0.13	-0.69	-0.48	-0.16	-1.01	-0.53	-0.17	-1.17
San Juan Capistrano	1.41	0.51	2.67	1.99	0.65	4.10	1.90	0.63	4.10	13.22	4.82	24.83	17.57	5.67	36.76	19.01	6.22	41.85	-11.81	-4.31	-22.18	-15.57	-5.02	-32.66	-17.11	-5.59	-37.75
Santa Ana	10.62	3.81	20.08	14.98	4.89	30.82	14.34	4.73	31.05	104.82	38.18	196.85	139.29	44.98	291.44	150.71	49.30	331.82	-94.20	-34.37	-176.77	-124.31	-40.09	-260.62	-136.37	-44.57	-300.77
Seal Beach	0.90	0.32	1.71	1.28	0.42	2.63	1.21	0.40	2.62	13.50	4.92	25.36	17.95	5.80	37.55	19.42	6.35	42.75	-12.60	-4.60	-23.66	-16.67	-5.38	-34.92	-18.21	-5.95	-40.13
Stanton	0.82	0.29	1.55	1.16	0.38	2.39	1.11	0.38	2.39	9.70	3.53	18.22	12.89	4.16	26.97	13.95	4.56	30.70	-8.88	-3.24	-16.66	-11.73	-3.78	-24.58	-12.84	-4.20	-28.31
Tustin	3.55	1.27	6.70	4.98	1.63	10.28	4.61	1.58	10.43	32.23	11.74	60.53	42.83	13.83	89.61	46.34	15.16	102.03	-28.68	-10.47	-53.83	-37.85	-12.20	-79.35	-41.53	-13.57	-91.60
Tustin Foothills	0.56	0.20	1.06	0.78	0.25	1.61	0.77	0.25	1.67	4.46	1.62	8.37	5.92	1.91	12.39	6.41	2.10	14.11	-3.89	-1.42	-7.31	-5.14	-1.66	-10.78	-5.64	-1.84	-12.43
Villa Park	0.13	0.05	0.24	0.18	0.06	0.36	0.17	0.06	0.37	1.24	0.45	2.32	1.64	0.53	3.44	1.76	0.58	3.92	-1.11	-0.41	-2.09	-1.47	-0.47	-3.08	-1.61	-0.53	-3.55
Westminster	3.08	1.10	5.79	4.30	1.40	8.86	4.15	1.37	9.01	33.48	12.19	62.88	44.49	14.37	93.09	48.14	15.75	105.99	-30.42	-11.10	-57.09	-40.19	-12.96	-84.22	-43.98	-14.38	-96.98
Yorba Linda	1.26	0.45	2.39	1.77	0.58	3.65	1.72	0.57	3.74	11.90	4.34	22.35	15.82	5.11	33.09	17.11	5.60	37.68	-10.64	-3.88	-19.97	-14.05	-4.53	-29.45	-15.39	-5.03	-33.95
Banning	0.39	0.14	0.73	0.55	0.18	1.12	0.52	0.17	1.13	3.61	1.31	6.78	4.80	1.55	10.03	5.19	1.70	11.42	-3.22	-1.16	-6.05	-4.25	-1.37	-8.91	-4.67	-1.53	-10.30
Beaumont	0.25	0.09	0.47	0.35	0.12	0.73	0.34	0.11	0.73	2.37	0.86	4.45	3.15	1.02	6.58	3.41	1.11	7.50	-2.12	-0.77	-3.98	-2.79	-0.90	-5.86	-3.07	-1.00	-6.77
Bermuda Dunes	0.06	0.02	0.10	0.06	0.03	0.16	0.07	0.02	0.16	0.50	0.18	0.94	0.66	0.21	1.38	0.72	0.23	1.58	-0.44	-0.16	-0.83	-0.58	-0.19	-1.22	-0.64	-0.21	-1.41
Cabazon	0.02	0.01	0.04	0.03	0.01	0.05	0.03	0.01	0.05	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58	-0.16	-0.06	-0.31	-0.22	-0.07	-0.45	-0.24	-0.08	-0.52
Calimesa	0.14	0.05	0.26	0.19	0.06	0.40	0.19	0.06	0.40	1.22	0.44	2.29	1.62	0.52	3.39	1.75	0.57	3.86	-1.08	-0.39	-2.03	-1.43	-0.46	-2.99	-1.57	-0.51	-3.45
Canyon Lake	0.04	0.02	0.09	0.06	0.02	0.13	0.06	0.02	0.13	0.41	0.15	0.78	0.54	0.17	1.13	0.59	0.19	1.29	-0.36	-0.13	-0.68	-0.48	-0.15	-1.00	-0.52	-0.17	-1.16
Cathedral City	1.06	0.39	2.05	1.53	0.50	3.15	1.46	0.48	3.15	10.15	3.70	19.06	13.49	4.36	28.22	14.59	4.77	32.13	-9.07	-3.31	-17.01	-11.96	-3.85	-25.07	-13.14	-4.29	-28.98
Cherry Valley	0.04	0.01	0.07	0.05	0.02	0.11	0.05	0.02	0.11	0.33	0.12	0.61	0.43	0.14	0.91	0.47	0.15	1.03	-0.29	-0.11	-0.54	-0.38	-0.12	-0.80	-0.42	-0.14	-0.93
Coachella	0.39	0.14	0.74	0.56	0.18	1.14	0.52	0.17	1.13	3.96	1.45	7.48	5.29	1.71	11.07	5.72	1.87	12.60	-3.59	-1.31	-6.74	-4.73	-1.53	-9.93	-5.20	-1.70	-11.47
Corona	2.78	0.99	5.25	3.93	1.29	8.09	3.73	1.23	8.06	27.87	10.15	52.35	37.04	11.96	77.50	40.06	13.11	88.24	-25.10	-9.16	-47.10	-33.11	-10.68	-69.42	-36.35	-11.68	-80.18
Desert Hot Springs	0.18	0.07	0.34	0.26	0.08	0.53	0.24	0.08	0.53	1.66	0.61	3.12	2.21	0.71	4.62	2.39	0.78	5.26	-1.48	-0.54	-2.78	-1.95	-0.63	-4.09	-2.15	-0.70	-4.73
East Hemet	0.31	0.11	0.58	0.43	0.14	0.89	0.42	0.14	0.91	2.69	0.98	5.05	3.57	1.15	7.48	3.87	1.26	8.51	-2.38	-0.87	-4.47	-3.14	-1.01	-6.59	-3.45	-1.13	-7.61
El Cerrito	0.04	0.01	0.07	0.06	0.02	0.12	0.05	0.02	0.11	0.42	0.15	0.79	0.56	0.18	1.17	0.61	0.20	1.34	-0.38	-0.14	-0.72	-0.50	-0.16	-1.06	-0.55	-0.18	-1.22
Glen Avon	0.31	0.11	0.59	0.45	0.15	0.92	0.42	0.14	0.90	3.62	1.32	6.80	4.81	1.55	10.06	5.20	1.70	11.45	-3.30	-1.21	-6.20	-4.36	-1.41	-9.14	-4.78	-1.56	-10.55
Hemet	1.58	0.57	2.99	2.23	0.73	4.59	2.14	0.70	4.63	14.18	5.18	26.60	18.82	6.08	39.38	20.37	6.66	44.84	-12.58	-4.59	-23.61	-16.59	-5.35	-34.79	-18.23	-5.96	-40.21
Highgrove	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08	0.31	0.11	0.58	0.41	0.13	0.86	0.45	0.15	0.98	-0.28	-0.10	-0.53	-0.37	-0.12	-0.78	-0.41	-0.13	-0.90
Home Gardens	0.12	0.04	0.23	0.17	0.06	0.35	0.16	0.05	0.35	1.21	0.44	2.28	1.61	0.52	3.37	1.74	0.57	3.84	-1.09	-0.40	-2.05	-1.44	-0.46	-3.02	-1.58	-0.52	-3.49
Homeland	0.02	0.01	0.03	0.03	0.01	0.05	0.02	0.01	0.05	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58	-0.18	-0.06	-0.31	-0.22	-0.07	-0.45	-0.24	-0.08	-0.52
Idyllwild-Pine Cove	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.04	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.12	-0.03	-0.01	-0.06	-0.04	-0.01	-0.09	-0.05	-0.02	0.10
Indian Wells	0.40	0.14	0.76	0.57	0.19	1.17	0.54	0.18	1.17	3.30	1.20	6.20	4.38	1.42	9.17	4.74	1.55	10.44	-2.90	-1.06	-5.43	-3.81	-1.23	-8.00	-4.20	-1.37	-9.27
Indio	0.99	0.36	1.87	1.40	0.46	2.87	1.34	0.44	2.91	9.19	3.35	17.26	12.22	3.94	25.56	13.22	4.32	29.10	-8.20	-2.99	-15.39	-10.82	-3.49	-22.68	-11.88	-3.88	-26.20
Lake Elsinore	0.69	0.25	1.31	0.98	0.32	2.01	0.93	0.31	2.02	6.48	2.35	12.13	8.58	2.77	17.96	9.29	3.04	20.45	-5.77	-2.10	-10.82	-7.61	-2.45	-15.95	-8.35	-2.73	-18.43
Lakeland Village	0.05	0.02	0.09	0.07	0.02	0.14	0.06	0.02	0.14	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48	-0.42	-0.15	-0.79	-0.55	-0.18	-1.16	-0.61	-0.20	-1.34
Lakeview	0.02	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.19	0.07	0.36	0.25	0.08	0.53	0.27	0.09	0.60	-0.18	-0.06	-0.33	-0.23	-0.07	-0.49	-0.25	-0.08	-0.56
La Quinta	0.33	0.12	0.63	0.47	0.15	0.97	0.45	0.15	0.96	2.88	1.05	5.42	3.83	1.24	8.02	4.15	1.36	9.13	-2.55	-0.93	-4.79	-3.36	-1.08	-7.05	-3.70	-1.21	-8.17
March AFB	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08	0.27	0.10	0.50	0.36	0.11	0.74	0.38	0.13	0.85	-0.24	-0.09	-0.45	-0.32	-0.10	-0.67	-0.35	-0.11	-0.77
Mecca	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.03	0.02	0.01	0.05	0.02	0.01	0.05	-0.02	-0.01	-0.03	-0.02	-0.01	-0.04	-0.02	0.01	-0.05
Mira Loma	0.23	0.08	0.43	0.32	0.10	0.66	0.30	0.10	0.66	2.37	0.88	4.44	3.14	1.02	8.58	3.40	1.11	7.49	-2.14	-0.78	-4.01	-2.82	-0.91	-5.92	-3.10	-1.01	-8.83

(Millions of $ 1990)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	2.24	0.80	4.24	3.15	1.03	6.49	3.03	1.00	6.58	20.29	7.39	38.10	26.96	8.71	58.40	29.17	9.54	64.22	-18.04	-6.59	-33.86	-23.81	-7.68	-49.91	-26.13	-8.54	-57.64
Murrieta	0.47	0.17	0.89	0.67	0.22	1.37	0.63	0.21	1.37	4.58	1.67	8.61	6.09	1.97	12.75	6.59	2.18	14.51	-4.11	-1.50	-7.72	-5.43	-1.75	-11.38	-5.96	-1.95	-13.15
Murrieta Hot Springs	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.14	0.05	0.26	0.18	0.06	0.38	0.20	0.06	0.43	-0.12	-0.04	-0.23	-0.16	-0.05	-0.34	-0.18	-0.06	-0.39
Norco	0.58	0.21	1.09	0.82	0.27	1.69	0.77	0.25	1.68	5.73	2.09	10.78	7.62	2.48	15.93	8.24	2.70	18.14	-5.15	-1.88	-9.67	-6.79	-2.19	-14.25	-7.47	-2.44	-16.49
Nuevo	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08	0.33	0.12	0.62	0.44	0.14	0.91	0.47	0.15	1.04	-0.30	-0.11	-0.56	-0.40	-0.13	-0.83	-0.44	-0.14	-0.96
Palm Desert	2.38	0.85	4.51	3.36	1.10	6.91	3.22	1.06	6.97	21.11	7.69	39.64	28.05	9.08	58.68	30.35	9.93	66.81	-18.72	-6.83	-35.13	-24.69	-7.98	-51.77	-27.13	-8.87	-59.84
Palm Springs	2.55	0.92	4.83	3.61	1.18	7.42	3.44	1.13	7.45	22.85	8.32	42.92	30.37	9.81	63.54	32.86	10.75	72.34	-20.30	-7.41	-38.09	-26.78	-8.63	-56.12	-29.41	-9.61	-64.89
Perris	0.22	0.08	0.42	0.31	0.10	0.64	0.29	0.10	0.64	2.24	0.82	4.20	2.97	0.96	6.22	3.22	1.05	7.06	-2.02	-0.74	-3.79	-2.66	-0.86	-5.58	-2.92	-0.96	-6.45
Quail Valley	0.68	0.24	1.28	0.96	0.31	1.97	0.91	0.30	1.98	6.39	2.33	11.99	8.49	2.74	17.76	9.18	3.00	20.22	-5.71	-2.08	-10.71	-7.53	-2.43	-15.78	-8.27	-2.70	-18.24
Rancho Mirage	0.01	0.00	0.02	0.02	0.01	0.03	0.02	0.01	0.03	0.11	0.04	0.21	0.15	0.05	0.31	0.16	0.05	0.35	-0.10	-0.04	-0.19	-0.13	-0.04	-0.27	-0.14	-0.05	-0.32
Riverside	0.78	0.27	1.44	1.08	0.35	2.21	1.03	0.34	2.23	6.58	2.40	12.36	8.74	2.82	18.29	9.46	3.09	20.83	-5.82	-2.12	-10.92	-7.67	-2.47	-16.06	-8.43	-2.78	-18.60
Romoland	9.30	3.33	17.58	13.09	4.28	26.96	12.57	4.14	27.23	85.79	31.25	161.13	114.01	36.82	238.55	123.36	40.35	271.61	-76.50	-27.92	-143.55	-100.92	-32.54	-211.59	-110.79	-36.21	-244.38
Rubidoux	0.03	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.10	0.32	0.12	0.60	0.42	0.14	0.89	0.46	0.15	1.01	-0.28	-0.10	-0.53	-0.37	-0.12	-0.78	-0.41	-0.13	-0.91
San Jacinto	0.33	0.12	0.62	0.47	0.16	0.96	0.45	0.15	0.97	3.24	1.18	6.08	4.31	1.39	9.01	4.66	1.52	10.26	-2.91	-1.06	-5.46	-3.84	-1.24	-8.05	-4.21	-1.36	-9.29
Sedco Hills	0.35	0.12	0.66	0.49	0.18	1.01	0.47	0.15	1.01	3.33	1.21	6.26	4.43	1.43	9.27	4.79	1.57	10.55	-2.99	-1.09	-5.60	-3.94	-1.27	-8.26	-4.32	-1.41	-9.54
Sun City	0.08	0.03	0.15	0.11	0.04	0.23	0.11	0.04	0.24	0.72	0.26	1.36	0.96	0.31	2.01	1.04	0.34	2.29	-0.64	-0.23	-1.21	-0.85	-0.27	-1.78	-0.93	-0.30	-2.05
Sunnyslope	0.44	0.16	0.83	0.62	0.20	1.27	0.60	0.20	1.30	4.02	1.46	7.55	5.34	1.72	11.17	5.78	1.89	12.72	-3.58	-1.31	-6.71	-4.72	-1.52	-9.90	-5.18	-1.69	-11.42
Temecula	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.06	0.25	0.09	0.48	0.34	0.11	0.71	0.37	0.12	0.80	-0.23	-0.09	-0.44	-0.31	-0.10	-0.65	-0.34	-0.11	-0.75
Thousand Palms	1.21	0.43	2.30	1.72	0.56	3.53	1.63	0.54	3.53	11.25	4.10	21.13	14.95	4.83	31.28	16.18	5.29	35.62	-10.04	-3.66	-18.84	-13.24	-4.27	-27.76	-14.55	-4.75	-32.09
Valle Vista	0.02	0.01	0.03	0.03	0.01	0.05	0.02	0.01	0.05	0.18	0.06	0.33	0.23	0.08	0.49	0.25	0.08	0.56	-0.16	-0.06	-0.30	-0.21	-0.07	-0.44	-0.23	-0.07	-0.51
Wildomar	0.06	0.03	0.15	0.11	0.04	0.23	0.11	0.04	0.23	0.68	0.25	1.28	0.91	0.29	1.90	0.98	0.32	2.17	-0.61	-0.22	-1.14	-0.80	-0.26	-1.67	-0.88	-0.29	-1.93
Winchester	0.19	0.07	0.37	0.27	0.09	0.56	0.26	0.09	0.57	1.78	0.65	3.34	2.36	0.78	4.94	2.56	0.84	5.63	-1.58	-0.58	-2.97	-2.09	-0.67	-4.38	-2.30	-0.75	-5.06
Woodcrest	0.06	0.02	0.11	0.08	0.03	0.17	0.08	0.03	0.16	0.55	0.20	1.04	0.73	0.24	1.54	0.79	0.26	1.75	-0.50	-0.18	-0.93	-0.65	-0.21	-1.37	-0.72	-0.23	-1.58
Camarillo	0.19	0.07	0.36	0.27	0.09	0.56	0.26	0.09	0.55	1.81	0.68	3.40	2.40	0.78	5.03	2.60	0.85	5.72	-1.62	-0.59	-3.03	-2.13	-0.69	-4.47	-2.34	-0.77	-5.17
Casa Conejo	1.75	0.63	3.31	2.46	0.81	5.07	2.36	0.78	5.12	16.35	5.96	30.71	21.73	7.02	45.47	23.52	7.69	51.77	-14.61	-5.33	-27.41	-19.27	-6.21	-40.40	-21.15	-6.91	-46.66
Channel Islands Beach	0.06	0.02	0.11	0.08	0.03	0.17	0.08	0.03	0.17	0.63	0.23	1.19	0.84	0.27	1.77	0.91	0.30	2.01	-0.58	-0.21	-1.08	-0.78	-0.25	-1.59	-0.83	-0.27	-1.84
El Rio	0.11	0.04	0.21	0.15	0.05	0.32	0.15	0.05	0.32	0.98	0.36	1.84	1.30	0.42	2.72	1.41	0.46	3.10	-0.87	-0.32	-1.83	-1.15	-0.37	-2.41	-1.26	-0.41	-2.78
Fillmore	0.12	0.04	0.22	0.17	0.05	0.34	0.16	0.05	0.34	1.24	0.45	2.32	1.64	0.53	3.44	1.78	0.58	3.91	-1.10	-0.40	-2.06	-1.45	-0.47	-3.03	-1.59	-0.52	-3.50
Meiners Oaks	0.07	0.03	0.13	0.10	0.03	0.20	0.09	0.03	0.20	0.63	0.23	1.18	0.83	0.27	1.74	0.90	0.29	1.98	-0.56	-0.20	-1.04	-0.73	-0.24	-1.54	-0.81	-0.26	-1.78
Mira Monte	0.17	0.06	0.32	0.24	0.08	0.50	0.23	0.08	0.50	1.58	0.58	2.97	2.10	0.68	4.39	2.27	0.74	5.00	-1.41	-0.51	-2.64	-1.86	-0.60	-3.89	-2.04	-0.67	-4.50
Moorpark	0.41	0.15	0.78	0.58	0.19	1.20	0.55	0.18	1.19	4.59	1.67	8.62	6.10	1.97	12.78	6.60	2.18	14.53	-4.18	-1.52	-7.84	-5.52	-1.78	-11.58	-6.05	-1.98	-13.34
Oak Park	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.07	0.02	0.13	0.09	0.03	0.19	0.10	0.03	0.22	-0.06	-0.02	-0.12	-0.09	-0.03	-0.18	-0.09	-0.03	-0.20
Oak View	0.07	0.02	0.13	0.09	0.03	0.20	0.09	0.03	0.20	0.62	0.23	1.17	0.83	0.27	1.73	0.90	0.29	1.96	-0.56	-0.20	-1.04	-0.73	-0.24	-1.54	-0.81	-0.26	-1.78
Ojai	0.15	0.05	0.29	0.21	0.07	0.44	0.20	0.07	0.44	1.35	0.49	2.54	1.80	0.58	3.76	1.95	0.64	4.28	-1.20	-0.44	-2.26	-1.59	-0.51	-3.32	-1.74	-0.57	-3.84
Oxnard	3.85	1.38	7.29	5.45	1.76	11.21	5.18	1.71	11.21	37.82	13.78	71.03	50.28	16.23	105.16	54.38	17.79	119.73	-33.97	-12.40	-63.74	-44.80	-14.45	-93.94	-49.20	-16.08	-108.51
Piru	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.08	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Port Hueneme	0.44	0.16	0.83	0.61	0.20	1.27	0.59	0.19	1.28	3.98	1.44	7.43	5.26	1.70	11.00	5.69	1.86	12.52	-3.52	-1.28	-6.60	-4.64	-1.50	-9.73	-5.10	-1.67	-11.24
San Buenaventura (Ventura)	3.88	1.31	6.92	5.18	1.69	10.65	4.91	1.62	10.61	36.41	13.26	68.38	48.36	15.62	101.23	52.35	17.12	115.26	-32.75	-11.95	-61.46	-43.20	-13.93	-90.58	-47.44	-15.51	-104.65
Santa Paula	0.56	0.20	1.06	0.79	0.26	1.63	0.76	0.25	1.64	5.52	2.01	10.36	7.33	2.37	15.34	7.93	2.60	17.47	-4.96	-1.81	-9.30	-6.54	-2.11	-13.71	-7.17	-2.35	-15.82
Simi Valley	3.15	1.13	5.96	4.43	1.45	9.12	4.25	1.40	9.21	34.72	12.65	65.21	46.14	14.90	96.54	49.92	16.33	109.92	-31.57	-11.52	-59.25	-41.71	-13.45	-87.42	-45.67	-14.93	-100.71
Thousand Oaks	5.70	2.06	10.78	8.00	2.61	16.46	7.68	2.53	16.64	69.81	25.36	130.73	92.50	29.87	193.55	100.09	32.74	220.36	-63.91	-23.30	-119.95	-84.50	-27.26	-177.08	-92.41	-30.21	-203.72
Adelanto	0.15	0.05	0.28	0.21	0.07	0.43	0.20	0.06	0.42	1.69	0.62	3.18	2.25	0.73	4.71	2.44	0.80	5.38	-1.55	-0.58	-2.90	-2.04	-0.66	-4.28	-2.24	-0.73	-4.94
Apple Valley	0.73	0.26	1.38	1.03	0.34	2.12	0.98	0.32	2.13	6.75	2.48	12.67	8.97	2.90	18.78	9.70	3.17	21.36	-8.02	-2.20	-11.29	-7.94	-2.58	-16.64	-8.72	-2.85	-19.23
Barstow	0.49	0.18	0.93	0.70	0.23	1.43	0.66	0.22	1.42	4.58	1.68	8.57	6.07	1.96	12.69	6.56	2.15	14.45	-4.07	-1.49	-7.64	-5.37	-1.73	-11.26	-5.91	-1.93	-13.03
Big Bear City	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.07	0.02	0.13	0.09	0.03	0.19	0.10	0.03	0.22	-0.06	-0.02	-0.11	-0.08	-0.03	-0.17	-0.09	-0.03	-0.20
Big Bear Lake	0.30	0.11	0.56	0.42	0.14	0.86	0.40	0.13	0.87	2.37	0.86	4.45	3.15	1.02	6.56	3.41	1.11	7.50	-2.07	-0.76	-3.86	-2.73	-0.88	-5.73	-3.01	-0.99	-6.63
Bloomington	0.30	0.11	0.57	0.43	0.14	0.88	0.41	0.13	0.88	3.00	1.09	5.63	3.98	1.29	8.33	4.31	1.41	9.48	-2.69	-0.98	-5.06	-3.55	-1.15	-7.45	-3.90	-1.28	-8.60
Chino	1.99	0.71	3.77	2.83	0.92	5.81	2.67	0.88	5.78	26.31	9.58	49.41	34.96	11.29	73.15	37.83	12.37	83.28	-24.31	-8.87	-45.63	-32.13	-10.38	-67.33	-35.15	-11.49	-77.50
Chino Hills	0.83	0.22	1.18	0.88	0.29	1.81	0.85	0.28	1.84	6.43	3.44	17.72	12.54	4.05	26.23	13.56	4.44	29.86	-8.61	-3.21	-16.53	-11.66	-3.78	-24.42	-12.72	-4.16	-28.03
Colton	1.45	0.52	2.75	2.05	0.67	4.22	1.98	0.65	4.25	13.52	4.92	25.39	17.97	5.80	37.59	19.44	6.36	42.80	-12.07	-4.40	-22.64	-15.91	-5.13	-33.37	-17.48	-5.71	-38.55
Crestline	0.06	0.03	0.15	0.11	0.04	0.23	0.11	0.03	0.23	0.78	0.28	1.42	1.01	0.32	2.10	1.09	0.36	2.39	-0.68	-0.25	-1.27	-0.89	-0.29	-1.87	-0.98	-0.32	-2.17
Fontana	2.32	0.83	4.39	3.28	1.07	6.75	3.11	1.03	6.73	23.36	8.51	43.87	31.04	10.03	64.96	33.59	10.99	73.96	-21.04	-7.68	-39.49	-27.76	-8.95	-58.21	-30.48	-9.96	-67.22
Grand Terrace	0.84	0.30	1.59	1.18	0.39	2.43	1.14	0.37	2.46	7.86	2.86	14.77	10.45	3.37	21.87	11.31	3.70	24.90	-7.02	-2.58	-13.18	-9.27	-2.99	-19.43	-10.17	-3.32	-22.43
Hesperia	0.93	0.33	1.75	1.31	0.43	2.69	1.25	0.41	2.70	8.69	3.16	16.31	11.54	3.73	24.15	12.49	4.09	27.50	-7.76	-2.83	-14.56	-10.23	-3.30	-21.46	-11.24	-3.67	-24.80
Highland	0.52	0.19	0.99	0.74	0.24	1.52	0.71	0.23	1.54	5.15	1.97	9.67	6.84	2.21	14.31	7.40	2.42	16.29	-4.62	-1.69	-8.67	-6.10	-1.97	-12.79	-6.69	-2.19	-14.75
Joshua Tree	0.01	0.00	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.13	0.05	0.24	0.17	0.06	0.36	0.19	0.06	0.41	-0.12	-0.04	-0.22	-0.15	-0.05	-0.32	-0.17	-0.05	-0.37
Lake Arrowhead	0.12	0.04	0.23	0.16	0.06	0.36	0.17	0.06	0.36	0.93	0.34	1.75	1.24	0.40	2.59	1.34	0.44	2.95	-0.81	-0.30	-1.52	-1.06	-0.34	-2.23	-1.17	-0.38	-2.59
Lenwood	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.02	0.06	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27	-0.06	-0.03	-0.14	-0.10	-0.03	-0.21	-0.11	-0.04	-0.25
Loma Linda	0.35	0.12	0.66	0.49	0.18	1.01	0.47	0.16	1.02	3.21	1.17	6.03	4.26	1.38	8.92	4.61	1.51	10.18	-2.86	-1.04	-5.37	-3.77	-1.22	-7.91	-4.14	-1.35	-9.14
Mentone	0.04	0.01	0.08	0.06	0.02	0.12	0.05	0.02	0.12	0.52	0.19	0.97	0.69	0.22	1.44	0.75	0.24	1.64	-0.48	-0.17	-0.90	-0.63	-0.20	-1.32	-0.69	-0.23	-1.53
Montclair	2.03	0.73	3.85	2.87	0.94	5.90	2.75	0.91	5.95	38.00	13.84	71.37	50.50	16.31	105.67	54.85	17.88	120.31	-35.97	-13.11	-67.53	-47.63	-15.37	-99.77	-51.90	-16.97	-114.36
Morongo Valley	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Mountain View Acres	0.08	0.03	0.16	0.12	0.04	0.24	0.11	0.04	0.24	0.83	0.30	1.58	1.10	0.36	2.31	1.20	0.39	2.63	-0.75	-0.27	-1.41	-0.99	-0.32	-2.07	-1.08	-0.35	-2.39
Muscoy	0.15	0.05	0.28	0.21	0.07	0.43	0.20	0.07	0.44	1.27	0.46	2.38	1.68	0.54	3.52	1.82	0.60	4.01	-1.12	-0.41	-2.10	-1.47	-0.48	-3.09	-1.62	-0.53	-3.57
Nebo Center	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.10	-0.03	-0.01	-0.05	-0.04	-0.01	-0.08	-0.04	-0.01	-0.09
Ontario	5.30	1.90	10.03	7.52	2.48	15.45	7.11	2.34	15.36	63.11	22.99	118.52	83.86	27.08	175.47	90.74	29.88	199.79	-57.81	-21.09	-108.49	-76.34	-24.82	-160.02	-83.64	-27.34	-184.43
Rancho Cucamonga	3.49	1.25	6.59	4.91	1.60	10.11	4.72	1.55	10.22	33.97	12.37	63.79	45.14	14.58	94.44	48.84	15.98	107.53	-30.48	-11.12	-57.20	-40.23	-12.97	-84.33	-44.12	-14.42	-97.31
Redlands	2.10	0.75	3.97	2.96	0.97	6.09	2.84	0.93	6.14	19.08	6.95	35.83	25.35	8.19	53.05	27.43	8.97	60.40	-16.98	-6.20	-31.86	-22.39	-7.22	-46.96	-24.60	-8.04	-54.25
Rialto	1.39	0.50	2.63	1.96	0.64	4.04	1.87	0.62	4.05	13.51	4.92	25.37	17.95	5.80	37.57	19.43	6.35	42.77	-12.12	-4.42	-22.74	-15.99	-5.16	-33.52	-17.55	-5.74	-38.72
Running Springs	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.06	0.18	0.06	0.30	0.21	0.07	0.45	0.23	0.08	0.51	-0.14	-0.05	-0.26	-0.18	-0.06	-0.39	-0.20	-0.07	-0.45
San Antonio Heights	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08	0.37	0.13	0.69	0.49	0.16	1.02	0.53	0.17	1.16	-0.34	-0.12	-0.84	-0.45	-0.14	-0.94	-0.49	-0.16	-1.06
San Bernardino	6.10	2.19	11.54	8.81	2.81	17.72	8.23	2.71	17.82	58.65	20.83	106.39	75.28	24.31	157.51	81.45	26.64	179.33	-50.54	-18.45	-84.85	-66.87	-21.50	-139.79	-73.22	-23.93	-161.51
Twentynine Palms	0.20	0.07	0.38	0.28	0.09	0.56	0.27	0.09	0.59	1.85	0.67	3.48	2.48	0.80	5.15	2.66	0.87	5.87	-1.65	-0.60	-3.10	-2.18	-0.70	-4.57	-2.39	-0.78	-5.28
Twentynine Palms Base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Upland	2.48	0.88	4.65	3.45	1.13	7.11	3.34	1.10	7.25	29.80	10.78	55.58	39.33	12.70	82.29	42.58	13.92	93.70	-27.14	-9.90	-50.93	-35.88	-11.57	-75.18	-39.22	-12.62	-86.45
Victorville	2.18	0.76	4.12	3.06	1.01	6.33	2.93	0.97	6.35	21.18	7.71	39.78	28.14	9.09	58.89	30.45	9.96	67.05	-19.00	-6.93	-35.66	-25.07	-8.06	-52.56	-27.52	-8.99	-60.70
Wrightwood	0.04	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.10	0.35	0.13	0.66	0.46	0.15	0.97	0.50	0.18	1.10	-0.31	-0.11	-0.58	-0.41	-0.13	-0.87	-0.46	-0.15	-1.01
Yucaipa	0.60	0.22	1.14	0.85	0.28	1.75	0.81	0.27	1.78	5.57	2.03	10.48	7.40	2.39	15.48	8.01	2.62	17.83	-4.97	-1.81	-9.32	-6.55	-2.11	-13.73	-7.19	-2.35	-15.66
Yucca Valley	0.25	0.09	0.47	0.35	0.12	0.73	0.34	0.11	0.73	2.22	0.81	4.17	2.95	0.95	6.18	3.20	1.05	7.04	-1.97	-0.72	-3.70	-2.60	-0.84	-5.45	-2.86	-0.93	-6.30
LOS ANGELES - UNINCOR	113.71	40.81	219.50	125.21	45.40	248.77	106.95	33.80	235.26	210.88	76.73	411.09	290.87	93.93	606.62	314.74	102.96	692.95	-105.18	-39.12	-191.58	-165.66	-48.53	-359.85	-207.79	-69.36	-457.69
ORANGE - UNINCOR	3.79	1.36	7.15	5.32	1.74	10.94	5.10	1.68	11.04	38.41	13.99	72.13	51.04	16.48	108.79	55.23	18.07	121.59	-34.62	-12.63	-64.99	-45.72	-14.74	-95.85	-50.13	-16.39	-110.55
RIVERSIDE - UNINCOR	4.24	1.52	8.02	6.01	1.97	12.35	5.69	1.88	12.30	42.28	15.40	79.41	56.19	18.14	117.58	60.80	19.89	133.85	-38.04	-13.88	-71.38	-50.18	-16.18	-105.21	-55.10	-18.01	-121.55
SAN BERNARDINO - UNINCOR	4.59	1.64	8.67	6.51	2.13	13.37	8.15	2.03	13.28	51.34	18.70	96.42	68.22	22.03	142.74	73.82	24.15	162.52	-46.75	-17.06	-87.74	-61.71	-19.90	-129.37	-67.67	-22.12	-149.24
VENTURA - UNINCOR	4.02	1.45	7.58	5.70	1.87	11.89	5.31	1.75	11.47	45.28	16.49	85.04	60.17	19.43	125.91	65.11	21.30	143.35	-41.26	-15.04	-77.46	-54.48	-17.58	-114.22	-59.80	-19.55	-131.89
Total	1275.63	457.52	2411.97	1439.74	481.36	2846.01	1724.84	570.77	3728.46	11769.28	4287.05	22103.85	15639.89	5050.58	32724.47	16923.05	5535.78	37258.97	-10493.66	-3829.53	-19691.87	-14200.15	-4569.21	-29878.46	-15198.40	-4965.01	-33530.51

Table A10. Annual Indirect Impacts (Year 1 -Year 15)

(Millions of $ 1999)

Stimulus Effects

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.00	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
Agoura Hills	1.78	0.66	3.32	2.54	0.81	5.36	2.80	0.91	6.29
Alhambra	8.01	2.99	14.90	11.44	3.87	24.28	12.68	4.12	28.44
Alondra Park	0.31	0.12	0.58	0.45	0.14	0.95	0.49	0.16	1.11
Altadena	1.53	0.57	2.85	2.20	0.70	4.66	2.43	0.79	5.45
Arcadia	6.80	2.53	12.64	9.67	3.10	20.50	10.69	3.48	24.00
Artesia	1.46	0.54	2.71	2.06	0.67	4.40	2.29	0.75	5.15
Avocado Heights	3.28	1.22	6.09	4.70	1.51	9.96	5.18	1.68	11.60
Azusa	2.72	1.01	5.05	3.90	1.25	8.27	4.30	1.40	9.87
Baldwin Park	3.06	1.14	5.69	4.36	1.40	9.30	4.84	1.58	10.87
Bell	2.70	1.01	5.02	3.86	1.24	8.20	4.27	1.39	9.59
Bellflower	2.78	1.04	5.17	3.97	1.27	8.43	4.39	1.43	9.86
Bell Gardens	1.21	0.45	2.25	1.73	0.56	3.68	1.91	0.62	4.30
Beverly Hills	19.61	7.30	36.47	27.92	8.95	59.24	30.87	10.06	69.31
Bradbury	0.09	0.03	0.17	0.13	0.04	0.27	0.14	0.05	0.32
Burbank	16.46	6.14	30.64	23.54	7.55	49.95	26.02	8.48	58.45
Calabasas	1.51	0.56	2.81	2.15	0.69	4.57	2.38	0.78	5.34
Carson	16.18	6.04	30.08	23.19	7.43	49.22	25.62	8.35	57.59
Cerritos	6.56	2.44	12.19	9.34	3.00	19.82	10.33	3.36	23.19
Charter Oak	0.30	0.11	0.56	0.43	0.14	0.91	0.48	0.15	1.07
Citrus	0.14	0.05	0.26	0.20	0.06	0.42	0.22	0.07	0.49
Claremont	2.71	1.01	5.03	3.87	1.24	8.20	4.27	1.39	9.60
Commerce	12.16	4.54	22.59	17.41	5.58	36.96	19.28	6.27	43.29
Compton	6.59	2.46	12.25	9.45	3.03	20.05	10.44	3.40	23.47
Covina	4.26	1.59	7.93	6.08	1.95	12.89	6.72	2.19	15.08
Cudahy	0.38	0.14	0.72	0.55	0.18	1.17	0.61	0.20	1.37
Culver City	8.48	3.16	15.76	12.09	3.88	25.65	13.37	4.35	30.02
Del Aire	1.15	0.43	2.13	1.64	0.53	3.49	1.82	0.59	4.09
Desert View Highlands	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07
Diamond Bar	3.38	1.26	6.29	4.82	1.55	10.23	5.33	1.74	11.96
Downey	9.87	3.68	18.35	14.10	4.52	29.92	15.58	5.06	34.99
Duarte	1.12	0.42	2.07	1.60	0.51	3.39	1.76	0.57	3.96
East Compton	0.14	0.05	0.25	0.19	0.06	0.41	0.21	0.07	0.48
East La Mirada	0.10	0.04	0.20	0.15	0.05	0.32	0.17	0.05	0.37
East Los Angeles	7.91	2.95	14.70	11.31	3.63	24.02	12.53	4.06	28.16
East Pasadena	0.54	0.20	1.01	0.77	0.25	1.64	0.85	0.28	1.92
East San Gabriel	0.25	0.09	0.47	0.36	0.11	0.75	0.39	0.13	0.88
El Monte	8.48	3.16	15.76	12.13	3.89	25.74	13.41	4.37	30.14
El Segundo	13.69	5.11	25.45	19.60	6.28	41.61	21.70	7.07	48.78
Florence-Graham	1.90	0.71	3.54	2.73	0.87	5.79	3.02	0.96	6.79
Gardena	5.31	1.98	9.87	7.60	2.44	16.12	8.40	2.74	18.87
Glendale	21.47	8.00	39.93	30.58	9.80	64.82	33.77	11.00	75.81
Glendora	3.47	1.29	6.46	4.96	1.59	10.52	5.47	1.78	12.29
Hacienda Heights	2.40	0.89	4.46	3.42	1.10	7.27	3.78	1.23	8.49
Hawaiian Gardens	0.23	0.08	0.42	0.32	0.10	0.68	0.36	0.12	0.80
Hawthorne	4.21	1.57	7.82	6.02	1.93	12.77	6.65	2.17	14.94
Hermosa Beach	1.65	0.62	3.08	2.36	0.76	5.01	2.61	0.85	5.86
Hidden Hills	0.61	0.23	1.13	0.87	0.28	1.84	0.96	0.31	2.16
Huntington Park	2.68	1.00	4.98	3.83	1.23	8.12	4.23	1.38	9.51
Industry	10.35	3.86	19.23	14.81	4.75	31.44	16.37	5.33	36.80
Inglewood	8.27	3.09	15.36	11.84	3.79	25.12	13.06	4.26	29.40
Irwindale	6.96	2.59	12.94	9.88	3.17	20.95	10.92	3.56	24.49
La Canada Flintridge	2.07	0.77	3.86	2.93	0.94	6.21	3.24	1.05	7.26
La Crescenta-Montrose	0.99	0.37	1.85	1.41	0.45	3.00	1.56	0.51	3.51
Ladera Heights	0.87	0.32	1.61	1.24	0.40	2.63	1.37	0.45	3.08
La Habra Heights	0.17	0.06	0.31	0.24	0.08	0.50	0.26	0.09	0.59
Lake Los Angeles	0.02	0.01	0.04	0.03	0.01	0.07	0.04	0.01	0.08
Lakewood	2.98	1.11	5.54	4.25	1.36	9.02	4.69	1.53	10.54
La Mirada	4.24	1.58	7.89	6.07	1.95	12.88	6.71	2.19	15.07
Lancaster	5.73	2.13	10.65	8.16	2.62	17.35	9.03	2.94	20.29
La Puente	0.78	0.29	1.45	1.12	0.36	2.37	1.24	0.40	2.78
La Verne	1.54	0.57	2.86	2.20	0.71	4.68	2.44	0.79	5.47
Lawndale	1.20	0.45	2.22	1.71	0.55	3.62	1.88	0.61	4.23
Lennox	0.76	0.29	1.42	1.10	0.35	2.32	1.21	0.39	2.71
Littlerock	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.05
Lomita	1.10	0.41	2.05	1.57	0.50	3.34	1.74	0.57	3.90
Long Beach	38.57	14.38	71.71	55.11	17.67	118.95	60.92	19.85	136.87
Los Angeles	438.00	163.25	814.43	625.43	200.53	1327.00	691.07	225.17	1552.22
Lynwood	2.18	0.81	4.06	3.12	1.00	6.63	3.46	1.13	7.77
Malibu	0.63	0.23	1.16	0.89	0.29	1.89	0.98	0.32	2.21
Manhattan Beach	3.57	1.33	6.63	5.09	1.63	10.80	5.63	1.83	12.65
Marina del Rey	2.53	0.94	4.70	3.61	1.18	7.66	3.99	1.30	8.96
Mayflower Village	0.08	0.03	0.15	0.12	0.04	0.25	0.13	0.04	0.30
Maywood	1.54	0.57	2.86	2.21	0.71	4.69	2.44	0.80	5.49
Monrovia	4.27	1.59	7.94	6.11	1.96	12.96	6.76	2.20	15.19
Montebello	5.14	1.92	9.56	7.35	2.36	15.59	8.12	2.65	18.25
Monterey Park	5.57	2.07	10.37	7.92	2.54	16.80	8.75	2.85	19.63
North El Monte	0.22	0.08	0.40	0.31	0.10	0.66	0.34	0.11	0.77
Norwalk	4.32	1.61	8.04	6.19	1.98	13.13	6.83	2.23	15.35
Palmdale	3.98	1.48	7.41	5.69	1.82	12.07	6.28	2.05	14.10
Palos Verdes Estates	1.14	0.43	2.13	1.62	0.52	3.44	1.79	0.58	4.03
Paramount	4.01	1.50	7.46	5.75	1.84	12.20	6.36	2.07	14.29
Pasadena	29.87	11.13	55.58	42.61	13.66	90.40	47.06	15.34	105.72
Pico Rivera	3.98	1.49	7.40	5.70	1.83	12.10	6.30	2.05	14.17
Pomona	8.82	3.29	16.40	12.61	4.04	26.75	13.93	4.54	31.28
Quartz Hill	0.35	0.13	0.66	0.50	0.16	1.07	0.56	0.18	1.25
Rancho Palos Verdes	1.79	0.67	3.33	2.55	0.82	5.41	2.82	0.92	6.32
Redondo Beach	5.87	2.19	10.92	8.40	2.69	17.82	9.28	3.02	20.86
Rolling Hills	0.07	0.03	0.14	0.10	0.03	0.22	0.12	0.04	0.28
Rolling Hills Estates	0.53	0.20	0.98	0.75	0.24	1.59	0.83	0.27	1.86
Rosemead	5.53	2.06	10.29	7.92	2.54	16.79	8.70	2.83	19.52
Rowland Heights	2.57	0.96	4.79	3.68	1.18	7.81	4.07	1.33	9.14
San Dimas	3.37	1.26	6.26	4.82	1.54	10.22	5.32	1.73	11.94
San Fernando	2.22	0.83	4.13	3.18	1.02	6.74	3.51	1.14	7.88
San Gabriel	2.18	0.81	4.06	3.11	1.00	6.59	3.43	1.12	7.71
San Marino	1.39	0.52	2.59	1.98	0.63	4.19	2.19	0.71	4.91
Santa Clarita	6.42	2.39	11.94	9.17	2.94	19.45	10.13	3.30	22.75
Santa Fe Springs	13.03	4.86	24.21	18.67	5.98	39.64	20.65	6.73	48.43

Impacts of Household Expenditure Reduction

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
Agoura Hills	2.34	0.85	4.39	3.11	1.00	6.50	3.38	1.10	7.40
Alhambra	9.71	3.54	18.24	12.91	4.17	27.00	13.96	4.57	30.75
Alondra Park	0.35	0.13	0.67	0.47	0.15	0.99	0.51	0.17	1.12
Altadena	1.50	0.55	2.62	1.99	0.64	4.17	2.16	0.71	4.75
Arcadia	9.03	3.29	16.95	11.99	3.87	25.10	12.98	4.25	28.57
Artesia	1.82	0.66	3.41	2.41	0.78	5.05	2.61	0.85	5.75
Avocado Heights	5.27	1.92	9.89	7.00	2.26	14.64	7.57	2.48	16.67
Azusa	3.72	1.35	6.96	4.94	1.60	10.34	5.35	1.75	11.77
Baldwin Park	4.15	1.51	7.80	5.52	1.78	11.54	5.97	1.95	13.14
Bell	3.44	1.25	6.47	4.58	1.48	9.58	4.95	1.62	10.90
Bellflower	3.36	1.22	6.31	4.47	1.44	9.34	4.83	1.58	10.64
Bell Gardens	1.89	0.69	3.55	2.51	0.81	5.26	2.72	0.89	5.98
Beverly Hills	23.38	8.52	43.91	31.07	10.03	65.01	33.62	11.00	74.02
Bradbury	0.14	0.05	0.27	0.19	0.06	0.40	0.21	0.07	0.45
Burbank	22.40	8.16	42.07	29.77	9.61	62.29	32.21	10.54	70.92
Calabasas	1.82	0.66	3.42	2.42	0.78	5.06	2.62	0.86	5.76
Carson	20.48	7.45	38.43	27.19	8.78	56.89	29.42	9.62	64.78
Cerritos	8.35	3.04	15.69	11.10	3.58	23.23	12.01	3.93	26.45
Charter Oak	0.36	0.13	0.67	0.47	0.15	0.99	0.51	0.17	1.12
Citrus	0.16	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58
Claremont	2.74	1.00	5.15	3.84	1.18	7.82	3.94	1.29	8.68
Commerce	17.41	6.34	32.71	23.14	7.47	48.42	25.04	8.19	55.13
Compton	8.81	3.14	16.17	11.44	3.69	23.94	12.38	4.05	27.25
Covina	5.24	1.91	9.64	6.98	2.25	14.58	7.53	2.46	16.58
Cudahy	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48
Culver City	11.47	4.18	21.54	15.24	4.92	31.89	16.49	5.40	36.31
Del Aire	1.21	0.44	2.27	1.61	0.52	3.36	1.74	0.57	3.83
Desert View Highlands	0.03	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08
Diamond Bar	4.38	1.60	8.23	5.82	1.88	12.18	6.30	2.06	13.87
Downey	10.55	3.84	19.82	14.02	4.53	29.35	15.18	4.96	33.41
Duarte	1.27	0.46	2.38	1.69	0.54	3.53	1.82	0.60	4.02
East Compton	0.12	0.04	0.23	0.16	0.05	0.33	0.17	0.06	0.38
East La Mirada	0.12	0.05	0.23	0.17	0.05	0.35	0.18	0.06	0.39
East Los Angeles	9.27	3.38	17.41	12.32	3.98	25.77	13.33	4.36	29.34
East Pasadena	0.60	0.22	1.12	0.79	0.26	1.66	0.86	0.28	1.89
East San Gabriel	0.34	0.12	0.64	0.45	0.15	0.95	0.49	0.16	1.08
El Monte	9.94	3.62	18.66	13.21	4.27	27.65	14.30	4.68	31.48
El Segundo	18.02	5.83	30.06	21.28	6.87	44.53	23.03	7.53	50.70
Florence-Graham	2.37	0.86	4.45	3.15	1.02	6.59	3.41	1.11	7.50
Gardena	7.10	2.59	13.34	9.44	3.05	19.75	10.21	3.34	22.49
Glendale	28.87	10.52	54.23	38.37	12.39	80.28	41.52	13.58	91.41
Glendora	4.46	1.63	8.38	5.93	1.91	12.41	6.42	2.10	14.13
Hacienda Heights	2.93	1.07	5.51	3.90	1.26	8.16	4.22	1.38	9.29
Hawaiian Gardens	0.26	0.09	0.48	0.34	0.11	0.72	0.37	0.12	0.81
Hawthorne	4.95	1.80	9.30	6.58	2.12	13.76	7.12	2.33	15.67
Hermosa Beach	1.95	0.71	3.68	2.59	0.84	5.42	2.80	0.92	6.17
Hidden Hills	0.69	0.25	1.29	0.91	0.29	1.91	0.99	0.32	2.17
Huntington Park	3.42	1.24	6.42	4.54	1.47	9.50	4.91	1.61	10.82
Industry	14.27	5.20	26.80	18.96	6.12	39.68	20.52	6.71	45.17
Inglewood	9.77	3.56	18.34	12.98	4.19	27.15	14.04	4.59	30.91
Irwindale	10.27	3.74	19.30	13.65	4.41	28.57	14.77	4.83	32.53
La Canada Flintridge	2.77	1.01	5.21	3.68	1.19	7.71	3.99	1.30	8.77
La Crescenta-Montrose	1.20	0.44	2.25	1.59	0.51	3.32	1.72	0.56	3.78
Ladera Heights	1.06	0.39	2.02	1.43	0.46	2.99	1.55	0.51	3.41
La Habra Heights	0.21	0.08	0.40	0.28	0.09	0.59	0.31	0.10	0.67
Lake Los Angeles	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07
Lakewood	3.97	1.45	7.46	5.28	1.71	11.05	5.71	1.87	12.58
La Mirada	5.78	2.10	10.81	7.65	2.47	16.00	8.28	2.71	18.22
Lancaster	7.17	2.61	13.48	9.52	3.08	19.93	10.31	3.37	22.69
La Puente	1.07	0.39	2.01	1.42	0.46	2.98	1.54	0.50	3.39
La Verne	1.77	0.64	3.32	2.35	0.76	4.91	2.54	0.83	5.59
Lawndale	1.43	0.52	2.69	1.90	0.61	3.96	2.06	0.67	4.53
Lennox	0.91	0.33	1.72	1.22	0.39	2.54	1.32	0.43	2.90
Littlerock	0.02	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.05
Lomita	1.32	0.48	2.48	1.75	0.57	3.67	1.90	0.62	4.17
Long Beach	44.02	16.04	82.68	58.50	18.89	122.41	63.30	20.71	139.37
Los Angeles	542.87	197.74	1019.55	721.40	232.96	1509.44	780.59	255.34	1718.60
Lynwood	2.54	0.92	4.77	3.37	1.09	7.06	3.65	1.19	8.04
Malibu	0.80	0.29	1.51	1.07	0.34	2.23	1.15	0.38	2.54
Manhattan Beach	3.85	1.40	7.23	5.12	1.65	10.70	5.54	1.81	12.19
Marina del Rey	2.53	0.92	4.76	3.37	1.09	7.04	3.64	1.19	8.02
Mayflower Village	0.10	0.04	0.19	0.14	0.04	0.28	0.15	0.05	0.32
Maywood	1.73	0.63	3.24	2.29	0.74	4.80	2.48	0.81	5.46
Monrovia	4.75	1.73	8.91	6.31	2.04	13.20	6.82	2.23	15.03
Montebello	6.87	2.50	12.91	9.13	2.95	19.11	9.88	3.23	21.76
Monterey Park	7.48	2.72	14.05	9.94	3.21	20.80	10.76	3.52	23.68
North El Monte	0.27	0.10	0.50	0.35	0.11	0.74	0.38	0.13	0.84
Norwalk	5.84	2.05	10.59	7.49	2.42	15.67	8.11	2.65	17.85
Palmdale	4.95	1.80	9.30	6.58	2.12	13.78	7.12	2.33	15.67
Palos Verdes Estates	1.42	0.52	2.67	1.89	0.61	3.95	2.04	0.67	4.50
Paramount	5.13	1.87	9.63	6.81	2.20	14.26	7.37	2.41	16.23
Pasadena	31.74	11.56	59.81	42.18	13.62	88.25	45.64	14.93	100.47
Pico Rivera	4.40	1.60	8.27	5.85	1.89	12.24	6.33	2.07	13.94
Pomona	11.34	4.13	21.29	15.07	4.87	31.53	16.30	5.33	35.90
Quartz Hill	0.41	0.15	0.77	0.55	0.18	1.14	0.59	0.19	1.30
Rancho Palos Verdes	2.13	0.78	4.00	2.63	0.81	5.92	3.06	1.00	6.74
Redondo Beach	6.27	2.28	11.78	8.33	2.89	17.44	9.02	2.95	19.85
Rolling Hills	0.08	0.03	0.15	0.10	0.03	0.22	0.11	0.04	0.25
Rolling Hills Estates	0.69	0.25	1.30	0.92	0.30	1.93	1.00	0.33	2.20
Rosemead	9.31	3.39	17.49	12.37	4.00	25.89	13.39	4.38	29.48
Rowland Heights	3.42	1.25	6.42	4.54	1.47	9.50	4.91	1.61	10.82
San Dimas	4.40	1.60	8.27	5.85	1.89	12.24	6.33	2.07	13.94
San Fernando	3.15	1.15	5.92	4.19	1.35	8.78	4.53	1.48	9.97
San Gabriel	2.80	1.02	5.27	3.73	1.20	7.80	4.03	1.32	8.88
San Marino	1.91	0.70	3.59	2.54	0.82	5.32	2.75	0.90	6.06
Santa Clarita	8.44	3.07	15.85	11.22	3.62	23.47	12.14	3.97	26.72
Santa Fe Springs	17.20	6.27	32.31	22.86	7.36	47.83	24.74	8.09	54.46

Net Impacts

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Agoura Hills	-0.55	-0.19	-1.07	-0.57	-0.19	-1.12	-0.56	-0.19	-1.11
Alhambra	-1.70	-0.55	-3.34	-1.48	-0.50	-2.72	-1.31	-0.44	-2.31
Alondra Park	-0.04	-0.01	-0.08	-0.02	-0.01	-0.04	-0.02	-0.01	-0.01
Altadena	0.03	0.03	0.04	0.20	0.06	0.49	0.27	0.09	0.71
Arcadia	-2.23	-0.76	-4.31	-2.33	-0.77	-4.59	-2.29	-0.76	-4.58
Artesia	-0.36	-0.12	-0.70	-0.34	-0.11	-0.65	-0.32	-0.11	-0.60
Avocado Heights	-1.99	-0.70	-3.80	-2.30	-0.75	-4.68	-2.41	-0.79	-5.07
Azusa	-1.00	-0.34	-1.93	-1.04	-0.35	-2.07	-1.04	-0.35	-2.10
Baldwin Park	-1.09	-0.37	-2.11	-1.14	-0.38	-2.25	-1.13	-0.38	-2.27
Bell	-0.74	-0.25	-1.45	-0.72	-0.24	-1.38	-0.68	-0.23	-1.31
Bellflower	-0.58	-0.19	-1.14	-0.49	-0.17	-0.92	-0.44	-0.15	-0.78
Bell Gardens	-0.68	-0.24	-1.30	-0.78	-0.26	-1.58	-0.80	-0.27	-1.68
Beverly Hills	-3.77	-1.21	-7.44	-3.15	-1.06	-5.77	-2.75	-0.94	-4.71
Bradbury	-0.05	-0.02	-0.10	-0.06	-0.02	-0.12	-0.06	-0.02	-0.13
Burbank	-5.92	-2.02	-11.43	-6.23	-2.07	-12.34	-6.19	-2.06	-12.47
Calabasas	-0.31	-0.10	-0.61	-0.28	-0.09	-0.49	-0.24	-0.08	-0.42
Carson	-4.28	-1.42	-8.35	-4.00	-1.35	-7.67	-3.80	-1.28	-7.19
Cerritos	-1.80	-0.60	-3.50	-1.76	-0.59	-3.41	-1.68	-0.56	-3.26
Charter Oak	-0.05	-0.02	-0.11	-0.04	-0.01	-0.07	-0.03	-0.01	-0.06
Citrus	-0.04	-0.02	-0.09	-0.05	-0.02	-0.09	-0.05	-0.02	-0.09
Claremont	-0.04	0.01	-0.12	0.22	0.08	0.58	0.33	0.10	0.92
Commerce	-5.26	-1.81	-10.11	-5.73	-1.89	-11.46	-5.76	-1.92	-11.84
Compton	-2.02	-0.68	-3.91	-1.99	-0.67	-3.88	-1.94	-0.65	-3.79
Covina	-0.97	-0.32	-1.91	-0.88	-0.30	-1.87	-0.82	-0.28	-1.50
Cudahy	-0.08	-0.03	-0.16	-0.07	-0.02	-0.13	-0.06	-0.02	-0.11
Culver City	-3.00	-1.02	-5.78	-3.15	-1.05	-6.24	-3.13	-1.04	-6.30
Del Aire	-0.08	-0.01	-0.14	0.03	0.01	0.12	0.06	0.02	0.26
Desert View Highlands	0.00	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Diamond Bar	-1.00	-0.34	-1.94	-1.00	-0.33	-1.85	-0.97	-0.32	-1.91
Downey	-0.88	-0.17	-1.47	0.08	-0.01	0.57	0.40	0.11	1.58
Duarte	-0.15	-0.05	-0.31	-0.09	-0.03	-0.14	-0.06	-0.02	-0.06
East Compton	0.02	0.01	0.03	0.03	0.01	0.08	0.04	0.01	0.10
East La Mirada	-0.02	-0.01	-0.04	-0.02	-0.01	-0.03	-0.01	0.00	-0.02
East Los Angeles	-1.36	-0.42	-2.70	-1.00	-0.35	-1.75	-0.80	-0.28	-1.19
East Pasadena	-0.06	-0.02	-0.11	-0.02	-0.01	-0.02	0.00	0.00	0.03
East San Gabriel	-0.09	-0.03	-0.17	-0.10	-0.03	-0.19	-0.10	-0.03	-0.20
El Monte	-1.47	-0.48	-2.91	-1.09	-0.38	-1.91	-0.89	-0.31	-1.34
El Segundo	-2.32	-0.72	-4.63	-1.69	-0.59	-2.93	-1.33	-0.47	-1.92
Florence-Graham	-0.46	-0.15	-0.91	-0.42	-0.14	-0.79	-0.39	-0.13	-0.71
Gardena	-1.79	-0.61	-3.47	-1.84	-0.61	-3.63	-1.82	-0.61	-3.62
Glendale	-7.40	-2.52	-14.29	-7.81	-2.59	-15.46	-7.75	-2.58	-15.60
Glendora	-0.99	-0.33	-1.92	-0.97	-0.32	-1.89	-0.94	-0.32	-1.83
Hacienda Heights	-0.54	-0.18	-1.05	-0.48	-0.16	-0.89	-0.44	-0.15	-0.80
Hawaiian Gardens	-0.03	-0.01	-0.06	-0.02	-0.01	-0.03	-0.01	0.00	-0.01
Hawthorne	-0.74	-0.23	-1.47	-0.56	-0.19	-0.99	-0.47	-0.16	-0.73
Hermosa Beach	-0.29	-0.09	-0.58	-0.23	-0.08	-0.41	-0.19	-0.07	-0.31
Hidden Hills	-0.08	-0.02	-0.16	-0.04	-0.02	-0.06	-0.03	-0.01	-0.02
Huntington Park	-0.74	-0.25	-1.44	-0.71	-0.24	-1.38	-0.68	-0.23	-1.31
Industry	-3.92	-1.34	-7.57	-4.15	-1.38	-8.23	-4.14	-1.38	-8.37
Inglewood	-1.49	-0.47	-2.98	-1.14	-0.40	-2.03	-0.98	-0.33	-1.51
Irwindale	-3.32	-1.15	-6.35	-3.77	-1.24	-7.61	-3.86	-1.27	-8.03
La Canada Flintridge	-0.70	-0.24	-1.35	-0.75	-0.25	-1.49	-0.75	-0.25	-1.52
La Crescenta-Montrose	-0.20	-0.07	-0.40	-0.17	-0.06	-0.32	-0.16	-0.05	-0.28
Ladera Heights	-0.21	-0.07	-0.41	-0.19	-0.06	-0.36	-0.18	-0.06	-0.33
La Habra Heights	-0.05	-0.02	-0.09	-0.04	-0.01	-0.09	-0.04	-0.01	-0.06
Lake Los Angeles	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Lakewood	-1.00	-0.34	-1.93	-1.03	-0.34	-2.03	-1.02	-0.34	-2.04
La Mirada	-1.51	-0.51	-2.92	-1.58	-0.52	-3.12	-1.57	-0.52	-3.15
Lancaster	-1.44	-0.48	-2.81	-1.35	-0.45	-2.58	-1.27	-0.43	-2.41
La Puente	-0.29	-0.10	-0.58	-0.31	-0.10	-0.61	-0.31	-0.10	-0.62
La Verne	-0.23	-0.07	-0.45	-0.15	-0.05	-0.24	-0.11	-0.04	-0.12
Lawndale	-0.24	-0.08	-0.47	-0.20	-0.07	-0.36	-0.17	-0.06	-0.30
Lennox	-0.15	-0.05	-0.30	-0.12	-0.04	-0.22	-0.11	-0.04	-0.18
Littlerock	0.00	0.00	-0.01	0.00	0.00	0.00	0.00	0.00	0.00
Lomita	-0.22	-0.07	-0.43	-0.18	-0.06	-0.33	-0.16	-0.05	-0.27
Long Beach	-5.45	-1.66	-10.97	-3.39	-1.22	-5.48	-2.38	-0.86	-2.50
Los Angeles	-104.86	-34.49	-205.12	-95.97	-32.43	-182.44	-89.52	-30.18	-168.38
Lynwood	-0.36	-0.11	-0.71	-0.25	-0.09	-0.43	-0.19	-0.07	-0.27
Malibu	-0.18	-0.06	-0.35	-0.18	-0.06	-0.34	-0.17	-0.06	-0.33
Manhattan Beach	-0.28	-0.07	-0.60	-0.02	-0.02	0.10	0.10	0.02	0.46
Marina del Rey	-0.01	0.02	-0.06	0.24	0.07	0.61	0.35	0.11	0.94
Mayflower Village	-0.02	-0.01	-0.04	-0.02	-0.01	-0.03	-0.02	-0.01	-0.03
Maywood	-0.19	-0.05	-0.38	-0.09	-0.03	-0.11	-0.04	-0.02	0.03
Monrovia	-0.48	-0.14	-0.98	-0.20	-0.06	-0.22	-0.06	-0.03	0.17
Montebello	-1.73	-0.59	-3.35	-1.79	-0.59	-3.52	-1.76	-0.59	-3.51
Monterey Park	-1.91	-0.65	-3.68	-2.02	-0.67	-4.00	-2.00	-0.67	-4.05
North El Monte	-0.05	-0.02	-0.10	-0.04	-0.01	-0.08	-0.04	-0.01	-0.07
Norwalk	-1.31	-0.44	-2.55	-1.30	-0.43	-2.54	-1.27	-0.43	-2.50
Palmdale	-0.97	-0.32	-1.89	-0.89	-0.30	-1.70	-0.84	-0.28	-1.57
Palos Verdes Estates	-0.28	-0.09	-0.55	-0.27	-0.09	-0.51	-0.25	-0.08	-0.48
Paramount	-1.11	-0.37	-2.17	-1.07	-0.36	-2.05	-1.01	-0.34	-1.94
Pasadena	-1.86	-0.43	-4.05	0.44	0.04	2.15	1.44	0.41	5.24
Pico Rivera	-0.42	-0.12	-0.87	-0.15	-0.06	-0.14	-0.03	-0.02	0.23
Pomona	-2.52	-0.84	-4.90	-2.48	-0.82	-4.77	-2.38	-0.80	-4.61
Quartz Hill	-0.06	-0.02	-0.12	-0.04	-0.01	-0.07	-0.03	-0.01	-0.05
Rancho Palos Verdes	-0.34	-0.11	-0.66	-0.28	-0.10	-0.51	-0.24	-0.08	-0.42
Redondo Beach	-0.40	-0.09	-0.86	0.06	0.00	0.38	0.27	0.08	1.01
Rolling Hills	0.00	0.00	-0.01	0.00	0.00	0.01	0.00	0.00	0.01
Rolling Hills Estates	-0.17	-0.06	-0.32	-0.17	-0.06	-0.34	-0.17	-0.06	-0.34
Rosemead	-3.78	-1.33	-7.19	-4.45	-1.45	-9.10	-4.69	-1.54	-9.96
Rowland Heights	-0.84	-0.28	-1.63	-0.86	-0.29	-1.69	-0.85	-0.28	-1.68
San Dimas	-1.03	-0.35	-2.01	-1.04	-0.35	-2.03	-1.02	-0.34	-2.00
San Fernando	-0.93	-0.32	-1.79	-1.01	-0.33	-2.02	-1.02	-0.34	-2.09
San Gabriel	-0.62	-0.21	-1.21	-0.62	-0.21	-1.20	-0.60	-0.20	-1.17
San Marino	-0.52	-0.18	-1.01	-0.57	-0.19	-1.13	-0.56	-0.19	-1.15
Santa Clarita	-2.02	-0.68	-3.92	-2.05	-0.68	-4.02	-2.01	-0.67	-3.98
Santa Fe Springs	-4.18	-1.41	-8.10	-4.19	-1.40	-8.20	-4.09	-1.38	-8.03

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Santa Monica	22.71	8.47	42.23	32.44	10.40	68.64	35.86	11.68	80.55	24.99	9.10	46.94	33.21	10.73	69.50	35.94	11.78	79.12	-2.28	-0.84	-4.71	-0.77	-0.32	-0.86	-0.08	-0.07	1.43
Sierra Madre	0.66	0.25	1.23	0.94	0.30	2.00	1.04	0.34	2.34	0.74	0.27	1.39	0.98	0.32	2.08	1.06	0.35	2.34	-0.08	-0.02	-0.16	-0.04	-0.02	-0.08	-0.02	-0.01	-0.01
Signal Hill	4.23	1.58	7.86	6.05	1.94	12.85	6.69	2.18	15.04	5.36	1.95	10.07	7.13	2.30	14.92	7.71	2.52	16.98	-1.14	-0.38	-2.22	-1.07	-0.36	-2.06	-1.02	-0.34	-1.94
South El Monte	3.18	1.19	5.92	4.58	1.46	9.68	5.05	1.64	11.35	4.62	1.66	8.68	6.14	1.98	12.85	6.65	2.17	14.64	-1.44	-0.50	-2.77	-1.58	-0.52	-3.17	-1.60	-0.53	-3.29
South Gate	3.83	1.43	7.12	5.47	1.75	11.62	6.05	1.97	13.59	5.18	1.88	9.70	6.86	2.22	14.35	7.42	2.43	16.34	-1.33	-0.45	-2.58	-1.39	-0.48	-2.74	-1.37	-0.46	-2.75
South Pasadena	2.66	0.99	4.94	3.79	1.22	8.04	4.20	1.37	9.42	3.17	1.15	5.95	4.21	1.36	8.81	4.55	1.49	10.03	-0.51	-0.16	-1.00	-0.42	-0.14	-0.78	-0.36	-0.12	-0.60
South San Gabriel	0.31	0.11	0.57	0.44	0.14	0.93	0.48	0.18	1.09	0.34	0.12	0.63	0.45	0.14	0.93	0.48	0.18	1.06	-0.03	-0.01	-0.06	-0.01	0.00	-0.01	0.00	0.00	0.07
South San Jose Hills	0.17	0.06	0.32	0.25	0.08	0.52	0.27	0.09	0.61	0.21	0.08	0.40	0.28	0.09	0.59	0.30	0.10	0.67	-0.04	-0.01	-0.08	-0.04	-0.01	-0.07	-0.03	-0.01	-0.06
South Whittier	1.33	0.49	2.47	1.90	0.61	4.03	2.10	0.68	4.72	1.62	0.59	3.04	2.15	0.69	4.50	2.33	0.76	5.12	-0.29	-0.09	-0.57	-0.25	-0.09	-0.47	-0.23	-0.08	-0.41
Temple City	1.43	0.53	2.66	2.04	0.65	4.33	2.25	0.73	5.06	1.81	0.66	3.40	2.40	0.78	5.03	2.60	0.85	5.72	-0.38	-0.13	-0.74	-0.36	-0.12	-0.70	-0.34	-0.12	-0.66
Torrance	25.68	9.57	47.74	36.67	11.76	77.63	40.57	13.22	91.14	30.27	11.03	56.85	40.23	12.99	84.17	43.53	14.24	95.83	-4.59	-1.45	-9.11	-3.55	-1.23	-6.33	-2.96	-1.02	-4.69
Valinda	0.31	0.12	0.58	0.44	0.14	0.94	0.49	0.16	1.10	0.38	0.14	0.72	0.51	0.18	1.07	0.55	0.18	1.21	-0.07	-0.02	-0.14	-0.07	-0.02	-0.12	-0.06	-0.02	-0.11
Val Verde	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Vernon	12.27	4.58	22.80	17.58	5.64	37.34	19.46	6.34	43.76	18.88	6.88	35.48	25.09	8.10	52.49	27.15	8.88	59.77	-6.61	-2.30	-12.68	-7.50	-2.47	-15.15	-7.68	-2.54	-16.00
View Park-Windsor Hills	0.84	0.31	1.56	1.20	0.38	2.55	1.33	0.43	2.98	0.85	0.31	1.60	1.13	0.37	2.37	1.22	0.40	2.69	-0.01	0.00	-0.03	0.07	0.02	0.18	0.10	0.03	0.28
Vincent	0.42	0.16	0.77	0.59	0.19	1.26	0.66	0.21	1.48	0.55	0.20	1.03	0.73	0.24	1.52	0.79	0.26	1.74	-0.13	-0.04	-0.26	-0.13	-0.04	-0.26	-0.13	-0.04	-0.26
Walnut	1.70	0.64	3.17	2.43	0.78	5.18	2.69	0.88	6.05	2.02	0.73	3.79	2.68	0.87	5.61	2.90	0.95	6.39	-0.31	-0.10	-0.62	-0.25	-0.09	-0.45	-0.21	-0.07	-0.34
Walnut Park	0.28	0.11	0.53	0.41	0.13	0.86	0.45	0.15	1.01	0.33	0.12	0.62	0.44	0.14	0.92	0.47	0.15	1.04	-0.04	-0.01	-0.09	-0.03	-0.01	-0.05	-0.02	-0.01	-0.03
West Athens	0.41	0.15	0.76	0.59	0.19	1.24	0.65	0.21	1.46	0.54	0.20	1.02	0.72	0.23	1.50	0.78	0.25	1.71	-0.13	-0.04	-0.25	-0.13	-0.04	-0.26	-0.13	-0.04	-0.25
West Carson	2.05	0.76	3.81	2.93	0.94	6.23	3.24	1.06	7.29	2.07	0.75	3.89	2.75	0.89	5.78	2.98	0.97	6.58	-0.02	0.01	-0.08	0.18	0.05	0.46	0.27	0.08	0.73
West Compton	2.18	0.81	4.05	3.12	1.00	6.63	3.45	1.13	7.77	3.18	1.18	5.97	4.22	1.36	8.84	4.57	1.49	10.06	-1.00	-0.34	-1.92	-1.10	-0.36	-2.20	-1.12	-0.37	-2.30
West Covina	4.55	1.69	8.46	6.48	2.08	13.74	7.18	2.33	16.07	5.70	2.08	10.71	7.57	2.45	15.85	8.20	2.68	18.05	-1.15	-0.38	-2.25	-1.10	-0.37	-2.11	-1.04	-0.35	-1.97
West Hollywood	8.41	3.14	15.64	12.03	3.86	25.54	13.31	4.34	29.91	8.29	3.02	15.56	11.01	3.56	23.04	11.91	3.90	26.23	0.13	0.12	0.08	1.02	0.30	2.50	1.39	0.44	3.68
Westlake Village	0.44	0.16	0.81	0.62	0.20	1.31	0.68	0.22	1.53	0.57	0.21	1.07	0.76	0.24	1.58	0.82	0.27	1.80	-0.13	-0.05	-0.26	-0.14	-0.05	-0.27	-0.14	-0.05	-0.27
Westmont	0.68	0.25	1.23	0.95	0.30	2.01	1.05	0.34	2.35	0.68	0.24	1.25	0.88	0.28	1.84	0.95	0.31	2.10	0.00	0.01	-0.01	0.07	0.02	0.17	0.09	0.03	0.26
West Puente Valley	0.50	0.18	0.92	0.71	0.23	1.51	0.79	0.26	1.77	0.69	0.25	1.30	0.92	0.30	1.92	0.99	0.33	2.19	-0.20	-0.07	-0.38	-0.21	-0.07	-0.42	-0.21	-0.07	-0.42
West Whittier-Los Nietos	0.64	0.31	1.57	1.21	0.39	2.56	1.33	0.43	2.99	1.15	0.42	2.18	1.53	0.49	3.20	1.65	0.54	3.64	-0.31	-0.10	-0.59	-0.32	-0.11	-0.64	-0.32	-0.11	-0.66
Whittier	4.69	1.75	8.72	6.69	2.15	14.20	7.39	2.41	16.60	5.63	2.05	10.58	7.49	2.42	15.66	8.10	2.65	17.83	-0.94	-0.30	-1.86	-0.79	-0.27	-1.46	-0.71	-0.24	-1.23
Willowbrook	2.77	1.03	5.15	3.97	1.27	8.42	4.38	1.43	9.84	3.98	1.44	7.44	5.27	1.70	11.02	5.70	1.86	12.55	-1.19	-0.41	-2.29	-1.30	-0.43	-2.60	-1.32	-0.44	-2.71
Aliso Viejo	2.11	0.79	3.92	3.01	0.97	6.39	3.33	1.08	7.48	2.53	0.92	4.75	3.36	1.08	7.03	3.64	1.19	8.00	-0.42	-0.13	-0.82	-0.35	-0.12	-0.64	-0.31	-0.10	-0.53
Anaheim	37.90	14.13	70.48	54.18	17.37	114.92	59.83	19.49	134.40	48.09	17.52	90.33	63.91	20.64	133.73	69.16	22.62	152.26	-10.20	-3.39	-19.86	-9.75	-3.27	-18.80	-9.32	-3.13	-17.66
Brea	7.43	2.77	13.81	10.58	3.39	22.44	11.69	3.81	26.24	9.67	3.52	18.15	12.85	4.15	26.88	13.90	4.55	30.60	-2.24	-0.76	-4.34	-2.27	-0.78	-4.44	-2.21	-0.74	-4.36
Buena Park	7.48	2.79	13.90	10.70	3.43	22.71	11.82	3.85	26.57	10.06	3.66	18.89	13.37	4.32	27.97	14.46	4.73	31.84	-2.58	-0.88	-4.99	-2.67	-0.89	-5.26	-2.64	-0.88	-5.28
Costa Mesa	23.91	8.91	44.46	34.11	10.94	72.38	37.71	12.29	84.70	27.48	10.01	51.60	36.51	11.79	76.40	39.51	12.92	86.96	-3.57	-1.10	-7.15	-2.40	-0.85	-4.02	-1.80	-0.64	-2.29
Coto de Caza	0.16	0.06	0.30	0.23	0.07	0.48	0.25	0.08	0.57	0.21	0.08	0.39	0.28	0.09	0.58	0.30	0.10	0.66	-0.05	-0.02	-0.09	-0.05	-0.02	-0.09	-0.05	-0.02	-0.09
Cypress	6.83	2.54	12.70	9.71	3.11	20.59	10.73	3.50	24.09	8.61	3.21	18.55	11.71	3.78	24.50	12.67	4.15	27.90	-1.99	-0.67	-3.85	-2.00	-0.67	-3.91	-1.94	-0.65	-3.81
Dana Point	3.21	1.20	5.97	4.59	1.47	9.73	5.06	1.65	11.37	3.87	1.41	7.26	5.14	1.66	10.75	5.56	1.82	12.24	-0.66	-0.21	-1.30	-0.55	-0.19	-1.03	-0.50	-0.17	-0.88
Foothill Ranch	0.05	0.02	0.09	0.07	0.02	0.15	0.08	0.03	0.18	0.08	0.03	0.15	0.11	0.04	0.23	0.12	0.04	0.26	-0.03	-0.01	-0.06	-0.04	-0.01	-0.08	-0.04	-0.01	-0.06
Fountain Valley	6.21	2.32	11.58	8.86	2.84	18.80	9.79	3.19	21.99	8.18	2.98	15.36	10.87	3.51	22.74	11.76	3.85	25.89	-1.97	-0.66	-3.81	-2.01	-0.67	-3.94	-1.97	-0.66	-3.91
Fullerton	13.58	5.06	25.25	19.41	6.22	41.19	21.46	6.99	48.22	16.52	6.02	31.02	21.95	7.09	45.93	23.75	7.77	52.29	-2.93	-0.95	-5.77	-2.54	-0.87	-4.74	-2.29	-0.78	-4.06
Garden Grove	11.58	4.32	21.54	16.58	5.31	35.14	18.30	5.96	41.11	14.69	5.35	27.58	19.52	6.30	40.84	21.12	6.91	46.50	-3.10	-1.03	-6.05	-2.96	-0.99	-5.70	-2.82	-0.95	-5.39
Huntington Beach	14.35	5.35	26.68	20.50	6.57	43.49	22.65	7.38	50.89	17.22	6.27	32.34	22.89	7.39	47.89	24.78	8.10	54.52	-2.87	-0.92	-5.67	-2.39	-0.82	-4.39	-2.11	-0.72	-3.63
Irvine	54.13	20.17	100.66	77.24	24.77	163.87	85.33	27.80	191.64	63.44	23.11	119.15	84.30	27.22	176.40	91.22	29.84	200.84	-9.31	-2.94	-18.48	-7.06	-2.46	-12.53	-5.89	-2.03	-9.20
Laguna Beach	3.73	1.39	6.93	5.31	1.70	11.26	5.86	1.91	13.15	4.71	1.72	8.85	6.26	2.02	13.10	6.77	2.22	14.91	-0.98	-0.33	-1.91	-0.95	-0.32	-1.84	-0.92	-0.31	-1.77
Laguna Hills	3.63	1.35	6.74	5.18	1.65	10.94	5.70	1.86	12.80	4.42	1.61	8.30	5.87	1.90	12.29	6.35	2.08	13.99	-0.79	-0.26	-1.56	-0.71	-0.24	-1.34	-0.65	-0.22	-1.19
Laguna Niguel	3.11	1.16	5.79	4.43	1.42	9.41	4.90	1.60	11.00	3.84	1.40	7.22	5.11	1.65	10.69	5.53	1.81	12.17	-0.73	-0.24	-1.43	-0.67	-0.23	-1.26	-0.63	-0.21	-1.17
Laguna Woods	2.06	0.77	3.87	2.96	0.95	6.27	3.27	1.06	7.33	2.71	0.99	5.08	3.60	1.16	7.52	3.89	1.27	8.56	-0.62	-0.21	-1.21	-0.64	-0.21	-1.25	-0.62	-0.21	-1.23
La Habra	6.00	2.24	11.15	8.57	2.75	18.19	9.50	3.09	21.35	9.85	3.59	18.50	13.09	4.23	27.40	14.17	4.63	31.19	-3.86	-1.35	-7.36	-4.53	-1.48	-9.20	-4.67	-1.54	-9.85
Lake Forest	6.62	2.47	12.30	9.45	3.03	20.08	10.45	3.41	23.48	8.00	2.91	15.02	10.63	3.43	22.24	11.50	3.76	25.32	-1.38	-0.45	-2.72	-1.17	-0.40	-2.18	-1.05	-0.36	-1.84
La Palma	3.05	1.14	5.67	4.36	1.40	9.25	4.83	1.57	10.86	3.78	1.37	7.08	5.00	1.61	10.45	5.41	1.77	11.90	-0.71	-0.23	-1.39	-0.64	-0.22	-1.20	-0.57	-0.19	-1.04
Las Flores	0.09	0.03	0.17	0.13	0.04	0.28	0.15	0.05	0.33	0.12	0.04	0.22	0.16	0.05	0.33	0.17	0.06	0.38	-0.02	-0.01	-0.05	-0.02	-0.01	-0.05	-0.02	-0.01	-0.04
Los Alamitos	3.50	1.30	6.50	4.99	1.60	10.60	5.52	1.80	12.41	4.84	1.76	9.09	6.43	2.08	13.46	6.96	2.28	15.32	-1.34	-0.46	-2.59	-1.44	-0.48	-2.86	-1.43	-0.48	-2.91
Mission Viejo	5.78	2.15	10.72	8.20	2.63	17.38	9.05	2.95	20.32	7.40	2.69	13.89	9.83	3.17	20.57	10.64	3.48	23.42	-1.63	-0.55	-3.17	-1.63	-0.55	-3.19	-1.58	-0.53	-3.11
Newport Beach	23.02	8.57	42.82	32.78	10.51	69.53	36.22	11.80	81.32	25.68	9.36	48.24	34.13	11.02	71.42	36.93	12.08	81.31	-2.66	-0.78	-5.42	-1.35	-0.51	-1.89	-0.71	-0.28	0.01
Newport Coast	0.18	0.07	0.34	0.26	0.08	0.56	0.29	0.09	0.65	0.22	0.08	0.41	0.29	0.09	0.60	0.31	0.10	0.69	-0.03	-0.01	-0.06	-0.02	-0.01	-0.04	-0.02	-0.01	-0.03
Orange	20.97	7.81	38.99	29.90	9.59	63.44	33.04	10.76	74.19	26.63	9.70	50.01	35.39	11.43	74.04	38.29	12.53	84.30	-5.66	-1.89	-11.02	-5.48	-1.84	-10.61	-5.25	-1.78	-10.12
Placentia	4.10	1.53	7.62	5.87	1.88	12.45	6.48	2.11	14.57	5.03	1.83	9.45	6.69	2.16	14.00	7.24	2.37	15.94	-0.93	-0.30	-1.83	-0.82	-0.28	-1.55	-0.75	-0.26	-1.37
Portola Hills	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07	0.03	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.11	-0.01	0.00	-0.03	-0.02	-0.01	-0.03	-0.02	-0.01	-0.04
Rancho Santa Margarita	0.44	0.16	0.81	0.62	0.20	1.32	0.69	0.22	1.54	0.57	0.21	1.07	0.75	0.24	1.58	0.82	0.27	1.80	-0.13	-0.04	-0.25	-0.13	-0.04	-0.26	-0.13	-0.04	-0.25
Rossmoor	0.61	0.23	1.13	0.87	0.28	1.84	0.96	0.31	2.16	0.73	0.27	1.37	0.97	0.31	2.03	1.05	0.34	2.31	-0.12	-0.04	-0.24	-0.10	-0.03	-0.19	-0.09	-0.03	-0.16
San Clemente	6.36	2.36	11.86	9.11	2.92	19.32	10.05	3.27	22.57	8.61	3.14	16.17	11.44	3.70	23.95	12.38	4.05	27.27	-2.24	-0.78	-4.32	-2.34	-0.77	-4.63	-2.33	-0.78	-4.70
San Joaquin Hills	0.04	0.01	0.07	0.06	0.02	0.12	0.06	0.02	0.14	0.04	0.02	0.08	0.06	0.02	0.12	0.06	0.02	0.14	0.00	0.00	-0.01	0.00	0.00	0.00	0.00	0.00	0.00
San Juan Capistrano	3.95	1.47	7.34	5.64	1.81	11.95	6.21	2.02	13.95	5.77	2.10	10.83	7.66	2.47	16.03	8.29	2.71	18.26	-1.82	-0.63	-3.49	-2.03	-0.67	-4.08	-2.08	-0.69	-4.31
Santa Ana	38.58	14.38	71.75	55.10	17.66	116.91	60.90	19.84	136.81	48.97	17.84	91.98	65.08	21.02	136.17	70.42	23.04	155.04	-10.39	-3.46	-20.23	-9.99	-3.35	-19.27	-9.52	-3.19	-18.24
Seal Beach	3.39	1.26	6.29	4.84	1.55	10.27	5.35	1.74	12.03	3.16	1.15	5.93	4.19	1.35	8.78	4.54	1.48	9.99	0.23	0.11	0.37	0.65	0.20	1.50	0.82	0.28	2.04
Stanton	2.09	0.78	3.88	2.98	0.96	6.33	3.30	1.07	7.41	2.53	0.92	4.78	3.37	1.09	7.04	3.64	1.19	8.02	-0.45	-0.15	-0.86	-0.38	-0.13	-0.71	-0.34	-0.12	-0.61
Tustin	11.12	4.14	20.68	15.85	5.08	33.62	17.51	5.71	39.32	14.15	5.18	26.58	18.81	6.07	39.36	20.35	6.66	44.81	-3.03	-1.01	-5.90	-2.96	-0.99	-5.73	-2.84	-0.95	-5.49
Tustin Foothills	1.53	0.57	2.84	2.17	0.70	4.59	2.39	0.78	5.37	1.87	0.68	3.52	2.49	0.80	5.21	2.69	0.88	5.93	-0.35	-0.11	-0.68	-0.32	-0.11	-0.62	-0.30	-0.10	-0.56
Villa Park	0.23	0.08	0.42	0.32	0.10	0.68	0.35	0.12	0.79	0.28	0.10	0.52	0.37	0.12	0.77	0.40	0.13	0.87	-0.05	-0.02	-0.10	-0.05	-0.02	-0.09	-0.04	-0.01	-0.08
Westminster	5.22	1.94	9.70	7.44	2.38	15.77	8.22	2.68	18.45	6.24	2.27	11.71	8.29	2.68	17.34	8.97	2.93	19.75	-1.02	-0.33	-2.02	-0.85	-0.29	-1.57	-0.75	-0.26	-1.29
Yorba Linda	2.88	1.07	5.35	4.09	1.31	8.67	4.51	1.47	10.13	3.91	1.42	7.35	5.20	1.68	10.88	5.62	1.84	12.38	-1.04	-0.35	-2.00	-1.11	-0.37	-2.20	-1.11	-0.37	-2.25
Banning	0.73	0.27	1.35	1.04	0.33	2.21	1.15	0.37	2.58	0.92	0.34	1.73	1.22	0.39	2.58	1.32	0.43	2.91	-0.19	-0.06	-0.38	-0.18	-0.06	-0.35	-0.18	-0.06	-0.34
Beaumont	0.59	0.22	1.09	0.84	0.27	1.78	0.93	0.30	2.08	0.72	0.26	1.35	0.95	0.31	1.99	1.03	0.34	2.27	-0.13	-0.04	-0.26	-0.11	-0.04	-0.21	-0.10	-0.04	-0.19
Bermuda Dunes	0.19	0.07	0.35	0.27	0.09	0.58	0.29	0.10	0.66	0.27	0.10	0.50	0.35	0.11	0.74	0.38	0.12	0.84	-0.08	-0.03	-0.15	-0.09	-0.03	-0.18	-0.09	-0.03	-0.18
Cabazon	0.02	0.01	0.04	0.03	0.01	0.07	0.04	0.01	0.08	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02
Calimesa	0.34	0.13	0.63	0.48	0.15	1.02	0.53	0.17	1.19	0.42	0.15	0.79	0.56	0.18	1.17	0.60	0.20	1.33	-0.08	-0.03	-0.16	-0.08	-0.03	-0.15	-0.07	-0.02	-0.14
Canyon Lake	0.09	0.03	0.17	0.13	0.04	0.28	0.15	0.05	0.33	0.11	0.04	0.20	0.14	0.05	0.30	0.15	0.05	0.34	-0.01	0.00	-0.03	-0.01	0.00	-0.01	-0.01	0.00	0.00
Cathedral City	2.29	0.85	4.26	3.26	1.05	6.95	3.62	1.18	8.13	2.71	0.99	5.09	3.60	1.16	7.53	3.89	1.27	8.57	-0.42	-0.13	-0.83	-0.32	-0.11	-0.58	-0.27	-0.09	-0.44
Cherry Valley	0.09	0.04	0.18	0.14	0.04	0.29	0.15	0.05	0.34	0.11	0.04	0.20	0.14	0.05	0.30	0.16	0.05	0.34	-0.01	0.00	-0.03	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Coachella	0.96	0.36	1.79	1.38	0.44	2.92	1.52	0.49	3.41	1.50	0.55	2.82	1.99	0.64	4.17	2.16	0.71	4.75	-0.54	-0.19	-1.03	-0.62	-0.20	-1.25	-0.64	-0.21	-1.34
Corona	7.79	2.90	14.48	11.13	3.57	23.62	12.29	4.00	27.61	10.63	3.87	19.98	14.13	4.58	29.58	15.29	5.00	33.65	-2.84	-0.97	-5.49	-2.99	-0.99	-5.93	-2.99	-1.00	-6.04
Desert Hot Springs	0.34	0.13	0.64	0.49	0.16	1.04	0.54	0.18	1.21	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.18	1.20	-0.04	-0.01	-0.07	-0.01	-0.01	-0.01	0.00	0.00	0.02
East Hemet	0.31	0.11	0.57	0.44	0.14	0.93	0.49	0.16	1.09	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.18	1.20	-0.07	-0.02	-0.13	-0.06	-0.02	-0.12	-0.06	-0.02	-0.11
El Cerrito	0.11	0.04	0.21	0.16	0.05	0.34	0.18	0.06	0.39	0.16	0.06	0.30	0.21	0.07	0.45	0.23	0.08	0.51	-0.05	-0.02	-0.10	-0.05	-0.02	-0.11	-0.06	-0.02	-0.11
Glen Avon	1.03	0.39	1.92	1.48	0.47	3.14	1.63	0.53	3.67	1.45	0.53	2.71	1.92	0.62	4.02	2.08	0.68	4.58	-0.41	-0.14	-0.80	-0.44	-0.15	-0.88	-0.44	-0.15	-0.90
Hemet	2.80	1.04	5.20	3.99	1.28	8.48	4.40	1.43	9.88	3.63	1.32	6.81	4.82	1.56	10.09	5.22	1.71	11.48	-0.83	-0.28	-1.61	-0.83	-0.28	-1.62	-0.81	-0.27	-1.60
Highgrove	0.15	0.06	0.28	0.22	0.07	0.46	0.24	0.08	0.54	0.17	0.06	0.32	0.23	0.07	0.47	0.24	0.08	0.54	-0.02	-0.01	-0.04	-0.01	0.00	-0.01	0.00	0.00	0.00
Home Gardens	0.44	0.16	0.81	0.63	0.20	1.33	0.69	0.22	1.55	0.69	0.25	1.29	0.91	0.29	1.91	0.99	0.32	2.17	-0.25	-0.09	-0.47	-0.29	-0.09	-0.58	-0.30	-0.10	-0.62
Homeland	0.04	0.01	0.07	0.05	0.02	0.11	0.06	0.02	0.13	0.07	0.02	0.12	0.09	0.03	0.18	0.10	0.03	0.21	-0.03	-0.01	-0.06	-0.04	-0.01	-0.08	-0.04	-0.01	-0.08
Idyllwild-Pine Cove	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.11	0.03	0.01	0.06	0.04	0.01	0.08	0.04	0.01	0.10	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01
Indian Wells	1.92	0.72	3.57	2.74	0.88	5.82	3.03	0.99	6.81	1.92	0.70	3.60	2.55	0.82	5.33	2.76	0.90	6.07	0.00	0.02	-0.03	0.20	0.06	0.49	0.28	0.09	0.74
Indio	2.14	0.80	3.97	3.05	0.98	6.47	3.37	1.10	7.58	2.97	1.08	5.58	3.95	1.28	8.26	4.27	1.40	9.41	-0.84	-0.28	-1.61	-0.90	-0.30	-1.80	-0.91	-0.30	-1.85
Lake Elsinore	1.31	0.49	2.44	1.88	0.60	3.98	2.07	0.68	4.65	1.74	0.63	3.26	2.31	0.74	4.83	2.50	0.82	5.49	-0.42	-0.14	-0.81	-0.43	-0.14	-0.84	-0.42	-0.14	-0.84
Lakeland Village	0.08	0.03	0.15	0.12	0.04	0.25	0.13	0.04	0.29	0.13	0.05	0.24	0.17	0.06	0.36	0.18	0.06	0.41	-0.05	-0.02	-0.09	-0.05	-0.02	-0.10	-0.05	-0.02	-0.11
Lakeview	0.04	0.01	0.07	0.06	0.02	0.12	0.06	0.02	0.14	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.28	-0.05	-0.02	-0.09	-0.06	-0.02	-0.13	-0.07	-0.02	-0.14
La Quinta	1.25	0.47	2.32	1.79	0.57	3.79	1.97	0.64	4.43	1.17	0.43	2.19	1.55	0.50	3.25	1.68	0.55	3.70	0.08	0.04	0.13	0.23	0.07	0.54	0.29	0.09	0.74
March AFB	0.07	0.02	0.12	0.09	0.03	0.20	0.10	0.03	0.23	0.09	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27	-0.02	-0.01	-0.04	-0.02	-0.01	-0.04	-0.02	-0.01	-0.04
Mecca	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
Mira Loma	0.28	0.10	0.52	0.40	0.13	0.85	0.44	0.14	1.00	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.18	1.20	-0.10	-0.03	-0.19	-0.10	-0.03	-0.20	-0.10	-0.03	-0.20

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	2.93	1.09	5.46	4.19	1.34	8.88	4.82	1.51	10.38	3.47	1.28	8.51	4.81	1.49	9.64	4.98	1.63	10.97	-0.53	-0.17	-1.05	-0.42	-0.15	-0.78	-0.36	-0.12	-0.59
Murrieta	1.78	0.66	3.28	2.52	0.81	5.35	2.79	0.91	6.28	2.33	0.85	4.38	3.10	1.00	6.48	3.35	1.10	7.38	-0.57	-0.19	-1.10	-0.58	-0.19	-1.13	-0.57	-0.19	-1.12
Murrieta Hot Springs	0.04	0.02	0.08	0.06	0.02	0.13	0.07	0.02	0.15	0.05	0.02	0.10	0.07	0.02	0.15	0.08	0.03	0.17	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Norco	2.18	0.81	4.02	3.10	0.99	6.58	3.42	1.12	7.70	2.13	0.78	4.00	2.83	0.91	5.92	3.06	1.00	6.74	0.03	0.03	0.02	0.27	0.08	0.66	0.36	0.11	0.96
Nuevo	0.06	0.02	0.11	0.09	0.03	0.18	0.10	0.03	0.22	0.13	0.05	0.25	0.18	0.06	0.37	0.19	0.06	0.42	-0.07	-0.03	-0.14	-0.09	-0.03	-0.19	-0.10	-0.03	-0.21
Palm Desert	5.29	1.97	9.85	7.55	2.42	16.02	8.33	2.71	18.70	7.01	2.55	13.17	9.32	3.01	19.49	10.06	3.30	22.19	-1.72	-0.58	-3.32	-1.78	-0.59	-3.48	-1.75	-0.58	-3.49
Palm Springs	6.18	2.31	11.50	8.84	2.83	18.75	9.78	3.18	21.92	8.75	2.46	12.86	8.96	2.90	18.78	9.71	3.18	21.38	-0.57	-0.18	-1.19	-0.14	-0.07	-0.03	0.05	0.00	0.54
Perley	0.37	0.14	0.68	0.52	0.17	1.11	0.58	0.19	1.30	0.48	0.18	0.91	0.64	0.21	1.34	0.69	0.23	1.53	-0.12	-0.04	-0.23	-0.12	-0.04	-0.23	-0.12	-0.04	-0.23
Perris	1.30	0.49	2.42	1.87	0.60	3.96	2.06	0.67	4.63	1.51	0.55	2.83	2.00	0.65	4.19	2.17	0.71	4.77	-0.20	-0.06	-0.41	-0.14	-0.05	-0.23	-0.11	-0.04	-0.14
Quail Valley	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Rancho Mirage	2.04	0.78	3.80	2.92	0.94	6.19	3.23	1.05	7.25	1.92	0.70	3.80	2.55	0.82	5.33	2.76	0.90	6.07	0.12	0.08	0.20	0.37	0.11	0.86	0.47	0.15	1.18
Riverside	22.26	8.29	41.40	31.77	10.19	67.39	35.08	11.43	78.78	28.25	10.29	53.06	37.54	12.12	78.55	40.62	13.29	89.44	-5.99	-2.00	-11.66	-5.78	-1.84	-11.18	-5.54	-1.86	-10.66
Romoland	0.06	0.03	0.14	0.11	0.04	0.24	0.12	0.04	0.28	0.06	0.03	0.14	0.10	0.03	0.21	0.11	0.04	0.24	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03
Rubidoux	0.55	0.20	1.02	0.78	0.25	1.66	0.88	0.28	1.84	0.69	0.25	1.30	0.92	0.30	1.93	1.00	0.33	2.19	-0.15	-0.05	-0.28	-0.14	-0.05	-0.27	-0.13	-0.04	-0.25
San Jacinto	0.84	0.31	1.55	1.19	0.38	2.53	1.32	0.43	2.96	1.18	0.42	2.18	1.54	0.50	3.23	1.67	0.55	3.68	-0.33	-0.11	-0.63	-0.35	-0.12	-0.70	-0.35	-0.12	-0.72
Sedco Hills	0.12	0.04	0.22	0.17	0.05	0.35	0.18	0.06	0.41	0.14	0.05	0.25	0.18	0.06	0.38	0.19	0.06	0.43	-0.02	-0.01	-0.04	-0.01	0.00	-0.02	-0.01	0.00	-0.01
Sun City	0.32	0.12	0.59	0.45	0.15	0.96	0.50	0.16	1.13	0.49	0.18	0.92	0.65	0.21	1.36	0.70	0.23	1.54	-0.17	-0.06	-0.32	-0.19	-0.06	-0.38	-0.20	-0.07	-0.42
Sunnylope	0.09	0.03	0.16	0.12	0.04	0.26	0.14	0.04	0.31	0.11	0.04	0.22	0.15	0.05	0.32	0.17	0.05	0.36	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06
Temecula	3.88	1.45	7.21	5.54	1.78	11.76	8.12	1.99	13.73	5.15	1.88	9.68	8.85	2.21	14.33	7.41	2.42	16.31	-1.27	-0.43	-2.48	-1.31	-0.43	-2.57	-1.29	-0.43	-2.58
Thousand Palms	0.07	0.03	0.13	0.10	0.03	0.21	0.11	0.04	0.24	0.06	0.03	0.15	0.11	0.03	0.22	0.11	0.04	0.25	-0.01	0.00	-0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Valle Vista	0.13	0.05	0.24	0.18	0.06	0.39	0.20	0.07	0.45	0.18	0.06	0.30	0.21	0.07	0.44	0.23	0.07	0.50	-0.03	-0.01	-0.06	-0.03	-0.01	-0.05	-0.03	-0.01	-0.05
Wildomar	0.39	0.15	0.73	0.58	0.18	1.19	0.62	0.20	1.39	0.49	0.18	0.91	0.65	0.21	1.35	0.70	0.23	1.54	-0.09	-0.03	-0.18	-0.08	-0.03	-0.18	-0.08	-0.03	-0.15
Winchester	0.07	0.03	0.13	0.10	0.03	0.20	0.11	0.03	0.24	0.12	0.04	0.23	0.18	0.05	0.34	0.18	0.06	0.39	-0.05	-0.02	-0.10	-0.07	-0.02	-0.13	-0.07	-0.02	-0.15
Woodcrest	0.41	0.15	0.78	0.59	0.19	1.25	0.65	0.21	1.46	0.47	0.17	0.89	0.63	0.20	1.32	0.68	0.22	1.50	-0.06	-0.02	-0.13	-0.04	-0.01	-0.07	-0.03	-0.01	-0.04
Camarillo	5.39	2.01	10.02	7.70	2.47	16.33	8.51	2.77	19.11	6.43	2.34	12.08	8.55	2.78	17.89	9.25	3.03	20.37	-1.04	-0.33	-2.06	-0.85	-0.29	-1.56	-0.74	-0.25	-1.26
Casa Conejo	0.15	0.06	0.28	0.22	0.07	0.48	0.24	0.08	0.53	0.19	0.07	0.36	0.25	0.08	0.53	0.27	0.09	0.60	-0.04	-0.01	-0.08	-0.04	-0.01	-0.07	-0.04	-0.01	-0.07
Channel Islands Beach	0.12	0.04	0.22	0.17	0.05	0.35	0.18	0.06	0.41	0.15	0.06	0.29	0.20	0.07	0.42	0.22	0.07	0.48	-0.04	-0.01	-0.07	-0.04	-0.01	-0.07	-0.03	-0.01	-0.07
El Rio	0.13	0.05	0.25	0.19	0.06	0.41	0.21	0.07	0.48	0.14	0.05	0.27	0.19	0.06	0.40	0.21	0.07	0.45	-0.01	0.00	-0.02	0.00	0.00	0.01	0.01	0.00	0.02
Fillmore	0.39	0.15	0.73	0.58	0.18	1.19	0.62	0.20	1.40	0.48	0.17	0.87	0.61	0.20	1.29	0.67	0.22	1.48	-0.07	-0.02	-0.14	-0.05	-0.02	-0.09	-0.04	-0.01	-0.06
Meiners Oaks	0.14	0.05	0.28	0.20	0.06	0.42	0.22	0.07	0.49	0.18	0.06	0.30	0.22	0.07	0.45	0.23	0.08	0.51	-0.02	-0.01	-0.05	-0.02	-0.01	-0.03	-0.02	-0.01	-0.02
Mira Monte	0.22	0.08	0.41	0.31	0.10	0.67	0.35	0.11	0.78	0.26	0.09	0.48	0.34	0.11	0.72	0.37	0.12	0.82	-0.04	-0.01	-0.08	-0.03	-0.01	-0.05	-0.02	-0.01	-0.04
Moorpark	1.13	0.42	2.10	1.62	0.52	3.44	1.79	0.58	4.02	1.35	0.49	2.53	1.79	0.58	3.75	1.94	0.63	4.27	-0.22	-0.07	-0.43	-0.17	-0.06	-0.31	-0.15	-0.05	-0.24
Oak Park	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	0.01	0.00	0.02	0.02	0.01	0.03	0.02	0.01	0.04	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01
Oak View	0.07	0.03	0.14	0.11	0.03	0.23	0.12	0.04	0.26	0.08	0.03	0.15	0.11	0.04	0.23	0.12	0.04	0.26	-0.01	0.00	-0.02	0.00	0.00	0.00	0.00	0.00	0.01
Ojai	0.34	0.13	0.64	0.49	0.18	1.04	0.54	0.18	1.22	0.39	0.14	0.72	0.51	0.17	1.07	0.55	0.18	1.22	-0.04	-0.01	-0.09	-0.02	-0.01	-0.03	-0.01	0.00	0.00
Oxnard	11.14	4.18	20.72	15.94	5.11	33.82	17.61	5.74	39.57	14.50	5.28	27.23	19.27	6.22	40.31	20.85	6.82	45.90	-3.35	-1.13	-6.51	-3.33	-1.11	-6.50	-3.24	-1.08	-6.33
Piru	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.02	0.02	0.01	0.03	0.02	0.01	0.04	-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Port Hueneme	0.73	0.27	1.35	1.04	0.33	2.21	1.15	0.37	2.58	0.90	0.33	1.68	1.19	0.38	2.49	1.29	0.42	2.84	-0.17	-0.06	-0.33	-0.15	-0.05	-0.29	-0.14	-0.05	-0.26
San Buenaventura (Ventura)	12.48	4.66	23.21	17.86	5.73	37.91	19.75	6.44	44.39	15.13	5.51	28.42	20.11	6.49	42.08	21.76	7.12	47.91	-2.65	-0.86	-5.21	-2.25	-0.77	-4.16	-2.01	-0.68	-3.51
Santa Paula	1.28	0.48	2.37	1.82	0.58	3.86	2.01	0.66	4.52	2.01	0.73	3.77	2.67	0.86	5.58	2.88	0.94	6.35	-0.73	-0.26	-1.40	-0.84	-0.28	-1.71	-0.67	-0.29	-1.83
Simi Valley	8.55	2.44	12.18	9.35	3.00	19.83	10.32	3.36	23.18	8.36	3.05	15.71	11.11	3.59	23.25	12.03	3.93	26.48	-1.82	-0.61	-3.53	-1.77	-0.59	-3.43	-1.70	-0.57	-3.30
Thousand Oaks	15.33	5.71	28.51	21.88	7.01	48.41	24.16	7.87	54.26	19.72	7.18	37.04	26.21	8.46	54.83	28.38	9.28	62.43	-4.39	-1.47	-8.52	-4.33	-1.45	-8.43	-4.20	-1.40	-8.18
Adelanto	0.61	0.23	1.13	0.87	0.28	1.84	0.96	0.31	2.15	0.89	0.25	1.29	0.91	0.30	1.91	0.99	0.32	2.18	-0.08	-0.02	-0.17	-0.05	-0.02	-0.07	-0.03	-0.01	-0.03
Apple Valley	1.29	0.48	2.41	1.85	0.59	3.92	2.04	0.66	4.57	1.74	0.64	3.28	2.32	0.75	4.85	2.51	0.82	5.52	-0.45	-0.15	-0.87	-0.47	-0.16	-0.93	-0.47	-0.16	-0.95
Barstow	1.66	0.62	3.09	2.37	0.78	5.04	2.62	0.85	5.89	1.90	0.69	3.58	2.52	0.81	5.27	2.73	0.89	6.00	-0.24	-0.07	-0.48	-0.15	-0.05	-0.24	-0.11	-0.04	-0.11
Big Bear City	0.02	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.09	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.11	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Big Bear Lake	1.06	0.40	2.01	1.54	0.50	3.27	1.70	0.55	3.82	1.31	0.48	2.46	1.74	0.58	3.64	1.88	0.62	4.14	-0.23	-0.07	-0.44	-0.20	-0.07	-0.37	-0.18	-0.06	-0.32
Bloomington	0.59	0.22	1.10	0.85	0.27	1.80	0.94	0.31	2.11	0.67	0.25	1.27	0.90	0.29	1.88	0.97	0.32	2.14	-0.08	-0.02	-0.18	-0.05	-0.02	-0.07	-0.03	-0.01	-0.03
Chino	8.31	2.35	11.73	9.03	2.89	19.16	9.98	3.25	22.41	8.03	2.92	15.06	10.87	3.44	22.32	11.54	3.78	25.41	-1.72	-0.57	-3.34	-1.84	-0.55	-3.16	-1.57	-0.53	-3.00
Chino Hills	0.94	0.35	1.74	1.34	0.43	2.83	1.47	0.48	3.31	1.24	0.45	2.33	1.65	0.53	3.46	1.79	0.58	3.94	-0.31	-0.10	-0.59	-0.32	-0.11	-0.63	-0.31	-0.10	-0.63
Colton	3.57	1.33	6.64	5.09	1.63	10.81	5.82	1.83	12.63	4.49	1.63	8.43	5.98	1.93	12.48	6.45	2.11	14.21	-0.92	-0.31	-1.79	-0.87	-0.29	-1.67	-0.83	-0.28	-1.58
Crestline	0.35	0.13	0.66	0.51	0.18	1.07	0.56	0.18	1.25	0.48	0.18	0.90	0.64	0.21	1.34	0.69	0.23	1.52	-0.13	-0.04	-0.25	-0.13	-0.04	-0.27	-0.13	-0.04	-0.27
Fontana	4.66	1.86	9.25	7.13	2.26	15.12	7.87	2.56	17.68	6.13	2.23	11.52	8.15	2.63	17.05	8.82	2.86	19.42	-1.16	-0.38	-2.26	-1.02	-0.35	-1.93	-0.95	-0.32	-1.73
Grand Terrace	0.71	0.27	1.32	1.02	0.33	2.16	1.12	0.37	2.52	0.79	0.29	1.49	1.05	0.34	2.20	1.14	0.37	2.51	-0.06	-0.02	-0.18	-0.04	-0.01	-0.05	-0.02	-0.01	0.01
Hesperia	2.04	0.78	3.79	2.91	0.93	6.16	3.21	1.05	7.22	2.56	0.93	4.81	3.41	1.10	7.13	3.69	1.21	8.11	-0.52	-0.17	-1.02	-0.49	-0.17	-0.95	-0.47	-0.16	-0.89
Highland	1.23	0.48	2.28	1.75	0.58	3.71	1.94	0.63	4.35	1.61	0.66	3.39	2.40	0.77	5.02	2.60	0.85	5.72	-0.58	-0.20	-1.11	-0.85	-0.21	-1.31	-0.68	-0.22	-1.37
Joshua Tree	0.02	0.01	0.04	0.03	0.01	0.07	0.04	0.01	0.08	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Lake Arrowhead	0.73	0.27	1.37	1.05	0.34	2.23	1.16	0.38	2.60	0.75	0.27	1.40	0.99	0.32	2.07	1.07	0.35	2.38	-0.01	0.00	-0.03	0.06	0.02	0.15	0.09	0.03	0.24
Lenwood	0.06	0.02	0.11	0.08	0.03	0.18	0.09	0.03	0.21	0.06	0.02	0.12	0.08	0.03	0.17	0.09	0.03	0.20	0.00	0.00	-0.01	0.00	0.00	0.00	0.00	0.00	0.01
Loma Linda	0.92	0.34	1.71	1.31	0.42	2.78	1.45	0.47	3.26	1.16	0.42	2.16	1.54	0.50	3.23	1.67	0.55	3.68	-0.24	-0.08	-0.47	-0.23	-0.08	-0.45	-0.22	-0.07	-0.42
Mentone	0.22	0.08	0.41	0.32	0.10	0.67	0.35	0.11	0.79	0.33	0.12	0.63	0.44	0.14	0.93	0.48	0.16	1.06	-0.11	-0.04	-0.22	-0.13	-0.04	-0.26	-0.13	-0.04	-0.27
Montclair	2.22	0.83	4.13	3.18	1.02	6.74	3.51	1.14	7.86	2.68	0.98	5.03	3.56	1.15	7.44	3.85	1.26	8.48	-0.46	-0.15	-0.90	-0.38	-0.13	-0.70	-0.34	-0.12	-0.59
Morongo Valley	0.00	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mountain View Acres	0.05	0.02	0.10	0.08	0.02	0.16	0.08	0.03	0.19	0.07	0.02	0.12	0.09	0.03	0.18	0.09	0.03	0.21	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Muscoy	0.83	0.23	1.18	0.89	0.29	1.89	0.98	0.32	2.20	0.98	0.36	1.65	1.31	0.42	2.73	1.41	0.46	3.11	-0.36	-0.13	-0.68	-0.42	-0.14	-0.85	-0.43	-0.14	-0.91
Nebo Center	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01
Ontario	18.33	6.69	30.36	23.37	7.49	49.59	25.82	8.41	58.01	21.05	7.67	39.53	27.97	9.03	58.52	30.26	9.90	66.83	-4.72	-1.58	-8.17	-4.60	-1.54	-8.93	-4.45	-1.49	-8.82
Rancho Cucamonga	9.07	3.38	16.67	12.04	4.15	27.45	14.29	4.86	32.08	11.81	4.30	22.18	15.89	5.07	32.63	18.96	6.55	37.38	-2.74	-0.92	-5.30	-2.75	-0.92	-5.38	-2.59	-0.90	-5.30
Redlands	5.07	1.89	9.42	7.24	2.32	15.36	8.00	2.61	17.96	5.81	2.12	10.92	7.73	2.49	16.18	8.36	2.73	18.40	-0.74	-0.23	-1.49	-0.49	-0.17	-0.81	-0.36	-0.13	-0.44
Rialto	2.61	0.97	4.86	3.74	1.20	7.93	4.13	1.35	9.28	3.32	1.21	6.23	4.41	1.42	9.22	4.77	1.58	10.50	-0.70	-0.23	-1.37	-0.87	-0.22	-1.28	-0.64	-0.21	-1.22
Running Springs	0.15	0.06	0.28	0.22	0.07	0.47	0.24	0.08	0.55	0.12	0.04	0.22	0.18	0.05	0.32	0.17	0.05	0.37	0.04	0.01	0.07	0.06	0.02	0.14	0.08	0.02	0.18
San Antonio Heights	0.10	0.04	0.18	0.14	0.04	0.30	0.15	0.05	0.35	0.12	0.04	0.22	0.18	0.05	0.33	0.17	0.06	0.38	-0.02	-0.01	-0.04	-0.02	-0.01	-0.04	-0.02	-0.01	-0.03
San Bernardino	15.00	5.59	27.88	21.41	6.87	45.43	23.84	7.70	53.09	18.97	8.91	35.63	25.21	8.14	52.75	27.28	8.92	60.05	-3.97	-1.32	-7.74	-3.79	-1.27	-7.32	-3.64	-1.22	-6.97
Twentynine Palms	0.29	0.11	0.54	0.42	0.13	0.88	0.48	0.15	1.03	0.38	0.14	0.72	0.51	0.18	1.06	0.55	0.18	1.21	-0.09	-0.03	-0.17	-0.09	-0.03	-0.18	-0.09	-0.03	-0.18
Twentynine Palms Base	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01
Upland	4.84	1.73	8.82	6.80	2.12	14.00	7.29	2.38	16.36	8.05	2.20	11.36	8.04	2.60	16.81	8.70	2.84	19.14	-1.41	-0.48	-2.73	-1.43	-0.48	-2.81	-1.41	-0.47	-2.78
Victorville	4.48	1.86	8.29	6.37	2.04	13.50	7.01	2.29	15.75	8.24	2.27	11.71	8.29	2.68	17.34	8.97	2.93	19.74	-1.78	-0.61	-3.42	-1.92	-0.63	-3.84	-1.95	-0.65	-3.99
Wrightwood	0.24	0.09	0.45	0.35	0.11	0.74	0.39	0.13	0.87	0.19	0.07	0.36	0.25	0.08	0.53	0.27	0.09	0.60	0.05	0.02	0.10	0.10	0.03	0.22	0.11	0.04	0.27
Yucaipa	1.19	0.44	2.20	1.69	0.54	3.59	1.87	0.61	4.19	1.58	0.58	2.97	2.10	0.68	4.40	2.27	0.74	5.01	-0.40	-0.13	-0.77	-0.41	-0.14	-0.81	-0.41	-0.14	-0.81
Yucca Valley	0.59	0.22	1.09	0.84	0.27	1.77	0.92	0.30	2.07	0.72	0.28	1.36	0.96	0.31	2.01	1.04	0.34	2.29	-0.14	-0.04	-0.27	-0.12	-0.04	-0.23	-0.11	-0.04	-0.21
LOS ANGELES - UNINCOR	29.64	11.05	55.11	42.34	13.58	89.64	46.78	15.24	105.06	39.86	14.52	74.85	52.96	17.10	110.82	57.31	18.75	128.17	-10.22	-3.47	-19.74	-10.82	-3.53	-20.96	-10.53	-3.50	-21.09
ORANGE - UNINCOR	11.73	4.37	21.80	16.74	5.37	35.51	18.50	6.03	41.56	15.05	5.48	28.26	20.00	6.46	41.84	21.84	7.08	47.84	-3.32	-1.11	-6.46	-3.26	-1.09	-6.32	-3.13	-1.05	-6.06
RIVERSIDE - UNINCOR	10.25	3.82	19.06	14.67	4.70	31.13	16.19	5.28	36.38	14.04	5.11	26.37	18.68	6.03	39.04	20.19	6.60	44.45	-3.79	-1.29	-7.31	-3.99	-1.32	-7.91	-4.00	-1.33	-8.07
SAN BERNARDINO - UNINCOR	12.83	4.78	23.86	18.36	5.89	38.96	20.26	6.60	45.51	17.91	6.52	33.63	23.80	7.68	49.79	25.75	8.42	56.69	-5.07	-1.74	-9.77	-5.43	-1.80	-10.83	-5.49	-1.82	-11.17
VENTURA - UNINCOR	17.38	6.48	32.30	24.86	7.97	52.78	27.49	8.96	61.79	23.72	8.64	44.54	31.52	10.18	65.95	34.10	11.16	75.09	-6.34	-2.18	-12.24	-6.85	-2.21	-13.17	-6.61	-2.20	-13.30
Total	1838	611	3048	2340	750	4965	2586	842	5806	2048	745	3842	2719	878	5689	2942	962	6477	-407.52	-134.54	-796.02	-378.90	-127.74	-723.91	-356.25	-119.88	-669.19

Table A11. Annual Indirect Impacts (Year 16 -Year 20)

(Millions of $ 1999)

City and CDP	Stimulus Effects CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Agoura Hills	0.30	0.11	0.57	0.42	0.14	0.88	0.42	0.14	0.90
Alhambra	1.02	0.37	1.94	1.45	0.47	2.98	1.38	0.48	2.99
Alondra Park	0.04	0.01	0.07	0.05	0.02	0.11	0.05	0.02	0.11
Altadena	0.17	0.06	0.32	0.24	0.08	0.50	0.22	0.07	0.47
Arcadia	1.17	0.42	2.20	1.61	0.53	3.34	1.61	0.53	3.50
Artesia	0.24	0.09	0.46	0.34	0.11	0.70	0.33	0.11	0.72
Avocado Heights	0.43	0.15	0.82	0.64	0.21	1.30	0.55	0.18	1.17
Azusa	0.28	0.10	0.54	0.41	0.14	0.84	0.36	0.12	0.78
Baldwin Park	0.32	0.11	0.61	0.47	0.15	0.96	0.42	0.14	0.89
Bell	0.32	0.11	0.61	0.46	0.15	0.94	0.43	0.14	0.92
Bellflower	0.38	0.13	0.71	0.53	0.17	1.09	0.51	0.17	1.10
Bell Gardens	0.13	0.05	0.24	0.18	0.06	0.38	0.17	0.05	0.36
Beverly Hills	3.13	1.13	5.91	4.36	1.42	9.00	4.26	1.41	9.31
Bradbury	0.02	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08
Burbank	2.15	0.77	4.07	3.05	1.00	6.27	2.89	0.95	6.24
Calabasas	0.24	0.09	0.45	0.33	0.11	0.69	0.32	0.11	0.70
Carson	1.61	0.57	3.07	2.36	0.78	4.82	2.09	0.69	4.46
Cerritos	1.00	0.36	1.88	1.40	0.48	2.88	1.38	0.45	2.94
Charter Oak	0.03	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.10
Citrus	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07
Claremont	0.34	0.12	0.64	0.48	0.16	0.99	0.45	0.15	0.98
Commerce	1.15	0.41	2.16	1.68	0.55	3.42	1.50	0.50	3.20
Compton	0.64	0.23	1.22	0.94	0.31	1.92	0.83	0.28	1.78
Covina	0.64	0.23	1.22	0.90	0.29	1.86	0.87	0.29	1.89
Cudahy	0.04	0.01	0.07	0.05	0.02	0.11	0.05	0.02	0.10
Culver City	1.21	0.43	2.28	1.70	0.55	3.50	1.63	0.54	3.54
Del Aire	0.10	0.04	0.19	0.15	0.05	0.30	0.13	0.04	0.29
Desert View Highlands	0.00	0.00	0.01	0.01	0.00	0.01	0.00	0.00	0.01
Diamond Bar	0.50	0.18	0.95	0.71	0.23	1.45	0.68	0.22	1.47
Downey	1.30	0.48	2.48	1.85	0.60	3.79	1.74	0.57	3.75
Duarte	0.13	0.05	0.25	0.18	0.06	0.39	0.17	0.06	0.38
East Compton	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.04
East La Mirada	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04
East Los Angeles	0.81	0.29	1.54	1.17	0.38	2.39	1.08	0.36	2.33
East Pasadena	0.08	0.03	0.14	0.11	0.03	0.22	0.10	0.03	0.22
East San Gabriel	0.05	0.02	0.09	0.07	0.02	0.14	0.07	0.02	0.15
El Monte	0.94	0.34	1.79	1.35	0.44	2.77	1.25	0.41	2.69
El Segundo	1.31	0.47	2.49	1.89	0.62	3.86	1.73	0.57	3.72
Florence-Graham	0.18	0.06	0.31	0.24	0.08	0.49	0.21	0.07	0.45
Gardena	0.59	0.21	1.13	0.86	0.28	1.75	0.78	0.26	1.68
Glendale	3.60	1.29	6.79	5.01	1.63	10.34	4.92	1.62	10.69
Glendora	0.51	0.18	0.96	0.72	0.24	1.48	0.68	0.23	1.48
Hacienda Heights	0.33	0.12	0.62	0.47	0.15	0.96	0.44	0.14	0.94
Hawaiian Gardens	0.02	0.01	0.05	0.04	0.01	0.07	0.03	0.01	0.07
Hawthorne	0.50	0.18	0.94	0.71	0.23	1.48	0.88	0.22	1.41
Hermosa Beach	0.23	0.08	0.44	0.33	0.11	0.68	0.32	0.10	0.69
Hidden Hills	0.09	0.03	0.16	0.12	0.04	0.25	0.12	0.04	0.25
Huntington Park	0.30	0.11	0.57	0.43	0.14	0.89	0.40	0.13	0.86
Industry	1.06	0.38	2.05	1.57	0.51	3.20	1.41	0.47	3.03
Inglewood	0.94	0.33	1.78	1.35	0.44	2.78	1.24	0.41	2.87
Irwindale	1.34	0.48	2.52	1.85	0.60	3.82	1.84	0.61	4.02
La Canada Flintridge	0.49	0.18	0.92	0.67	0.22	1.39	0.68	0.22	1.49
La Crescenta-Montrose	0.18	0.06	0.30	0.22	0.07	0.48	0.21	0.07	0.48
Ladera Heights	0.12	0.04	0.22	0.17	0.05	0.34	0.16	0.05	0.35
La Habra Heights	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08
Lake Los Angeles	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Lakewood	0.42	0.15	0.79	0.59	0.19	1.22	0.55	0.18	1.19
La Mirada	0.48	0.17	0.91	0.69	0.23	1.41	0.63	0.21	1.36
Lancaster	0.80	0.29	1.51	1.13	0.37	2.33	1.07	0.35	2.31
La Puente	0.10	0.03	0.18	0.14	0.05	0.29	0.13	0.04	0.28
La Verne	0.16	0.06	0.34	0.25	0.08	0.52	0.23	0.08	0.50
Lawndale	0.17	0.06	0.32	0.24	0.08	0.50	0.23	0.08	0.50
Lennox	0.09	0.03	0.16	0.13	0.04	0.26	0.11	0.04	0.24
Littlerock	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lomita	0.15	0.05	0.29	0.21	0.07	0.44	0.20	0.07	0.44
Long Beach	4.84	1.73	9.15	6.88	2.25	14.13	8.46	2.13	13.95
Los Angeles	59.37	21.26	112.35	84.20	27.53	173.01	79.87	26.28	172.19
Lynwood	0.21	0.08	0.41	0.31	0.10	0.83	0.28	0.09	0.81
Malibu	0.10	0.03	0.18	0.13	0.04	0.28	0.13	0.04	0.28
Manhattan Beach	0.48	0.17	0.92	0.68	0.22	1.40	0.66	0.22	1.42
Marina del Ray	0.33	0.12	0.63	0.47	0.15	0.97	0.45	0.15	0.97
Mayflower Village	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.02
Maywood	0.13	0.05	0.25	0.20	0.06	0.40	0.17	0.06	0.37
Monrovia	0.44	0.16	0.83	0.64	0.21	1.30	0.58	0.19	1.24
Montebello	0.82	0.22	1.17	0.86	0.29	1.81	0.82	0.27	1.77
Monterey Park	1.04	0.37	1.96	1.44	0.47	2.98	1.43	0.47	3.11
North El Monte	0.02	0.01	0.05	0.04	0.01	0.07	0.03	0.01	0.07
Norwalk	0.52	0.19	0.99	0.75	0.25	1.54	0.68	0.23	1.46
Palmdale	0.56	0.20	1.06	0.80	0.26	1.64	0.75	0.25	1.62
Palos Verdes Estates	0.21	0.06	0.40	0.29	0.10	0.60	0.29	0.10	0.63
Paramount	0.38	0.14	0.73	0.58	0.18	1.13	0.50	0.16	1.07
Pasadena	4.42	1.58	8.35	8.22	2.03	12.80	5.97	1.97	12.94
Pico Rivera	0.41	0.14	0.77	0.59	0.19	1.20	0.53	0.18	1.14
Pomona	1.11	0.40	2.10	1.59	0.52	3.26	1.47	0.49	3.17
Quartz Hill	0.04	0.02	0.08	0.06	0.02	0.13	0.06	0.02	0.13
Rancho Palos Verdes	0.31	0.11	0.58	0.43	0.14	0.89	0.42	0.14	0.92
Redondo Beach	0.70	0.25	1.33	1.00	0.33	2.05	0.93	0.31	2.01
Rolling Hills	0.01	0.00	0.02	0.02	0.01	0.03	0.01	0.00	0.03
Rolling Hills Estates	0.09	0.03	0.18	0.13	0.04	0.27	0.13	0.04	0.28
Rosemead	0.86	0.31	1.68	1.29	0.43	2.63	1.14	0.38	2.44
Rowland Heights	0.31	0.11	0.59	0.44	0.15	0.91	0.41	0.14	0.89
San Dimas	0.44	0.16	0.83	0.63	0.21	1.29	0.58	0.19	1.25
San Fernando	0.28	0.09	0.49	0.38	0.12	0.77	0.34	0.11	0.73
San Gabriel	0.35	0.12	0.65	0.48	0.16	1.00	0.47	0.15	1.02
San Marino	0.24	0.09	0.46	0.34	0.11	0.70	0.34	0.11	0.74
Santa Clarita	0.86	0.31	1.66	1.25	0.41	2.56	1.18	0.39	2.54
Santa F[illegible]ngs	1.13	0.40	2.15	1.67	0.55	3.39	1.48	0.48	3.11

City and CDP	Impacts of Household Expenditure Reduction CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
Agoura Hills	2.34	0.85	4.39	3.11	1.00	6.50	3.36	1.10	7.40
Alhambra	9.71	3.54	18.24	12.91	4.17	27.00	13.96	4.57	30.75
Alondra Park	0.35	0.13	0.67	0.47	0.15	0.99	0.51	0.17	1.12
Altadena	1.50	0.55	2.82	1.99	0.64	4.17	2.16	0.71	4.75
Arcadia	9.03	3.29	16.95	11.99	3.87	25.10	12.98	4.25	28.57
Artesia	1.82	0.66	3.41	2.41	0.78	5.05	2.61	0.85	5.75
Avocado Heights	5.27	1.92	9.89	7.00	2.26	14.64	7.57	2.48	16.67
Azusa	3.72	1.35	6.98	4.94	1.60	10.34	5.35	1.75	11.77
Baldwin Park	4.15	1.51	7.80	5.52	1.78	11.54	5.97	1.95	13.14
Bell	3.44	1.25	6.47	4.56	1.48	9.58	4.95	1.62	10.90
Bellflower	3.36	1.22	6.31	4.47	1.44	9.34	4.83	1.58	10.64
Bell Gardens	1.89	0.69	3.55	2.51	0.81	5.26	2.72	0.89	5.98
Beverly Hills	23.38	8.52	43.91	31.07	10.03	65.01	33.62	11.00	74.02
Bradbury	0.14	0.05	0.27	0.19	0.06	0.40	0.21	0.07	0.45
Burbank	22.40	8.16	42.07	29.77	9.61	62.29	32.21	10.54	70.92
Calabasas	1.82	0.66	3.42	2.42	0.78	5.06	2.62	0.86	5.76
Carson	20.48	7.45	38.43	27.19	8.78	56.89	29.42	9.62	64.78
Cerritos	8.35	3.04	15.69	11.10	3.58	23.23	12.01	3.93	26.45
Charter Oak	0.36	0.13	0.67	0.47	0.15	0.99	0.51	0.17	1.12
Citrus	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58
Claremont	2.74	1.00	5.15	3.64	1.16	7.62	3.94	1.29	8.68
Commerce	17.41	6.34	32.71	23.14	7.47	48.42	25.04	8.19	55.13
Compton	8.51	3.14	16.17	11.44	3.69	23.94	12.38	4.05	27.25
Covina	5.24	1.91	9.84	6.96	2.25	14.58	7.53	2.46	16.58
Cudahy	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48
Culver City	11.47	4.18	21.54	15.24	4.92	31.89	16.49	5.40	36.31
Del Aire	1.21	0.44	2.27	1.61	0.52	3.36	1.74	0.57	3.83
Desert View Highlands	0.03	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08
Diamond Bar	4.38	1.60	8.23	5.82	1.88	12.18	6.30	2.06	13.87
Downey	10.55	3.84	19.82	14.02	4.53	29.35	15.18	4.96	33.41
Duarte	1.27	0.46	2.38	1.69	0.54	3.53	1.82	0.60	4.02
East Compton	0.12	0.04	0.23	0.16	0.05	0.33	0.17	0.06	0.38
East La Mirada	0.12	0.05	0.23	0.17	0.05	0.35	0.18	0.06	0.39
East Los Angeles	9.27	3.38	17.41	12.32	3.98	25.77	13.33	4.36	29.34
East Pasadena	0.60	0.22	1.12	0.79	0.26	1.66	0.86	0.28	1.89
East San Gabriel	0.34	0.12	0.64	0.45	0.15	0.95	0.49	0.16	1.06
El Monte	9.94	3.62	18.68	13.21	4.27	27.65	14.30	4.68	31.48
El Segundo	16.02	5.83	30.08	21.28	6.87	44.53	23.03	7.53	50.70
Florence-Graham	2.37	0.86	4.45	3.15	1.02	6.59	3.41	1.11	7.50
Gardena	7.10	2.59	13.34	9.44	3.05	19.75	10.21	3.34	22.49
Glendale	28.87	10.52	54.23	38.37	12.39	80.28	41.52	13.58	91.41
Glendora	4.48	1.63	8.38	5.93	1.91	12.41	6.42	2.10	14.13
Hacienda Heights	2.93	1.07	5.51	3.90	1.26	8.16	4.22	1.38	9.29
Hawaiian Gardens	0.26	0.09	0.48	0.34	0.11	0.72	0.37	0.12	0.81
Hawthorne	4.95	1.80	9.30	6.58	2.12	13.76	7.12	2.33	15.67
Hermosa Beach	1.95	0.71	3.68	2.59	0.84	5.42	2.80	0.92	6.17
Hidden Hills	0.69	0.25	1.29	0.91	0.29	1.91	0.99	0.32	2.17
Huntington Park	3.42	1.24	6.42	4.54	1.47	9.50	4.91	1.61	10.82
Industry	14.27	5.20	26.80	18.96	6.12	39.68	20.52	6.71	45.17
Inglewood	9.77	3.56	18.34	12.98	4.19	27.15	14.04	4.59	30.91
Irwindale	10.27	3.74	19.30	13.85	4.41	28.57	14.77	4.83	32.53
La Canada Flintridge	2.77	1.01	5.21	3.68	1.19	7.71	3.99	1.30	8.77
La Crescenta-Montrose	1.20	0.44	2.25	1.59	0.51	3.32	1.72	0.56	3.78
Ladera Heights	1.06	0.39	2.02	1.43	0.48	2.99	1.55	0.51	3.41
La Habra Heights	0.21	0.08	0.40	0.28	0.09	0.59	0.31	0.10	0.67
Lake Los Angeles	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07
Lakewood	3.97	1.45	7.48	5.28	1.71	11.05	5.71	1.87	12.58
La Mirada	5.78	2.10	10.81	7.65	2.47	16.00	8.28	2.71	18.22
Lancaster	7.17	2.61	13.48	9.52	3.08	19.93	10.31	3.37	22.69
La Puente	1.07	0.39	2.01	1.42	0.48	2.98	1.54	0.50	3.39
La Verne	1.77	0.64	3.32	2.35	0.76	4.91	2.54	0.83	5.59
Lawndale	1.43	0.52	2.69	1.90	0.61	3.98	2.06	0.67	4.53
Lennox	0.81	0.33	1.72	1.22	0.39	2.54	1.32	0.43	2.90
Littlerock	0.02	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.05
Lomita	1.32	0.48	2.48	1.75	0.57	3.67	1.90	0.62	4.17
Long Beach	44.02	16.04	82.68	58.50	18.89	122.41	83.30	20.71	139.37
Los Angeles	542.87	197.74	1019.55	721.40	232.98	1509.44	780.59	255.34	1718.60
Lynwood	2.54	0.92	4.77	3.37	1.09	7.06	3.65	1.19	8.04
Malibu	0.80	0.29	1.51	1.07	0.34	2.23	1.15	0.38	2.54
Manhattan Beach	3.85	1.40	7.23	5.12	1.65	10.70	5.54	1.81	12.19
Marina del Ray	2.53	0.92	4.78	3.37	1.09	7.04	3.64	1.19	8.02
Mayflower Village	0.10	0.04	0.19	0.14	0.04	0.28	0.15	0.05	0.32
Maywood	1.73	0.63	3.24	2.29	0.74	4.80	2.48	0.81	5.46
Monrovia	4.75	1.73	8.91	6.31	2.04	13.20	6.82	2.23	15.03
Montebello	6.87	2.50	12.91	9.13	2.95	19.11	9.88	3.23	21.76
Monterey Park	7.48	2.72	14.05	9.94	3.21	20.80	10.76	3.52	23.68
North El Monte	0.27	0.10	0.50	0.35	0.11	0.74	0.38	0.13	0.84
Norwalk	5.64	2.05	10.59	7.49	2.42	15.67	8.11	2.65	17.85
Palmdale	4.95	1.80	9.30	6.58	2.12	13.76	7.12	2.33	15.67
Palos Verdes Estates	1.42	0.52	2.67	1.89	0.61	3.95	2.04	0.67	4.50
Paramount	5.13	1.87	9.63	6.81	2.20	14.26	7.37	2.41	16.23
Pasadena	31.74	11.56	59.81	42.18	13.62	88.25	45.64	14.93	100.47
Pico Rivera	4.40	1.60	8.27	5.85	1.89	12.24	6.33	2.07	13.94
Pomona	11.34	4.13	21.29	15.07	4.87	31.53	18.30	5.33	35.90
Quartz Hill	0.41	0.15	0.77	0.55	0.18	1.14	0.59	0.19	1.30
Rancho Palos Verdes	2.13	0.78	4.00	2.83	0.91	5.92	3.06	1.00	6.74
Redondo Beach	6.27	2.28	11.78	8.33	2.69	17.44	9.02	2.95	19.85
Rolling Hills	0.08	0.03	0.15	0.10	0.03	0.22	0.11	0.04	0.25
Rolling Hills Estates	0.69	0.25	1.30	0.92	0.30	1.93	1.00	0.33	2.20
Rosemead	9.31	3.39	17.49	12.37	4.00	25.89	13.39	4.38	29.48
Rowland Heights	3.42	1.25	6.42	4.54	1.47	9.50	4.91	1.61	10.82
San Dimas	4.40	1.60	8.27	5.85	1.89	12.24	6.33	2.07	13.94
San Fernando	3.15	1.15	5.92	4.19	1.35	8.78	4.53	1.48	9.97
San Gabriel	2.80	1.02	5.27	3.73	1.20	7.80	4.03	1.32	8.88
San Marino	1.91	0.70	3.59	2.54	0.82	5.32	2.75	0.90	6.05
Santa Clarita	8.44	3.07	15.85	11.22	3.62	23.47	12.14	3.97	26.72
Santa F[illegible]ngs	17.20	6.27	32.31	22.86	7.38	47.83	24.74	8.09	54.46

City and CDP	Net Impacts CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Acton	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Agoura Hills	-2.03	-0.74	-3.82	-2.68	-0.87	-5.63	-2.95	-0.96	-6.50
Alhambra	-8.69	-3.17	-18.30	-11.48	-3.70	-24.03	-12.58	-4.11	-27.75
Alondra Park	-0.32	-0.12	-0.60	-0.42	-0.13	-0.88	-0.48	-0.15	-1.02
Altadena	-1.33	-0.49	-2.50	-1.75	-0.58	-3.67	-1.94	-0.63	-4.27
Arcadia	-7.86	-2.87	-14.75	-10.38	-3.35	-21.78	-11.37	-3.72	-25.07
Artesia	-1.57	-0.57	-2.95	-2.08	-0.67	-4.35	-2.28	-0.75	-5.03
Avocado Heights	-4.83	-1.77	-9.07	-6.38	-2.05	-13.34	-7.02	-2.29	-15.50
Azusa	-3.44	-1.25	-6.45	-4.53	-1.46	-9.49	-4.96	-1.63	-10.99
Baldwin Park	-3.83	-1.40	-7.19	-5.05	-1.63	-10.59	-5.55	-1.81	-12.25
Bell	-3.12	-1.14	-5.86	-4.12	-1.33	-8.64	-4.53	-1.48	-9.99
Bellflower	-2.98	-1.09	-5.60	-3.93	-1.27	-8.25	-4.32	-1.41	-9.54
Bell Gardens	-1.76	-0.64	-3.31	-2.33	-0.75	-4.88	-2.55	-0.83	-5.63
Beverly Hills	-20.25	-7.39	-38.00	-26.71	-8.61	-56.01	-29.34	-9.59	-64.71
Bradbury	-0.12	-0.04	-0.22	-0.16	-0.05	-0.33	-0.17	-0.06	-0.38
Burbank	-20.25	-7.39	-38.00	-26.72	-8.62	-56.02	-29.33	-9.58	-64.68
Calabasas	-1.58	-0.58	-2.97	-2.08	-0.67	-4.37	-2.29	-0.75	-5.06
Carson	-18.65	-6.88	-35.36	-24.63	-8.00	-52.06	-27.34	-8.93	-60.32
Cerritos	-7.36	-2.68	-13.80	-9.70	-3.13	-20.35	-10.66	-3.48	-23.50
Charter Oak	-0.32	-0.12	-0.60	-0.42	-0.14	-0.88	-0.46	-0.15	-1.07
Citrus	-0.16	-0.06	-0.30	-0.21	-0.07	-0.44	-0.23	-0.08	-0.51
Claremont	-2.40	-0.88	-4.51	-3.16	-1.02	-6.63	-3.49	-1.14	-7.70
Commerce	-16.28	-5.93	-30.52	-21.47	-6.92	-45.00	-23.54	-7.70	-51.93
Compton	-7.96	-2.91	-14.94	-10.50	-3.38	-22.01	-11.55	-3.77	-25.48
Covina	-4.59	-1.68	-8.62	-6.06	-1.95	-12.70	-6.66	-2.18	-14.69
Cudahy	-0.43	-0.16	-0.81	-0.57	-0.18	-1.19	-0.63	-0.20	-1.38
Culver City	-10.26	-3.75	-19.26	-13.54	-4.37	-28.40	-14.86	-4.86	-32.78
Del Aire	-1.11	-0.40	-2.08	-1.46	-0.47	-3.06	-1.61	-0.52	-3.54
Desert View Highlands	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Diamond Bar	-3.68	-1.42	-7.28	-5.12	-1.65	-10.73	-5.62	-1.84	-12.40
Downey	-9.26	-3.38	-17.36	-12.18	-3.92	-25.55	-13.44	-4.39	-29.66
Duarte	-1.14	-0.42	-2.13	-1.50	-0.48	-3.14	-1.65	-0.54	-3.64
East Compton	-0.11	-0.04	-0.20	-0.14	-0.05	-0.30	-0.16	-0.05	-0.35
East La Mirada	-0.11	-0.04	-0.21	-0.15	-0.05	-0.31	-0.16	-0.05	-0.35
East Los Angeles	-8.45	-3.09	-15.86	-11.15	-3.60	-23.38	-12.25	-4.00	-27.01
East Pasadena	-0.52	-0.19	-0.98	-0.69	-0.22	-1.44	-0.76	-0.25	-1.67
East San Gabriel	-0.29	-0.11	-0.55	-0.38	-0.12	-0.81	-0.42	-0.14	-0.93
El Monte	-9.00	-3.29	-16.89	-11.86	-3.82	-24.88	-13.05	-4.26	-28.79
El Segundo	-14.70	-5.37	-27.59	-19.40	-6.25	-40.67	-21.30	-6.96	-46.98
Florence-Graham	-2.21	-0.81	-4.14	-2.91	-0.94	-6.10	-3.20	-1.04	-7.05
Gardena	-6.51	-2.38	-12.22	-8.58	-2.77	-18.00	-9.43	-3.08	-20.81
Glendale	-25.28	-9.22	-47.44	-33.38	-10.78	-69.94	-36.60	-11.96	-80.72
Glendora	-3.95	-1.44	-7.42	-5.21	-1.68	-10.92	-5.73	-1.87	-12.65
Hacienda Heights	-2.61	-0.95	-4.89	-3.43	-1.11	-7.20	-3.78	-1.24	-8.35
Hawaiian Gardens	-0.23	-0.08	-0.44	-0.31	-0.10	-0.64	-0.34	-0.11	-0.74
Hawthorne	-4.45	-1.63	-8.36	-5.87	-1.89	-12.31	-6.46	-2.11	-14.28
Hermosa Beach	-1.72	-0.63	-3.22	-2.28	-0.73	-4.74	-2.49	-0.81	-5.48
Hidden Hills	-0.60	-0.22	-1.13	-0.79	-0.25	-1.66	-0.87	-0.28	-1.92
Huntington Park	-3.12	-1.14	-5.85	-4.11	-1.32	-8.62	-4.51	-1.48	-9.96
Industry	-13.19	-4.81	-24.75	-17.39	-5.61	-36.47	-19.11	-6.24	-42.14
Inglewood	-8.83	-3.22	-16.56	-11.63	-3.75	-24.39	-12.80	-4.18	-28.25
Irwindale	-8.94	-3.26	-16.78	-11.81	-3.81	-24.75	-12.93	-4.23	-28.51
La Canada Flintridge	-2.28	-0.83	-4.28	-3.01	-0.97	-6.31	-3.30	-1.08	-7.28
La Crescenta-Montrose	-1.04	-0.38	-1.95	-1.37	-0.44	-2.87	-1.50	-0.49	-3.32
Ladera Heights	-0.96	-0.35	-1.80	-1.28	-0.41	-2.65	-1.39	-0.45	-3.06
La Habra Heights	-0.19	-0.07	-0.35	-0.24	-0.08	-0.51	-0.27	-0.09	-0.59
Lake Los Angeles	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Lakewood	-3.56	-1.30	-6.68	-4.69	-1.51	-9.83	-5.18	-1.69	-11.39
La Mirada	-5.28	-1.93	-9.90	-6.96	-2.24	-14.59	-7.64	-2.50	-16.86
Lancaster	-6.37	-2.33	-11.95	-8.39	-2.71	-17.60	-9.24	-3.02	-20.38
La Puente	-0.97	-0.36	-1.83	-1.28	-0.41	-2.69	-1.41	-0.46	-3.12
La Verne	-1.59	-0.58	-2.98	-2.09	-0.67	-4.39	-2.31	-0.75	-5.09
Lawndale	-1.26	-0.48	-2.36	-1.68	-0.54	-3.48	-1.83	-0.60	-4.03
Lennox	-0.83	-0.30	-1.55	-1.09	-0.35	-2.29	-1.20	-0.39	-2.66
Littlerock	-0.01	-0.01	-0.03	-0.02	-0.01	-0.04	-0.02	-0.01	-0.05
Lomita	-1.17	-0.43	-2.19	-1.54	-0.50	-3.23	-1.69	-0.55	-3.74
Long Beach	-39.19	-14.31	-73.53	-51.62	-16.64	-108.26	-56.84	-18.58	-125.43
Los Angeles	-483.49	-178.48	-907.20	-637.20	-205.43	-1336.43	-700.92	-229.06	-1548.41
Lynwood	-2.33	-0.85	-4.36	-3.07	-0.99	-6.43	-3.37	-1.10	-7.43
Malibu	-0.71	-0.26	-1.33	-0.93	-0.30	-1.96	-1.03	-0.34	-2.26
Manhattan Beach	-3.37	-1.23	-6.32	-4.43	-1.43	-9.30	-4.88	-1.60	-10.77
Marina del Ray	-2.20	-0.80	-4.13	-2.90	-0.93	-6.08	-3.19	-1.04	-7.05
Mayflower Village	-0.09	-0.03	-0.18	-0.12	-0.04	-0.26	-0.14	-0.04	-0.30
Maywood	-1.59	-0.58	-2.99	-2.10	-0.68	-4.40	-2.31	-0.75	-5.10
Monrovia	-4.31	-1.57	-8.06	-5.87	-1.83	-11.90	-6.25	-2.04	-13.79
Montebello	-6.26	-2.28	-11.74	-8.25	-2.66	-17.31	-9.06	-2.96	-19.98
Monterey Park	-6.44	-2.35	-12.09	-8.50	-2.74	-17.82	-9.33	-3.05	-20.57
North El Monte	-0.24	-0.09	-0.45	-0.32	-0.10	-0.67	-0.35	-0.11	-0.77
Norwalk	-5.12	-1.87	-9.60	-6.74	-2.17	-14.13	-7.42	-2.43	-16.38
Palmdale	-4.39	-1.60	-8.23	-5.78	-1.86	-12.12	-6.37	-2.08	-14.05
Palos Verdes Estates	-1.21	-0.44	-2.27	-1.60	-0.52	-3.35	-1.76	-0.57	-3.87
Paramount	-4.75	-1.73	-8.90	-6.28	-2.02	-13.12	-6.87	-2.25	-15.16
Pasadena	-27.32	-9.98	-51.26	-35.96	-11.59	-75.44	-39.58	-12.96	-87.54
Pico Rivera	-4.00	-1.48	-7.50	-5.28	-1.70	-11.04	-5.80	-1.90	-12.80
Pomona	-10.23	-3.73	-19.19	-13.48	-4.34	-28.27	-14.83	-4.85	-32.73
Quartz Hill	-0.37	-0.13	-0.69	-0.48	-0.16	-1.01	-0.53	-0.17	-1.17
Rancho Palos Verdes	-1.82	-0.66	-3.41	-2.40	-0.77	-5.03	-2.64	-0.86	-5.82
Redondo Beach	-5.57	-2.03	-10.45	-7.33	-2.36	-15.38	-8.06	-2.64	-17.84
Rolling Hills	-0.07	-0.02	-0.13	-0.09	-0.03	-0.18	-0.10	-0.03	-0.21
Rolling Hills Estates	-0.60	-0.22	-1.12	-0.79	-0.26	-1.66	-0.87	-0.28	-1.91
Rosemead	-8.43	-3.08	-15.81	-11.08	-3.57	-23.25	-12.25	-4.00	-27.03
Rowland Heights	-3.11	-1.13	-5.83	-4.10	-1.32	-8.59	-4.50	-1.47	-9.93
San Dimas	-3.96	-1.45	-7.44	-5.22	-1.68	-10.95	-5.75	-1.88	-12.69
San Fernando	-2.89	-1.05	-5.42	-3.81	-1.23	-7.99	-4.19	-1.37	-9.24
San Gabriel	-2.46	-0.90	-4.61	-3.24	-1.05	-6.80	-3.56	-1.16	-7.86
San Marino	-1.67	-0.81	-3.13	-2.21	-0.71	-4.67	-2.41	-0.79	-5.32
Santa Clarita	-7.58	-2.76	-14.19	-9.97	-3.22	-20.91	-10.96	-3.58	-24.18
Santa F[illegible]ngs	-16.07	-5.86	-30.16	-21.19	-6.83	-44.44	-23.28	-7.61	-51.35

(millions of $ 1999)

Stimulus Effects

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Santa Monica	2.94	1.05	5.57	4.18	1.37	8.58	3.94	1.30	8.52
Sierra Madre	0.08	0.03	0.16	0.12	0.04	0.25	0.11	0.04	0.24
Signal Hill	0.42	0.15	0.80	0.62	0.20	1.26	0.55	0.18	1.18
South El Monte	0.28	0.10	0.53	0.40	0.13	0.82	0.36	0.12	0.77
South Gate	0.48	0.18	0.87	0.68	0.22	1.35	0.61	0.20	1.31
South Pasadena	0.37	0.13	0.71	0.52	0.17	1.08	0.51	0.17	1.11
South San Gabriel	0.04	0.01	0.08	0.06	0.02	0.12	0.05	0.02	0.12
South San Jose Hills	0.02	0.01	0.03	0.02	0.01	0.05	0.02	0.01	0.04
South Whittier	0.14	0.05	0.26	0.20	0.07	0.41	0.18	0.06	0.38
Temple City	0.20	0.07	0.38	0.28	0.09	0.59	0.27	0.09	0.59
Torrance	3.19	1.14	6.04	4.52	1.48	9.30	4.29	1.42	9.28
Valinda	0.05	0.02	0.09	0.07	0.02	0.15	0.07	0.02	0.15
Val Verde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Vernon	1.01	0.36	1.93	1.49	0.49	3.04	1.30	0.43	2.78
View Park-Windsor Hills	0.12	0.04	0.22	0.16	0.05	0.34	0.16	0.05	0.34
Vincent	0.05	0.02	0.09	0.07	0.02	0.14	0.06	0.02	0.13
Walnut	0.21	0.08	0.40	0.30	0.10	0.61	0.28	0.09	0.61
Walnut Park	0.03	0.01	0.06	0.05	0.02	0.10	0.05	0.01	0.10
West Athens	0.04	0.01	0.08	0.06	0.02	0.12	0.05	0.02	0.11
West Carson	0.22	0.08	0.42	0.32	0.10	0.65	0.29	0.10	0.63
West Compton	0.19	0.07	0.36	0.28	0.09	0.57	0.24	0.08	0.51
West Covina	0.72	0.28	1.36	1.00	0.33	2.07	0.98	0.32	2.12
West Hollywood	0.95	0.34	1.81	1.36	0.45	2.79	1.27	0.42	2.73
Westlake Village	0.09	0.03	0.17	0.13	0.04	0.26	0.13	0.04	0.28
Westmont	0.07	0.02	0.13	0.10	0.03	0.21	0.09	0.03	0.19
West Puente Valley	0.04	0.02	0.08	0.08	0.02	0.13	0.06	0.02	0.12
West Whittier-Los Nietos	0.13	0.05	0.24	0.18	0.06	0.37	0.17	0.06	0.36
Whittier	0.68	0.24	1.29	0.97	0.32	1.99	0.92	0.30	1.99
Willowbrook	0.30	0.11	0.58	0.45	0.15	0.91	0.39	0.13	0.84
Aliso Viejo	0.29	0.10	0.55	0.41	0.13	0.84	0.39	0.13	0.84
Anaheim	4.88	1.74	9.24	6.97	2.28	14.28	6.49	2.14	14.00
Brea	1.18	0.43	2.24	1.65	0.54	3.41	1.62	0.53	3.51
Buena Park	0.83	0.30	1.58	1.21	0.40	2.48	1.09	0.36	2.35
Costa Mesa	3.35	1.20	6.34	4.72	1.54	9.72	4.53	1.49	9.82
Coto de Caza	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07
Cypress	1.18	0.43	2.23	1.64	0.53	3.39	1.63	0.53	3.54
Dana Point	0.44	0.16	0.84	0.63	0.21	1.30	0.59	0.19	1.27
Foothill Ranch	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
Fountain Valley	0.92	0.33	1.75	1.30	0.42	2.68	1.25	0.41	2.71
Fullerton	1.67	0.60	3.16	2.38	0.78	4.88	2.23	0.74	4.82
Garden Grove	1.44	0.51	2.72	2.06	0.67	4.22	1.91	0.63	4.12
Huntington Beach	1.86	0.66	3.51	2.64	0.86	5.41	2.48	0.82	5.36
Irvine	7.80	2.80	14.76	11.02	3.60	22.66	10.52	3.47	22.77
Laguna Beach	0.64	0.23	1.21	0.90	0.29	1.85	0.87	0.29	1.89
Laguna Hills	0.61	0.22	1.15	0.85	0.28	1.78	0.84	0.27	1.82
Laguna Niguel	0.48	0.17	0.91	0.68	0.22	1.40	0.66	0.22	1.42
Laguna Woods	0.38	0.14	0.72	0.53	0.17	1.09	0.52	0.17	1.14
La Habra	0.63	0.23	1.20	0.89	0.29	1.84	0.85	0.28	1.85
Lake Forest	0.83	0.30	1.56	1.17	0.38	2.41	1.10	0.36	2.38
La Palma	0.32	0.12	0.61	0.46	0.15	0.94	0.44	0.14	0.95
Las Flores	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.04
Los Alamitos	0.44	0.16	0.83	0.62	0.20	1.28	0.59	0.20	1.28
Mission Viejo	1.04	0.38	1.97	1.45	0.47	3.00	1.43	0.47	3.11
Newport Beach	3.77	1.36	7.12	5.26	1.72	10.86	5.16	1.70	11.20
Newport Coast	0.03	0.01	0.05	0.04	0.01	0.07	0.03	0.01	0.08
Orange	3.11	1.12	5.88	4.36	1.43	9.02	4.21	1.39	9.12
Placentia	0.46	0.16	0.87	0.66	0.22	1.36	0.61	0.20	1.30
Portola Hills	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Rancho Santa Margarita	0.06	0.02	0.12	0.09	0.03	0.18	0.08	0.03	0.18
Rossmoor	0.09	0.03	0.17	0.13	0.04	0.26	0.12	0.04	0.26
San Clemente	0.91	0.33	1.73	1.30	0.43	2.67	1.21	0.40	2.62
San Joaquin Hills	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
San Juan Capistrano	0.61	0.22	1.15	0.87	0.28	1.78	0.81	0.27	1.75
Santa Ana	5.14	1.84	9.73	7.28	2.38	14.97	6.92	2.28	14.96
Seal Beach	0.39	0.14	0.74	0.56	0.18	1.14	0.52	0.17	1.12
Stanton	0.23	0.08	0.44	0.33	0.11	0.68	0.31	0.10	0.67
Tustin	1.72	0.62	3.25	2.42	0.79	4.98	2.34	0.77	5.07
Tustin Foothills	0.31	0.11	0.58	0.43	0.14	0.88	0.43	0.14	0.93
Villa Park	0.04	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.11
Westminster	0.78	0.28	1.47	1.09	0.36	2.25	1.06	0.35	2.30
Yorba Linda	0.54	0.19	1.01	0.74	0.24	1.54	0.73	0.24	1.60
Banning	0.10	0.03	0.18	0.14	0.05	0.28	0.13	0.04	0.28
Beaumont	0.07	0.03	0.14	0.10	0.03	0.21	0.10	0.03	0.21
Bermuda Dunes	0.03	0.01	0.06	0.04	0.01	0.09	0.04	0.01	0.09
Cabazon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Calimesa	0.05	0.02	0.10	0.07	0.02	0.15	0.07	0.02	0.15
Canyon Lake	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.03
Cathedral City	0.28	0.10	0.53	0.40	0.13	0.82	0.36	0.12	0.78
Cherry Valley	0.01	0.00	0.03	0.02	0.01	0.04	0.02	0.01	0.04
Coachella	0.12	0.04	0.22	0.17	0.06	0.35	0.15	0.05	0.33
Corona	0.99	0.35	1.88	1.42	0.47	2.91	1.31	0.43	2.81
Desert Hot Springs	0.04	0.02	0.08	0.06	0.02	0.13	0.06	0.02	0.12
East Hemet	0.05	0.02	0.10	0.08	0.02	0.16	0.07	0.02	0.16
El Cerrito	0.01	0.00	0.03	0.02	0.01	0.04	0.02	0.01	0.04
Glen Avon	0.11	0.04	0.21	0.16	0.05	0.32	0.14	0.05	0.30
Hemet	0.43	0.15	0.81	0.61	0.20	1.26	0.58	0.19	1.25
Highgrove	0.01	0.00	0.03	0.02	0.01	0.04	0.02	0.01	0.04
Home Gardens	0.07	0.02	0.12	0.09	0.03	0.19	0.09	0.03	0.18
Homeland	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.01
Idyllwild-Pine Cove	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01
Indian Wells	0.25	0.09	0.48	0.36	0.12	0.73	0.34	0.11	0.73
Indio	0.31	0.11	0.58	0.43	0.14	0.89	0.41	0.14	0.89
Lake Elsinore	0.18	0.07	0.35	0.26	0.09	0.54	0.24	0.08	0.53
Lakeland Village	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.00	0.03
Lakeview	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01
La Quinta	0.14	0.05	0.27	0.21	0.07	0.42	0.19	0.06	0.41
March AFB	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02
Mecca	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mira Loma	0.03	0.01	0.06	0.05	0.02	0.10	0.04	0.01	0.09

Impacts of Household Expenditure Reduction

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Santa Monica	24.99	9.10	46.94	33.21	10.73	69.50	35.94	11.78	79.12
Sierra Madre	0.74	0.27	1.39	0.98	0.32	2.06	1.06	0.35	7.34
Signal Hill	5.36	1.95	10.07	7.13	2.30	14.92	7.71	2.52	16.98
South El Monte	4.62	1.68	8.68	6.14	1.98	12.85	6.65	2.17	14.64
South Gate	5.16	1.88	9.70	6.86	2.22	14.35	7.42	2.43	16.34
South Pasadena	3.17	1.15	5.95	4.21	1.36	8.81	4.55	1.49	10.03
South San Gabriel	0.34	0.12	0.63	0.45	0.14	0.93	0.48	0.16	1.06
South San Jose Hills	0.21	0.08	0.40	0.28	0.09	0.59	0.30	0.10	0.67
South Whittier	1.62	0.59	3.04	2.15	0.69	4.50	2.33	0.76	5.12
Temple City	1.81	0.66	3.40	2.40	0.78	5.03	2.60	0.85	5.72
Torrance	30.27	11.03	56.85	40.23	12.99	84.17	43.53	14.24	95.83
Valinda	0.38	0.14	0.72	0.51	0.16	1.07	0.55	0.18	1.21
Val Verde	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02
Vernon	18.88	6.88	35.48	25.09	8.10	52.49	27.15	8.88	59.77
View Park-Windsor Hills	0.85	0.31	1.60	1.13	0.37	2.37	1.22	0.40	2.69
Vincent	0.55	0.20	1.03	0.73	0.24	1.52	0.79	0.26	1.74
Walnut	2.02	0.73	3.79	2.68	0.87	5.61	2.90	0.95	6.39
Walnut Park	0.33	0.12	0.62	0.44	0.14	0.92	0.47	0.15	1.04
West Athens	0.54	0.20	1.02	0.72	0.23	1.50	0.78	0.25	1.71
West Carson	2.07	0.75	3.89	2.75	0.89	5.78	2.98	0.97	6.58
West Compton	3.18	1.16	5.97	4.22	1.36	8.84	4.57	1.49	10.06
West Covina	5.70	2.08	10.71	7.57	2.45	15.85	8.20	2.68	18.05
West Hollywood	8.29	3.02	15.58	11.01	3.56	23.04	11.91	3.90	26.23
Westlake Village	0.57	0.21	1.07	0.76	0.24	1.58	0.82	0.27	1.80
Westmont	0.68	0.24	1.25	0.88	0.28	1.84	0.95	0.31	2.10
West Puente Valley	0.69	0.25	1.30	0.92	0.30	1.92	0.99	0.33	2.19
West Whittier-Los Nietos	1.15	0.42	2.16	1.53	0.49	3.20	1.65	0.54	3.64
Whittier	5.83	2.05	10.58	7.49	2.42	15.66	8.10	2.65	17.83
Willowbrook	3.96	1.44	7.44	5.27	1.70	11.02	5.70	1.86	12.55
Aliso Viejo	2.53	0.92	4.75	3.36	1.08	7.03	3.64	1.19	8.00
Anaheim	48.09	17.52	90.33	63.91	20.64	133.73	69.16	22.62	152.26
Brea	9.67	3.52	18.15	12.85	4.15	26.88	13.90	4.55	30.60
Buena Park	10.06	3.66	18.89	13.37	4.32	27.97	14.46	4.73	31.84
Costa Mesa	27.48	10.01	51.60	36.51	11.79	76.40	39.51	12.92	86.98
Coto de Caza	0.21	0.08	0.39	0.28	0.09	0.58	0.30	0.10	0.66
Cypress	8.81	3.21	16.55	11.71	3.78	24.50	12.67	4.15	27.90
Dana Point	3.87	1.41	7.26	5.14	1.66	10.75	5.56	1.82	12.24
Foothill Ranch	0.08	0.03	0.15	0.11	0.04	0.23	0.12	0.04	0.26
Fountain Valley	8.18	2.98	15.36	10.87	3.51	22.74	11.76	3.85	25.89
Fullerton	16.52	6.02	31.02	21.95	7.09	45.93	23.75	7.77	52.29
Garden Grove	14.69	5.35	27.58	19.52	6.30	40.84	21.12	6.91	46.50
Huntington Beach	17.22	6.27	32.34	22.89	7.39	47.89	24.76	8.10	54.52
Irvine	63.44	23.11	119.15	84.30	27.22	176.40	91.22	29.84	200.84
Laguna Beach	4.71	1.72	8.85	6.26	2.02	13.10	6.77	2.22	14.91
Laguna Hills	4.42	1.61	8.30	5.87	1.90	12.29	6.35	2.08	13.99
Laguna Niguel	3.84	1.40	7.22	5.11	1.65	10.69	5.53	1.81	12.17
Laguna Woods	2.71	0.99	5.08	3.60	1.16	7.52	3.89	1.27	8.56
La Habra	9.85	3.59	18.50	13.09	4.23	27.40	14.17	4.63	31.19
Lake Forest	8.00	2.91	15.02	10.63	3.43	22.24	11.50	3.76	25.32
La Palma	3.78	1.37	7.08	5.00	1.61	10.45	5.41	1.77	11.90
Las Flores	0.12	0.04	0.22	0.16	0.05	0.33	0.17	0.06	0.38
Los Alamitos	4.84	1.76	9.09	6.43	2.08	13.46	6.96	2.28	15.32
Mission Viejo	7.40	2.69	13.89	9.83	3.17	20.57	10.64	3.48	23.42
Newport Beach	25.68	9.36	48.24	34.13	11.02	71.42	36.93	12.08	81.31
Newport Coast	0.22	0.08	0.41	0.29	0.09	0.60	0.31	0.10	0.69
Orange	26.83	9.70	50.01	35.39	11.43	74.04	38.29	12.53	84.30
Placentia	5.03	1.83	9.45	6.69	2.16	14.00	7.24	2.37	15.94
Portola Hills	0.03	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.11
Rancho Santa Margarita	0.57	0.21	1.07	0.75	0.24	1.58	0.82	0.27	1.80
Rossmoor	0.73	0.27	1.37	0.97	0.31	2.03	1.05	0.34	2.31
San Clemente	8.61	3.14	16.17	11.44	3.70	23.95	12.38	4.05	27.27
San Joaquin Hills	0.04	0.02	0.06	0.06	0.02	0.12	0.06	0.02	0.14
San Juan Capistrano	5.77	2.10	10.83	7.66	2.47	16.03	8.29	2.71	18.26
Santa Ana	46.97	17.64	91.98	65.08	21.02	136.17	70.42	23.04	155.04
Seal Beach	3.16	1.15	5.93	4.19	1.35	8.78	4.54	1.48	9.99
Stanton	2.53	0.92	4.78	3.37	1.09	7.04	3.64	1.19	8.02
Tustin	14.15	5.16	26.58	18.81	6.07	39.36	20.35	6.66	44.81
Tustin Foothills	1.87	0.68	3.52	2.49	0.80	5.21	2.69	0.88	5.93
Villa Park	0.28	0.10	0.52	0.37	0.12	0.77	0.40	0.13	0.87
Westminster	6.24	2.27	11.71	8.29	2.68	17.34	8.97	2.93	19.75
Yorba Linda	3.91	1.42	7.35	5.20	1.68	10.88	5.62	1.84	12.38
Banning	0.92	0.34	1.73	1.22	0.39	2.58	1.32	0.43	2.91
Beaumont	0.72	0.26	1.35	0.95	0.31	1.99	1.03	0.34	2.27
Bermuda Dunes	0.27	0.10	0.50	0.35	0.11	0.74	0.38	0.12	0.84
Cabazon	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07
Calimesa	0.42	0.15	0.79	0.56	0.18	1.17	0.60	0.20	1.33
Canyon Lake	0.11	0.04	0.20	0.14	0.05	0.30	0.15	0.05	0.34
Cathedral City	2.71	0.99	5.09	3.60	1.16	7.53	3.89	1.27	8.57
Cherry Valley	0.11	0.04	0.20	0.14	0.05	0.30	0.16	0.05	0.34
Coachella	1.50	0.55	2.82	1.99	0.64	4.17	2.16	0.71	4.75
Corona	10.63	3.87	19.96	14.13	4.56	29.56	15.29	5.00	33.85
Desert Hot Springs	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.18	1.20
East Hemet	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.18	1.20
El Cerrito	0.18	0.06	0.30	0.21	0.07	0.45	0.23	0.08	0.51
Glen Avon	1.45	0.53	2.71	1.92	0.62	4.02	2.08	0.68	4.58
Hemet	3.63	1.32	6.81	4.82	1.56	10.09	5.22	1.71	11.48
Highgrove	0.17	0.06	0.32	0.23	0.07	0.47	0.24	0.08	0.54
Home Gardens	0.69	0.25	1.29	0.91	0.29	1.91	0.99	0.32	2.17
Homeland	0.07	0.02	0.12	0.09	0.03	0.18	0.10	0.03	0.21
Idyllwild-Pine Cove	0.03	0.01	0.06	0.04	0.01	0.06	0.04	0.01	0.10
Indian Wells	1.92	0.70	3.60	2.55	0.82	5.33	2.76	0.90	6.07
Indio	2.97	1.08	5.58	3.95	1.28	8.26	4.27	1.40	9.41
Lake Elsinore	1.74	0.63	3.26	2.31	0.74	4.83	2.50	0.82	5.49
Lakeland Village	0.13	0.05	0.24	0.17	0.06	0.36	0.18	0.06	0.41
Lakeview	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.28
La Quinta	1.17	0.43	2.19	1.55	0.50	3.25	1.68	0.55	3.70
March AFB	0.09	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27
Mecca	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02
Mira Loma	0.38	0.14	0.71	0.50	0.16	1.05	0.54	0.16	1.20

Net Impacts

City and CDP	CASE I Scenario I	CASE I Scenario II	CASE I Scenario III	CASE II Scenario I	CASE II Scenario II	CASE II Scenario III	CASE III Scenario I	CASE III Scenario II	CASE III Scenario III
Santa Monica	-22.05	-8.05	-41.37	-29.03	-9.36	-60.91	-31.99	-10.45	-70.60
Sierra Madre	-0.66	-0.24	-1.23	-0.88	-0.28	-1.81	-0.95	-0.31	-2.10
Signal Hill	-4.94	-1.80	-9.27	-6.51	-2.10	-13.68	-7.16	-2.34	-15.81
South El Monte	-4.35	-1.59	-8.16	-5.74	-1.65	-12.03	-6.29	-2.06	-13.87
South Gate	-4.70	-1.72	-8.82	-6.20	-2.00	-13.00	-6.81	-2.23	-15.03
South Pasadena	-2.79	-1.02	-5.24	-3.69	-1.19	-7.73	-4.04	-1.32	-8.92
South San Gabriel	-0.30	-0.11	-0.55	-0.39	-0.13	-0.82	-0.43	-0.14	-0.95
South San Jose Hills	-0.20	-0.07	-0.37	-0.26	-0.08	-0.54	-0.28	-0.09	-0.63
South Whittier	-1.48	-0.54	-2.78	-1.95	-0.63	-4.09	-2.15	-0.70	-4.74
Temple City	-1.61	-0.59	-3.01	-2.12	-0.68	-4.44	-2.33	-0.76	-5.13
Torrance	-27.08	-9.88	-50.81	-35.70	-11.51	-74.87	-39.23	-12.82	-86.55
Valinda	-0.33	-0.12	-0.62	-0.44	-0.14	-0.92	-0.48	-0.16	-1.07
Val Verde	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
Vernon	-17.88	-6.52	-33.53	-23.60	-7.61	-49.46	-25.84	-8.45	-58.98
View Park-Windsor Hills	-0.73	-0.27	-1.38	-0.97	-0.31	-2.03	-1.07	-0.35	-2.35
Vincent	-0.50	-0.18	-0.94	-0.66	-0.21	-1.39	-0.73	-0.24	-1.60
Walnut	-1.81	-0.66	-3.39	-2.38	-0.77	-5.00	-2.62	-0.86	-5.78
Walnut Park	-0.30	-0.11	-0.55	-0.39	-0.13	-0.82	-0.43	-0.14	-0.94
West Athens	-0.50	-0.18	-0.94	-0.66	-0.21	-1.38	-0.72	-0.24	-1.60
West Carson	-1.85	-0.68	-3.47	-2.44	-0.79	-5.11	-2.69	-0.88	-5.93
West Compton	-2.99	-1.09	-5.61	-3.94	-1.27	-8.27	-4.33	-1.42	-9.55
West Covina	-4.98	-1.82	-9.35	-6.57	-2.12	-13.78	-7.22	-2.36	-15.92
West Hollywood	-7.33	-2.68	-13.78	-9.65	-3.11	-20.24	-10.65	-3.48	-23.50
Westlake Village	-0.48	-0.17	-0.89	-0.63	-0.20	-1.32	-0.69	-0.23	-1.57
Westmont	-0.59	-0.22	-1.11	-0.78	-0.25	-1.64	-0.86	-0.28	-1.91
West Puente Valley	-0.65	-0.24	-1.22	-0.85	-0.28	-1.79	-0.94	-0.31	-2.07
West Whittier-Los Nietos	-1.02	-0.37	-1.92	-1.35	-0.44	-2.83	-1.49	-0.49	-3.28
Whittier	-4.95	-1.81	-8.29	-6.52	-2.10	-13.68	-7.18	-2.35	-15.84
Willowbrook	-3.66	-1.34	-6.86	-4.82	-1.55	-10.11	-5.30	-1.73	-11.70
Aliso Viejo	-2.24	-0.82	-4.20	-2.95	-0.95	-6.19	-3.25	-1.06	-7.16
Anaheim	-43.22	-15.78	-81.09	-56.95	-18.36	-119.44	-62.67	-20.48	-138.26
Brea	-8.48	-3.10	-15.92	-11.19	-3.61	-23.46	-12.28	-4.01	-27.09
Buena Park	-9.23	-3.37	-17.31	-12.16	-3.92	-25.51	-13.37	-4.37	-29.49
Costa Mesa	-24.12	-8.81	-45.26	-31.79	-10.25	-66.68	-34.97	-11.43	-77.16
Coto de Caza	-0.18	-0.07	-0.35	-0.24	-0.08	-0.51	-0.27	-0.09	-0.59
Cypress	-7.63	-2.78	-14.32	-10.07	-3.25	-21.11	-11.05	-3.61	-24.36
Dana Point	-3.42	-1.25	-6.42	-4.51	-1.45	-9.46	-4.97	-1.62	-10.97
Foothill Ranch	-0.08	-0.03	-0.14	-0.10	-0.03	-0.21	-0.11	-0.04	-0.24
Fountain Valley	-7.26	-2.65	-13.62	-9.57	-3.09	-20.07	-10.51	-3.44	-23.19
Fullerton	-14.85	-5.42	-27.86	-19.57	-6.31	-41.05	-21.52	-7.03	-47.47
Garden Grove	-13.25	-4.84	-24.86	-17.48	-5.63	-36.62	-19.21	-6.28	-42.38
Huntington Beach	-15.37	-5.61	-28.83	-20.25	-6.53	-42.47	-22.28	-7.28	-49.16
Irvine	-55.64	-20.31	-104.39	-73.29	-23.62	-153.73	-80.70	-26.37	-178.07
Laguna Beach	-4.07	-1.49	-7.64	-5.36	-1.73	-11.25	-5.90	-1.93	-13.03
Laguna Hills	-3.81	-1.39	-7.15	-5.02	-1.62	-10.53	-5.52	-1.80	-12.17
Laguna Niguel	-3.36	-1.23	-6.31	-4.43	-1.43	-9.29	-4.87	-1.59	-10.74
Laguna Woods	-2.32	-0.85	-4.36	-3.07	-0.99	-6.43	-3.37	-1.10	-7.43
La Habra	-9.22	-3.36	-17.31	-12.20	-3.94	-25.58	-13.31	-4.35	-29.34
Lake Forest	-7.17	-2.62	-13.46	-9.45	-3.05	-19.83	-10.40	-3.40	-22.94
La Palma	-3.44	-1.25	-6.45	-4.54	-1.46	-9.51	-4.97	-1.62	-10.95
Las Flores	-0.11	-0.04	-0.20	-0.14	-0.04	-0.29	-0.15	-0.05	-0.34
Los Alamitos	-4.40	-1.61	-8.26	-5.81	-1.87	-12.18	-6.37	-2.08	-14.04
Mission Viejo	-6.36	-2.32	-11.93	-8.38	-2.70	-17.58	-9.21	-3.01	-20.31
Newport Beach	-21.91	-8.00	-41.11	-28.87	-9.31	-60.58	-31.77	-10.38	-70.11
Newport Coast	-0.19	-0.07	-0.36	-0.25	-0.08	-0.53	-0.28	-0.09	-0.61
Orange	-23.52	-8.58	-44.13	-31.00	-10.00	-65.02	-34.08	-11.14	-75.18
Placentia	-4.57	-1.67	-8.58	-6.03	-1.94	-12.64	-6.63	-2.17	-14.63
Portola Hills	-0.03	-0.01	-0.06	-0.04	-0.01	-0.09	-0.05	-0.02	-0.10
Rancho Santa Margarita	-0.50	-0.18	-0.95	-0.66	-0.21	-1.39	-0.73	-0.24	-1.61
Rossmoor	-0.64	-0.23	-1.20	-0.85	-0.27	-1.77	-0.93	-0.30	-2.05
San Clemente	-7.70	-2.81	-14.45	-10.14	-3.27	-21.28	-11.17	-3.65	-24.65
San Joaquin Hills	-0.04	-0.01	-0.07	-0.05	-0.02	-0.10	-0.05	-0.02	-0.12
San Juan Capistrano	-5.16	-1.88	-9.68	-6.79	-2.19	-14.25	-7.48	-2.44	-16.51
Santa Ana	-43.83	-16.00	-82.24	-57.80	-18.64	-121.20	-63.50	-20.75	-140.08
Seal Beach	-2.77	-1.01	-5.19	-3.64	-1.17	-7.63	-4.02	-1.31	-8.88
Stanton	-2.30	-0.84	-4.32	-3.03	-0.98	-6.36	-3.33	-1.09	-7.36
Tustin	-12.43	-4.54	-23.33	-16.39	-5.29	-34.38	-18.02	-5.89	-39.74
Tustin Foothills	-1.57	-0.57	-2.94	-2.06	-0.67	-4.33	-2.27	-0.74	-5.00
Villa Park	-0.24	-0.09	-0.45	-0.32	-0.10	-0.66	-0.35	-0.11	-0.77
Westminster	-5.46	-1.99	-10.24	-7.20	-2.32	-15.09	-7.91	-2.59	-17.45
Yorba Linda	-3.38	-1.23	-6.33	-4.45	-1.44	-9.34	-4.89	-1.60	-10.79
Banning	-0.82	-0.30	-1.55	-1.09	-0.35	-2.28	-1.20	-0.39	-2.64
Beaumont	-0.65	-0.24	-1.21	-0.85	-0.27	-1.78	-0.94	-0.31	-2.07
Bermuda Dunes	-0.24	-0.09	-0.44	-0.31	-0.10	-0.65	-0.34	-0.11	-0.75
Cabazon	-0.02	-0.01	-0.04	-0.03	-0.01	-0.05	-0.03	-0.01	-0.06
Calimesa	-0.37	-0.13	-0.69	-0.48	-0.16	-1.02	-0.53	-0.17	-1.18
Canyon Lake	-0.09	-0.03	-0.18	-0.12	-0.04	-0.26	-0.14	-0.04	-0.30
Cathedral City	-2.43	-0.89	-4.56	-3.20	-1.03	-6.71	-3.53	-1.15	-7.79
Cherry Valley	-0.09	-0.03	-0.18	-0.12	-0.04	-0.26	-0.14	-0.04	-0.30
Coachella	-1.36	-0.50	-2.60	-1.82	-0.59	-3.82	-2.01	-0.66	-4.42
Corona	-9.64	-3.52	-18.09	-12.70	-4.10	-26.64	-13.98	-4.57	-30.84
Desert Hot Springs	-0.33	-0.12	-0.63	-0.44	-0.14	-0.92	-0.49	-0.16	-1.07
East Hemet	-0.32	-0.12	-0.61	-0.43	-0.14	-0.89	-0.47	-0.15	-1.03
El Cerrito	-0.15	-0.05	-0.28	-0.19	-0.06	-0.41	-0.21	-0.07	-0.47
Glen Avon	-1.34	-0.49	-2.51	-1.76	-0.57	-3.70	-1.94	-0.63	-4.28
Hemet	-3.20	-1.17	-6.00	-4.21	-1.36	-8.83	-4.64	-1.52	-10.24
Highgrove	-0.16	-0.06	-0.29	-0.21	-0.07	-0.43	-0.23	-0.07	-0.50
Home Gardens	-0.62	-0.23	-1.16	-0.82	-0.26	-1.71	-0.90	-0.29	-1.99
Homeland	-0.06	-0.02	-0.11	-0.08	-0.03	-0.17	-0.09	-0.03	-0.20
Idyllwild-Pine Cove	-0.03	-0.01	-0.05	-0.03	-0.01	-0.07	-0.04	-0.01	-0.08
Indian Wells	-1.67	-0.61	-3.12	-2.19	-0.71	-4.59	-2.42	-0.79	-5.34
Indio	-2.66	-0.97	-5.00	-3.52	-1.13	-7.37	-3.86	-1.26	-8.51
Lake Elsinore	-1.55	-0.57	-2.91	-2.04	-0.66	-4.29	-2.25	-0.74	-4.97
Lakeland Village	-0.12	-0.04	-0.22	-0.15	-0.05	-0.32	-0.17	-0.06	-0.37
Lakeview	-0.08	-0.03	-0.16	-0.11	-0.04	-0.23	-0.12	-0.04	-0.27
La Quinta	-1.02	-0.37	-1.92	-1.35	-0.43	-2.82	-1.49	-0.49	-3.28
March AFB	-0.06	-0.03	-0.15	-0.10	-0.03	-0.22	-0.11	-0.04	-0.25
Mecca	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
Mira Loma	-0.34	-0.13	-0.65	-0.45	-0.15	-0.95	-0.50	-0.16	-1.10

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction										Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III				CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	0 43	0.15	0.81	0.81	0.20	1.25	0.58	0.19	1.25	3.47	1.28	6.51	4.61	1.49	8.64	4.98	1.83	10 97	-3 04	-1.11	-5 70	-4 00	-1 29	-8 39	-4 40	-1 44	-9 72
Murrieta	0 23	0 08	0 43	0 32	0.11	0 68	0.30	0 10	0 55	2.33	0 85	4 38	3 10	1 00	5.48	3.35	1.10	7 38	-2 10	-0 77	-3 95	-2 77	-0 99	-5 82	-3 05	-1 00	-6 73
Murrieta Hot Springs	0 01	0 00	0.01	0.01	0.00	0 01	0.01	0 00	0 01	0.05	0 02	0 10	0 07	0 02	0 15	0 08	0 03	0 17	-0 05	-0 02	-0 09	-0 06	-0 02	-0 14	-0 07	-0 02	-0 16
Norco	0 21	0 06	0 41	0 31	0 10	0 64	0 28	0 09	0 59	2 13	0 78	4 00	2 83	0 91	5 92	3 06	1.00	6 74	-1 91	-0 70	-3 59	-2 52	-0 81	-5 28	-2 76	-0 91	-6 15
Nuevo	0 01	0 00	0.01	0.01	0.00	0 02	0.01	0 00	0 02	0.13	0 05	0 25	0 18	0 06	0 37	0 19	0 06	0 42	-0 13	-0 05	-0 24	-0 17	-0 05	-0 35	-0 18	-0 06	-0 40
Palm Desert	0 85	0 30	1 60	1 20	0 39	2.47	1 14	0 38	2.46	7.01	2 55	13.17	9.32	3 01	19 49	10 06	3 30	22 19	-6 16	-2 25	-11 56	-8 12	-2 82	-17 03	-8 94	-2 92	-19 73
Palm Springs	0 82	0 29	1 55	1 17	0 38	2 40	1 09	0 36	2 35	8 75	2 48	12 68	8 98	2 90	18 78	9 71	3.18	21 38	-5 93	-2 17	-11 13	-7 81	-2 52	-16 38	-8 62	-2 82	-19 03
Pedley	0 04	0 02	0 08	0 06	0 02	0 13	0 06	0 02	0 12	0 48	0 18	0 91	0 64	0 21	1 34	0 69	0 23	1 53	-0 44	-0 16	-0 82	-0 58	-0 19	-1 21	-0 64	-0 21	-1 41
Perris	0 15	0 05	0 29	0 22	0 07	0 45	0 20	0 07	0 43	1 51	0 55	2 83	2 00	0 65	4 19	2 17	0 71	4 77	-1 39	-0 50	-2 54	-1 78	-0 57	-3 74	-1 97	-0 64	-4 34
Quail Valley	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 09	-0 02	-0 01	-0 05	-0 03	-0 01	-0 07	-0 04	-0 01	-0 08
Rancho Mirage	0 26	0 09	0 48	0 36	0 12	0 75	0 34	0 11	0 74	1 92	0 70	3 60	2 55	0 82	5 33	2 78	0 90	6 07	-1 66	-0 61	-3 12	-2 19	-0 70	-4 59	-2 42	-0 79	-5 33
Riverside	3 24	1 18	6 13	4 58	1 50	9 42	4 36	1 44	9 43	26 25	10 29	53 06	37 54	12 12	76 55	40 62	13 29	89 44	-25 01	-9 13	-46 93	-32 98	-10 63	-69 14	-36 27	-11 85	-80 01
Romoland	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 02	0 08	0 03	0 14	0 10	0 03	0 21	0 11	0 04	0 24	-0 07	-0 02	-0 13	-0 09	-0 03	-0 19	-0 10	-0 03	-0 22
Rubidoux	0 07	0 03	0 14	0 10	0 03	0 21	0 10	0 03	0 21	0 69	0 25	1 30	0 92	0 30	1 93	1 00	0 33	2 19	-0 62	-0 23	-1 17	-0 82	-0 26	-1 72	-0 90	-0 29	-1 99
San Jacinto	0 11	0 04	0 21	0 16	0 05	0 33	0 15	0 05	0 32	1 18	0 42	2 18	1 54	0 50	3 23	1 67	0 55	3 68	-1 05	-0 38	-1 97	-1 38	-0 45	-2 90	-1 52	-0 50	-3 36
Sedco Hills	0 02	0 01	0 03	0 02	0 01	0 05	0 02	0 01	0 05	0 14	0 05	0 25	0 18	0 06	0 38	0 19	0 06	0 43	-0 12	-0 04	-0 22	-0 16	-0 05	-0 33	-0 17	-0 06	-0 38
Sun City	0 06	0 02	0 11	0 08	0 03	0 17	0 08	0 03	0 18	0 49	0 18	0 92	0 65	0 21	1 36	0 70	0 23	1 54	-0 43	-0 16	-0 80	-0 57	-0 18	-1 19	-0 82	-0 20	-1 37
Sunnyslope	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	0 11	0 04	0 22	0 15	0 05	0 32	0 17	0 05	0 36	-0 11	-0 04	-0 20	-0 14	-0 05	-0 30	-0 16	-0 05	-0 35
Temecula	0 55	0 20	1 03	0 78	0 28	1 60	0 73	0 24	1 57	5 15	1 88	9 88	6 85	2 21	14 33	7 41	2 42	16 31	-4 81	-1 68	-9 64	-6 07	-1 90	-12 73	-6 68	-2 16	-14 74
Thousand Palms	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 02	0 06	0 03	0 15	0 11	0 03	0 22	0 11	0 04	0 25	-0 07	-0 03	-0 13	-0 09	-0 03	-0 20	-0 10	-0 03	-0 23
Valle Vista	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 06	0 18	0 06	0 30	0 21	0 07	0 44	0 23	0 07	0 50	-0 14	-0 05	-0 26	-0 18	-0 06	-0 38	-0 20	-0 07	-0 44
Wildomar	0 05	0 02	0 10	0 06	0 03	0 18	0 07	0 02	0 15	0 49	0 16	0 91	0 65	0 21	1 35	0 70	0 23	1 54	-0 43	-0 18	-0 81	-0 57	-0 18	-1 20	-0 83	-0 21	-1 39
Winchester	0 01	0 00	0 02	0 02	0 00	0 03	0 01	0 00	0 03	0 12	0 04	0 23	0 16	0 05	0 34	0 18	0 06	0 39	-0 11	-0 04	-0 21	-0 15	-0 05	-0 31	-0 16	-0 05	-0 36
Woodcrest	0 05	0 02	0 09	0 07	0 02	0 15	0 06	0 02	0 14	0 47	0 17	0 89	0 63	0 20	1 32	0 68	0 22	1 50	-0 42	-0 15	-0 80	-0 56	-0 18	-1 17	-0 82	-0 20	-1 36
Camarillo	0 73	0 26	1 37	1 03	0 34	2 11	0 98	0 32	2 11	6 43	2 34	12 08	8 55	2 78	17 89	9 25	3 03	20 37	-5 71	-2 08	-10 71	-7 52	-2 42	-15 78	-8 27	-2 70	-18 25
Casa Conejo	0 02	0 01	0 03	0 03	0 01	0 05	0 02	0 01	0 05	0 19	0 07	0 36	0 25	0 08	0 53	0 27	0 09	0 60	-0 17	-0 06	-0 32	-0 23	-0 07	-0 48	-0 25	-0 08	-0 55
Channel Islands Beach	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 06	0 15	0 06	0 29	0 20	0 07	0 42	0 22	0 07	0 48	-0 13	-0 05	-0 25	-0 18	-0 06	-0 37	-0 19	-0 06	-0 42
El Rio	0 01	0 00	0 03	0 02	0 01	0 04	0 02	0 01	0 04	0 14	0 05	0 27	0 19	0 06	0 40	0 21	0 07	0 45	-0 13	-0 05	-0 24	-0 17	-0 06	-0 36	-0 19	-0 06	-0 42
Fillmore	0 04	0 01	0 07	0 06	0 02	0 11	0 05	0 02	0 11	0 48	0 17	0 87	0 61	0 20	1 29	0 67	0 22	1 46	-0 42	-0 15	-0 80	-0 56	-0 18	-1 17	-0 81	-0 20	-1 35
Meiners Oaks	0 02	0 01	0 04	0 03	0 01	0 05	0 03	0 01	0 05	0 18	0 06	0 30	0 22	0 07	0 45	0 23	0 08	0 51	-0 14	-0 05	-0 27	-0 19	-0 06	-0 40	-0 21	-0 07	-0 48
Mira Monte	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 08	0 28	0 09	0 48	0 34	0 11	0 72	0 37	0 12	0 82	-0 23	-0 08	-0 43	-0 30	-0 10	-0 64	-0 34	-0 11	-0 74
Moorpark	0 12	0 04	0 22	0 17	0 06	0 35	0 15	0 05	0 33	1 35	0 49	2 53	1 79	0 58	3 75	1 94	0 63	4 27	-1 23	-0 45	-2 31	-1 62	-0 52	-3 40	-1 78	-0 58	-3 93
Oak Park	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 02	0 01	0 03	0 02	0 01	0 04	-0 01	0 00	-0 02	-0 01	0 00	-0 03	-0 02	-0 01	-0 04
Oak View	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 02	0 08	0 03	0 15	0 11	0 04	0 23	0 12	0 04	0 26	-0 07	-0 03	-0 14	-0 10	-0 03	-0 20	-0 11	-0 04	-0 24
Ojai	0 05	0 02	0 09	0 06	0 02	0 13	0 06	0 02	0 13	0 39	0 14	0 72	0 51	0 17	1 07	0 55	0 18	1 22	-0 34	-0 12	-0 64	-0 45	-0 14	-0 94	-0 49	-0 18	-1 09
Oxnard	1 32	0 47	2 51	1 90	0 62	3 89	1 78	0 58	3 78	14 50	5 28	27 23	19 27	6 22	40 31	20 85	6 82	45 90	-13 18	-4 81	-24 72	-17 37	-5 60	-36 43	-19 09	-6 24	-42 12
Piru	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 02	0 01	0 03	0 02	0 01	0 04	-0 01	0 00	-0 02	-0 02	0 00	-0 03	-0 02	-0 01	-0 04
Port Hueneme	0 10	0 04	0 20	0 15	0 05	0 30	0 14	0 05	0 30	0 90	0 33	1 68	1 19	0 38	2 49	1 29	0 42	2 84	-0 79	-0 29	-1 49	-1 04	-0 34	-2 19	-1 15	-0 38	-2 54
San Buenaventura (Ventura)	1 38	0 48	2 57	1 95	0 64	3 99	1 79	0 59	3 85	15 13	5 51	28 42	20 11	6 49	42 08	21 78	7 12	47 91	-13 78	-5 03	-25 85	-18 16	-5 85	-38 08	-19 97	-6 53	-44 06
Santa Paula	0 18	0 06	0 33	0 25	0 08	0 52	0 24	0 08	0 51	2 01	0 73	3 77	2 67	0 86	5 58	2 88	0 94	6 35	-1 83	-0 67	-3 43	-2 41	-0 78	-5 06	-2 65	-0 87	-5 84
Simi Valley	0 94	0 34	1 78	1 33	0 44	2 74	1 28	0 42	2 73	8 36	3 05	15 71	11 11	3 59	23 25	12 03	3 93	26 48	-7 42	-2 71	-13 93	-9 78	-3 15	-20 51	-10 76	-3 52	-23 74
Thousand Oaks	2 26	0 81	4 28	3 20	1 04	6 58	3 05	1 01	6 61	19 72	7 18	37 04	26 21	8 48	54 83	28 36	9 28	62 43	-17 48	-6 37	-32 76	-23 01	-7 42	-48 26	-25 30	-8 27	-55 82
Adelanto	0 07	0 02	0 12	0 10	0 03	0 19	0 08	0 03	0 18	0 69	0 25	1 29	0 91	0 30	1 91	0 99	0 32	2 16	-0 82	-0 23	-1 17	-0 82	-0 28	-1 72	-0 91	-0 30	-2 00
Apple Valley	0 20	0 07	0 37	0 28	0 09	0 58	0 28	0 09	0 57	1 74	0 64	3 28	2 32	0 75	4 85	2 51	0 82	5 52	-1 55	-0 56	-2 90	-2 04	-0 66	-4 27	-2 25	-0 73	-4 96
Barstow	0 20	0 07	0 38	0 29	0 09	0 59	0 26	0 09	0 57	1 90	0 69	3 56	2 52	0 81	5 27	2 73	0 89	6 00	-1 70	-0 62	-3 18	-2 23	-0 72	-4 68	-2 48	-0 80	-5 43
Big Bear City	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01	0 03	0 01	0 06	0 04	0 01	0 09	0 05	0 02	0 11	-0 03	-0 01	-0 06	-0 04	-0 01	-0 08	-0 04	-0 01	-0 10
Big Bear Lake	0 18	0 06	0 34	0 25	0 08	0 52	0 24	0 08	0 53	1 31	0 48	2 46	1 74	0 56	3 64	1 88	0 62	4 14	-1 13	-0 41	-2 12	-1 49	-0 48	-3 12	-1 64	-0 54	-3 62
Bloomington	0 07	0 02	0 13	0 10	0 03	0 20	0 09	0 03	0 19	0 67	0 25	1 27	0 90	0 29	1 88	0 97	0 32	2 14	-0 61	-0 22	-1 14	-0 80	-0 28	-1 68	-0 86	-0 29	-1 94
Chino	0 73	0 28	1 38	1 05	0 34	2 15	0 96	0 32	2 06	8 03	2 92	15 06	10 87	3 44	22 32	11 54	3 78	25 41	-7 30	-2 66	-13 69	-9 82	-3 10	-20 17	-10 58	-3 46	-23 35
Chino Hills	0 15	0 05	0 28	0 21	0 07	0 43	0 20	0 07	0 43	1 24	0 45	2 33	1 65	0 53	3 46	1 79	0 58	3 94	-1 10	-0 40	-2 06	-1 44	-0 47	-3 03	-1 59	-0 52	-3 50
Colton	0 51	0 18	0 97	0 73	0 24	1 49	0 68	0 23	1 46	4 49	1 63	8 43	5 96	1 93	12 48	6 45	2 11	14 21	-3 98	-1 45	-7 46	-5 24	-1 69	-10 99	-5 77	-1 89	-12 73
Crestline	0 05	0 02	0 10	0 07	0 02	0 15	0 07	0 02	0 14	0 48	0 18	0 90	0 64	0 21	1 34	0 69	0 23	1 52	-0 43	-0 16	-0 81	-0 57	-0 18	-1 19	-0 83	-0 20	-1 38
Fontana	0 57	0 20	1 08	0 82	0 27	1 68	0 74	0 25	1 59	6 13	2 23	11 52	8 15	2 63	17 05	8 82	2 88	19 42	-5 57	-2 03	-10 44	-7 33	-2 36	-15 37	-8 08	-2 64	-17 83
Grand Terrace	0 10	0 04	0 19	0 15	0 05	0 30	0 14	0 05	0 30	0 79	0 29	1 49	1 05	0 34	2 20	1 14	0 37	2 51	-0 58	-0 25	-1 29	-0 91	-0 29	-1 90	-1 00	-0 33	-2 21
Hesperia	0 28	0 10	0 53	0 40	0 13	0 82	0 37	0 12	0 80	2 56	0 93	4 81	3 41	1 10	7 13	3 69	1 21	8 11	-2 28	-0 83	-4 26	-3 01	-0 97	-6 31	-3 31	-1 08	-7 32
Highland	0 17	0 06	0 32	0 24	0 08	0 49	0 23	0 07	0 49	1 81	0 66	3 39	2 40	0 77	5 02	2 60	0 85	5 72	-1 64	-0 60	-3 07	-2 16	-0 70	-4 54	-2 37	-0 77	-5 22
Joshua Tree	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 09	-0 03	-0 01	-0 05	-0 03	-0 01	-0 07	-0 04	-0 01	-0 08
Lake Arrowhead	0 10	0 04	0 20	0 15	0 05	0 30	0 14	0 05	0 30	0 75	0 27	1 40	0 99	0 32	2 07	1 07	0 35	2 38	-0 64	-0 23	-1 20	-0 84	-0 27	-1 77	-0 93	-0 30	-2 06
Lenwood	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	0 06	0 02	0 12	0 08	0 03	0 17	0 09	0 03	0 20	-0 08	-0 02	-0 11	-0 07	-0 02	-0 16	-0 08	-0 03	-0 18
Loma Linda	0 13	0 05	0 25	0 19	0 06	0 38	0 18	0 06	0 38	1 18	0 42	2 18	1 54	0 50	3 23	1 67	0 55	3 68	-1 03	-0 38	-1 93	-1 38	-0 44	-2 85	-1 49	-0 49	-3 29
Menlona	0 02	0 01	0 04	0 03	0 01	0 07	0 03	0 01	0 06	0 33	0 12	0 63	0 44	0 14	0 93	0 48	0 18	1 06	-0 31	-0 11	-0 59	-0 41	-0 13	-0 86	-0 45	-0 15	-1 00
Montclair	0 26	0 09	0 50	0 38	0 12	0 78	0 35	0 12	0 75	2 68	0 98	5 03	3 56	1 15	7 44	3 85	1 26	8 48	-2 41	-0 88	-4 53	-3 18	-1 02	-6 67	-3 50	-1 14	-7 73
Morongo Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	-0 01	0 00	-0 01	-0 01	0 00	-0 02	-0 01	0 00	-0 02
Mountain View Acres	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	0 07	0 02	0 12	0 09	0 03	0 18	0 09	0 03	0 21	-0 06	-0 02	-0 11	-0 08	-0 02	-0 16	-0 08	-0 03	-0 18
Muscoy	0 12	0 04	0 23	0 17	0 05	0 35	0 18	0 05	0 36	0 66	0 36	1 85	1 31	0 42	2 73	1 41	0 48	3 11	-0 86	-0 31	-1 62	-1 14	-0 37	-2 39	-1 25	-0 41	-2 78
Nebo Center	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 00	0 00	0 00	-0 01	0 00	0 00	-0 01
Ontario	1 87	0 67	3 54	2 70	0 88	5 52	2 48	0 81	5 28	21 05	7 67	39 53	27 97	9 03	58 52	30 26	9 90	66 83	-19 18	-7 00	-35 98	-25 27	-8 15	-53 00	-27 81	-9 09	-61 35
Rancho Cucamonga	1 38	0 48	2 60	1 94	0 64	4 00	1 88	0 61	4 02	11 81	4 30	22 18	15 89	5 07	32 83	18 98	5 55	37 36	-10 43	-3 81	-19 57	-13 75	-4 43	-28 83	-15 12	-4 94	-33 37
Redlands	0 69	0 25	1 30	0 97	0 32	2 00	0 92	0 30	1 99	5 81	2 12	10 92	7 73	2 49	16 16	8 36	2 73	18 40	-5 13	-1 87	-9 62	-6 75	-2 18	-14 17	-7 44	-2 43	-16 41
Rialto	0 32	0 11	0 61	0 46	0 15	0 95	0 42	0 14	0 91	3 32	1 21	6 23	4 41	1 42	9 22	4 77	1 56	10 50	-2 99	-1 09	-5 62	-3 94	-1 27	-8 27	-4 34	-1 42	-9 58
Running Springs	0 02	0 01	0 03	0 02	0 01	0 05	0 02	0 01	0 04	0 12	0 04	0 22	0 16	0 05	0 32	0 17	0 05	0 37	-0 10	-0 04	-0 19	-0 13	-0 04	-0 28	-0 15	-0 05	-0 33
San Antonio Heights	0 01	0 00	0 02	0 02	0 01	0 03	0 01	0 00	0 03	0 12	0 04	0 22	0 16	0 05	0 33	0 17	0 06	0 38	-0 11	-0 04	-0 20	-0 14	-0 05	-0 30	-0 16	-0 05	-0 35
San Bernardino	2 12	0 76	4 02	3 02	0 99	6 20	2 84	0 94	6 14	18 97	6 91	35 83	25 21	8 14	52 75	27 28	8 92	60 05	-16 84	-6 15	-31 80	-22 19	-7 15	-48 54	-24 43	-7 98	-53 92
Twentynine Palms	0 04	0 01	0 07	0 06	0 02	0 11	0 05	0 02	0 11	0 38	0 14	0 72	0 51	0 16	1 06	0 55	0 18	1 21	-0 34	-0 12	-0 64	-0 45	-0 15	-0 94	-0 50	-0 16	-1 09
Twentynine Palms Base	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 01	0 00	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Upland	0 79	0 28	1 49	1 10	0 36	2 27	1 07	0 35	2 33	8 05	2 20	11 36	8 04	2 60	16 81	8 70	2 84	19 14	-5 26	-1 92	-9 87	-6 94	-2 24	-14 54	-7 62	-2 49	-16 81
Victorville	0 89	0 25	1 30	0 96	0 32	2 02	0 92	0 30	1 96	8 24	2 27	11 71	8 29	2 68	17 34	8 97	2 93	19 74	-5 55	-2 03	-10 41	-7 30	-2 35	-15 32	-8 05	-2 63	-17 77
Wrightwood	0 02	0 01	0 05	0 03	0 01	0 07	0 03	0 01	0 07	0 19	0 07	0 36	0 25	0 08	0 53	0 27	0 09	0 60	-0 17	-0 06	-0 31	-0 22	-0 07	-0 46	-0 24	-0 08	-0 53
Yucaipa	0 18	0 06	0 33	0 25	0 08	0 51	0 24	0 08	0 51	1 58	0 58	2 97	2 10	0 68	4 40	2 27	0 74	5 01	-1 41	-0 51	-2 64	-1 85	-0 60	-3 88	-2 04	-0 67	-4 50
Yucca Valley	0 09	0 03	0 16	0 12	0 04	0 25	0 11	0 04	0 25	0 72	0 26	1 36	0 96	0 31	2 01	1 04	0 34	2 29	-0 64	-0 23	-1 19	-0 84	-0 27	-1 78	-0 92	-0 30	-2 04
LOS ANGELES - UNINCOR	3 89	1 39	7 38	5 53	1 81	11 38	5 19	1 71	11 21	39 86	14 52	74 85	52 98	17 10	110 82	57 31	18 75	128 17	-35 97	-13 13	-67 48	-47 43	-15 29	-99 48	-52 11	-17 03	-114 96
ORANGE - UNINCOR	1 59	0 57	3 00	2 24	0 73	4 62	2 14	0 71	4 63	15 05	5 48	28 26	20 00	6 46	41 84	21 64	7 08	47 64	-13 46	-4 91	-25 26	-17 75	-5 72	-37 22	-19 50	-6 37	-43 01
RIVERSIDE - UNINCOR	1 26	0 45	2 38	1 62	0 60	3 71	1 85	0 54	3 54	14 04	5 11	26 37	18 66	6 03	39 04	20 19	6 60	44 45	-12 78	-4 67	-23 99	-16 84	-5 43	-35 33	-18 54	-6 06	-40 91
SAN BERNARDINO - UNINCOR	1 81	0 58	3 06	2 34	0 77	4 77	2 12	0 70	4 55	17 91	6 52	33 83	23 80	7 69	49 79	25 75	8 42	56 69	-16 29	-5 95	-30 57	-21 46	-6 92	-45 02	-23 83	-7 72	-52 14
VENTURA - UNINCOR	1 88	0 67	3 57	2 71	0 89	5 55	2 48	0 82	5 33	23 72	8 64	44 54	31 52	10 18	65 95	34 10	11 16	75 09	-21 84	-7 97	-40 98	-28 81	-9 29	-60 40	-31 83	-10 34	-69 76
Total	218.65	78.27	413.80	310.39	101.52	637.81	293.05	96.67	633.16	2045.96	745.26	3842.48	2718.83	877.99	5888.79	2941.89	962.34	6477 07	-1827.32	-666 99	-3428.68	-2408.43	-778 46	-5051.18	-2648.84	-865 66	-5843 90

Table A12. Annual Direct Impacts (Year 1-Year 15)

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0.85	0.31	1.35	0.05	0.02	0.09	0.02	0.01	0.03	0.05	0.02	0.09	0.06	0.02	0.13	0.07	0.02	0.15	0.80	0.29	1.26	-0.02	0.00	-0.04	-0.05	-0.01	-0.11
Agoura Hills	14.94	1.21	26.86	6.25	3.10	11.07	5.08	2.64	8.34	8.13	2.96	15.27	10.81	3.49	22.61	11.69	3.83	25.74	6.81	-1.75	11.59	-4.56	-0.39	-11.54	-6.61	-1.18	-17.40
Alhambra	27.44	0.01	45.64	0.00	0.00	0.00	8.54	4.41	15.17	55.77	20.31	104.74	74.11	23.83	155.06	80.19	26.23	178.55	-28.33	-20.30	-59.10	-74.11	-23.83	-155.06	-71.65	-21.82	-161.38
Alondra Park	0.00	10.02	0.00	0.00	0.00	0.00	24.08	12.44	53.11	3.06	1.12	5.78	4.09	1.32	8.55	4.42	1.45	9.74	-3.06	8.90	-5.78	-4.09	-1.32	-8.55	19.66	10.99	43.38
Altadena	0.04	0.00	16.75	0.00	0.00	0.00	0.00	0.00	0.00	16.37	5.96	30.75	21.75	7.03	45.52	23.54	7.70	51.83	-16.33	-5.96	-14.00	-21.75	-7.03	-45.52	-23.54	-7.70	-51.83
Arcadia	9.16	20.88	34.58	0.08	0.03	0.13	21.60	10.14	43.57	58.00	20.40	105.17	74.41	24.03	155.70	80.52	26.34	177.27	-48.83	0.48	-70.61	-74.35	-24.00	-155.57	-58.92	-16.20	-133.70
Artesia	0.31	0.00	9.17	0.00	0.00	0.00	0.05	0.03	0.09	20.81	7.58	39.08	27.85	8.93	57.88	29.92	9.79	65.88	-20.50	-7.58	-29.92	-27.85	-8.93	-57.86	-29.87	-9.76	-65.79
Avocado Heights	19.41	0.00	25.03	0.00	0.00	0.00	0.05	0.03	0.10	9.02	3.28	16.94	11.98	3.87	25.07	12.97	4.24	28.55	10.39	-3.28	8.10	-11.98	-3.87	-25.07	-12.91	-4.21	-28.45
Azusa	30.34	0.00	10.64	450.99	137.89	989.04	0.01	0.01	0.03	24.68	9.06	46.74	33.07	10.68	69.19	35.78	11.70	78.78	5.45	-9.06	-36.10	417.92	127.21	919.85	-35.77	-11.70	-78.75
Baldwin Park	36.93	20.61	28.13	0.05	0.03	0.08	1.38	0.72	2.76	26.21	9.55	49.22	34.82	11.25	72.86	37.68	12.33	82.96	10.72	11.06	-21.08	-34.77	-11.22	-72.79	-36.30	-11.60	-80.20
Bell	9.42	0.00	32.34	0.00	0.00	0.00	15.23	7.97	29.03	19.91	7.25	37.40	26.48	8.55	55.37	28.64	9.37	63.05	-10.49	-7.25	-5.07	-26.48	-8.55	-55.37	-13.40	-1.39	-34.01
Bellflower	36.63	20.65	26.91	0.00	0.00	0.00	0.13	0.07	0.30	39.28	14.31	73.77	52.20	16.86	109.22	56.48	18.48	124.35	-2.65	6.34	-46.86	-52.20	-16.86	-109.22	-56.35	-18.41	-124.05
Bell Gardens	8.93	0.00	17.93	0.00	0.00	0.00	6.05	3.16	10.07	16.44	5.99	30.88	21.85	7.06	45.72	23.64	7.73	52.06	-7.52	-5.99	-12.96	-21.85	-7.06	-45.72	-17.59	-4.58	-41.99
Beverly Hills	0.00	0.00	9.60	0.00	0.00	0.00	0.33	0.17	0.71	84.22	30.68	158.16	111.91	36.14	234.16	121.09	39.61	266.61	-84.22	-30.68	-148.56	-111.91	-36.14	-234.16	-120.76	-39.45	-265.90
Bradbury	0.97	0.55	17.96	0.00	0.00	0.01	0.00	0.00	0.00	0.83	0.30	1.57	1.11	0.36	2.32	1.20	0.39	2.64	0.14	0.25	16.39	-1.10	-0.36	-2.31	-1.20	-0.39	-2.64
Burbank	63.94	0.16	45.45	0.00	0.00	0.00	35.27	13.12	74.44	96.32	35.06	180.89	127.99	41.33	267.81	138.50	45.30	304.92	-32.38	-34.93	-135.44	-127.99	-41.33	-267.81	-103.23	-32.18	-230.48
Calabasas	25.96	9.07	40.65	8.08	3.04	9.78	10.26	5.32	19.32	3.19	1.16	5.99	4.24	1.37	8.87	4.58	1.50	10.09	22.77	7.91	34.66	1.84	1.68	0.92	5.68	3.82	9.23
Carson	14.86	0.00	64.99	0.00	0.00	0.00	51.24	18.20	101.67	59.04	21.50	110.87	78.45	25.33	164.15	84.89	27.77	186.89	-44.17	-21.50	-45.89	-78.45	-25.33	-164.15	-33.65	-9.57	-85.22
Cerritos	48.23	20.70	80.80	0.00	0.00	0.00	49.49	25.85	111.81	47.38	17.25	88.95	62.94	20.33	131.69	68.10	22.28	149.94	-1.14	3.45	-8.15	-62.94	-20.33	-131.69	-18.61	3.37	-38.13
Charter Oak	7.95	0.00	12.68	0.00	0.00	0.00	0.00	0.00	0.00	5.53	2.01	10.39	7.35	2.37	15.38	7.95	2.60	17.51	2.42	-2.01	2.49	-7.35	-2.37	-15.38	-7.95	-2.60	-17.51
Citrus	2.94	0.08	12.80	0.00	0.00	0.00	0.29	0.11	0.82	3.05	1.11	5.74	4.06	1.31	8.49	4.39	1.44	9.67	-0.12	-1.04	7.07	-4.06	-1.31	-8.49	-4.10	-1.33	-9.05
Claremont	26.93	7.99	63.65	10.04	5.08	17.30	0.02	0.01	0.04	24.07	8.77	45.21	31.99	10.33	66.93	34.61	11.32	78.21	2.85	-0.78	18.44	-21.95	-5.25	-49.64	-34.59	-11.31	-78.17
Commerce	9.30	10.49	11.96	0.00	0.00	0.00	13.16	6.86	28.40	25.78	9.39	48.42	34.28	11.06	71.68	37.07	12.13	81.61	-16.48	1.10	-36.48	-34.28	-11.06	-71.66	-23.91	-5.27	-53.22
Compton	42.44	0.04	65.04	0.00	0.00	0.00	8.85	4.63	14.47	41.42	15.09	77.78	55.04	17.77	115.16	59.55	19.48	131.12	1.02	-15.04	-12.74	-55.04	-17.77	-115.16	-50.70	-14.85	-116.64
Covina	50.68	20.11	39.68	0.02	0.01	0.05	49.00	19.20	105.74	46.94	17.10	88.15	62.37	20.14	130.51	67.49	22.08	148.60	3.74	3.01	-48.47	-62.35	-20.13	-130.47	-18.49	-2.88	-42.86
Cudahy	0.25	0.00	9.18	0.00	0.00	0.00	0.28	0.14	0.50	8.85	3.22	16.62	11.76	3.80	24.60	12.72	4.16	28.01	-8.60	-3.22	-7.48	-11.76	-3.80	-24.60	-12.46	-4.02	-27.51
Culver City	11.24	0.02	0.44	0.00	0.00	0.00	0.00	0.00	0.00	73.25	26.68	137.58	97.34	31.44	203.68	105.33	34.48	231.91	-62.02	-26.66	-137.14	-97.34	-31.44	-203.68	-105.33	-34.46	-231.91
Del Aire	0.00	0.01	0.02	0.00	0.00	0.00	0.00	0.00	0.00	7.51	2.73	14.10	9.98	3.22	20.67	10.79	3.53	23.77	-7.51	-2.72	-14.08	-9.98	-3.22	-20.67	-10.79	-3.53	-23.77
Desert View Highlands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.04	0.38	1.95	1.38	0.44	2.88	1.49	0.49	3.28	-1.04	-0.38	-1.95	-1.38	-0.44	-2.88	-1.49	-0.49	-3.28
Diamond Bar	6.81	0.00	30.62	5.70	2.91	11.58	12.26	5.42	25.65	19.12	6.98	35.90	25.41	8.20	53.18	27.49	8.99	60.52	-12.31	-6.96	-5.29	-19.71	-5.29	-41.57	-15.23	-3.58	-34.88
Downey	55.45	20.52	81.05	0.00	0.00	0.00	18.95	8.84	28.81	64.67	23.58	121.45	85.93	27.75	179.80	92.98	30.42	204.72	-9.22	-3.04	-40.40	-85.93	-27.75	-179.80	-76.04	-21.57	-178.10
Duarte	25.18	19.34	34.59	11.11	3.40	24.35	5.81	3.05	9.09	14.24	5.19	26.74	18.92	6.11	39.60	20.48	6.70	45.08	10.94	14.15	7.85	-7.81	-2.71	-15.25	-14.67	-3.65	-35.99
East Compton	0.00	0.00	5.63	0.00	0.00	0.00	0.14	0.08	0.23	1.51	0.55	2.83	2.00	0.65	4.19	2.17	0.71	4.77	-1.51	-0.55	2.80	-2.00	-0.65	-4.19	-2.02	-0.63	-4.53
East La Mirada	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.73	0.99	5.13	3.63	1.17	7.59	3.93	1.28	8.64	-2.73	-0.99	-5.12	-3.63	-1.17	-7.59	-3.93	-1.28	-8.64
East Los Angeles	35.63	30.77	63.16	0.00	0.00	0.00	13.43	6.87	28.67	39.70	14.46	74.57	52.76	17.04	110.40	57.09	18.68	125.70	-4.08	16.30	-11.41	-52.78	-17.04	-110.40	-43.67	-11.71	-97.02
East Pasadena	0.06	0.00	0.02	0.00	0.00	0.00	0.19	0.07	0.40	16.41	5.98	30.81	21.80	7.04	45.62	23.59	7.72	51.94	-16.34	-5.98	-30.79	-21.80	-7.04	-45.62	-23.40	-7.65	-51.55
East San Gabriel	0.00	7.59	8.82	0.00	0.00	0.00	72.48	25.48	151.98	10.02	3.65	18.62	13.32	4.30	27.87	14.41	4.71	31.73	-10.02	3.94	-10.00	-13.32	-4.30	-27.87	58.07	20.78	120.25
El Monte	34.40	10.18	61.55	0.00	0.00	0.00	35.69	17.10	72.95	60.94	22.20	114.45	80.98	26.15	169.45	87.63	28.66	192.93	-26.54	-12.02	-52.90	-80.98	-26.15	-169.45	-51.94	-11.56	-119.98
El Segundo	10.91	0.01	0.15	223.73	73.88	451.68	8.78	4.53	14.78	20.15	7.34	37.85	26.78	8.65	56.04	28.98	9.48	63.80	-9.25	-7.33	-37.70	196.94	65.23	395.64	-20.20	-4.95	-49.04
Florence-Graham	27.11	10.47	43.39	0.00	0.00	0.00	0.09	0.05	0.15	13.99	5.10	26.28	18.60	6.01	38.91	20.12	6.58	44.30	13.12	5.37	17.11	-18.60	-6.01	-38.91	-20.03	-6.53	-44.15
Gardena	29.48	0.00	9.25	0.00	0.00	0.00	10.29	5.33	21.58	49.54	18.04	93.04	65.83	21.26	137.74	71.23	23.30	156.83	-20.06	-18.04	-83.79	-65.83	-21.26	-137.74	-60.94	-17.98	-135.25
Glendale	56.26	42.31	91.11	45.35	14.82	69.72	0.19	0.09	0.44	180.70	65.82	339.38	240.13	77.55	502.45	259.84	85.00	572.07	-124.44	-23.52	-248.27	-194.78	-62.72	-412.73	-259.65	-84.90	-571.63
Glendora	54.67	19.78	87.23	28.35	8.68	62.11	0.00	0.00	0.00	35.91	13.08	67.45	47.72	15.41	99.86	51.64	16.89	113.69	18.76	6.70	-0.22	-19.38	-6.73	-37.75	-51.64	-16.89	-113.69
Hacienda Heights	36.50	0.00	51.31	0.00	0.00	0.00	0.00	0.00	0.00	22.93	8.35	43.08	30.47	9.84	63.75	32.97	10.78	72.58	13.57	-8.35	8.25	-30.47	-9.84	-63.75	-32.97	-10.78	-72.58
Hawaiian Gardens	0.03	2.09	12.78	0.00	0.00	0.00	0.06	0.03	0.13	5.10	1.86	9.59	6.78	2.19	14.19	7.34	2.40	16.16	-5.07	0.24	3.17	-6.78	-2.19	-14.19	-7.28	-2.37	-16.03
Hawthorne	3.84	1.12	37.88	0.00	0.00	0.00	4.72	2.44	11.21	48.01	17.49	90.18	63.79	20.60	133.48	69.03	22.58	151.97	-44.17	-16.37	-52.28	-63.79	-20.60	-133.48	-64.31	-20.14	-140.77
Hermosa Beach	0.04	0.00	0.05	0.00	0.00	0.00	10.87	5.54	19.81	25.15	9.16	47.24	33.42	10.79	69.94	36.17	11.83	79.63	-25.11	-9.16	-47.19	-33.42	-10.79	-69.94	-25.29	-6.29	-59.82
Hidden Hills	5.60	0.04	5.42	0.00	0.00	0.00	1.42	0.74	2.35	0.88	0.32	1.65	1.16	0.38	2.44	1.26	0.41	2.77	4.73	-0.28	3.77	-1.18	-0.38	-2.44	0.16	0.32	-0.42
Huntington Park	9.19	0.00	28.87	0.00	0.00	0.00	0.00	0.00	0.00	35.72	13.01	67.08	47.46	15.33	99.31	51.36	16.80	113.07	-26.53	-13.01	-38.21	-47.46	-15.33	-99.31	-51.36	-16.80	-113.07
Industry	9.13	0.34	31.75	10.08	5.10	22.82	33.49	15.10	70.18	58.23	21.21	109.36	77.38	24.99	161.91	83.73	27.39	184.34	-49.10	-20.87	-77.81	-87.30	-19.89	-139.20	-50.24	-12.29	-114.16
Inglewood	58.56	21.01	69.35	0.00	0.00	0.00	18.35	9.51	39.01	76.09	27.72	142.90	101.11	32.65	211.56	109.41	35.79	240.88	-17.53	-6.71	-73.54	-101.11	-32.65	-211.56	-91.06	-26.28	-201.87
Irwindale	0.31	0.41	9.88	10.30	5.08	16.35	22.26	11.68	45.47	1.90	0.69	3.57	2.52	0.82	5.28	2.73	0.89	6.01	-1.59	-0.29	6.12	7.78	4.27	11.07	19.53	10.79	39.45
La Canada Flintridge	10.72	22.53	28.43	0.12	0.03	0.23	0.03	0.01	0.07	15.19	5.53	28.53	20.19	6.52	42.24	21.64	7.15	48.09	-4.47	17.00	-0.10	-20.07	-6.49	-42.01	-21.81	-7.13	-48.02
La Crescenta-Montrose	15.82	18.08	8.85	0.00	0.00	0.00	0.00	0.00	0.00	11.71	4.27	22.00	15.56	5.03	32.56	16.64	5.51	37.08	4.11	13.82	-15.15	-15.56	-5.03	-32.56	-16.64	-5.51	-37.08
Ladera Heights	0.00	0.00	9.53	0.00	0.00	0.00	0.00	0.00	0.00	4.04	1.47	7.59	5.37	1.73	11.24	5.81	1.90	12.79	-4.04	-1.47	1.94	-5.37	-1.73	-11.24	-5.81	-1.90	-12.79
La Habra Heights	10.05	9.81	9.51	18.41	7.28	38.71	0.68	0.34	1.09	3.05	1.11	5.73	4.05	1.31	8.48	4.38	1.43	9.65	7.01	8.70	3.78	14.36	5.97	30.23	-3.73	-1.09	-8.57
Lake Los Angeles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.54	0.20	1.02	0.72	0.23	1.51	0.78	0.25	1.72	-0.54	-0.20	-1.02	-0.72	-0.23	-1.51	-0.78	-0.25	-1.72
Lakewood	47.54	8.60	96.03	0.00	0.00	0.00	24.17	12.80	47.07	60.80	22.15	114.19	80.80	26.09	169.08	87.43	28.60	192.48	-13.26	-13.35	-18.18	-80.80	-26.09	-169.08	-63.25	-15.99	-145.41
La Mirada	17.89	0.00	53.22	0.00	0.00	0.00	0.00	0.00	0.00	18.06	6.58	33.91	23.99	7.75	50.20	25.96	8.49	57.16	-0.17	-6.58	19.31	-23.99	-7.75	-50.20	-25.96	-8.49	-57.16
Lancaster	0.15	0.09	0.43	0.00	0.00	0.00	0.00	0.00	0.00	102.38	37.29	192.27	136.04	43.93	284.68	147.21	48.15	324.10	-102.23	-37.20	-191.84	-136.04	-43.93	-284.68	-147.21	-48.15	-324.10
La Puente	18.64	9.98	46.32	0.00	0.00	0.00	10.18	5.15	17.56	15.96	5.81	29.97	21.21	6.85	44.37	22.95	7.51	50.52	2.68	4.17	16.35	-21.21	-6.85	-44.37	-12.76	-2.35	-32.96
La Verne	5.04	17.97	47.46	49.38	18.40	100.63	0.12	0.08	0.23	19.72	7.18	37.04	26.21	8.46	54.83	28.36	9.28	62.43	-14.69	10.78	10.42	23.17	9.94	45.79	-28.23	-9.21	-62.21
Lawndale	0.00	0.12	27.22	0.00	0.00	0.00	8.36	3.26	11.28	18.52	6.75	34.78	24.61	7.95	51.50	26.63	8.71	58.63	-18.52	-6.63	-7.57	-24.61	-7.95	-51.50	-20.27	-5.45	-47.35
Lennox	9.15	8.96	21.54	0.00	0.00	0.00	0.00	0.00	0.00	8.86	3.23	16.63	11.77	3.80	24.62	12.73	4.17	28.03	0.30	5.74	4.91	-11.77	-3.80	-24.62	-12.73	-4.18	-28.03
Littlerock	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15	0.05	0.28	0.20	0.06	0.41	0.21	0.07	0.47	-0.15	-0.05	-0.28	-0.20	-0.06	-0.41	-0.21	-0.07	-0.47
Lomita	0.11	0.00	9.18	0.00	0.00	0.00	0.08	0.04	0.13	18.06	6.58	33.92	24.00	7.75	50.22	25.97	8.49	57.18	-17.95	-6.58	-24.74	-24.00	-7.75	-50.22	-25.89	-8.46	-57.05
Long Beach	250.29	71.53	514.48	755.52	242.74	1588.70	1635.52	508.07	3663.89	238.70	86.95	448.29	317.20	102.43	663.70	343.22	112.27	755.66	11.59	-15.42	66.18	438.32	140.31	925.00	1292.30	396.80	2908.23
Los Angeles	1359.32	433.90	2465.87	2028.00	829.25	4288.71	1770.53	578.87	3972.31	2588.65	942.93	4861.69	3439.99	1110.87	7197.73	3722.22	1217.58	8195.10	-1229.33	-508.95	-2396.02	-1411.99	-481.62	-2911.02	-1951.68	-640.92	-4222.79
Lynwood	28.12	10.45	17.90	0.00	0.00	0.00	0.28	0.14	0.42	20.34	7.41	38.21	27.04	8.73	56.57	29.25	9.57	64.41	7.78	3.04	-20.31	-27.04	-8.73	-56.57	-29.00	-9.43	-63.99
Malibu	10.82	1.91	22.85	52.15	23.82	94.12	75.54	27.10	159.85	5.47	1.99	10.27	7.27	2.35	15.21	7.86	2.57	17.32	5.35	-0.09	12.58	44.88	21.47	78.91	67.68	24.53	142.33
Manhattan Beach	21.97	0.00	47.28	0.90	0.30	1.82	14.98	7.60	27.66	45.68	16.64	85.79	60.70	19.60	127.02	65.68	21.49	144.62	-23.71	-16.64	-38.53	-59.80	-19.31	-125.20	-50.71	-13.89	-116.96
Marina del Rey	0.00	0.00	0.08	0.10	0.03	0.21	0.00	0.00	0.00	16.82	6.13	31.58	22.35	7.22	46.78	24.18	7.91	53.24	-16.82	-6.13	-31.52	-22.24	-7.18	-46.55	-24.18	-7.91	-53.24
Mayflower Village	0.00	0.00	8.07	0.00	0.00	0.00	2.05	1.08	3.15	1.47	0.54	2.77	1.96	0.63	4.10	2.12	0.69	4.66	-1.47	-0.54	3.31	-1.96	-0.63	-4.10	-0.07	0.39	-1.51
Maywood	9.11	0.00	18.81	0.00	0.00	0.00	8.41	4.48	12.98	10.74	3.91	20.18	14.28	4.61	29.87	15.45	5.05	34.01	-1.63	-3.91	-1.38	-14.28	-4.61	-29.87	-7.04	-0.60	-21.05
Monrovia	1.58	0.86	40.90	15.27	7.81	38.39	1.74	0.91	2.76	35.79	13.04	67.22	47.56	15.36	99.52	51.46	16.83	113.30	-34.21	-12.18	-26.32	-32.29	-7.55	-63.12	-49.72	-15.92	-110.55
Montebello	27.80	0.02	18.37	3.86	1.20	7.58	0.11	0.06	0.21	48.88	17.73	91.42	64.69	20.89	135.35	69.99	22.90	154.10	-21.08	-17.71	-73.05	-61.02	-19.69	-127.79	-69.88	-22.84	-153.89
Monterey Park	0.09	20.92	72.44	0.00	0.00	0.00	13.31	8.90	28.50	38.64	13.35	68.82	48.69	15.72	101.88	52.69	17.23	116.00	-38.55	7.57	3.62	-48.69	-15.72	-101.88	-39.37	-10.34	-87.50
North El Monte	0.00	0.00	3.17	0.00	0.00	0.00	7.65	3.35	16.78	1.21	0.44	2.26	1.61	0.52	3.38	1.75	0.57	3.84	-1.21	-0.44	0.89	-1.61	-0.52	-3.38	6.10	2.78	12.94
Norwalk	37.10	20.58	98.40	0.00	0.00	0.00	0.47	0.18	1.00	42.68	15.55	80.18	56.72	18.32	118.68	61.38	20.08	135.13	-5.58	5.04	18.33	-56.72	-18.32	-118.68	-60.90	-19.90	-134.13
Palmdale	22.17	6.20	40.68	1.20	0.53	2.42	0.58	0.30	0.84	95.36	34.73	179.09	126.72	40.92	265.14	137.11	44.85	301.87	-73.18	-26.53	-138.40	-125.52	-40.39	-262.72	-136.56	-44.55	-301.04
Palos Verdes Estates	10.52	0.01	28.29	0.00	0.00	0.00	13.54	6.94	23.48	4.20	1.53	7.89	5.58	1.80	11.68	6.04	1.98	13.29	6.32	-1.52	20.40	-5.58	-1.80	-11.68	7.50	4.97	10.19
Paramount	18.93	10.48	63.88	0.00	0.00	0.00	34.31	17.91	69.17	21.43	7.81	40.24	28.47	9.20	59.58	30.81	10.08	67.83	-2.50	2.67	23.64	-28.47	-9.20	-59.58	3.50	7.83	1.34
Pasadena	54.69	31.15	86.52	64.66	18.44	125.53	15.63	8.03	37.02	146.70	53.44	275.51	194.94	62.95	407.90	210.94	69.00	464.42	-92.01	-22.28	-188.99	-130.29	-44.51	-282.36	-195.31	-60.97	-427.40
Pico Rivera	36.71	0.00	63.13	640.00	207.34	1338.60	59.17	18.50	121.92	29.94	10.91	56.24	39.79	12.85	83.28	43.06	14.06	94.79	6.78	-10.91	6.89	600.21	194.49	1253.34	16.11	4.42	27.13
Pomona	77.23	31.29	123.80	23.47	9.51	47.24	50.33	26.29	108.74	64.15	23.37	120.47	85.24	27.53	178.36	92.24	30.17	203.08	13.09	7.92	3.33	-61.78	-18.02	-131.12	-41.91	-3.88	-94.34
Quartz Hill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.31	1.21	6.22	4.40	1.42	9.21	4.78	1.56	10.49	-3.31	-1.21	-6.22	-4.40	-1.42	-9.21	-4.76	-1.56	-10.49
Rancho Palos Verdes	38.89	0.00	22.90	0.00	0.00	0.00	21.39	10.97	37.64	23.85	8.69	44.79	31.69	10.23	66.32	34.29	11.22	75.50	15.04	-8.69	-21.89	-31.69	-10.23	-66.32	-12.91	-0.25	-37.86
Redondo Beach	0.08	10.81	29.00	0.00	0.00	0.00	8.88	4.54	15.44	61.69	22.47	115.87	81.98	26.47	171.54	88.71	29.02	195.31	-61.62	-11.68	-86.87	-81.98	-26.47	-171.54	-79.83	-24.48	-179.87
Rolling Hills	0.15	0.00	0.22	0.00	0.00	0.00	0.30	0.15	0.52	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48	-0.32	-0.17	-0.65	-0.62	-0.20	-1.30	-0.37	-0.07	-0.95
Rolling Hills Estates	3.64	0.00	19.79	0.00	0.00	0.00	0.01	0.01	0.02	7.41	2.70	13.91	9.84	3.18	20.59	10.65	3.48	23.44	-3.56	-2.70	5.88	-9.84	-3.18	-20.59	-10.64	-3.48	-23.42
Rosemead	0.45	0.00	35.66	0.00	0.00	0.00	30.80	15.95	59.65	22.36	8.14	41.99	29.71	9.60	62.17	32.15	10.52	70.79	-21.91	-8.14	-6.34	-29.71	-9.60	-62.17	-1.35	5.43	-11.13
Rowland Heights	18.53	10.32	18.29	0.00	0.00	0.00	0.00	0.00	0.00	28.52	10.39	53.58	37.90	12.24	79.30	41.01	13.41	90.29	-9.99	-0.07	-35.27	-37.90	-12.24	-79.30	-41.01	-13.41	-90.29
San Dimas	21.68	10.64	13.60	14.60	7.18	32.31	11.54	8.04	24.07	22.46	8.18	42.18	29.84	9.64	62.45	32.29	10.56	71.10	-0.78	2.48	-28.58	-15.05	-2.48	-30.14	-20.75	-4.52	-47.02
San Fernando	0.00	0.00	0.34	91.08	29.08	179.28	0.00	0.00	0.00	21.71	7.91	40.78	28.86	9.32	60.38	31.22	10.21	68.74	-21.71	-7.91	-40.45	62.21	19.76	118.88	-31.22	-10.21	-68.74
San Gabriel	2.80	0.00	28.81	0.00	0.00	0.00	10.14	5.11	18.70	30.03	10.94	56.39	39.90	12.89	83.49	43.18	14.12	95.06	-27.23	-10.94	-29.58	-39.90	-12.89	-83.49	-33.03	-9.02	-76.36
San Marino	0.02	0.05	9.27	0.00	0.00	0.00	1.47	0.53	3.08	6.43	2.34	12.07	8.54	2.76	17.87	9.24	3.02	20.34	-6.41	-2.29	-2.80	-8.54	-2.76	-17.87	-7.77	-2.50	-17.28
Santa Clarita	319.87	135.85	595.22	1087.08	312.82	2516.52	1708.20	448.23	4072.87	84.21	30.68	158.18	111.91	36.14	234.18	121.09	39.61	266.81	235.65	108.27	427.08	965.17	278.68	2282.36	1587.11	408.62	3806.26
Santa Fe Springs	11.05	7.78	27.48	0.00	0.00	0.00	34.27	12.65	71.58	18.88	6.88	35.08	24.82	8.02	51.93	26.88	8.79	59.13	-7.63	0.97	-7.82	-24.82	-8.02	-51.93	7.41	3.87	12.45

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Santa Monica	33.33	11.05	19.22	0.00	0.00	0.00	0.26	0.13	0.64	142.96	52.08	268.50	189.98	61.35	397.51	205.57	67.24	452.59	-109.63	-41.02	-249.28	-189.98	-61.35	-397.51	-205.31	-67.11	-451.95
Sierra Madre	9.09	0.05	9.07	0.00	0.00	0.00	0.04	0.02	0.08	6.70	2.44	12.58	8.90	2.88	18.63	9.63	3.15	21.21	2.39	-2.39	-3.51	-8.90	-2.88	-18.63	-9.59	-3.13	-21.13
Signal Hill	0.14	0.16	8.99	0.00	0.00	0.00	0.04	0.02	0.07	11.01	4.01	20.88	14.63	4.73	30.62	15.83	5.18	34.86	-10.87	-3.85	-11.89	-14.63	-4.73	-30.62	-15.79	-5.16	-34.79
South El Monte	9.50	5.35	12.01	0.00	0.00	0.00	7.95	4.18	14.75	7.87	2.87	14.77	10.45	3.38	21.87	11.31	3.70	24.91	1.63	2.48	-2.77	-10.45	-3.38	-21.87	-3.36	0.48	-10.16
South Gate	18.45	0.07	36.67	0.00	0.00	0.00	17.74	9.28	29.14	38.39	13.98	72.10	51.02	16.47	106.74	55.20	18.06	121.54	-19.94	-13.91	-35.43	-51.02	-16.47	-106.74	-37.46	-8.78	-92.39
South Pasadena	9.15	0.09	18.08	0.00	0.00	0.00	0.02	0.01	0.03	19.61	7.14	36.84	26.06	8.42	54.54	28.20	9.23	62.09	-10.47	-7.05	-18.76	-26.06	-8.42	-54.54	-28.19	-9.22	-62.07
South San Gabriel	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.87	1.05	5.39	3.82	1.23	7.98	4.13	1.35	9.09	-2.87	-1.04	-5.39	-3.82	-1.23	-7.98	-4.13	-1.35	-9.09
South San Jose Hills	1.42	0.00	18.18	0.00	0.00	0.00	2.65	1.35	5.98	3.36	1.22	6.32	4.47	1.44	9.35	4.84	1.58	10.65	-1.94	-1.22	11.86	-4.47	-1.44	-9.35	-2.19	-0.24	-4.67
South Whittier	17.55	22.72	57.84	0.00	0.00	0.00	0.00	0.00	0.00	16.03	5.84	30.11	21.30	6.88	44.58	23.05	7.54	50.75	1.51	16.88	27.73	-21.30	-6.88	-44.58	-23.05	-7.54	-50.75
Temple City	9.15	2.88	2.65	0.00	0.00	0.00	6.58	2.80	14.03	21.59	7.86	40.54	28.69	9.28	60.02	31.04	10.15	68.34	-12.44	-4.98	-37.89	-28.69	-9.28	-60.02	-24.48	-7.35	-54.31
Torrance	32.45	40.73	75.22	0.00	0.00	0.00	53.55	20.41	109.68	185.37	67.52	348.14	246.33	79.55	515.42	266.54	87.19	586.84	-152.92	-26.79	-272.92	-246.33	-79.55	-515.42	-213.00	-66.78	-477.17
Valinda	1.22	0.00	18.79	0.00	0.00	0.00	0.00	0.00	0.00	7.87	2.87	14.79	10.48	3.38	21.89	11.32	3.70	24.93	-6.65	-2.87	4.01	-10.48	-3.38	-21.89	-11.32	-3.70	-24.93
Val Verde	0.10	0.04	0.19	0.37	0.12	0.73	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.09	0.04	0.18	0.36	0.12	0.71	-0.01	0.00	-0.02
Vernon	17.81	0.00	10.78	0.00	0.00	0.00	0.00	0.00	0.00	10.50	3.82	19.72	13.95	4.51	29.19	15.10	4.94	33.24	7.31	-3.82	-8.94	-13.95	-4.51	-29.19	-15.10	-4.94	-33.24
View Park-Windsor Hills	0.00	0.05	0.02	0.00	0.00	0.00	0.00	0.00	0.00	5.35	1.95	10.05	7.11	2.30	14.89	7.70	2.52	16.95	-5.35	-1.90	-10.03	-7.11	-2.30	-14.89	-7.70	-2.52	-16.95
Vincent	10.47	0.80	3.89	0.00	0.00	0.00	0.39	0.20	0.85	9.10	3.32	17.10	12.10	3.91	25.31	13.09	4.28	28.82	1.37	-2.52	-13.20	-12.10	-3.91	-25.31	-12.70	-4.08	-27.98
Walnut	0.10	0.11	1.78	0.05	0.02	0.10	0.29	0.14	0.65	9.22	3.36	17.31	12.25	3.95	25.62	13.25	4.33	29.17	-9.12	-3.24	-15.55	-12.20	-3.93	-25.52	-12.96	-4.19	-28.53
Walnut Park	0.19	0.00	26.95	0.00	0.00	0.00	0.00	0.00	0.00	5.61	2.04	10.53	7.45	2.41	15.59	8.06	2.64	17.75	-5.41	-2.04	16.42	-7.45	-2.41	-15.59	-8.06	-2.64	-17.75
West Athens	0.43	0.00	9.07	0.00	0.00	0.00	0.00	0.00	0.00	2.65	0.97	4.98	3.52	1.14	7.37	3.81	1.25	8.40	-2.22	-0.97	4.09	-3.52	-1.14	-7.37	-3.81	-1.25	-8.40
West Carson	0.16	0.00	18.37	0.00	0.00	0.00	0.00	0.00	0.00	13.73	5.00	25.79	18.25	5.89	38.18	19.75	6.46	43.47	-13.57	-5.00	-7.42	-18.25	-5.89	-38.18	-19.75	-6.46	-43.47
West Compton	0.02	0.00	12.42	0.00	0.00	0.00	0.00	0.00	0.00	2.73	0.99	5.12	3.62	1.17	7.58	3.92	1.28	8.63	-2.71	-0.99	7.30	-3.62	-1.17	-7.58	-3.92	-1.28	-8.63
West Covina	55.79	29.90	114.24	0.00	0.00	0.00	29.84	15.14	65.97	70.02	25.51	131.51	93.05	30.05	194.70	100.68	32.94	221.67	-14.24	4.40	-17.27	-93.05	-30.05	-194.70	-70.84	-17.79	-155.70
West Hollywood	0.41	0.00	9.09	0.00	0.00	0.00	0.07	0.03	0.12	68.76	24.32	125.38	88.71	28.65	185.62	95.99	31.40	211.34	-68.34	-24.31	-116.29	-88.71	-28.65	-185.62	-95.92	-31.37	-211.22
Westlake Village	24.33	25.69	53.61	6.87	3.47	10.43	7.51	3.93	12.01	2.80	1.02	5.27	3.73	1.20	7.80	4.03	1.32	8.88	21.53	24.67	48.34	3.15	2.27	2.64	3.48	2.61	3.13
Westmont	0.18	0.00	18.37	0.00	0.00	0.00	0.00	0.00	0.00	8.21	2.99	15.41	10.91	3.52	22.82	11.80	3.86	25.98	-8.03	-2.99	2.96	-10.91	-3.52	-22.82	-11.80	-3.86	-25.98
West Puente Valley	6.69	0.32	10.28	0.00	0.00	0.00	37.88	14.72	78.87	3.08	1.12	5.79	4.10	1.32	8.58	4.43	1.45	9.78	3.61	-0.81	4.49	-4.10	-1.32	-8.58	33.43	13.27	69.11
West Whittier-Los Nietos	7.71	0.08	19.73	0.00	0.00	0.00	0.00	0.00	0.00	10.02	3.65	18.82	13.32	4.30	27.87	14.41	4.71	31.73	-2.31	-3.57	0.91	-13.32	-4.30	-27.87	-14.41	-4.71	-31.73
Whittier	44.36	21.03	58.85	7.20	2.85	15.14	9.94	5.21	18.58	50.90	18.54	95.59	67.64	21.84	141.53	73.19	23.94	161.14	-6.54	2.49	-36.74	-60.44	-18.99	-126.39	-63.25	-18.73	-144.56
Willowbrook	10.59	10.52	27.48	0.00	0.00	0.00	0.00	0.00	0.00	8.90	3.24	16.72	11.83	3.82	24.78	12.80	4.19	28.19	1.69	7.28	10.76	-11.83	-3.82	-24.78	-12.80	-4.19	-28.19
Aliso Viejo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.23	0.08	0.44	0.31	0.10	0.65	0.33	0.11	0.73	-0.23	-0.08	-0.44	-0.31	-0.10	-0.65	-0.33	-0.11	-0.73
Anaheim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.86	6.14	31.66	22.40	7.23	46.87	24.24	7.93	53.36	-18.86	-6.14	-31.66	-22.40	-7.23	-46.87	-24.24	-7.93	-53.36
Brea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.98	1.44	7.44	5.28	1.70	11.01	5.69	1.86	12.53	-3.98	-1.44	-7.43	-5.28	-1.70	-11.01	-5.69	-1.86	-12.53
Buena Park	0.01	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	10.28	3.75	19.32	13.87	4.42	28.81	14.79	4.84	32.57	-10.28	-3.75	-19.31	-13.87	-4.42	-28.81	-14.79	-4.84	-32.57
Costa Mesa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.43	1.61	8.32	5.89	1.90	12.32	6.37	2.08	14.02	-4.43	-1.61	-8.32	-5.89	-1.90	-12.32	-6.37	-2.08	-14.02
Coto de Caza	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.08	0.04	0.01	0.09	0.04	0.01	0.10	-0.03	-0.01	-0.08	-0.04	-0.01	-0.09	-0.04	-0.01	-0.10
Cypress	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.65	2.79	14.38	10.16	3.28	21.27	11.00	3.60	24.21	-7.65	-2.79	-14.38	-10.16	-3.28	-21.27	-11.00	-3.60	-24.21
Dana Point	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.13	0.05	0.24	0.17	0.06	0.36	0.18	0.08	0.41	-0.13	-0.05	-0.24	-0.17	-0.06	-0.36	-0.18	-0.08	-0.41
Foothill Ranch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.03
Fountain Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.06	0.75	3.87	2.74	0.88	5.73	2.96	0.97	6.52	-2.06	-0.75	-3.87	-2.74	-0.88	-5.73	-2.96	-0.97	-6.52
Fullerton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.81	5.03	25.93	18.35	5.93	38.40	19.86	6.50	43.72	-13.81	-5.03	-25.93	-18.35	-5.93	-38.40	-19.86	-6.50	-43.72
Garden Grove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.17	2.61	13.47	9.53	3.08	19.94	10.31	3.37	22.70	-7.17	-2.61	-13.47	-9.53	-3.08	-19.94	-10.31	-3.37	-22.70
Huntington Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.68	2.80	14.42	10.20	3.29	21.35	11.04	3.61	24.30	-7.68	-2.80	-14.42	-10.20	-3.29	-21.35	-11.04	-3.61	-24.30
Irvine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.45	0.53	2.73	1.93	0.62	4.04	2.09	0.68	4.60	-1.45	-0.53	-2.73	-1.93	-0.62	-4.04	-2.09	-0.68	-4.60
Laguna Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.37	0.13	0.69	0.49	0.16	1.03	0.53	0.17	1.17	-0.37	-0.13	-0.69	-0.49	-0.16	-1.03	-0.53	-0.17	-1.17
Laguna Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.26	0.09	0.48	0.34	0.11	0.72	0.37	0.12	0.81	-0.26	-0.09	-0.48	-0.34	-0.11	-0.72	-0.37	-0.12	-0.81
Laguna Niguel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.33	0.12	0.61	0.43	0.14	0.90	0.47	0.15	1.03	-0.33	-0.12	-0.61	-0.43	-0.14	-0.90	-0.47	-0.15	-1.03
Laguna Woods	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.07	0.38	0.27	0.09	0.58	0.29	0.10	0.64	-0.20	-0.07	-0.38	-0.27	-0.09	-0.58	-0.29	-0.10	-0.64
La Habra	0.01	0.01	0.01	0.00	0.00	0.01	0.00	0.00	0.00	9.48	3.45	17.77	12.58	4.06	26.32	13.61	4.45	29.96	-9.46	-3.44	-17.77	-12.57	-4.06	-26.31	-13.61	-4.45	-29.96
Lake Forest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.39	0.14	0.74	0.52	0.17	1.09	0.57	0.18	1.24	-0.39	-0.14	-0.74	-0.52	-0.17	-1.09	-0.57	-0.18	-1.24
La Palma	0.01	0.00	0.03	0.00	0.00	0.00	0.03	0.02	0.07	2.29	0.83	4.30	3.04	0.98	6.37	3.29	1.08	7.25	-2.28	-0.83	-4.27	-3.04	-0.98	-6.37	-3.26	-1.06	-7.18
Las Flores	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Los Alamitos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.86	1.04	5.37	3.80	1.23	7.95	4.11	1.34	9.05	-2.86	-1.04	-5.37	-3.80	-1.23	-7.95	-4.11	-1.34	-9.05
Mission Viejo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46	0.17	0.87	0.62	0.20	1.29	0.67	0.22	1.47	-0.46	-0.17	-0.87	-0.62	-0.20	-1.29	-0.67	-0.22	-1.47
Newport Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.10	1.13	5.83	4.12	1.33	8.63	4.46	1.46	9.82	-3.10	-1.13	-5.83	-4.12	-1.33	-8.63	-4.46	-1.46	-9.82
Newport Coast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.16	0.12	0.04	0.24	0.12	0.04	0.27	-0.09	-0.03	-0.16	-0.12	-0.04	-0.24	-0.12	-0.04	-0.27
Orange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.08	2.22	11.42	8.08	2.61	16.91	8.75	2.86	19.26	-6.08	-2.22	-11.42	-8.08	-2.61	-16.91	-8.75	-2.86	-19.26
Placentia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.87	0.68	3.51	2.48	0.80	5.19	2.69	0.88	5.91	-1.87	-0.68	-3.51	-2.48	-0.80	-5.19	-2.69	-0.88	-5.91
Portola Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Rancho Santa Margarita	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.29	-0.09	-0.03	-0.17	-0.12	-0.04	-0.25	-0.13	-0.04	-0.29
Rossmoor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.03	0.38	1.94	1.37	0.44	2.87	1.48	0.48	3.26	-1.03	-0.38	-1.94	-1.37	-0.44	-2.87	-1.48	-0.48	-3.26
San Clemente	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.06	0.33	0.23	0.08	0.49	0.25	0.08	0.55	-0.17	-0.06	-0.33	-0.23	-0.08	-0.49	-0.25	-0.08	-0.55
San Joaquin Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.11	-0.03	-0.01	-0.06	-0.04	-0.01	-0.09	-0.05	-0.02	-0.11
San Juan Capistrano	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.18	0.07	0.34	0.24	0.08	0.50	0.26	0.08	0.57	-0.18	-0.07	-0.34	-0.24	-0.08	-0.50	-0.26	-0.08	-0.57
Santa Ana	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.14	2.24	11.54	8.16	2.64	17.08	8.83	2.89	19.45	-6.14	-2.24	-11.54	-8.16	-2.64	-17.08	-8.83	-2.89	-19.45
Seal Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.69	2.07	10.69	7.57	2.44	15.83	8.19	2.68	18.02	-5.69	-2.07	-10.69	-7.57	-2.44	-15.83	-8.19	-2.68	-18.02
Stanton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.83	0.67	3.43	2.43	0.78	5.08	2.63	0.86	5.78	-1.83	-0.67	-3.43	-2.43	-0.78	-5.08	-2.63	-0.86	-5.78
Tustin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.51	0.55	2.83	2.01	0.65	4.20	2.17	0.71	4.78	-1.51	-0.55	-2.83	-2.01	-0.65	-4.20	-2.17	-0.71	-4.78
Tustin Foothills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.29	0.10	0.54	0.38	0.12	0.79	0.41	0.13	0.90	-0.29	-0.10	-0.54	-0.38	-0.12	-0.79	-0.41	-0.13	-0.90
Villa Park	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15	0.05	0.28	0.20	0.06	0.41	0.21	0.07	0.47	-0.15	-0.05	-0.28	-0.20	-0.06	-0.41	-0.21	-0.07	-0.47
Westminster	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.51	2.37	12.23	8.66	2.80	18.11	9.37	3.06	20.62	-6.51	-2.37	-12.23	-8.66	-2.80	-18.11	-9.37	-3.06	-20.62
Yorba Linda	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.39	0.50	2.60	1.84	0.59	3.85	1.99	0.65	4.39	-1.39	-0.50	-2.60	-1.84	-0.59	-3.85	-1.99	-0.65	-4.39
Banning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.02	0.11	0.08	0.02	0.16	0.08	0.03	0.18	-0.06	-0.02	-0.11	-0.08	-0.02	-0.16	-0.08	-0.03	-0.18
Beaumont	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.04	0.01	0.07	0.05	0.02	0.11	0.06	0.02	0.12	-0.04	-0.01	-0.07	-0.05	-0.02	-0.11	-0.06	-0.02	-0.12
Bermuda Dunes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cabazon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Calimesa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08	-0.02	-0.01	-0.05	-0.03	-0.01	-0.07	-0.04	-0.01	-0.08
Canyon Lake	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
Cathedral City	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.12	0.04	0.23	0.16	0.05	0.33	0.17	0.06	0.38	-0.12	-0.04	-0.23	-0.16	-0.05	-0.33	-0.17	-0.06	-0.38
Cherry Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.03
Coachella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Corona	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.03	0.37	1.93	1.37	0.44	2.86	1.48	0.48	3.26	-1.03	-0.37	-1.93	-1.37	-0.44	-2.86	-1.48	-0.48	-3.26
Desert Hot Springs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08	-0.03	-0.01	-0.05	-0.03	-0.01	-0.07	-0.04	-0.01	-0.08
East Hemet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.02	0.00	0.03	0.02	0.01	0.04	-0.01	0.00	-0.02	-0.02	0.00	-0.03	-0.02	-0.01	-0.04
El Cerrito	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07	-0.02	-0.01	-0.04	-0.03	-0.01	-0.07	-0.03	-0.01	-0.07
Glen Avon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.31	0.11	0.58	0.41	0.13	0.85	0.44	0.14	0.97	-0.31	-0.11	-0.58	-0.41	-0.13	-0.85	-0.44	-0.14	-0.97
Hemet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27	-0.09	-0.03	-0.16	-0.11	-0.04	-0.24	-0.12	-0.04	-0.27
Highgrove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Home Gardens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	-0.03	-0.01	-0.05	-0.04	-0.01	-0.08	-0.04	-0.01	-0.09
Homeland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
Idyllwild-Pine Cove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Indian Wells	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Indio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Lake Elsinore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.11	0.04	0.21	0.15	0.05	0.31	0.16	0.05	0.35	-0.11	-0.04	-0.21	-0.15	-0.05	-0.31	-0.16	-0.05	-0.35
Lakeland Village	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Lakeview	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
La Quinta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
March AFB	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Mecca	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mira Loma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.23	0.09	0.44	0.31	0.10	0.65	0.34	0.11	0.74	-0.23	-0.09	-0.44	-0.31	-0.10	-0.65	-0.34	-0.11	-0.74

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction										Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III				CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 38	0 14	0 71	0 50	0 18	1 05	0 54	0 18	1 19		-0 38	-0 14	-0 71	-0 50	-0 18	-1 05	-0 54	-0 18	-1 19
Murrieta	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 05	0 02	0 09	0 06	0 02	0 13	0 07	0 02	0 14		-0 05	-0 02	-0 09	-0 06	-0 02	-0 13	-0 07	-0 02	-0 14
Murrieta Hot Springs	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Norco	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 32	0 11	0 58	0 42	0 14	0 88	0 45	0 15	1 00		-0 32	-0 11	-0 58	-0 42	-0 14	-0 88	-0 45	-0 15	-1 00
Nuevo	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 01		0 00	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Palm Desert	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 18	0 06	0 30	0 21	0 07	0 44	0 23	0 07	0 50		-0 18	-0 06	-0 30	-0 21	-0 07	-0 44	-0 23	-0 07	-0 50
Palm Springs	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 36	0 13	0 67	0 47	0 15	0 99	0 51	0 17	1 13		-0 36	-0 13	-0 67	-0 47	-0 15	-0 99	-0 51	-0 17	-1 13
Pedley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 18	0 06	0 30	0 21	0 07	0 45	0 23	0 08	0 51		-0 18	-0 06	-0 30	-0 21	-0 07	-0 45	-0 23	-0 08	-0 51
Perris	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 10	0 04	0 18	0 13	0 04	0 27	0 14	0 05	0 31		-0 10	-0 04	-0 18	-0 13	-0 04	-0 27	-0 14	-0 05	-0 31
Quail Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Rancho Mirage	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 06	0 02	0 11	0 08	0 03	0 17	0 09	0 03	0 19		-0 06	-0 02	-0 11	-0 08	-0 03	-0 17	-0 09	-0 03	-0 19
Riverside	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	2 54	0 93	4 77	3 38	1 09	7 07	3 85	1 20	8 04		-2 54	-0 93	-4 77	-3 38	-1 09	-7 07	-3 85	-1 20	-8 04
Romoland	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 01		0 00	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Rubidoux	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 20	0 07	0 37	0 26	0 09	0 55	0 29	0 09	0 83		-0 20	-0 07	-0 37	-0 26	-0 09	-0 55	-0 29	-0 09	-0 83
San Jacinto	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 02	0 01	0 05	0 03	0 01	0 07	0 04	0 01	0 06		-0 02	-0 01	-0 05	-0 03	-0 01	-0 07	-0 04	-0 01	-0 06
Sedco Hills	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 01	0 00	0 03	0 01	0 00	0 03		-0 01	0 00	-0 02	-0 01	0 00	-0 03	-0 01	0 00	-0 03
Sun City	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 06	0 02	0 12	0 08	0 03	0 18	0 09	0 03	0 20		-0 06	-0 02	-0 12	-0 08	-0 03	-0 18	-0 09	-0 03	-0 20
Sunnyslope	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 01	0 03	0 02	0 01	0 04	0 02	0 01	0 05		-0 01	-0 01	-0 03	-0 02	-0 01	-0 04	-0 02	-0 01	-0 05
Temecula	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 05	0 02	0 09	0 06	0 02	0 13	0 07	0 02	0 14		-0 05	-0 02	-0 09	-0 06	-0 02	-0 13	-0 07	-0 02	-0 14
Thousand Palms	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01		0 00	0 00	-0 01	0 00	0 00	-0 01	0 00	0 00	-0 01
Valle Vista	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Wildomar	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 07		-0 02	-0 01	-0 04	-0 03	-0 01	-0 06	-0 03	-0 01	-0 07
Winchester	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 03		-0 01	0 00	-0 02	-0 01	0 00	-0 02	-0 01	0 00	-0 03
Woodcrest	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 05	0 02	0 09	0 06	0 02	0 13	0 07	0 02	0 15		-0 05	-0 02	-0 09	-0 06	-0 02	-0 13	-0 07	-0 02	-0 15
Camarillo	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 64	0 23	1 20	0 85	0 27	1 78	0 92	0 30	2 02		-0 64	-0 23	-1 20	-0 85	-0 27	-1 78	-0 92	-0 30	-2 02
Casa Conejo	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 07	0 03	0 13	0 10	0 03	0 20	0 10	0 03	0 23		-0 07	-0 03	-0 13	-0 10	-0 03	-0 20	-0 10	-0 03	-0 23
Channel Islands Beach	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 01	0 00	0 03	0 02	0 00	0 03		-0 01	0 00	-0 02	-0 01	0 00	-0 03	-0 02	0 00	-0 03
El Rio	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 03	0 01	0 05	0 04	0 01	0 07	0 04	0 01	0 08		-0 03	-0 01	-0 05	-0 04	-0 01	-0 07	-0 04	-0 01	-0 08
Fillmore	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 05	0 02	0 09	0 07	0 02	0 14	0 07	0 02	0 16		-0 05	-0 02	-0 09	-0 07	-0 02	-0 14	-0 07	-0 02	-0 16
Meiners Oaks	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	-0 01
Mira Monte	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02		-0 01	0 00	-0 01	-0 01	0 00	-0 02	-0 01	0 00	-0 02
Moorpark	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 58	0 21	1 09	0 77	0 25	1 61	0 83	0 27	1 83		-0 58	-0 21	-1 09	-0 77	-0 25	-1 61	-0 83	-0 27	-1 83
Oak Park	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 03	0 01	0 06	0 04	0 01	0 08	0 04	0 01	0 10		-0 03	-0 01	-0 06	-0 04	-0 01	-0 08	-0 04	-0 01	-0 10
Oak View	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01		0 00	0 00	-0 01	0 00	0 00	-0 01	0 00	0 00	-0 01
Ojai	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 01	0 00	0 01		0 00	0 00	-0 01	0 00	0 00	-0 01	0 01	0 00	-0 01
Oxnard	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 35	0 13	0 68	0 47	0 15	0 99	0 51	0 17	1 12		-0 35	-0 13	-0 68	-0 47	-0 15	-0 99	-0 51	-0 17	-1 12
Piru	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02		-0 01	0 00	-0 01	-0 01	0 00	-0 02	-0 01	0 00	-0 02
Port Hueneme	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 03	0 01	0 07	0 05	0 01	0 10	0 05	0 02	0 11		-0 03	-0 01	-0 07	-0 05	-0 01	-0 10	-0 05	-0 02	-0 11
San Buenaventura (Ventura)	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 40	0 15	0 75	0 53	0 17	1 11	0 57	0 19	1 26		-0 40	-0 15	-0 75	-0 53	-0 17	-1 11	-0 57	-0 19	-1 26
Santa Paula	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 02	0 01	0 03	0 02	0 01	0 05	0 02	0 01	0 05		-0 02	-0 01	-0 03	-0 02	-0 01	-0 05	-0 02	-0 01	-0 05
Simi Valley	0 03	0 02	0 07	0 01	0 01	0 01	0 00	0 00	0 00	6 35	2 31	11 93	8 44	2 73	17 87	9 14	2 99	20 12		-6 32	-2 30	-11 86	-8 43	-2 72	-17 85	-9 14	-2 99	-20 11
Thousand Oaks	0 13	0 14	0 28	0 03	0 01	0 04	0 03	0 02	0 05	18 91	6 89	35 51	25 13	8 11	52 58	27 19	8 89	59 86		-18 78	-6 75	-35 23	-25 10	-8 10	-52 53	-27 18	-8 88	-59 81
Adelanto	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 27	0 10	0 50	0 35	0 11	0 74	0 38	0 12	0 84		-0 27	-0 10	-0 50	-0 35	-0 11	-0 74	-0 38	-0 12	-0 84
Apple Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 18	0 06	0 33	0 23	0 08	0 49	0 25	0 08	0 56		-0 18	-0 06	-0 33	-0 23	-0 08	-0 49	-0 25	-0 08	-0 56
Barstow	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 04	0 01	0 07	0 05	0 02	0 10	0 05	0 02	0 12		-0 04	-0 01	-0 07	-0 05	-0 02	-0 10	-0 05	-0 02	-0 12
Big Bear City	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Big Bear Lake	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Bloomington	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 18	0 07	0 34	0 24	0 08	0 51	0 26	0 09	0 58		-0 18	-0 07	-0 34	-0 24	-0 08	-0 51	-0 26	-0 09	-0 58
Chino	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	6 79	2 47	12 78	9 03	2 91	18 88	9 77	3 19	21 50		-6 79	-2 47	-12 78	-9 03	-2 91	-18 88	-9 77	-3 19	-21 50
Chino Hills	0 01	0 00	0 02	0 00	0 00	0 00	0 00	0 00	0 01	3 86	1 41	7 25	5 13	1 66	10 73	5 55	1 81	12 21		-3 85	-1 41	-7 23	-5 13	-1 66	-10 73	-5 54	-1 81	-12 21
Colton	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 46	0 17	0 87	0 62	0 20	1 29	0 67	0 22	1 47		-0 46	-0 17	-0 87	-0 62	-0 20	-1 29	-0 67	-0 22	-1 47
Crestline	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 01	0 00	0 03	0 01	0 00	0 03		-0 01	0 00	-0 02	-0 01	0 00	-0 03	-0 01	0 00	-0 03
Fontana	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	1 33	0 48	2 50	1 77	0 57	3 70	1 91	0 63	4 21		-1 33	-0 48	-2 50	-1 77	-0 57	-3 70	-1 91	-0 63	-4 21
Grand Terrace	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 38	0 14	0 71	0 51	0 18	1 06	0 55	0 18	1 20		-0 38	-0 14	-0 71	-0 51	-0 18	-1 06	-0 55	-0 18	-1 20
Hesperia	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 26	0 09	0 49	0 34	0 11	0 72	0 37	0 12	0 82		-0 26	-0 09	-0 49	-0 34	-0 11	-0 72	-0 37	-0 12	-0 82
Highland	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 10	0 04	0 19	0 14	0 04	0 29	0 15	0 05	0 33		-0 10	-0 04	-0 19	-0 14	-0 04	-0 29	-0 15	-0 05	-0 33
Joshua Tree	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Lake Arrowhead	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01		0 00	0 00	-0 01	0 00	0 00	-0 01	0 00	0 00	-0 01
Lanwood	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Loma Linda	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 09	0 03	0 17	0 12	0 04	0 25	0 13	0 04	0 28		-0 09	-0 03	-0 17	-0 12	-0 04	-0 25	-0 13	-0 04	-0 28
Mentone	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 02	0 02	0 01	0 03	0 02	0 01	0 04		-0 01	0 00	-0 02	-0 02	-0 01	-0 03	-0 02	-0 01	-0 04
Montclair	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	19 25	7 01	38 15	25 58	8 28	53 52	27 68	9 05	60 93		-19 25	-7 01	-38 15	-25 58	-8 28	-53 52	-27 68	-9 05	-60 93
Morongo Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Mountain View Acres	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 09	0 03	0 17	0 12	0 04	0 25	0 13	0 04	0 28		-0 09	-0 03	-0 17	-0 12	-0 04	-0 25	-0 13	-0 04	-0 28
Muscoy	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 07		-0 02	-0 01	-0 04	-0 03	-0 01	-0 06	-0 03	-0 01	-0 07
Nebo Center	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Ontario	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	10 91	3 98	20 50	14 50	4 68	30 35	15 68	5 13	34 55		-10 91	-3 98	-20 50	-14 50	-4 68	-30 35	-15 69	-5 13	-34 55
Rancho Cucamonga	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	3 00	1 09	5 63	3 98	1 29	8 33	4 31	1 41	9 48		-3 00	-1 09	-5 63	-3 98	-1 29	-8 33	-4 31	-1 41	-9 48
Redlands	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 44	0 16	0 82	0 58	0 19	1 22	0 63	0 21	1 39		-0 44	-0 16	-0 82	-0 58	-0 19	-1 22	-0 63	-0 21	-1 39
Rialto	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 49	0 18	0 92	0 65	0 21	1 37	0 71	0 23	1 56		-0 49	-0 18	-0 92	-0 65	-0 21	-1 37	-0 71	-0 23	-1 56
Running Springs	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
San Antonio Heights	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 10	0 04	0 18	0 13	0 04	0 27	0 14	0 05	0 31		-0 10	-0 04	-0 18	-0 13	-0 04	-0 27	-0 14	-0 05	-0 31
San Bernardino	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	1 57	0 57	2 95	2 09	0 67	4 36	2 28	0 74	4 97		-1 57	-0 57	-2 95	-2 09	-0 67	-4 36	-2 26	-0 74	-4 97
Twentynine Palms	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01		0 00	0 00	0 00	0 00	0 00	-0 01	0 00	0 00	-0 01
Twentynine Palms Base	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00		0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Upland	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	8 36	3 05	15 71	11 11	3 59	23 26	12 03	3 93	26 48		-8 36	-3 05	-15 71	-11 11	-3 59	-23 26	-12 03	-3 93	-26 48
Victorville	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	1 43	0 52	2 68	1 90	0 61	3 97	2 05	0 67	4 52		-1 43	-0 52	-2 68	-1 90	-0 61	-3 97	-2 05	-0 67	-4 52
Wrightwood	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 06	0 02	0 11	0 08	0 02	0 16	0 08	0 03	0 18		-0 06	-0 02	-0 11	-0 08	-0 03	-0 16	-0 08	-0 03	-0 18
Yucaipa	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 12	0 04	0 22	0 15	0 05	0 32	0 17	0 05	0 37		-0 12	-0 04	-0 22	-0 15	-0 05	-0 32	-0 17	-0 05	-0 37
Yucca Valley	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 02		0 00	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 02
LOS ANGELES - UNINCOR	879 74	251 89	1287 48	703 05	261 35	1405 70	725 41	219 77	1657 58	148 32	53 30	274 81	194 44	62 79	406 85	210 40	68 82	463 23		533 42	198 59	1012 66	508 61	198 58	998 85	515 02	150 95	1194 35
ORANGE - UNINCOR	0 10	0 03	0 11	0 04	0 02	0 08	0 00	0 00	0 00	3 55	1 29	6 87	4 72	1 52	9 88	5 11	1 67	11 25		-3 45	-1 26	-6 56	-4 68	-1 51	-9 82	-5 11	-1 67	-11 25
RIVERSIDE - UNINCOR	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	1 15	0 42	2 17	1 53	0 50	3 21	1 66	0 54	3 65		-1 15	-0 42	-2 17	-1 53	-0 50	-3 21	-1 66	-0 54	-3 65
SAN BERNARDINO - UNINCOR	0 02	0 00	0 02	0 03	0 01	0 06	0 03	0 02	0 07	6 49	2 37	12 20	8 63	2 79	18 06	9 34	3 05	20 58		-6 47	-2 36	-12 18	-8 60	-2 77	-18 00	-9 31	-3 04	-20 49
VENTURA - UNINCOR	0 30	0 19	0 41	0 24	0 12	0 45	0 00	0 00	0 00	2 61	0 95	4 90	3 47	1 12	7 25	3 75	1 23	8 26		-2 31	-0 76	-4 49	-3 22	-1 00	-6 81	-3 75	-1 23	-8 25
Total	4477	1667	8327	6382	2047	13534	7041	2296	15802	6837	2490	12840	9065	2934	19010	9831	3218	21644		-2359 61	-823 28	-4512 43	-2703 32	-887 04	-5475 87	-2789 47	-920 13	-5841 93

Table A13. Annual Direct Impacts (Year 16 - Year 20)

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0.13	0.04	0.21	0.01	0.00	0.02	0.00	0.00	0.01	0.05	0.02	0.09	0.06	0.02	0.13	0.07	0.02	0.15	0.08	0.03	0.12	-0.05	-0.02	-0.11	-0.06	-0.02	-0.14
Agoura Hills	2.58	0.20	4.68	1.21	0.55	2.21	0.84	0.41	1.39	8.13	2.96	15.27	10.81	3.49	22.61	11.69	3.83	25.74	-5.57	-2.76	-10.59	-9.60	-2.94	-20.40	-10.65	-3.41	-24.35
Alhambra	4.59	0.00	7.76	0.00	0.00	0.00	1.51	0.71	2.65	55.77	20.31	104.74	74.11	23.93	155.06	80.19	26.23	178.55	-51.17	-20.31	-98.97	-74.11	-23.93	-155.06	-78.68	-25.52	-173.89
Alondra Park	0.00	1.66	0.00	0.00	0.00	0.00	4.15	1.98	8.87	3.08	1.12	5.78	4.09	1.32	8.55	4.42	1.45	9.74	-3.08	0.54	-5.78	-4.09	-1.32	-8.55	-0.27	0.54	-0.86
Altadena	0.01	0.00	2.85	0.00	0.00	0.00	0.00	0.00	0.00	18.37	5.96	30.75	21.75	7.03	45.52	23.54	7.70	51.83	-18.36	-5.96	-27.90	-21.75	-7.03	-45.52	-23.54	-7.70	-51.83
Arcadia	1.53	3.37	5.87	0.01	0.00	0.02	3.82	1.65	7.48	58.00	20.40	105.17	74.41	24.03	155.70	80.52	26.34	177.27	-54.46	-17.03	-99.29	-74.40	-24.02	-155.68	-78.70	-24.69	-169.70
Artesia	0.05	0.00	1.55	0.00	0.00	0.00	0.01	0.00	0.01	20.81	7.58	39.06	27.65	8.93	57.86	29.92	9.79	65.88	-20.76	-7.58	-37.54	-27.65	-8.93	-57.86	-29.91	-9.78	-65.87
Avocado Heights	3.22	0.00	4.22	0.00	0.00	0.00	0.01	0.00	0.02	9.02	3.28	16.94	11.98	3.87	25.07	12.97	4.24	28.55	-5.60	-3.28	-12.72	-11.98	-3.87	-25.07	-12.96	-4.24	-28.53
Azusa	5.03	0.00	1.79	85.71	20.65	139.71	0.00	0.00	0.00	24.88	9.06	46.74	33.07	10.68	69.19	35.78	11.70	78.78	-19.65	-9.06	-44.94	32.64	9.97	70.52	-35.78	-11.70	-78.78
Baldwin Park	6.12	3.29	4.74	0.01	0.00	0.01	0.23	0.11	0.46	26.21	9.55	49.22	34.82	11.25	72.86	37.68	12.33	82.96	-20.08	-8.25	-44.47	-34.81	-11.24	-72.85	-37.45	-12.21	-82.50
Bell	1.58	0.00	5.50	0.00	0.00	0.00	2.53	1.24	4.79	19.91	7.25	37.40	26.46	8.55	55.37	28.64	9.37	63.05	-18.34	-7.25	-31.90	-26.46	-8.55	-55.37	-26.10	-8.12	-58.26
Bellflower	6.07	3.30	4.54	0.00	0.00	0.00	0.02	0.01	0.05	39.28	14.31	73.77	52.20	16.86	109.22	56.48	18.46	124.35	-33.21	-11.01	-69.24	-52.20	-16.86	-109.22	-56.46	-18.47	-124.30
Bell Gardens	1.50	0.00	3.05	0.00	0.00	0.00	1.02	0.50	1.70	16.44	5.99	30.88	21.85	7.06	45.72	23.64	7.73	52.06	-14.95	-5.99	-27.83	-21.85	-7.06	-45.72	-22.62	-7.24	-50.36
Beverly Hills	0.00	0.00	1.69	0.00	0.00	0.00	0.06	0.03	0.13	84.22	30.68	158.16	111.91	36.14	234.16	121.09	39.61	266.61	-84.22	-30.66	-158.48	-111.91	-36.14	-234.16	-121.03	-39.58	-266.48
Bradbury	0.16	0.09	3.04	0.00	0.00	0.00	0.00	0.00	0.00	0.83	0.30	1.57	1.11	0.36	2.32	1.20	0.39	2.64	-0.67	-0.21	1.47	-1.11	-0.36	-2.32	-1.20	-0.39	-2.64
Burbank	10.71	0.03	7.73	0.00	0.00	0.00	8.00	2.12	12.32	96.32	35.08	180.89	127.99	41.33	267.81	138.50	45.30	304.92	-85.61	-35.06	-173.16	-127.99	-41.33	-267.81	-132.49	-43.18	-292.60
Calabasas	4.43	1.49	7.08	1.15	0.53	1.95	1.76	0.85	3.28	3.19	1.16	5.99	4.24	1.37	8.87	4.58	1.50	10.09	1.24	0.33	1.09	-3.08	-0.84	-6.92	-2.82	-0.65	-6.82
Carson	2.54	0.00	11.23	0.00	0.00	0.00	8.31	2.85	16.28	59.04	21.50	110.87	78.45	25.33	164.15	84.89	27.77	186.89	-58.49	-21.50	-99.64	-78.45	-25.33	-164.15	-76.57	-24.92	-170.61
Cerritos	7.87	3.31	13.62	0.00	0.00	0.00	8.54	4.06	18.86	47.38	17.25	88.95	62.94	20.33	131.69	68.10	22.28	149.94	-39.70	-13.94	-75.33	-82.94	-20.33	-131.69	-59.57	-18.20	-131.29
Charter Oak	1.32	0.00	2.17	0.00	0.00	0.00	0.00	0.00	0.00	5.53	2.01	10.39	7.35	2.37	15.38	7.95	2.60	17.51	-4.21	-2.01	-8.22	-7.35	-2.37	-15.38	-7.95	-2.60	-17.51
Citrus	0.49	0.01	2.16	0.00	0.00	0.00	0.05	0.02	0.11	3.05	1.11	5.74	4.06	1.31	8.49	4.39	1.44	9.67	-2.57	-1.10	-3.58	-4.06	-1.31	-8.49	-4.34	-1.42	-9.56
Claremont	4.43	1.24	10.83	1.70	0.62	2.99	0.00	0.00	0.01	24.07	8.77	45.21	31.99	10.33	66.93	34.61	11.32	76.21	-19.64	-7.62	-34.58	-30.29	-9.51	-63.94	-34.61	-11.32	-76.20
Commerce	1.56	1.70	2.03	0.00	0.00	0.00	2.23	1.08	4.70	25.78	9.39	48.42	34.26	11.06	71.68	37.07	12.13	81.61	-24.22	-7.70	-48.38	-34.26	-11.06	-71.68	-34.84	-11.05	-76.92
Compton	7.18	0.01	11.12	0.00	0.00	0.00	1.47	0.72	2.41	41.42	15.09	77.78	55.04	17.77	115.16	59.55	19.48	131.12	-34.28	-15.08	-66.66	-55.04	-17.77	-115.16	-58.09	-18.78	-128.70
Covina	8.41	3.21	6.69	0.00	0.00	0.01	8.55	3.15	17.79	46.94	17.10	88.15	62.37	20.14	130.51	67.49	22.08	148.60	-38.53	-13.86	-81.46	-62.37	-20.14	-130.50	-58.94	-18.93	-130.80
Cudahy	0.04	0.00	1.56	0.00	0.00	0.00	0.04	0.02	0.08	8.85	3.22	16.62	11.76	3.80	24.60	12.72	4.16	28.01	-8.81	-3.22	-15.06	-11.76	-3.80	-24.60	-12.68	-4.14	-27.93
Culver City	1.95	0.00	0.08	0.00	0.00	0.00	0.00	0.00	0.00	73.25	26.68	137.58	97.34	31.44	203.68	105.33	34.46	231.91	-71.31	-26.68	-137.50	-97.34	-31.44	-203.68	-105.33	-34.46	-231.91
Del Aire	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.51	2.73	14.10	9.98	3.22	20.87	10.79	3.53	23.77	-7.51	-2.73	-14.10	-9.98	-3.22	-20.87	-10.79	-3.53	-23.77
Desert View Highlands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.04	0.38	1.95	1.38	0.44	2.68	1.49	0.49	3.28	-1.04	-0.38	-1.95	-1.38	-0.44	-2.88	-1.49	-0.49	-3.28
Diamond Bar	1.13	0.00	5.11	1.02	0.49	2.08	2.00	0.84	4.14	19.12	6.96	35.90	25.41	8.20	53.18	27.49	8.99	60.52	-17.99	-8.96	-30.79	-24.38	-7.72	-51.07	-25.49	-8.15	-56.39
Downey	9.25	3.28	13.70	0.00	0.00	0.00	2.88	1.40	4.87	64.67	23.56	121.45	85.93	27.75	179.80	92.98	30.42	204.72	-55.41	-20.28	-107.74	-85.93	-27.75	-179.80	-90.10	-29.02	-199.85
Duarte	4.19	3.12	5.84	1.82	0.51	3.44	0.93	0.47	1.48	14.24	5.19	26.74	18.92	6.11	39.60	20.48	6.70	45.08	-10.05	-2.06	-20.90	-17.30	-5.60	-36.15	-19.55	-6.23	-43.62
East Compton	0.00	0.00	0.96	0.00	0.00	0.00	0.02	0.01	0.04	1.51	0.55	2.83	2.00	0.65	4.19	2.17	0.71	4.77	-1.51	-0.55	-1.87	-2.00	-0.65	-4.19	-2.14	-0.70	-4.73
East La Mirada	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.73	0.99	5.13	3.63	1.17	7.59	3.93	1.28	8.64	-2.73	-0.99	-5.13	-3.63	-1.17	-7.59	-3.93	-1.28	-8.64
East Los Angeles	5.97	4.97	10.74	0.00	0.00	0.00	2.32	1.11	4.82	39.70	14.46	74.57	52.76	17.04	110.40	57.09	18.68	125.70	-33.74	-9.49	-63.83	-52.76	-17.04	-110.40	-54.77	-17.57	-120.88
East Pasadena	0.01	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.07	16.41	5.98	30.81	21.80	7.04	45.62	23.59	7.72	51.94	-16.40	-5.98	-30.81	-21.80	-7.04	-45.62	-23.56	-7.71	-51.88
East San Gabriel	0.00	1.23	1.50	0.00	0.00	0.00	12.34	4.15	25.04	10.02	3.65	18.82	13.32	4.30	27.87	14.41	4.71	31.73	-10.02	-2.42	-17.32	-13.32	-4.30	-27.87	-2.07	-0.56	-6.69
El Monte	5.74	1.64	10.44	0.00	0.00	0.00	8.04	2.71	12.10	60.94	22.20	114.45	80.98	26.15	169.45	87.63	28.66	192.93	-55.21	-20.55	-104.02	-80.98	-26.15	-169.45	-81.59	-25.96	-180.83
El Segundo	1.89	0.00	0.03	40.03	13.28	79.40	1.50	0.72	2.52	20.15	7.34	37.85	26.78	8.65	58.04	28.98	9.48	63.80	-18.28	-7.34	-37.82	13.25	4.81	23.36	-27.48	-8.76	-61.28
Florence-Graham	4.54	1.69	7.38	0.00	0.00	0.00	0.02	0.01	0.03	13.99	5.10	26.28	18.60	6.01	38.91	20.12	6.58	44.30	-8.45	-3.41	-18.90	-18.60	-6.01	-38.91	-20.11	-6.57	-44.27
Gardena	5.04	0.00	1.60	0.00	0.00	0.00	1.77	0.85	3.63	49.54	18.04	93.04	65.83	21.26	137.74	71.23	23.30	156.83	-44.50	-18.04	-91.43	-65.83	-21.26	-137.74	-69.46	-22.45	-153.20
Glendale	9.42	6.84	15.50	8.82	2.85	17.44	0.03	0.02	0.07	180.70	65.82	339.38	240.13	77.55	502.45	259.84	85.00	572.07	-171.28	-58.99	-323.88	-231.32	-74.70	-485.01	-259.80	-84.98	-572.00
Glendora	9.06	3.18	11.33	4.13	1.30	8.78	0.00	0.00	0.00	35.91	13.06	67.45	47.72	15.41	99.88	51.64	18.69	113.69	-28.85	-9.92	-58.12	-43.59	-14.11	-91.08	-51.84	-16.89	-113.69
Hacienda Heights	6.05	0.00	8.65	0.00	0.00	0.00	0.00	0.00	0.00	22.93	8.35	43.06	30.47	9.84	63.75	32.97	10.78	72.58	-16.87	-8.35	-34.41	-30.47	-9.84	-83.75	-32.97	-10.78	-72.58
Hawaiian Gardens	0.01	0.33	2.15	0.00	0.00	0.00	0.01	0.01	0.02	5.10	1.86	9.59	6.76	2.19	14.19	7.34	2.40	16.16	-5.10	-1.52	-7.44	-8.76	-2.19	-14.19	-7.33	-2.40	-16.14
Hawthorne	0.68	0.18	6.56	0.00	0.00	0.00	0.62	0.39	1.88	48.01	17.49	90.18	63.79	20.60	133.48	69.03	22.58	151.97	-47.35	-17.30	-83.59	-63.79	-20.60	-133.48	-68.21	-22.19	-150.11
Hermosa Beach	0.01	0.00	0.01	0.00	0.00	0.00	1.99	0.92	3.55	25.15	9.16	47.24	33.42	10.79	69.94	36.17	11.83	79.63	-25.15	-9.16	-47.23	-33.42	-10.79	-69.94	-34.18	-10.91	-76.08
Hidden Hills	0.95	0.01	0.94	0.00	0.00	0.00	0.24	0.12	0.39	0.88	0.32	1.65	1.18	0.38	2.44	1.28	0.41	2.77	0.07	-0.31	-0.70	-1.18	-0.38	-2.44	-1.02	-0.30	-2.38
Huntington Park	1.54	0.00	4.91	0.00	0.00	0.00	0.00	0.00	0.00	35.72	13.01	67.06	47.46	15.33	99.31	51.36	16.80	113.07	-34.18	-13.01	-62.17	-47.46	-15.33	-99.31	-51.36	-16.80	-113.07
Industry	1.51	0.05	5.35	1.89	0.88	4.17	5.51	2.35	11.37	58.23	21.21	109.36	77.38	24.99	161.91	83.73	27.39	184.34	-58.72	-21.16	-104.01	-75.49	-24.11	-157.73	-78.22	-25.04	-172.97
Inglewood	9.98	3.50	11.99	0.00	0.00	0.00	3.12	1.51	8.48	78.09	27.72	142.90	101.11	32.65	211.56	109.41	35.79	240.88	-68.11	-24.22	-130.91	-101.11	-32.85	-211.56	-106.28	-34.28	-234.39
Irwindale	0.05	0.07	1.83	1.87	0.88	3.11	3.68	1.81	7.43	1.90	0.69	3.57	2.52	0.82	5.28	2.73	0.89	6.01	-1.85	-0.63	-1.93	-0.65	0.05	-2.17	0.95	0.92	1.41
La Canada Flintridge	1.80	3.84	4.84	0.02	0.01	0.04	0.01	0.00	0.01	15.19	5.53	28.53	20.19	6.52	42.24	21.84	7.15	48.09	-13.39	-1.89	-23.69	-20.17	-6.51	-42.20	-21.84	-7.14	-48.08
La Crescenta-Montrose	2.65	2.92	1.16	0.00	0.00	0.00	0.00	0.00	0.00	11.71	4.27	22.00	15.56	5.03	32.56	16.84	5.51	37.06	-9.06	-1.34	-20.83	-15.56	-5.03	-32.56	-16.84	-5.51	-37.08
Ladera Heights	0.00	0.00	1.68	0.00	0.00	0.00	0.00	0.00	0.00	4.04	1.47	7.59	5.37	1.73	11.24	5.81	1.90	12.79	-4.04	-1.47	-5.91	-5.37	-1.73	-11.24	-5.81	-1.90	-12.79
La Habra Heights	1.87	1.57	1.80	3.27	1.24	8.86	0.11	0.05	0.18	3.05	1.11	5.73	4.05	1.31	8.48	4.38	1.43	9.65	-1.38	0.46	-4.12	-0.78	-0.07	-1.62	-4.27	-1.38	-9.47
Lake Los Angeles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.54	0.20	1.02	0.72	0.23	1.51	0.78	0.25	1.72	-0.54	-0.20	-1.02	-0.72	-0.23	-1.51	-0.78	-0.25	-1.72
Lakewood	7.90	1.41	16.19	0.00	0.00	0.00	4.13	1.99	7.92	60.80	22.15	114.19	80.80	26.09	169.06	87.43	28.60	192.48	-52.90	-20.74	-98.00	-80.80	-26.09	-169.06	-83.30	-26.60	-184.58
La Mirada	2.97	0.00	8.97	0.00	0.00	0.00	0.00	0.00	0.00	18.06	6.58	33.91	23.99	7.75	50.20	25.96	8.49	57.18	-15.09	-8.58	-24.94	-23.99	-7.75	-50.20	-25.98	-8.49	-57.18
Lancaster	0.02	0.01	0.07	0.00	0.00	0.00	0.00	0.00	0.00	102.38	37.29	192.27	136.04	43.93	284.86	147.21	48.15	324.10	-102.35	-37.28	-192.20	-136.04	-43.93	-284.86	-147.21	-48.15	-324.10
La Puente	3.09	1.60	7.81	0.00	0.00	0.00	1.72	0.81	2.96	15.98	5.81	29.97	21.21	8.65	44.37	22.95	7.51	50.52	-12.87	-4.22	-22.18	-21.21	-8.85	-44.37	-21.23	-8.69	-47.58
La Verne	0.83	2.87	8.00	8.57	3.09	17.47	0.02	0.01	0.04	19.72	7.18	37.04	28.21	8.46	54.83	28.36	9.28	62.43	-18.89	-4.31	-29.04	-28.21	-5.38	-37.36	-28.34	-9.27	-62.40
Lawndale	0.00	0.02	4.72	0.00	0.00	0.00	1.13	0.53	1.97	18.52	8.75	34.78	24.61	7.95	51.50	26.63	8.71	58.63	-18.52	-8.73	-30.07	-24.61	-7.95	-51.50	-25.50	-8.18	-58.66
Lennox	1.58	1.48	3.73	0.00	0.00	0.00	0.00	0.00	0.00	8.88	3.23	16.63	11.77	3.80	24.62	12.73	4.17	28.03	-7.29	-1.74	-12.90	-11.77	-3.80	-24.62	-12.73	-4.17	-28.03
Littlerock	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15	0.05	0.28	0.20	0.06	0.41	0.21	0.07	0.47	-0.15	-0.05	-0.28	-0.20	-0.06	-0.41	-0.21	-0.07	-0.47
Lomita	0.02	0.00	1.59	0.00	0.00	0.00	0.01	0.01	0.02	18.06	6.58	33.92	24.00	7.75	50.22	25.97	8.49	57.18	-18.04	-6.58	-32.33	-24.00	-7.75	-50.22	-25.96	-8.49	-57.15
Long Beach	41.73	-11.49	87.12	130.73	42.78	267.00	228.48	72.51	494.61	238.70	86.95	448.29	317.20	102.43	663.70	343.22	112.27	755.66	-196.97	-75.48	-361.17	-188.47	-59.67	-396.70	-114.76	-39.76	-261.05
Los Angeles	229.88	70.93	423.59	344.11	109.41	704.48	262.25	88.18	583.34	2588.65	942.93	4861.69	3439.90	1110.87	7197.73	3722.22	1217.59	8195.10	-2358.78	-872.01	-4438.10	-3095.88	-1001.48	-8493.25	-3459.97	-1131.41	-7631.75
Lynwood	4.71	1.69	3.04	0.00	0.00	0.00	0.04	0.02	0.07	20.34	7.41	38.21	27.04	8.73	58.57	29.25	9.57	84.41	-15.64	-5.72	-35.17	-27.04	-8.73	-58.57	-29.21	-9.55	-84.34
Malibu	1.85	0.31	3.98	10.98	4.58	20.32	12.15	4.22	24.80	5.47	1.99	10.27	7.27	2.35	15.21	7.86	2.57	17.32	-3.62	-1.68	-8.29	3.71	2.22	5.12	4.28	1.85	7.48
Manhattan Beach	3.81	0.00	8.28	0.16	0.05	0.32	2.77	1.27	4.98	45.68	16.64	85.79	60.70	19.60	127.02	65.68	21.49	144.62	-41.88	-16.64	-77.53	-60.54	-19.55	-126.70	-62.91	-20.22	-139.64
Marina del Rey	0.00	0.00	0.01	0.02	0.01	0.04	0.00	0.00	0.00	16.82	6.13	31.58	22.35	7.22	46.76	24.18	7.91	53.24	-16.82	-6.13	-31.57	-22.33	-7.21	-46.72	-24.18	-7.91	-53.24
Mayflower Village	0.00	0.00	1.02	0.00	0.00	0.00	0.32	0.16	0.50	1.47	0.54	2.77	1.96	0.63	4.10	2.12	0.69	4.68	-1.47	-0.54	-1.74	-1.96	-0.63	-4.10	-1.80	-0.53	-4.16
Maywood	1.53	0.00	2.86	0.00	0.00	0.00	1.33	0.68	2.09	10.74	3.91	20.18	14.28	4.61	29.87	15.45	5.05	34.01	-9.22	-3.91	-17.32	-14.28	-4.81	-29.87	-14.12	-4.38	-31.92
Monrovia	0.28	0.14	8.94	2.72	1.30	8.37	0.28	0.14	0.45	35.79	13.04	67.22	47.56	15.36	99.52	51.46	16.83	113.30	-35.53	-12.90	-60.28	-44.84	-14.06	-93.15	-51.18	-16.69	-112.86
Montebello	4.62	0.00	3.12	0.68	0.22	1.37	0.02	0.01	0.04	48.68	17.73	91.42	64.69	20.89	135.35	69.99	22.90	154.10	-44.05	-17.73	-88.30	-64.01	-20.88	-133.98	-69.97	-22.89	-154.07
Monterey Park	0.02	3.38	12.32	0.00	0.00	0.00	2.32	1.10	4.81	36.84	13.35	68.82	48.69	15.72	101.86	52.69	17.23	116.00	-38.63	-9.97	-58.49	-48.69	-15.72	-101.88	-50.37	-16.13	-111.19
North El Monte	0.00	0.00	0.54	0.00	0.00	0.00	1.31	0.53	2.74	1.21	0.44	2.28	1.61	0.52	3.38	1.75	0.57	3.84	-1.21	-0.44	-1.74	-1.61	-0.52	-3.38	-0.44	-0.04	-1.10
Norwalk	6.15	3.29	16.60	0.00	0.00	0.00	0.08	0.03	0.16	42.68	15.55	80.18	56.72	18.32	118.68	61.38	20.08	135.13	-38.53	-12.28	-83.56	-58.72	-18.32	-118.68	-61.30	-20.05	-134.97
Palmdale	3.37	1.20	6.30	0.19	0.08	0.39	0.09	0.04	0.13	95.38	34.73	179.09	126.72	40.92	265.14	137.11	44.85	301.87	-91.99	-33.54	-172.79	-128.52	-40.84	-284.75	-137.03	-44.81	-301.74
Palos Verdes Estates	1.80	0.00	4.95	0.00	0.00	0.00	2.38	1.12	4.08	4.20	1.53	7.89	5.58	1.80	11.68	8.04	1.98	13.29	-2.40	-1.53	-2.94	-5.58	-1.80	-11.68	-3.88	-0.85	-9.21
Paramount	3.15	1.69	10.81	0.00	0.00	0.00	5.82	2.82	11.54	21.43	7.81	40.24	28.47	9.20	59.58	30.81	10.08	67.83	-18.27	-8.11	-29.43	-28.47	-9.20	-59.58	-24.99	-7.25	-58.30
Pasadena	9.16	5.03	14.72	11.88	3.38	22.87	2.79	1.31	8.29	146.70	53.44	275.51	194.94	62.95	407.90	210.94	69.00	464.42	-137.54	-48.40	-260.80	-183.28	-59.59	-385.23	-208.14	-67.70	-458.12
Pico Rivera	6.10	0.00	10.87	115.33	37.93	234.23	9.76	2.95	19.84	29.94	10.91	58.24	39.79	12.85	83.26	43.06	14.08	94.79	-23.84	-10.91	-45.57	75.54	25.08	150.97	-33.29	-11.13	-75.16
Pomona	12.88	4.97	20.69	4.39	1.58	8.83	6.21	4.05	17.52	64.15	23.37	120.47	85.24	27.53	178.36	92.24	30.17	203.08	-51.49	-18.40	-99.79	-80.98	-25.84	-169.54	-84.03	-26.13	-185.56
Quartz Hill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.31	1.21	6.22	4.40	1.42	9.21	4.78	1.58	10.49	-3.31	-1.21	-6.22	-4.40	-1.42	-9.21	-4.78	-1.58	-10.49
Rancho Palos Verdes	8.70	0.00	3.97	0.00	0.00	0.00	3.80	1.79	8.60	23.85	8.69	44.79	31.69	10.23	66.32	34.29	11.22	75.50	-17.15	-6.89	-40.82	-31.89	-10.23	-66.32	-30.49	-9.43	-68.90
Redondo Beach	0.01	1.81	5.10	0.00	0.00	0.00	1.58	0.73	2.68	61.69	22.47	115.87	81.98	26.47	171.54	88.71	29.02	195.31	-61.68	-20.88	-110.77	-81.98	-26.47	-171.54	-87.15	-28.29	-192.83
Rolling Hills	0.03	0.00	0.04	0.00	0.00	0.00	0.05	0.02	0.09	0.47	0.17	0.88	0.62	0.20	1.30	0.67	0.22	1.48	-0.44	-0.17	-0.84	-0.62	-0.20	-1.30	-0.62	-0.19	-1.38
Rolling Hills Estates	0.88	0.00	3.43	0.00	0.00	0.00	0.00	0.00	0.00	7.41	2.70	13.91	9.84	3.18	20.59	10.65	3.48	23.44	-6.75	-2.70	-10.48	-9.84	-3.18	-20.59	-10.65	-3.48	-23.44
Rosemead	0.08	0.00	6.06	0.00	0.00	0.00	5.39	2.58	10.23	22.38	8.14	41.99	29.71	9.60	62.17	32.15	10.52	70.79	-22.28	-8.14	-35.93	-29.71	-9.60	-62.17	-26.76	-7.95	-60.56
Rowland Heights	3.07	1.65	3.08	0.00	0.00	0.00	0.00	0.00	0.00	28.52	10.39	53.58	37.90	12.24	79.30	41.01	13.41	90.29	-25.45	-8.74	-50.48	-37.90	-12.24	-79.30	-41.01	-13.41	-90.29
San Dimas	3.59	1.70	2.29	2.89	1.28	8.21	1.93	0.94	3.98	22.48	8.18	42.18	29.84	9.64	62.45	32.29	10.56	71.10	-18.88	-8.48	-39.89	-28.98	-8.35	-58.24	-30.38	-9.62	-67.14
San Fernando	0.00	0.00	0.06	15.01	4.75	29.43	0.00	0.00	0.00	21.71	7.91	40.78	28.86	9.32	60.38	31.22	10.21	68.74	-21.71	-7.91	-40.72	-13.85	-4.57	-30.95	-31.22	-10.21	-68.74
San Gabriel	0.47	0.00	4.58	0.00	0.00	0.00	1.84	0.84	3.31	30.03	10.94	56.39	39.90	12.89	83.49	43.18	14.12	95.08	-29.56	-10.94	-51.83	-39.90	-12.89	-83.49	-41.34	-13.28	-91.75
San Marino	0.00	0.01	1.58	0.00	0.00	0.00	0.25	0.09	0.51	8.43	2.34	12.07	8.54	2.78	17.87	9.24	3.02	20.34	-8.42	-2.33	-10.49	-8.54	-2.78	-17.87	-8.99	-2.94	-19.84
Santa Clarita	48.71	20.13	90.88	142.89	42.14	318.34	209.28	58.91	486.01	84.21	30.68	158.18	111.91	36.14	234.18	121.09	39.61	266.61	-35.50	-10.55	-67.48	30.98	6.00	84.18	88.19	17.30	219.40
Santa Fe Springs	1.83	1.24	4.83	0.00	0.00	0.00	5.70	2.01	11.65	18.68	6.80	35.08	24.82	8.02	51.93	26.86	8.79	59.13	-16.85	-5.58	-30.45	-24.82	-8.02	-51.83	-21.16	-8.78	-47.48

(Millions of $ 1999)

City and CDP	Stimulus Effects: CASE I Scenario I	Stimulus Effects: CASE I Scenario II	Stimulus Effects: CASE I Scenario III	Stimulus Effects: CASE II Scenario I	Stimulus Effects: CASE II Scenario II	Stimulus Effects: CASE II Scenario III	Stimulus Effects: CASE III Scenario I	Stimulus Effects: CASE III Scenario II	Stimulus Effects: CASE III Scenario III	Impacts of Household Expenditure Reduction: CASE I Scenario I	Impacts of Household Expenditure Reduction: CASE I Scenario II	Impacts of Household Expenditure Reduction: CASE I Scenario III	Impacts of Household Expenditure Reduction: CASE II Scenario I	Impacts of Household Expenditure Reduction: CASE II Scenario II	Impacts of Household Expenditure Reduction: CASE II Scenario III	Impacts of Household Expenditure Reduction: CASE III Scenario I	Impacts of Household Expenditure Reduction: CASE III Scenario II	Impacts of Household Expenditure Reduction: CASE III Scenario III	Net Impacts: CASE I Scenario I	Net Impacts: CASE I Scenario II	Net Impacts: CASE I Scenario III	Net Impacts: CASE II Scenario I	Net Impacts: CASE II Scenario II	Net Impacts: CASE II Scenario III	Net Impacts: CASE III Scenario I	Net Impacts: CASE III Scenario II	Net Impacts: CASE III Scenario III
Santa Monica	5.77	1.85	3.38	0.00	0.00	0.00	0.05	0.02	0.11	142.96	52.08	268.50	189.98	61.35	397.51	205.57	87.24	452.59	-137.19	-50.23	-265.12	-189.98	-61.35	-397.51	-205.52	-87.22	-452.48
Sierra Madre	1.52	0.01	1.54	0.00	0.00	0.00	0.01	0.00	0.01	6.70	2.44	12.58	8.90	2.88	18.83	9.63	3.15	21.21	-5.18	-2.43	-11.04	-8.90	-2.88	-18.83	-9.63	-3.15	-21.20
Signal Hill	0.02	0.03	1.52	0.00	0.00	0.00	0.01	0.00	0.01	11.01	4.01	20.68	14.83	4.73	30.82	15.83	5.18	34.86	-10.99	-3.99	-19.16	-14.83	-4.73	-30.82	-15.83	-5.18	-34.85
South El Monte	1.59	0.86	2.04	0.00	0.00	0.00	1.32	0.65	2.43	7.87	2.87	14.77	10.45	3.38	21.87	11.31	3.70	24.91	-6.28	-2.00	-12.74	-10.45	-3.38	-21.87	-9.99	-3.05	-22.47
South Gate	3.09	0.01	6.24	0.00	0.00	0.00	2.96	1.45	4.88	38.39	13.98	72.10	51.02	18.47	106.74	55.20	18.06	121.54	-35.30	-13.97	-65.86	-51.02	-18.47	-106.74	-52.25	-16.60	-116.66
South Pasadena	1.53	0.01	3.07	0.00	0.00	0.00	0.00	0.00	0.00	19.61	7.14	36.84	26.06	8.42	54.54	28.20	9.23	62.09	-18.08	-7.13	-33.76	-26.06	-8.42	-54.54	-28.20	-9.22	-62.09
South San Gabriel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.87	1.05	5.39	3.82	1.23	7.98	4.13	1.35	9.09	-2.87	-1.04	-5.39	-3.82	-1.23	-7.98	-4.13	-1.35	-9.09
South San Jose Hills	0.24	0.00	3.06	0.00	0.00	0.00	0.50	0.23	1.06	3.36	1.22	6.32	4.47	1.44	9.35	4.84	1.58	10.65	-3.13	-1.22	-3.25	-4.47	-1.44	-9.35	-4.34	-1.36	-9.59
South Whittier	2.91	3.63	9.75	0.00	0.00	0.00	0.00	0.00	0.00	16.03	5.84	30.11	21.30	6.86	44.58	23.05	7.54	50.75	-13.12	-2.21	-20.36	-21.30	-6.86	-44.58	-23.05	-7.54	-50.75
Temple City	1.53	0.48	0.45	0.00	0.00	0.00	1.09	0.44	2.29	21.59	7.88	40.54	28.69	9.26	60.02	31.04	10.15	68.34	-20.05	-7.40	-40.09	-28.69	-9.26	-60.02	-29.95	-9.71	-66.05
Torrance	5.60	6.74	13.11	0.00	0.00	0.00	9.27	3.34	18.43	185.37	67.52	348.14	248.33	79.55	515.42	266.54	87.19	586.84	-179.77	-60.78	-335.03	-248.33	-79.55	-515.42	-257.27	-83.85	-568.41
Valinda	0.20	0.00	3.17	0.00	0.00	0.00	0.00	0.00	0.00	7.87	2.87	14.79	10.46	3.38	21.89	11.32	3.70	24.93	-7.67	-2.87	-11.62	-10.46	-3.38	-21.89	-11.32	-3.70	-24.93
Val Verde	0.02	0.01	0.03	0.05	0.02	0.11	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.02	0.04	0.01	0.08	-0.01	0.00	-0.02
Vernon	2.98	0.00	1.83	0.00	0.00	0.00	0.00	0.00	0.00	10.50	3.82	19.72	13.95	4.51	29.19	15.10	4.94	33.24	-7.52	-3.82	-17.89	-13.95	-4.51	-29.19	-15.10	-4.94	-33.24
View Park-Windsor Hills	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.35	1.95	10.05	7.11	2.30	14.89	7.70	2.52	16.95	-5.35	-1.94	-10.05	-7.11	-2.30	-14.89	-7.70	-2.52	-16.95
Vincent	1.74	0.13	0.68	0.00	0.00	0.00	0.07	0.03	0.14	9.10	3.32	17.10	12.10	3.91	25.31	13.09	4.28	28.82	-7.37	-3.19	-16.44	-12.10	-3.91	-25.31	-13.02	-4.25	-28.68
Walnut	0.02	0.02	0.30	0.01	0.00	0.02	0.05	0.02	0.11	9.22	3.36	17.31	12.25	3.95	25.62	13.25	4.33	29.17	-9.20	-3.34	-17.01	-12.24	-3.95	-25.60	-13.20	-4.31	-29.06
Walnut Park	0.03	0.00	4.58	0.00	0.00	0.00	0.00	0.00	0.00	5.61	2.04	10.53	7.45	2.41	15.59	8.06	2.64	17.75	-5.57	-2.04	-5.95	-7.45	-2.41	-15.59	-8.06	-2.64	-17.75
West Athens	0.07	0.00	1.54	0.00	0.00	0.00	0.00	0.00	0.00	2.65	0.97	4.98	3.52	1.14	7.37	3.81	1.25	8.40	-2.58	-0.97	-3.44	-3.52	-1.14	-7.37	-3.81	-1.25	-8.40
West Carson	0.03	0.00	3.18	0.00	0.00	0.00	0.00	0.00	0.00	13.73	5.00	25.79	18.25	5.89	38.18	19.75	6.48	43.47	-13.71	-5.00	-22.61	-18.25	-5.89	-38.18	-19.75	-6.46	-43.47
West Compton	0.00	0.00	2.15	0.00	0.00	0.00	0.00	0.00	0.00	2.73	0.99	5.12	3.62	1.17	7.58	3.92	1.28	8.63	-2.72	-0.99	-2.97	-3.62	-1.17	-7.58	-3.92	-1.28	-8.63
West Covina	9.25	4.78	19.26	0.00	0.00	0.00	5.33	2.46	11.31	70.02	25.51	131.51	93.05	30.05	194.70	100.68	32.94	221.67	-60.77	-20.73	-112.25	-93.05	-30.05	-194.70	-95.35	-30.47	-210.37
West Hollywood	0.07	0.00	1.60	0.00	0.00	0.00	0.01	0.01	0.02	68.76	24.32	125.36	88.71	28.65	185.62	95.99	31.40	211.34	-68.69	-24.32	-123.76	-88.71	-28.65	-185.62	-95.98	-31.39	-211.32
Westlake Village	4.16	4.22	9.34	1.27	0.59	2.03	1.22	0.60	1.97	2.80	1.02	5.27	3.73	1.20	7.80	4.03	1.32	8.88	1.36	3.20	4.07	-2.46	-0.61	-5.78	-2.81	-0.71	-6.91
Westmont	0.03	0.00	3.15	0.00	0.00	0.00	0.00	0.00	0.00	8.21	2.99	15.41	10.91	3.52	22.82	11.80	3.86	25.98	-8.18	-2.99	-12.26	-10.91	-3.52	-22.82	-11.80	-3.86	-25.98
West Puente Valley	1.11	0.05	1.73	0.00	0.00	0.00	6.35	2.34	12.94	3.08	1.12	5.79	4.10	1.32	8.58	4.43	1.45	9.76	-1.97	-1.07	-4.06	-4.10	-1.32	-8.58	1.92	0.89	3.18
West Whittier-Los Nietos	1.28	0.01	3.33	0.00	0.00	0.00	0.00	0.00	0.00	10.02	3.65	18.82	13.32	4.30	27.87	14.41	4.71	31.73	-8.74	-3.64	-15.50	-13.32	-4.30	-27.87	-14.41	-4.71	-31.73
Whittier	7.36	3.36	9.58	1.28	0.49	2.68	1.66	0.81	2.78	50.90	18.54	95.59	87.64	21.84	141.53	73.19	23.94	161.14	-43.54	-15.18	-86.01	-86.36	-21.36	-138.85	-71.53	-23.13	-158.36
Willowbrook	1.81	1.70	4.70	0.00	0.00	0.00	0.00	0.00	0.00	8.90	3.24	16.72	11.83	3.82	24.78	12.80	4.19	28.19	-7.09	-1.54	-12.02	-11.83	-3.82	-24.78	-12.80	-4.19	-28.19
Aliso Viejo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.23	0.08	0.44	0.31	0.10	0.65	0.33	0.11	0.73	-0.23	-0.08	-0.44	-0.31	-0.10	-0.65	-0.33	-0.11	-0.73
Anaheim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.88	6.14	31.66	22.40	7.23	46.87	24.24	7.93	53.36	-16.88	-6.14	-31.66	-22.40	-7.23	-46.87	-24.24	-7.93	-53.36
Brea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.96	1.44	7.44	5.28	1.70	11.01	5.69	1.86	12.53	-3.96	-1.44	-7.44	-5.28	-1.70	-11.01	-5.69	-1.86	-12.53
Buena Park	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.29	3.75	19.32	13.67	4.42	28.61	14.79	4.84	32.57	-10.29	-3.75	-19.32	-13.67	-4.42	-28.61	-14.79	-4.84	-32.57
Costa Mesa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.43	1.61	8.32	5.89	1.90	12.32	6.37	2.08	14.02	-4.43	-1.61	-8.32	-5.89	-1.90	-12.32	-6.37	-2.08	-14.02
Coto de Caza	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.06	0.04	0.01	0.09	0.04	0.01	0.10	-0.03	-0.01	-0.06	-0.04	-0.01	-0.09	-0.04	-0.01	-0.10
Cypress	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.65	2.79	14.36	10.16	3.28	21.27	11.00	3.60	24.21	-7.65	-2.79	-14.36	-10.16	-3.28	-21.27	-11.00	-3.60	-24.21
Dana Point	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.13	0.05	0.24	0.17	0.06	0.36	0.18	0.06	0.41	-0.13	-0.05	-0.24	-0.17	-0.06	-0.36	-0.18	-0.06	-0.41
Foothill Ranch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.03
Fountain Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.06	0.75	3.87	2.74	0.88	5.73	2.96	0.97	6.52	-2.06	-0.75	-3.87	-2.74	-0.88	-5.73	-2.96	-0.97	-6.52
Fullerton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	13.81	5.03	25.93	18.35	5.93	38.40	19.86	6.50	43.72	-13.81	-5.03	-25.93	-18.35	-5.93	-38.40	-19.86	-6.50	-43.72
Garden Grove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.17	2.61	13.47	9.53	3.08	19.94	10.31	3.37	22.70	-7.17	-2.61	-13.47	-9.53	-3.08	-19.94	-10.31	-3.37	-22.70
Huntington Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.68	2.80	14.42	10.20	3.29	21.35	11.04	3.61	24.30	-7.68	-2.80	-14.42	-10.20	-3.29	-21.35	-11.04	-3.61	-24.30
Irvine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.45	0.53	2.73	1.93	0.62	4.04	2.09	0.68	4.60	-1.45	-0.53	-2.73	-1.93	-0.62	-4.04	-2.09	-0.68	-4.60
Laguna Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.37	0.13	0.69	0.49	0.16	1.03	0.53	0.17	1.17	-0.37	-0.13	-0.69	-0.49	-0.16	-1.03	-0.53	-0.17	-1.17
Laguna Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.26	0.09	0.48	0.34	0.11	0.72	0.37	0.12	0.81	-0.26	-0.09	-0.48	-0.34	-0.11	-0.72	-0.37	-0.12	-0.81
Laguna Niguel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.33	0.12	0.61	0.43	0.14	0.90	0.47	0.15	1.03	-0.33	-0.12	-0.61	-0.43	-0.14	-0.90	-0.47	-0.15	-1.03
Laguna Woods	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.07	0.38	0.27	0.09	0.56	0.29	0.10	0.64	-0.20	-0.07	-0.38	-0.27	-0.09	-0.56	-0.29	-0.10	-0.64
La Habra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	9.46	3.45	17.77	12.58	4.06	26.32	13.61	4.45	29.96	-9.46	-3.45	-17.77	-12.58	-4.06	-26.31	-13.61	-4.45	-29.96
Lake Forest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.39	0.14	0.74	0.52	0.17	1.09	0.57	0.18	1.24	-0.39	-0.14	-0.74	-0.52	-0.17	-1.09	-0.57	-0.18	-1.24
La Palma	0.00	0.00	0.01	0.00	0.00	0.00	0.01	0.00	0.01	2.29	0.83	4.30	3.04	0.98	6.37	3.29	1.08	7.25	-2.29	-0.83	-4.30	-3.04	-0.98	-6.37	-3.29	-1.07	-7.24
Las Flores	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Los Alamitos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.86	1.04	5.37	3.80	1.23	7.95	4.11	1.34	9.05	-2.86	-1.04	-5.37	-3.80	-1.23	-7.95	-4.11	-1.34	-9.05
Mission Viejo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46	0.17	0.87	0.62	0.20	1.29	0.67	0.22	1.47	-0.46	-0.17	-0.87	-0.62	-0.20	-1.29	-0.67	-0.22	-1.47
Newport Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.10	1.13	5.83	4.12	1.33	8.63	4.46	1.46	9.82	-3.10	-1.13	-5.83	-4.12	-1.33	-8.63	-4.46	-1.46	-9.82
Newport Coast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.16	0.12	0.04	0.24	0.12	0.04	0.27	-0.09	-0.03	-0.16	-0.12	-0.04	-0.24	-0.12	-0.04	-0.27
Orange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.08	2.22	11.42	8.08	2.61	16.91	8.75	2.86	19.28	-6.08	-2.22	-11.42	-8.08	-2.61	-16.91	-8.75	-2.86	-19.28
Placentia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.87	0.68	3.51	2.48	0.80	5.19	2.69	0.88	5.91	-1.87	-0.68	-3.51	-2.48	-0.80	-5.19	-2.69	-0.88	-5.91
Portola Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Rancho Santa Margarita	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.29	-0.09	-0.03	-0.17	-0.12	-0.04	-0.25	-0.13	-0.04	-0.29
Rossmoor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.03	0.38	1.94	1.37	0.44	2.87	1.48	0.48	3.26	-1.03	-0.38	-1.94	-1.37	-0.44	-2.87	-1.48	-0.48	-3.26
San Clemente	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.06	0.33	0.23	0.08	0.49	0.25	0.08	0.55	-0.17	-0.06	-0.33	-0.23	-0.08	-0.49	-0.25	-0.08	-0.55
San Joaquin Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.06	0.04	0.01	0.09	0.05	0.02	0.11	-0.03	-0.01	-0.06	-0.04	-0.01	-0.09	-0.05	-0.02	-0.11
San Juan Capistrano	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.18	0.07	0.34	0.24	0.08	0.50	0.26	0.08	0.57	-0.18	-0.07	-0.34	-0.24	-0.08	-0.50	-0.26	-0.08	-0.57
Santa Ana	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.14	2.24	11.54	8.18	2.64	17.08	8.83	2.89	19.45	-6.14	-2.24	-11.54	-8.18	-2.64	-17.08	-8.83	-2.89	-19.45
Seal Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.69	2.07	10.69	7.57	2.44	15.83	8.19	2.68	18.02	-5.69	-2.07	-10.69	-7.57	-2.44	-15.83	-8.19	-2.68	-18.02
Stanton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.83	0.67	3.43	2.43	0.78	5.08	2.63	0.86	5.78	-1.83	-0.67	-3.43	-2.43	-0.78	-5.08	-2.63	-0.86	-5.78
Tustin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.51	0.55	2.83	2.01	0.65	4.20	2.17	0.71	4.78	-1.51	-0.55	-2.83	-2.01	-0.65	-4.20	-2.17	-0.71	-4.78
Tustin Foothills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.29	0.10	0.54	0.38	0.12	0.79	0.41	0.13	0.90	-0.29	-0.10	-0.54	-0.38	-0.12	-0.79	-0.41	-0.13	-0.90
Villa Park	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.15	0.05	0.28	0.20	0.06	0.41	0.21	0.07	0.47	-0.15	-0.05	-0.28	-0.20	-0.06	-0.41	-0.21	-0.07	-0.47
Westminster	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.51	2.37	12.23	8.66	2.80	18.11	9.37	3.06	20.62	-6.51	-2.37	-12.23	-8.66	-2.80	-18.11	-9.37	-3.06	-20.62
Yorba Linda	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.39	0.50	2.60	1.84	0.59	3.85	1.99	0.65	4.39	-1.39	-0.50	-2.60	-1.84	-0.59	-3.85	-1.99	-0.65	-4.39
Banning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.02	0.11	0.08	0.02	0.16	0.08	0.03	0.18	-0.06	-0.02	-0.11	-0.08	-0.02	-0.16	-0.08	-0.03	-0.18
Beaumont	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.04	0.01	0.07	0.05	0.02	0.11	0.06	0.02	0.12	-0.04	-0.01	-0.07	-0.05	-0.02	-0.11	-0.06	-0.02	-0.12
Bermuda Dunes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cabazon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Calimesa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08	-0.02	-0.01	-0.05	-0.03	-0.01	-0.07	-0.04	-0.01	-0.08
Canyon Lake	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
Cathedral City	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.12	0.04	0.23	0.16	0.05	0.33	0.17	0.06	0.38	-0.12	-0.04	-0.23	-0.16	-0.05	-0.33	-0.17	-0.06	-0.38
Cherry Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.03
Coachella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Corona	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.03	0.37	1.93	1.37	0.44	2.86	1.48	0.48	3.26	-1.03	-0.37	-1.93	-1.37	-0.44	-2.86	-1.48	-0.48	-3.26
Desert Hot Springs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08	-0.03	-0.01	-0.05	-0.03	0.01	-0.07	-0.04	-0.01	-0.08
East Hemet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.02	0.00	0.03	0.02	0.01	0.04	-0.01	0.00	-0.02	-0.02	0.00	-0.03	-0.02	-0.01	-0.04
El Cerrito	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07	-0.02	-0.01	-0.04	-0.03	-0.01	-0.07	-0.03	-0.01	-0.07
Glen Avon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.31	0.11	0.58	0.41	0.13	0.85	0.44	0.14	0.97	-0.31	-0.11	-0.58	-0.41	-0.13	-0.85	-0.44	-0.14	-0.97
Hemet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.16	0.11	0.04	0.24	0.12	0.04	0.27	-0.09	-0.03	-0.16	-0.11	-0.04	-0.24	-0.12	-0.04	-0.27
Highgrove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Home Gardens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.09	-0.03	-0.01	-0.05	-0.04	-0.01	-0.08	-0.04	-0.01	-0.09
Homeland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
Idyllwild-Pine Cove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Indian Wells	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Indio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Lake Elsinore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.11	0.04	0.21	0.15	0.05	0.31	0.16	0.05	0.35	-0.11	-0.04	-0.21	-0.15	-0.05	-0.31	-0.16	-0.05	-0.35
Lakeland Village	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Lakeview	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
La Quinta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	0.02
March AFB	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Mecca	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mira Loma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.23	0.09	0.44	0.31	0.10	0.65	0.34	0.11	0.74	-0.23	-0.09	-0.44	-0.31	-0.10	-0.65	-0.34	-0.11	-0.74

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.38	0.14	0.71	0.50	0.18	1.05	0.54	0.18	1.19	-0.38	-0.14	-0.71	-0.50	-0.18	-1.05	-0.54	-0.18	-1.19
Murrieta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.02	0.09	0.06	0.02	0.13	0.07	0.02	0.14	-0.05	-0.02	-0.09	-0.06	-0.02	-0.13	-0.07	-0.02	-0.14
Murrieta Hot Springs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-0.01
Norco	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.32	0.11	0.59	0.42	0.14	0.88	0.45	0.15	1.00	-0.32	-0.11	-0.59	-0.42	-0.14	-0.88	-0.45	-0.15	-1.00
Nuevo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Palm Desert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.16	0.06	0.30	0.21	0.07	0.44	0.23	0.07	0.50	-0.16	-0.06	-0.30	-0.21	-0.07	-0.44	-0.23	-0.07	-0.50
Palm Springs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.36	0.13	0.67	0.47	0.15	0.99	0.51	0.17	1.13	-0.36	-0.13	-0.67	-0.47	-0.15	-0.99	-0.51	-0.17	-1.13
Pedley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.16	0.06	0.30	0.21	0.07	0.45	0.23	0.08	0.51	-0.16	-0.06	-0.30	-0.21	-0.07	-0.45	-0.23	-0.08	-0.51
Perris	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.04	0.18	0.13	0.04	0.27	0.14	0.05	0.31	-0.10	-0.04	-0.18	-0.13	-0.04	-0.27	-0.14	-0.05	-0.31
Quail Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Rancho Mirage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.02	0.11	0.08	0.03	0.17	0.09	0.03	0.19	-0.06	-0.02	-0.11	-0.08	-0.03	-0.17	-0.09	-0.03	-0.19
Riverside	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.54	0.93	4.77	3.38	1.09	7.07	3.85	1.20	8.04	-2.54	-0.93	-4.77	-3.38	-1.09	-7.07	-3.85	-1.20	-8.04
Romoland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.01	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.01
Rubidoux	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.20	0.07	0.37	0.26	0.09	0.55	0.29	0.09	0.63	-0.20	-0.07	-0.37	-0.26	-0.09	-0.55	-0.29	-0.09	-0.63
San Jacinto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.05	0.03	0.01	0.07	0.04	0.01	0.08	-0.02	-0.01	-0.05	-0.03	-0.01	-0.07	-0.04	-0.01	-0.08
Sedco Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Sun City	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.08	0.02	0.12	0.08	0.03	0.18	0.09	0.03	0.20	-0.08	-0.02	-0.12	-0.08	-0.03	-0.18	-0.09	-0.03	-0.20
Sunnyslope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.05	-0.01	-0.01	-0.03	-0.02	-0.01	-0.04	-0.02	-0.01	-0.05
Temecula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.02	0.09	0.06	0.02	0.13	0.07	0.02	0.14	-0.05	-0.02	-0.09	-0.06	-0.02	-0.13	-0.07	-0.02	-0.14
Thousand Palms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Valle Vista	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Wildomar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.04	0.03	0.01	0.08	0.03	0.01	0.07	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Winchester	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.03
Woodcrest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.02	0.09	0.06	0.02	0.13	0.07	0.02	0.15	-0.05	-0.02	-0.09	-0.06	-0.02	-0.13	-0.07	-0.02	-0.15
Camarillo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.84	0.23	1.20	0.85	0.27	1.78	0.92	0.30	2.02	-0.84	-0.23	-1.20	-0.85	-0.27	-1.78	-0.92	-0.30	-2.02
Casa Conejo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.07	0.03	0.13	0.10	0.03	0.20	0.10	0.03	0.23	-0.07	-0.03	-0.13	-0.10	-0.03	-0.20	-0.10	-0.03	-0.23
Channel Islands Beach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.02	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.02	0.00	-0.03
El Rio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.05	0.04	0.01	0.07	0.04	0.01	0.06	-0.03	-0.01	-0.05	-0.04	-0.01	-0.07	-0.04	-0.01	-0.06
Fillmore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.02	0.09	0.07	0.02	0.14	0.07	0.02	0.16	-0.05	-0.02	-0.09	-0.07	-0.02	-0.14	-0.07	-0.02	-0.16
Meiners Oaks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-0.01
Mira Monte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Moorpark	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.58	0.21	1.09	0.77	0.25	1.81	0.83	0.27	1.83	-0.58	-0.21	-1.09	-0.77	-0.25	-1.81	-0.83	-0.27	-1.83
Oak Park	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.08	0.04	0.01	0.08	0.04	0.01	0.10	-0.03	-0.01	-0.08	-0.04	-0.01	-0.08	-0.04	-0.01	-0.10
Oak View	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Ojai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.01	0.00	0.01	0.00	0.00	-0.01	0.00	0.00	-0.01	-0.01	0.00	-0.01
Oxnard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.35	0.13	0.86	0.47	0.15	0.98	0.51	0.17	1.12	-0.35	-0.13	-0.86	-0.47	-0.15	-0.98	-0.51	-0.17	-1.12
Piru	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Port Hueneme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.01	0.07	0.05	0.01	0.10	0.05	0.02	0.11	-0.03	-0.01	-0.07	-0.05	-0.01	-0.10	-0.05	-0.02	-0.11
San Buenaventura (Ventura)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.15	0.75	0.53	0.17	1.11	0.57	0.19	1.26	-0.40	-0.15	-0.75	-0.53	-0.17	-1.11	-0.57	-0.19	-1.26
Santa Paula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.03	0.02	0.01	0.05	0.02	0.01	0.05	-0.02	-0.01	-0.03	-0.02	-0.01	-0.05	-0.02	-0.01	-0.05
Simi Valley	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	8.35	2.31	11.93	8.44	2.73	17.87	9.14	2.99	20.12	-8.35	-2.31	-11.92	-8.44	-2.73	-17.86	-9.14	-2.99	-20.11
Thousand Oaks	0.02	0.02	0.05	0.01	0.00	0.01	0.01	0.00	0.01	18.91	6.89	35.51	25.13	8.11	52.58	27.19	8.89	59.86	-18.89	-6.86	-35.46	-25.12	-8.11	-52.57	-27.18	-8.89	-59.85
Adelanto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.27	0.10	0.50	0.35	0.11	0.74	0.38	0.12	0.84	-0.27	-0.10	-0.50	-0.35	-0.11	-0.74	-0.38	-0.12	-0.84
Apple Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.18	0.06	0.33	0.23	0.08	0.49	0.25	0.08	0.56	-0.18	-0.06	-0.33	-0.23	-0.08	-0.49	-0.25	-0.08	-0.56
Barstow	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.04	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.12	-0.04	-0.01	-0.07	-0.05	-0.02	-0.10	-0.05	-0.02	-0.12
Big Bear City	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Big Bear Lake	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bloomington	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.18	0.07	0.34	0.24	0.08	0.51	0.26	0.09	0.58	-0.18	-0.07	-0.34	-0.24	-0.08	-0.51	-0.26	-0.09	-0.58
Chino	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.79	2.47	12.78	9.03	2.91	18.89	9.77	3.19	21.50	-8.79	-2.47	-12.78	-9.03	-2.91	-18.89	-9.77	-3.19	-21.50
Chino Hills	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.86	1.41	7.25	5.13	1.86	10.73	5.55	1.81	12.21	-3.86	-1.41	-7.24	-5.13	-1.86	-10.73	-5.55	-1.81	-12.21
Colton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.46	0.17	0.87	0.62	0.20	1.29	0.67	0.22	1.47	-0.46	-0.17	-0.87	-0.62	-0.20	-1.29	-0.67	-0.22	-1.47
Crestline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Fontana	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.33	0.48	2.50	1.77	0.57	3.70	1.91	0.63	4.21	-1.33	-0.48	-2.50	-1.77	-0.57	-3.70	-1.91	-0.63	-4.21
Grand Terrace	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.38	0.14	0.71	0.51	0.18	1.06	0.55	0.18	1.20	-0.36	-0.14	-0.71	-0.51	-0.18	-1.06	-0.55	-0.18	-1.20
Hesperia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.26	0.08	0.49	0.34	0.11	0.72	0.37	0.12	0.82	-0.26	-0.09	-0.49	-0.34	-0.11	-0.72	-0.37	-0.12	-0.82
Highland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.04	0.19	0.14	0.04	0.29	0.15	0.05	0.33	-0.10	-0.04	-0.19	-0.14	-0.04	-0.29	-0.15	-0.05	-0.33
Joshua Tree	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lake Arrowhead	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Lenwood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Loma Linda	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.28	-0.09	-0.03	-0.17	-0.12	-0.04	-0.25	-0.13	-0.04	-0.28
Mentone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.02	0.01	0.03	0.02	0.01	0.04	-0.01	0.00	-0.02	-0.02	-0.01	-0.03	-0.02	-0.01	-0.04
Montclair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	19.25	7.01	38.15	25.58	8.26	53.52	27.88	9.05	60.93	-19.25	-7.01	-38.15	-25.58	-8.26	-53.52	-27.88	-9.05	-60.93
Morongo Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mountain View Acres	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.09	0.03	0.17	0.12	0.04	0.25	0.13	0.04	0.28	-0.09	-0.03	-0.17	-0.12	-0.04	-0.25	-0.13	-0.04	-0.28
Muscoy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.01	0.04	0.03	0.01	0.08	0.03	0.01	0.07	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.07
Nebo Center	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ontario	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10.91	3.98	20.50	14.50	4.68	30.35	15.89	5.13	34.55	-10.91	-3.98	-20.50	-14.50	-4.68	-30.35	-15.89	-5.13	-34.55
Rancho Cucamonga	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	1.09	5.63	3.98	1.29	8.33	4.31	1.41	9.48	-3.00	-1.09	-5.63	-3.98	-1.29	-8.33	-4.31	-1.41	-9.48
Redlands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.44	0.16	0.82	0.58	0.19	1.22	0.63	0.21	1.39	-0.44	-0.16	-0.82	-0.58	-0.19	-1.22	-0.63	-0.21	-1.39
Rialto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.49	0.18	0.92	0.65	0.21	1.37	0.71	0.23	1.56	-0.49	-0.18	-0.92	-0.65	-0.21	-1.37	-0.71	-0.23	-1.56
Running Springs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
San Antonio Heights	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.04	0.18	0.13	0.04	0.27	0.14	0.05	0.31	-0.10	-0.04	-0.18	-0.13	-0.04	-0.27	-0.14	-0.05	-0.31
San Bernardino	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.57	0.57	2.95	2.09	0.67	4.36	2.26	0.74	4.97	-1.57	-0.57	-2.95	-2.09	-0.67	-4.36	-2.26	-0.74	-4.97
Twentynine Palms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	-0.01	0.00	0.00	-0.01
Twentynine Palms Base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Upland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.36	3.05	15.71	11.11	3.59	23.28	12.03	3.93	26.48	-8.36	-3.05	-15.71	-11.11	-3.59	-23.26	-12.03	-3.93	-26.48
Victorville	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.43	0.52	2.68	1.90	0.61	3.97	2.05	0.67	4.52	-1.43	-0.52	-2.68	-1.90	-0.61	-3.97	-2.05	-0.67	-4.52
Wrightwood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.02	0.11	0.08	0.02	0.16	0.08	0.03	0.18	-0.06	-0.02	-0.11	-0.08	-0.02	-0.16	-0.08	-0.03	-0.18
Yucaipa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.12	0.04	0.22	0.15	0.05	0.32	0.17	0.05	0.37	-0.12	-0.04	-0.22	-0.15	-0.05	-0.32	-0.17	-0.05	-0.37
Yucca Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.00	0.01	0.01	0.00	0.02	0.00	0.00	-0.01	-0.01	0.00	-0.01	-0.01	0.00	-0.02
LOS ANGELES - UNINCOR	106.22	37.82	205.33	114.62	41.84	226.96	96.87	30.26	213.46	148.32	53.30	274.81	194.44	62.79	408.85	210.40	68.82	463.23	-40.10	-15.38	-69.47	-79.83	-20.85	-179.87	-113.52	-38.55	-249.77
ORANGE - UNINCOR	0.02	0.01	0.02	0.01	0.00	0.01	0.00	0.00	0.00	3.55	1.29	6.87	4.72	1.52	9.88	5.11	1.87	11.25	-3.53	-1.29	-6.85	-4.71	-1.52	-9.87	-5.11	-1.87	-11.25
RIVERSIDE - UNINCOR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.15	0.42	2.17	1.53	0.50	3.21	1.68	0.54	3.65	-1.15	-0.42	-2.17	-1.53	-0.50	-3.21	-1.68	-0.54	-3.65
SAN BERNARDINO - UNINCOR	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.01	6.49	2.37	12.20	8.63	2.79	18.06	9.34	3.05	20.56	-6.49	-2.37	-12.20	-8.63	-2.79	-18.05	-9.33	-3.05	-20.55
VENTURA - UNINCOR	0.05	0.03	0.07	0.05	0.02	0.09	0.00	0.00	0.00	2.81	0.95	4.90	3.47	1.12	7.25	3.75	1.23	8.26	-2.56	-0.92	-4.83	-3.42	-1.10	-7.16	-3.75	-1.23	-8.26
Total	739.00	265.11	1397.10	1040.11	339.85	2141.85	1000.54	332.09	2181.00	8836.72	2490.33	12839.91	9085.15	2933.86	19009.50	9830.52	3215.71	21843.58	-6097.72	-2225.22	-11442.81	-8045.03	-2594.21	-16867.85	-8829.99	-2883.82	-19482.57

Table A14 Annual Induced Impacts (Year 1 -Year 15)

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 02	0 01	0 00	0 03	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Agoura Hills	1 84	0 68	3 42	2 82	0 84	5 56	2 90	0 94	6 51	2 40	0 87	4 51	3 19	1 03	6 67	3 45	1 13	7 80	-0 56	-0 19	-1 09	-0 57	-0 19	-1 11	-0 55	-0 18	-1 09
Alhambra	11 25	4 19	20 92	18 04	5 14	34 04	17 74	5 78	39 83	14 69	5 35	27 59	19 52	8 30	40 65	21 12	8 91	48 51	-3 44	-1 16	-6 67	-3 46	-1 18	-6 81	-3 39	-1 13	-6 68
Alondra Park	0 58	0 22	1 08	0 83	0 26	1 75	0 91	0 30	2 05	0 78	0 28	1 42	1 01	0 32	2 10	1 09	0 36	2 40	-0 18	-0 06	-0 34	-0 18	-0 06	-0 35	-0 17	-0 06	-0 34
Altadena	2 83	1 05	5 26	4 04	1 29	8 56	4 46	1 45	10 02	3 70	1 35	6 94	4 91	1 59	10 28	5 31	1 74	11 70	-0 87	-0 29	-1 68	-0 88	-0 29	-1 71	-0 85	-0 28	-1 68
Arcadia	10 38	3 87	19 30	14 80	4 75	31 41	16 37	5 33	36 75	13 56	4 94	25 46	18 01	5 62	37 89	19 49	6 38	42 91	-3 18	-1 07	-6 16	-3 21	-1 07	-6 28	-3 13	-1 04	-6 16
Artesia	4 77	1 78	8 87	6 80	2 18	14 43	7 52	2 45	16 88	6 23	2 27	11 69	8 27	2 67	17 31	8 95	2 93	19 71	-1 46	-0 49	-2 83	-1 47	-0 49	-2 89	-1 44	-0 48	-2 83
Avocado Heights	1 77	0 66	3 28	2 52	0 81	5 35	2 79	0 91	6 25	2 31	0 84	4 33	3 07	0 99	6 41	3 32	1 09	7 30	-0 54	-0 18	-1 05	-0 55	-0 18	-1 07	-0 53	-0 18	-1 05
Azusa	4 90	1 83	9 11	6 99	2 24	14 83	7 73	2 52	17 35	6 40	2 33	12 02	8 50	2 75	17 79	9 20	3 01	20 26	-1 50	-0 51	-2 91	-1 52	-0 51	-2 97	-1 48	-0 49	-2 91
Baldwin Park	5 30	1 97	9 85	7 55	2 42	16 03	8 35	2 72	18 76	6 92	2 52	12 99	9 19	2 97	19 23	9 95	3 25	21 90	-1 62	-0 55	-3 14	-1 64	-0 55	-3 21	-1 60	-0 53	-3 14
Bell	4 18	1 55	7 73	5 93	1 90	12 58	6 55	2 14	14 72	5 43	1 98	10 19	7 21	2 33	15 09	7 80	2 55	17 18	-1 27	-0 43	-2 47	-1 29	-0 43	-2 52	-1 25	-0 42	-2 47
Bellflower	8 19	3 05	15 23	11 68	3 75	24 79	12 02	4 21	29 01	10 70	3 90	20 10	14 22	4 59	29 75	15 39	5 03	33 87	-2 51	-0 84	-4 86	-2 53	-0 85	-4 96	-2 47	-0 82	-4 86
Bell Gardens	3 40	1 27	6 32	4 85	1 55	10 29	5 36	1 75	12 04	4 44	1 62	8 34	5 90	1 91	12 35	6 38	2 09	14 06	-1 04	-0 35	-2 02	-1 05	-0 35	-2 06	-1 02	-0 34	-2 02
Beverly Hills	15 80	5 88	29 39	22 54	7 23	47 83	24 92	8 12	55 96	20 64	7 52	38 77	27 43	8 86	57 39	29 68	9 71	65 35	-4 84	-1 63	-9 38	-4 89	-1 63	-9 57	-4 78	-1 59	-9 38
Bradbury	0 18	0 06	0 30	0 23	0 07	0 49	0 28	0 08	0 58	0 21	0 08	0 40	0 28	0 09	0 59	0 31	0 10	0 67	-0 05	-0 02	-0 10	-0 05	-0 02	-0 10	-0 05	-0 02	-0 10
Burbank	18 83	7 02	35 02	26 86	8 61	58 99	29 69	9 67	66 68	24 60	8 96	46 19	32 68	10 55	68 39	35 37	11 57	77 86	-5 78	-1 94	-11 17	-5 83	-1 94	-11 40	-5 67	-1 89	-11 18
Calabasas	0 62	0 23	1 16	0 89	0 28	1 88	0 98	0 32	2 21	0 81	0 30	1 53	1 06	0 35	2 26	1 17	0 38	2 58	-0 19	-0 06	-0 37	-0 19	-0 06	-0 38	-0 19	-0 06	-0 37
Carson	11 82	4 33	21 81	16 57	5 31	35 18	18 32	5 97	41 14	15 17	5 53	28 50	20 17	6 51	42 19	21 82	7 14	48 04	-3 56	-1 20	-6 69	-3 59	-1 20	-7 03	-3 50	-1 17	-6 90
Cerritos	10 85	4 04	20 18	15 48	4 96	32 84	17 11	5 57	38 43	14 17	5 16	26 82	18 83	6 08	39 41	20 38	6 67	44 87	-3 32	-1 12	-6 44	-3 38	-1 12	-6 57	-3 27	-1 09	-6 44
Charter Oak	1 03	0 38	1 91	1 48	0 47	3 11	1 62	0 53	3 63	1 34	0 49	2 52	1 78	0 58	3 73	1 93	0 63	4 24	-0 31	-0 11	-0 61	-0 32	-0 11	-0 62	-0 31	-0 10	-0 61
Citrus	0 59	0 22	1 09	0 84	0 27	1 78	0 93	0 30	2 08	0 77	0 28	1 44	1 02	0 33	2 14	1 10	0 36	2 43	-0 18	-0 06	-0 35	-0 18	-0 06	-0 36	-0 18	-0 06	-0 35
Claremont	5 85	2 11	10 51	8 08	2 58	17 09	8 91	2 90	20 00	7 38	2 69	13 86	9 80	3 17	20 52	10 61	3 47	23 36	-1 73	-0 58	-3 35	-1 75	-0 58	-3 42	-1 70	-0 57	-3 35
Commerce	5 53	2 06	10 28	7 89	2 53	16 73	8 72	2 84	19 58	7 22	2 63	13 58	9 60	3 10	20 08	10 38	3 40	22 86	-1 69	-0 57	-3 28	-1 71	-0 57	-3 35	-1 67	-0 56	-3 28
Compton	8 11	3 02	15 07	11 58	3 71	24 53	12 78	4 16	28 71	10 59	3 86	19 88	14 07	4 54	29 44	15 22	4 98	33 52	-2 48	-0 84	-4 81	-2 51	-0 84	-4 91	-2 44	-0 82	-4 81
Covina	8 98	3 34	18 67	12 78	4 10	27 12	14 13	4 60	31 74	11 71	4 26	21 98	15 56	5 02	32 55	16 83	5 51	37 06	-2 74	-0 92	-5 32	-2 77	-0 92	-5 43	-2 70	-0 90	-5 32
Cudahy	1 84	0 68	3 41	2 62	0 84	5 55	2 89	0 94	6 50	2 40	0 87	4 50	3 19	1 03	6 67	3 45	1 13	7 59	-0 56	-0 19	-1 09	-0 57	-0 19	-1 11	-0 55	-0 18	-1 09
Culver City	14 56	5 43	27 06	20 77	6 66	44 06	22 96	7 48	51 56	19 02	6 93	35 72	25 27	8 18	52 88	27 35	8 95	60 21	-4 46	-1 50	-8 64	-4 50	-1 50	-8 82	-4 39	-1 48	-8 64
Del Aire	1 38	0 52	2 57	1 97	0 63	4 18	2 18	0 71	4 90	1 81	0 66	3 39	2 40	0 78	5 02	2 60	0 85	5 72	-0 42	-0 14	-0 82	-0 43	-0 14	-0 84	-0 42	-0 14	-0 82
Desert View Highlands	0 10	0 04	0 19	0 15	0 05	0 32	0 16	0 05	0 37	0 14	0 05	0 26	0 18	0 06	0 38	0 20	0 06	0 43	-0 03	-0 01	-0 06	-0 03	-0 01	-0 06	-0 03	-0 01	-0 06
Diamond Bar	4 36	1 82	8 10	6 21	1 99	13 18	6 87	2 24	15 43	5 69	2 07	10 69	7 56	2 44	15 82	8 18	2 68	18 01	-1 33	-0 45	-2 59	-1 35	-0 45	-2 64	-1 31	-0 44	-2 59
Downey	12 93	4 82	24 03	18 43	5 91	39 11	20 38	6 84	45 77	16 88	6 15	31 70	22 43	7 24	46 94	24 27	7 94	53 44	-3 98	-1 33	-7 67	-4 00	-1 33	-7 83	-3 89	-1 30	-7 67
Duarte	2 78	1 04	5 17	3 96	1 27	8 41	4 38	1 43	9 84	3 83	1 32	6 82	4 82	1 56	10 09	5 22	1 71	11 49	-0 85	-0 29	-1 65	-0 86	-0 29	-1 68	-0 84	-0 28	-1 65
East Compton	0 30	0 11	0 56	0 43	0 14	0 91	0 48	0 16	1 07	0 39	0 14	0 74	0 52	0 17	1 10	0 57	0 19	1 25	-0 09	-0 03	-0 18	-0 09	-0 03	-0 18	-0 09	-0 03	-0 18
East La Mirada	0 70	0 26	1 30	1 00	0 32	2 12	1 10	0 36	2 48	0 91	0 33	1 72	1 22	0 39	2 54	1 32	0 43	2 90	-0 21	-0 07	-0 42	-0 22	-0 07	-0 42	-0 21	-0 07	-0 42
East Los Angeles	8 66	3 23	16 10	12 35	3 98	26 19	13 85	4 45	30 65	11 31	4 12	21 23	15 02	4 85	31 44	16 26	5 32	35 79	-2 65	-0 89	-5 14	-2 68	-0 89	-5 24	-2 61	-0 87	-5 14
East Pasadena	2 96	1 10	5 50	4 22	1 35	8 96	4 67	1 52	10 48	3 87	1 41	7 26	5 14	1 66	10 75	5 56	1 82	12 24	-0 91	-0 31	-1 78	-0 92	-0 31	-1 79	-0 89	-0 30	-1 78
East San Gabriel	1 83	0 68	3 41	2 62	0 84	5 55	2 89	0 94	6 49	2 39	0 87	4 50	3 18	1 03	6 66	3 44	1 13	7 58	-0 56	-0 19	-1 09	-0 57	-0 19	-1 11	-0 55	-0 18	-1 09
El Monte	12 48	4 65	23 20	17 80	5 71	37 76	19 87	6 41	44 18	18 30	5 94	30 81	21 66	6 99	45 31	23 43	7 67	51 59	-3 82	-1 29	-7 40	-3 86	-1 29	-7 55	-3 78	-1 28	-7 41
El Segundo	3 69	1 37	6 88	5 26	1 69	11 16	5 61	1 80	13 06	4 82	1 75	9 04	6 40	2 07	13 39	6 92	2 27	15 25	-1 13	-0 38	-2 19	-1 14	-0 38	-2 23	-1 11	-0 37	-2 19
Florence-Graham	2 01	1 00	5 42	4 16	1 33	8 82	4 59	1 50	10 32	3 81	1 39	7 15	5 06	1 63	10 58	5 47	1 79	12 05	-0 89	-0 30	-1 73	-0 90	-0 30	-1 78	-0 88	-0 29	-1 73
Gardena	9 30	3 47	17 29	13 26	4 25	28 14	14 66	4 78	32 93	12 15	4 42	22 81	16 14	5 21	33 77	17 46	5 71	38 45	-2 85	-0 96	-5 52	-2 88	-0 96	-5 63	-2 80	-0 94	-5 52
Glendale	35 01	13 05	65 10	49 93	16 01	105 94	55 20	17 98	123 96	45 72	16 65	85 87	60 78	19 62	127 13	65 74	21 51	144 75	-10 71	-3 61	-20 77	-10 83	-3 61	-21 20	-10 55	-3 52	-20 78
Glendora	8 73	2 51	12 51	8 80	3 08	20 36	10 61	3 46	23 83	8 79	3 20	16 51	11 68	3 77	24 44	12 64	4 13	27 83	-2 06	-0 69	-3 99	-2 08	-0 69	-4 07	-2 03	-0 68	-4 00
Hacienda Heights	4 39	1 83	8 18	6 29	2 01	13 27	8 02	2 25	15 53	5 73	2 09	10 78	7 61	2 46	15 93	8 24	2 69	18 13	-1 34	-0 45	-2 60	-1 36	-0 45	-2 66	-1 32	-0 44	-2 60
Hawaiian Gardens	1 40	0 52	2 60	1 99	0 64	4 22	2 20	0 72	4 94	1 82	0 68	3 42	2 42	0 78	5 07	2 62	0 86	5 77	-0 43	-0 14	-0 83	-0 43	-0 14	-0 85	-0 42	-0 14	-0 83
Hawthorne	9 18	3 42	17 07	13 09	4 20	27 78	14 48	4 72	32 51	11 99	4 37	22 52	15 93	5 15	33 34	17 24	5 64	37 96	-2 81	-0 95	-5 45	-2 84	-0 95	-5 56	-2 77	-0 92	-5 45
Hermosa Beach	4 55	1 70	8 47	6 49	2 08	13 78	7 18	2 34	16 12	5 95	2 17	11 17	7 90	2 55	16 53	8 55	2 80	18 82	-1 39	-0 47	-2 70	-1 41	-0 47	-2 78	-1 37	-0 46	-2 70
Hidden Hills	0 17	0 06	0 32	0 25	0 08	0 52	0 27	0 09	0 61	0 23	0 08	0 42	0 30	0 10	0 63	0 32	0 11	0 71	-0 05	-0 02	-0 10	-0 05	-0 02	-0 10	-0 05	-0 02	-0 10
Huntington Park	7 60	2 83	14 13	10 83	3 47	22 99	11 96	3 90	26 90	9 92	3 61	18 83	13 18	4 26	27 59	14 27	4 67	31 41	-2 32	-0 78	-4 51	-2 35	-0 78	-4 60	-2 29	-0 76	-4 51
Industry	12 30	4 58	22 87	17 54	5 82	37 21	19 39	6 32	43 55	16 06	5 85	30 17	21 34	6 89	44 68	23 10	7 55	50 85	-3 78	-1 27	-7 30	-3 80	-1 27	-7 45	-3 70	-1 24	-7 30
Inglewood	14 72	5 49	27 37	20 99	6 73	44 54	23 21	7 56	52 12	19 22	7 00	36 10	25 55	8 25	53 45	27 64	9 04	60 86	-4 50	-1 52	-8 73	-4 55	-1 52	-8 91	-4 43	-1 48	-8 74
Irwindale	0 38	0 14	0 70	0 54	0 17	1 14	0 60	0 19	1 34	0 49	0 18	0 93	0 66	0 21	1 37	0 71	0 23	1 56	-0 12	-0 04	-0 22	-0 12	-0 04	-0 23	-0 11	-0 04	-0 22
La Canada Flintridge	2 55	0 95	4 75	3 64	1 17	7 73	4 03	1 31	9 04	3 34	1 21	6 26	4 43	1 43	9 27	4 80	1 57	10 56	-0 78	-0 28	-1 52	-0 79	-0 28	-1 55	-0 77	-0 28	-1 52
La Crescenta-Montrose	2 05	0 76	3 81	2 92	0 94	6 20	3 23	1 05	7 28	2 68	0 96	5 03	3 56	1 15	7 44	3 85	1 26	8 48	-0 63	-0 21	-1 22	-0 63	-0 21	-1 24	-0 62	-0 21	-1 22
Ladera Heights	0 70	0 26	1 30	1 00	0 32	2 11	1 10	0 36	2 47	0 91	0 33	1 71	1 21	0 39	2 54	1 31	0 43	2 89	-0 21	-0 07	-0 41	-0 22	-0 07	-0 42	-0 21	-0 07	-0 41
La Habra Heights	0 89	0 26	1 28	0 98	0 32	2 09	1 09	0 35	2 44	0 90	0 33	1 69	1 20	0 39	2 50	1 30	0 42	2 85	-0 21	-0 07	-0 41	-0 21	-0 07	-0 42	-0 21	-0 07	-0 41
Lake Los Angeles	0 07	0 03	0 14	0 11	0 03	0 22	0 12	0 04	0 26	0 10	0 04	0 18	0 13	0 04	0 27	0 14	0 05	0 30	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04
Lakewood	12 40	4 62	23 06	17 86	5 87	37 52	19 55	6 37	43 91	16 19	5 90	30 41	21 52	6 95	45 03	23 29	7 62	51 27	-3 79	-1 28	-7 38	-3 84	-1 28	-7 51	-3 74	-1 25	-7 36
La Mirada	4 74	1 77	8 61	6 76	2 17	14 34	7 47	2 43	16 78	6 19	2 25	11 62	8 22	2 66	17 21	8 90	2 91	19 59	-1 45	-0 48	-2 81	-1 47	-0 48	-2 87	-1 43	-0 46	-2 81
Lancaster	11 34	4 23	21 09	16 17	5 19	34 31	17 88	5 83	40 15	14 81	5 39	27 81	19 88	6 36	41 18	21 30	6 97	48 88	-3 47	-1 17	-6 73	-3 51	-1 17	-6 87	-3 42	-1 14	-6 73
La Puente	3 15	1 18	5 88	4 50	1 44	9 54	4 97	1 62	11 17	4 12	1 50	7 74	5 47	1 77	11 45	5 92	1 94	13 04	-0 97	-0 33	-1 81	-0 98	-0 33	-1 91	-0 95	-0 32	-1 87
La Verne	3 85	1 44	7 17	5 50	1 76	11 88	6 08	1 98	13 85	5 03	1 83	9 45	6 69	2 18	14 00	7 24	2 37	15 94	-1 18	-0 40	-2 29	-1 19	-0 40	-2 33	-1 16	-0 39	-2 29
Lawndale	3 51	1 31	6 53	5 01	1 61	10 82	5 54	1 80	12 43	4 59	1 67	8 61	6 09	1 97	12 75	6 59	2 16	14 52	-1 07	-0 38	-2 08	-1 09	-0 36	-2 13	-1 06	-0 35	-2 08
Lennox	1 74	0 65	3 23	2 48	0 80	5 26	2 74	0 89	6 16	2 27	0 83	4 26	3 02	0 97	6 31	3 27	1 07	7 19	-0 53	-0 18	-1 03	-0 54	-0 18	-1 05	-0 52	-0 17	-1 03
Littlerock	0 02	0 01	0 03	0 02	0 01	0 05	0 03	0 01	0 06	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 07	-0 01	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Lomita	3 19	1 19	5 93	4 55	1 46	9 66	5 03	1 64	11 30	4 17	1 52	7 83	5 54	1 79	11 59	5 99	1 98	13 19	-0 98	-0 33	-1 89	-0 99	-0 33	-1 93	-0 96	-0 32	-1 89
Long Beach	50 77	18 92	94 41	72 42	23 22	153 84	80 05	26 06	179 79	68 31	24 15	124 54	88 12	28 46	184 36	95 35	31 19	209 93	-15 54	-5 23	-30 12	-15 71	-5 24	-30 74	-15 30	-5 11	-30 14
Los Angeles	531 87	196 13	968 67	758 30	243 14	1608 86	838 29	273 14	1882 86	694 39	252 94	1304 12	922 78	297 99	1930 78	998 47	326 81	2196 29	-162 72	-54 80	-315 48	-164 48	-54 85	-321 90	-160 17	-53 48	-315 64
Lynwood	4 04	1 51	7 52	5 78	1 85	12 23	6 37	2 06	14 31	5 28	1 92	9 91	7 01	2 27	14 68	7 59	2 48	16 71	-1 24	-0 42	-2 40	-1 25	-0 42	-2 45	-1 22	-0 41	-2 40
Malibu	0 90	0 33	1 67	1 28	0 41	2 72	1 42	0 46	3 18	1 17	0 43	2 20	1 58	0 50	3 26	1 69	0 55	3 71	-0 27	-0 09	-0 53	-0 28	-0 09	-0 54	-0 27	-0 09	-0 53
Manhattan Beach	7 73	2 88	14 38	11 03	3 54	23 39	12 19	3 97	27 38	10 10	3 68	18 98	13 42	4 33	28 07	14 52	4 75	31 96	-2 37	-0 80	-4 59	-2 39	-0 80	-4 88	-2 33	-0 78	-4 59
Marina del Rey	3 06	1 14	5 68	4 36	1 40	9 25	4 82	1 57	10 82	3 99	1 45	7 50	5 30	1 71	11 10	5 74	1 88	12 64	-0 94	-0 32	-1 81	-0 95	-0 32	-1 85	-0 92	-0 31	-1 81
Mayflower Village	0 28	0 11	0 53	0 40	0 13	0 86	0 45	0 15	1 00	0 37	0 13	0 69	0 49	0 16	1 03	0 53	0 17	1 17	-0 09	-0 03	-0 17	-0 09	-0 03	-0 17	-0 09	-0 03	-0 17
Maywood	2 31	0 86	4 29	3 29	1 05	6 98	3 64	1 16	8 17	3 01	1 10	5 66	4 00	1 29	8 38	4 33	1 42	9 54	-0 71	-0 24	-1 37	-0 71	-0 24	-1 40	-0 69	-0 23	-1 37
Monrovia	8 92	2 58	12 86	9 87	3 18	20 94	10 91	3 55	24 50	9 04	3 29	18 97	12 01	3 88	25 12	12 99	4 25	28 61	-2 12	-0 71	-4 10	-2 14	-0 71	-4 19	-2 08	-0 70	-4 11
Montebello	10 00	3 73	18 60	14 27	4 57	30 27	15 77	5 14	35 42	13 06	4 78	24 54	17 36	5 61	36 33	18 79	6 15	41 36	-3 06	-1 03	-5 94	-3 09	-1 03	-6 06	-3 01	-1 01	-5 94
Monterey Park	7 37	2 75	13 71	10 52	3 37	22 31	11 83	3 79	26 11	9 63	3 51	18 09	12 80	4 13	26 78	13 85	4 53	30 49	-2 26	-0 78	-4 38	-2 28	-0 78	-4 48	-2 22	-0 74	-4 38
North El Monte	0 23	0 09	0 43	0 33	0 11	0 71	0 37	0 12	0 83	0 31	0 11	0 57	0 41	0 13	0 85	0 44	0 14	0 97	-0 07	-0 02	-0 14	-0 07	-0 02	-0 14	-0 07	-0 02	-0 14
Norwalk	9 23	3 44	17 16	13 16	4 22	27 92	14 55	4 74	32 67	12 05	4 39	23 63	18 01	5 17	33 51	17 33	5 67	38 15	-2 82	-0 95	-5 47	-2 85	-0 95	-5 59	-2 78	-0 93	-5 48
Palmdale	8 71	3 25	16 20	12 43	3 98	26 37	13 74	4 48	30 85	11 38	4 15	21 37	15 12	4 86	31 64	16 36	5 35	36 03	-2 67	-0 90	-5 17	-2 70	-0 90	-5 28	-2 62	-0 88	-5 17
Palos Verdes Estates	0 60	0 22	1 11	0 85	0 27	1 80	0 94	0 31	2 11	0 78	0 28	1 48	1 03	0 33	2 18	1 12	0 37	2 46	-0 18	-0 06	-0 35	-0 18	-0 06	-0 36	-0 18	-0 06	-0 35
Paramount	4 30	1 60	8 00	6 14	1 97	13 02	6 79	2 21	15 24	5 62	2 05	10 58	7 47	2 41	15 83	8 08	2 64	17 80	-1 32	-0 44	-2 55	-1 33	-0 44	-2 61	-1 30	-0 43	-2 56
Pasadena	27 93	10 41	51 93	39 83	12 77	84 51	44 03	14 35	98 89	38 47	13 29	88 50	48 47	15 85	101 41	52 44	17 18	115 47	-8 55	-2 88	-16 57	-8 84	-2 88	-18 91	-8 41	-2 81	-16 58
Pico Rivera	6 21	2 31	11 54	8 85	2 84	18 78	9 78	3 19	21 97	8 10	2 95	15 22	10 77	3 48	22 53	11 85	3 81	25 66	-1 90	-0 64	-3 68	-1 92	-0 64	-3 78	-1 87	-0 62	-3 68
Pomona	15 66	5 84	29 12	22 34	7 16	47 39	24 69	8 05	55 45	20 45	7 45	38 41	27 18	8 78	66 87	29 41	9 62	84 75	-4 79	-1 61	-9 29	-4 84	-1 62	-9 48	-4 72	-1 58	-9 30
Quartz Hill	0 39	0 15	0 73	0 56	0 18	1 19	0 62	0 20	1 39	0 51	0 19	0 96	0 68	0 22	1 43	0 74	0 24	1 83	-0 12	-0 04	-0 23	-0 12	-0 04	-0 24	-0 12	-0 04	-0 23
Rancho Palos Verdes	3 53	1 31	6 56	5 03	1 61	10 67	5 56	1 81	12 49	4 61	1 66	8 85	6 12	1 98	12 81	6 62	2 17	14 58	-1 08	-0 36	-2 09	-1 09	-0 36	-2 13	-1 06	-0 35	-2 09
Redondo Beach	11 14	4 15	20 72	15 69	5 10	33 72	17 57	5 72	39 48	14 55	5 30	27 33	19 34	6 25	40 47	20 93	6 85	46 07	-3 41	-1 15	-6 81	-3 45	-1 15	-6 75	-3 36	-1 12	-6 82
Rolling Hills	0 07	0 03	0 14	0 10	0 03	0 22	0 12	0 04	0 26	0 10	0 03	0 18	0 13	0 04	0 27	0 14	0 05	0 30	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04	-0 02	-0 01	0 04
Rolling Hills Estates	1 08	0 40	2 01	1 54	0 49	3 28	1 71	0 56	3 83	1 41	0 51	2 65	1 88	0 61	3 93	2 03	0 68	4 48	-0 33	-0 11	-0 64	-0 33	-0 11	-0 64	-0 33	-0 11	-0 64
Rosemead	4 47	1 67	8 32	6 36	2 05	13 54	7 05	2 30	15 84	5 84	2 13	10 97	7 78	2 51	16 25	8 40	2 75	18 50	-1 37	-0 48	-2 65	-1 38	-0 48	-2 71	-1 35	-0 45	-2 66
Rowland Heights	8 24	2 33	11 61	8 90	2 85	18 89	9 84	3 21	22 10

City and CDP	Stimulus Effects CASE I Scenario I	Stimulus Effects CASE I Scenario II	Stimulus Effects CASE I Scenario III	Stimulus Effects CASE II Scenario I	Stimulus Effects CASE II Scenario II	Stimulus Effects CASE II Scenario III	Stimulus Effects CASE III Scenario I	Stimulus Effects CASE III Scenario II	Stimulus Effects CASE III Scenario III	Impacts of Household Expenditure Reduction CASE I Scenario I	Impacts of Household Expenditure Reduction CASE I Scenario II	Impacts of Household Expenditure Reduction CASE I Scenario III	Impacts of Household Expenditure Reduction CASE II Scenario I	Impacts of Household Expenditure Reduction CASE II Scenario II	Impacts of Household Expenditure Reduction CASE II Scenario III	Impacts of Household Expenditure Reduction CASE III Scenario I	Impacts of Household Expenditure Reduction CASE III Scenario II	Impacts of Household Expenditure Reduction CASE III Scenario III	Net Impacts CASE I Scenario I	Net Impacts CASE I Scenario II	Net Impacts CASE I Scenario III	Net Impacts CASE II Scenario I	Net Impacts CASE II Scenario II	Net Impacts CASE II Scenario III	Net Impacts CASE III Scenario I	Net Impacts CASE III Scenario II	Net Impacts CASE III Scenario III
Santa Monica	28.21	10.51	52.46	40.23	12.90	85.36	44.48	14.49	99.89	35.84	13.42	69.20	48.96	15.81	102.44	52.96	17.33	116.64	-8.63	-2.91	-18.74	-8.73	-2.91	-17.06	-8.50	-2.84	-18.75
Sierra Madre	1.24	0.46	2.30	1.77	0.57	3.75	1.95	0.64	4.38	1.62	0.59	3.04	2.15	0.69	4.49	2.32	0.76	5.12	-0.38	-0.13	-0.73	-0.38	-0.13	-0.75	-0.37	-0.12	-0.73
Signal Hill	2.28	0.85	4.23	3.25	1.04	6.89	3.59	1.17	8.06	2.97	1.08	5.59	3.95	1.28	8.27	4.28	1.40	9.42	-0.70	-0.23	-1.35	-0.70	-0.23	-1.38	-0.69	-0.23	-1.35
South El Monte	1.66	0.62	3.08	2.37	0.76	5.02	2.62	0.85	5.87	2.17	0.79	4.07	2.88	0.93	6.02	3.12	1.02	6.86	-0.51	-0.17	-0.98	-0.51	-0.17	-1.00	-0.50	-0.17	-0.98
South Gate	7.82	2.91	14.54	11.15	3.57	23.85	12.32	4.02	27.68	10.21	3.72	19.17	13.57	4.38	28.39	14.68	4.80	32.32	-2.39	-0.81	-4.84	-2.42	-0.81	-4.73	-2.35	-0.79	-4.84
South Pasadena	3.84	1.43	7.14	5.47	1.75	11.61	6.05	1.97	13.59	5.01	1.83	9.41	6.66	2.15	13.93	7.21	2.36	15.87	-1.17	-0.40	-2.28	-1.19	-0.40	-2.32	-1.16	-0.39	-2.28
South San Gabriel	0.58	0.21	1.07	0.82	0.26	1.74	0.91	0.30	2.04	0.75	0.27	1.41	1.00	0.32	2.09	1.08	0.35	2.38	-0.18	-0.06	-0.34	-0.18	-0.06	-0.35	-0.17	-0.06	-0.34
South San Jose Hills	0.71	0.26	1.31	1.01	0.32	2.14	1.11	0.36	2.50	0.92	0.34	1.73	1.23	0.40	2.57	1.33	0.43	2.92	-0.22	-0.07	-0.42	-0.22	-0.07	-0.43	-0.21	-0.07	-0.42
South Whittier	3.60	1.34	6.69	5.13	1.65	10.89	5.68	1.85	12.75	4.70	1.71	8.83	6.25	2.02	13.07	6.78	2.21	14.88	-1.10	-0.37	-2.14	-1.11	-0.37	-2.18	-1.06	-0.36	-2.14
Temple City	4.16	1.55	7.73	5.93	1.90	12.58	6.55	2.14	14.72	5.43	1.98	10.20	7.21	2.33	15.10	7.81	2.55	17.19	-1.27	-0.43	-2.47	-1.29	-0.43	-2.52	-1.25	-0.42	-2.47
Torrance	33.00	12.30	61.36	47.06	15.09	99.85	52.03	16.95	116.84	43.10	15.70	80.94	57.27	18.49	119.83	61.97	20.27	138.43	-10.10	-3.40	-19.58	-10.21	-3.40	-19.98	-9.94	-3.32	-19.59
Valinda	1.51	0.56	2.81	2.15	0.69	4.57	2.38	0.78	5.34	1.97	0.72	3.70	2.62	0.85	5.48	2.83	0.93	6.24	-0.46	-0.16	-0.90	-0.47	-0.16	-0.91	-0.45	-0.15	-0.90
Val Verde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Vernon	2.24	0.83	4.16	3.19	1.02	6.77	3.53	1.15	7.92	2.92	1.06	5.49	3.88	1.25	8.12	4.20	1.37	9.25	-0.68	-0.23	-1.33	-0.69	-0.23	-1.35	-0.67	-0.22	-1.33
View Park-Windsor Hills	0.98	0.37	1.82	1.40	0.45	2.96	1.54	0.50	3.47	1.28	0.47	2.40	1.70	0.55	3.56	1.84	0.60	4.05	-0.30	-0.10	-0.58	-0.30	-0.10	-0.59	-0.30	-0.10	-0.58
Vincent	1.77	0.66	3.30	2.53	0.81	5.37	2.80	0.91	6.28	2.32	0.84	4.35	3.08	0.99	6.44	3.33	1.09	7.33	-0.54	-0.18	-1.05	-0.55	-0.18	-1.07	-0.53	-0.18	-1.05
Walnut	1.80	0.67	3.35	2.57	0.82	5.44	2.84	0.92	6.37	2.35	0.86	4.41	3.12	1.01	6.53	3.38	1.11	7.44	-0.55	-0.19	-1.07	-0.56	-0.19	-1.09	-0.54	-0.18	-1.07
Walnut Park	1.20	0.45	2.22	1.70	0.55	3.62	1.88	0.61	4.23	1.56	0.57	2.93	2.07	0.67	4.34	2.24	0.73	4.94	-0.37	-0.12	-0.71	-0.37	-0.12	-0.72	-0.36	-0.12	-0.71
West Athens	0.51	0.19	0.94	0.72	0.23	1.53	0.80	0.26	1.79	0.66	0.24	1.24	0.88	0.28	1.83	0.95	0.31	2.09	-0.15	-0.05	-0.30	-0.18	-0.05	-0.31	-0.15	-0.05	-0.30
West Carson	2.61	0.97	4.85	3.72	1.19	7.89	4.11	1.34	9.24	3.41	1.24	6.40	4.53	1.46	9.47	4.90	1.60	10.79	-0.80	-0.27	-1.55	-0.81	-0.27	-1.58	-0.79	-0.26	-1.55
West Compton	0.53	0.20	0.98	0.75	0.24	1.59	0.83	0.27	1.86	0.69	0.25	1.29	0.91	0.30	1.91	0.99	0.32	2.18	-0.16	-0.05	-0.31	-0.16	-0.05	-0.32	-0.16	-0.05	-0.31
West Covina	13.59	5.06	25.26	19.38	6.21	41.11	21.42	6.98	48.10	17.74	6.46	33.32	23.58	7.61	49.33	25.51	8.35	58.17	-4.16	-1.40	-8.08	-4.20	-1.40	-8.23	-4.09	-1.37	-8.07
West Hollywood	13.38	4.98	24.87	19.08	6.12	40.47	21.09	6.87	47.36	17.47	6.36	32.81	23.21	7.50	48.57	25.12	8.22	55.30	-4.09	-1.38	-7.94	-4.14	-1.38	-8.10	-4.03	-1.35	-7.94
Westlake Village	0.78	0.29	1.45	1.12	0.36	2.37	1.23	0.40	2.77	1.02	0.37	1.92	1.36	0.44	2.84	1.47	0.48	3.23	-0.24	-0.08	-0.48	-0.24	-0.08	-0.47	-0.24	-0.08	-0.48
Westmont	1.57	0.58	2.92	2.24	0.72	4.75	2.47	0.81	5.58	2.05	0.75	3.85	2.72	0.88	5.70	2.95	0.96	6.49	-0.48	-0.16	-0.93	-0.49	-0.16	-0.95	-0.47	-0.16	-0.93
West Puente Valley	0.62	0.23	1.14	0.88	0.28	1.86	0.97	0.32	2.18	0.80	0.29	1.51	1.07	0.34	2.24	1.16	0.38	2.54	-0.19	-0.06	-0.37	-0.19	-0.06	-0.37	-0.19	-0.06	-0.37
West Whittier-Los Nietos	2.05	0.77	3.82	2.93	0.94	6.21	3.24	1.05	7.27	2.88	0.98	5.04	3.58	1.15	7.46	3.86	1.28	8.49	-0.63	-0.21	-1.22	-0.64	-0.21	-1.24	-0.62	-0.21	-1.22
Whittier	10.75	4.01	19.99	15.33	4.92	32.52	16.95	5.52	38.06	14.04	5.11	26.38	18.65	6.02	39.03	20.18	6.60	44.44	-3.29	-1.11	-6.38	-3.32	-1.11	-6.51	-3.24	-1.08	-6.38
Willowbrook	1.73	0.64	3.22	2.47	0.79	5.23	2.73	0.89	6.12	2.26	0.82	4.24	3.00	0.97	6.28	3.25	1.06	7.15	-0.53	-0.18	-1.03	-0.53	-0.18	-1.05	-0.52	-0.17	-1.03
Aliso Viejo	5.34	1.99	9.93	7.62	2.44	16.16	8.42	2.74	18.91	6.97	2.54	13.10	9.27	2.99	19.39	10.03	3.28	22.08	-1.63	-0.55	-3.17	-1.65	-0.55	-3.23	-1.61	-0.54	-3.17
Anaheim	38.70	14.42	71.96	55.19	17.70	117.10	61.02	19.88	137.03	50.54	18.41	94.92	67.17	21.69	140.53	72.68	23.77	160.01	-11.84	-3.99	-22.96	-11.97	-3.99	-23.43	-11.66	-3.89	-22.97
Brea	5.31	1.98	9.88	7.58	2.43	16.08	8.38	2.73	18.82	6.94	2.53	13.04	9.22	2.98	19.30	9.98	3.27	21.96	-1.63	-0.55	-3.15	-1.64	-0.55	-3.22	-1.60	-0.53	-3.16
Buena Park	9.68	3.61	18.00	13.80	4.43	29.28	15.26	4.97	34.27	12.64	4.60	23.74	16.80	5.42	35.14	18.17	5.95	40.01	-2.96	-1.00	-5.74	-2.99	-1.00	-5.86	-2.92	-0.97	-5.75
Costa Mesa	31.80	11.85	59.14	45.36	14.54	96.24	50.14	16.34	112.61	41.54	15.13	78.01	55.20	17.82	115.49	59.72	19.54	131.49	-9.73	-3.28	-18.87	-9.84	-3.28	-19.25	-9.58	-3.20	-18.88
Coto de Caza	0.74	0.28	1.38	1.06	0.34	2.25	1.17	0.38	2.64	0.97	0.35	1.83	1.29	0.42	2.70	1.40	0.46	3.08	-0.23	-0.08	-0.44	-0.23	-0.08	-0.45	-0.22	-0.07	-0.44
Cypress	7.09	2.64	13.19	10.12	3.24	21.47	11.19	3.64	25.12	9.27	3.37	17.40	12.31	3.98	25.76	13.32	4.36	29.33	-2.17	-0.73	-4.21	-2.19	-0.73	-4.30	-2.14	-0.71	-4.21
Dana Point	6.16	2.29	11.45	8.78	2.82	18.63	9.71	3.16	21.81	8.04	2.93	15.10	10.69	3.45	22.38	11.58	3.78	25.48	-1.88	-0.63	-3.65	-1.90	-0.64	-3.73	-1.86	-0.62	-3.66
Foothill Ranch	0.10	0.04	0.19	0.14	0.05	0.30	0.16	0.05	0.35	0.13	0.05	0.24	0.17	0.06	0.36	0.19	0.06	0.41	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06
Fountain Valley	10.56	3.93	19.63	15.06	4.83	31.95	16.65	5.42	37.38	13.79	5.02	25.90	18.32	5.92	38.34	19.83	6.49	43.65	-3.23	-1.09	-6.26	-3.27	-1.09	-6.39	-3.18	-1.06	-6.27
Fullerton	20.39	7.60	37.92	29.09	9.33	61.72	32.16	10.48	72.22	26.64	9.70	50.03	35.40	11.43	74.06	38.30	12.53	84.33	-6.24	-2.10	-12.10	-6.31	-2.10	-12.35	-6.14	-2.05	-12.11
Garden Grove	21.53	8.02	40.04	30.71	9.85	65.15	33.95	11.06	76.24	28.12	10.24	52.81	37.37	12.07	78.19	40.43	13.23	89.02	-6.59	-2.22	-12.77	-6.66	-2.22	-13.04	-6.49	-2.17	-12.78
Huntington Beach	31.36	11.69	58.31	44.73	14.34	94.90	49.45	16.11	111.04	40.96	14.92	76.92	54.43	17.58	113.88	58.89	19.28	129.66	-9.60	-3.23	-18.61	-9.70	-3.24	-18.99	-9.45	-3.15	-18.62
Irvine	15.08	5.62	28.04	21.51	6.90	45.63	23.78	7.75	53.40	19.69	7.17	36.99	26.17	8.45	54.76	28.32	9.26	62.35	-4.62	-1.55	-8.95	-4.66	-1.56	-9.13	-4.54	-1.52	-8.95
Laguna Beach	6.37	2.37	11.85	9.09	2.91	19.28	10.05	3.27	22.57	8.32	3.03	15.63	11.06	3.57	23.14	11.97	3.91	26.35	-1.95	-0.66	-3.78	-1.97	-0.66	-3.86	-1.92	-0.64	-3.78
Laguna Hills	5.97	2.22	11.10	8.51	2.73	18.06	9.41	3.07	21.14	7.80	2.84	14.64	10.36	3.35	21.68	11.21	3.67	24.68	-1.83	-0.62	-3.54	-1.85	-0.62	-3.61	-1.80	-0.60	-3.54
Laguna Niguel	10.14	3.78	18.86	14.47	4.64	30.69	15.99	5.21	35.91	13.25	4.83	24.88	17.60	5.68	36.83	19.05	6.23	41.93	-3.10	-1.05	-6.02	-3.14	-1.05	-6.14	-3.06	-1.02	-6.02
Laguna Woods	4.08	1.52	7.58	5.82	1.87	12.34	6.43	2.10	14.44	5.33	1.94	10.00	7.08	2.29	14.81	7.66	2.51	16.86	-1.25	-0.42	-2.42	-1.26	-0.42	-2.47	-1.23	-0.41	-2.42
La Habra	6.62	2.47	12.30	9.43	3.03	20.02	10.43	3.40	23.42	8.64	3.15	16.23	11.48	3.71	24.02	12.42	4.06	27.35	-2.02	-0.68	-3.92	-2.05	-0.68	-4.01	-1.99	-0.67	-3.93
Lake Forest	8.78	3.27	16.33	12.52	4.01	26.57	13.84	4.51	31.09	11.47	4.18	21.53	15.24	4.92	31.88	16.49	5.39	36.30	-2.69	-0.90	-5.21	-2.72	-0.91	-5.32	-2.64	-0.88	-5.21
La Palma	1.33	0.50	2.48	1.90	0.61	4.03	2.10	0.68	4.72	1.74	0.63	3.27	2.31	0.75	4.84	2.50	0.82	5.51	-0.41	-0.14	-0.79	-0.41	-0.14	-0.81	-0.40	-0.13	-0.79
Las Flores	0.24	0.09	0.45	0.34	0.11	0.73	0.38	0.12	0.85	0.31	0.11	0.59	0.42	0.13	0.87	0.45	0.15	0.99	-0.07	-0.02	-0.14	-0.07	-0.02	-0.15	-0.07	-0.02	-0.14
Los Alamitos	2.30	0.86	4.28	3.28	1.05	6.97	3.63	1.18	8.15	3.01	1.10	5.65	4.00	1.29	8.36	4.32	1.41	9.52	-0.70	-0.24	-1.37	-0.71	-0.24	-1.39	-0.69	-0.23	-1.37
Mission Viejo	12.11	4.51	22.52	17.27	5.54	36.64	19.09	6.22	42.88	15.81	5.76	29.70	21.02	6.79	43.97	22.74	7.44	50.07	-3.71	-1.25	-7.18	-3.75	-1.25	-7.33	-3.65	-1.22	-7.19
Newport Beach	23.98	8.93	44.58	34.18	10.96	72.52	37.78	12.31	84.86	31.30	11.40	58.78	41.59	13.43	87.03	45.00	14.72	99.08	-7.33	-2.47	-14.22	-7.41	-2.47	-14.51	-7.22	-2.41	-14.23
Newport Coast	0.64	0.24	1.19	0.92	0.29	1.94	1.01	0.33	2.27	0.84	0.31	1.57	1.11	0.36	2.33	1.21	0.39	2.65	-0.20	-0.07	-0.38	-0.20	-0.07	-0.39	-0.19	-0.06	-0.38
Orange	24.29	9.05	45.17	34.64	11.11	73.50	38.30	12.48	86.01	31.72	11.56	59.58	42.16	13.61	88.21	45.61	14.92	100.43	-7.43	-2.50	-14.41	-7.51	-2.51	-14.71	-7.32	-2.44	-14.42
Placentia	4.85	1.81	9.01	6.91	2.22	14.67	7.64	2.49	17.16	6.33	2.31	11.89	8.41	2.72	17.60	9.10	2.98	20.04	-1.48	-0.50	-2.88	-1.50	-0.50	-2.93	-1.46	-0.49	-2.88
Portola Hills	0.04	0.02	0.08	0.06	0.02	0.12	0.06	0.02	0.14	0.05	0.02	0.10	0.07	0.02	0.15	0.08	0.03	0.17	-0.01	0.00	-0.02	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Rancho Santa Margarita	2.46	0.92	4.58	3.51	1.13	7.46	3.89	1.27	8.73	3.22	1.17	6.04	4.28	1.38	8.95	4.63	1.51	10.19	-0.75	-0.25	-1.46	-0.76	-0.25	-1.49	-0.74	-0.25	-1.48
Rossmoor	0.49	0.16	0.92	0.71	0.23	1.50	0.78	0.25	1.75	0.65	0.24	1.21	0.86	0.28	1.80	0.93	0.30	2.05	-0.15	-0.05	-0.29	-0.15	-0.05	-0.30	-0.15	-0.05	-0.29
San Clemente	7.31	2.72	13.59	10.42	3.34	22.12	11.52	3.75	25.88	9.55	3.48	17.93	12.68	4.10	26.54	13.73	4.49	30.22	-2.24	-0.75	-4.34	-2.26	-0.75	-4.43	-2.20	-0.74	-4.34
San Joaquin Hills	0.25	0.09	0.47	0.36	0.12	0.77	0.40	0.13	0.90	0.33	0.12	0.62	0.44	0.14	0.92	0.47	0.16	1.05	-0.08	-0.03	-0.15	-0.08	-0.03	-0.15	-0.08	-0.03	-0.15
San Juan Capistrano	5.57	2.08	10.36	7.94	2.55	16.85	8.78	2.86	19.72	7.27	2.65	13.66	9.67	3.12	20.23	10.46	3.42	23.03	-1.70	-0.57	-3.30	-1.72	-0.57	-3.37	-1.68	-0.56	-3.31
Santa Ana	38.05	14.18	70.76	54.27	17.40	115.15	60.00	19.55	134.74	49.70	18.10	93.34	66.04	21.33	138.18	71.46	23.38	157.33	-11.65	-3.92	-22.58	-11.77	-3.93	-23.04	-11.46	-3.83	-22.59
Seal Beach	3.58	1.33	6.63	5.08	1.63	10.79	5.62	1.83	12.62	4.66	1.70	8.74	6.19	2.00	12.94	6.69	2.19	14.74	-1.09	-0.37	-2.11	-1.10	-0.37	-2.18	-1.07	-0.36	-2.12
Stanton	4.09	1.52	7.60	5.83	1.87	12.37	6.45	2.10	14.48	5.34	1.94	10.03	7.10	2.29	14.85	7.68	2.51	16.90	-1.25	-0.42	-2.43	-1.26	-0.42	-2.48	-1.23	-0.41	-2.43
Tustin	12.68	4.73	23.58	18.09	5.80	38.38	20.00	6.52	44.91	16.57	6.03	31.11	22.01	7.11	46.06	23.82	7.79	52.44	-3.88	-1.31	-7.53	-3.92	-1.31	-7.68	-3.82	-1.28	-7.53
Tustin Foothills	1.76	0.66	3.27	2.51	0.80	5.32	2.77	0.90	6.23	2.30	0.84	4.31	3.05	0.99	6.39	3.30	1.08	7.27	-0.54	-0.18	-1.04	-0.54	-0.18	-1.06	-0.53	-0.18	-1.04
Villa Park	0.62	0.23	1.16	0.89	0.29	1.89	0.98	0.32	2.21	0.81	0.30	1.53	1.08	0.35	2.27	1.17	0.38	2.58	-0.19	-0.06	-0.37	-0.19	-0.06	-0.38	-0.19	-0.06	-0.37
Westminster	15.87	5.91	29.51	22.63	7.26	48.02	25.02	8.15	56.20	20.73	7.55	38.93	27.54	8.89	57.63	29.80	9.75	65.62	-4.86	-1.64	-9.42	-4.91	-1.64	-9.61	-4.78	-1.60	-9.42
Yorba Linda	5.06	1.88	9.40	7.21	2.31	15.30	7.97	2.60	17.91	6.61	2.41	12.41	8.78	2.83	18.37	9.50	3.11	20.91	-1.55	-0.52	-3.00	-1.56	-0.52	-3.06	-1.52	-0.51	-3.00
Banning	2.01	0.75	3.75	2.87	0.92	6.10	3.18	1.03	7.13	2.63	0.96	4.94	3.50	1.13	7.31	3.78	1.24	8.33	-0.62	-0.21	-1.20	-0.62	-0.21	-1.22	-0.61	-0.20	-1.20
Beaumont	1.23	0.46	2.30	1.76	0.56	3.74	1.95	0.63	4.37	1.61	0.59	3.03	2.14	0.69	4.48	2.32	0.76	5.10	-0.38	-0.13	-0.73	-0.38	-0.13	-0.75	-0.37	-0.12	-0.73
Bermuda Dunes	0.18	0.07	0.33	0.25	0.08	0.54	0.28	0.09	0.63	0.23	0.08	0.44	0.31	0.10	0.64	0.33	0.11	0.73	-0.05	-0.02	-0.11	-0.05	-0.02	-0.11	-0.05	-0.02	-0.11
Cabazon	0.12	0.04	0.22	0.17	0.05	0.36	0.19	0.06	0.42	0.15	0.06	0.29	0.21	0.07	0.43	0.22	0.07	0.49	-0.04	-0.01	-0.07	-0.04	-0.01	-0.07	-0.04	-0.01	-0.07
Calimesa	0.59	0.22	1.10	0.84	0.27	1.79	0.93	0.30	2.10	0.77	0.28	1.45	1.03	0.33	2.15	1.11	0.36	2.45	-0.18	-0.06	-0.35	-0.18	-0.06	-0.36	-0.18	-0.06	-0.35
Canyon Lake	0.23	0.08	0.42	0.32	0.10	0.69	0.36	0.12	0.80	0.30	0.11	0.56	0.39	0.13	0.82	0.43	0.14	0.94	-0.07	-0.02	-0.13	-0.07	-0.02	-0.14	-0.07	-0.02	-0.13
Cathedral City	5.61	2.09	10.42	8.00	2.56	16.96	8.84	2.88	19.85	7.32	2.67	13.75	9.73	3.14	20.36	10.53	3.44	23.18	-1.72	-0.58	-3.33	-1.73	-0.58	-3.39	-1.69	-0.56	-3.33
Cherry Valley	0.16	0.06	0.30	0.23	0.07	0.49	0.25	0.08	0.57	0.21	0.08	0.39	0.28	0.09	0.58	0.30	0.10	0.66	-0.05	-0.02	-0.10	-0.05	-0.02	-0.10	-0.05	-0.02	-0.10
Coachella	1.90	0.71	3.53	2.71	0.87	5.74	2.99	0.98	6.72	2.48	0.90	4.66	3.29	1.06	6.89	3.56	1.17	7.85	-0.58	-0.20	-1.13	-0.59	-0.20	-1.15	-0.57	-0.19	-1.13
Corona	12.41	4.63	23.09	17.71	5.68	37.57	19.57	6.38	43.96	16.21	5.91	30.45	21.55	6.96	45.06	23.31	7.63	51.33	-3.80	-1.28	-7.37	-3.84	-1.28	-7.52	-3.74	-1.25	-7.37
Desert Hot Springs	0.96	0.36	1.79	1.37	0.44	2.92	1.52	0.50	3.41	1.26	0.46	2.36	1.67	0.54	3.50	1.81	0.59	3.98	-0.29	-0.10	-0.57	-0.30	-0.10	-0.58	-0.29	-0.10	-0.57
East Hemet	1.76	0.66	3.27	2.51	0.81	5.33	2.78	0.90	6.24	2.30	0.84	4.32	3.06	0.99	6.40	3.31	1.08	7.28	-0.54	-0.18	-1.04	-0.54	-0.18	-1.07	-0.53	-0.18	-1.05
El Cerrito	0.18	0.07	0.34	0.26	0.08	0.55	0.29	0.09	0.64	0.24	0.09	0.45	0.32	0.10	0.66	0.34	0.11	0.75	-0.06	-0.02	-0.11	-0.06	-0.02	-0.11	-0.05	-0.02	-0.11
Glen Avon	1.43	0.53	2.66	2.04	0.65	4.32	2.25	0.73	5.06	1.87	0.68	3.50	2.48	0.80	5.19	2.68	0.88	5.91	-0.44	-0.15	-0.85	-0.44	-0.15	-0.87	-0.43	-0.14	-0.85
Hemet	8.00	2.98	14.88	11.41	3.66	24.21	12.62	4.11	28.33	10.45	3.81	19.63	13.89	4.48	29.06	15.03	4.92	33.08	-2.45	-0.82	-4.75	-2.47	-0.83	-4.84	-2.41	-0.80	-4.75
Highgrove	0.10	0.04	0.19	0.14	0.05	0.30	0.16	0.05	0.36	0.13	0.05	0.25	0.17	0.06	0.36	0.19	0.06	0.41	-0.03	-0.01	-0.08	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06
Home Gardens	0.38	0.14	0.71	0.55	0.18	1.16	0.60	0.20	1.36	0.50	0.18	0.94	0.67	0.21	1.39	0.72	0.24	1.59	-0.12	-0.04	-0.23	-0.12	-0.04	-0.23	-0.12	-0.04	-0.23
Homeland	0.09	0.03	0.16	0.12	0.04	0.26	0.14	0.04	0.31	0.11	0.04	0.21	0.15	0.05	0.32	0.16	0.05	0.36	-0.03	-0.01	-0.05	-0.03	-0.01	-0.05	-0.03	-0.01	-0.05
Idyllwild-Pine Cove	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Indian Wells	1.05	0.39	1.95	1.50	0.48	3.16	1.66	0.54	3.72	1.37	0.50	2.58	1.82	0.59	3.82	1.97	0.65	4.35	-0.32	-0.11	-0.62	-0.33	-0.11	-0.64	-0.32	-0.11	-0.62
Indio	4.76	1.77	8.85	6.78	2.18	14.39	7.50	2.44	16.84	6.21	2.26	11.67	8.26	2.67	17.27	8.93	2.92	19.67	-1.46	-0.48	-2.82	-1.47	-0.49	-2.88	-1.43	-0.48	-2.82
Lake Elsinore	3.53	1.32	6.57	5.04	1.61	10.69	5.57	1.81	12.50	4.61	1.68	8.66	6.13	1.98	12.82	6.63	2.17	14.60	-1.08	-0.36	-2.10	-1.09	-0.36	-2.14	-1.06	-0.36	-2.10
Lakeland Village	0.26	0.10	0.47	0.36	0.12	0.77	0.40	0.13	0.90	0.33	0.12	0.63	0.44	0.14	0.93	0.48	0.16	1.06	-0.08	-0.03	-0.15	-0.08	-0.03	-0.15	-0.08	-0.03	-0.15
Lakeview	0.08	0.03	0.14	0.11	0.04	0.23	0.12	0.04	0.27	0.10	0.04	0.19	0.13	0.04	0.28	0.14	0.05	0.32	-0.02	-0.01	-0.05	-0.02	-0.01	-0.05	-0.02	-0.01	-0.05
La Quinta	1.31	0.49	2.44	1.87	0.60	3.97	2.07	0.67	4.64	1.71	0.62	3.22	2.28	0.73	4.76	2.46	0.81	5.42	-0.40	-0.14	-0.78	-0.41	-0.14	-0.79	-0.39	-0.13	-0.78
March AFB	0.13	0.05	0.25	0.19	0.06	0.40	0.21	0.07	0.47	0.17	0.06	0.33	0.23	0.07	0.49	0.25	0.08	0.55	-0.04	-0.01	-0.08	-0.04	-0.01	-0.08	-0.04	-0.01	-0.08
Mecca	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03	0.01	0.00	0.02	0.02	0.00	0.03	0.02	0.01	0.04	0.00	0.00	-0.01	0.00	0.00	-0.01	0.00	0.00	-0.01
Mira Loma	1.34	0.50	2.50	1.92	0.61	4.06	2.12	0.69	4.76	1.75	0.64	3.29	2.33	0.75	4.88	2.52	0.83	5.55	-0.41	-0.14	-0.80	-0.42	-0.14	-0.81	-0.40	-0.14	-0.80
Moreno Valley	12.59	4.69	23.41	17.96	5.76	38.10	19.85	6.47	44.58	16.44	5.99	30.88	21.85	7.08	45.72	23.84	7.73	52.06	-3.85	-1.30	-7.47	-3.89	-1.30	-7.82	-3.79	-1.27	-7.47

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction										Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III				CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Murrieta	1 69	0 63	3 14	2 41	0 77	5 11	2 66	0 87	5 98	2 21	0 80	4 15	2 93	0 95	6 14	3 17	1 04	6 99	-0 52	-0 17	-1 00	-0 52	-0 17	-1 02	-0 51	-0 17	-1 00
Murrieta Hot Springs	0 06	0 02	0 11	0 09	0 03	0 19	0 10	0 03	0 22	0 08	0 03	0 15	0 11	0 03	0 22	0 12	0 04	0 25	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04
Norco	2 52	0 94	4 68	3 59	1 15	7 81	3 97	1 29	8 91	3 29	1 20	6 17	4 37	1 41	9 14	4 73	1 55	10 40	-0 77	-0 26	-1 49	-0 78	-0 26	-1 52	-0 78	-0 25	-1 49
Nuevo	0 15	0 05	0 27	0 21	0 07	0 44	0 23	0 08	0 52	0 19	0 07	0 36	0 25	0 08	0 53	0 28	0 09	0 61	-0 04	-0 02	-0 09	-0 05	-0 02	-0 09	-0 04	-0 01	-0 09
Palm Desert	10 67	3 98	19 84	15 22	4 88	32 29	16 82	5 48	37 76	13 94	5 08	26 17	18 52	5 98	38 75	20 04	6 55	44 12	-3 27	-1 10	-8 33	-3 30	-1 10	-8 46	-3 21	-1 07	-8 33
Palm Springs	12 05	4 49	22 41	17 19	5 51	38 47	19 00	6 19	42 68	15 74	5 73	29 56	20 92	6 75	43 77	22 63	7 40	49 83	-3 69	-1 24	-7 15	-3 73	-1 24	-7 30	-3 63	-1 21	-7 18
Pedley	1 22	0 45	2 27	1 74	0 56	3 89	1 92	0 63	4 32	1 59	0 58	2 99	2 12	0 68	4 43	2 29	0 75	5 05	-0 37	-0 13	-0 72	-0 38	-0 13	-0 74	-0 37	-0 12	-0 72
Perris	3 66	1 36	6 81	5 22	1 67	11 07	5 77	1 88	12 96	4 78	1 74	8 98	6 35	2 05	13 29	6 87	2 25	15 13	-1 12	-0 38	-2 17	-1 13	-0 38	-2 22	-1 10	-0 37	-2 17
Quail Valley	0 06	0 02	0 12	0 09	0 03	0 19	0 10	0 03	0 22	0 06	0 03	0 16	0 11	0 04	0 23	0 12	0 04	0 26	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04
Rancho Mirage	3 52	1 31	6 55	5 03	1 81	10 66	5 58	1 81	12 48	4 60	1 68	8 84	6 12	1 97	12 80	6 62	2 18	14 57	-1 08	-0 36	-2 09	-1 09	-0 36	-2 13	-1 06	-0 35	-2 09
Riverside	42 11	15 69	78 31	60 06	19 26	127 43	66 40	21 63	149 12	55 00	20 03	103 30	73 09	23 60	152 93	79 09	25 87	174 12	-12 89	-4 34	-24 99	-13 03	-4 34	-25 50	-12 89	-4 24	-25 00
Romoland	0 18	0 07	0 34	0 26	0 08	0 55	0 29	0 09	0 65	0 24	0 09	0 45	0 32	0 10	0 66	0 34	0 11	0 75	-0 06	-0 02	-0 11	-0 06	-0 02	-0 11	-0 05	-0 02	-0 11
Rubidoux	1 80	0 67	3 34	2 58	0 82	5 44	2 83	0 92	6 37	2 35	0 86	4 41	3 12	1 01	8 53	3 38	1 10	7 43	-0 55	-0 19	-1 07	-0 56	-0 19	-1 09	-0 54	-0 18	-1 07
San Jacinto	1 84	0 61	3 06	2 34	0 75	4 97	2 59	0 84	5 82	2 15	0 78	4 03	2 85	0 92	5 97	3 09	1 01	6 80	-0 50	-0 17	-0 98	-0 51	-0 17	-1 00	-0 50	-0 17	-0 98
Sedco Hills	0 44	0 17	0 82	0 63	0 20	1 34	0 70	0 23	1 57	0 58	0 21	1 09	0 77	0 25	1 61	0 83	0 27	1 83	-0 14	-0 05	-0 26	-0 14	-0 05	-0 27	-0 13	-0 04	-0 26
Sun City	2 66	0 99	4 94	3 79	1 21	8 04	4 19	1 36	9 40	3 47	1 28	6 51	4 61	1 49	9 64	4 99	1 63	10 98	-0 81	-0 27	-1 58	-0 82	-0 27	-1 61	-0 80	-0 27	-1 58
Sunnyslope	0 10	0 04	0 18	0 14	0 04	0 29	0 15	0 05	0 34	0 12	0 05	0 23	0 17	0 05	0 35	0 18	0 06	0 39	-0 03	-0 01	-0 06	-0 03	-0 01	-0 06	-0 03	-0 01	-0 06
Temecula	4 83	1 73	8 82	6 81	2 12	14 03	7 31	2 36	16 41	6 05	2 20	11 37	8 04	2 60	16 83	8 70	2 85	19 18	-1 42	-0 48	-2 75	-1 43	-0 48	-2 81	-1 40	-0 47	-2 75
Thousand Palms	0 07	0 03	0 13	0 10	0 03	0 22	0 11	0 04	0 25	0 09	0 03	0 18	0 12	0 04	0 26	0 13	0 04	0 30	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04	-0 02	-0 01	-0 04
Valle Vista	0 40	0 15	0 75	0 57	0 18	1 21	0 63	0 21	1 42	0 52	0 19	0 98	0 70	0 22	1 48	0 75	0 25	1 66	-0 12	-0 04	-0 24	-0 12	-0 04	-0 24	-0 12	-0 04	-0 24
Wildomar	0 97	0 36	1 81	1 39	0 44	2 94	1 53	0 50	3 45	1 27	0 46	2 39	1 69	0 55	3 53	1 83	0 60	4 02	-0 30	-0 10	-0 58	-0 30	-0 10	-0 59	-0 29	-0 10	-0 58
Winchester	0 32	0 12	0 60	0 46	0 15	0 98	0 51	0 17	1 15	0 42	0 15	0 79	0 56	0 18	1 18	0 61	0 20	1 34	-0 10	-0 03	-0 19	-0 10	-0 03	-0 20	-0 10	-0 03	-0 19
Woodcrest	0 99	0 37	1 83	1 41	0 45	2 98	1 55	0 51	3 49	1 29	0 47	2 42	1 71	0 55	3 58	1 85	0 61	4 08	-0 30	-0 10	-0 59	-0 31	-0 10	-0 60	-0 30	-0 10	-0 59
Camarillo	7 11	2 65	13 22	10 14	3 25	21 51	11 21	3 85	25 17	9 28	3 38	17 43	12 33	3 98	25 81	13 35	4 37	29 39	-2 18	-0 73	-4 22	-2 20	-0 73	-4 30	-2 14	-0 71	-4 22
Casa Conejo	0 29	0 11	0 53	0 41	0 13	0 86	0 45	0 15	1 01	0 37	0 14	0 70	0 50	0 16	1 04	0 54	0 18	1 18	-0 09	-0 03	-0 17	-0 09	-0 03	-0 17	-0 09	-0 03	-0 17
Channel Islands Beach	0 63	0 23	1 18	0 89	0 29	1 89	0 99	0 32	2 21	0 82	0 30	1 53	1 09	0 35	2 27	1 17	0 38	2 59	-0 19	-0 06	-0 37	-0 19	-0 06	-0 38	-0 19	-0 06	-0 37
El Rio	0 81	0 30	1 50	1 15	0 37	2 45	1 28	0 42	2 87	1 06	0 39	1 99	1 40	0 45	2 94	1 52	0 50	3 35	-0 25	-0 08	-0 48	-0 25	-0 08	-0 49	-0 24	-0 08	-0 48
Fillmore	0 55	0 21	1 03	0 79	0 25	1 68	0 87	0 28	1 96	0 72	0 28	1 36	0 96	0 31	2 01	1 04	0 34	2 29	-0 17	-0 06	-0 33	-0 17	-0 06	-0 34	-0 17	-0 06	-0 33
Meiners Oaks	0 35	0 13	0 66	0 50	0 16	1 07	0 56	0 18	1 25	0 46	0 17	0 87	0 61	0 20	1 29	0 66	0 22	1 46	-0 11	-0 04	-0 21	-0 11	-0 04	-0 21	-0 11	-0 04	-0 21
Mira Monte	1 01	0 38	1 87	1 44	0 46	3 05	1 59	0 52	3 58	1 31	0 48	2 47	1 75	0 58	3 86	1 89	0 62	4 16	-0 31	-0 10	-0 60	-0 31	-0 10	-0 61	-0 30	-0 10	-0 60
Moorpark	2 04	0 78	3 79	2 91	0 93	6 17	3 22	1 05	7 22	2 68	0 97	5 00	3 54	1 14	7 41	3 83	1 25	8 43	-0 82	-0 21	-1 21	-0 83	-0 21	-1 24	-0 81	-0 21	-1 21
Oak Park	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 07	0 03	0 01	0 05	0 03	0 01	0 07	0 04	0 01	0 08	-0 01	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Oak View	0 41	0 15	0 77	0 59	0 19	1 25	0 65	0 21	1 46	0 54	0 20	1 01	0 72	0 23	1 50	0 77	0 25	1 71	-0 13	-0 04	-0 24	-0 13	-0 04	-0 25	-0 12	-0 04	-0 24
Ojai	0 74	0 28	1 37	1 05	0 34	2 23	1 18	0 38	2 61	0 96	0 35	1 81	1 28	0 41	2 68	1 39	0 45	3 05	-0 23	-0 08	-0 44	-0 23	-0 08	-0 45	-0 22	-0 07	-0 44
Oxnard	17 58	6 55	32 70	25 08	8 04	53 21	27 73	9 03	62 27	22 97	8 37	43 13	30 52	9 86	63 88	33 02	10 80	72 71	-5 38	-1 81	-10 43	-5 44	-1 81	-10 85	-5 30	-1 77	-10 44
Piru	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Port Hueneme	2 32	0 86	4 31	3 30	1 06	7 01	3 65	1 19	8 20	3 02	1 10	5 68	4 02	1 30	8 41	4 35	1 42	9 57	-0 71	-0 24	-1 37	-0 72	-0 24	-1 40	-0 70	-0 23	-1 37
San Buenaventura (Ventura)	15 99	5 96	29 73	22 80	7 31	48 37	25 20	8 21	58 60	20 88	7 60	39 21	27 74	8 96	58 05	30 02	9 82	66 09	-4 89	-1 65	-9 48	-4 94	-1 65	-9 88	-4 82	-1 61	-9 49
Santa Paula	2 68	1 00	4 98	3 82	1 22	8 10	4 22	1 37	9 48	3 49	1 27	6 56	4 64	1 50	9 72	5 03	1 64	11 06	-0 82	-0 28	-1 59	-0 83	-0 28	-1 62	-0 81	-0 27	-1 59
Simi Valley	15 32	5 71	28 48	21 84	7 00	46 35	24 15	7 87	54 23	20 00	7 29	37 57	26 58	8 58	55 62	28 76	9 41	63 33	-4 69	-1 58	-9 09	-4 74	-1 58	-9 27	-4 61	-1 54	-9 09
Thousand Oaks	23 72	8 64	44 11	33 83	10 85	71 77	37 40	12 18	83 99	30 06	11 28	58 18	41 17	13 29	86 13	44 54	14 57	98 07	-7 26	-2 44	-14 07	-7 34	-2 45	-14 36	-7 15	-2 39	-14 08
Adelanto	0 57	0 21	1 05	0 81	0 28	1 72	0 89	0 29	2 01	0 74	0 27	1 39	0 98	0 32	2 06	1 06	0 35	2 34	-0 17	-0 06	-0 34	-0 18	-0 06	-0 34	-0 17	-0 06	-0 34
Apple Valley	3 70	1 38	6 87	5 27	1 69	11 18	5 83	1 90	13 09	4 83	1 78	9 06	6 41	2 07	13 42	6 94	2 27	15 28	-1 13	-0 38	-2 19	-1 14	-0 38	-2 24	-1 11	-0 37	-2 19
Barstow	2 01	0 75	3 75	2 87	0 92	6 10	3 18	1 03	7 13	2 63	0 96	4 94	3 50	1 13	7 32	3 78	1 24	8 33	-0 62	-0 21	-1 20	-0 62	-0 21	-1 22	-0 61	-0 20	-1 20
Big Bear City	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 09	0 03	0 01	0 06	0 05	0 01	0 10	0 05	0 02	0 11	-0 01	0 00	-0 02	-0 01	0 00	-0 02	-0 01	0 00	-0 02
Big Bear Lake	0 81	0 30	1 51	1 16	0 37	2 48	1 28	0 42	2 88	1 06	0 39	1 99	1 41	0 46	2 95	1 53	0 50	3 36	-0 25	-0 08	-0 48	-0 25	-0 08	-0 49	-0 24	-0 08	-0 48
Bloomington	1 64	0 61	3 05	2 34	0 75	4 06	2 58	0 84	5 80	2 14	0 78	4 02	2 84	0 92	5 95	3 06	1 01	6 77	-0 50	-0 17	-0 97	-0 51	-0 17	-0 99	-0 49	-0 16	-0 97
Chino	8 80	3 28	16 36	12 54	4 02	26 81	13 87	4 52	31 14	11 49	4 18	21 57	15 26	4 93	31 94	16 52	5 40	36 37	-2 69	-0 91	-5 22	-2 72	-0 91	-5 33	-2 65	-0 88	-5 22
Chino Hills	3 32	1 24	6 17	4 73	1 52	10 04	5 23	1 70	11 74	4 33	1 58	8 14	5 78	1 86	12 04	6 23	2 04	13 71	-1 02	-0 34	-1 97	-1 03	-0 34	-2 01	-1 00	-0 33	-1 97
Colton	6 56	2 44	12 20	9 36	3 00	19 85	10 34	3 37	23 23	8 57	3 12	16 09	11 39	3 68	23 83	12 32	4 03	27 13	-2 01	-0 68	-3 89	-2 03	-0 68	-3 97	-1 98	-0 66	-3 89
Crestline	0 20	0 08	0 38	0 29	0 09	0 61	0 32	0 10	0 72	0 27	0 10	0 50	0 35	0 11	0 74	0 38	0 12	0 84	-0 06	-0 02	-0 12	-0 06	-0 02	-0 12	-0 06	-0 02	-0 12
Fontana	12 17	4 54	22 63	17 38	6 57	38 83	19 19	6 25	43 10	15 90	5 79	29 86	21 13	6 82	44 20	22 86	7 48	50 33	-3 73	-1 25	-7 22	-3 78	-1 26	-7 37	-3 67	-1 22	-7 23
Grand Terrace	5 12	1 91	9 53	7 31	2 34	15 50	8 08	2 63	18 14	6 69	2 44	12 57	8 89	2 87	18 61	9 62	3 15	21 18	-1 57	-0 53	-3 04	-1 58	-0 53	-3 10	-1 54	-0 52	-3 04
Hesperia	4 49	1 67	8 35	6 40	2 05	13 58	7 08	2 31	15 90	5 86	2 14	11 01	7 79	2 52	16 30	8 43	2 76	18 58	-1 37	-0 46	-2 86	-1 39	-0 46	-2 72	-1 35	-0 45	-2 67
Highland	2 48	0 92	4 61	3 54	1 13	7 50	3 91	1 27	8 78	3 24	1 18	8 08	4 30	1 39	9 00	4 66	1 52	10 25	-0 76	-0 26	-1 47	-0 77	-0 26	-1 50	-0 75	-0 25	-1 47
Joshua Tree	0 06	0 03	0 14	0 11	0 04	0 23	0 12	0 04	0 27	0 10	0 04	0 19	0 13	0 04	0 29	0 14	0 05	0 32	-0 02	-0 01	-0 05	-0 02	-0 01	-0 05	-0 02	-0 01	-0 05
Lake Arrowhead	0 14	0 05	0 28	0 20	0 06	0 43	0 22	0 07	0 50	0 18	0 07	0 35	0 25	0 08	0 51	0 27	0 09	0 58	-0 04	-0 01	-0 08	-0 04	-0 01	-0 09	-0 04	-0 01	-0 08
Lenwood	0 02	0 01	0 03	0 02	0 01	0 05	0 03	0 01	0 06	0 02	0 01	0 04	0 03	0 01	0 08	0 03	0 01	0 07	-0 01	0 00	-0 01	-0 01	0 00	-0 01	0 00	0 00	-0 01
Loma Linda	1 50	0 56	2 79	2 14	0 69	4 54	2 38	0 77	5 31	1 96	0 71	3 68	2 60	0 84	5 44	2 82	0 92	6 20	-0 48	-0 15	-0 89	-0 48	-0 15	-0 91	-0 45	-0 15	-0 89
Mentone	0 13	0 05	0 25	0 19	0 06	0 40	0 21	0 07	0 47	0 17	0 06	0 32	0 23	0 07	0 48	0 25	0 08	0 55	-0 04	-0 01	-0 08	-0 04	-0 01	-0 08	-0 04	-0 01	-0 08
Montclair	12 31	4 59	22 86	17 58	5 83	37 25	19 41	6 32	43 59	16 08	5 86	30 20	21 37	6 90	44 71	23 12	7 58	50 90	-3 77	-1 27	-7 30	-3 81	-1 27	-7 45	-3 71	-1 24	-7 31
Morongo Valley	0 01	0 00	0 02	0 02	0 01	0 04	0 02	0 01	0 04	0 02	0 01	0 03	0 02	0 01	0 04	0 02	0 01	0 05	0 00	0 00	-0 01	0 00	0 00	-0 01	0 00	0 00	-0 01
Mountain View Acres	0 52	0 19	0 96	0 74	0 24	1 57	0 82	0 27	1 84	0 68	0 25	1 27	0 90	0 29	1 88	0 97	0 32	2 14	-0 16	-0 05	-0 31	-0 16	-0 05	-0 31	-0 16	-0 05	-0 31
Muscoy	0 20	0 07	0 37	0 29	0 09	0 61	0 32	0 10	0 71	0 26	0 10	0 49	0 35	0 11	0 73	0 38	0 12	0 83	-0 06	-0 02	-0 12	-0 06	-0 02	-0 12	-0 06	-0 02	-0 12
Nebo Center	0 02	0 01	0 04	0 03	0 01	0 07	0 04	0 01	0 08	0 03	0 01	0 06	0 04	0 01	0 09	0 04	0 01	0 09	-0 01	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 01
Ontario	23 85	8 89	44 35	34 02	10 91	72 17	37 60	12 25	84 45	31 15	11 35	58 50	41 39	13 37	86 81	44 79	14 85	98 81	-7 30	-2 46	-14 15	-7 38	-2 48	-14 44	-7 18	-2 40	-14 16
Rancho Cucamonga	14 67	5 47	27 28	20 93	6 71	44 40	23 13	7 54	51 95	19 16	6 98	35 99	25 48	8 22	53 28	27 55	9 01	60 68	-4 49	-1 51	-8 70	-4 54	-1 51	-8 88	-4 42	-1 48	-8 71
Redlands	9 82	3 66	18 26	14 01	4 49	29 72	15 48	5 05	34 77	12 83	4 67	24 09	17 04	5 50	35 66	18 44	6 03	40 61	-3 01	-1 01	-5 83	-3 04	-1 01	-5 95	-2 98	-0 99	-5 83
Rialto	7 43	2 77	13 82	10 60	3 40	22 48	11 71	3 82	26 31	9 70	3 53	18 22	12 90	4 16	26 98	13 95	4 56	30 72	-2 27	-0 77	-4 41	-2 30	-0 77	-4 50	-2 24	-0 75	-4 41
Running Springs	0 03	0 01	0 06	0 05	0 01	0 10	0 05	0 02	0 11	0 04	0 02	0 09	0 06	0 02	0 12	0 06	0 02	0 13	-0 01	0 00	-0 02	-0 01	0 00	-0 02	-0 01	0 00	-0 02
San Antonio Heights	0 12	0 04	0 22	0 17	0 05	0 35	0 18	0 06	0 41	0 15	0 06	0 28	0 20	0 06	0 42	0 22	0 07	0 48	-0 04	-0 01	-0 07	-0 04	-0 01	-0 07	-0 03	-0 01	-0 07
San Bernardino	27 85	10 30	51 41	39 43	12 64	83 66	43 59	14 20	97 90	36 11	13 15	87 81	47 98	15 50	100 40	51 92	16 98	114 31	-8 46	-2 85	-18 40	-8 55	-2 85	-18 74	-8 33	-2 78	-18 41
Twentynine Palms	1 13	0 42	2 09	1 60	0 51	3 40	1 77	0 58	3 98	1 47	0 54	2 76	1 95	0 63	4 09	2 11	0 69	4 65	-0 34	-0 12	-0 67	-0 35	-0 12	-0 68	-0 34	-0 11	-0 67
Twentynine Palms Base	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Upland	11 83	4 33	21 62	16 58	5 32	35 18	18 33	5 97	41 17	15 19	5 53	28 52	20 18	6 52	42 22	21 83	7 14	48 07	-3 58	-1 20	-8 90	-3 60	-1 20	-7 04	-3 50	-1 17	-8 90
Victorville	10 35	3 86	19 24	14 78	4 73	31 32	16 32	5 32	36 64	13 52	4 92	25 36	17 96	5 80	37 58	19 43	6 36	42 79	-3 17	-1 07	-8 14	-3 20	-1 07	-8 27	-3 12	-1 04	-8 14
Wrightwood	0 06	0 03	0 15	0 11	0 04	0 24	0 12	0 04	0 26	0 10	0 04	0 19	0 14	0 04	0 28	0 15	0 05	0 32	-0 02	-0 01	-0 05	-0 02	-0 01	-0 05	-0 02	-0 01	-0 05
Yucaipa	2 96	1 10	5 51	4 23	1 36	8 97	4 67	1 52	10 49	3 87	1 41	7 27	5 14	1 68	10 78	5 57	1 82	12 25	-0 91	-0 31	-1 78	-0 92	-0 31	-1 79	-0 89	-0 30	-1 78
Yucca Valley	1 15	0 43	2 13	1 63	0 52	3 47	1 81	0 59	4 06	1 50	0 54	2 81	1 99	0 64	4 18	2 15	0 70	4 74	-0 35	-0 12	-0 68	-0 35	-0 12	-0 69	-0 35	-0 12	-0 68
LOS ANGELES - UNINCOR	25 04	9 33	46 57	35 72	11 45	75 78	39 49	12 87	88 58	32 71	11 91	61 43	43 47	14 04	90 95	47 03	15 39	103 55	-7 66	-2 58	-14 86	-7 75	-2 58	-15 18	-7 54	-2 52	-14 87
ORANGE - UNINCOR	15 17	5 65	28 20	21 83	6 94	45 90	23 91	7 79	53 71	19 81	7 22	37 20	26 32	8 50	55 08	28 48	9 32	62 71	-4 64	-1 56	-9 00	-4 69	-1 56	-9 18	-4 57	-1 53	-9 00
RIVERSIDE - UNINCOR	20 74	7 73	38 57	29 58	9 48	62 76	32 70	10 65	73 44	27 09	9 87	50 87	35 99	11 62	75 31	38 95	12 74	85 75	-8 35	-2 14	-12 31	-8 42	-2 14	-12 56	-8 25	-2 09	-12 31
SAN BERNARDINO - UNINCOR	20 82	7 69	38 35	29 41	9 43	62 41	32 52	10 60	73 03	26 94	9 81	50 59	35 79	11 56	74 89	38 73	12 67	85 27	-8 31	-2 13	-12 24	-8 38	-2 13	-12 49	-8 21	-2 07	-12 24
VENTURA - UNINCOR	14 51	5 41	26 99	20 70	6 84	43 92	22 86	7 46	51 39	18 95	6 90	35 60	25 19	8 13	52 70	27 25	8 92	60 01	-4 44	-1 50	-8 61	-4 49	-1 50	-8 79	-4 37	-1 46	-8 62
Total	2210	824	4110	3152	1011	6688	3485	1135	7826	2887	1051	5421	3836	1239	8026	4151	1358	9138	-676 43	-227 82	-1311 35	-683 65	-228 01	-1338 14	-665 84	-222 30	-1312 11

Table A15. Annual Induced Impacts (Year 16 -Year 20)

(Millions of $ 1999)

Stimulus Effects

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Agoura Hills	0.28	0.09	0.50	0.37	0.12	0.77	0.38	0.12	0.78
Alhambra	1.62	0.58	3.06	2.27	0.74	4.68	2.19	0.72	4.75
Alondra Park	0.06	0.03	0.16	0.12	0.04	0.24	0.11	0.04	0.24
Altadena	0.41	0.15	0.77	0.57	0.19	1.18	0.55	0.18	1.20
Arcadia	1.49	0.54	2.82	2.10	0.69	4.32	2.02	0.67	4.39
Artesia	0.69	0.25	1.30	0.96	0.31	1.99	0.93	0.31	2.02
Avocado Heights	0.25	0.09	0.48	0.36	0.12	0.74	0.34	0.11	0.75
Azusa	0.70	0.25	1.33	0.99	0.32	2.04	0.96	0.31	2.07
Baldwin Park	0.76	0.27	1.44	1.07	0.35	2.21	1.03	0.34	2.24
Bell	0.60	0.21	1.13	0.84	0.27	1.73	0.81	0.27	1.76
Bellflower	1.18	0.42	2.23	1.68	0.54	3.41	1.60	0.53	3.46
Bell Gardens	0.49	0.18	0.92	0.69	0.22	1.42	0.66	0.22	1.44
Beverly Hills	2.27	0.82	4.30	3.20	1.04	8.58	3.08	1.02	6.68
Bradbury	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07
Burbank	2.71	0.97	5.12	3.81	1.24	7.84	3.87	1.21	7.96
Calabasas	0.09	0.03	0.17	0.13	0.04	0.26	0.12	0.04	0.28
Carson	1.67	0.60	3.16	2.35	0.77	4.84	2.27	0.75	4.91
Cerritos	1.58	0.56	2.95	2.19	0.72	4.52	2.12	0.70	4.59
Charter Oak	0.15	0.05	0.28	0.21	0.07	0.43	0.20	0.07	0.43
Citrus	0.08	0.03	0.16	0.12	0.04	0.25	0.11	0.04	0.25
Claremont	0.81	0.29	1.54	1.14	0.37	2.35	1.10	0.36	2.39
Commerce	0.80	0.29	1.50	1.12	0.36	2.30	1.08	0.36	2.34
Compton	1.17	0.42	2.20	1.64	0.54	3.38	1.58	0.52	3.43
Covina	1.29	0.46	2.44	1.81	0.59	3.73	1.75	0.58	3.79
Cudahy	0.26	0.09	0.50	0.37	0.12	0.76	0.36	0.12	0.78
Culver City	2.09	0.75	3.96	2.94	0.96	6.06	2.84	0.94	6.16
Del Aire	0.20	0.07	0.38	0.28	0.09	0.58	0.27	0.09	0.58
Desert View Highlands	0.02	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04
Diamond Bar	0.63	0.22	1.18	0.88	0.29	1.81	0.85	0.28	1.84
Downey	1.86	0.67	3.52	2.61	0.85	5.38	2.52	0.83	5.46
Duarte	0.40	0.14	0.76	0.56	0.18	1.16	0.54	0.18	1.17
East Compton	0.04	0.02	0.08	0.06	0.02	0.13	0.06	0.02	0.13
East La Mirada	0.10	0.04	0.19	0.14	0.05	0.29	0.14	0.04	0.30
East Los Angeles	1.25	0.45	2.35	1.75	0.57	3.61	1.69	0.56	3.66
East Pasadena	0.43	0.15	0.80	0.60	0.20	1.23	0.58	0.19	1.25
East San Gabriel	0.26	0.09	0.50	0.37	0.12	0.76	0.36	0.12	0.78
El Monte	1.80	0.64	3.39	2.52	0.82	5.20	2.43	0.80	5.27
El Segundo	0.53	0.19	1.00	0.75	0.24	1.54	0.72	0.24	1.56
Florence-Graham	0.42	0.15	0.79	0.59	0.19	1.21	0.57	0.19	1.23
Gardena	1.34	0.48	2.53	1.88	0.61	3.87	1.81	0.60	3.93
Glendale	5.04	1.81	9.52	7.06	2.31	14.58	6.83	2.25	14.80
Glendora	0.97	0.35	1.83	1.36	0.44	2.80	1.31	0.43	2.84
Hacienda Heights	0.63	0.23	1.19	0.89	0.29	1.83	0.86	0.28	1.85
Hawaiian Gardens	0.20	0.07	0.38	0.26	0.09	0.58	0.27	0.09	0.59
Hawthorne	1.32	0.47	2.50	1.86	0.61	3.82	1.79	0.59	3.88
Hermosa Beach	0.65	0.24	1.24	0.92	0.30	1.90	0.89	0.29	1.92
Hidden Hills	0.02	0.01	0.05	0.03	0.01	0.07	0.03	0.01	0.07
Huntington Park	1.09	0.39	2.07	1.54	0.50	3.16	1.48	0.49	3.21
Industry	1.77	0.64	3.34	2.49	0.81	5.12	2.40	0.79	5.20
Inglewood	2.12	0.76	4.00	2.98	0.97	6.13	2.87	0.95	6.22
Irwindale	0.05	0.02	0.10	0.08	0.02	0.16	0.07	0.02	0.16
La Canada Flintridge	0.37	0.13	0.69	0.52	0.17	1.06	0.50	0.16	1.08
La Crescenta-Montrose	0.29	0.11	0.56	0.41	0.14	0.85	0.40	0.13	0.87
Ladera Heights	0.10	0.04	0.19	0.14	0.05	0.29	0.14	0.04	0.30
La Habra Heights	0.10	0.04	0.19	0.14	0.05	0.29	0.13	0.04	0.29
Lake Los Angeles	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03
Lakewood	1.78	0.64	3.37	2.51	0.82	5.16	2.42	0.80	5.24
La Mirada	0.68	0.24	1.29	0.96	0.31	1.97	0.92	0.30	2.00
Lancaster	1.63	0.59	3.08	2.29	0.75	4.72	2.21	0.73	4.79
La Puente	0.45	0.16	0.86	0.64	0.21	1.31	0.62	0.20	1.33
La Verne	0.55	0.20	1.05	0.78	0.25	1.61	0.75	0.25	1.63
Lawndale	0.51	0.18	0.95	0.71	0.23	1.46	0.68	0.23	1.48
Lennox	0.25	0.09	0.47	0.35	0.11	0.72	0.34	0.11	0.74
Littlerock	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01
Lomita	0.46	0.16	0.87	0.65	0.21	1.33	0.62	0.21	1.35
Long Beach	7.30	2.62	13.81	10.27	3.35	21.15	9.90	3.26	21.46
Los Angeles	78.49	27.48	144.59	107.50	35.09	221.43	103.69	34.18	224.75
Lynwood	0.58	0.21	1.10	0.82	0.27	1.68	0.79	0.26	1.71
Malibu	0.13	0.05	0.24	0.18	0.06	0.37	0.18	0.06	0.38
Manhattan Beach	1.11	0.40	2.10	1.58	0.51	3.22	1.51	0.50	3.27
Marina del Rey	0.44	0.16	0.83	0.62	0.20	1.27	0.60	0.20	1.29
Mayflower Village	0.04	0.01	0.08	0.06	0.02	0.12	0.06	0.02	0.12
Maywood	0.33	0.12	0.63	0.47	0.15	0.96	0.45	0.15	0.97
Monrovia	1.00	0.36	1.88	1.40	0.46	2.88	1.35	0.44	2.92
Montebello	1.44	0.52	2.72	2.02	0.66	4.17	1.95	0.64	4.23
Monterey Park	1.06	0.38	2.01	1.49	0.49	3.07	1.44	0.47	3.12
North El Monte	0.03	0.01	0.06	0.05	0.02	0.10	0.05	0.02	0.10
Norwalk	1.33	0.48	2.51	1.87	0.61	3.84	1.80	0.59	3.90
Palmdale	1.25	0.45	2.37	1.78	0.58	3.83	1.70	0.58	3.88
Palos Verdes Estates	0.09	0.03	0.16	0.12	0.04	0.25	0.12	0.04	0.25
Paramount	0.62	0.22	1.17	0.87	0.28	1.79	0.84	0.28	1.82
Pasadena	4.02	1.44	7.59	5.65	1.84	11.63	5.45	1.79	11.81
Pico Rivera	0.89	0.32	1.69	1.25	0.41	2.58	1.21	0.40	2.62
Pomona	2.25	0.81	4.26	3.17	1.03	6.52	3.05	1.01	6.62
Quartz Hill	0.06	0.02	0.11	0.08	0.03	0.16	0.08	0.03	0.17
Rancho Palos Verdes	0.51	0.18	0.96	0.71	0.23	1.47	0.69	0.23	1.49
Redondo Beach	1.60	0.58	3.03	2.25	0.74	4.64	2.17	0.72	4.71
Rolling Hills	0.01	0.00	0.02	0.01	0.00	0.03	0.01	0.00	0.03
Rolling Hills Estates	0.16	0.06	0.29	0.22	0.07	0.45	0.21	0.07	0.46
Rosemead	0.64	0.23	1.22	0.90	0.30	1.86	0.87	0.29	1.89
Rowland Heights	0.90	0.32	1.70	1.26	0.41	2.60	1.22	0.40	2.64
San Dimas	0.64	0.23	1.20	0.89	0.29	1.84	0.86	0.28	1.87
San Fernando	0.64	0.23	1.21	0.90	0.29	1.86	0.87	0.29	1.89
San Gabriel	0.84	0.30	1.60	1.19	0.39	2.45	1.15	0.38	2.48
San Marino	0.16	0.06	0.30	0.23	0.07	0.47	0.22	0.07	0.47
Santa Clarita	1.90	0.68	3.59	2.67	0.87	5.50	2.58	0.85	5.58
Santa Fe Springs	0.61	0.22	1.15	0.85	0.28	1.76	0.82	0.27	1.79

Impacts of Household Expenditure Reduction

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0.01	0.00	0.02	0.01	0.00	0.02	0.01	0.00	0.03
Agoura Hills	2.40	0.87	4.51	3.19	1.03	6.87	3.45	1.13	7.60
Alhambra	14.69	5.35	27.59	19.52	6.30	40.65	21.12	6.91	46.51
Alondra Park	0.78	0.28	1.42	1.01	0.32	2.10	1.09	0.36	2.40
Altadena	3.70	1.35	6.94	4.91	1.58	10.28	5.31	1.74	11.70
Arcadia	13.58	4.94	25.46	18.01	5.82	37.69	19.49	6.38	42.91
Artesia	6.23	2.27	11.69	8.27	2.67	17.31	8.95	2.93	19.71
Avocado Heights	2.31	0.84	4.33	3.07	0.99	6.41	3.32	1.09	7.30
Azusa	6.40	2.33	12.02	8.50	2.75	17.79	9.20	3.01	20.26
Baldwin Park	6.92	2.52	12.99	9.19	2.97	19.23	9.95	3.25	21.90
Bell	5.43	1.98	10.19	7.21	2.33	15.09	7.80	2.55	17.18
Bellflower	10.70	3.90	20.10	14.22	4.59	29.75	15.39	5.03	33.87
Bell Gardens	4.44	1.62	8.34	5.90	1.91	12.35	6.38	2.09	14.06
Beverly Hills	20.64	7.52	38.77	27.43	8.86	57.39	29.68	9.71	65.35
Bradbury	0.21	0.08	0.40	0.28	0.09	0.59	0.31	0.10	0.67
Burbank	24.60	8.96	46.19	32.68	10.55	68.39	35.37	11.57	77.86
Calabasas	0.81	0.30	1.53	1.08	0.35	2.26	1.17	0.38	2.58
Carson	15.17	5.53	28.50	20.17	6.51	42.19	21.82	7.14	48.04
Cerritos	14.17	5.16	26.62	18.83	6.08	39.41	20.38	6.67	44.87
Charter Oak	1.34	0.49	2.52	1.78	0.58	3.73	1.93	0.63	4.24
Citrus	0.77	0.28	1.44	1.02	0.33	2.14	1.10	0.36	2.43
Claremont	7.38	2.69	13.86	9.80	3.17	20.52	10.61	3.47	23.36
Commerce	7.22	2.63	13.58	9.60	3.10	20.08	10.38	3.40	22.86
Compton	10.59	3.86	19.88	14.07	4.54	29.44	15.22	4.98	33.52
Covina	11.71	4.26	21.98	15.58	5.02	32.55	16.83	5.51	37.06
Cudahy	2.40	0.87	4.50	3.19	1.03	6.67	3.45	1.13	7.59
Culver City	19.02	6.93	35.72	25.27	8.18	52.88	27.35	8.95	60.21
Del Aire	1.81	0.66	3.39	2.40	0.78	5.02	2.60	0.85	5.72
Desert View Highlands	0.14	0.05	0.26	0.18	0.06	0.38	0.20	0.06	0.43
Diamond Bar	5.69	2.07	10.68	7.56	2.44	15.82	8.16	2.68	18.01
Downey	16.88	6.15	31.70	22.43	7.24	46.94	24.27	7.94	53.44
Duarte	3.63	1.32	6.82	4.82	1.56	10.09	5.22	1.71	11.49
East Compton	0.39	0.14	0.74	0.52	0.17	1.10	0.57	0.19	1.25
East La Mirada	0.91	0.33	1.72	1.22	0.39	2.54	1.32	0.43	2.90
East Los Angeles	11.31	4.12	21.23	15.02	4.85	31.44	16.26	5.32	35.79
East Pasadena	3.87	1.41	7.26	5.14	1.66	10.75	5.56	1.82	12.24
East San Gabriel	2.39	0.87	4.50	3.18	1.03	6.66	3.44	1.13	7.58
El Monte	16.30	5.94	30.61	21.66	6.99	45.31	23.43	7.67	51.59
El Segundo	4.82	1.75	9.04	6.40	2.07	13.39	6.92	2.27	15.25
Florence-Graham	3.81	1.39	7.15	5.06	1.63	10.58	5.47	1.79	12.05
Gardena	12.15	4.42	22.81	16.14	5.21	33.77	17.46	5.71	38.45
Glendale	45.72	16.65	85.87	60.78	19.62	127.13	65.74	21.51	144.75
Glendora	8.79	3.20	16.51	11.68	3.77	24.44	12.64	4.13	27.83
Hacienda Heights	5.73	2.09	10.76	7.61	2.46	15.93	8.24	2.69	18.13
Hawaiian Gardens	1.82	0.66	3.42	2.42	0.78	5.07	2.62	0.86	5.77
Hawthorne	11.99	4.37	22.52	15.93	5.15	33.34	17.24	5.64	37.96
Hermosa Beach	5.95	2.17	11.17	7.90	2.55	16.53	8.55	2.80	18.82
Hidden Hills	0.23	0.08	0.42	0.30	0.10	0.63	0.32	0.11	0.71
Huntington Park	9.92	3.61	18.63	13.18	4.26	27.59	14.27	4.67	31.41
Industry	16.06	5.85	30.17	21.34	6.89	44.66	23.10	7.55	50.85
Inglewood	19.22	7.00	36.10	25.55	8.25	53.45	27.64	9.04	60.86
Irwindale	0.49	0.18	0.93	0.66	0.21	1.37	0.71	0.23	1.56
La Canada Flintridge	3.34	1.21	6.26	4.43	1.43	9.27	4.80	1.57	10.56
La Crescenta-Montrose	2.68	0.98	5.03	3.56	1.15	7.44	3.85	1.26	8.46
Ladera Heights	0.91	0.33	1.71	1.21	0.39	2.54	1.31	0.43	2.89
La Habra Heights	0.90	0.33	1.69	1.20	0.39	2.50	1.30	0.42	2.85
Lake Los Angeles	0.10	0.04	0.18	0.13	0.04	0.27	0.14	0.05	0.30
Lakewood	16.19	5.90	30.41	21.52	6.95	45.03	23.29	7.62	51.27
La Mirada	6.19	2.25	11.62	8.22	2.66	17.21	8.90	2.91	19.59
Lancaster	14.81	5.39	27.81	19.68	6.36	41.18	21.30	6.97	46.88
La Puente	4.12	1.50	7.74	5.47	1.77	11.45	5.92	1.94	13.04
La Verne	5.03	1.83	9.45	6.69	2.16	14.00	7.24	2.37	15.94
Lawndale	4.59	1.67	8.61	6.09	1.97	12.75	6.59	2.16	14.52
Lennox	2.27	0.83	4.26	3.02	0.97	6.31	3.27	1.07	7.19
Littlerock	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.07
Lomita	4.17	1.52	7.83	5.54	1.79	11.59	5.99	1.96	13.19
Long Beach	68.31	24.15	124.54	68.12	28.46	184.38	95.35	31.19	209.93
Los Angeles	694.39	252.94	1304.12	922.76	297.99	1930.76	998.47	326.61	2198.29
Lynwood	5.26	1.92	9.91	7.01	2.27	14.68	7.59	2.48	16.71
Malibu	1.17	0.43	2.20	1.56	0.50	3.26	1.69	0.55	3.71
Manhattan Beach	10.10	3.68	18.96	13.42	4.33	28.07	14.52	4.75	31.96
Marina del Rey	3.99	1.45	7.50	5.30	1.71	11.10	5.74	1.88	12.64
Mayflower Village	0.37	0.13	0.69	0.49	0.16	1.03	0.53	0.17	1.17
Maywood	3.01	1.10	5.66	4.00	1.29	8.38	4.33	1.42	9.54
Monrovia	9.04	3.29	16.97	12.01	3.88	25.12	12.99	4.25	28.61
Montebello	13.06	4.76	24.54	17.38	5.61	36.33	18.79	6.15	41.36
Monterey Park	9.63	3.51	18.09	12.80	4.13	26.78	13.85	4.53	30.49
North El Monte	0.31	0.11	0.57	0.41	0.13	0.85	0.44	0.14	0.97
Norwalk	12.05	4.39	22.83	16.01	5.17	33.51	17.33	5.67	38.15
Palmdale	11.36	4.15	21.37	15.12	4.88	31.84	16.36	5.35	36.03
Palos Verdes Estates	0.78	0.28	1.46	1.03	0.33	2.16	1.12	0.37	2.46
Paramount	5.62	2.05	10.56	7.47	2.41	15.63	8.08	2.64	17.80
Pasadena	36.47	13.29	68.50	48.47	15.65	101.41	52.44	17.16	115.47
Pico Rivera	8.10	2.95	15.22	10.77	3.48	22.53	11.65	3.81	25.66
Pomona	20.45	7.45	38.41	27.18	8.78	56.87	29.41	9.62	64.75
Quartz Hill	0.51	0.19	0.96	0.68	0.22	1.43	0.74	0.24	1.63
Rancho Palos Verdes	4.61	1.68	8.65	6.12	1.98	12.81	6.62	2.17	14.58
Redondo Beach	14.56	5.30	27.33	19.34	6.25	40.47	20.93	6.85	46.07
Rolling Hills	0.10	0.03	0.18	0.13	0.04	0.27	0.14	0.05	0.30
Rolling Hills Estates	1.41	0.51	2.65	1.88	0.61	3.93	2.03	0.66	4.48
Rosemead	5.64	2.13	10.97	7.78	2.51	16.25	8.40	2.75	18.50
Rowland Heights	8.15	2.97	15.31	10.83	3.50	22.67	11.72	3.83	25.81
San Dimas	5.77	2.10	10.83	7.66	2.47	16.03	8.29	2.71	18.25
San Fernando	5.83	2.12	10.95	7.75	2.50	16.21	8.38	2.74	18.46
San Gabriel	7.67	2.79	14.41	10.19	3.29	21.33	11.03	3.61	24.28
San Marino	1.46	0.53	2.74	1.94	0.63	4.06	2.10	0.69	4.62
Santa Clarita	17.25	6.29	32.41	22.93	7.40	47.98	24.81	8.12	54.62
Santa Fe Springs	5.52	2.01	10.37	7.33	2.37	15.35	7.94	2.60	17.47

Net Impacts

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Agoura Hills	-2.14	-0.78	-4.01	-2.82	-0.91	-5.91	-3.09	-1.01	-6.82
Alhambra	-13.07	-4.77	-24.53	-17.25	-5.56	-36.16	-18.93	-6.19	-41.75
Alondra Park	-0.67	-0.25	-1.26	-0.89	-0.29	-1.86	-0.98	-0.32	-2.15
Altadena	-3.29	-1.20	-6.17	-4.34	-1.40	-9.10	-4.78	-1.56	-10.51
Arcadia	-12.06	-4.40	-22.64	-15.92	-5.13	-33.37	-17.47	-5.71	-38.53
Artesia	-5.54	-2.02	-10.40	-7.31	-2.36	-15.33	-8.02	-2.62	-17.70
Avocado Heights	-2.05	-0.75	-3.85	-2.71	-0.87	-5.68	-2.97	-0.97	-6.56
Azusa	-5.69	-2.08	-10.69	-7.51	-2.42	-15.75	-8.25	-2.70	-18.19
Baldwin Park	-6.16	-2.25	-11.55	-8.12	-2.62	-17.03	-8.91	-2.91	-19.66
Bell	-4.83	-1.76	-9.06	-6.37	-2.05	-13.36	-6.99	-2.29	-15.43
Bellflower	-9.52	-3.47	-17.87	-12.56	-4.05	-26.34	-13.79	-4.51	-30.41
Bell Gardens	-3.95	-1.44	-7.41	-5.21	-1.68	-10.93	-5.72	-1.87	-12.62
Beverly Hills	-18.37	-6.70	-34.47	-24.23	-7.81	-50.81	-26.60	-8.69	-58.67
Bradbury	-0.19	-0.07	-0.35	-0.25	-0.08	-0.52	-0.27	-0.09	-0.60
Burbank	-21.89	-7.99	-41.07	-28.86	-9.31	-60.54	-31.69	-10.36	-69.90
Calabasas	-0.72	-0.26	-1.36	-0.96	-0.31	-2.00	-1.05	-0.34	-2.31
Carson	-13.50	-4.93	-25.34	-17.82	-5.75	-37.35	-19.55	-6.39	-43.13
Cerritos	-12.61	-4.60	-23.67	-16.64	-5.37	-34.89	-18.26	-5.97	-40.28
Charter Oak	-1.19	-0.44	-2.24	-1.57	-0.51	-3.30	-1.73	-0.56	-3.81
Citrus	-0.68	-0.25	-1.28	-0.90	-0.29	-1.89	-0.99	-0.32	-2.18
Claremont	-6.57	-2.40	-12.32	-8.66	-2.79	-18.16	-9.51	-3.11	-20.97
Commerce	-6.43	-2.35	-12.06	-8.48	-2.73	-17.78	-9.31	-3.04	-20.53
Compton	-9.42	-3.44	-17.68	-12.43	-4.01	-26.06	-13.64	-4.46	-30.09
Covina	-10.42	-3.80	-19.55	-13.74	-4.43	-28.81	-15.08	-4.93	-33.27
Cudahy	-2.13	-0.78	-4.00	-2.81	-0.91	-5.90	-3.09	-1.01	-6.81
Culver City	-16.92	-6.18	-31.76	-22.33	-7.20	-46.82	-24.51	-8.01	-54.05
Del Aire	-1.61	-0.59	-3.02	-2.12	-0.68	-4.45	-2.33	-0.76	-5.13
Desert View Highlands	-0.12	-0.04	-0.23	-0.16	-0.05	-0.34	-0.18	-0.06	-0.39
Diamond Bar	-5.06	-1.85	-9.50	-6.68	-2.15	-14.01	-7.33	-2.40	-16.17
Downey	-15.02	-5.48	-28.19	-19.82	-6.39	-41.55	-21.75	-7.11	-47.98
Duarte	-3.23	-1.16	-6.06	-4.26	-1.37	-8.94	-4.68	-1.53	-10.32
East Compton	-0.35	-0.13	-0.66	-0.46	-0.15	-0.97	-0.51	-0.17	-1.12
East La Mirada	-0.81	-0.30	-1.53	-1.07	-0.35	-2.25	-1.16	-0.39	-2.60
East Los Angeles	-10.06	-3.67	-18.88	-13.27	-4.28	-27.83	-14.57	-4.78	-32.13
East Pasadena	-3.44	-1.26	-6.46	-4.54	-1.46	-9.52	-4.98	-1.63	-10.99
East San Gabriel	-2.13	-0.78	-4.00	-2.81	-0.91	-5.90	-3.09	-1.01	-6.81
El Monte	-14.50	-5.29	-27.21	-19.13	-6.17	-40.12	-21.00	-6.86	-46.32
El Segundo	-4.29	-1.56	-8.04	-5.65	-1.82	-11.85	-6.21	-2.03	-13.69
Florence-Graham	-3.39	-1.24	-6.36	-4.47	-1.44	-9.37	-4.90	-1.60	-10.82
Gardena	-10.81	-3.94	-20.28	-14.26	-4.60	-29.90	-15.65	-5.12	-34.52
Glendale	-40.69	-14.85	-76.35	-53.88	-17.31	-112.55	-58.92	-19.26	-129.95
Glendora	-7.82	-2.85	-14.68	-10.32	-3.33	-21.64	-11.33	-3.70	-24.98
Hacienda Heights	-5.10	-1.86	-9.57	-6.73	-2.17	-14.10	-7.38	-2.41	-16.28
Hawaiian Gardens	-1.62	-0.59	-3.04	-2.14	-0.69	-4.49	-2.35	-0.77	-5.18
Hawthorne	-10.67	-3.89	-20.02	-14.08	-4.54	-29.52	-15.45	-5.05	-34.08
Hermosa Beach	-5.29	-1.93	-9.93	-6.98	-2.25	-14.64	-7.66	-2.50	-16.90
Hidden Hills	-0.20	-0.07	-0.38	-0.26	-0.09	-0.55	-0.29	-0.09	-0.64
Huntington Park	-8.83	-3.22	-16.57	-11.65	-3.76	-24.42	-12.78	-4.18	-28.20
Industry	-14.29	-5.22	-26.82	-18.86	-6.08	-39.54	-20.70	-6.76	-45.65
Inglewood	-17.11	-6.24	-32.10	-22.57	-7.28	-47.32	-24.77	-8.10	-54.64
Irwindale	-0.44	-0.16	-0.82	-0.58	-0.19	-1.22	-0.64	-0.21	-1.40
La Canada Flintridge	-2.97	-1.08	-5.57	-3.92	-1.26	-8.21	-4.30	-1.40	-9.48
La Crescenta-Montrose	-2.36	-0.87	-4.47	-3.14	-1.01	-6.59	-3.45	-1.13	-7.81
Ladera Heights	-0.81	-0.30	-1.52	-1.07	-0.35	-2.25	-1.16	-0.38	-2.59
La Habra Heights	-0.80	-0.29	-1.50	-1.06	-0.34	-2.22	-1.16	-0.38	-2.56
Lake Los Angeles	-0.09	-0.03	-0.16	-0.11	-0.04	-0.24	-0.12	-0.04	-0.27
Lakewood	-14.41	-5.26	-27.04	-19.01	-6.13	-39.86	-20.87	-6.82	-46.02
La Mirada	-5.51	-2.01	-10.33	-7.27	-2.34	-15.23	-7.97	-2.61	-17.59
Lancaster	-13.18	-4.81	-24.73	-17.39	-5.61	-36.46	-19.08	-6.24	-42.09
La Puente	-3.67	-1.34	-6.86	-4.84	-1.56	-10.14	-5.31	-1.73	-11.71
La Verne	-4.48	-1.63	-8.41	-5.91	-1.91	-12.39	-6.49	-2.12	-14.31
Lawndale	-4.08	-1.49	-7.66	-5.38	-1.74	-11.29	-5.91	-1.93	-13.03
Lennox	-2.02	-0.74	-3.79	-2.67	-0.86	-5.59	-2.93	-0.96	-6.45
Littlerock	-0.02	-0.01	-0.04	-0.03	-0.01	-0.06	-0.03	-0.01	-0.06
Lomita	-3.71	-1.35	-6.96	-4.89	-1.58	-10.26	-5.37	-1.76	-11.85
Long Beach	-59.01	-21.53	-110.73	-77.85	-25.11	-163.23	-85.45	-27.93	-186.47
Los Angeles	-617.90	-225.48	-1159.53	-815.26	-262.89	-1709.32	-894.77	-292.45	-1973.54
Lynwood	-4.70	-1.71	-8.81	-6.20	-2.00	-12.99	-6.80	-2.22	-15.00
Malibu	-1.04	-0.38	-1.96	-1.38	-0.44	-2.89	-1.51	-0.49	-3.33
Manhattan Beach	-8.98	-3.28	-16.86	-11.85	-3.82	-24.85	-13.01	-4.25	-28.70
Marina del Rey	-3.55	-1.30	-6.67	-4.69	-1.51	-9.83	-5.14	-1.68	-11.35
Mayflower Village	-0.33	-0.12	-0.62	-0.43	-0.14	-0.91	-0.48	-0.16	-1.05
Maywood	-2.68	-0.98	-5.03	-3.54	-1.14	-7.41	-3.88	-1.27	-8.56
Monrovia	-8.04	-2.93	-15.09	-10.61	-3.42	-22.24	-11.64	-3.81	-25.68
Montebello	-11.63	-4.24	-21.82	-15.34	-4.95	-32.16	-16.83	-5.50	-37.13
Monterey Park	-8.57	-3.13	-16.08	-11.31	-3.65	-23.71	-12.41	-4.06	-27.37
North El Monte	-0.27	-0.10	-0.51	-0.36	-0.12	-0.75	-0.39	-0.13	-0.87
Norwalk	-10.72	-3.91	-20.12	-14.15	-4.56	-29.66	-15.53	-5.08	-34.25
Palmdale	-10.13	-3.70	-19.00	-13.36	-4.31	-28.01	-14.66	-4.79	-32.34
Palos Verdes Estates	-0.69	-0.25	-1.30	-0.91	-0.29	-1.91	-1.00	-0.33	-2.21
Paramount	-5.00	-1.83	-9.39	-6.60	-2.13	-13.84	-7.24	-2.37	-15.98
Pasadena	-32.46	-11.84	-60.90	-42.82	-13.81	-89.78	-47.00	-15.36	-103.66
Pico Rivera	-7.21	-2.63	-13.53	-9.52	-3.07	-19.95	-10.44	-3.41	-23.03
Pomona	-18.20	-6.64	-34.15	-24.01	-7.74	-50.35	-26.36	-8.61	-58.13
Quartz Hill	-0.46	-0.17	-0.86	-0.60	-0.19	-1.26	-0.66	-0.22	-1.46
Rancho Palos Verdes	-4.10	-1.50	-7.69	-5.41	-1.74	-11.34	-5.93	-1.94	-13.09
Redondo Beach	-12.95	-4.73	-24.30	-17.09	-5.51	-35.83	-18.75	-6.13	-41.36
Rolling Hills	-0.09	-0.03	-0.16	-0.11	-0.04	-0.24	-0.12	-0.04	-0.27
Rolling Hills Estates	-1.26	-0.46	-2.36	-1.66	-0.54	-3.48	-1.82	-0.60	-4.02
Rosemead	-5.20	-1.90	-9.76	-6.86	-2.21	-14.38	-7.53	-2.46	-16.61
Rowland Heights	-7.25	-2.65	-13.61	-9.57	-3.09	-20.07	-10.50	-3.43	-23.17
San Dimas	-5.13	-1.87	-9.63	-6.77	-2.18	-14.19	-7.43	-2.43	-16.39
San Fernando	-5.19	-1.89	-9.74	-6.85	-2.21	-14.35	-7.51	-2.46	-16.57
San Gabriel	-6.83	-2.49	-12.81	-9.01	-2.90	-18.86	-9.88	-3.23	-21.80
San Marino	-1.30	-0.47	-2.44	-1.71	-0.55	-3.60	-1.88	-0.62	-4.15
Santa Clarita	-15.35	-5.60	-28.81	-20.26	-6.53	-42.47	22.23	-7.27	49.04
Santa Fe Springs	-4.91	-1.79	-9.22	-6.48	-2.09	-13.59	-7.11	-2.37	-15.69

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction									Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III			CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Santa Monica	4.06	1.48	7.67	5.70	1.66	11.75	5.50	1.81	11.93	36.84	13.42	69.20	48.96	15.81	102.44	52.98	17.33	116.64	-32.79	-11.96	-61.52	-43.26	-13.95	-90.69	-47.48	-15.52	-104.71
Sierra Madre	0.18	0.06	0.34	0.25	0.08	0.52	0.24	0.08	0.52	1.62	0.59	3.04	2.15	0.69	4.49	2.32	0.78	5.12	-1.44	-0.52	-2.70	-1.90	-0.61	-3.96	-2.08	-0.68	-4.59
Signal Hill	0.33	0.12	0.62	0.46	0.15	0.95	0.44	0.15	0.96	2.97	1.08	5.59	3.95	1.28	8.27	4.28	1.40	9.42	-2.65	-0.97	-4.97	-3.49	-1.13	-7.32	-3.83	-1.25	-8.45
South El Monte	0.24	0.09	0.45	0.34	0.11	0.69	0.32	0.11	0.70	2.17	0.79	4.07	2.88	0.93	6.02	3.12	1.02	6.86	-1.93	-0.70	-3.62	-2.54	-0.82	-5.33	-2.79	-0.91	-6.16
South Gate	1.12	0.40	2.13	1.58	0.52	3.26	1.52	0.50	3.30	10.21	3.72	19.17	13.57	4.38	28.39	14.68	4.80	32.32	-9.08	-3.32	-17.05	-11.99	-3.87	-25.13	-13.15	-4.30	-29.01
South Pasadena	0.55	0.20	1.04	0.78	0.25	1.60	0.75	0.25	1.62	5.01	1.83	9.41	6.66	2.15	13.93	7.21	2.36	15.87	-4.46	-1.63	-8.37	-5.88	-1.90	-12.34	-6.46	-2.11	-14.24
South San Gabriel	0.08	0.03	0.16	0.12	0.04	0.24	0.11	0.04	0.24	0.75	0.27	1.41	1.00	0.32	2.09	1.08	0.35	2.38	-0.67	-0.24	-1.26	-0.88	-0.29	-1.85	-0.97	-0.32	-2.14
South San Jose Hills	0.10	0.04	0.19	0.14	0.05	0.29	0.14	0.05	0.30	0.92	0.34	1.73	1.23	0.40	2.57	1.33	0.43	2.92	-0.82	-0.30	-1.54	-1.09	-0.35	-2.27	-1.19	-0.39	-2.62
South Whittier	0.52	0.19	0.98	0.73	0.24	1.50	0.70	0.23	1.52	4.70	1.71	8.83	6.25	2.02	13.07	6.76	2.21	14.88	-4.18	-1.53	-7.85	-5.52	-1.78	-11.57	-6.06	-1.98	-13.36
Temple City	0.60	0.21	1.13	0.84	0.27	1.73	0.81	0.27	1.76	5.43	1.98	10.20	7.21	2.33	15.10	7.81	2.55	17.19	-4.83	-1.76	-9.07	-6.37	-2.06	-13.38	-7.00	-2.29	-15.43
Torrance	4.75	1.70	8.97	6.67	2.16	13.74	6.44	2.12	13.95	43.10	15.70	80.94	57.27	18.49	119.83	61.97	20.27	138.43	-38.35	-13.99	-71.96	-50.60	-16.32	-106.09	-55.53	-18.15	-122.48
Valinda	0.22	0.08	0.41	0.31	0.10	0.63	0.29	0.10	0.64	1.97	0.72	3.70	2.62	0.85	5.48	2.83	0.93	6.24	-1.75	-0.64	-3.29	-2.31	-0.75	-4.85	-2.54	-0.83	-5.60
Val Verde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-0.01
Vernon	0.32	0.12	0.61	0.45	0.15	0.93	0.44	0.14	0.95	2.92	1.06	5.49	3.88	1.25	8.12	4.20	1.37	9.25	-2.60	-0.95	-4.88	-3.43	-1.11	-7.19	-3.76	-1.23	-8.30
View Park-Windsor Hills	0.14	0.05	0.27	0.20	0.06	0.41	0.19	0.06	0.41	1.28	0.47	2.40	1.70	0.55	3.58	1.84	0.60	4.05	-1.14	-0.42	-2.14	-1.50	-0.48	-3.15	-1.65	-0.54	-3.64
Vincent	0.26	0.09	0.48	0.36	0.12	0.74	0.35	0.11	0.75	2.32	0.84	4.35	3.08	0.99	6.44	3.33	1.09	7.33	-2.06	-0.75	-3.87	-2.72	-0.88	-5.70	-2.98	-0.98	-6.58
Walnut	0.26	0.09	0.49	0.36	0.12	0.75	0.35	0.12	0.76	2.35	0.86	4.41	3.12	1.01	6.53	3.38	1.11	7.44	-2.09	-0.76	-3.92	-2.76	-0.89	-5.79	-3.03	-0.99	-6.68
Walnut Park	0.17	0.06	0.32	0.24	0.08	0.50	0.23	0.08	0.51	1.56	0.57	2.93	2.07	0.67	4.34	2.24	0.73	4.94	-1.39	-0.51	-2.61	-1.83	-0.59	-3.84	-2.01	-0.66	-4.44
West Athens	0.07	0.03	0.14	0.10	0.03	0.21	0.10	0.03	0.21	0.66	0.24	1.24	0.88	0.28	1.83	0.95	0.31	2.09	-0.59	-0.21	-1.10	-0.77	-0.25	-1.62	-0.85	-0.28	-1.87
West Carson	0.38	0.13	0.71	0.53	0.17	1.09	0.51	0.17	1.10	3.41	1.24	6.40	4.53	1.46	9.47	4.90	1.60	10.79	-3.03	-1.11	-5.69	-4.00	-1.29	-8.39	-4.39	-1.44	-9.68
West Compton	0.08	0.03	0.14	0.11	0.03	0.22	0.10	0.03	0.22	0.69	0.25	1.29	0.91	0.30	1.91	0.99	0.32	2.18	-0.61	-0.22	-1.15	-0.81	-0.26	-1.69	-0.89	-0.29	-1.95
West Covina	1.95	0.70	3.69	2.75	0.90	5.66	2.65	0.87	5.74	17.74	6.46	33.32	23.58	7.61	49.33	25.51	8.35	56.17	-15.79	-5.76	-29.63	-20.83	-6.72	-43.68	-22.86	-7.47	-50.43
West Hollywood	1.92	0.69	3.64	2.70	0.88	5.57	2.61	0.86	5.65	17.47	6.36	32.81	23.21	7.50	48.57	25.12	8.22	55.30	-15.54	-5.67	-29.17	-20.51	-6.61	-43.00	-22.51	-7.36	-49.65
Westlake Village	0.11	0.04	0.21	0.16	0.05	0.33	0.15	0.05	0.33	1.02	0.37	1.92	1.36	0.44	2.84	1.47	0.48	3.23	-0.91	-0.33	-1.71	-1.20	-0.39	-2.51	-1.32	-0.43	-2.90
Westmont	0.23	0.08	0.43	0.32	0.10	0.65	0.31	0.10	0.66	2.05	0.75	3.85	2.72	0.88	5.70	2.95	0.96	6.49	-1.82	-0.67	-3.42	-2.41	-0.78	-5.05	-2.64	-0.86	-5.83
West Puente Valley	0.09	0.03	0.17	0.12	0.04	0.26	0.12	0.04	0.26	0.80	0.29	1.51	1.07	0.34	2.24	1.16	0.38	2.54	-0.72	-0.26	-1.34	-0.94	-0.30	-1.98	-1.04	-0.34	-2.28
West Whittier-Los Nietos	0.30	0.11	0.58	0.42	0.14	0.86	0.40	0.13	0.87	2.66	0.98	5.04	3.58	1.15	7.46	3.86	1.26	8.49	-2.39	-0.87	-4.48	-3.15	-1.02	-6.60	-3.46	-1.13	-7.62
Whittier	1.55	0.56	2.92	2.17	0.71	4.48	2.10	0.69	4.54	14.04	5.11	26.36	18.65	6.02	39.03	20.18	6.60	44.44	-12.49	-4.56	-23.44	-16.48	-5.31	-34.56	-18.09	-5.91	-39.90
Willowbrook	0.25	0.09	0.47	0.35	0.11	0.72	0.34	0.11	0.73	2.26	0.82	4.24	3.00	0.97	6.28	3.25	1.06	7.15	-2.01	-0.73	-3.77	-2.65	-0.85	-5.56	-2.91	-0.95	-6.42
Aliso Viejo	0.77	0.28	1.45	1.08	0.35	2.22	1.04	0.34	2.26	6.97	2.54	13.10	9.27	2.99	19.39	10.03	3.28	22.08	-6.21	-2.26	-11.65	-8.19	-2.64	-17.17	-8.99	-2.94	-19.82
Anaheim	5.57	2.00	10.52	7.62	2.55	16.12	7.55	2.49	16.36	50.54	18.41	94.92	67.17	21.69	140.53	72.68	23.77	160.01	-44.98	-16.41	-84.40	-59.34	-19.14	-124.42	-65.13	-21.29	-143.65
Brea	0.76	0.27	1.45	1.07	0.35	2.21	1.04	0.34	2.25	8.94	2.53	13.04	9.22	2.98	19.30	9.98	3.27	21.98	-8.18	-2.25	-11.59	-8.15	-2.63	-17.09	-8.94	-2.92	-19.73
Buena Park	1.39	0.50	2.63	1.96	0.64	4.03	1.89	0.62	4.09	12.64	4.60	23.74	16.80	5.42	35.14	18.17	5.95	40.01	-11.25	-4.10	-21.11	-14.84	-4.79	-31.11	-16.28	-5.32	-35.92
Costa Mesa	4.58	1.64	8.65	6.43	2.10	13.25	6.20	2.04	13.44	41.54	15.13	78.01	55.20	17.82	115.49	59.72	19.54	131.49	-36.96	-13.49	-69.36	-48.77	-15.73	-102.25	-53.52	-17.49	-118.05
Coto de Caza	0.11	0.04	0.20	0.15	0.05	0.31	0.15	0.05	0.31	0.97	0.35	1.83	1.29	0.42	2.70	1.40	0.46	3.08	-0.86	-0.32	-1.62	-1.14	-0.37	-2.39	-1.25	-0.41	-2.76
Cypress	1.02	0.37	1.93	1.43	0.47	2.95	1.38	0.46	3.00	9.27	3.37	17.40	12.31	3.98	25.76	13.32	4.36	29.33	-8.24	-3.01	-15.47	-10.88	-3.51	-22.81	-11.94	-3.90	-26.33
Dana Point	0.89	0.32	1.67	1.25	0.41	2.56	1.20	0.40	2.60	8.04	2.93	15.10	10.69	3.45	22.36	11.56	3.78	25.46	-7.16	-2.61	-13.43	-9.44	-3.04	-19.80	-10.36	-3.39	-22.86
Foothill Ranch	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.13	0.05	0.24	0.17	0.06	0.36	0.19	0.06	0.41	-0.12	-0.04	-0.22	-0.15	-0.05	-0.32	-0.17	-0.05	-0.37
Fountain Valley	1.52	0.55	2.87	2.13	0.70	4.40	2.06	0.68	4.46	13.79	5.02	25.90	18.32	5.92	38.34	19.83	6.49	43.65	-12.27	-4.48	-23.02	-16.19	-5.22	-33.94	-17.77	-5.81	-39.19
Fullerton	2.93	1.05	5.55	4.12	1.35	8.49	3.98	1.31	8.62	26.64	9.70	50.03	35.40	11.43	74.08	38.30	12.53	84.33	-23.70	-8.65	-44.48	-31.27	-10.08	-65.57	-34.32	-11.22	-75.70
Garden Grove	3.10	1.11	5.86	4.35	1.42	8.97	4.20	1.38	9.10	28.12	10.24	52.81	37.37	12.07	78.19	40.43	13.23	89.02	-25.02	-9.13	-46.96	-33.01	-10.65	-69.22	-36.23	-11.84	-79.92
Huntington Beach	4.51	1.62	8.53	6.34	2.07	13.06	6.12	2.01	13.26	40.96	14.92	76.92	54.43	17.58	113.88	58.89	19.28	129.66	-36.45	-13.30	-68.39	-48.09	-15.51	-100.82	-52.78	-17.25	-116.41
Irvine	2.17	0.78	4.10	3.05	1.00	6.28	2.94	0.97	6.37	19.69	7.17	36.99	26.17	8.45	54.78	28.32	9.26	62.35	-17.53	-6.40	-32.89	-23.12	-7.46	-48.48	-25.38	-8.29	-55.97
Laguna Beach	0.92	0.33	1.73	1.29	0.42	2.65	1.24	0.41	2.69	8.32	3.03	15.63	11.06	3.57	23.14	11.97	3.91	26.35	-7.41	-2.70	-13.90	-9.77	-3.15	-20.49	-10.73	-3.51	-23.66
Laguna Hills	0.86	0.31	1.62	1.21	0.39	2.49	1.16	0.38	2.52	7.80	2.84	14.64	10.36	3.35	21.68	11.21	3.67	24.68	-6.94	-2.53	-13.02	-9.15	-2.95	-19.19	-10.05	-3.28	-22.16
Laguna Niguel	1.46	0.52	2.76	2.05	0.67	4.22	1.98	0.65	4.29	13.25	4.83	24.88	17.60	5.68	36.83	19.05	6.23	41.93	-11.79	-4.30	-22.12	-15.55	-5.01	-32.61	-17.07	-5.58	-37.65
Laguna Woods	0.59	0.21	1.11	0.82	0.27	1.70	0.80	0.26	1.72	5.33	1.94	10.00	7.08	2.29	14.81	7.66	2.51	16.86	-4.74	-1.73	-8.90	-6.25	-2.02	-13.11	-6.86	-2.24	-15.14
La Habra	0.95	0.34	1.80	1.34	0.44	2.76	1.29	0.43	2.80	8.64	3.15	16.23	11.48	3.71	24.02	12.42	4.06	27.35	-7.69	-2.81	-14.43	-10.14	-3.27	-21.27	-11.13	-3.64	-24.55
Lake Forest	1.26	0.45	2.39	1.78	0.58	3.66	1.71	0.56	3.71	11.47	4.18	21.53	15.24	4.92	31.88	16.49	5.39	36.30	-10.20	-3.72	-19.15	-13.46	-4.34	-28.23	-14.78	-4.83	-32.59
La Palma	0.19	0.07	0.36	0.27	0.09	0.56	0.26	0.09	0.56	1.74	0.63	3.27	2.31	0.75	4.84	2.50	0.82	5.51	-1.55	-0.57	-2.91	-2.04	-0.66	-4.29	-2.24	-0.73	-4.95
Las Flores	0.03	0.01	0.07	0.05	0.02	0.10	0.05	0.02	0.10	0.31	0.11	0.59	0.42	0.13	0.87	0.45	0.15	0.99	-0.28	-0.10	-0.52	-0.37	-0.12	-0.77	-0.40	-0.13	-0.89
Los Alamitos	0.33	0.12	0.63	0.47	0.15	0.96	0.45	0.15	0.97	3.01	1.10	5.65	4.00	1.29	8.36	4.32	1.41	9.52	-2.68	-0.98	-5.02	-3.53	-1.14	-7.40	-3.87	-1.27	-8.55
Mission Viejo	1.74	0.63	3.29	2.45	0.80	5.04	2.36	0.78	5.12	15.81	5.76	29.70	21.02	6.79	43.97	22.74	7.44	50.07	-14.07	-5.14	-26.41	-18.57	-5.99	-38.93	-20.38	-6.66	-44.95
Newport Beach	3.45	1.24	6.52	4.85	1.58	9.98	4.67	1.54	10.13	31.30	11.40	58.78	41.59	13.43	87.03	45.00	14.72	99.08	-27.85	-10.16	-52.26	-36.75	-11.85	-77.04	-40.33	-13.18	-88.95
Newport Coast	0.09	0.03	0.17	0.13	0.04	0.27	0.13	0.04	0.27	0.84	0.31	1.57	1.11	0.36	2.33	1.21	0.39	2.65	-0.75	-0.27	-1.40	-0.98	-0.32	-2.06	-1.08	-0.35	-2.38
Orange	3.49	1.25	6.61	4.91	1.60	10.12	4.74	1.56	10.27	31.72	11.56	59.58	42.16	13.61	88.21	45.61	14.92	100.43	-28.23	-10.30	-52.97	-37.24	-12.01	-78.09	-40.88	-13.36	-90.16
Placentia	0.70	0.25	1.32	0.96	0.32	2.02	0.95	0.31	2.05	6.33	2.31	11.89	8.41	2.72	17.60	9.10	2.98	20.04	-5.63	-2.06	-10.57	-7.43	-2.40	-15.58	-8.16	-2.67	-17.99
Portola Hills	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	0.05	0.02	0.10	0.07	0.02	0.15	0.08	0.03	0.17	-0.05	-0.02	-0.09	-0.06	-0.02	-0.13	-0.07	-0.02	-0.15
Rancho Santa Margarita	0.35	0.13	0.67	0.50	0.16	1.03	0.48	0.16	1.04	3.22	1.17	6.04	4.28	1.38	8.95	4.63	1.51	10.19	-2.86	-1.05	-5.37	-3.78	-1.22	-7.92	-4.15	-1.36	-9.15
Rossmoor	0.07	0.03	0.13	0.10	0.03	0.21	0.10	0.03	0.21	0.65	0.24	1.21	0.86	0.28	1.80	0.93	0.30	2.05	-0.58	-0.21	-1.08	-0.76	-0.24	-1.59	-0.83	-0.27	-1.84
San Clemente	1.05	0.38	1.99	1.48	0.48	3.04	1.43	0.47	3.09	9.55	3.48	17.93	12.68	4.10	26.54	13.73	4.49	30.22	-8.49	-3.10	-15.94	-11.21	-3.61	-23.50	-12.30	-4.02	-27.13
San Joaquin Hills	0.04	0.01	0.07	0.05	0.02	0.11	0.05	0.02	0.11	0.33	0.12	0.62	0.44	0.14	0.92	0.47	0.16	1.05	-0.29	-0.11	-0.55	-0.39	-0.13	-0.81	-0.43	-0.14	-0.94
San Juan Capistrano	0.80	0.29	1.51	1.13	0.37	2.32	1.09	0.36	2.35	7.27	2.65	13.66	9.67	3.12	20.23	10.46	3.42	23.03	-6.47	-2.36	-12.15	-8.54	-2.75	-17.91	-9.37	-3.06	-20.67
Santa Ana	5.47	1.97	10.35	7.69	2.51	15.85	7.42	2.44	16.09	49.70	18.10	93.34	66.04	21.33	138.18	71.46	23.38	157.33	-44.22	-16.14	-82.99	-58.35	-18.82	-122.34	-64.04	-20.93	-141.25
Seal Beach	0.51	0.18	0.97	0.72	0.24	1.48	0.70	0.23	1.51	4.66	1.70	8.74	6.19	2.00	12.94	6.69	2.19	14.74	-4.14	-1.51	-7.77	-5.47	-1.76	-11.46	-6.00	-1.96	-13.23
Stanton	0.59	0.21	1.11	0.83	0.27	1.70	0.80	0.26	1.73	5.34	1.94	10.03	7.10	2.29	14.85	7.68	2.51	16.90	-4.75	-1.73	-8.92	-6.27	-2.02	-13.14	-6.88	-2.25	-15.18
Tustin	1.82	0.66	3.45	2.56	0.84	5.28	2.47	0.81	5.36	16.57	6.03	31.11	22.01	7.11	46.06	23.82	7.79	52.44	-14.74	-5.38	-27.66	-19.45	-6.27	-40.78	-21.35	-6.98	-47.08
Tustin Foothills	0.25	0.09	0.48	0.36	0.12	0.73	0.34	0.11	0.74	2.30	0.84	4.31	3.05	0.99	6.39	3.30	1.08	7.27	-2.04	-0.75	-3.83	-2.70	-0.87	-5.65	-2.96	-0.97	-6.53
Villa Park	0.09	0.03	0.17	0.13	0.04	0.26	0.12	0.04	0.26	0.81	0.30	1.53	1.08	0.35	2.27	1.17	0.38	2.58	-0.73	-0.26	-1.36	-0.96	-0.31	-2.01	-1.05	-0.34	-2.32
Westminster	2.28	0.82	4.32	3.21	1.05	6.61	3.10	1.02	6.71	20.73	7.55	38.93	27.54	8.89	57.63	29.80	9.75	65.62	-18.44	-6.73	-34.61	-24.33	-7.85	-51.02	-26.71	-8.73	-58.91
Yorba Linda	0.73	0.26	1.38	1.02	0.33	2.11	0.99	0.32	2.14	6.61	2.41	12.41	8.78	2.83	18.37	9.50	3.11	20.91	-5.88	-2.14	-11.03	-7.75	-2.50	-16.26	-8.51	-2.78	-18.77
Banning	0.29	0.10	0.55	0.41	0.13	0.84	0.39	0.13	0.85	2.63	0.96	4.94	3.50	1.13	7.31	3.78	1.24	8.33	-2.34	-0.85	-4.39	-3.09	-1.00	-6.48	-3.39	-1.11	-7.48
Beaumont	0.18	0.06	0.34	0.25	0.08	0.51	0.24	0.08	0.52	1.61	0.59	3.03	2.14	0.69	4.48	2.32	0.76	5.10	-1.43	-0.52	-2.69	-1.89	-0.61	-3.97	-2.08	-0.68	-4.58
Bermuda Dunes	0.03	0.01	0.05	0.04	0.01	0.07	0.03	0.01	0.07	0.23	0.08	0.44	0.31	0.10	0.64	0.33	0.11	0.73	-0.21	-0.08	-0.39	-0.27	-0.09	-0.57	-0.30	-0.10	-0.66
Cabazon	0.02	0.01	0.03	0.02	0.01	0.05	0.02	0.01	0.05	0.15	0.06	0.29	0.21	0.07	0.43	0.22	0.07	0.49	-0.14	-0.05	-0.26	-0.18	-0.06	-0.38	-0.20	-0.07	-0.44
Calimesa	0.09	0.03	0.16	0.12	0.04	0.25	0.12	0.04	0.25	0.77	0.28	1.45	1.03	0.33	2.15	1.11	0.36	2.45	-0.69	-0.25	-1.29	-0.91	-0.29	-1.90	-1.00	-0.33	-2.20
Canyon Lake	0.03	0.01	0.06	0.05	0.01	0.09	0.04	0.01	0.10	0.30	0.11	0.56	0.39	0.13	0.82	0.43	0.14	0.94	-0.26	-0.10	-0.49	-0.35	-0.11	-0.73	-0.38	-0.12	-0.84
Cathedral City	0.81	0.29	1.52	1.13	0.37	2.33	1.09	0.36	2.37	7.32	2.67	13.75	9.73	3.14	20.36	10.53	3.44	23.18	-6.52	-2.38	-12.23	-8.60	-2.77	-18.02	-9.43	-3.08	-20.81
Cherry Valley	0.02	0.01	0.04	0.03	0.01	0.07	0.03	0.01	0.07	0.21	0.08	0.39	0.28	0.09	0.58	0.30	0.10	0.66	-0.19	-0.07	-0.35	-0.25	-0.08	-0.52	-0.27	-0.09	-0.60
Coachella	0.27	0.10	0.52	0.38	0.13	0.79	0.37	0.12	0.80	2.48	0.90	4.66	3.29	1.06	6.89	3.56	1.17	7.85	-2.21	-0.81	-4.14	-2.91	-0.94	-6.10	-3.19	-1.04	-7.05
Corona	1.79	0.64	3.38	2.51	0.82	5.17	2.42	0.80	5.25	16.21	5.91	30.45	21.55	6.96	45.08	23.31	7.63	51.33	-14.43	-5.27	-27.08	-19.04	-6.14	-39.91	-20.89	-6.83	-46.08
Desert Hot Springs	0.14	0.05	0.26	0.19	0.06	0.40	0.19	0.06	0.41	1.26	0.46	2.36	1.67	0.54	3.50	1.81	0.59	3.98	-1.12	-0.41	-2.10	-1.48	-0.48	-3.10	-1.62	-0.53	-3.58
East Hemet	0.25	0.09	0.48	0.36	0.12	0.73	0.34	0.11	0.74	2.30	0.84	4.32	3.06	0.99	6.40	3.31	1.08	7.28	-2.05	-0.75	-3.84	-2.70	-0.87	-5.66	-2.96	-0.97	-6.54
El Cerrito	0.03	0.01	0.05	0.04	0.01	0.08	0.04	0.01	0.08	0.24	0.09	0.45	0.32	0.10	0.68	0.34	0.11	0.75	-0.21	-0.08	-0.40	-0.28	-0.09	-0.59	-0.31	-0.10	-0.68
Glen Avon	0.21	0.07	0.39	0.29	0.09	0.60	0.28	0.09	0.60	1.87	0.68	3.50	2.48	0.80	5.19	2.68	0.88	5.91	-1.66	-0.61	-3.12	-2.19	-0.71	-4.59	-2.40	-0.79	-5.30
Hemet	1.15	0.41	2.18	1.62	0.53	3.33	1.56	0.51	3.38	10.45	3.81	19.63	13.89	4.48	29.06	15.03	4.92	33.06	-9.30	-3.39	-17.45	-12.27	-3.96	-25.72	-13.47	-4.40	-29.70
Highgrove	0.01	0.01	0.03	0.02	0.01	0.04	0.02	0.01	0.04	0.13	0.05	0.25	0.17	0.06	0.36	0.19	0.06	0.41	-0.12	-0.04	-0.22	-0.15	-0.05	-0.32	-0.17	-0.06	-0.37
Home Gardens	0.06	0.02	0.10	0.08	0.03	0.16	0.07	0.02	0.16	0.50	0.18	0.94	0.67	0.21	1.39	0.72	0.24	1.59	-0.45	-0.16	-0.84	-0.59	-0.19	-1.23	-0.65	-0.21	-1.42
Homeland	0.01	0.00	0.02	0.02	0.01	0.04	0.02	0.01	0.04	0.11	0.04	0.21	0.15	0.05	0.32	0.16	0.05	0.36	-0.10	-0.04	-0.19	-0.13	-0.04	-0.28	-0.15	-0.05	-0.32
Idyllwild-Pine Cove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.01	0.00	0.02	0.01	0.00	0.02	-0.01	0.00	-0.01	-0.01	0.00	-0.02	-0.01	0.00	-0.02
Indian Wells	0.15	0.05	0.29	0.21	0.07	0.44	0.20	0.07	0.44	1.37	0.50	2.58	1.82	0.59	3.82	1.97	0.65	4.35	-1.22	-0.45	-2.29	-1.61	-0.52	-3.38	-1.77	-0.58	-3.90
Indio	0.68	0.25	1.29	0.96	0.31	1.98	0.93	0.31	2.01	6.21	2.26	11.67	8.26	2.67	17.27	8.93	2.92	19.67	-5.53	-2.02	-10.37	-7.29	-2.35	-15.29	-8.01	-2.62	-17.66
Lake Elsinore	0.51	0.18	0.96	0.71	0.23	1.47	0.69	0.23	1.49	4.61	1.68	8.66	6.13	1.98	12.82	6.63	2.17	14.60	-4.10	-1.50	-7.70	-5.42	-1.75	-11.35	-5.94	-1.94	-13.11
Lakeland Village	0.04	0.01	0.07	0.05	0.02	0.11	0.05	0.02	0.11	0.33	0.12	0.63	0.44	0.14	0.93	0.48	0.16	1.06	-0.30	-0.11	-0.56	-0.39	-0.13	-0.82	-0.43	-0.14	-0.95
Lakeview	0.01	0.00	0.02	0.02	0.01	0.03	0.01	0.00	0.03	0.10	0.04	0.19	0.13	0.04	0.28	0.14	0.05	0.32	-0.09	-0.03	-0.17	-0.12	-0.04	-0.25	-0.13	-0.04	-0.28
La Quinta	0.19	0.07	0.36	0.27	0.09	0.55	0.26	0.08	0.55	1.71	0.62	3.22	2.28	0.73	4.76	2.46	0.81	5.42	-1.52	-0.56	-2.86	-2.01	-0.65	-4.21	-2.21	-0.72	-4.87
March AFB	0.02	0.01	0.04	0.03	0.01	0.06	0.03	0.01	0.06	0.17	0.06	0.33	0.23	0.07	0.49	0.25	0.08	0.55	-0.16	-0.06	-0.29	-0.21	-0.07	-0.43	-0.23	-0.07	-0.50
Mecca	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.02	0.00	0.03	0.02	0.01	0.04	-0.01	0.00	-0.02	-0.01	0.00	-0.03	-0.01	0.00	-0.03
Mira Loma	0.19	0.07	0.37	0.27	0.09	0.56	0.26	0.09	0.57	1.75	0.64	3.29	2.33	0.75	4.88	2.52	0.83	5.55	-1.56	-0.57	-2.93	-2.06	-0.68	-4.32	-2.26	-0.74	-4.99

(Millions of $ 1999)

City and CDP	Stimulus Effects									Impacts of Household Expenditure Reduction										Net Impacts								
	CASE I			CASE II			CASE III			CASE I			CASE II			CASE III				CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Moreno Valley	1 81	0 65	3.42	2 55	0 83	5 24	2.46	0 81	5.32	16 44	5 99	30.88	21 85	7 06	45 72	23.64	7.73	52.06	-14 63	-5 34	-27 46	-19 31	-6 23	-40 48	-21 19	-6 93	-48 73
Murrieta	0 24	0 09	0 46	0 34	0 11	0 70	0 33	0 11	0 71	2 21	0 80	4 15	2 93	0 95	6 14	3 17	1 04	6 99	-1 96	-0 72	-3 69	-2 59	-0 84	-5 43	-2 84	-0 93	-6 27
Murrieta Hot Springs	0 01	0 00	0 02	0 01	0 00	0 03	0 01	0 00	0 03	0 06	0 03	0 15	0 11	0 03	0 22	0 12	0 04	0 25	-0 07	-0 03	-0 13	-0 09	-0 03	-0 20	-0 10	-0 03	-0 23
Norco	0 36	0 13	0 68	0 51	0 17	1 05	0 49	0 18	1 06	3 29	1 20	6 17	4 37	1 41	9 14	4 73	1 55	10 40	-2 92	-1 07	-5 49	-3 86	-1 24	-8 09	-4 23	-1 38	-9 34
Nuevo	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 06	0 19	0 07	0 36	0 25	0 08	0 53	0 28	0 09	0 61	-0 17	-0 06	-0 32	-0 22	-0 07	-0 47	-0 25	-0 08	-0 54
Palm Desert	1 54	0 55	2 90	2 18	0 70	4 44	2 08	0 69	4 51	13 94	5 08	26 17	18 52	5 98	38 75	20 04	6 55	44 12	-12 40	-4 52	-23 27	-16 38	-5 28	-34 30	-17 96	-5 87	-39 61
Palm Springs	1 73	0 62	3 28	2 44	0 80	5 02	2.35	0 77	5 09	15 74	5 73	29 56	20 92	6 75	43 77	22 63	7 40	49 83	-14 01	-5 11	-26 29	-18 48	-5 96	-38 75	-20 28	-6 63	-44 74
Perley	0 18	0 06	0 33	0 25	0 08	0 51	0 24	0 08	0 52	1 59	0 58	2 99	2 12	0 68	4 43	2 29	0 75	5 05	-1 42	-0 52	-2 66	-1 87	-0 60	-3 92	-2 05	-0 67	-4 53
Perris	0 53	0 19	1 00	0 74	0 24	1 52	0 71	0 24	1 55	4 78	1 74	8 98	6 35	2 05	13 29	6 87	2 25	15 13	-4 25	-1 55	-7 98	-5 61	-1 81	-11 77	-6 16	-2 01	-13 58
Quail Valley	0 01	0 00	0 02	0 01	0 00	0 03	0 01	0 00	0 03	0 08	0 03	0 16	0 11	0 04	0 23	0 12	0 04	0 26	-0 07	-0 03	-0 14	-0 10	-0 03	-0 20	-0 11	-0 03	-0 24
Rancho Mirage	0 51	0 18	0 98	0 71	0 23	1 47	0 69	0 23	1 49	4 60	1 68	8 84	6 12	1 97	12 80	6 62	2 18	14 57	-4 10	-1 49	-7 68	-5 40	-1 74	-11 33	-5 93	-1 94	-13 08
Riverside	8 06	2 17	11.45	8.51	2.78	17.54	8 21	2.71	17.80	55 00	20 03	103 30	73 09	23 60	152.93	79 09	25.87	174 12	-46 94	-17 86	-91 84	-64 57	-20 82	-135 39	-70 87	-23 16	-156 32
Romoland	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 08	0 24	0 09	0 45	0 32	0 10	0 66	0 34	0 11	0 75	-0 21	-0 08	-0 40	-0 28	-0 09	-0 59	-0 31	-0 10	-0 68
Rubidoux	0 26	0 09	0 49	0 36	0 12	0 75	0 35	0 12	0 76	2 35	0 86	4 41	3 12	1 01	6 53	3 38	1 10	7 43	-2 09	-0 78	-3 92	-2 78	-0 89	-5 78	-3 03	-0 99	-6 67
San Jacinto	0 24	0 08	0 45	0 33	0 11	0 68	0 32	0 11	0 69	2 15	0 78	4 03	2 85	0 92	5 97	3 09	1 01	6 80	-1 91	-0 70	-3 59	-2 52	-0 81	-5 29	-2 77	-0 90	-6 10
Sedco Hills	0 08	0 02	0 12	0 09	0 03	0 18	0 09	0 03	0 19	0 58	0 21	1 09	0 77	0 25	1 61	0 83	0 27	1 83	-0 51	-0 19	-0 97	-0 68	-0 22	-1 42	-0 75	-0 24	-1 64
Sun City	0 38	0 14	0 72	0 54	0 18	1 11	0 52	0 17	1 12	3 47	1 26	6 51	4 61	1 49	9 64	4 99	1 63	10 98	-3 09	-1 13	-5 79	-4 07	-1 31	-8 54	-4 47	-1 48	-9 86
Sunnyslope	0 01	0 00	0 03	0 02	0 01	0 04	0 02	0 01	0 04	0 12	0 05	0 23	0 17	0 05	0 35	0 18	0 06	0 39	-0 11	-0 04	-0 21	-0 15	-0 05	-0 31	-0 16	-0 05	-0 35
Temecula	0 87	0 24	1 28	0 94	0 31	1 93	0 80	0 30	1 96	8 05	2 20	11 37	8 04	2 60	16 83	8 70	2 85	18 18	-5 39	-1 97	-10 11	-7 11	-2 29	-14 90	-7 80	-2 55	-17 20
Thousand Palms	0 01	0 00	0 02	0 01	0 00	0 03	0 01	0 00	0 03	0 09	0 03	0 18	0 12	0 04	0 26	0 13	0 04	0 30	-0 08	-0 03	-0 16	-0 11	-0 04	-0 23	-0 12	-0 04	-0 27
Valle Vista	0 06	0 02	0 11	0 08	0 03	0 17	0 08	0 03	0 17	0 52	0 19	0 96	0 70	0 22	1 46	0 75	0 25	1 66	-0 47	-0 17	-0 88	-0 62	-0 20	-1 29	-0 68	-0 22	-1 49
Wildomar	0 14	0 05	0 26	0 20	0 06	0 41	0 19	0 06	0 41	1 27	0 46	2 39	1 69	0 55	3 53	1 83	0 60	4 02	-1 13	-0 41	-2 12	-1 49	-0 48	-3 13	-1 64	-0 54	-3 61
Winchester	0 05	0 02	0 09	0 07	0 02	0 13	0 06	0 02	0 14	0 42	0 15	0 79	0 56	0 18	1 18	0 61	0 20	1 34	-0 38	-0 14	-0 71	-0 50	-0 18	-1 04	-0 54	-0 18	-1 20
Woodcrest	0 14	0 05	0 27	0 20	0 07	0 41	0 19	0 06	0 42	1 29	0 47	2 42	1 71	0 55	3 58	1 85	0 61	4 06	-1 15	-0 42	-2 15	-1 51	-0 49	-3 17	-1 66	-0 54	-3 66
Camarillo	1 02	0 37	1 93	1 44	0 47	2.96	1 39	0 46	3 00	8 26	3 38	17 43	12 33	3 98	25 81	13 35	4 37	29 39	-8 26	-3 01	-15 50	-10 90	-3 51	-22 85	-11 98	-3 91	-26 38
Casa Conejo	0 04	0 01	0 08	0 06	0 02	0 12	0 06	0 02	0 12	0 37	0 14	0 70	0 50	0 18	1 04	0 54	0 18	1 18	-0 33	-0 12	-0 62	-0 44	-0 14	-0 92	-0 48	-0 16	-1 06
Channel Islands Beach	0 09	0 03	0 17	0 13	0 04	0 26	0 12	0 04	0 26	0 82	0 30	1 53	1 09	0 35	2 27	1 17	0 38	2 59	-0 73	-0 27	-1 36	-0 96	-0 31	-2 01	-1 05	-0 34	-2 32
El Rio	0 12	0 04	0 22	0 16	0 05	0 34	0 16	0 05	0 34	1 06	0 39	1 99	1 40	0 45	2 94	1 52	0 50	3 35	-0 94	-0 34	-1 77	-1 24	-0 40	-2 60	-1 36	-0 45	-3 00
Fillmore	0 08	0 03	0 15	0 11	0 04	0 23	0 11	0 04	0 23	0 72	0 26	1 36	0 96	0 31	2 01	1 04	0 34	2 29	-0 64	-0 23	-1 21	-0 85	-0 27	-1 78	-0 93	-0 30	-2 06
Meiners Oaks	0 05	0 02	0 10	0 07	0 02	0 15	0 07	0 02	0 15	0 48	0 17	0 87	0 61	0 20	1 29	0 66	0 22	1 46	-0 41	-0 15	-0 77	-0 54	-0 18	-1 14	-0 60	-0 19	-1 31
Mira Monte	0 14	0 05	0 27	0 20	0 07	0 42	0 20	0 06	0 43	1 31	0 48	2 47	1 75	0 58	3 66	1 89	0 62	4 16	-1 17	-0 43	-2 20	-1 54	-0 50	-3 24	-1 69	-0 55	-3 74
Moorpark	0 29	0 11	0 55	0 41	0 13	0 85	0 40	0 13	0 86	2 68	0 97	5 00	3 54	1 14	7 41	3 83	1 25	8 43	-2 37	-0 87	-4 45	-3 13	-1 01	-6 56	-3 43	-1 12	-7 57
Oak Park	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01	0 03	0 01	0 05	0 03	0 01	0 07	0 04	0 01	0 08	-0 02	-0 01	-0 04	-0 03	-0 01	-0 06	-0 03	-0 01	-0 07
Oak View	0 08	0 02	0 11	0 08	0 03	0 17	0 08	0 03	0 17	0 54	0 20	1 01	0 72	0 23	1 50	0 77	0 25	1 71	-0 48	-0 17	-0 90	-0 63	-0 20	-1 33	-0 69	-0 23	-1 53
Ojai	0 11	0 04	0 20	0 15	0 05	0 31	0 14	0 05	0 31	0 96	0 35	1 81	1 28	0 41	2 66	1 39	0 45	3 05	-0 86	-0 31	-1 61	-1 13	-0 36	-2 37	-1 24	-0 41	-2 74
Oxnard	2 53	0 91	4 78	3 58	1 16	7.32	3 43	1 13	7 43	22 97	8 37	43 13	30 52	9 86	63 86	33 02	10 80	72.71	-20 44	-7 48	-38 35	-26 96	-8 89	-56 53	-29 59	-9 87	-65 27
Piru	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 01	0 01	0 00	0 02	0 01	0 00	0 02	-0 01	0 00	-0 01	-0 01	0 00	-0 01	-0 01	0 00	-0 02
Port Hueneme	0 33	0 12	0 63	0 47	0 15	0 98	0 45	0 15	0 98	3 02	1 10	5 68	4 02	1 30	8 41	4 35	1 42	9 57	-2 69	-0 98	-5 05	-3 55	-1 14	-7 44	-3 90	-1 27	-8 60
San Buenaventura (Ventura)	2 30	0 83	4.35	3.23	1 06	6.86	3.12	1 03	6.76	20 88	7 60	39 21	27 74	8 96	58 05	30 02	9 82	66 09	-18 58	-6 78	-34 86	-24 51	-7 90	-51 39	-26 90	-8 79	-59 34
Santa Paula	0 38	0 14	0 73	0 54	0 18	1 11	0 52	0 17	1 13	3 49	1 27	6 56	4 64	1 50	9 72	5 03	1 64	11 06	-3 11	-1 13	-5 84	-4 10	-1 32	-8 60	-4 50	-1 47	-9 93
Simi Valley	2.20	0.79	4 17	3 10	1.01	6 38	2.99	0 98	6.47	20 00	7 29	37 57	26 58	8 58	55 62	28 76	9 41	63 33	-17 80	-6 50	-33 40	-23 49	-7 57	-49 24	-25 78	-8 42	-56 85
Thousand Oaks	3.41	1.22	6 45	4.80	1 57	9.88	4 63	1 52	10 03	30 98	11 28	58 18	41 17	13 29	86 13	44 54	14 57	98 07	-27 57	-10 06	-51 73	-36 37	-11 73	-78 25	-39 92	-13 05	-88 04
Adelanto	0 08	0 03	0 15	0 11	0 04	0 24	0 11	0 04	0 24	0 74	0 27	1 39	0 96	0 32	2 06	1 06	0 35	2 34	-0 66	-0 24	-1 24	-0 87	-0 28	-1 82	-0 95	-0 31	-2 10
Apple Valley	0 53	0 19	1 00	0 75	0 24	1 54	0 72	0 24	1 56	4 83	1 78	9 06	6 41	2 07	13 42	6 94	2 27	15 28	-4 29	-1 57	-8 06	-5 67	-1 83	-11 88	-6 22	-2 03	-13 72
Barstow	0 29	0 10	0 55	0 41	0 13	0 84	0 39	0 13	0 85	2 63	0 96	4 94	3 50	1 13	7 32	3 78	1 24	8 33	-2 34	-0 85	-4 39	-3 09	-1 00	-6 48	-3 39	-1 11	-7 48
Big Bear City	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 01	0 03	0 01	0 06	0 05	0 01	0 10	0 05	0 02	0 11	-0 03	-0 01	-0 06	-0 04	-0 01	-0 08	-0 04	-0 01	-0 10
Big Bear Lake	0 12	0 04	0 22	0 16	0 05	0 34	0 16	0 05	0 34	1 06	0 39	1 99	1 41	0 46	2 95	1 53	0 50	3 36	-0 94	-0 34	-1 77	-1 25	-0 40	-2 61	-1 37	-0 45	-3 02
Bloomington	0 24	0 08	0 45	0 33	0 11	0 68	0 32	0 11	0 69	2 14	0 78	4 02	2 84	0 92	5 95	3 08	1 01	6 77	-1 90	-0 69	-3 57	-2 51	-0 81	-5 27	-2 78	-0 90	-6 08
Chino	1.27	0 45	2 39	1 78	0 58	3 66	1 72	0 57	3 72	11 49	4 18	21 57	15 26	4 93	31 94	16 52	5 40	36 37	-10 22	-3 73	-19 18	-13 49	-4 35	-28 28	-14 80	-4 84	-32 65
Chino Hills	0 48	0 17	0 90	0 67	0 22	1 38	0 65	0 21	1 40	4 33	1 58	8 14	5 76	1 86	12 04	6 23	2 04	13 71	-3 85	-1 41	-7 23	-5 09	-1 64	-10 66	-5 58	-1 82	-12 31
Colton	0 94	0 34	1 78	1 33	0 43	2.73	1 28	0 42	2 77	8 57	3 12	16 09	11 39	3 68	23 83	12 32	4 03	27 13	-7 62	-2 78	-14 31	-10 06	-3 24	-21 06	-11 04	-3 61	-24 35
Crestline	0 03	0 01	0 06	0 04	0 01	0 08	0 04	0 01	0 09	0 27	0 10	0 50	0 35	0 11	0 74	0 39	0 12	0 84	-0 24	-0 09	-0 44	-0 31	-0 10	-0 65	-0 34	-0 11	-0 75
Fontana	1.75	0 63	3.31	2.48	0 80	5 07	2.37	0 78	5 15	15 90	5 79	29 86	21 13	6 82	44 20	22 86	7 48	50 33	-14 15	-5 16	-26 55	-18 98	-6 02	-39 13	-20 48	-6 70	-45 18
Grand Terrace	0 74	0 26	1 39	1 04	0 34	2.13	1 00	0 33	2.17	6 89	2 44	12 57	8 89	2 87	18 61	9 62	3 15	21 19	-5 95	-2 17	-11 17	-7 96	-2 53	-16 47	-8 62	-2 82	-19 02
Hesperia	0 65	0 23	1.22	0 91	0 30	1 87	0 88	0 29	1 90	5 86	2 14	11 01	7 78	2 52	18 30	8 43	2 76	18 56	-5 22	-1 90	-9 79	-6 88	-2 22	-14 43	-7 56	-2 47	-16 67
Highland	0 36	0 13	0 67	0 50	0 18	1 03	0 48	0 16	1 05	3 24	1 18	6 08	4 30	1 39	9 00	4 66	1 52	10 25	-2 88	-1 05	-5 41	-3 80	-1 23	-7 97	-4 17	-1 36	-9 20
Joshua Tree	0 01	0 00	0 02	0 02	0 01	0 03	0 02	0 00	0 03	0 10	0 04	0 19	0 13	0 04	0 28	0 14	0 05	0 32	-0 09	-0 03	-0 17	-0 12	-0 04	-0 25	-0 13	-0 04	-0 29
Lake Arrowhead	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 06	0 18	0 07	0 35	0 25	0 08	0 51	0 27	0 09	0 58	-0 16	-0 06	-0 31	-0 22	-0 07	-0 45	-0 24	-0 08	-0 53
Lenwood	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 07	-0 02	-0 01	-0 04	-0 03	-0 01	-0 05	-0 03	-0 01	-0 06
Loma Linda	0 22	0 08	0 41	0 30	0 10	0 62	0 29	0 10	0 63	1 96	0 71	3 68	2 60	0 84	5 44	2 82	0 92	6 20	-1 74	-0 64	-3 27	-2 30	-0 74	-4 82	-2 52	-0 82	-5 56
Mentone	0 02	0 01	0 04	0 03	0 01	0 06	0 03	0 01	0 06	0 17	0 06	0 32	0 23	0 07	0 48	0 25	0 08	0 55	-0 15	-0 06	-0 29	-0 20	-0 07	-0 43	-0 22	-0 07	-0 49
Montclair	1 77	0 64	3.35	2.49	0 81	5.13	2.40	0 79	5.20	18 08	5 88	30.20	21 37	6 90	44.71	23.12	7 58	50 90	-14 31	-5 22	-28 85	-18 88	-6 09	-39 58	-20 72	-6 77	-45 70
Morongo Valley	0 00	0 00	0 00	0 00	0 00	0 01	0 00	0 00	0 01	0 02	0 01	0 03	0 02	0 01	0 04	0 02	0 01	0 05	-0 01	-0 01	-0 03	-0 02	-0 01	-0 04	-0 02	-0 01	-0 05
Mountain View Acres	0 07	0 03	0 14	0 10	0 03	0 22	0 10	0 03	0 22	0 68	0 25	1 27	0 90	0 29	1 88	0 97	0 32	2 14	-0 60	-0 22	-1 13	-0 78	-0 26	-1 67	-0 87	-0 29	-1 92
Muscoy	0 03	0 01	0 05	0 04	0 01	0 08	0 04	0 01	0 08	0 28	0 10	0 49	0 35	0 11	0 73	0 38	0 12	0 83	-0 23	-0 09	-0 44	-0 31	-0 10	-0 65	-0 34	-0 11	-0 75
Nebo Center	0 00	0 00	0 01	0 00	0 00	0 01	0 00	0 00	0 01	0 03	0 01	0 06	0 04	0 01	0 08	0 04	0 01	0 09	-0 03	-0 01	-0 05	-0 04	-0 01	-0 07	-0 04	-0 01	-0 08
Ontario	3.43	1.23	6 49	4.82	1 57	9 93	4 85	1 53	10 08	31 15	11 35	58 50	41 39	13 37	86 81	44 78	14 85	98 61	-27 72	-10 11	-52 01	-36 57	-11 79	-76 87	-40 14	-13 12	-88 53
Rancho Cucamonga	2.11	0 76	3 99	2.97	0 97	6.11	2.88	0 94	6.20	19 16	6 96	35 99	25 48	8 22	53 28	27 55	9 01	60 66	-17 05	-6 22	-32 00	-22 50	-7 25	-47 17	-24 69	-8 07	-54 48
Redlands	1.41	0 51	2.67	1.99	0 65	4.09	1 92	0 63	4 15	12 83	4 67	24 09	17 04	5 50	35 66	18 44	6 03	40 61	-11 41	-4 16	-21 42	-15 06	-4 86	-31 57	-16 53	-5 40	-36 45
Rialto	1.07	0 38	2.02	1 50	0 49	3.09	1.45	0 48	3 14	9 70	3 53	18 22	12 90	4 16	26 96	13 95	4 56	30 72	-8 63	-3 15	-16 20	-11 39	-3 67	-23 89	-12 50	-4 09	-27 58
Running Springs	0 00	0 00	0 01	0 01	0 00	0 01	0 01	0 00	0 01	0 04	0 02	0 06	0 06	0 02	0 12	0 06	0 02	0 13	-0 04	-0 01	-0 07	-0 05	-0 02	-0 10	-0 05	-0 02	-0 12
San Antonio Heights	0 02	0 01	0 03	0 02	0 01	0 05	0 02	0 01	0 05	0 15	0 06	0 29	0 20	0 06	0 42	0 22	0 07	0 48	-0 13	-0 05	-0 25	-0 18	-0 06	-0 37	-0 19	-0 06	-0 43
San Bernardino	3.96	1.43	7.52	5.59	1.82	11.51	5.39	1.78	11.69	36 11	13 15	67 81	47 98	15.50	100 40	51 92	18 98	114 31	-32 13	-11.72	-60 29	-42.39	-13 67	-88 86	-46 53	-15 21	-102 62
Twentynine Palms	0 18	0 06	0 31	0 23	0 07	0 47	0 22	0 07	0 48	1 47	0 54	2 78	1 95	0 63	4 09	2 11	0 69	4 65	-1 31	-0 48	-2 45	-1 73	-0 56	-3 82	-1 89	-0 62	-4 18
Twentynine Palms Base	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00	0 00
Upland	1.87	0 60	3 18	2 35	0 77	4.84	2.27	0 75	4 91	15 19	5 53	28 52	20 18	6 52	42 22	21 83	7 14	48 07	-13 51	-4 93	-25 36	-17 83	-5 75	-37 38	-19 57	-6 40	-43 16
Victorville	1.49	0 53	2.81	2 09	0 68	4 31	2.02	0 66	4.37	13 52	4 92	25 36	17 96	5 80	37 58	19 43	6 36	42 79	-12 03	-4 39	-22 57	-15 87	-5 12	-33 27	-17 42	-5 69	-38 41
Wrightwood	0 01	0 00	0 02	0 02	0 01	0 03	0 02	0 01	0 03	0 10	0 04	0 19	0 14	0 04	0 26	0 15	0 05	0 32	-0 09	-0 03	-0 17	-0 12	-0 04	-0 25	-0 13	-0 04	-0 29
Yucaipa	0 43	0 15	0 81	0 60	0 20	1 23	0 58	0 19	1.25	3 87	1 41	7 27	5 14	1 66	10 78	5 57	1 82	12 25	-3 44	-1 26	-6 46	-4 54	-1 47	-9 53	-4 99	-1 63	-11 00
Yucca Valley	0 18	0 06	0 31	0 23	0 08	0 48	0 22	0 07	0 48	1 50	0 54	2 81	1 99	0 64	4 18	2 15	0 70	4 74	-1 33	-0 49	-2 50	-1 78	-0 57	-3 68	-1 93	-0 63	-4 25
LOS ANGELES - UNINCOR	3.60	1.29	6 81	5 06	1 65	10 43	4.88	1.61	10 59	32.71	11 91	61.43	43 47	14.04	90 05	47 03	15 30	103 55	-29 11	-10 62	-54 62	-38 40	-12 38	-80 52	-42 15	-13 78	-92 96
ORANGE - UNINCOR	2.19	0 78	4 12	3.07	1.00	6.32	2.96	0 97	6 41	19 81	7 22	37 20	26 32	8 50	55 08	28 48	9 32	62.71	-17 63	-6 43	-33 08	-23 26	-7 50	-48 78	-25 52	-8 34	-56 30
RIVERSIDE - UNINCOR	2 98	1.07	5 64	4.19	1 37	8 84	4.04	1 33	8.77	27 08	9 87	50 87	35 98	11 82	75 31	38 95	12 74	85 75	-24 10	-8 80	-45 23	-31 80	-10 25	-66 88	-34 90	-11 41	-76 98
SAN BERNARDINO - UNINCOR	2.97	1 07	5 61	4 17	1 36	8 59	4.02	1 33	8.72	26 94	9 81	50 59	35 79	11 56	74 89	38 73	12 67	85 27	-23 97	-8 75	-44 98	-31 82	-10 20	-66 31	-34 71	-11 34	-76 55
VENTURA - UNINCOR	2.09	0.75	3.95	2.93	0.96	6.04	2.83	0 93	6.13	18 95	6.90	35.60	25 19	8.13	52.70	27 25	8 92	60 01	-16 87	-6 15	-31 65	-22 25	-7 18	-46 88	-24 42	-7 98	-53 87
Total	317.96	114.14	601.07	446.87	145.89	920.50	431.06	142.00	934.30	2886.80	1051.46	5421.26	3835.92	1238.73	8028.17	4150 83	1357 73	9138 33	-2568.82	-937 32	-4820 19	-3389.05	-1092 84	-7105 67	-3719 58	-1215 73	-8204 03

Table A16. Annual Direct Impacts for years 1 - 15 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	34.4	58.6	54.7	77.2	32.5
		Scenario II	10.2	21.0	31.2	31.3	40.7
		Scenario III	61.6	69.4	86.5	123.8	75.2
	CASE II	Scenario I	0.0	0.0	64.7	23.5	0.0
		Scenario II	0.0	0.0	18.4	9.5	0.0
		Scenario III	0.0	0.0	125.5	47.2	0.0
	CASE III	Scenario I	35.7	18.3	15.6	50.3	53.5
		Scenario II	17.1	9.5	8.0	26.3	20.4
		Scenario III	72.9	39.0	37.0	108.7	109.7
Impacts of Household Expenditure Reduction	CASE I	Scenario I	60.9	76.1	146.7	64.1	185.4
		Scenario II	22.2	27.7	53.4	23.4	67.5
		Scenario III	114.5	142.9	275.5	120.5	348.1
	CASE II	Scenario I	81.0	101.1	194.9	85.2	246.3
		Scenario II	26.2	32.7	63.0	27.5	79.5
		Scenario III	169.4	211.6	407.9	178.4	515.4
	CASE III	Scenario I	87.6	109.4	210.9	92.2	266.5
		Scenario II	28.7	35.8	69.0	30.2	87.2
		Scenario III	192.9	240.9	464.4	203.1	586.8
Net Impacts	CASE I	Scenario I	-26.5	-17.5	-92.0	13.1	-152.9
		Scenario II	-12.0	-6.7	-22.3	7.9	-26.8
		Scenario III	-52.9	-73.5	-189.0	3.3	-272.9
	CASE II	Scenario I	-81.0	-101.1	-130.3	-61.8	-246.3
		Scenario II	-26.2	-32.7	-44.5	-18.0	-79.5
		Scenario III	-169.4	-211.6	-282.4	-131.1	-515.4
	CASE III	Scenario I	-51.9	-91.1	-195.3	-41.9	-213.0
		Scenario II	-11.6	-26.3	-61.0	-3.9	-66.8
		Scenario III	-120.0	-201.9	-427.4	-94.3	-477.2

Table A17. Annual Direct Impacts for years 16 - 20 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	5.7	10.0	9.2	12.7	5.6
		Scenario II	1.6	3.5	5.0	5.0	6.7
		Scenario III	10.4	12.0	14.7	20.7	13.1
	CASE II	Scenario I	0.0	0.0	11.7	4.4	0.0
		Scenario II	0.0	0.0	3.4	1.7	0.0
		Scenario III	0.0	0.0	22.7	8.8	0.0
	CASE III	Scenario I	6.0	3.1	2.8	8.2	9.3
		Scenario II	2.7	1.5	1.3	4.0	3.3
		Scenario III	12.1	6.5	6.3	17.5	18.4
Impacts of Household Expenditure Reduction	CASE I	Scenario I	60.9	76.1	146.7	64.1	185.4
		Scenario II	22.2	27.7	53.4	23.4	67.5
		Scenario III	114.5	142.9	275.5	120.5	348.1
	CASE II	Scenario I	81.0	101.1	194.9	85.2	246.3
		Scenario II	26.2	32.7	63.0	27.5	79.5
		Scenario III	169.4	211.6	407.9	178.4	515.4
	CASE III	Scenario I	87.6	109.4	210.9	92.2	266.5
		Scenario II	28.7	35.8	69.0	30.2	87.2
		Scenario III	192.9	240.9	464.4	203.1	586.8
Net Impacts	CASE I	Scenario I	-55.2	-66.1	-137.5	-51.5	-179.8
		Scenario II	-20.6	-24.2	-48.4	-18.4	-60.8
		Scenario III	-104.0	-130.9	-260.8	-99.8	-335.0
	CASE II	Scenario I	-81.0	-101.1	-183.3	-80.9	-246.3
		Scenario II	-26.2	-32.7	-59.6	-25.8	-79.5
		Scenario III	-169.4	-211.6	-385.2	-169.5	-515.4
	CASE III	Scenario I	-81.6	-106.3	-208.1	-84.0	-257.3
		Scenario II	-26.0	-34.3	-67.7	-26.1	-83.8
		Scenario III	-180.8	-234.4	-458.1	-185.6	-568.4

Table A18. Annual Indirect Impacts for years 1 - 15 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	8.5	8.3	29.9	8.8	25.7
		Scenario II	3.2	3.1	11.1	3.3	9.6
		Scenario III	15.8	15.4	55.6	16.4	47.7
	CASE II	Scenario I	12.1	11.8	42.6	12.6	36.7
		Scenario II	3.9	3.8	13.7	4.0	11.8
		Scenario III	25.7	25.1	90.4	26.8	77.8
	CASE III	Scenario I	13.4	13.1	47.1	13.9	40.6
		Scenario II	4.4	4.3	15.3	4.5	13.2
		Scenario III	30.1	29.4	105.7	31.3	91.1
Impacts of Household Expenditure Reduction	CASE I	Scenario I	9.9	9.8	31.7	11.3	30.3
		Scenario II	3.6	3.6	11.6	4.1	11.0
		Scenario III	18.7	18.3	59.6	21.3	56.8
	CASE II	Scenario I	13.2	13.0	42.2	15.1	40.2
		Scenario II	4.3	4.2	13.6	4.9	13.0
		Scenario III	27.7	27.2	88.2	31.5	84.2
	CASE III	Scenario I	14.3	14.0	45.6	16.3	43.5
		Scenario II	4.7	4.6	14.9	5.3	14.2
		Scenario III	31.5	30.9	100.5	35.9	95.8
Net Impacts	CASE I	Scenario I	-1.5	-1.5	-1.9	-2.5	-4.6
		Scenario II	-0.5	-0.5	-0.4	-0.8	-1.5
		Scenario III	-2.9	-3.0	-4.0	-4.9	-9.1
	CASE II	Scenario I	-1.1	-1.1	0.4	-2.5	-3.6
		Scenario II	-0.4	-0.4	0.0	-0.8	-1.2
		Scenario III	-1.9	-2.0	2.1	-4.8	-6.3
	CASE III	Scenario I	-0.9	-1.0	1.4	-2.4	-3.0
		Scenario II	-0.3	-0.3	0.4	-0.8	-1.0
		Scenario III	-1.3	-1.5	5.2	-4.6	-4.7

Table A19. Annual Indirect Impacts for years 16 - 20 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	0.9	0.9	4.4	1.1	3.2
		Scenario II	0.3	0.3	1.6	0.4	1.1
		Scenario III	1.8	1.8	8.4	2.1	6.0
	CASE II	Scenario I	1.4	1.3	6.2	1.6	4.5
		Scenario II	0.4	0.4	2.0	0.5	1.5
		Scenario III	2.8	2.8	12.8	3.3	9.3
	CASE III	Scenario I	1.2	1.2	6.0	1.5	4.3
		Scenario II	0.4	0.4	2.0	0.5	1.4
		Scenario III	2.7	2.7	12.9	3.2	9.3
Impacts of Household Expenditure Reduction	CASE I	Scenario I	9.9	9.8	31.7	11.3	30.3
		Scenario II	3.6	3.6	11.6	4.1	11.0
		Scenario III	18.7	18.3	59.6	21.3	56.8
	CASE II	Scenario I	13.2	13.0	42.2	15.1	40.2
		Scenario II	4.3	4.2	13.6	4.9	13.0
		Scenario III	27.7	27.2	88.2	31.5	84.2
	CASE III	Scenario I	14.3	14.0	45.6	16.3	43.5
		Scenario II	4.7	4.6	14.9	5.3	14.2
		Scenario III	31.5	30.9	100.5	35.9	95.8
Net Impacts	CASE I	Scenario I	-9.0	-8.8	-27.3	-10.2	-27.1
		Scenario II	-3.3	-3.2	-10.0	-3.7	-9.9
		Scenario III	-16.9	-16.6	-51.3	-19.2	-50.8
	CASE II	Scenario I	-11.9	-11.6	-36.0	-13.5	-35.7
		Scenario II	-3.8	-3.7	-11.6	-4.3	-11.5
		Scenario III	-24.9	-24.4	-75.4	-28.3	-74.9
	CASE III	Scenario I	-13.0	-12.8	-39.7	-14.8	-39.2
		Scenario II	-4.3	-4.2	-13.0	-4.8	-12.8
		Scenario III	-28.8	-28.2	-87.5	-32.7	-86.5

Table A20. Annual Induced Impacts for years 1 - 15 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	12.5	14.7	27.9	15.7	33.0
		Scenario II	4.6	5.5	10.4	5.8	12.3
		Scenario III	23.2	27.4	51.9	29.1	61.4
	CASE II	Scenario I	17.8	21.0	39.8	22.3	47.1
		Scenario II	5.7	6.7	12.8	7.2	15.1
		Scenario III	37.8	44.5	84.5	47.4	99.9
	CASE III	Scenario I	19.7	23.2	44.0	24.7	52.0
		Scenario II	6.4	7.6	14.3	8.0	17.0
		Scenario III	44.2	52.1	98.9	55.5	116.8
Impacts of Household Expenditure Reduction	CASE I	Scenario I	16.3	19.2	36.5	20.5	43.1
		Scenario II	5.9	7.0	13.3	7.5	15.7
		Scenario III	30.6	36.1	68.5	38.4	80.9
	CASE II	Scenario I	21.7	25.5	48.5	27.2	57.3
		Scenario II	7.0	8.2	15.7	8.8	18.5
		Scenario III	45.3	53.5	101.4	56.9	119.8
	CASE III	Scenario I	23.4	27.6	52.4	29.4	62.0
		Scenario II	7.7	9.0	17.2	9.6	20.3
		Scenario III	51.6	60.9	115.5	64.8	136.4
Net Impacts	CASE I	Scenario I	-3.8	-4.5	-8.5	-4.8	-10.1
		Scenario II	-1.3	-1.5	-2.9	-1.6	-3.4
		Scenario III	-7.4	-8.7	-16.6	-9.3	-19.6
	CASE II	Scenario I	-3.9	-4.6	-8.6	-4.8	-10.2
		Scenario II	-1.3	-1.5	-2.9	-1.6	-3.4
		Scenario III	-7.6	-8.9	-16.9	-9.5	-20.0
	CASE III	Scenario I	-3.8	-4.4	-8.4	-4.7	-9.9
		Scenario II	-1.3	-1.5	-2.8	-1.6	-3.3
		Scenario III	-7.4	-8.7	-16.6	-9.3	-19.6

Table A21. Annual Induced Impacts for years 16 - 20 (El Monte, Inglewood, Pasadena, Pomona, Torrance)

(Millions of $ 1999)

Scenario			El Monte	Inglewood	Pasadena	Pomona	Torrance
Stimulus Effect	CASE I	Scenario I	1.8	2.1	4.0	2.3	4.7
		Scenario II	0.6	0.8	1.4	0.8	1.7
		Scenario III	3.4	4.0	7.6	4.3	9.0
	CASE II	Scenario I	2.5	3.0	5.6	3.2	6.7
		Scenario II	0.8	1.0	1.8	1.0	2.2
		Scenario III	5.2	6.1	11.6	6.5	13.7
	CASE III	Scenario I	2.4	2.9	5.4	3.1	6.4
		Scenario II	0.8	0.9	1.8	1.0	2.1
		Scenario III	5.3	6.2	11.8	6.6	13.9
Impacts of Household Expenditure Reduction	CASE I	Scenario I	16.3	19.2	36.5	20.5	43.1
		Scenario II	5.9	7.0	13.3	7.5	15.7
		Scenario III	30.6	36.1	68.5	38.4	80.9
	CASE II	Scenario I	21.7	25.5	48.5	27.2	57.3
		Scenario II	7.0	8.2	15.7	8.8	18.5
		Scenario III	45.3	53.5	101.4	56.9	119.8
	CASE III	Scenario I	23.4	27.6	52.4	29.4	62.0
		Scenario II	7.7	9.0	17.2	9.6	20.3
		Scenario III	51.6	60.9	115.5	64.8	136.4
Net Impacts	CASE I	Scenario I	-14.5	-17.1	-32.5	-18.2	-38.3
		Scenario II	-5.3	-6.2	-11.8	-6.6	-14.0
		Scenario III	-27.2	-32.1	-60.9	-34.2	-72.0
	CASE II	Scenario I	-19.1	-22.6	-42.8	-24.0	-50.6
		Scenario II	-6.2	-7.3	-13.8	-7.7	-16.3
		Scenario III	-40.1	-47.3	-89.8	-50.3	-106.1
	CASE III	Scenario I	-21.0	-24.8	-47.0	-26.4	-55.5
		Scenario II	-6.9	-8.1	-15.4	-8.6	-18.2
		Scenario III	-46.3	-54.6	-103.7	-58.1	-122.5

Table A22. Present Value of Net Project Impacts by County by Scenario

(Millions of $ 1999)

County		CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenano III
Los Angeles County	Arroyo Verdugo	-3,985.5	-1,161.4	-8,592.5	-7,005.8	-2,288.5	-14,831.7	-8,369.9	-2,686.0	-18,436.2
	City of Los Angeles	-19,434.4	-7,841.9	-37,606.0	-22,189.1	-7,366.3	-46,321.3	-29,858.2	-9,741.0	-65,073.6
	North Los Angeles County	101.7	271.8	7.4	7,472.9	1,943.9	18,140.3	14,006.5	3,325.3	34,364.4
	San Gabriel Valley	-4,560.4	-976.4	-7,843.7	-6,709.4	-2,075.9	-13,559.9	-10,964.0	-2,943.1	-24,751.8
	Southeast Los Angeles County	-3,753.3	-1,990.7	-7,286.0	-680.7	-201.6	-1,396.6	3,657.2	1,368.0	7,973.1
	South Bay	-6,136.4	-2,333.3	-11,327.7	-9,019.6	-2,893.7	-19,066.6	-9,991.2	-2,966.3	-22,668.9
	Westside Cities	-4,470.8	-1,690.0	-8,929.1	-6,631.4	-2,141.5	-13,875.3	-7,167.8	-2,343.4	-15,781.0
	Other Los Angeles County	4,136.3	2,233.4	9,143.1	-915.4	125.0	-2,742.7	464.1	138.3	1,429.6
	Los Angeles County Total	-38,103.0	-13,488.4	-72,434.5	-45,678.4	-14,898.6	-93,653.9	-48,223.4	-15,848.1	-102,944.6
Orange County		-1,793.7	-653.5	-3,369.7	-2,385.2	-770.2	-4,990.9	-2,581.0	-844.2	-5,682.5
Riverside County		-107.1	-39.0	-201.2	-142.3	-46.0	-297.8	-154.0	-50.4	-339.1
San Bernardino County		-900.6	-328.1	-1,691.6	-1,196.9	-386.5	-2,504.3	-1,295.0	-423.5	-2,851.2
Ventura County		-403.7	-145.0	-759.6	-540.4	-174.0	-1,131.6	-587.8	-192.2	-1,294.5
Total		-41,308.1	-14,654.0	-78,456.5	-49,943.1	-16,275.1	-102,578.6	-52,841.3	-17,358.4	-113,111.9

Table A23. Present Value of N[redacted]direct Impacts by County by Scenar[redacted]

(Millions of $ 1999)

County		CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenano II	Scenano III
Los Angeles County	Arroyo Verdugo	-374.9	-130.0	-718.6	-418.2	-137.5	-842.8	-430.4	-142.3	-893.2
	City of Los Angeles	-2,392.0	-830.5	-4,582.1	-2,677.6	-879.9	-5,403.8	-2,764.8	-913.9	-5,749.9
	North Los Angeles County	-94.5	-33.0	-180.8	-107.3	-35.2	-217.4	-111.5	-36.8	-233.4
	San Gabriel Valley	-662.8	-231.8	-1,266.0	-762.1	-249.7	-1,547.6	-793.5	-261.8	-1,667.2
	Southeast Los Angeles County	-880.3	-306.3	-1,684.9	-994.2	-326.4	-2,010.4	-1,028.8	-339.9	-2,146.5
	South Bay	-434.1	-149.6	-834.0	-473.1	-156.0	-948.3	-483.4	-160.1	-993.9
	Westside Cities	-247.2	-84.6	-476.3	-262.4	-86.8	-522.4	-265.4	-88.1	-539.2
	Other Los Angeles County	-446.8	-155.8	-854.5	-507.9	-166.6	-1,028.8	-527.2	-174.1	-1,103.2
	Los Angeles County Total	-5,532.7	-1,921.6	-10,597.3	-6,202.7	-2,038.2	-12,521.4	-6,405.0	-2,117.0	-13,326.5
Orange County		-1,953.8	-678.4	-3,742.6	-2,189.3	-719.5	-4,418.6	-2,259.1	-746.8	-4,698.8
Riverside County		-498.8	-173.7	-954.3	-563.3	-184.9	-1,140.0	-585.2	-193.3	-1,222.5
San Bernardino County		-619.6	-216.2	-1,184.4	-705.5	-231.3	-1,430.5	-734.6	-242.5	-1,539.4
Ventura County		-443.1	-154.6	-847.2	-505.3	-165.7	-1,024.1	-524.6	-173.2	-1,098.6
Total		-9,047.9	-3,144.6	-17,325.8	-10,166.1	-3,339.6	-20,534.7	-10,508.5	-3,472.7	-21,885.9

Table A24. Present Value of N[redacted]duced Impacts by County by Scenari[redacted]

(Millions of $ 1999)

County		CASE I			CASE II			CASE III		
		Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Los Angeles County	Arroyo Verdugo	-553.2	-193.5	-1,056.8	-637.3	-208.9	-1,294.0	-662.0	-216.5	-1,390.8
	City of Los Angeles	-3,375.2	-1,180.2	-6,447.4	-3,888.3	-1,274.3	-7,894.7	-4,038.9	-1,332.8	-8,484.9
	North Los Angeles County	-208.8	-73.0	-398.8	-240.5	-78.8	-488.3	-249.8	-82.4	-524.8
	San Gabriel Valley	-983.6	-343.9	-1,879.0	-1,133.2	-371.4	-2,300.7	-1,177.0	-388.4	-2,472.8
	Southeast Los Angeles County	-1,259.8	-440.5	-2,406.6	-1,451.3	-475.6	-2,946.8	-1,507.5	-497.5	-3,167.1
	South Bay	-733.7	-256.5	-1,401.5	-845.2	-277.0	-1,716.1	-877.9	-289.7	-1,844.4
	Westside Cities	-451.5	-157.9	-862.5	-520.2	-170.5	-1,056.2	-540.3	-178.3	-1,135.1
	Other Los Angeles County	-606.2	-212.0	-1,157.9	-698.3	-228.9	-1,417.8	-725.4	-239.4	-1,523.9
	Los Angeles County Total	-8,172.1	-2,857.5	-15,610.5	-9,414.2	-3,085.2	-19,114.6	-9,779.0	-3,226.9	-20,543.7
Orange County		-2,689.3	-940.4	-5,137.2	-3,098.1	-1,015.3	-6,290.3	-3,218.1	-1,061.9	-6,760.6
Riverside County		-1,098.7	-384.2	-2,098.8	-1,265.7	-414.8	-2,569.9	-1,314.8	-433.8	-2,762.0
San Bernardino County		-1,244.5	-435.2	-2,377.2	-1,433.6	-469.8	-2,910.8	-1,489.2	-491.4	-3,128.5
Ventura County		-665.6	-232.7	-1,271.5	-766.8	-251.3	-1,556.9	-796.5	-262.8	-1,673.3
Total		-13,870.2	-4,850.0	-26,495.2	-15,978.5	-5,236.5	-32,442.5	-16,597.5	-5,476.8	-34,868.1

Table A25. Present Value of Net Fiscal Impacts by Place by Scenario

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenano III
Acton	9.1	3.3	14.2	-0.4	-0.1	-0.8	-0.7	-0.2	-1.8
Agoura Hills	39.2	-34.2	59.2	-100.6	-20.2	-232.1	-127.6	-30.6	-311.0
Alhambra	-552.4	-314.6	-1,109.0	-1,133.1	-366.6	-2,362.1	-1,121.2	-348.7	-2,495.9
Alondra Park	-46.7	98.6	-87.9	-61.0	-19.7	-127.3	212.3	121.7	468.4
Altadena	-242.7	-88.2	-264.3	-318.2	-102.9	-663.8	-342.9	-112.3	-751.7
Arcadia	-764.7	-75.2	-1,239.3	-1,137.2	-367.7	-2,371.7	-976.2	-284.6	-2,182.9
Artesia	-317.1	-116.2	-497.7	-419.2	-135.6	-874.4	-451.1	-147.6	-988.7
Avocado Heights	56.0	-60.6	-27.2	-216.9	-70.2	-451.7	-233.0	-76.2	-509.4
Azusa	-38.8	-140.8	-608.6	4,669.1	1,419.9	10,283.2	-546.8	-179.0	-1,198.2
Baldwin Park	14.7	88.3	-449.1	-536.1	-173.3	-1,118.3	-562.2	-181.0	-1,234.7
Bell	-204.1	-113.3	-215.6	-407.8	-131.9	-850.3	-263.5	-52.1	-627.0
Bellflower	-176.8	20.6	-816.9	-783.9	-253.5	-1,635.2	-843.2	-275.8	-1,848.0
Bell Gardens	-153.8	-93.1	-276.2	-336.0	-108.7	-700.9	-292.3	-82.2	-677.6
Beverly Hills	-1,335.7	-483.3	-2,404.7	-1,736.2	-561.9	-3,617.0	-1,863.6	-609.7	-4,076.8
Bradbury	-2.0	1.6	182.3	-17.3	-5.6	-36.0	-18.6	-6.1	-40.8
Burbank	-805.7	-557.0	-2,380.7	-2,011.0	-650.6	-4,191.8	-1,758.0	-557.8	-3,881.5
Calabasas	245.0	84.9	368.7	0.3	12.4	-32.3	43.2	36.6	58.8
Carson	-797.8	-350.5	-1,076.0	-1,256.0	-406.6	-2,615.4	-760.5	-233.1	-1,781.5
Cerritos	-217.0	-33.3	-479.9	-977.4	-316.2	-2,037.2	-480.7	-49.3	-1,014.0
Charter Oak	8.6	-30.1	-7.6	-108.8	-35.2	-227.1	-117.3	-38.4	-257.3
Citrus	-12.2	-15.8	61.0	-60.5	-19.5	-126.2	-61.9	-20.1	-135.8
Claremont	-58.6	-41.8	39.4	-365.1	-97.1	-802.8	-517.5	-169.4	-1,133.2
Commerce	-376.5	-53.7	-774.2	-622.3	-201.6	-1,294.0	-516.0	-139.9	-1,129.0
Compton	-166.3	-237.0	-484.1	-854.7	-276.5	-1,781.6	-818.3	-248.1	-1,848.0
Covina	-132.1	-28.2	-890.2	-937.0	-303.0	-1,954.7	-444.1	-109.4	-994.2
Cudahy	-130.9	-48.5	-146.0	-175.2	-56.7	-365.7	-185.9	-60.3	-408.5
Culver City	-1,015.8	-414.9	-2,151.1	-1,496.8	-484.1	-3,121.4	-1,612.4	-527.9	-3,532.4
Del Aire	-114.1	-41.2	-214.7	-148.8	-48.1	-310.1	-160.2	-52.5	-350.7
Desert View Highlands	-14.8	-5.4	-27.9	-19.6	-6.3	-40.9	-21.2	-6.9	-46.5
Diamond Bar	-229.4	-111.4	-226.7	-334.6	-96.0	-700.7	-289.8	-78.9	-647.8
Downey	-351.0	-122.4	-929.7	-1,290.6	-417.5	-2,690.1	-1,193.9	-353.2	-2,711.7
Duarte	74.9	144.6	-6.5	-154.5	-52.1	-309.0	-237.1	-64.4	-561.4
East Compton	-22.5	-8.1	22.7	-29.3	-9.5	-61.2	-30.0	-9.5	-66.6
East La Mirada	-42.0	-15.2	-79.0	-54.9	-17.8	-114.5	-59.2	-19.4	-129.6
East Los Angeles	-219.1	126.5	-457.7	-818.3	-264.9	-1,704.6	-725.1	-208.1	-1,594.1
East Pasadena	-242.7	-88.4	-457.7	-319.6	-103.3	-667.2	-342.6	-112.1	-751.8
East San Gabriel	-149.4	33.2	-179.3	-196.3	-63.5	-409.8	624.7	224.2	1,287.0
El Monte	-548.4	-225.1	-1,069.0	-1,232.2	-398.7	-2,568.8	-915.0	-237.6	-2,063.9
El Segundo	-233.3	-129.1	-676.6	2,129.1	705.9	4,269.4	-387.6	-108.2	-892.5
Florence-Graham	93.6	41.2	88.2	-285.6	-92.4	-595.4	-306.4	-100.1	-671.6
Gardena	-427.4	-278.3	-1,337.9	-1,003.6	-324.6	-2,093.3	-962.6	-292.8	-2,120.9
Glendale	-2,171.5	-534.9	-4,256.8	-3,159.8	-1,020.3	-6,646.5	-3,968.6	-1,299.0	-8,694.9
Glendora	79.2	27.9	-261.5	-395.5	-133.4	-791.6	-777.0	-254.4	-1,703.0
Hacienda Heights	69.2	-127.4	-69.7	-459.5	-148.6	-958.4	-495.2	-162.1	-1,085.0
Hawaiian Gardens	-78.7	-4.5	-1.7	-103.3	-33.4	-215.3	-110.5	-36.0	-242.1
Hawthorne	-685.0	-251.5	-935.0	-954.1	-308.6	-1,990.2	-973.7	-308.6	-2,124.3
Hermosa Beach	-377.4	-137.1	-710.4	-495.3	-160.2	-1,033.6	-408.2	-110.9	-941.9
Hidden Hills	49.3	-5.0	33.6	-19.5	-6.3	-40.5	-4.5	1.6	-18.2
Huntington Park	-443.0	-199.0	-700.1	-718.0	-232.2	-1,497.8	-773.7	-253.3	-1,695.6
Industry	-839.5	-338.1	-1,412.8	-1,112.9	-339.0	-2,300.8	-937.6	-259.8	-2,088.1
Inglewood	-489.0	-179.9	-1,391.6	-1,522.0	-492.3	-3,174.1	-1,427.9	-427.4	-3,142.7
Irwindale	-83.5	-26.4	-53.4	11.0	23.5	-33.7	141.8	96.7	276.4
La Canada Flintridge	-112.2	174.0	-115.8	-307.2	-99.4	-641.1	-332.2	-108.7	-728.0
La Crescenta-Montrose	5.6	144.1	-253.7	-231.6	-74.9	-483.3	-249.7	-81.7	-547.5
Ladera Heights	-63.9	-23.2	-10.3	-83.3	-26.9	-173.5	-89.6	-29.3	-196.1
La Habra Heights	69.2	96.0	21.7	151.6	64.2	319.8	-58.3	-17.6	-131.9
Lake Los Angeles	-7.9	-2.9	-14.8	-10.4	-3.3	-21.6	-11.2	-3.7	-24.5
Lakewood	-375.9	-233.8	-630.8	-1,210.7	-391.5	-2,526.4	-1,026.4	-282.3	-2,319.4
La Mirada	-98.8	-110.3	39.3	-395.1	-127.9	-822.6	-424.7	-139.1	-928.2
Lancaster	-1,492.5	-541.7	-2,804.8	-1,966.6	-635.7	-4,107.2	-2,122.7	-694.7	-4,660.6
La Puente	-27.4	27.0	78.4	-317.6	-102.7	-662.7	-224.9	-52.8	-548.3
La Verne	-240.6	98.6	-14.5	179.4	85.9	346.7	-419.8	-137.2	-920.6
Lawndale	-279.5	-100.0	-211.5	-366.2	-118.4	-764.0	-321.2	-91.6	-735.2

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lennox	-29.4	54.4	-5.3	-176.5	-57.1	-368.2	-190.2	-62.3	-417.0
Littlerock	-2.2	-0.8	-4.1	-2.9	-0.9	-6.0	-3.1	-1.0	-6.8
Lomita	-269.5	-98.2	-403.4	-355.0	-114.8	-741.0	-382.0	-124.9	-838.2
Long Beach	-834.1	-523.1	-1,069.3	3,880.1	1,237.5	8,230.3	13,536.3	4,132.2	30,550.6
Los Angeles	-25,196.4	-9,800.6	-48,507.2	-29,837.7	-9,958.4	-61,552.8	-36,972.9	-12,141.9	-79,875.8
Lynwood	12.7	7.5	-379.9	-407.0	-131.7	-848.8	-435.4	-142.0	-955.6
Malibu	41.1	-8.4	106.4	497.4	240.7	868.2	751.9	273.1	1,577.6
Manhattan Beach	-427.1	-246.9	-735.0	-881.7	-285.0	-1,840.5	-788.3	-227.3	-1,789.0
Marina del Rey	-253.2	-91.7	-476.0	-329.1	-106.5	-686.1	-355.6	-116.4	-778.7
Mayflower Village	-22.2	-8.1	28.2	-29.1	-9.4	-60.8	-7.8	2.1	-32.6
Maywood	-61.4	-60.3	-119.5	-216.8	-70.2	-451.9	-136.6	-25.2	-361.6
Monrovia	-527.5	-187.9	-555.4	-536.0	-140.5	-1,065.5	-747.5	-240.8	-1,649.4
Montebello	-440.7	-274.9	-1,216.7	-949.3	-306.9	-1,980.7	-1,067.0	-349.1	-2,338.0
Monterey Park	-580.3	30.3	-258.5	-758.5	-245.4	-1,581.3	-663.0	-188.0	-1,459.9
North El Monte	-19.1	-6.9	0.6	-24.9	-8.0	-51.8	63.7	29.8	134.7
Norwalk	-237.5	-4.1	-116.0	-868.7	-281.0	-1,811.6	-930.4	-304.4	-2,038.7
Palmdale	-1,117.3	-404.5	-2,111.7	-1,795.5	-578.6	-3,752.2	-1,947.5	-636.0	-4,282.6
Palos Verdes Estates	54.5	-24.1	200.8	-87.0	-28.2	-181.4	62.7	49.3	66.2
Paramount	-124.1	-3.3	92.3	-445.4	-144.1	-928.1	-83.4	49.1	-251.2
Pasadena	-1,626.5	-458.1	-3,252.4	-2,187.6	-736.5	-4,664.2	-2,977.7	-941.8	-6,483.1
Pico Rivera	-37.3	-166.8	-138.6	6,800.5	2,204.8	14,188.4	35.6	1.3	-11.2
Pomona	-133.3	-10.4	-499.3	-1,060.6	-321.3	-2,229.8	-854.3	-167.4	-1,886.8
Quartz Hill	-49.0	-17.8	-92.3	-64.3	-20.8	-134.3	-69.4	-22.7	-152.2
Rancho Palos Verdes	94.5	-128.6	-402.4	-465.2	-150.4	-971.1	-254.6	-37.9	-665.9
Redondo Beach	-925.7	-211.3	-1,408.6	-1,212.2	-392.0	-2,528.6	-1,203.7	-375.4	-2,684.7
Rolling Hills	-5.3	-2.5	-10.6	-9.2	-3.0	-19.1	-6.4	-1.5	-15.6
Rolling Hills Estates	-66.4	-40.2	20.1	-145.4	-47.0	-303.6	-156.7	-51.3	-343.9
Rosemead	-389.6	-142.9	-331.9	-513.0	-166.0	-1,069.2	-197.2	2.6	-521.6
Rowland Heights	-230.2	-42.0	-624.4	-579.9	-187.6	-1,209.4	-624.7	-204.6	-1,368.7
San Dimas	-104.3	-5.8	-509.9	-290.2	-66.5	-588.5	-364.5	-93.4	-812.0
San Fernando	-340.6	-123.5	-637.2	604.5	191.1	1,137.5	-479.6	-157.0	-1,050.7
San Gabriel	-425.6	-166.1	-552.3	-599.6	-193.9	-1,251.0	-529.0	-152.7	-1,200.9
San Marino	-104.0	-37.2	-89.4	-135.9	-44.0	-283.2	-129.3	-41.8	-284.7
Santa Clarita	2,408.2	1,112.1	4,344.4	10,887.1	3,044.2	25,293.9	17,715.4	4,536.9	42,549.5
Santa Fe Springs	-239.2	-42.3	-375.3	-466.9	-151.4	-968.8	-104.6	-18.2	-261.9
Santa Monica	-1,815.0	-669.2	-3,919.8	-2,866.2	-927.4	-5,974.2	-3,082.5	-1,008.9	-6,747.2
Sierra Madre	3.4	-36.1	-86.1	-132.5	-42.9	-276.5	-142.4	-46.5	-312.2
Signal Hill	-187.2	-66.3	-252.2	-243.4	-78.8	-506.2	-260.8	-85.4	-569.5
South El Monte	-34.6	9.6	-133.1	-185.8	-60.2	-386.6	-107.8	-17.5	-265.4
South Gate	-384.5	-215.7	-700.9	-780.6	-252.5	-1,628.0	-636.5	-168.6	-1,506.7
South Pasadena	-197.7	-108.8	-362.2	-395.7	-128.0	-825.1	-425.9	-139.4	-932.9
South San Gabriel	-43.7	-15.7	-82.2	-57.1	-18.5	-119.0	-61.5	-20.1	-134.7
South San Jose Hills	-34.7	-18.5	113.6	-66.9	-21.6	-139.5	-41.4	-8.1	-88.9
South Whittier	-45.1	171.9	201.6	-323.2	-104.5	-674.0	-348.2	-114.0	-762.7
Temple City	-222.1	-85.7	-585.9	-429.2	-138.8	-895.5	-387.0	-119.2	-852.7
Torrance	-2,469.6	-561.1	-4,485.1	-3,714.0	-1,201.4	-7,744.6	-3,381.8	-1,074.6	-7,497.1
Valinda	-104.0	-42.9	-5.4	-154.9	-50.1	-323.3	-167.1	-54.7	-366.5
Val Verde	1.0	0.4	1.9	4.0	1.3	8.0	-0.2	-0.1	-0.4
Vernon	-69.0	-98.5	-394.0	-347.5	-112.8	-720.3	-371.3	-121.8	-805.8
View Park-Windsor Hills	-80.8	-28.8	-151.9	-105.4	-34.1	-219.7	-113.5	-37.2	-248.4
Vincent	-16.8	-40.8	-213.9	-180.4	-58.3	-376.4	-190.0	-61.3	-416.8
Walnut	-143.4	-51.0	-251.8	-187.6	-60.6	-390.8	-199.0	-64.7	-435.5
Walnut Park	-82.7	-30.8	151.1	-111.2	-36.0	-232.0	-119.8	-39.2	-262.7
West Athens	-36.9	-15.2	25.8	-54.6	-17.7	-113.9	-58.8	-19.3	-128.8
West Carson	-206.0	-75.3	-179.2	-270.9	-87.6	-564.7	-291.6	-95.5	-638.5
West Compton	-58.6	-21.2	32.3	-75.0	-24.3	-155.7	-80.3	-26.3	-174.7
West Covina	-418.9	-40.9	-680.4	-1,391.2	-449.9	-2,902.9	-1,154.7	-316.5	-2,526.8
West Hollywood	-1,003.1	-365.1	-1,792.3	-1,314.8	-425.4	-2,741.2	-1,415.0	-463.2	-3,099.0
Westlake Village	235.2	279.5	533.1	20.2	20.8	-2.7	22.7	24.2	-1.4
Westmont	-120.8	-44.5	-19.1	-160.8	-52.0	-335.3	-173.3	-56.7	-379.7
West Puente Valley	27.6	-14.3	25.3	-64.6	-20.9	-134.6	367.1	146.7	756.7
West Whittier-Los Nietos	-66.1	-55.3	-64.2	-202.8	-65.6	-423.0	-218.5	-71.5	-479.0
Whittier	-270.5	-41.2	-815.8	-938.6	-297.7	-1,956.3	-986.4	-300.5	-2,221.2
Willowbrook	-31.9	65.5	26.7	-199.6	-64.6	-415.7	-214.8	-70.3	-469.4

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Aliso Viejo	-46.8	-16.4	-89.5	-53.9	-17.7	-109.5	-56.1	-18.5	-117.8
Anaheim	-692.1	-245.1	-1,315.4	-833.4	-271.8	-1,709.3	-878.6	-289.0	-1,876.0
Brea	-133.0	-47.3	-252.4	-162.8	-53.0	-335.0	-172.2	-56.6	-369.6
Buena Park	-252.0	-90.2	-476.8	-315.5	-102.5	-652.4	-336.2	-110.3	-726.9
Costa Mesa	-359.1	-125.7	-685.6	-415.2	-136.0	-843.7	-431.8	-142.5	-908.5
Coto de Caza	-6.1	-2.1	-11.6	-7.1	-2.3	-14.4	-7.4	-2.4	-15.6
Cypress	-189.4	-67.7	-358.5	-236.6	-76.9	-488.8	-251.6	-82.6	-543.6
Dana Point	-56.2	-19.6	-107.4	-64.1	-21.0	-130.0	-66.6	-22.0	-139.6
Foothill Ranch	-1.3	-0.5	-2.5	-1.6	-0.5	-3.2	-1.6	-0.5	-3.5
Fountain Valley	-134.0	-47.3	-255.1	-159.5	-52.1	-326.2	-167.4	-55.1	-355.9
Fullerton	-385.0	-137.1	-730.0	-473.5	-154.1	-975.3	-501.7	-164.8	-1,078.6
Garden Grove	-299.8	-106.2	-569.8	-361.2	-117.8	-740.8	-380.6	-125.2	-812.8
Huntington Beach	-371.1	-131.0	-706.2	-442.0	-144.3	-904.3	-464.1	-152.8	-986.9
Irvine	-355.4	-123.2	-681.4	-395.0	-129.9	-795.6	-406.6	-134.5	-843.0
Laguna Beach	-66.0	-23.1	-126.0	-76.6	-25.1	-155.8	-79.8	-26.3	-168.3
Laguna Hills	-59.2	-20.7	-113.1	-68.1	-22.3	-138.3	-70.7	-23.3	-148.6
Laguna Niguel	-84.5	-29.6	-161.4	-97.6	-32.0	-198.4	-101.5	-33.5	-213.5
Laguna Woods	-41.0	-14.4	-78.3	-47.8	-15.6	-97.3	-49.8	-16.4	-105.1
La Habra	-235.7	-84.6	-445.4	-299.2	-97.1	-620.1	-319.5	-104.8	-693.6
Lake Forest	-93.5	-32.6	-178.8	-107.0	-35.1	-216.9	-111.0	-36.6	-232.6
La Palma	-55.7	-19.9	-105.4	-69.3	-22.5	-143.0	-73.0	-23.9	-157.4
Las Flores	-2.2	-0.8	-4.1	-2.5	-0.8	-5.1	-2.6	-0.9	-5.5
Los Alamitos	-79.1	-28.3	-149.8	-98.6	-32.1	-203.7	-104.9	-34.4	-226.4
Mission Viejo	-116.2	-40.7	-221.8	-134.8	-44.1	-274.2	-140.4	-46.3	-295.7
Newport Beach	-276.3	-96.4	-528.4	-315.7	-103.5	-639.7	-327.0	-108.0	-684.8
Newport Coast	-6.0	-2.1	-11.5	-7.1	-2.3	-14.5	-7.4	-2.4	-15.7
Orange	-356.2	-125.6	-678.1	-423.1	-138.2	-865.0	-443.9	-146.2	-943.2
Placentia	-77.5	-27.4	-147.4	-92.8	-30.3	-190.2	-97.7	-32.1	-208.2
Portola Hills	-0.5	-0.2	-1.0	-0.7	-0.2	-1.3	-0.7	-0.2	-1.5
Rancho Santa Margarita	-19.4	-6.8	-37.0	-22.5	-7.4	-45.9	-23.5	-7.7	-49.5
Rossmoor	-20.0	-7.2	-37.9	-25.4	-8.2	-52.7	-27.2	-8.9	-59.0
San Clemente	-92.1	-32.3	-175.8	-107.0	-35.0	-217.9	-111.9	-36.9	-236.0
San Joaquin Hills	-2.2	-0.8	-4.1	-2.6	-0.8	-5.2	-2.7	-0.9	-5.7
San Juan Capistrano	-70.4	-24.8	-134.1	-82.8	-27.1	-169.2	-87.0	-28.6	-184.3
Santa Ana	-546.1	-191.9	-1,041.2	-639.9	-209.3	-1,304.5	-668.6	-220.4	-1,413.6
Seal Beach	-104.0	-37.2	-196.8	-130.4	-42.3	-269.7	-138.9	-45.6	-300.5
Stanton	-61.1	-21.7	-116.1	-74.3	-24.2	-152.7	-78.4	-25.8	-168.0
Tustin	-164.6	-57.8	-313.9	-192.4	-62.9	-391.9	-200.9	-66.2	-424.3
Tustin Foothills	-22.6	-8.0	-43.2	-26.6	-8.7	-54.1	-27.7	-9.1	-58.7
Villa Park	-7.1	-2.5	-13.4	-8.5	-2.8	-17.3	-8.9	-2.9	-18.9
Westminster	-213.0	-75.7	-404.2	-259.7	-84.6	-533.9	-274.4	-90.2	-588.1
Yorba Linda	-70.4	-24.9	-133.8	-84.9	-27.7	-174.2	-89.5	-29.4	-191.1
Banning	-17.6	-6.2	-33.6	-20.3	-6.7	-41.3	-21.2	-7.0	-44.5
Beaumont	-11.3	-4.0	-21.6	-13.0	-4.3	-26.4	-13.5	-4.5	-28.3
Bermuda Dunes	-2.6	-0.9	-4.9	-3.0	-1.0	-6.2	-3.2	-1.0	-6.7
Cabazon	-0.8	-0.3	-1.6	-1.0	-0.3	-2.0	-1.0	-0.3	-2.1
Calimesa	-5.9	-2.1	-11.2	-6.8	-2.2	-13.8	-7.1	-2.3	-14.8
Canyon Lake	-1.9	-0.6	-3.6	-2.1	-0.7	-4.3	-2.2	-0.7	-4.6
Cathedral City	-47.5	-16.6	-90.7	-54.2	-17.8	-109.8	-56.2	-18.6	-117.8
Cherry Valley	-1.5	-0.5	-2.9	-1.7	-0.6	-3.5	-1.8	-0.6	-3.7
Coachella	-21.3	-7.5	-40.6	-25.1	-8.2	-51.2	-26.3	-8.7	-55.8
Corona	-147.4	-51.8	-280.8	-173.0	-56.6	-353.0	-181.2	-59.7	-383.6
Desert Hot Springs	-7.6	-2.7	-14.6	-8.7	-2.8	-17.5	-9.0	-3.0	-18.8
East Hemet	-12.8	-4.5	-24.4	-14.7	-4.8	-29.8	-15.3	-5.0	-32.0
El Cerrito	-2.4	-0.8	-4.5	-2.8	-0.9	-5.8	-3.0	-1.0	-6.3
Glen Avon	-21.0	-7.4	-40.0	-25.1	-8.2	-51.5	-26.5	-8.7	-56.4
Hemet	-68.5	-24.0	-130.9	-79.0	-25.9	-160.6	-82.3	-27.1	-173.0
Highgrove	-1.4	-0.5	-2.6	-1.5	-0.5	-3.0	-1.6	-0.5	-3.2
Home Gardens	-7.1	-2.5	-13.4	-8.5	-2.8	-17.3	-8.9	-2.9	-19.1
Homeland	-1.1	-0.4	-2.0	-1.3	-0.4	-2.6	-1.3	-0.4	-2.9
Idyllwild-Pine Cove	-0.1	0.0	-0.2	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Indian Wells	-10.8	-3.7	-20.9	-11.0	-3.7	-21.7	-11.0	-3.7	-22.0
Indio	-45.8	-16.1	-87.5	-53.2	-17.4	-108.3	-55.5	-18.3	-116.9

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenano I	Scenario II	Scenano III
Lake Elsinore	-32.2	-11.3	-61.4	-37.4	-12.2	-76.0	-39.0	-12.9	-82.1
Lakeland Village	-2.5	-0.9	-4.7	-2.9	-0.9	-5.9	-3.0	-1.0	-6.5
Lakeview	-1.3	-0.5	-2.4	-1.6	-0.5	-3.2	-1.6	-0.5	-3.5
La Quinta	-9.9	-3.4	-19.2	-10.3	-3.4	-20.4	-10.3	-3.4	-20.8
March AFB	-1.4	-0.5	-2.6	-1.6	-0.5	-3.2	-1.6	-0.5	-3.5
Mecca	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Mira Loma	-13.5	-4.8	-25.7	-16.2	-5.3	-33.1	-17.0	-5.6	-36.2
Moreno Valley	-97.6	-34.1	-186.3	-112.4	-36.8	-228.2	-116.8	-38.5	-245.4
Murrieta	-22.7	-8.0	-43.4	-26.3	-8.6	-53.5	-27.4	-9.0	-57.8
Murrieta Hot Springs	-0.7	-0.2	-1.3	-0.8	-0.3	-1.6	-0.8	-0.3	-1.7
Norco	-24.4	-8.5	-46.9	-27.1	-8.9	-54.6	-27.9	-9.2	-57.8
Nuevo	-2.1	-0.7	-4.0	-2.5	-0.8	-5.2	-2.7	-0.9	-5.8
Palm Desert	-103.4	-36.2	-197.4	-119.7	-39.2	-243.4	-124.8	-41.2	-262.8
Palm Springs	-101.5	-35.3	-194.3	-114.4	-37.6	-231.2	-118.2	-39.1	-246.5
Pedley	-12.2	-4.3	-23.3	-14.5	-4.7	-29.5	-15.2	-5.0	-32.2
Perris	-29.9	-10.4	-57.2	-34.2	-11.2	-69.3	-35.5	-11.7	-74.3
Quail Valley	-0.5	-0.2	-0.9	-0.6	-0.2	-1.1	-0.6	-0.2	-1.2
Rancho Mirage	-25.6	-8.8	-49.3	-27.8	-9.2	-55.8	-28.4	-9.4	-58.2
Riverside	-427.3	-149.8	-815.4	-496.0	-162.4	-1,009.2	-517.1	-170.5	-1,090.0
Romoland	-1.4	-0.5	-2.6	-1.5	-0.5	-3.0	-1.6	-0.5	-3.2
Rubidoux	-17.1	-6.0	-32.7	-20.2	-6.6	-41.1	-21.1	-6.9	-44.7
San Jacinto	-16.9	-5.9	-32.2	-19.7	-6.4	-40.0	-20.5	-6.8	-43.3
Sedco Hills	-3.4	-1.2	-6.5	-3.9	-1.3	-7.9	-4.0	-1.3	-8.5
Sun City	-20.5	-7.2	-39.0	-23.9	-7.8	-48.7	-24.9	-8.2	-52.6
Sunnyslope	-1.4	-0.5	-2.6	-1.6	-0.5	-3.3	-1.7	-0.6	-3.6
Temecula	-55.2	-19.3	-105.5	-63.8	-20.9	-129.8	-66.6	-22.0	-140.2
Thousand Palms	-0.8	-0.3	-1.5	-0.9	-0.3	-1.8	-0.9	-0.3	-1.9
Valle Vista	-3.2	-1.1	-6.1	-3.7	-1.2	-7.5	-3.8	-1.3	-8.0
Wildomar	-8.5	-3.0	-16.2	-9.8	-3.2	-19.8	-10.2	-3.3	-21.3
Winchester	-3.0	-1.1	-5.8	-3.6	-1.2	-7.3	-3.8	-1.2	-8.0
Woodcrest	-8.6	-3.0	-16.4	-9.8	-3.2	-19.9	-10.2	-3.4	-21.4
Camarillo	-79.0	-27.6	-150.9	-91.0	-29.8	-184.8	-94.6	-31.2	-198.7
Casa Conejo	-3.6	-1.3	-6.9	-4.3	-1.4	-8.9	-4.6	-1.5	-9.7
Channel Islands Beach	-4.8	-1.7	-9.1	-5.5	-1.8	-11.3	-5.8	-1.9	-12.1
El Rio	-5.9	-2.0	-11.2	-6.7	-2.2	-13.7	-7.0	-2.3	-14.7
Fillmore	-6.0	-2.1	-11.4	-6.9	-2.3	-13.9	-7.1	-2.4	-14.9
Meiners Oaks	-2.9	-1.0	-5.5	-3.3	-1.1	-6.6	-3.4	-1.1	-7.1
Mira Monte	-7.4	-2.6	-14.2	-8.5	-2.8	-17.2	-8.8	-2.9	-18.4
Moorpark	-26.1	-9.2	-49.7	-31.1	-10.2	-63.6	-32.7	-10.8	-69.5
Oak Park	-0.6	-0.2	-1.1	-0.8	-0.2	-1.6	-0.8	-0.3	-1.8
Oak View	-2.9	-1.0	-5.5	-3.3	-1.1	-6.7	-3.4	-1.1	-7.2
Ojai	-6.0	-2.1	-11.5	-6.8	-2.2	-13.6	-7.0	-2.3	-14.5
Oxnard	-185.0	-64.7	-353.3	-213.5	-69.9	-433.7	-222.1	-73.3	-467.1
Piru	-0.2	-0.1	-0.4	-0.3	-0.1	-0.5	-0.3	-0.1	-0.6
Port Hueneme	-18.8	-6.6	-36.0	-21.6	-7.1	-43.9	-22.5	-7.4	-47.2
San Buenaventura (Ventura)	-169.2	-59.0	-323.6	-192.6	-63.2	-390.1	-199.5	-65.9	-417.3
Santa Paula	-29.7	-10.4	-56.5	-35.0	-11.4	-71.5	-36.7	-12.1	-77.8
Simi Valley	-220.7	-78.3	-418.7	-269.2	-87.7	-553.6	-284.7	-93.6	-610.4
Thousand Oaks	-496.2	-176.1	-939.5	-617.7	-200.7	-1,275.2	-656.5	-215.5	-1,416.1
Adelanto	-9.6	-3.4	-18.3	-11.4	-3.7	-23.4	-12.0	-4.0	-25.6
Apple Valley	-34.4	-12.1	-65.6	-40.1	-13.1	-81.8	-42.0	-13.8	-88.6
Barstow	-20.0	-6.9	-38.2	-22.4	-7.4	-45.2	-23.1	-7.6	-48.1
Big Bear City	-0.3	-0.1	-0.7	-0.4	-0.1	-0.8	-0.4	-0.1	-0.9
Big Bear Lake	-10.4	-3.6	-19.9	-11.7	-3.8	-23.7	-12.1	-4.0	-25.3
Bloomington	-15.2	-5.3	-29.0	-17.7	-5.8	-35.9	-18.4	-6.1	-38.8
Chino	-184.6	-65.9	-349.8	-228.2	-74.2	-470.8	-242.4	-79.6	-522.0
Chino Hills	-79.2	-28.5	-149.7	-100.7	-32.7	-208.9	-107.7	-35.3	-233.9
Colton	-67.5	-23.7	-128.9	-78.4	-25.7	-159.6	-81.8	-27.0	-172.4
Crestline	-3.9	-1.4	-7.4	-4.5	-1.5	-9.2	-4.8	-1.6	-10.1
Fontana	-121.1	-42.5	-230.9	-141.5	-46.3	-288.4	-147.9	-48.8	-312.6
Grand Terrace	-39.9	-14.0	-76.1	-46.5	-15.2	-94.8	-48.6	-16.0	-102.5
Hesperia	-43.2	-15.1	-82.4	-50.0	-16.4	-101.8	-52.2	-17.2	-110.0
Highland	-27.4	-9.7	-52.3	-32.4	-10.6	-66.0	-33.8	-11.1	-71.7

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenano III
Joshua Tree	-0.6	-0.2	-1.2	-0.7	-0.2	-1.4	-0.7	-0.2	-1.6
Lake Arrowhead	-2.6	-0.9	-5.1	-2.5	-0.8	-4.9	-2.5	-0.8	-4.7
Lenwood	-0.3	-0.1	-0.6	-0.3	-0.1	-0.6	-0.3	-0.1	-0.6
Loma Linda	-15.9	-5.6	-30.3	-18.4	-6.0	-37.4	-19.1	-6.3	-40.3
Mentone	-3.0	-1.1	-5.7	-3.6	-1.2	-7.4	-3.8	-1.2	-8.1
Montclair	-349.9	-126.1	-660.1	-448.7	-145.4	-932.4	-481.0	-157.7	-1,048.0
Morongo Valley	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.1	0.0	-0.3
Mountain View Acres	-4.7	-1.7	-9.0	-5.7	-1.8	-11.6	-6.0	-2.0	-12.7
Muscoy	-7.7	-2.7	-14.5	-9.3	-3.0	-19.1	-9.8	-3.2	-21.0
Nebo Center	-0.1	0.0	-0.3	-0.1	0.0	-0.3	-0.2	-0.1	-0.3
Ontario	-397.8	-141.2	-755.3	-483.1	-157.4	-992.8	-510.5	-167.9	-1,093.3
Rancho Cucamonga	-189.0	-66.7	-359.7	-224.7	-73.4	-459.7	-236.0	-77.7	-501.8
Redlands	-88.5	-30.9	-169.3	-101.0	-33.1	-204.7	-104.7	-34.6	-219.2
Rialto	-68.5	-24.0	-130.7	-79.7	-26.1	-162.4	-83.2	-27.4	-175.6
Running Springs	-0.1	0.0	-0.2	0.1	0.0	0.4	0.2	0.1	0.6
San Antonio Heights	-2.5	-0.9	-4.8	-3.1	-1.0	-6.5	-3.3	-1.1	-7.2
San Bernardino	-280.7	-98.3	-535.7	-325.3	-106.5	-661.5	-339.1	-111.8	-714.4
Twentynine Palms	-8.9	-3.1	-17.1	-10.3	-3.4	-20.9	-10.7	-3.5	-22.5
Twentynine Palms Base	0.0	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Upland	-215.3	-77.0	-407.6	-268.2	-87.2	-554.0	-285.2	-93.6	-615.8
Victorville	-117.8	-41.6	-224.2	-140.0	-45.7	-286.4	-147.2	-48.5	-313.0
Wrightwood	-1.1	-0.4	-2.1	-1.0	-0.3	-2.0	-1.0	-0.3	-2.0
Yucaipa	-28.1	-9.8	-53.5	-32.7	-10.7	-66.5	-34.1	-11.2	-71.9
Yucca Valley	-10.3	-3.6	-19.8	-11.8	-3.9	-23.9	-12.3	-4.0	-25.7
LOS ANGELES - UNINCOR	5,472.0	2,044.1	10,400.8	5,041.2	2,019.7	9,814.3	5,011.6	1,439.9	11,748.1
ORANGE - UNINCOR	-212.4	-75.0	-405.4	-253.5	-82.7	-518.5	-266.3	-87.7	-566.0
RIVERSIDE - UNINCOR	-219.6	-77.1	-418.6	-256.7	-84.0	-523.3	-268.6	-88.5	-567.7
SAN BERNARDINO - UNINCOR	-314.1	-111.4	-597.0	-379.5	-123.7	-779.2	-400.8	-131.8	-857.1
VENTURA - UNINCOR	-247.5	-86.3	-473.3	-294.4	-95.7	-602.1	-311.6	-102.6	-661.4
Total	-64,226	-22,649	-122,277	-76,088	-24,851	-155,556	-79,947	-26,308	-169,866

Table A26. Present Value of Di[redacted]Net Impacts by Place by Scenario

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	9.1	3.3	14.4	-0.3	0.0	-0.7	-0.7	-0.2	-1.6
Agoura Hills	62.0	-26.3	102.6	-74.4	-11.6	-178.8	-100.3	-21.6	-253.7
Alhambra	-441.5	-275.9	-896.7	-1,007.1	-325.2	-2,107.3	-991.1	-305.7	-2,224.1
Alondra Park	-41.8	100.3	-78.5	-55.5	-17.9	-116.2	217.9	123.6	480.1
Altadena	-222.0	-81.0	-224.6	-295.7	-95.5	-618.6	-319.9	-104.6	-704.3
Arcadia	-655.3	-37.0	-1,030.5	-1,010.6	-326.2	-2,114.5	-844.7	-241.2	-1,906.3
Artesia	-279.3	-103.0	-425.4	-375.8	-121.4	-786.4	-406.1	-132.7	-894.3
Avocado Heights	101.2	-44.6	58.6	-162.9	-52.6	-340.7	-175.6	-57.3	-386.8
Azusa	11.6	-123.1	-512.5	4,727.3	1,439.0	10,401.6	-486.1	-159.0	-1,070.3
Baldwin Park	69.6	107.5	-344.3	-472.7	-152.5	-989.4	-496.2	-159.2	-1,095.7
Bell	-162.0	-98.6	-135.2	-359.7	-116.1	-752.5	-213.5	-35.6	-522.2
Bellflower	-111.6	43.3	-692.2	-709.4	-229.1	-1,484.3	-766.1	-250.3	-1,686.5
Bell Gardens	-120.5	-81.4	-212.8	-297.0	-95.9	-621.4	-251.5	-68.8	-591.4
Beverly Hills	-1,144.5	-416.9	-2,038.6	-1,520.9	-491.2	-3,182.3	-1,641.9	-536.4	-3,615.1
Bradbury	-0.1	2.2	185.9	-15.0	-4.8	-31.4	-16.3	-5.3	-35.9
Burbank	-571.7	-475.0	-1,933.9	-1,739.5	-561.7	-3,639.7	-1,475.2	-464.5	-3,285.9
Calabasas	256.2	88.8	390.3	12.9	16.6	-6.9	56.2	40.9	85.8
Carson	-630.8	-292.2	-756.5	-1,066.2	-344.3	-2,230.8	-563.4	-168.0	-1,369.2
Cerritos	-110.8	3.9	-276.8	-855.4	-276.2	-1,789.8	-354.2	-7.5	-748.5
Charter Oak	16.5	-27.4	7.4	-99.9	-32.3	-209.0	-108.1	-35.4	-238.0
Citrus	-7.7	-14.2	69.7	-55.2	-17.8	-115.4	-56.4	-18.3	-124.2
Claremont	-16.8	-27.3	119.6	-318.9	-81.9	-709.9	-470.2	-153.7	-1,035.3
Commerce	-243.1	-6.8	-520.0	-465.6	-150.4	-974.2	-352.0	-85.9	-781.8
Compton	-73.4	-204.5	-306.5	-748.0	-241.5	-1,565.0	-707.3	-211.5	-1,615.0
Covina	-53.6	-0.9	-740.3	-847.4	-273.6	-1,773.2	-351.3	-78.8	-799.8
Cudahy	-117.4	-43.8	-120.1	-159.8	-51.6	-334.4	-169.9	-55.0	-374.9
Culver City	-865.8	-362.4	-1,864.6	-1,322.9	-427.2	-2,768.1	-1,431.5	-468.3	-3,151.7
Del Aire	-102.0	-37.0	-191.4	-135.6	-43.8	-283.7	-146.7	-48.0	-323.0
Desert View Highlands	-14.1	-5.1	-26.5	-18.7	-6.0	-39.2	-20.3	-6.6	-44.6
Diamond Bar	-181.3	-94.6	-134.9	-279.4	-77.9	-588.5	-232.3	-59.9	-527.2
Downey	-239.5	-83.9	-715.5	-1,167.9	-377.1	-2,443.6	-1,068.1	-311.6	-2,452.0
Duarte	96.8	152.2	35.6	-129.7	-44.0	-258.9	-211.4	-56.0	-508.0
East Compton	-20.5	-7.5	26.5	-27.2	-8.8	-56.9	-27.8	-8.8	-62.1
East La Mirada	-37.1	-13.5	-69.6	-49.3	-15.9	-103.2	-53.4	-17.5	-117.5
East Los Angeles	-128.7	157.8	-284.6	-717.1	-231.6	-1,500.4	-620.9	-173.6	-1,377.6
East Pasadena	-222.3	-81.2	-418.5	-296.3	-95.7	-620.0	-318.4	-104.1	-701.3
East San Gabriel	-136.2	37.8	-154.0	-181.0	-58.5	-378.7	640.6	229.4	1,320.5
El Monte	-431.6	-184.4	-845.3	-1,100.6	-355.4	-2,302.9	-779.1	-192.7	-1,781.0
El Segundo	-148.0	-99.7	-512.7	2,222.5	736.6	4,456.6	-292.5	-76.6	-696.8
Florence-Graham	122.5	51.3	143.5	-252.7	-81.6	-528.8	-272.4	-88.9	-600.3
Gardena	-333.0	-245.2	-1,157.6	-894.7	-288.9	-1,872.0	-849.3	-255.4	-1,882.5
Glendale	-1,807.0	-407.3	-3,561.0	-2,737.4	-882.0	-5,787.8	-3,529.1	-1,154.1	-7,769.6
Glendora	142.2	50.0	-141.1	-323.2	-109.7	-644.8	-701.8	-229.6	-1,545.1
Hacienda Heights	109.2	-113.5	6.7	-414.0	-133.7	-866.3	-448.0	-146.5	-986.4
Hawaiian Gardens	-69.0	-1.1	16.8	-92.2	-29.8	-192.9	-99.0	-32.3	-218.1
Hawthorne	-608.1	-224.8	-787.9	-867.0	-280.0	-1,814.0	-883.6	-278.8	-1,936.1
Hermosa Beach	-341.4	-124.5	-641.4	-454.2	-146.7	-950.5	-365.7	-96.9	-853.2
Hidden Hills	52.8	-3.8	40.2	-15.8	-5.1	-33.1	-0.8	2.9	-10.6
Huntington Park	-379.4	-176.8	-578.5	-645.0	-208.3	-1,349.6	-697.9	-228.3	-1,536.6
Industry	-686.1	-284.4	-1,120.0	-934.8	-280.7	-1,938.6	-752.0	-198.5	-1,696.8
Inglewood	-358.3	-134.4	-1,141.3	-1,374.1	-443.7	-2,875.2	-1,275.1	-376.9	-2,823.9
Irwindale	-22.2	-4.7	63.2	84.9	47.5	117.7	219.5	122.2	442.1
La Canada Flintridge	-82.8	184.4	-59.6	-273.0	-88.2	-571.4	-296.5	-96.9	-652.8
La Crescenta-Montrose	23.2	150.3	-219.9	-211.5	-68.3	-442.6	-228.9	-74.9	-503.9
Ladera Heights	-54.9	-20.0	7.0	-73.0	-23.6	-152.7	-79.0	-25.8	-173.9
La Habra Heights	74.5	97.9	31.9	157.7	66.2	332.1	-52.0	-15.5	-118.6
Lake Los Angeles	-7.4	-2.7	-13.8	-9.8	-3.2	-20.5	-10.6	-3.5	-23.3
Lakewood	-278.2	-199.7	-444.2	-1,098.1	-354.6	-2,297.5	-909.1	-243.6	-2,072.9
La Mirada	-39.2	-89.4	153.1	-326.1	-105.3	-682.3	-352.8	-115.4	-776.8
Lancaster	-1,389.6	-505.8	-2,608.1	-1,848.9	-597.1	-3,868.6	-2,000.6	-654.4	-4,404.6
La Puente	-2.0	35.9	127.0	-288.2	-93.1	-603.0	-194.3	-42.7	-484.0
La Verne	-210.0	109.2	44.1	214.0	97.2	416.8	-384.0	-125.3	-845.9
Lawndale	-251.7	-90.4	-158.4	-334.5	-108.0	-699.9	-288.4	-80.8	-666.5

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenano II	Scenario III
Lennox	-14.7	59.5	22.7	-159.9	-51.6	-334.6	-173.0	-56.6	-381.0
Littlerock	-2.0	-0.7	-3.8	-2.7	-0.9	-5.6	-2.9	-0.9	-6.4
Lomita	-244.2	-89.4	-355.0	-326.2	-105.3	-682.5	-352.1	-115.0	-775.6
Long Beach	-358.0	-357.9	-156.9	4,412.5	1,412.5	9,303.9	14,084.6	4,313.5	31,689.5
Los Angeles	-19,498.8	-7,814.2	-37,610.4	-23,351.8	-7,830.4	-48,416.6	-30,252.3	-9,922.7	-65,815.6
Lynwood	47.8	19.7	-312.8	-367.4	-118.7	-768.8	-394.6	-128.5	-870.5
Malibu	50.5	-5.1	124.3	508.2	244.2	890.0	763.0	276.8	1,601.0
Manhattan Beach	-367.2	-226.1	-620.0	-814.6	-263.0	-1,705.2	-719.3	-204.4	-1,645.5
Marina del Rey	-228.5	-83.2	-428.5	-302.5	-97.7	-633.1	-328.6	-107.5	-723.5
Mayflower Village	-20.0	-7.3	32.4	-26.6	-8.6	-55.7	-5.2	3.0	-27.1
Maywood	-40.9	-53.2	-80.2	-194.0	-62.7	-405.9	-113.2	-17.4	-312.9
Monrovia	-468.1	-167.3	-441.6	-469.8	-118.7	-932.1	-679.4	-218.3	-1,508.1
Montebello	-343.2	-240.7	-1,030.5	-836.7	-270.0	-1,752.0	-949.9	-310.5	-2,091.8
Monterey Park	-496.9	59.5	-99.4	-661.7	-213.7	-1,384.6	-562.3	-154.8	-1,247.7
North El Monte	-16.5	-6.0	5.6	-21.9	-7.1	-45.9	66.8	30.8	141.1
Norwalk	-152.4	25.7	46.6	-770.9	-248.9	-1,612.9	-828.6	-270.8	-1,824.9
Palmdale	-1,041.0	-377.9	-1,965.9	-1,708.3	-550.0	-3,575.4	-1,857.0	-606.1	-4,092.9
Palos Verdes Estates	64.4	-20.7	219.6	-75.8	-24.5	-158.7	74.3	53.1	90.5
Paramount	-73.0	14.6	190.1	-387.0	-125.0	-809.7	-22.8	69.1	-124.3
Pasadena	-1,363.0	-367.4	-2,745.9	-1,901.6	-642.2	-4,091.7	-2,686.0	-845.2	-5,884.4
Pico Rivera	16.3	-148.2	-36.0	6,860.1	2,224.4	14,308.4	96.8	21.6	115.8
Pomona	18.2	42.6	-209.7	-886.7	-264.3	-1,877.0	-673.6	-107.7	-1,507.6
Quartz Hill	-45.0	-16.4	-84.6	-59.8	-19.3	-125.2	-64.7	-21.2	-142.5
Rancho Palos Verdes	124.8	-118.1	-344.3	-430.7	-139.1	-901.2	-218.9	-26.1	-591.3
Redondo Beach	-837.6	-180.8	-1,239.7	-1,114.2	-359.8	-2,331.3	-1,103.0	-342.1	-2,476.0
Rolling Hills	-4.6	-2.3	-9.3	-8.4	-2.7	-17.6	-5.7	-1.2	-14.0
Rolling Hills Estates	-56.3	-36.7	39.5	-133.7	-43.2	-279.8	-144.6	-47.3	-318.4
Rosemead	-298.7	-110.7	-159.3	-403.8	-130.4	-844.9	-81.1	40.8	-273.5
Rowland Heights	-174.0	-22.4	-517.0	-515.1	-166.3	-1,077.7	-557.3	-182.3	-1,227.1
San Dimas	-55.3	11.3	-416.3	-233.9	-48.0	-474.1	-305.8	-74.0	-688.8
San Fernando	-295.1	-107.5	-550.4	657.4	208.4	1,245.2	-424.3	-138.8	-934.3
San Gabriel	-375.8	-148.6	-457.0	-542.3	-175.1	-1,134.7	-469.4	-133.1	-1,075.8
San Marino	-87.1	-31.3	-57.1	-116.1	-37.5	-242.8	-108.6	-35.0	-241.2
Santa Clarita	2,532.3	1,155.5	4,581.4	11,030.1	3,091.0	25,584.3	17,864.1	4,585.9	42,861.9
Santa Fe Springs	-126.5	-2.9	-160.0	-337.3	-108.9	-705.8	30.1	26.2	21.0
Santa Monica	-1,558.1	-580.3	-3,427.0	-2,581.9	-833.8	-5,402.3	-2,790.7	-912.4	-6,143.5
Sierra Madre	13.7	-32.5	-66.3	-121.0	-39.1	-253.2	-130.4	-42.6	-287.4
Signal Hill	-148.0	-52.7	-177.3	-198.9	-64.2	-416.1	-214.7	-70.1	-472.9
South El Monte	2.6	22.7	-62.3	-142.1	-45.9	-297.3	-62.0	-2.4	-168.5
South Gate	-309.0	-189.2	-556.7	-693.3	-223.9	-1,450.7	-545.7	-138.7	-1,315.6
South Pasadena	-161.1	-96.1	-292.1	-354.2	-114.4	-741.2	-383.1	-125.3	-843.6
South San Gabriel	-39.0	-14.1	-73.3	-51.8	-16.7	-108.5	-56.1	-18.4	-123.5
South San Jose Hills	-29.3	-16.6	123.9	-60.7	-19.6	-127.1	-35.0	-6.0	-75.6
South Whittier	-15.6	182.2	258.0	-289.5	-93.5	-605.8	-313.3	-102.5	-689.7
Temple City	-187.9	-73.7	-520.4	-389.9	-125.9	-815.7	-346.2	-105.8	-767.1
Torrance	-2,144.6	-448.1	-3,862.6	-3,347.7	-1,081.1	-7,004.7	-3,004.1	-949.7	-6,710.5
Valinda	-92.9	-39.0	15.8	-142.2	-45.9	-297.5	-153.9	-50.3	-338.8
Val Verde	1.0	0.4	2.0	4.1	1.3	8.1	-0.1	0.0	-0.3
Vernon	62.7	-52.0	-143.6	-189.6	-61.2	-396.8	-205.2	-67.1	-451.7
View Park-Windsor Hills	-72.8	-26.0	-136.4	-96.7	-31.2	-202.3	-104.6	-34.2	-230.3
Vincent	-3.0	-35.9	-187.5	-164.4	-53.1	-344.0	-173.4	-55.9	-381.9
Walnut	-124.1	-44.3	-214.9	-165.9	-53.5	-347.1	-176.7	-57.3	-389.0
Walnut Park	-74.0	-27.8	167.8	-101.2	-32.7	-211.9	-109.6	-35.8	-241.2
West Athens	-31.1	-13.1	37.0	-47.9	-15.5	-100.2	-51.8	-17.0	-114.1
West Carson	-184.8	-68.0	-138.4	-248.0	-80.1	-518.9	-268.4	-87.8	-590.8
West Compton	-36.8	-13.5	73.8	-49.2	-15.9	-103.0	-53.3	-17.4	-117.3
West Covina	-308.5	-2.4	-469.4	-1,264.6	-408.4	-2,646.0	-1,023.3	-273.2	-2,251.2
West Hollywood	-902.5	-330.4	-1,598.9	-1,205.6	-389.3	-2,522.6	-1,303.8	-426.3	-2,870.8
Westlake Village	242.7	282.2	547.5	28.9	23.7	15.1	31.8	27.2	17.7
Westmont	-109.5	-40.6	2.6	-148.2	-47.9	-310.1	-160.4	-52.5	-353.1
West Puente Valley	35.2	-11.6	39.9	-55.7	-18.0	-116.5	376.4	149.8	776.2
West Whittier-Los Nietos	-47.3	-48.7	-28.2	-181.0	-58.4	-378.7	-195.8	-64.1	-431.2
Whittier	-180.4	-9.8	-643.4	-836.0	-264.0	-1,748.4	-880.1	-265.4	-1,998.7
Willowbrook	1.3	77.1	89.9	-160.8	-51.9	-336.5	-174.0	-56.9	-383.1

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenano II	Scenario III	Scenario I	Scenano II	Scenano III
Aliso Viejo	-3.2	-1.1	-5.9	-4.2	-1.4	-8.8	-4.5	-1.5	-10.0
Anaheim	-229.1	-83.4	-430.2	-304.4	-98.3	-636.9	-329.4	-107.7	-725.2
Brea	-53.8	-19.6	-101.0	-71.5	-23.1	-149.6	-77.4	-25.3	-170.3
Buena Park	-139.8	-50.9	-262.4	-185.8	-60.0	-388.8	-201.1	-65.8	-442.7
Costa Mesa	-60.2	-21.9	-113.0	-80.0	-25.8	-167.4	-86.6	-28.3	-190.6
Coto de Caza	-0.4	-0.2	-0.8	-0.6	-0.2	-1.2	-0.6	-0.2	-1.3
Cypress	-103.9	-37.9	-195.2	-138.1	-44.6	-289.0	-149.5	-48.9	-329.1
Dana Point	-1.7	-0.6	-3.3	-2.3	-0.7	-4.9	-2.5	-0.8	-5.5
Foothill Ranch	-0.1	0.0	-0.2	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4
Fountain Valley	-28.0	-10.2	-52.6	-37.2	-12.0	-77.8	-40.2	-13.2	-88.6
Fullerton	-187.7	-68.4	-352.5	-249.4	-80.5	-521.8	-269.9	-88.3	-594.1
Garden Grove	-97.4	-35.5	-183.0	-129.5	-41.8	-270.9	-140.1	-45.8	-308.5
Huntington Beach	-104.3	-38.0	-196.0	-138.7	-44.8	-290.1	-150.0	-49.1	-330.3
Irvine	-19.8	-7.2	-37.1	-26.3	-8.5	-54.9	-28.4	-9.3	-62.6
Laguna Beach	-5.0	-1.8	-9.4	-6.7	-2.2	-14.0	-7.2	-2.4	-15.9
Laguna Hills	-3.5	-1.3	-6.6	-4.6	-1.5	-9.7	-5.0	-1.6	-11.1
Laguna Niguel	-4.4	-1.6	-8.3	-5.9	-1.9	-12.3	-6.4	-2.1	-14.0
Laguna Woods	-2.8	-1.0	-5.2	-3.7	-1.2	-7.7	-4.0	-1.3	-8.7
La Habra	-128.5	-46.8	-241.5	-170.9	-55.2	-357.5	-184.9	-60.5	-407.2
Lake Forest	-5.3	-1.9	-10.0	-7.1	-2.3	-14.9	-7.7	-2.5	-16.9
La Palma	-31.0	-11.3	-58.1	-41.4	-13.4	-86.6	-44.4	-14.4	-97.7
Las Flores	-0.1	0.0	-0.2	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Los Alamitos	-38.9	-14.2	-73.0	-51.6	-16.7	-108.0	-55.9	-18.3	-123.0
Mission Viejo	-6.3	-2.3	-11.8	-8.4	-2.7	-17.5	-9.1	-3.0	-20.0
Newport Beach	-42.2	-15.4	-79.2	-56.0	-18.1	-117.2	-60.6	-19.8	-133.5
Newport Coast	-1.2	-0.4	-2.2	-1.6	-0.5	-3.3	-1.7	-0.6	-3.7
Orange	-82.7	-30.1	-155.3	-109.9	-35.5	-229.9	-118.9	-38.9	-261.7
Placentia	-25.4	-9.2	-47.7	-33.7	-10.9	-70.6	-36.5	-11.9	-80.4
Portola Hills	-0.1	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.2
Rancho Santa Margarita	-1.2	-0.4	-2.3	-1.6	-0.5	-3.4	-1.8	-0.6	-3.9
Rossmoor	-14.0	-5.1	-26.3	-18.6	-6.0	-39.0	-20.1	-6.6	-44.4
San Clemente	-2.4	-0.9	-4.5	-3.2	-1.0	-6.6	-3.4	-1.1	-7.5
San Joaquin Hills	-0.5	-0.2	-0.9	-0.6	-0.2	-1.3	-0.7	-0.2	-1.4
San Juan Capistrano	-2.4	-0.9	-4.6	-3.2	-1.0	-6.8	-3.5	-1.1	-7.7
Santa Ana	-83.5	-30.4	-156.8	-110.9	-35.8	-232.1	-120.1	-39.3	-264.3
Seal Beach	-77.4	-28.2	-145.3	-102.8	-33.2	-215.1	-111.2	-36.4	-244.9
Stanton	-24.8	-9.0	-46.6	-33.0	-10.6	-69.0	-35.7	-11.7	-78.5
Tustin	-20.5	-7.5	-38.5	-27.3	-8.8	-57.0	-29.5	-9.6	-64.9
Tustin Foothills	-3.9	-1.4	-7.3	-5.2	-1.7	-10.8	-5.6	-1.8	-12.3
Villa Park	-2.0	-0.7	-3.8	-2.7	-0.9	-5.6	-2.9	-0.9	-6.3
Westminster	-88.5	-32.2	-166.3	-117.6	-38.0	-246.2	-127.3	-41.6	-280.3
Yorba Linda	-18.8	-6.9	-35.4	-25.0	-8.1	-52.4	-27.1	-8.9	-59.6
Banning	-0.8	-0.3	-1.5	-1.0	-0.3	-2.2	-1.1	-0.4	-2.5
Beaumont	-0.5	-0.2	-1.0	-0.7	-0.2	-1.5	-0.8	-0.2	-1.7
Bermuda Dunes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Cabazon	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Calimesa	-0.3	-0.1	-0.6	-0.4	-0.1	-0.9	-0.5	-0.2	-1.1
Canyon Lake	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Cathedral City	-1.6	-0.6	-3.1	-2.2	-0.7	-4.6	-2.4	-0.8	-5.2
Cherry Valley	-0.1	0.0	-0.2	-0.2	0.0	-0.3	-0.2	-0.1	-0.4
Coachella	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Corona	-14.0	-5.1	-26.3	-18.6	-6.0	-38.9	-20.1	-6.6	-44.3
Desert Hot Springs	-0.4	-0.1	-0.7	-0.5	-0.2	-1.0	-0.5	-0.2	-1.1
East Hemet	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.5
El Cerrito	-0.3	-0.1	-0.6	-0.4	-0.1	-0.9	-0.5	-0.2	-1.0
Glen Avon	-4.2	-1.5	-7.8	-5.5	-1.8	-11.6	-6.0	-2.0	-13.2
Hemet	-1.2	-0.4	-2.2	-1.6	-0.5	-3.3	-1.7	-0.6	-3.7
Highgrove	-0.1	0.0	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Home Gardens	-0.4	-0.1	-0.7	-0.5	-0.2	-1.0	-0.5	-0.2	-1.2
Homeland	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Idyllwild-Pine Cove	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Indian Wells	-0.1	0.0	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Indio	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.1	0.0	-0.3

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lake Elsinore	-1.5	-0.6	-2.9	-2.0	-0.7	-4.2	-2.2	-0.7	-4.8
Lakeland Village	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Lakeview	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
La Quinta	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
March AFB	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.1	0.0	-0.3
Mecca	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Mira Loma	-3.2	-1.2	-6.0	-4.2	-1.4	-8.8	-4.6	-1.5	-10.1
Moreno Valley	-5.1	-1.9	-9.6	-6.8	-2.2	-14.2	-7.4	-2.4	-16.2
Murrieta	-0.6	-0.2	-1.2	-0.8	-0.3	-1.7	-0.9	-0.3	-2.0
Murrieta Hot Springs	0.0	0.0	0.0	0.0	0.0	-0.1	0.0	0.0	-0.1
Norco	-4.3	-1.6	-8.0	-5.7	-1.8	-11.9	-6.2	-2.0	-13.6
Nuevo	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Palm Desert	-2.2	-0.8	-4.1	-2.9	-0.9	-6.0	-3.1	-1.0	-6.9
Palm Springs	-4.8	-1.8	-9.1	-6.4	-2.1	-13.4	-6.9	-2.3	-15.3
Pedley	-2.2	-0.8	-4.1	-2.9	-0.9	-6.1	-3.1	-1.0	-6.9
Perris	-1.3	-0.5	-2.5	-1.8	-0.6	-3.7	-1.9	-0.6	-4.2
Quail Valley	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-0.1
Rancho Mirage	-0.8	-0.3	-1.5	-1.1	-0.3	-2.2	-1.2	-0.4	-2.6
Riverside	-34.5	-12.6	-64.9	-45.9	-14.8	-96.0	-49.7	-16.2	-109.3
Romoland	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Rubidoux	-2.7	-1.0	-5.1	-3.6	-1.2	-7.5	-3.9	-1.3	-8.6
San Jacinto	-0.3	-0.1	-0.6	-0.4	-0.1	-0.9	-0.5	-0.2	-1.0
Sedco Hills	-0.1	0.0	-0.2	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Sun City	-0.9	-0.3	-1.6	-1.1	-0.4	-2.4	-1.2	-0.4	-2.7
Sunnyslope	-0.2	-0.1	-0.4	-0.3	-0.1	-0.5	-0.3	-0.1	-0.6
Temecula	-0.6	-0.2	-1.2	-0.8	-0.3	-1.7	-0.9	-0.3	-2.0
Thousand Palms	0.0	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Valle Vista	0.0	0.0	0.0	0.0	0.0	-0.1	0.0	0.0	-0.1
Wildomar	-0.3	-0.1	-0.5	-0.4	-0.1	-0.8	-0.4	-0.1	-0.9
Winchester	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.2	-0.1	-0.4
Woodcrest	-0.6	-0.2	-1.2	-0.8	-0.3	-1.8	-0.9	-0.3	-2.0
Camarillo	-8.7	-3.2	-16.3	-11.5	-3.7	-24.1	-12.5	-4.1	-27.5
Casa Conejo	-1.0	-0.4	-1.8	-1.3	-0.4	-2.7	-1.4	-0.5	-3.1
Channel Islands Beach	-0.1	-0.1	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.5
El Rio	-0.4	-0.1	-0.7	-0.5	-0.2	-1.0	-0.5	-0.2	-1.1
Fillmore	-0.7	-0.2	-1.3	-0.9	-0.3	-1.9	-1.0	-0.3	-2.1
Meiners Oaks	0.0	0.0	0.0	0.0	0.0	-0.1	0.0	0.0	-0.1
Mira Monte	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.1	0.0	-0.3
Moorpark	-7.9	-2.9	-14.8	-10.4	-3.4	-21.8	-11.3	-3.7	-24.9
Oak Park	-0.4	-0.1	-0.8	-0.5	-0.2	-1.1	-0.6	-0.2	-1.3
Oak View	0.0	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Ojai	0.0	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.2
Oxnard	-4.8	-1.8	-9.0	-6.4	-2.1	-13.4	-6.9	-2.3	-15.2
Piru	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Port Hueneme	-0.5	-0.2	-0.9	-0.6	-0.2	-1.3	-0.7	-0.2	-1.5
San Buenaventura (Ventura)	-5.4	-2.0	-10.2	-7.2	-2.3	-15.0	-7.8	-2.5	-17.1
Santa Paula	-0.2	-0.1	-0.4	-0.3	-0.1	-0.6	-0.3	-0.1	-0.7
Simi Valley	-86.0	-31.3	-161.4	-114.6	-37.0	-239.9	-124.2	-40.6	-273.4
Thousand Oaks	-255.4	-92.0	-479.4	-341.2	-110.1	-714.0	-369.1	-120.7	-813.0
Adelanto	-3.6	-1.3	-6.8	-4.8	-1.5	-10.0	-5.2	-1.7	-11.4
Apple Valley	-2.4	-0.9	-4.5	-3.2	-1.0	-6.6	-3.4	-1.1	-7.5
Barstow	-0.5	-0.2	-0.9	-0.7	-0.2	-1.4	-0.7	-0.2	-1.6
Big Bear City	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Big Bear Lake	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Bloomington	-2.5	-0.9	-4.7	-3.3	-1.1	-6.9	-3.6	-1.2	-7.9
Chino	-92.3	-33.6	-173.4	-122.7	-39.6	-256.7	-132.7	-43.4	-292.2
Chino Hills	-52.3	-19.1	-98.3	-69.7	-22.5	-145.8	-75.4	-24.6	-165.9
Colton	-6.3	-2.3	-11.8	-8.4	-2.7	-17.5	-9.0	-3.0	-19.9
Crestline	-0.1	0.0	-0.2	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Fontana	-18.1	-6.6	-34.0	-24.0	-7.8	-50.3	-26.0	-8.5	-57.3
Grand Terrace	-5.2	-1.9	-9.7	-6.9	-2.2	-14.4	-7.4	-2.4	-16.4
Hesperia	-3.5	-1.3	-6.6	-4.7	-1.5	-9.8	-5.1	-1.7	-11.1
Highland	-1.4	-0.5	-2.6	-1.9	-0.6	-3.9	-2.0	-0.7	-4.4

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City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Joshua Tree	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Lake Arrowhead	0.0	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Lenwood	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Loma Linda	-1.2	-0.4	-2.3	-1.6	-0.5	-3.4	-1.7	-0.6	-3.8
Mentone	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.5
Montclair	-261.6	-95.3	-491.3	-347.6	-112.3	-727.3	-376.1	-123.0	-828.1
Morongo Valley	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Mountain View Acres	-1.2	-0.4	-2.3	-1.6	-0.5	-3.4	-1.7	-0.6	-3.8
Muscoy	-0.3	-0.1	-0.5	-0.4	-0.1	-0.8	-0.4	-0.1	-0.9
Nebo Center	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ontario	-148.3	-54.0	-278.6	-197.1	-63.7	-412.4	-213.3	-69.8	-469.6
Rancho Cucamonga	-40.7	-14.8	-76.5	-54.1	-17.5	-113.2	-58.5	-19.2	-128.9
Redlands	-6.0	-2.2	-11.2	-7.9	-2.6	-16.6	-8.6	-2.8	-18.8
Rialto	-6.7	-2.4	-12.5	-8.9	-2.9	-18.6	-9.6	-3.1	-21.1
Running Springs	0.0	0.0	0.0	0.0	0.0	-0.1	0.0	0.0	-0.1
San Antonio Heights	-1.3	-0.5	-2.5	-1.7	-0.6	-3.6	-1.9	-0.6	-4.1
San Bernardino	-21.3	-7.8	-40.1	-28.3	-9.2	-59.3	-30.7	-10.0	-67.5
Twentynine Palms	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Twentynine Palms Base	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Upland	-113.7	-41.4	-213.5	-151.1	-48.8	-316.1	-163.4	-53.5	-359.9
Victorville	-19.4	-7.1	-36.4	-25.8	-8.3	-53.9	-27.9	-9.1	-61.4
Wrightwood	-0.8	-0.3	-1.5	-1.0	-0.3	-2.1	-1.1	-0.4	-2.4
Yucaipa	-1.6	-0.6	-3.0	-2.1	-0.7	-4.4	-2.3	-0.7	-5.0
Yucca Valley	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
LOS ANGELES - UNINCOR	5,831.7	2,170.0	11,087.4	5,457.6	2,156.1	10,661.0	5,445.5	1,583.0	12,661.9
ORANGE - UNINCOR	-47.1	-17.2	-89.4	-63.7	-20.5	-133.5	-69.4	-22.7	-152.8
RIVERSIDE - UNINCOR	-15.7	-5.7	-29.5	-20.9	-6.7	-43.6	-22.6	-7.4	-49.7
SAN BERNARDINO - UNINCOR	-88.0	-32.1	-165.6	-117.0	-37.7	-244.8	-126.6	-41.3	-278.6
VENTURA - UNINCOR	-32.0	-10.8	-61.9	-44.3	-13.8	-93.4	-51.0	-16.7	-112.2
Total	-41,308	-14,654	-78,457	-49,943	-16,275	-102,579	-52,841	-17,358	-113,112

Table A27. Present Value of Impact Net Impacts by Place by Scenario

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenano I	Scenario II	Scenano III
Acton	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Agoura Hills	-11.2	-3.9	-21.4	-13.0	-4.2	-26.3	-13.5	-4.4	-28.4
Alhambra	-40.4	-13.9	-77.4	-44.6	-14.7	-89.7	-45.6	-15.1	-94.3
Alondra Park	-1.3	-0.4	-2.4	-1.3	-0.4	-2.6	-1.3	-0.4	-2.6
Altadena	-2.9	-0.9	-5.8	-2.1	-0.7	-3.6	-1.8	-0.6	-2.7
Arcadia	-44.2	-15.5	-84.4	-51.5	-16.9	-104.8	-53.5	-17.7	-112.9
Artesia	-7.9	-2.7	-15.1	-8.9	-2.9	-18.0	-9.2	-3.0	-19.1
Avocado Heights	-34.1	-12.1	-64.6	-41.3	-13.4	-85.0	-44.1	-14.5	-94.7
Azusa	-19.6	-6.9	-37.4	-22.8	-7.5	-46.5	-23.9	-7.9	-50.5
Baldwin Park	-21.6	-7.6	-41.3	-25.1	-8.2	-51.1	-26.3	-8.7	-55.5
Bell	-16.0	-5.6	-30.6	-18.1	-6.0	-36.7	-18.8	-6.2	-39.3
Bellflower	-13.8	-4.8	-26.5	-15.2	-5.0	-30.6	-15.6	-5.2	-32.2
Bell Gardens	-11.9	-4.2	-22.6	-14.4	-4.7	-29.6	-15.2	-5.0	-32.6
Beverly Hills	-92.0	-31.7	-176.7	-101.0	-33.3	-202.6	-103.1	-34.1	-212.3
Bradbury	-0.9	-0.3	-1.6	-1.1	-0.3	-2.2	-1.1	-0.4	-2.4
Burbank	-115.9	-40.7	-221.0	-135.3	-44.3	-275.7	-141.3	-46.6	-298.5
Calabasas	-7.3	-2.5	-14.1	-8.1	-2.7	-16.2	-8.3	-2.7	-17.1
Carson	-94.1	-32.7	-180.2	-105.9	-34.8	-214.1	-109.8	-36.3	-229.0
Cerritos	-38.2	-13.3	-73.0	-43.5	-14.3	-88.2	-45.1	-14.9	-94.3
Charter Oak	-1.4	-0.5	-2.7	-1.5	-0.5	-3.0	-1.5	-0.5	-3.1
Citrus	-0.9	-0.3	-1.7	-1.0	-0.3	-2.1	-1.1	-0.4	-2.3
Claremont	-6.3	-2.1	-12.5	-5.3	-1.8	-9.9	-4.9	-1.7	-8.8
Commerce	-98.7	-34.8	-187.9	-116.8	-38.2	-238.6	-122.5	-40.3	-260.0
Compton	-42.1	-14.7	-80.4	-48.1	-15.8	-97.6	-50.1	-16.5	-105.1
Covina	-22.2	-7.7	-42.5	-24.8	-8.2	-50.0	-25.5	-8.4	-53.0
Cudahy	-2.0	-0.7	-3.8	-2.2	-0.7	-4.4	-2.2	-0.7	-4.6
Culver City	-58.7	-20.6	-111.9	-68.5	-22.4	-139.6	-71.5	-23.6	-151.0
Del Aire	-3.4	-1.1	-6.7	-3.2	-1.1	-6.2	-3.1	-1.0	-5.9
Desert View Highlands	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Diamond Bar	-20.7	-7.2	-39.6	-23.8	-7.8	-48.2	-24.7	-8.2	-51.9
Downey	-30.5	-10.2	-59.3	-29.3	-9.8	-56.8	-28.7	-9.6	-55.7
Duarte	-4.5	-1.5	-8.7	-4.7	-1.6	-9.4	-4.8	-1.6	-9.6
East Compton	-0.1	0.0	-0.2	0.0	0.0	0.1	0.1	0.0	0.3
East La Mirada	-0.5	-0.2	-0.9	-0.5	-0.2	-1.1	-0.5	-0.2	-1.1
East Los Angeles	-36.0	-12.3	-69.3	-38.7	-12.8	-77.2	-39.2	-13.0	-79.9
East Pasadena	-1.9	-0.6	-3.7	-1.9	-0.6	-3.8	-1.9	-0.6	-3.8
East San Gabriel	-1.7	-0.6	-3.3	-2.0	-0.7	-4.1	-2.1	-0.7	-4.5
El Monte	-38.5	-13.2	-74.2	-41.4	-13.7	-82.7	-42.1	-14.0	-86.1
El Segundo	-62.2	-21.3	-119.7	-66.7	-22.0	-133.1	-67.5	-22.4	-137.5
Florence-Graham	-10.6	-3.7	-20.3	-11.8	-3.9	-23.9	-12.2	-4.0	-25.3
Gardena	-36.0	-12.6	-68.8	-41.7	-13.7	-84.8	-43.5	-14.4	-91.7
Glendale	-144.8	-50.8	-276.2	-169.3	-55.4	-344.8	-176.6	-58.2	-373.0
Glendora	-20.8	-7.2	-39.7	-23.7	-7.8	-48.0	-24.6	-8.1	-51.7
Hacienda Heights	-12.4	-4.3	-23.8	-13.8	-4.5	-27.8	-14.2	-4.7	-29.5
Hawaiian Gardens	-0.9	-0.3	-1.8	-1.0	-0.3	-1.9	-1.0	-0.3	-2.0
Hawthorne	-19.3	-6.6	-37.0	-20.7	-6.8	-41.5	-21.2	-7.0	-43.3
Hermosa Beach	-7.5	-2.6	-14.4	-8.1	-2.7	-16.3	-8.3	-2.7	-17.0
Hidden Hills	-2.3	-0.8	-4.5	-2.4	-0.8	-4.8	-2.4	-0.8	-4.9
Huntington Park	-15.9	-5.6	-30.5	-18.1	-5.9	-36.6	-18.7	-6.2	-39.1
Industry	-76.2	-26.8	-145.3	-89.1	-29.2	-181.7	-93.3	-30.7	-197.3
Inglewood	-38.4	-13.2	-73.8	-41.4	-13.7	-82.9	-42.3	-14.0	-86.7
Irwindale	-59.0	-20.9	-112.1	-71.1	-23.2	-145.8	-74.8	-24.6	-159.8
La Canada Flintridge	-13.4	-4.7	-25.6	-15.8	-5.2	-32.2	-16.5	-5.4	-34.9
La Crescenta-Montrose	-4.8	-1.7	-9.2	-5.3	-1.7	-10.7	-5.5	-1.8	-11.3
Ladera Heights	-4.7	-1.6	-9.0	-5.2	-1.7	-10.6	-5.4	-1.8	-11.2
La Habra Heights	-1.0	-0.3	-1.8	-1.1	-0.4	-2.2	-1.1	-0.4	-2.4
Lake Los Angeles	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Lakewood	-19.9	-7.0	-37.9	-23.0	-7.5	-46.8	-24.1	-7.9	-50.8
La Mirada	-29.9	-10.5	-57.0	-34.8	-11.4	-70.8	-36.3	-12.0	-76.7
Lancaster	-31.8	-11.0	-60.8	-35.7	-11.7	-72.2	-37.0	-12.2	-77.1
La Puente	-5.6	-2.0	-10.7	-6.6	-2.2	-13.4	-6.9	-2.3	-14.6
La Verne	-6.4	-2.2	-12.4	-6.8	-2.2	-13.5	-6.9	-2.3	-13.9
Lawndale	-5.7	-2.0	-11.0	-6.3	-2.1	-12.6	-6.4	-2.1	-13.3

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lennox	-3.7	-1.3	-7.1	-4.0	-1.3	-8.1	-4.2	-1.4	-8.6
Littlerock	-0.1	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.2
Lomita	-5.3	-1.8	-10.2	-5.8	-1.9	-11.7	-6.0	-2.0	-12.3
Long Beach	-157.5	-53.8	-303.7	-165.3	-54.7	-328.3	-167.0	-55.5	-337.9
Los Angeles	-2,361.1	-819.7	-4,523.1	-2,642.1	-868.3	-5,331.9	-2,727.9	-901.7	-5,672.5
Lynwood	-9.7	-3.3	-18.7	-10.4	-3.4	-20.7	-10.5	-3.5	-21.3
Malibu	-3.7	-1.3	-7.1	-4.3	-1.4	-8.6	-4.4	-1.5	-9.3
Manhattan Beach	-11.5	-3.8	-22.2	-11.2	-3.8	-21.9	-11.0	-3.7	-21.5
Marina del Rey	-5.5	-1.8	-10.9	-4.5	-1.5	-8.2	-4.0	-1.4	-7.0
Mayflower Village	-0.4	-0.2	-0.8	-0.5	-0.2	-1.0	-0.5	-0.2	-1.0
Maywood	-6.0	-2.0	-11.6	-6.1	-2.0	-12.1	-6.1	-2.0	-12.3
Monrovia	-15.9	-5.4	-30.8	-16.2	-5.4	-31.9	-16.2	-5.4	-32.2
Montebello	-34.7	-12.2	-66.3	-40.3	-13.2	-81.9	-42.0	-13.8	-88.4
Monterey Park	-37.1	-13.0	-70.8	-43.4	-14.2	-88.5	-45.3	-14.9	-95.8
North El Monte	-1.1	-0.4	-2.2	-1.3	-0.4	-2.5	-1.3	-0.4	-2.7
Norwalk	-27.2	-9.5	-52.0	-31.1	-10.2	-63.2	-32.5	-10.7	-68.3
Palmdale	-21.6	-7.5	-41.4	-24.2	-7.9	-48.8	-25.1	-8.3	-52.2
Palos Verdes Estates	-6.1	-2.1	-11.7	-6.9	-2.3	-13.9	-7.1	-2.4	-14.9
Paramount	-24.1	-8.4	-46.1	-27.3	-9.0	-55.3	-28.3	-9.3	-59.0
Pasadena	-88.3	-29.4	-171.7	-84.0	-28.2	-162.6	-82.0	-27.5	-158.1
Pico Rivera	-14.6	-4.9	-28.2	-14.7	-4.9	-28.9	-14.7	-4.9	-29.1
Pomona	-53.3	-18.6	-101.9	-60.7	-19.9	-123.0	-63.1	-20.8	-132.2
Quartz Hill	-1.6	-0.5	-3.0	-1.7	-0.5	-3.3	-1.7	-0.6	-3.5
Rancho Palos Verdes	-8.2	-2.8	-15.8	-9.0	-3.0	-18.1	-9.2	-3.1	-19.0
Redondo Beach	-18.2	-6.1	-35.4	-17.4	-5.8	-33.8	-17.0	-5.7	-32.9
Rolling Hills	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Rolling Hills Estates	-3.3	-1.2	-6.4	-3.9	-1.3	-7.9	-4.0	-1.3	-8.5
Rosemead	-62.8	-22.4	-119.0	-76.9	-25.0	-158.6	-82.4	-27.1	-177.6
Rowland Heights	-17.1	-6.0	-32.6	-19.7	-6.5	-40.1	-20.5	-6.8	-43.2
San Dimas	-21.3	-7.4	-40.7	-24.4	-8.0	-49.6	-25.5	-8.4	-53.6
San Fernando	-17.5	-6.2	-33.3	-20.6	-6.7	-42.2	-21.7	-7.1	-46.1
San Gabriel	-13.0	-4.5	-24.8	-14.9	-4.9	-30.2	-15.4	-5.1	-32.4
San Marino	-9.9	-3.5	-18.9	-11.7	-3.8	-24.0	-12.2	-4.0	-25.9
Santa Clarita	-41.2	-14.4	-78.6	-47.4	-15.5	-96.4	-49.5	-16.3	-104.0
Santa Fe Springs	-86.2	-30.1	-164.6	-99.0	-32.5	-201.0	-103.0	-34.0	-216.2
Santa Monica	-79.9	-27.0	-154.7	-80.4	-26.7	-157.9	-80.0	-26.7	-158.6
Sierra Madre	-2.5	-0.9	-4.9	-2.6	-0.9	-5.1	-2.6	-0.9	-5.3
Signal Hill	-24.9	-8.7	-47.6	-28.1	-9.2	-56.7	-29.1	-9.6	-60.6
South El Monte	-26.7	-9.4	-50.9	-31.8	-10.4	-65.0	-33.3	-11.0	-70.8
South Gate	-26.5	-9.3	-50.5	-30.7	-10.1	-62.6	-32.1	-10.6	-67.8
South Pasadena	-12.6	-4.3	-24.1	-13.8	-4.5	-27.6	-14.0	-4.6	-28.8
South San Gabriel	-1.1	-0.4	-2.1	-1.1	-0.4	-2.1	-1.1	-0.4	-2.1
South San Jose Hills	-0.9	-0.3	-1.8	-1.0	-0.3	-2.1	-1.1	-0.3	-2.2
South Whittier	-6.9	-2.4	-13.3	-7.6	-2.5	-15.3	-7.9	-2.6	-16.2
Temple City	-8.2	-2.8	-15.6	-9.3	-3.0	-18.8	-9.6	-3.2	-20.0
Torrance	-118.0	-40.6	-226.9	-127.7	-42.2	-255.5	-129.9	-43.0	-266.0
Valinda	-1.6	-0.6	-3.1	-1.8	-0.6	-3.6	-1.9	-0.6	-3.9
Val Verde	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Vernon	-117.7	-41.7	-223.6	-141.8	-46.2	-290.7	-149.3	-49.1	-318.8
View Park-Windsor Hills	-1.9	-0.6	-3.8	-1.6	-0.6	-3.0	-1.5	-0.5	-2.7
Vincent	-2.7	-0.9	-5.2	-3.1	-1.0	-6.4	-3.3	-1.1	-6.8
Walnut	-8.0	-2.7	-15.3	-8.7	-2.9	-17.3	-8.8	-2.9	-18.0
Walnut Park	-1.2	-0.4	-2.4	-1.3	-0.4	-2.6	-1.3	-0.4	-2.7
West Athens	-2.7	-0.9	-5.1	-3.1	-1.0	-6.3	-3.2	-1.1	-6.8
West Carson	-4.8	-1.6	-9.5	-4.0	-1.4	-7.5	-3.7	-1.3	-6.5
West Compton	-18.5	-6.5	-35.2	-22.0	-7.2	-44.9	-23.1	-7.6	-49.1
West Covina	-25.1	-8.7	-48.1	-28.4	-9.3	-57.5	-29.4	-9.7	-61.3
West Hollywood	-16.7	-5.3	-33.1	-12.5	-4.3	-22.2	-10.8	-3.7	-17.2
Westlake Village	-2.7	-0.9	-5.1	-3.1	-1.0	-6.3	-3.2	-1.1	-6.8
Westmont	-1.5	-0.5	-2.9	-1.2	-0.4	-2.2	-1.1	-0.4	-1.9
West Puente Valley	-3.8	-1.3	-7.2	-4.4	-1.5	-9.1	-4.6	-1.5	-9.8
West Whittier-Los Nietos	-5.9	-2.1	-11.3	-6.9	-2.3	-14.1	-7.3	-2.4	-15.4
Whittier	-22.7	-7.9	-43.6	-24.9	-8.2	-50.1	-25.6	-8.5	-52.9
Willowbrook	-22.3	-7.9	-42.5	-26.3	-8.6	-53.9	-27.8	-9.1	-59.0

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenano III
Aliso Viejo	-10.2	-3.5	-19.5	-11.1	-3.7	-22.4	-11.4	-3.8	-23.6
Anaheim	-220.2	-76.7	-421.3	-249.2	-81.8	-504.3	-258.6	-85.4	-540.3
Brea	-45.9	-16.0	-87.6	-52.9	-17.3	-107.4	-54.9	-18.1	-115.4
Buena Park	-51.5	-18.1	-98.3	-59.7	-19.6	-121.6	-62.4	-20.6	-131.6
Costa Mesa	-99.3	-34.0	-191.3	-105.3	-34.8	-209.5	-106.4	-35.3	-216.2
Coto de Caza	-1.0	-0.3	-1.9	-1.1	-0.4	-2.3	-1.2	-0.4	-2.5
Cypress	-40.9	-14.3	-78.2	-47.1	-15.5	-95.7	-48.9	-16.1	-102.6
Dana Point	-15.8	-5.5	-30.3	-17.3	-5.7	-34.8	-17.9	-5.9	-36.9
Foothill Ranch	-0.5	-0.2	-1.0	-0.7	-0.2	-1.4	-0.7	-0.2	-1.5
Fountain Valley	-39.8	-13.9	-76.0	-46.0	-15.1	-93.4	-47.9	-15.8	-100.8
Fullerton	-69.3	-24.0	-133.0	-76.6	-25.2	-154.2	-78.7	-26.0	-162.7
Garden Grove	-67.3	-23.4	-128.7	-76.1	-25.0	-153.9	-78.9	-26.0	-164.7
Huntington Beach	-69.9	-24.1	-134.3	-76.6	-25.2	-153.8	-78.5	-26.0	-161.9
Irvine	-241.0	-82.9	-463.6	-259.7	-85.7	-519.3	-264.9	-87.8	-542.5
Laguna Beach	-21.0	-7.3	-40.2	-23.8	-7.8	-48.3	-24.8	-8.2	-51.8
Laguna Hills	-18.2	-6.3	-35.0	-20.3	-6.7	-40.9	-20.9	-6.9	-43.3
Laguna Niguel	-16.4	-5.7	-31.5	-18.4	-6.1	-37.2	-19.0	-6.3	-39.5
Laguna Woods	-12.7	-4.4	-24.2	-14.7	-4.8	-29.8	-15.2	-5.0	-32.1
La Habra	-65.7	-23.3	-124.6	-80.5	-26.2	-165.5	-84.8	-27.9	-182.0
Lake Forest	-33.1	-11.4	-63.5	-36.4	-12.0	-73.2	-37.4	-12.4	-77.1
La Palma	-16.4	-5.7	-31.4	-18.3	-6.0	-36.8	-18.7	-6.2	-38.6
Las Flores	-0.5	-0.2	-1.0	-0.6	-0.2	-1.2	-0.6	-0.2	-1.3
Los Alamitos	-25.8	-9.1	-49.2	-30.3	-9.9	-61.9	-31.7	-10.4	-67.1
Mission Viejo	-33.9	-11.8	-64.7	-38.9	-12.7	-78.9	-40.4	-13.3	-84.7
Newport Beach	-83.8	-28.5	-161.9	-86.4	-28.7	-170.7	-86.4	-28.8	-173.2
Newport Coast	-0.8	-0.3	-1.6	-0.9	-0.3	-1.8	-0.9	-0.3	-1.9
Orange	-121.1	-42.2	-231.6	-137.6	-45.2	-278.7	-142.7	-47.1	-298.3
Placentia	-21.7	-7.5	-41.6	-24.0	-7.9	-48.4	-24.8	-8.2	-51.3
Portola Hills	-0.2	-0.1	-0.4	-0.3	-0.1	-0.6	-0.3	-0.1	-0.7
Rancho Santa Margarita	-2.7	-0.9	-5.2	-3.1	-1.0	-6.3	-3.2	-1.1	-6.8
Rossmoor	-2.9	-1.0	-5.6	-3.2	-1.1	-6.5	-3.3	-1.1	-6.8
San Clemente	-43.9	-15.4	-83.7	-51.1	-16.7	-104.0	-53.6	-17.7	-113.2
San Joaquin Hills	-0.1	0.0	-0.3	-0.1	0.0	-0.3	-0.1	0.0	-0.3
San Juan Capistrano	-33.0	-11.7	-62.7	-39.3	-12.8	-80.6	-41.6	-13.7	-88.7
Santa Ana	-223.8	-78.0	-428.2	-253.9	-83.3	-513.8	-262.8	-86.8	-549.0
Seal Beach	-4.3	-1.2	-8.8	-1.8	-0.7	-2.2	-0.9	-0.4	0.7
Stanton	-10.7	-3.7	-20.5	-11.8	-3.9	-23.7	-12.1	-4.0	-24.9
Tustin	-64.5	-22.5	-123.3	-73.4	-24.1	-148.7	-76.1	-25.1	-159.3
Tustin Foothills	-7.7	-2.7	-14.8	-8.7	-2.9	-17.5	-8.9	-3.0	-18.6
Villa Park	-1.2	-0.4	-2.2	-1.3	-0.4	-2.6	-1.3	-0.4	-2.8
Westminster	-24.9	-8.6	-47.7	-27.3	-9.0	-54.8	-27.9	-9.2	-57.5
Yorba Linda	-19.9	-7.0	-37.8	-23.3	-7.6	-47.6	-24.4	-8.0	-51.7
Banning	-4.2	-1.5	-8.0	-4.7	-1.5	-9.6	-4.9	-1.6	-10.3
Beaumont	-3.0	-1.1	-5.8	-3.4	-1.1	-6.8	-3.5	-1.2	-7.2
Bermuda Dunes	-1.5	-0.5	-2.8	-1.7	-0.6	-3.6	-1.8	-0.6	-3.9
Cabazon	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Calimesa	-1.8	-0.6	-3.5	-2.0	-0.7	-4.1	-2.1	-0.7	-4.4
Canyon Lake	-0.4	-0.1	-0.7	-0.4	-0.1	-0.8	-0.4	-0.1	-0.8
Cathedral City	-10.6	-3.7	-20.5	-11.5	-3.8	-23.0	-11.8	-3.9	-24.2
Cherry Valley	-0.4	-0.1	-0.7	-0.4	-0.1	-0.8	-0.4	-0.1	-0.8
Coachella	-9.4	-3.3	-17.9	-11.4	-3.7	-23.4	-12.1	-4.0	-25.8
Corona	-55.5	-19.5	-105.7	-64.7	-21.1	-131.8	-67.8	-22.4	-143.4
Desert Hot Springs	-1.2	-0.4	-2.4	-1.2	-0.4	-2.4	-1.2	-0.4	-2.5
East Hemet	-1.6	-0.5	-3.0	-1.7	-0.6	-3.5	-1.8	-0.6	-3.7
El Cerrito	-0.9	-0.3	-1.7	-1.1	-0.4	-2.2	-1.1	-0.4	-2.4
Glen Avon	-7.9	-2.8	-15.0	-9.3	-3.0	-18.9	-9.7	-3.2	-20.6
Hemet	-17.1	-6.0	-32.7	-19.6	-6.4	-39.9	-20.5	-6.8	-43.1
Highgrove	-0.6	-0.2	-1.1	-0.6	-0.2	-1.2	-0.6	-0.2	-1.2
Home Gardens	-4.3	-1.5	-8.1	-5.2	-1.7	-10.7	-5.5	-1.8	-11.9
Homeland	-0.5	-0.2	-0.9	-0.6	-0.2	-1.3	-0.7	-0.2	-1.4
Idyllwild-Pine Cove	-0.1	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Indian Wells	-4.1	-1.3	-8.0	-3.2	-1.1	-5.9	-2.9	-1.0	-5.0
Indio	-15.9	-5.6	-30.3	-18.7	-6.1	-38.2	-19.6	-6.5	-41.6

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lake Elsinore	-8.5	-3.0	-16.3	-9.8	-3.2	-20.0	-10.3	-3.4	-21.6
Lakeland Village	-0.8	-0.3	-1.5	-0.9	-0.3	-2.0	-1.0	-0.3	-2.2
Lakeview	-0.8	-0.3	-1.4	-1.0	-0.3	-2.0	-1.0	-0.3	-2.2
La Quinta	-1.6	-0.5	-3.3	-0.7	-0.3	-0.9	-0.4	-0.2	0.1
March AFB	-0.4	-0.1	-0.8	-0.5	-0.2	-1.0	-0.5	-0.2	-1.0
Mecca	0.0	0.0	-0.1	0.0	0.0	-0.1	-0.1	0.0	-0.1
Mira Loma	-1.9	-0.7	-3.7	-2.2	-0.7	-4.5	-2.3	-0.8	-4.9
Moreno Valley	-13.4	-4.6	-25.8	-14.6	-4.8	-29.2	-14.9	-4.9	-30.6
Murrieta	-11.5	-4.0	-22.0	-13.3	-4.3	-27.0	-13.8	-4.6	-29.1
Murrieta Hot Springs	-0.3	-0.1	-0.5	-0.3	-0.1	-0.6	-0.3	-0.1	-0.7
Norco	-4.4	-1.4	-8.6	-3.2	-1.1	-5.7	-2.8	-1.0	-4.6
Nuevo	-1.1	-0.4	-2.1	-1.4	-0.5	-2.9	-1.5	-0.5	-3.3
Palm Desert	-34.3	-12.0	-65.5	-39.7	-13.0	-80.7	-41.6	-13.7	-87.6
Palm Springs	-21.0	-7.1	-40.7	-20.8	-6.9	-40.8	-20.8	-6.9	-41.0
Pedley	-2.4	-0.8	-4.6	-2.7	-0.9	-5.6	-2.9	-0.9	-6.0
Perris	-5.6	-1.9	-10.8	-5.9	-2.0	-11.9	-6.1	-2.0	-12.3
Quail Valley	-0.1	0.0	-0.2	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Rancho Mirage	-2.7	-0.8	-5.5	-1.3	-0.5	-1.8	-0.8	-0.3	-0.1
Riverside	-128.5	-44.8	-245.7	-145.7	-47.8	-295.0	-151.2	-49.9	-316.3
Romoland	-0.2	0.0	-0.3	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Rubidoux	-3.2	-1.1	-6.0	-3.6	-1.2	-7.2	-3.7	-1.2	-7.7
San Jacinto	-6.2	-2.2	-11.9	-7.3	-2.4	-15.0	-7.7	-2.5	-16.3
Sedco Hills	-0.5	-0.2	-1.0	-0.5	-0.2	-1.0	-0.5	-0.2	-1.1
Sun City	-2.9	-1.0	-5.6	-3.6	-1.2	-7.3	-3.8	-1.2	-8.0
Sunnyslope	-0.6	-0.2	-1.1	-0.7	-0.2	-1.4	-0.7	-0.2	-1.5
Temecula	-25.5	-9.0	-48.7	-29.5	-9.7	-60.1	-30.9	-10.2	-65.1
Thousand Palms	-0.3	-0.1	-0.6	-0.3	-0.1	-0.6	-0.3	-0.1	-0.7
Valle Vista	-0.7	-0.2	-1.3	-0.8	-0.2	-1.5	-0.8	-0.3	-1.6
Wildomar	-2.1	-0.7	-4.0	-2.4	-0.8	-4.7	-2.4	-0.8	-5.1
Winchester	-0.9	-0.3	-1.7	-1.1	-0.4	-2.3	-1.2	-0.4	-2.5
Woodcrest	-1.7	-0.6	-3.4	-1.8	-0.6	-3.7	-1.9	-0.6	-3.8
Camarillo	-25.7	-8.9	-49.4	-28.1	-9.3	-56.3	-28.7	-9.5	-59.1
Casa Conejo	-0.9	-0.3	-1.7	-1.0	-0.3	-2.0	-1.0	-0.3	-2.1
Channel Islands Beach	-0.7	-0.3	-1.4	-0.8	-0.3	-1.7	-0.9	-0.3	-1.8
El Rio	-0.4	-0.1	-0.8	-0.4	-0.1	-0.8	-0.4	-0.1	-0.8
Fillmore	-1.8	-0.6	-3.5	-2.0	-0.6	-3.9	-2.0	-0.7	-4.1
Meiners Oaks	-0.6	-0.2	-1.2	-0.7	-0.2	-1.4	-0.7	-0.2	-1.4
Mira Monte	-1.0	-0.3	-1.9	-1.1	-0.4	-2.1	-1.1	-0.4	-2.2
Moorpark	-5.4	-1.9	-10.5	-5.9	-2.0	-11.8	-6.0	-2.0	-12.4
Oak Park	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Oak View	-0.3	-0.1	-0.5	-0.3	-0.1	-0.5	-0.3	-0.1	-0.5
Ojai	-1.3	-0.4	-2.5	-1.4	-0.4	-2.7	-1.4	-0.5	-2.7
Oxnard	-69.9	-24.4	-133.5	-80.0	-26.2	-162.3	-83.2	-27.4	-174.5
Piru	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Port Hueneme	-3.8	-1.3	-7.3	-4.3	-1.4	-8.6	-4.4	-1.5	-9.2
San Buenaventura (Ventura)	-63.5	-21.9	-121.9	-69.9	-23.0	-140.4	-71.7	-23.7	-148.0
Santa Paula	-12.6	-4.5	-24.0	-15.4	-5.0	-31.6	-16.2	-5.3	-34.8
Simi Valley	-38.5	-13.4	-73.7	-43.8	-14.4	-88.8	-45.6	-15.0	-95.4
Thousand Oaks	-91.9	-32.1	-175.7	-105.0	-34.4	-213.0	-109.2	-36.0	-228.9
Adelanto	-2.5	-0.8	-4.7	-2.5	-0.8	-5.1	-2.6	-0.9	-5.2
Apple Valley	-8.8	-3.1	-16.8	-10.3	-3.4	-20.9	-10.8	-3.6	-22.8
Barstow	-6.8	-2.3	-13.2	-7.1	-2.4	-14.2	-7.3	-2.4	-14.7
Big Bear City	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.5
Big Bear Lake	-5.3	-1.8	-10.2	-5.8	-1.9	-11.8	-6.0	-2.0	-12.5
Bloomington	-2.4	-0.8	-4.6	-2.5	-0.8	-5.0	-2.5	-0.8	-5.1
Chino	-37.1	-12.9	-71.0	-42.0	-13.8	-85.0	-43.6	-14.4	-91.0
Chino Hills	-6.1	-2.1	-11.7	-7.1	-2.3	-14.4	-7.4	-2.4	-15.6
Colton	-20.1	-7.0	-38.4	-22.6	-7.4	-45.8	-23.5	-7.8	-49.0
Crestline	-2.5	-0.9	-4.7	-2.9	-0.9	-5.9	-3.0	-1.0	-6.4
Fontana	-26.6	-9.2	-51.0	-29.5	-9.7	-59.5	-30.5	-10.1	-63.4
Grand Terrace	-2.6	-0.9	-5.0	-2.6	-0.9	-5.2	-2.7	-0.9	-5.3
Hesperia	-11.5	-4.0	-22.0	-12.9	-4.2	-26.1	-13.4	-4.4	-28.0
Highland	-10.5	-3.7	-19.9	-12.6	-4.1	-25.7	-13.2	-4.3	-28.1

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenano I	Scenano II	Scenano III
Joshua Tree	-0.1	0.0	-0.3	-0.2	-0.1	-0.3	-0.2	-0.1	-0.3
Lake Arrowhead	-1.7	-0.6	-3.3	-1.4	-0.5	-2.7	-1.3	-0.5	-2.4
Lenwood	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Loma Linda	-5.2	-1.8	-10.0	-5.9	-1.9	-12.0	-6.2	-2.0	-12.9
Mentone	-2.0	-0.7	-3.9	-2.4	-0.8	-5.0	-2.6	-0.8	-5.5
Montclair	-11.0	-3.8	-21.2	-12.1	-4.0	-24.3	-12.4	-4.1	-25.7
Morongo Valley	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Mountain View Acres	-0.3	-0.1	-0.5	-0.3	-0.1	-0.6	-0.3	-0.1	-0.7
Muscoy	-6.1	-2.2	-11.6	-7.4	-2.4	-15.3	-7.9	-2.6	-16.9
Nebo Center	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ontario	-99.8	-34.8	-190.9	-113.6	-37.3	-230.3	-118.2	-39.0	-247.5
Rancho Cucamonga	-56.2	-19.7	-107.4	-64.6	-21.2	-131.1	-67.3	-22.2	-141.4
Redlands	-21.0	-7.2	-40.4	-22.1	-7.3	-44.0	-22.4	-7.4	-45.5
Rialto	-15.2	-5.3	-29.1	-17.2	-5.6	-34.7	-17.8	-5.9	-37.2
Running Springs	0.2	0.1	0.3	0.4	0.1	0.9	0.5	0.2	1.2
San Antonio Heights	-0.5	-0.2	-1.0	-0.6	-0.2	-1.1	-0.6	-0.2	-1.2
San Bernardino	-85.8	-29.9	-164.2	-97.0	-31.8	-196.4	-100.8	-33.3	-210.7
Twentynine Palms	-1.8	-0.6	-3.5	-2.1	-0.7	-4.3	-2.2	-0.7	-4.7
Twentynine Palms Base	0.0	0.0	-0.1	0.0	0.0	-0.1	-0.1	0.0	-0.1
Upland	-28.7	-10.0	-54.8	-33.1	-10.8	-67.2	-34.5	-11.4	-72.5
Victorville	-33.5	-11.8	-63.8	-39.4	-12.9	-80.6	-41.6	-13.7	-88.3
Wrightwood	0.2	0.1	0.3	0.6	0.2	1.3	0.7	0.2	1.7
Yucaipa	-7.9	-2.8	-15.0	-9.1	-3.0	-18.6	-9.6	-3.2	-20.2
Yucca Valley	-3.1	-1.1	-5.9	-3.4	-1.1	-6.9	-3.6	-1.2	-7.4
LOS ANGELES - UNINCOR	-202.5	-71.0	-386.4	-235.3	-77.0	-479.1	-245.9	-81.1	-518.7
ORANGE - UNINCOR	-70.2	-24.5	-134.2	-80.1	-26.3	-162.3	-83.0	-27.4	-173.9
RIVERSIDE - UNINCOR	-73.7	-25.9	-140.5	-86.0	-28.1	-175.3	-90.3	-29.7	-190.9
SAN BERNARDINO - UNINCOR	-96.7	-34.0	-184.1	-113.4	-37.1	-231.7	-119.4	-39.3	-253.1
VENTURA - UNINCOR	-124.5	-43.7	-237.4	-145.2	-47.5	-295.7	-151.7	-50.0	-320.3
Total	-9,048	-3,145	-17,326	-10,166	-3,340	-20,535	-10,509	-3,473	-21,886

Table A28. Present Value of Incurred Net Impacts by Place by Scenario

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Acton	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Agoura Hills	-11.5	-4.0	-22.0	-13.3	-4.4	-27.0	-13.8	-4.6	-29.0
Alhambra	-70.6	-24.7	-134.8	-81.3	-26.6	-165.1	-84.5	-27.9	-177.5
Alondra Park	-3.6	-1.3	-6.9	-4.2	-1.4	-8.5	-4.4	-1.4	-9.1
Altadena	-17.8	-6.2	-33.9	-20.5	-6.7	-41.5	-21.3	-7.0	-44.6
Arcadia	-65.1	-22.8	-124.4	-75.0	-24.6	-152.4	-77.9	-25.7	-163.7
Artesia	-29.9	-10.5	-57.2	-34.5	-11.3	-70.0	-35.8	-11.8	-75.2
Avocado Heights	-11.1	-3.9	-21.2	-12.8	-4.2	-25.9	-13.3	-4.4	-27.9
Azusa	-30.7	-10.8	-58.7	-35.4	-11.6	-71.9	-36.8	-12.1	-77.3
Baldwin Park	-33.2	-11.6	-63.5	-38.3	-12.5	-77.7	-39.8	-13.1	-83.6
Bell	-26.1	-9.1	-49.8	-30.0	-9.8	-61.0	-31.2	-10.3	-65.6
Bellflower	-51.4	-18.0	-98.2	-59.2	-19.4	-120.3	-61.5	-20.3	-129.2
Bell Gardens	-21.3	-7.5	-40.8	-24.6	-8.1	-49.9	-25.5	-8.4	-53.6
Beverly Hills	-99.2	-34.7	-189.5	-114.3	-37.4	-232.0	-118.7	-39.2	-249.3
Bradbury	-1.0	-0.4	-1.9	-1.2	-0.4	-2.4	-1.2	-0.4	-2.6
Burbank	-118.2	-41.3	-225.8	-136.1	-44.6	-276.4	-141.4	-46.7	-297.1
Calabasas	-3.9	-1.4	-7.5	-4.5	-1.5	-9.1	-4.7	-1.5	-9.8
Carson	-72.9	-25.5	-139.3	-84.0	-27.5	-170.6	-87.3	-28.8	-183.3
Cerritos	-68.1	-23.8	-130.1	-78.5	-25.7	-159.3	-81.5	-26.9	-171.2
Charter Oak	-6.4	-2.3	-12.3	-7.4	-2.4	-15.1	-7.7	-2.5	-16.2
Citrus	-3.7	-1.3	-7.1	-4.3	-1.4	-8.6	-4.4	-1.5	-9.3
Claremont	-35.5	-12.4	-67.7	-40.8	-13.4	-82.9	-42.4	-14.0	-89.1
Commerce	-34.7	-12.1	-66.3	-40.0	-13.1	-81.2	-41.5	-13.7	-87.2
Compton	-50.9	-17.8	-97.2	-58.6	-19.2	-119.0	-60.9	-20.1	-127.9
Covina	-56.2	-19.7	-107.4	-64.8	-21.2	-131.6	-67.3	-22.2	-141.4
Cudahy	-11.5	-4.0	-22.0	-13.3	-4.3	-26.9	-13.8	-4.5	-29.0
Culver City	-91.4	-32.0	-174.6	-105.3	-34.5	-213.7	-109.4	-36.1	-229.7
Del Aire	-8.7	-3.0	-16.6	-10.0	-3.3	-20.3	-10.4	-3.4	-21.8
Desert View Highlands	-0.7	-0.2	-1.3	-0.8	-0.2	-1.5	-0.8	-0.3	-1.6
Diamond Bar	-27.3	-9.6	-52.2	-31.5	-10.3	-64.0	-32.7	-10.8	-68.7
Downey	-81.1	-28.4	-154.9	-93.4	-30.6	-189.7	-97.1	-32.0	-203.9
Duarte	-17.4	-6.1	-33.3	-20.1	-6.6	-40.8	-20.9	-6.9	-43.8
East Compton	-1.9	-0.7	-3.6	-2.2	-0.7	-4.4	-2.3	-0.7	-4.8
East La Mirada	-4.4	-1.5	-8.4	-5.1	-1.7	-10.3	-5.3	-1.7	-11.0
East Los Angeles	-54.3	-19.0	-103.8	-62.6	-20.5	-127.1	-65.0	-21.5	-136.6
East Pasadena	-18.6	-6.5	-35.5	-21.4	-7.0	-43.4	-22.2	-7.3	-46.7
East San Gabriel	-11.5	-4.0	-22.0	-13.3	-4.3	-26.9	-13.8	-4.5	-28.9
El Monte	-78.3	-27.4	-149.6	-90.2	-29.6	-183.2	-93.7	-30.9	-196.8
El Segundo	-23.1	-8.1	-44.2	-26.7	-8.7	-54.1	-27.7	-9.1	-58.2
Florence-Graham	-18.3	-6.4	-34.9	-21.1	-6.9	-42.8	-21.9	-7.2	-46.0
Gardena	-58.4	-20.4	-111.5	-67.2	-22.0	-136.5	-69.8	-23.0	-146.7
Glendale	-219.7	-76.8	-419.7	-253.1	-82.9	-513.9	-262.9	-86.8	-552.3
Glendora	-42.2	-14.8	-80.7	-48.7	-15.9	-98.8	-50.5	-16.7	-106.2
Hacienda Heights	-27.5	-9.6	-52.6	-31.7	-10.4	-64.4	-32.9	-10.9	-69.2
Hawaiian Gardens	-8.8	-3.1	-16.7	-10.1	-3.3	-20.5	-10.5	-3.5	-22.0
Hawthorne	-57.6	-20.1	-110.1	-66.4	-21.8	-134.8	-68.9	-22.8	-144.8
Hermosa Beach	-28.6	-10.0	-54.6	-32.9	-10.8	-66.8	-34.2	-11.3	-71.8
Hidden Hills	-1.1	-0.4	-2.1	-1.2	-0.4	-2.5	-1.3	-0.4	-2.7
Huntington Park	-47.7	-16.7	-91.1	-54.9	-18.0	-111.5	-57.0	-18.8	-119.8
Industry	-77.2	-27.0	-147.4	-88.9	-29.1	-180.5	-92.4	-30.5	-194.0
Inglewood	-92.4	-32.3	-176.5	-106.4	-34.9	-216.1	-110.5	-36.5	-232.2
Irwindale	-2.4	-0.8	-4.5	-2.7	-0.9	-5.6	-2.8	-0.9	-6.0
La Canada Flintridge	-16.0	-5.6	-30.6	-18.5	-6.1	-37.5	-19.2	-6.3	-40.3
La Crescenta-Montrose	-12.9	-4.5	-24.6	-14.8	-4.9	-30.1	-15.4	-5.1	-32.3
Ladera Heights	-4.4	-1.5	-8.4	-5.1	-1.7	-10.3	-5.2	-1.7	-11.0
La Habra Heights	-4.3	-1.5	-8.3	-5.0	-1.6	-10.1	-5.2	-1.7	-10.9
Lake Los Angeles	-0.5	-0.2	-0.9	-0.5	-0.2	-1.1	-0.6	-0.2	-1.2
Lakewood	-77.8	-27.2	-148.6	-89.6	-29.4	-182.0	-93.1	-30.7	-195.6
La Mirada	-29.7	-10.4	-56.8	-34.3	-11.2	-69.6	-35.6	-11.7	-74.8
Lancaster	-71.2	-24.9	-135.9	-82.0	-26.9	-166.4	-85.2	-28.1	-178.9
La Puente	-19.8	-6.9	-37.8	-22.8	-7.5	-46.3	-23.7	-7.8	-49.8
La Verne	-24.2	-8.5	-46.2	-27.9	-9.1	-56.6	-28.9	-9.6	-60.8
Lawndale	-22.0	-7.7	-42.1	-25.4	-8.3	-51.5	-26.4	-8.7	-55.4

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lennox	-10.9	-3.8	-20.8	-12.6	-4.1	-25.5	-13.1	-4.3	-27.4
Littlerock	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.1	0.0	-0.3
Lomita	-20.0	-7.0	-38.3	-23.1	-7.6	-46.8	-24.0	-7.9	-50.3
Long Beach	-318.6	-111.4	-608.7	-367.1	-120.3	-745.3	-381.3	-125.8	-801.0
Los Angeles	-3,336.6	-1,166.7	-6,373.6	-3,843.7	-1,259.7	-7,804.3	-3,992.6	-1,317.5	-8,387.8
Lynwood	-25.4	-8.9	-48.5	-29.2	-9.6	-59.3	-30.4	-10.0	-63.8
Malibu	-5.6	-2.0	-10.8	-6.5	-2.1	-13.2	-6.7	-2.2	-14.2
Manhattan Beach	-48.5	-17.0	-92.7	-55.9	-18.3	-113.5	-58.1	-19.2	-122.0
Marina del Rey	-19.2	-6.7	-36.6	-22.1	-7.2	-44.9	-23.0	-7.6	-48.2
Mayflower Village	-1.8	-0.6	-3.4	-2.0	-0.7	-4.2	-2.1	-0.7	-4.5
Maywood	-14.5	-5.1	-27.6	-16.7	-5.5	-33.9	-17.3	-5.7	-36.4
Monrovia	-43.4	-15.2	-82.9	-50.0	-16.4	-101.6	-52.0	-17.1	-109.1
Montebello	-62.8	-22.0	-119.9	-72.3	-23.7	-146.8	-75.1	-24.8	-157.8
Monterey Park	-46.3	-16.2	-88.4	-53.3	-17.5	-108.2	-55.4	-18.3	-116.3
North El Monte	-1.5	-0.5	-2.8	-1.7	-0.6	-3.4	-1.8	-0.6	-3.7
Norwalk	-57.9	-20.2	-110.6	-66.7	-21.9	-135.4	-69.3	-22.9	-145.6
Palmdale	-54.7	-19.1	-104.5	-63.0	-20.6	-127.9	-65.4	-21.6	-137.5
Palos Verdes Estates	-3.7	-1.3	-7.1	-4.3	-1.4	-8.7	-4.5	-1.5	-9.4
Paramount	-27.0	-9.4	-51.6	-31.1	-10.2	-63.2	-32.3	-10.7	-67.9
Pasadena	-175.3	-61.3	-334.8	-201.9	-66.2	-409.9	-209.7	-69.2	-440.6
Pico Rivera	-38.9	-13.6	-74.4	-44.9	-14.7	-91.1	-46.6	-15.4	-97.9
Pomona	-98.3	-34.4	-187.7	-113.2	-37.1	-229.9	-117.6	-38.8	-247.1
Quartz Hill	-2.5	-0.9	-4.7	-2.8	-0.9	-5.8	-3.0	-1.0	-6.2
Rancho Palos Verdes	-22.1	-7.7	-42.3	-25.5	-8.4	-51.8	-26.5	-8.7	-55.6
Redondo Beach	-69.9	-24.5	-133.6	-80.6	-26.4	-163.6	-83.7	-27.6	-175.8
Rolling Hills	-0.5	-0.2	-0.9	-0.5	-0.2	-1.1	-0.6	-0.2	-1.2
Rolling Hills Estates	-6.8	-2.4	-13.0	-7.8	-2.6	-15.9	-8.1	-2.7	-17.1
Rosemead	-28.1	-9.8	-53.6	-32.3	-10.6	-65.7	-33.6	-11.1	-70.6
Rowland Heights	-39.2	-13.7	-74.8	-45.1	-14.8	-91.6	-46.9	-15.5	-98.5
San Dimas	-27.7	-9.7	-52.9	-31.9	-10.5	-64.8	-33.2	-10.9	-69.6
San Fernando	-28.0	-9.8	-53.5	-32.3	-10.6	-65.5	-33.5	-11.1	-70.4
San Gabriel	-36.9	-12.9	-70.4	-42.5	-13.9	-86.2	-44.1	-14.6	-92.7
San Marino	-7.0	-2.5	-13.4	-8.1	-2.6	-16.4	-8.4	-2.8	-17.6
Santa Clarita	-82.9	-29.0	-158.4	-95.5	-31.3	-193.9	-99.2	-32.7	-208.4
Santa Fe Springs	-26.5	-9.3	-50.7	-30.6	-10.0	-62.0	-31.7	-10.5	-66.7
Santa Monica	-177.0	-61.9	-338.2	-203.9	-66.8	-414.1	-211.8	-69.9	-445.0
Sierra Madre	-7.8	-2.7	-14.8	-8.9	-2.9	-18.2	-9.3	-3.1	-19.5
Signal Hill	-14.3	-5.0	-27.3	-16.5	-5.4	-33.4	-17.1	-5.6	-35.9
South El Monte	-10.4	-3.6	-19.9	-12.0	-3.9	-24.3	-12.5	-4.1	-26.2
South Gate	-49.1	-17.2	-93.7	-56.5	-18.5	-114.7	-58.7	-19.4	-123.3
South Pasadena	-24.1	-8.4	-46.0	-27.7	-9.1	-56.3	-28.8	-9.5	-60.5
South San Gabriel	-3.6	-1.3	-6.9	-4.2	-1.4	-8.5	-4.3	-1.4	-9.1
South San Jose Hills	-4.4	-1.6	-8.5	-5.1	-1.7	-10.4	-5.3	-1.8	-11.1
South Whittier	-22.6	-7.9	-43.2	-26.0	-8.5	-52.8	-27.0	-8.9	-56.8
Temple City	-26.1	-9.1	-49.8	-30.1	-9.8	-61.0	-31.2	-10.3	-65.6
Torrance	-207.1	-72.4	-395.6	-238.6	-78.2	-484.4	-247.8	-81.8	-520.6
Valinda	-9.5	-3.3	-18.1	-10.9	-3.6	-22.1	-11.3	-3.7	-23.8
Val Verde	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Vernon	-14.0	-4.9	-26.8	-16.2	-5.3	-32.8	-16.8	-5.5	-35.3
View Park-Windsor Hills	-6.1	-2.1	-11.7	-7.1	-2.3	-14.4	-7.4	-2.4	-15.5
Vincent	-11.1	-3.9	-21.3	-12.8	-4.2	-26.0	-13.3	-4.4	-28.0
Walnut	-11.3	-3.9	-21.6	-13.0	-4.3	-26.4	-13.5	-4.5	-28.4
Walnut Park	-7.5	-2.6	-14.3	-8.6	-2.8	-17.5	-9.0	-3.0	-18.9
West Athens	-3.2	-1.1	-6.1	-3.7	-1.2	-7.4	-3.8	-1.3	-8.0
West Carson	-16.4	-5.7	-31.3	-18.9	-6.2	-38.3	-19.6	-6.5	-41.2
West Compton	-3.3	-1.2	-6.3	-3.8	-1.2	-7.7	-4.0	-1.3	-8.3
West Covina	-85.3	-29.8	-162.9	-98.2	-32.2	-199.4	-102.0	-33.7	-214.3
West Hollywood	-83.9	-29.4	-160.3	-96.7	-31.7	-196.3	-100.4	-33.1	-211.0
Westlake Village	-4.9	-1.7	-9.4	-5.7	-1.9	-11.5	-5.9	-1.9	-12.3
Westmont	-9.9	-3.4	-18.8	-11.3	-3.7	-23.0	-11.8	-3.9	-24.8
West Puente Valley	-3.9	-1.4	-7.4	-4.4	-1.5	-9.0	-4.6	-1.5	-9.7
West Whittier-Los Nietos	-12.9	-4.5	-24.6	-14.8	-4.9	-30.1	-15.4	-5.1	-32.4
Whittier	-67.5	-23.6	-128.8	-77.7	-25.5	-157.8	-80.7	-26.6	-169.6
Willowbrook	-10.9	-3.8	-20.7	-12.5	-4.1	-25.4	-13.0	-4.3	-27.3

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenano I	Scenario II	Scenano III
Aliso Viejo	-33.5	-11.7	-64.0	-38.6	-12.7	-78.4	-40.1	-13.2	-84.2
Anaheim	-242.9	-84.9	-463.9	-279.8	-91.7	-568.1	-290.6	-95.9	-610.5
Brea	-33.4	-11.7	-63.7	-38.4	-12.6	-78.0	-39.9	-13.2	-83.8
Buena Park	-60.7	-21.2	-116.0	-70.0	-22.9	-142.1	-72.7	-24.0	-152.7
Costa Mesa	-199.6	-69.8	-381.2	-229.9	-75.3	-466.8	-238.8	-78.8	-501.7
Coto de Caza	-4.7	-1.6	-8.9	-5.4	-1.8	-10.9	-5.6	-1.8	-11.7
Cypress	-44.5	-15.6	-85.0	-51.3	-16.8	-104.1	-53.3	-17.6	-111.9
Dana Point	-38.6	-13.5	-73.8	-44.5	-14.6	-90.4	-46.2	-15.3	-97.1
Foothill Ranch	-0.6	-0.2	-1.2	-0.7	-0.2	-1.5	-0.7	-0.2	-1.6
Fountain Valley	-66.3	-23.2	-126.6	-76.3	-25.0	-155.0	-79.3	-26.2	-166.6
Fullerton	-128.0	-44.8	-244.5	-147.4	-48.3	-299.4	-153.2	-50.5	-321.8
Garden Grove	-135.1	-47.2	-258.1	-155.7	-51.0	-316.0	-161.7	-53.4	-339.7
Huntington Beach	-196.8	-68.8	-375.9	-226.7	-74.3	-460.3	-235.5	-77.7	-494.7
Irvine	-94.6	-33.1	-180.8	-109.0	-35.7	-221.3	-113.2	-37.4	-237.9
Laguna Beach	-40.0	-14.0	-76.4	-46.1	-15.1	-93.5	-47.9	-15.8	-100.5
Laguna Hills	-37.5	-13.1	-71.6	-43.2	-14.1	-87.6	-44.8	-14.8	-94.2
Laguna Niguel	-63.6	-22.3	-121.6	-73.3	-24.0	-148.9	-76.2	-25.1	-160.0
Laguna Woods	-25.6	-8.9	-48.9	-29.5	-9.7	-59.9	-30.6	-10.1	-64.3
La Habra	-41.5	-14.5	-79.3	-47.8	-15.7	-97.1	-49.7	-16.4	-104.4
Lake Forest	-55.1	-19.3	-105.2	-63.5	-20.8	-128.9	-65.9	-21.8	-138.5
La Palma	-8.4	-2.9	-16.0	-9.6	-3.2	-19.6	-10.0	-3.3	-21.0
Las Flores	-1.5	-0.5	-2.9	-1.7	-0.6	-3.5	-1.8	-0.6	-3.8
Los Alamitos	-14.4	-5.1	-27.6	-16.6	-5.5	-33.8	-17.3	-5.7	-36.3
Mission Viejo	-76.0	-26.6	-145.2	-87.5	-28.7	-177.7	-90.9	-30.0	-191.0
Newport Beach	-150.4	-52.6	-287.3	-173.2	-56.8	-351.8	-180.0	-59.4	-378.1
Newport Coast	-4.0	-1.4	-7.7	-4.6	-1.5	-9.4	-4.8	-1.6	-10.1
Orange	-152.4	-53.3	-291.2	-175.6	-57.5	-356.5	-182.4	-60.2	-383.2
Placentia	-30.4	-10.6	-58.1	-35.0	-11.5	-71.1	-36.4	-12.0	-76.5
Portola Hills	-0.3	-0.1	-0.5	-0.3	-0.1	-0.6	-0.3	-0.1	-0.6
Rancho Santa Margarita	-15.5	-5.4	-29.5	-17.8	-5.8	-36.2	-18.5	-6.1	-38.9
Rossmoor	-3.1	-1.1	-5.9	-3.6	-1.2	-7.3	-3.7	-1.2	-7.8
San Clemente	-45.9	-16.0	-87.6	-52.8	-17.3	-107.3	-54.9	-18.1	-115.3
San Joaquin Hills	-1.6	-0.6	-3.0	-1.8	-0.6	-3.7	-1.9	-0.6	-4.0
San Juan Capistrano	-35.0	-12.2	-66.8	-40.3	-13.2	-81.8	-41.8	-13.8	-87.9
Santa Ana	-238.8	-83.5	-456.2	-275.1	-90.2	-558.6	-285.8	-94.3	-600.3
Seal Beach	-22.4	-7.8	-42.7	-25.8	-8.4	-52.3	-26.8	-8.8	-56.2
Stanton	-25.7	-9.0	-49.0	-29.6	-9.7	-60.0	-30.7	-10.1	-64.5
Tustin	-79.6	-27.8	-152.0	-91.7	-30.1	-186.2	-95.2	-31.4	-200.1
Tustin Foothills	-11.0	-3.9	-21.1	-12.7	-4.2	-25.8	-13.2	-4.4	-27.7
Villa Park	-3.9	-1.4	-7.5	-4.5	-1.5	-9.2	-4.7	-1.5	-9.8
Westminster	-99.6	-34.8	-190.2	-114.7	-37.6	-232.9	-119.2	-39.3	-250.4
Yorba Linda	-31.7	-11.1	-60.6	-36.6	-12.0	-74.2	-38.0	-12.5	-79.8
Banning	-12.6	-4.4	-24.1	-14.6	-4.8	-29.6	-15.1	-5.0	-31.8
Beaumont	-7.7	-2.7	-14.8	-8.9	-2.9	-18.1	-9.3	-3.1	-19.5
Bermuda Dunes	-1.1	-0.4	-2.1	-1.3	-0.4	-2.6	-1.3	-0.4	-2.8
Cabazon	-0.7	-0.3	-1.4	-0.9	-0.3	-1.7	-0.9	-0.3	-1.9
Calimesa	-3.7	-1.3	-7.1	-4.3	-1.4	-8.7	-4.4	-1.5	-9.3
Canyon Lake	-1.4	-0.5	-2.7	-1.6	-0.5	-3.3	-1.7	-0.6	-3.6
Cathedral City	-35.2	-12.3	-67.2	-40.5	-13.3	-82.3	-42.1	-13.9	-88.4
Cherry Valley	-1.0	-0.4	-1.9	-1.2	-0.4	-2.4	-1.2	-0.4	-2.5
Coachella	-11.9	-4.2	-22.8	-13.7	-4.5	-27.9	-14.3	-4.7	-29.9
Corona	-77.9	-27.2	-148.8	-89.8	-29.4	-182.2	-93.2	-30.8	-195.9
Desert Hot Springs	-6.0	-2.1	-11.6	-7.0	-2.3	-14.1	-7.2	-2.4	-15.2
East Hemet	-11.1	-3.9	-21.1	-12.7	-4.2	-25.8	-13.2	-4.4	-27.8
El Cerrito	-1.1	-0.4	-2.2	-1.3	-0.4	-2.7	-1.4	-0.5	-2.9
Glen Avon	-9.0	-3.1	-17.1	-10.3	-3.4	-21.0	-10.7	-3.5	-22.5
Hemet	-50.2	-17.6	-95.9	-57.8	-19.0	-117.4	-60.1	-19.8	-126.2
Highgrove	-0.6	-0.2	-1.2	-0.7	-0.2	-1.5	-0.8	-0.2	-1.6
Home Gardens	-2.4	-0.8	-4.6	-2.8	-0.9	-5.6	-2.9	-0.9	-6.0
Homeland	-0.5	-0.2	-1.0	-0.6	-0.2	-1.3	-0.7	-0.2	-1.4
Idyllwild-Pine Cove	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Indian Wells	-6.6	-2.3	-12.6	-7.6	-2.5	-15.4	-7.9	-2.6	-16.6
Indio	-29.9	-10.4	-57.0	-34.4	-11.3	-69.8	-35.7	-11.8	-75.0

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III	Scenario I	Scenario II	Scenario III
Lake Elsinore	-22.2	-7.7	-42.3	-25.5	-8.4	-51.8	-26.5	-8.8	-55.7
Lakeland Village	-1.6	-0.6	-3.1	-1.8	-0.6	-3.7	-1.9	-0.6	-4.0
Lakeview	-0.5	-0.2	-0.9	-0.6	-0.2	-1.1	-0.6	-0.2	-1.2
La Quinta	-8.2	-2.9	-15.7	-9.5	-3.1	-19.2	-9.8	-3.2	-20.7
March AFB	-0.8	-0.3	-1.6	-1.0	-0.3	-2.0	-1.0	-0.3	-2.1
Mecca	-0.1	0.0	-0.1	-0.1	0.0	-0.1	-0.1	0.0	-0.1
Mira Loma	-8.4	-2.9	-16.1	-9.7	-3.2	-19.7	-10.1	-3.3	-21.2
Moreno Valley	-79.0	-27.6	-150.9	-91.0	-29.8	-184.8	-94.5	-31.2	-198.6
Murrieta	-10.6	-3.7	-20.3	-12.2	-4.0	-24.8	-12.7	-4.2	-26.7
Murrieta Hot Springs	-0.4	-0.1	-0.7	-0.4	-0.1	-0.9	-0.5	-0.2	-1.0
Norco	-15.8	-5.5	-30.2	-18.2	-6.0	-36.9	-18.9	-6.2	-39.7
Nuevo	-0.9	-0.3	-1.8	-1.1	-0.3	-2.1	-1.1	-0.4	-2.3
Palm Desert	-67.0	-23.4	-127.9	-77.1	-25.3	-156.6	-80.1	-26.4	-168.3
Palm Springs	-75.6	-26.4	-144.5	-87.1	-28.6	-176.9	-90.5	-29.9	-190.1
Pedley	-7.7	-2.7	-14.6	-8.8	-2.9	-17.9	-9.2	-3.0	-19.3
Perris	-23.0	-8.0	-43.9	-26.5	-8.7	-53.7	-27.5	-9.1	-57.7
Quail Valley	-0.4	-0.1	-0.8	-0.5	-0.2	-0.9	-0.5	-0.2	-1.0
Rancho Mirage	-22.1	-7.7	-42.2	-25.5	-8.3	-51.7	-26.5	-8.7	-55.6
Riverside	-264.3	-92.4	-504.8	-304.5	-99.8	-618.2	-316.2	-104.4	-664.4
Romoland	-1.1	-0.4	-2.2	-1.3	-0.4	-2.7	-1.4	-0.5	-2.9
Rubidoux	-11.3	-3.9	-21.5	-13.0	-4.3	-26.4	-13.5	-4.5	-28.4
San Jacinto	-10.3	-3.6	-19.7	-11.9	-3.9	-24.1	-12.3	-4.1	-25.9
Sedco Hills	-2.8	-1.0	-5.3	-3.2	-1.0	-6.5	-3.3	-1.1	-7.0
Sun City	-16.7	-5.8	-31.8	-19.2	-6.3	-39.0	-19.9	-6.6	-41.9
Sunnyslope	-0.6	-0.2	-1.1	-0.7	-0.2	-1.4	-0.7	-0.2	-1.5
Temecula	-29.1	-10.2	-55.6	-33.5	-11.0	-68.0	-34.8	-11.5	-73.1
Thousand Palms	-0.4	-0.2	-0.9	-0.5	-0.2	-1.0	-0.5	-0.2	-1.1
Valle Vista	-2.5	-0.9	-4.8	-2.9	-1.0	-5.9	-3.0	-1.0	-6.3
Wildomar	-6.1	-2.1	-11.7	-7.0	-2.3	-14.3	-7.3	-2.4	-15.3
Winchester	-2.0	-0.7	-3.9	-2.3	-0.8	-4.7	-2.4	-0.8	-5.1
Woodcrest	-6.2	-2.2	-11.8	-7.1	-2.3	-14.5	-7.4	-2.4	-15.6
Camarillo	-44.6	-15.6	-85.2	-51.4	-16.8	-104.3	-53.4	-17.6	-112.1
Casa Conejo	-1.8	-0.6	-3.4	-2.1	-0.7	-4.2	-2.1	-0.7	-4.5
Channel Islands Beach	-3.9	-1.4	-7.5	-4.5	-1.5	-9.2	-4.7	-1.5	-9.9
El Rio	-5.1	-1.8	-9.7	-5.9	-1.9	-11.9	-6.1	-2.0	-12.8
Fillmore	-3.5	-1.2	-6.6	-4.0	-1.3	-8.1	-4.2	-1.4	-8.7
Meiners Oaks	-2.2	-0.8	-4.2	-2.6	-0.8	-5.2	-2.7	-0.9	-5.6
Mira Monte	-6.3	-2.2	-12.1	-7.3	-2.4	-14.8	-7.6	-2.5	-15.9
Moorpark	-12.8	-4.5	-24.5	-14.7	-4.8	-29.9	-15.3	-5.1	-32.2
Oak Park	-0.1	0.0	-0.2	-0.1	0.0	-0.3	-0.2	0.0	-0.3
Oak View	-2.6	-0.9	-4.9	-3.0	-1.0	-6.1	-3.1	-1.0	-6.5
Ojai	-4.6	-1.6	-8.8	-5.3	-1.7	-10.8	-5.5	-1.8	-11.6
Oxnard	-110.4	-38.6	-210.8	-127.1	-41.7	-258.1	-132.1	-43.6	-277.4
Piru	0.0	0.0	-0.1	0.0	0.0	-0.1	0.0	0.0	-0.1
Port Hueneme	-14.5	-5.1	-27.8	-16.7	-5.5	-34.0	-17.4	-5.7	-36.5
San Buenaventura (Ventura)	-100.3	-35.1	-191.6	-115.6	-37.9	-234.6	-120.0	-39.6	-252.2
Santa Paula	-16.8	-5.9	-32.1	-19.3	-6.3	-39.3	-20.1	-6.6	-42.2
Simi Valley	-96.1	-33.6	-183.6	-110.7	-36.3	-224.8	-115.0	-38.0	-241.6
Thousand Oaks	-148.8	-52.0	-284.3	-171.5	-56.2	-348.2	-178.1	-58.8	-374.2
Adelanto	-3.6	-1.2	-6.8	-4.1	-1.3	-8.3	-4.3	-1.4	-8.9
Apple Valley	-23.2	-8.1	-44.3	-26.7	-8.8	-54.2	-27.8	-9.2	-58.3
Barstow	-12.6	-4.4	-24.1	-14.6	-4.8	-29.6	-15.1	-5.0	-31.8
Big Bear City	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4	-0.2	-0.1	-0.4
Big Bear Lake	-5.1	-1.8	-9.7	-5.9	-1.9	-11.9	-6.1	-2.0	-12.8
Bloomington	-10.3	-3.6	-19.6	-11.8	-3.9	-24.0	-12.3	-4.1	-25.8
Chino	-55.2	-19.3	-105.4	-63.6	-20.8	-129.1	-66.0	-21.8	-138.8
Chino Hills	-20.8	-7.3	-39.8	-24.0	-7.9	-48.7	-24.9	-8.2	-52.3
Colton	-41.2	-14.4	-78.7	-47.4	-15.5	-96.3	-49.3	-16.3	-103.5
Crestline	-1.3	-0.4	-2.4	-1.5	-0.5	-3.0	-1.5	-0.5	-3.2
Fontana	-76.4	-26.7	-145.9	-88.0	-28.8	-178.7	-91.4	-30.2	-192.0
Grand Terrace	-32.2	-11.2	-61.4	-37.0	-12.1	-75.2	-38.5	-12.7	-80.8
Hesperia	-28.2	-9.9	-53.8	-32.5	-10.6	-65.9	-33.7	-11.1	-70.8
Highland	-15.6	-5.4	-29.7	-17.9	-5.9	-36.4	-18.6	-6.1	-39.1

(Millioins of $ 1999)

City and CDP	CASE I			CASE II			CASE III		
	Scenario I	Scenario II	Scenario III	Scenario I	Scenano II	Scenario III	Scenario I	Scenano II	Scenario III
Joshua Tree	-0.5	-0.2	-0.9	-0.6	-0.2	-1.1	-0.6	-0.2	-1.2
Lake Arrowhead	-0.9	-0.3	-1.7	-1.0	-0.3	-2.1	-1.1	-0.4	-2.2
Lenwood	-0.1	0.0	-0.2	-0.1	0.0	-0.2	-0.1	0.0	-0.3
Loma Linda	-9.4	-3.3	-18.0	-10.8	-3.6	-22.0	-11.3	-3.7	-23.6
Mentone	-0.8	-0.3	-1.6	-1.0	-0.3	-1.9	-1.0	-0.3	-2.1
Montclair	-77.3	-27.0	-147.6	-89.0	-29.2	-180.7	-92.4	-30.5	-194.2
Morongo Valley	-0.1	0.0	-0.1	-0.1	0.0	-0.2	-0.1	0.0	-0.2
Mountain View Acres	-3.3	-1.1	-6.2	-3.7	-1.2	-7.6	-3.9	-1.3	-8.2
Muscoy	-1.3	-0.4	-2.4	-1.5	-0.5	-2.9	-1.5	-0.5	-3.2
Nebo Center	-0.1	-0.1	-0.3	-0.2	-0.1	-0.3	-0.2	-0.1	-0.4
Ontario	-149.7	-52.3	-285.9	-172.4	-56.5	-350.1	-179.1	-59.1	-376.3
Rancho Cucamonga	-92.1	-32.2	-175.9	-106.1	-34.8	-215.4	-110.2	-36.4	-231.5
Redlands	-61.6	-21.6	-117.7	-71.0	-23.3	-144.2	-73.7	-24.3	-154.9
Rialto	-46.6	-16.3	-89.1	-53.7	-17.6	-109.1	-55.8	-18.4	-117.2
Running Springs	-0.2	-0.1	-0.4	-0.2	-0.1	-0.5	-0.2	-0.1	-0.5
San Antonio Heights	-0.7	-0.3	-1.4	-0.8	-0.3	-1.7	-0.9	-0.3	-1.8
San Bernardino	-173.5	-60.7	-331.4	-199.9	-65.5	-405.8	-207.6	-68.5	-436.2
Twentynine Palms	-7.1	-2.5	-13.5	-8.1	-2.7	-16.5	-8.4	-2.8	-17.8
Twentynine Palms Base	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Upland	-73.0	-25.5	-139.4	-84.1	-27.5	-170.7	-87.3	-28.8	-183.4
Victorville	-64.9	-22.7	-124.1	-74.8	-24.5	-151.9	-77.7	-25.6	-163.3
Wrightwood	-0.5	-0.2	-0.9	-0.6	-0.2	-1.2	-0.6	-0.2	-1.2
Yucaipa	-18.6	-6.5	-35.5	-21.4	-7.0	-43.5	-22.3	-7.3	-46.8
Yucca Valley	-7.2	-2.5	-13.7	-8.3	-2.7	-16.8	-8.6	-2.8	-18.1
LOS ANGELES - UNINCOR	-157.2	-55.0	-300.2	-181.1	-59.3	-367.6	-188.1	-62.1	-395.1
ORANGE - UNINCOR	-95.2	-33.3	-181.8	-109.6	-35.9	-222.6	-113.9	-37.6	-239.3
RIVERSIDE - UNINCOR	-130.2	-45.5	-248.6	-149.9	-49.1	-304.4	-155.7	-51.4	-327.2
SAN BERNARDINO - UNINCOR	-129.4	-45.3	-247.2	-149.1	-48.9	-302.7	-154.9	-51.1	-325.4
VENTURA - UNINCOR	-91.1	-31.8	-174.0	-104.9	-34.4	-213.0	-109.0	-36.0	-229.0
Total	-13,870	-4,850	-26,495	-15,978	-5,236	-32,442	-16,597	-5,477	-34,868

Appendix B:
October 2002, Draft 303(d) Listings in Los Angeles Region

The LARWQCB 1998 303(d) list significantly follows the NRDC et al. EPA Consent Decree mandating the development of 92 TMDLs for about 550 water body-pollutant units. In the 2002 list draft, many of these units have been split into several contaminants units. Further, water bodies have been merged into a single reach designation, making direct numeric comparisons difficult. However, ignoring the splits and merges, about 70 of those units will be deleted from that list and nearly 100 added. Clearly, this list is in significant flux, and treatment solutions developed based on the 2002 303(d) list will need to be adaptive to the addition of new and potentially difficult to treat contaminants. The middle two columns of Table B.1 were converted from the October 2002 303(d) list. The left column is a numeric list and the right column identifies that level of water treatment that is correlated with the pollutants in the adjacent column that are identified in bold text. Most discharges to the ocean require at least level II treatment and most inland discharges need level III advanced treatment.

- "BMP" indicates that Best Management Practices may be sufficient to reach water quality objectives,

- "Legacy" indicates that any discharge is from a historic source such as sediments

- "Level I" is lower cost physical treatment

- "Level II" is a disinfection treatment (ozone or UV light since chlorination may form other prohibited compounds), with level I pretreatment; and

- "Level III" is an expensive advanced treatment such as reverse osmosis, denitrification, ion exchange, or granulated active carbon, with level I and II pretreatment.

Table B.1: October 2002, Draft 303(d) Listings in the Los Angeles Region

Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
1	Abalone Cove Beach	**Beach Closures**, DDT^{S}, PCBs^{F}	Level II
2	Aliso Canyon Wash	**Se**	Level III
3	Amarillo Beach	DDT^{F}, PCBs^{F}	Legacy
4	Arroyo Seco Reach 1	**Algae**, Coliform, Trash	Level III
5	Arroyo Seco Reach 2	**Algae**, Coliform, Trash	Level III
6	Ashland Avenue Drain	Coliform, Low DO, **Toxicity**	Level III
7	Avalon Beach	**Bacteria**	Level II
8	Ballona Creek	Cd^{S}, **ChemA, Chlordane, Cu, DDT, Dieldrin,** Virus, Coliform, **Pb, PCBs,** pH, Toxicity^{S}, **Se,** Ag^{S} **Toxicity, ,Zinc**	Level III
9	Ballona Creek Estuary	**Chlordane^{S},** DDT^{S}, Coliform, Pb^{S}, PAHs^{S}, **PCBs^{S},** Toxicity^{S}, Shellfish Zn^{S}	Level III
10	Ballona Creek Wetlands	Exotics, Altered Habitat, Hydromod., Reduced Tidal, **Trash**	Level I
11	Bell Creek	**Coliform**	Level II
12	Big Rock Beach	**Beach Closures**, DDT^{F}, **Coliform,** PCBs^{F}	Level II
13	Bluff Cove Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
14	Brown Barranca/Long Cyn	**Nitrate, Nitrite**	Level III
15	Burbank Western Channel	**Algae, NH_3, Cd**, Odors, Scum, Trash	Level III
16	Cabrillo Beach (Inner)	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
17	Cabrillo Beach (Outer)	**Beach Closures**, DDT^{F}, **Coliform,** PCBs^{F}	Level II
18	Calleguas Creek Reach 1	**Chlordane, Cu, DDT^{S}, Endosulfan, Hg, Ni, Nitrogen, PCBs**, Toxicity^{S}, Sedimentation, **Zinc**	Level III
19	Calleguas Creek Reach 2	**NH_3, ChemA, Chlordane, Cu, DDT^{S}, Endosulfan,** Fecal Coliform, **Nitrogen, PCBs,** Toxicity^{S}, Sedimentation, **Toxaphene^{S}**	Level III
20	Calleguas Creek Reach 3	**Cl, NO_2, NO_3,** Sedimentation, **TDS**	Level III
21	Calleguas Creek Reach 4	**Algae, ChemA, Chlordane^{S}, DDT^{S}, Chlorpyrifos, Endosulfan^{S}, Dieldrin,** Fecal Coliform, **NO_2, NO_3, Nitrogen, PCBs, Se,** Sedimentation, **Toxaphene^{S}, Toxicity,** Trash	Level III

^{S}=Sediments
^{F}=Fish Advisory (Normally due to legacy pollutants, requiring sediment treatment).

Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
22	Calleguas Creek Reach 5	**Algae, ChemA, Chlordane^{S}, Chlorpyrifos, Dacthal^{S}, DDT^{S}, Dieldrin, Endosulfan^{S}, Nitrogen, PCBs,** Sedimentation, **Toxaphene^{S}, Toxicity,** Trash	Level III
23	Calleguas Creek Reach 6	**NH_3, Cl, DDT^{S},** Fecal Coliform, **NO_2, NO_3,** Sedimentation, **Sulfates, TDS**	Level III
24	Calleguas Creek Reach 7	**NH_3, B, Cl,** Fecal Coliform, **OP Pesticides,** Sedimentation, **Sulfates, TDS**	Level III
25	Calleguas Creek Reach 8	**B, Cl,** Sedimentation, **Sulfates, TDS**	Level III
26	Calleguas Creek Reach 9A	**Algae, ChemA, DDT, Endosulfan,** Fecal Coliform, **NO_2, NO_3,** Sedimentation, **Sulfates, TDS, Toxaphene^{S}**	Level III
26	Calleguas Creek Reach 9B	**Algae, NH_3,ChemA, Cl, DDT, Endosulfan,** Fecal Coliform, Sedimentation, **Sulfates, TDS, Toxaphene^{S}, Toxicity**	Level III
27	Calleguas Creek Reach 10	**Algae, NH_3,ChemA, Cl, DDT, Endosulfan,** Fecal Coliform, **NO_2,** Sedimentation, **Sulfates, TDS, Toxaphene^{S}, Toxicity**	Level III
28	Calleguas Creek Reach 11	**Algae, NH_3,ChemA, Cl, DDT, Endosulfan,** Fecal Coliform, Sedimentation, **Sulfates, TDS, Toxaphene^{S}, Toxicity**	Level III
29	Calleguas Creek Reach 12	**NH_3, Chlordane, DDT,** Sedimentation, **Sulfates, TDS**	Level III
30	Calleguas Creek Reach 13	**Algae, NH_3,ChemA, Chlordane, Cl, DDT, Dieldrin, Endosulfan, HCH, PCBs,** Sedimentation, **Sulfates, TDS, Toxaphene^{S}, Toxicity**	Level III
31	Canada Larga (Ventura R)	**Fecal Coliform,** Low DO	Level II
32	Carbon Beach	**Beach Closures,** DDT^{F}, PCBs^{F}	Level II
33	Castlerock Beach	**Bacteria, Beach Closures,** DDT^{F}, PCBs^{F}	Level II
34	Channel Islands Harbor	Pb^{S}, Zn^{S}	Legacy
35	Channel Ilds Harbor Beach	**Bacteria**	Level II
36	Colorado Lagoon	**Chlordane^{S}, DDT, Dieldrin,** Pb^{S}, PAHs^{S}, **PCBs,** Toxicity^{S}, Zn^{S}	Level III

^{S}=Sediments

^{F}=Fish Advisory (Normally due to legacy pollutants, requiring sediment treatment).

Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
37	Compton Creek	**Cu**, Coliform, **Pb**, pH,	Level III
38	Coyote Creek	**Fish Histology, Algae, Cu,** Coliform, **Pb, Se, Zn**	Level III
39	Crystal Lake	**Low Do**	BMP / Level I
40	Dan Blocker Beach	**Coliform**	Level II
41	Dockweiler Beach	**Beach Closures, Coliform**	Level II
42	Dominguez Channel >VT	**Aldrin, NH_3, ChemA, Chlordane,** Cr^S, **Cu, DDT^S, Dieldrin,** Coliform, **Pb,** $PAHs^S$, **PCBs,** Zn^S	Level III
43	Dominguez Channel <VT	**Aldrin, NH_3, Benthic, ChemA, Chlordane,** Cr^S, **Cu, DDT^S, Dieldrin,** Coliform, **Pb,** $PAHs^S$, **PCBs,** Zn^S	Level III
44	Dry Canyon Creek	Fecal Coliform, **Se**	Level III
45	Duck Pond/Mugu Drain	**ChemA, Chlordane, DDT^S, Nitrogen, $Toxicity^S$, Toxaphene**	Level III
46	Echo Park Lake	**Algae, NH_3, Cu, Eutrophic, Pb,** Odors, **PCBs,** pH	Level III
47	El Dorado Lakes	**Algae, NH_3, Cu, Eutrophic, Pb, Hg,** pH	Level III
48	Elizabeth Lake	**Eutrophic,** Low DO, pH, Trash	Level III/I
49	Escondido Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
50	Flat Rock Point Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
51	Fox Barranca	**B, NO_2, NO_3, Sulfates, TDS**	Level III
52	Hermosa Beach	**Beach Closures**	Level II
53	Hobie Beach	**Bacteria**	Level II
54	Hopper Creek	**Sulfates, TDS**	Level III
55	Inspiration Point Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
56	La Costa Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
57	Lake Calabasas	**NH_3, DDT, Eutrophic,** Odors, Low DO, pH	Level III
58	Lake Hughes	**Algae, Eutrophic, Fish Kills,** Odors, Trash	Level III
59	Lake Lindero	**Algae, Cl, Eutrophic,** Odors, **EC(TDS),** Trash	Level III
60	Lake Sherwood	**Algae, NH_3, Eutrophic, Hg,** Low DO	Level III
61	Las Flores Beach	**Coliform**, DDT^F, $PCBs^F$	Level II
62	Las Tunas Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
63	Las Virgenes Creek	Coliforms, **Nutrients (Algae),** Low DO, Scum, Sedimentation, **Se,** Trash	Level III

^{S}=Sediments

^{F}=Fish Advisory (Normally due to legacy pollutants, requiring sediment treatment).

Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
64	Legg Lake	**NH_3, Cu, Pb,** Odors, pH, Trash	Level III
65	Leo Carillo Beach	**Beach Closures, Coliform**	Level II
66	Lincoln Park Lake	**NH_3, Eutrophic, Pb,** Odors, Low DO	Level III
67	Lindero Creek Reach 1	**Algae,** Coliform, Scum, **Se,** Trash	Level III
68	Lindero Creek Reach 2	**Algae,** Coliform, Scum, **Se,** Trash	Level III
69	Long Beach Harbor	**Benthic**, DDT^F, $PAHs^S$, $PCBs^F$, $Toxicity^S$	Legacy or Level III
70	Long Point Beach	**Coliform**, DDT^F, $PCBs^F$	Level II
71	Los Angeles Fish Harbor	DDT, PAHs, PCBs	Legacy or Level III
72	LA Hbr Consolidated Slip	**Benthic**, Cd^S, **$Chlorodane^S$**, Cr^S, Cu^S, DDT^F, $Dieldrin^S$, Pb^S, Hg^S, $PAHs^S$, $PCBs^F$, $Toxicity^S$, Zn^S	Legacy or Level III
73	LA Hbr Inner Breakwater	DDT, PAHs, PCBs	Legacy or Level III
74	LA Hbr Main Channel	**Beach Closures,** Cu^S, DDT^F, $PAHs^S$, $PCBs^F$, $Toxicity^S$, Zn^S	Level II
75	LA Hbr Southwest Slip	DDT^F, $PCBs^F$, $Toxicity^S$	Legacy
76	LA River Estuary	$Chlorodane^S$, DDT^S, Pb^S, $PCBs^S$, Zn^S	Legacy
77	LA River Reach 1	**Al, NH_3, Cd, Cu,** Coliform, **Pb, Nutrients (Algae),** pH, Scum, **Zn**	Level III
78	LA River Reach 2	**NH_3,** Coliform, **Pb, Nutrients (Algae),** Odors, Oil, Scum	Level III
79	LA River Reach 3	**NH_3, Nutrients (Algae),** Odors, Scum	Level III
80	LA River Reach 4	**NH_3,** Coliform, **Pb, Nutrients (Algae),** Odors, Scum	Level III
81	LA River Reach 5	**NH_3, ChemA, Nutrients (Algae),** Odors, Oil, Scum	Level III
82	LA River Reach 6	**1,1-DCE,** Coliform, **PCE, TCE**	Level III
83	Los Cerritos Channel	**NH_3, $Chlordane^S$, Cu,** Coliform, **Pb, Zn**	Level III
84	Lunda Bay Beach	**Beach Closures**	Level II
85	Machado Lake (Harbor L)	**Algae, NH_3, ChemA, Chlordane, DDT, Dieldrin, Eutrophic,** Odors, **PCBs,** Trash	Level III
86	Malaga Cove Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
87	Malibou Lake	**Algae, Chlordane, Eutrophic,** Low DO, **PCBs**	Level III
88	Malibu Beach	**Beach Closures,** DDT^F	Level II

^{S}=Sediments
^{F}=Fish Advisory (Normally due to legacy pollutants, requiring sediment treatment).

Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
89	Malibu Creek	Barriers, Coliform, **Nutrients (Algae)**, Scum, Sedimentation, Trash	Level III
90	Malibu Lagoon	Benthic, Virus, **Eutrophic,** Coliform, pH, Shellfish, REC1	Level III or Level II
91	Malibu Lagoon Beach	**Beach Closures**, DDT^F, Coliform, $PCBs^F$	Level II
92	Manhattan Beach	**Beach Closures**	Level II
93	Marina del Rey Basins	**Chlordane^S**, Cu^S, **DDT^S, Dieldrin,** Fish Consumption, Coliform, **Pb^S, $PCBs^S$, Toxicity^S, Zn^S**	Level III
94	Marina del Rey Beach	**Beach Closures, Coliform**	Level II
95	Matilija Creek Reach 1	**Barriers**	BMP
96	Matilija Creek Reach 2	**Barriers**	BMP
97	Matilija Reservoir	**Barriers**	BMP
98	McCoy Canyon Creek	Fecal Coliform, **NO_3, Se**	Level III
99	McGrath Beach	**Coliform**	Level II
100	McGrath Lake	**Chlordane^S, DDT^S, Dieldrin^S, $PCBs^S$, Toxicity^S**	Legacy
101	Medea Creek Reach 1	**Algae**, Coliform, Sedimentation, **Se,** Trash	Level III
102	Medea Creek Reach 2	**Algae**, Coliform, Sedimentation, **Se,** Trash	Level III
103	Mint Canyon Reach 1	**NO_2, NO_3**	Level III
104	Monrovia Canyon Lake	**Pb**	Level II or Level III
105	Munz Lake	**Eutrophic,** Trash	Level III
106	Nicholas Canyon Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II
107	Ormond Beach	**Bacteria**	Level II
108	Palo Comado Creek	**Coliform**	Level II
109	Palo Verde Shoreline Bch	Pathogens, **Pesticides**	Level III
110	Paradise Cove Beach	**Beach Closures**, DDT^F, **Coliform,** $PCBs^F$	Level II
111	Peck Road Park Lake	**Chlordane, DDT, Pb,** Odors, Low DO	Level III
112	Peninsula Beach	**Bacteria**	Level II
113	Pico Kenter Drain	**NH_3, Cu,** Virus, Coliform, **Pb, PAHs, Toxicity,** Trash	Level III
114	Piru Creek	**PH**	Level I
115	Point Dune Beach	**Beach Closures**, DDT^F, $PCBs^F$	Level II

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Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
116	Point Fermin Park Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
117	Point Vicente Beach	**Beach Closures**	Level II
118	Pole Creek	**Sulfates, TDS**	Level III
119	Port Hueneme (Back)	**DDT, PCBs**	Level III
120	Portugese Bend Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
121	Promenade Park Beach	**Bacteria**	Level II
122	Puddingstone Reservoir	**Chlordane, DDT, Hg,** Low DO, **PCBs**	Level III
123	Puerco Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
124	Redondo Beach	**Beach Closures**, DDT^{F}, **Coliform**, PCBs^{F}	Level II
125	Resort Point Beach	**Beach Closures**	Level II
126	Rincon Beach	**Bacteria**	Level II
127	Rio De Santa Clara	**ChemA, Chlordane, DDT, Nitrogen, PCBs, Toxicity^{S}, Toxaphene**	Level III
128	Rio Hondo Reach 1	**Cu,** Coliform, **Pb,** pH, Trash, **Toxaphene**	Level III
129	Rio Hondo Reach 2	**Coliform**	Level II
130	Robert H. Myer Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
131	Rocky Point Beach	**Beach Closures**	Level II
132	Royal Palms Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
133	San Antonio Creek	**Nitrogen**	Level III
134	San Buenaventure Beach	**Bacteria**	Level II
135	San Gabriel River Estuary	**Fish Histology**	Level III
136	San Gabriel River Reach 1	**Fish Histology, Algae, Coliform**	Level III
137	San Gabriel River Reach 2	**Cu,** Coliform, **Pb, Zn**	Level III
138	San Jose Creek Reach 1	**Algae,** Coliform, pH	Level III
139	San Jose Creek Reach 2	**Algae,** Coliform, pH	Level III
140	San Pedro Bay	Cr^{S}, Cu^{S}, DDT^{F}, PAH^{S}, PCBs^{F}, Toxicity^{S}, Zn^{S}	Legacy
141	Santa Clara River Estuary	**ChemA,** Coliform, **Toxaphene**	Level III
142	Santa Clara River Reach 3	**NH_3, Cl, TDS**	Level III
143	Santa Clara River Reach 7	**Cl,** Coliform, **NO_2, NO_3**	Level III
144	Santa Clara River Reach 8	**Cl,** Coliform, **NO_2**	Level III

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Item #	Water Body Name	303(d) Listed Pollutant/Stressor	Treatment
145	Santa Clara River Reach 9	**Coliform**	Level II
146	Santa Fe Dam Park Lake	**Cu, Pb,** pH	Level III
147	Santa Monica Bay	Chlordane^{S}, DDT^{S}, Debris, PAHs^{S}, PCBs^{S}, Fish Consumption, Toxicity^{S}	Legacy
148	Santa Monica Beach	**Beach Closures, Coliform**	Level II
149	Santa Monica Canyon	Coliform, **Pb**	Level III
150	Sea Level Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
151	Sepulveda Canyon	**NH3,** Coliform, **Pb**	Level III
152	Sespe Creek	**Cl,** pH	Level III
153	Stokes Creek	**Coliform**	Level II
154	Surfers Point at Seaside	**Bacteria**	Level II
155	Topanga Beach	**Beach Closures**, DDT^{F}, **Coliform** PCBs^{F}	Level II
156	Topanga Canyon Creek	**Pb**	Level III
157	Torrance Beach	**Beach Closures, Coliform**	Level II
158	Torrance Carson Channel	**Cu,** Coliform, **Pb**	Level III
159	Torrey Canyon Creek	**NO_2, NO_3**	Level III
160	Trancas (Broad) Beach	**Beach Closures**, DDT^{F}, **Coliform** PCBs^{F}	Level II
161	Triunfo Cyn Crk Reach 1	**Pb, Hg,** Sedimentation	Level III
162	Triunfo Cyn Crk Reach 2	**Pb, Hg,** Sedimentation	Level III
163	Tujunga Wash	**NH_3, Cu,** Coliform, Odors, Scum, Trash	Level III
164	Venice Beach	**Beach Closures, Coliform**	Level II
165	Ventura (Harbor) Keys	**Coliform**	Level II
166	Ventura River Estuary	**Algae, Eutrophic,** Coliform, Fecal Coliform, Trash	Level III
167	Ventura Reach 1 & 2	**Algae**	Level III
168	Verdugo Wash Reach 2	**Algae,** Coliform, Trash	Level III
169	Walnut Creek Wash	pH, **Toxicity**	Level III
170	Westlake Lake	**Algae, NH_3, Chlordane, Eutrophic, Pb,** Low DO	Level III
171	Wheeler Canyon (Todd B)	**NO_2, NO_3,Sulfates, TDS**	Level III
172	Whites Point Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II
173	Will Rogers Beach	**Beach Closures, Coliform**	Level II
174	Wilmington Drain	**NH_3, Cu,** Coliform, **Pb**	Level III
175	Zuma Beach	**Beach Closures**, DDT^{F}, PCBs^{F}	Level II

^{S}=Sediments

^{F}=Fish Advisory (Normally due to legacy pollutants, requiring sediment treatment).

1. TEST CLAIM TITLE

Waste Discharge Requirements; Calif. Regional Water Quality Control Bd. Ord. No. 01-182 (12/13/01)

2. CLAIMANT INFORMATION

See Attached

Name of Local Agency or School District

Howard Gest, Esq.

Claimant Contact

Burhenn & Gest LLP

Title

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Telephone Number

213.688.7716

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E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Howard Gest, Esq.

Claimant Representative Name

Attorney For Claimants

Title

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RECEIVED
NOV 28 2007
COMMISSION ON STATE MANDATES

Filing Date:

Test Claim #: 03-TC-20

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Los Angeles Regional Quality Control Board Order No. 01-182, Parts 4.C.2.a; 4.C.2.b; 4. E; and 4.F.5.c.3 (December 13, 2001)

☑ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 19.
6. Declarations: pages 20 to 25.
7. Documentation: pages 26 to end.

(Revised 1/2005)

INSERT

2. CLAIMANT INFORMATION

NAME OF CLAIMANTS

City of Artesia
City of Beverly Hills
City of Carson
City of Norwalk
City of Rancho Palos Verdes
City of Westlake Village
City of Azusa
City of Commerce
City of Vernon

Section 5

Written Narrative

Section 5: WRITTEN NARRATIVE IN SUPPORT OF TEST CLAIM OF THE CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, VERNON AND WESTLAKE VILLAGE REGARDING MANDATES IMPOSED UNDER AN EXECUTIVE ORDER OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ORDER NUMBER 01-182

This written narrative is submitted on behalf of the Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Vernon and Westlake Village (hereinafter, "Cities") regarding the following mandates contained in California Regional Water Quality Control Board, Los Angeles Region (hereinafter, "RWQCB") Order Number 01-182 ("Order"):

5(A) DESCRIPTION OF NEW ACTIVITIES AND COSTS

1. The New Mandates

The Cities seek a subvention of funds for the following state mandates contained in the Order:

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Resources Control Board ("State Water Board") permits], page 31;

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], pages 42-45;

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], pages 48-49.

2. Description of Mandates

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], Order, pages 28-31

Part 4.C.2.a of the Order provides, in relevant part, as follows:

> Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.
>
> (a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented *in compliance with State law*, County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:
>
> - has received educational materials on storm water pollution prevention practices;
> - does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
> - keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
> - does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
> - removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP,

Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automotive shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensure that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

(Emphasis added.)

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Board permits], Order, page 31

Part 4.C.2.b of the Order provides, in relevant part, as follows:

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

. . .

(b) Phase I Facilities

> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected each Permittee shall conduct compliance inspections as specified below.
>
> Frequency of Inspection
>
> Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provide that the Permittee inspects at least 20% of the facilities in Tier 2 each year.
>
> Level of Inspection: Each Permittee shall confirm that each operator:
>
> - *has a current Waste Discharge Identification (WDID) number* for facilities discharging storm water associated with industrial activity; and that *a Storm Water Pollution Prevention Plan is available on-site*; and
> - is effectively implementing BMPs in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP.

(Emphasis added.)

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], Order, pages 42-45

Part 4.E.2.b of the Order provides, in relevant part, as follows:

2. For construction sites one acre or greater, each Permittee shall comply with all conditions in section E.1 above and shall:

. . .

(b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Part 4.E.3. of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1 and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, *proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer.* A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require *proof of an NOI and a copy of the SWPPP at any time a transfer of ownership* takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

(Emphasis added.)

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], Order, pages 48-49.

Part 4.F.5.c.3 of the Order provides, in relevant part, as follows:

> 5. Storm Drain Operation and Management
>
> . . .
>
> (c) Permittees not subject to a trash TMDL shall:
>
> . . .
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

3. The inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships are new programs or higher levels of service mandated by the State

a. The State has had responsibility for regulation of discharges from restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969

Part 4.C.2.a of the Order requires the Cities to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. The purpose of the inspection is to assure that these facilities are implementing programs, known as Best Management Practices ("BMPs"), to prevent the discharge of waste into locations where it will be picked up by stormwater and carried into the rivers and other waters of the state.

Since at least 1969, State agencies have had the responsibility to prevent or regulate the discharge of waste that could be carried into the rivers and other waters of the state. In that year the Legislature adopted the Porter-Cologne Water Quality Act, Water Code §§ 13000 et seq. Under the Porter-Cologne Act, the Legislature imposed on the State Water Board and the regional water quality control boards ("regional boards") responsibility for the coordination and control of water quality. Water Code § 13001.

This responsibility includes the regulation of discharges from any entity that could affect the quality of the water of the state, including inspection of those facilities. Under the Act, any person who discharges "waste" or proposes to discharge "waste" that could affect the quality of the "waters of the state," other than into a community sewer system, must file a report of the discharge with the regional board that has the authority over that discharge. Water Code §§ 13260 and 13263. "Waste" and "waters of the state" are defined broadly. "Waste" includes all waste substances associated with human habitation, or of human or animal origin, or from any producing, manufacturing or

processing operation. Water Code § 13050(d). "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state. Water Code § 13050(e). Upon receipt of the report of discharge, the regional board, after a hearing, issues a permit, known as waste discharge requirements, authorizing or conditioning (including disallowing) the discharge. Water Code § 13263. The regional board is given the authority to require any person to furnish technical and monitoring reports describing any discharge or proposed discharge of waste, and can inspect the facility of any such person to ascertain whether the purpose of the Act are being met. Water Code § 13267(b) and (c). The State Water Board is given this same authority if it will not duplicate the efforts of the Regional Board. *Id.*, subd. (f).

The Porter-Cologne Act contains no exceptions for discharges from restaurants, automotive service facilities, retail gas station, or automobile dealerships. Accordingly, the State, through the State Water Board and the regional water quality control boards, has had the responsibility since 1969 for regulating the discharge or proposed discharge of any waste from these facilities.

b. The purpose of the inspection obligations imposed by the Order is to prevent or minimize the discharge of waste into waters of the state

As set forth above, the purpose of the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships is to assure that these facilities are implementing BMPs that will prevent the discharge of waste into locations where it could be carried into rivers and other waters of the state. The restaurant inspections are to assure that oil, grease, trash or waste are not entering areas exposed to stormwater, all to prevent these materials from being picked up by stormwater and then being discharged into waters of the state. The automotive service facility inspections are to assure that materials at these facilities do not come into contact with stormwater or other runoff that would carry these materials into waters of the state. The retail gas outlet and automotive dealership inspections likewise are to assure that fuel, debris and waste does not enter storm drain and catch basins and then enter waters of the state.

These inspections are all tasks for which the State has been responsible since at least 1969. These are all obligations of the State and regional boards under the Porter-Cologne Act since 1969.

c. The Order requires the Cities to conduct these inspections to assure compliance with State law

The Order explicitly requires the Cities to conduct these inspections to assure compliance with State law, including a resolution issued by a state agency, i.e., the RWQCB. The Order specifically provides that inspections of restaurants are to be performed in order to assure that BMPs "are being effectively implemented *in compliance with state law,* County and municipal ordinances, *Regional Board Resolution*

No. 98-08, and the SQMP." Order, Part 4.C.2.a(1) (emphasis added). The inspection of automotive service facilities, retail gasoline outlets and automobile dealerships similarly are to confirm that BMPs are being "effectively implemented . . . in compliance with *Regional Board Resolution No. 98-08*. Order, Parts 4.C.2.a(2) and (3) (emphasis added). (A copy of Resolution No. 98-08 is included in Section 7.)

d. These inspection obligations are new programs or higher levels of service.

The obligation to inspect restaurants, automotive service facilities, retail gas outlets and automotive dealerships is a new program or a higher level of service. A "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. These inspection obligations are such a program; inspections for the purpose of policing compliance with state law are a uniquely governmental function and are uniquely imposed on the municipalities that are permittees under the Order.[1]

These inspection obligations are also new. A program is "new" if the local governmental entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. Here, the Order constitutes both waste discharge requirements issued by the RWQCB and a NPDES municipal stormwater permit issued under the federal Clean Water Act. This is the third such order issued to the Cities. The RWQCB previously issued orders to the Cities in 1991 and 1996. Neither the 1991 nor the 1996 order imposed these inspection obligations. The inspection obligations were imposed by the RWQCB for the first time in the Order issued in 2001.

e. The inspections are not required by the federal Clean Water Act

The federal Clean Water Act imposes certain obligations on the Cities. Under the Clean Water Act, the Cities are required to (i) prohibit non-stormwater discharges into the storm sewers, and (2) reduce the discharge of pollutants in stormwater to the maximum extent practicable. 33 U.S.C. §1342(p). As noted above, the Order itself

[1] The inspections could also be considered a higher level of service. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in an increase in the actual level or quality of governmental services provided. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

constitutes both waste discharge requirements and NPDES permit issued under the federal Clean Water Act.

The federal Clean Water Act does not require Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships. The federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are solely municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). The federal regulations do not require inspections of restaurants, automotive service facilities, retail gas stations, or automotive dealerships.

Indeed, the 1991 and 1996 orders issued by the RWQCB to these Cities did not contain these inspection obligations. If the federal Clean Water Act had required Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships, the RWQCB could not have issued the prior orders without including these inspections. The RWQCB, however, did issue the prior orders without requiring these inspections.[2]

It is possible that the State Water Board or the RWQCB may argue that, because the Order also constituted a federal NPDES permit, the inspections are federally mandated. This argument would lack merit. An NPDES permit can contain both federal and non-federal requirements. *See City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618, 628. Where state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *See Long Beach Unified School District v State of California* (1990) 225 Cal.App.3d 155, 172-173.

Moreover, a "new program or higher level of service" imposed by the State upon a municipality as a result of a federal law or federal program is not necessarily a "federal mandate." In order to be a federal mandate, the obligation must be imposed upon the municipality by federal law itself. The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has a "true choice" in the matter of implementation, *i.e.*, whether the state freely chose to impose that program on local municipalities as opposed to performing the obligation itself. *See Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

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[2] Because the current federal regulations were not in effect at the time of the issuance of 1991 order, it could be argued that the 1991 order was issued under a prior set of regulations. The current regulations however, were in existence at the time the 1996 order was issued.

Here, the inspections are not required by federal statute or regulations; they exceed the requirements of the federal Clean Water Act. Here, the State has had the obligation to regulate restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969. This included the right to inspect such facilities to prevent activities that would result in the discharge of waste that could affect the quality of the waters of the state. Water Code § 13267(c). In 2001, the RWQCB freely chose to shift those inspection obligations to the Cities. Nothing under the federal Clean Water Act required the RWQCB to do so; nothing prevented the RWQCB from continuing to perform these inspections itself.

4. The inspections of industrial facilities that hold State Water Board stormwater permits for compliance with those permits are new programs or higher level of service mandated by the State

a. The Order imposes new inspection obligations that were required to be performed by the State

Part 4.c.2.b requires the cities to inspect industrial facilities to determine those facilities' compliance with the State's program for preventing waste from being discharged from those facilities, including permits issued by the State Water Board. As with the inspection of restaurants, gas stations and the other facilities, the requirement to inspect industrial is also a new program, one formerly performed by the State itself.

The Clean Water Act requires certain industrial facilities to have permits for stormwater discharges associated with their industrial activity. 33 U.S.C. § 1342(p)(3); 40 C.F.R. § 122.26(c). These industrial stormwater permits are issued either by the State Water Board or the regional boards. In California, the State Water Board issues a general permit to which industrial facilities can subscribe. Alternatively, an industrial discharger can obtain its own permit from a regional water quality control board. The Order refers to these industrial facilities as "Phase I Facilities." Order, pp. 31, 62.

Under the Porter-Cologne Water Quality Act, the State Water Board and the regional boards have both the authority and the obligation to issue these permits to "Phase I Facilities." Water Code § 13377. The State Water Board has issued these industrial stormwater permits since 1991. (See State Water Board Order No. 91-013-DWQ.) The most current general permit was issued in 1997. See State Water Resources Control Board Order No. 97-03-WQ, a copy of which is included in Section 7.

Significantly, the Legislature has authorized the State Water Board and regional boards to charge these industrial dischargers a fee which is deposited in the State's Waste Discharge Permit Fund and separately accounted for. Water Code § 13260(d)(2)provides in pertinent part:

(A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created.

(B) Notwithstanding subparagraph (A) the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the National Pollutant Discharge Elimination System (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

The Legislature has then directed that a portion of this fee should be spent specifically on inspection of these industrial facilities. "Not less than 50 percent in the Waste Discharge Permit Fund that is separately accounted for . . . is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out the stormwater programs in the region." Water Code § 13260(d)(2)(B)(ii). "Each regional board . . . shall spend not less than 50 percent of that money *solely on stormwater inspection and regulatory compliance issues* associated with industrial and construction stormwater programs." *Id.*, subd.(d)(2)(B)(iii) (emphasis added).

Like the inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships, the State Water Board and regional boards have had the authority under the Porter-Cologne Act to regulate these discharges from "Phase I" facilities since 1969, including the authority to inspect these facilities. Water Code §§ 13260, 13263, 13267. The obligation to inspect these "Phase I" industrial facilities that hold the State Board issued stormwater permits has rested with the regional boards since 1991. The State Water Board, in adopting the general industrial permit it issues to these Phase I facilities, stated that "following adoption of this General Permit, *the Regional Water Boards shall enforce its provisions.*" Order No. 97-03-DWQ, Finding 13 (emphasis added).

In 2001, the RWQCB imposed this obligation on the Cities. There is no question that the RWQCB imposed this inspection requirement to assure Phase I facilities' compliance with state law. The inspection required to be performed by the cities is a "compliance inspection." Order, Part 4.2.b. The inspection shall include a determination as to whether the industrial discharger has a waste discharge identification number and a stormwater pollution prevention plan. The waste discharge identification number is a number assigned by the State in conjunction with its permit program. The stormwater pollution prevention plan is a requirement of the state-issued general permit. The inspection is also for the purpose of determining whether the industrial facility is implementing BMPs in compliance with Regional Board Resolution No. 98-08, a resolution of the RWQCB itself.

Accordingly, the inspections of Phase I facilities is a new program or higher level of service imposed on the cities:

> (1) The State Board and the regional boards have had authority to regulate and inspect these facilities since 1969. Water Code §§ 13260, 13263, 13267.
>
> (2) The inspection is to determine compliance with the general industrial stormwater permit issued by the State Board. The State Board has specifically provided that the regional board shall enforce the provisions of this permit. State Water Board Order No. 97-03-DWQ, Finding 13.
>
> (3) The State Board and the regional board charge these industrial facilities a fee for this program. Water Code § 13260(d)(2).
>
> (4) The Water Board and the regional boards do not share any of these fees with the cities.
>
> (5) The inspections are compliance inspections to determine compliance with the State Water Board permit, and Regional Board Resolution No. 98-08.
>
> (6) The inspection obligation is new. The RWQCB imposed this obligation on the Cities in 2001. Prior orders did not impose this obligation on the Cities.

b. The obligation to inspect industrial facilities with State-issued stormwater permits is not contained in the federal Clean Water Act

As discussed above, the federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). These regulations do not require inspections of industrial facilities with state-issued stormwater permits.

5. The inspection of construction sites that hold State Board permits for compliance with those permits is a new program mandated by the state

Under the Clean Water Act, the definition of industrial activities includes construction. See 40 C.F.R. § 122.26(b)(14)(x). In 2001, construction sites where activity resulted in the disturbance of greater than five acres of total land area were required to obtain stormwater permits. In 2003 this requirement was expanded to sites where the activities resulted in the disturbance of greater than one acre.

As with the industrial facilities, the State Water Board and the regional boards are charged with issuing these permits. Water Code § 13377. The State Water Board has issued a general construction stormwater permit since 1992. See State Water Resources Control Board Order No. 92-08-DWQ. The most current general construction stormwater permit was issued in 1999. See State Water Resources Control Board Order No. 99-08-DWQ. Like industrial facilities, the State charges a fee for these permits. Like industrial facilities, a portion of that fee is to go to regional boards to be spent "solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." Water Code § 13260(d)(2)(B)(iii).

Like general industrial stormwater permit, the general construction stormwater permit issued by the State Water Board imposes the inspection obligation on the regional boards. State Board Order No. 99-08-DWQ specifically provides that "[f]ollowing adoption of this General Permit, the RWQCBs shall enforce the provisions herein . . . ." State Board Order No. 99-08-DWQ, Finding 11. Part D.1 of that Order further specifically provided that "RWQCBs shall . . . implement the provision of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPs, reviewing SWPPPs, reviewing monitoring reports, conducting *compliance inspections*, and taking enforcement actions." Thus, the specific responsibility for inspection of construction sites was allocated by the State Water Board to the regional boards, including the RWQCB.

The same analysis that applies the obligation to inspect industrial facilities applies to the obligation to inspect construction sites. Like inspection of the Phase I facilities in 2001, the RWQCB simply shifted this obligation from itself to the cities. The obligation to inspect these construction sites for compliance with the State Water Board's permit is a new program or higher level of service mandated on the Cities:

> (1) The State Water Board and the regional boards have had the authority and obligation to regulate these discharges since 1969. Water Code §§ 13260, 13263 and 13267.
>
> (2) The State Water Resources Board has issued permits to these facilities since 1992. See State Board Order No. 92-08-DWQ.

(3) The State Board orders adopting the general permit imposed the obligation to inspect construction sites on the regional boards. See State Board Order No. 99-08-DWQ, part D.1.

(4) The State Board and the regional boards charge a fee to the owners or developers of these construction sites. Water Code § 13260(d)(2). The Water Boards and the regional boards do not share any of these fees with the Cities.

(5) The inspections are compliance inspections to determine compliance with the State Water Board program and permit.

(6) The obligation is new. The RWQCB imposed the obligation on the Cities in 2001. Prior to 2001, the Cities did not have this obligation.

6. The installation and maintenance of trash receptacles at transit stops are new programs or higher levels of service mandated upon the Cities

Part 4.F.5.c.3. of the Order requires the cities to place trash receptacles at all transit stops within their jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary. This requirement also constitutes a new program or higher level of service mandated upon the Cities.

As set forth above, a "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. A program is "new" if the local government entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles v. State of California*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in increase in the actual level or quality of governmental services. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

The obligation to install trash receptacles at all transit stops is a new program or higher level of service. The collection of trash is a program that carries out a governmental function of providing services to the public. The Order directed the cities how and where to collect trash. It resulted in a new program or higher level of service along with a concomitant increase in costs.

Nothing in the federal Clean Water Act requires cities to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation. Indeed, this obligation is not found in other stormwater permits issued to

the cities throughout the state. The fact that it does not exist in other stormwater permits demonstrates that it is not a federal requirement.

The Order mandated that the Cities install and maintain trash receptacles at all transit stops. This is a new program or higher level or service mandated upon the cities.

7. The State Funding Disclaimers Under Government Code § 17556 Do Not Apply

The seven disclaimers specified in Government Code § 17556 do not apply to the instant test claim, as shown below.

Government Code § 17556(a): "The claim is submitted by a local agency . . . which requested legislative authority for that local agency . . . to implement the Program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority." This disclaimer is not applicable because the Cities did not request legislative authority for the Order.

Government Code § 17556(b): "The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts." This disclaimer is not applicable because the Order did not affirm what had been declared existing law or regulation by action of the courts.

Government Code § 17556(c): The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." This disclaimer is not applicable because no federal law or regulation is implemented in the Order, and the Order exceeds that mandated by federal law, as discussed above.

Government Code § 17556(d): "The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." This disclaimer is not applicable because the Cities do not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

Government Code § 17556(e): "The statute or executive order provides for offsetting savings to local agencies . . . which result in no net costs to the local agencies . . . , or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate." This disclaimer is not applicable as no offsetting savings are provided in the Order and no revenue to fund the implementation of the Order was provided.

Government Code § 17556(f): "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election." This disclaimer is not applicable as the Order does not impose duties imposed by a statewide ballot measure.

Government Code § 17556(g): "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." This disclaimer is not applicable as the Order did not create or eliminate a crime or infraction or change the penalty for a crime or infraction.

B. DESCRIPTION OF EXISTING ACTIVITIES AND COSTS THAT ARE MODIFED BY THE MANDATE

Not Applicable. The only possible exception is if the installation and maintenance of trash receptacles is viewed as a modification of the Cities' existing trash collection activities. See the discussion in Section 5(A) above.

C. INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE:

The actual increased costs incurred by the Cities during the current fiscal year exceeds $1,000.

D: ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The actual or estimated increased costs that will be incurred by the Cities during the next fiscal year will exceed $1,000.

E. STATEWIDE ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES OR SCHOOL DISTRICTS WILL INCUR TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The mandates in the Order, including those at issue in this test claim, apply to the County of Los Angeles, the Los Angeles Flood Control District, and 84 cities in the County of Los Angeles (except for the trash receptacle obligation, which does not apply to cities subject to a "Trash TMDL".) The increased costs that all the municipalities will incur to implement the mandates during the next fiscal year are not currently known, but

will exceed $1,000. It is also not known the number of municipalities outside the County of Los Angeles that are subject to similar mandates.

F. IDENTIFICATION OF FUNDING SOURCES AVAILABLE FOR THIS PROGRAM:

(i) Dedicated state funds

There are no known dedicated state funds available to fund the inspection programs or placement of trash receptacles mandated by the Order.

(ii) Dedicated federal funds

There are no known dedicated federal funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iii) Other nonlocal agency funds

There are no known nonlocal agency funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iv) The local agency's general purpose funds

There are no general purpose funds available to fund the inspection programs or installation and maintenance of trash receptacles mandated by the Order without taking those funds from other programs.

(v) Fee authority to offset costs

The State collects fees for inspections but does not share those funds with the Cities. The State Water Board and the RWQCB have in fact received funds from permit fees associated with the General Industrial Permit and the General Construction Permit, fees that were specifically assessed to pay for the costs of implementing the stormwater permit program. Water Code § 13260(d). The State receives an annual fee of $700 from every industrial facility, plus applicable surcharges (but subject to certain reductions) that is required to have a General Industrial Permit. 23 Cal. Code Reg. § 2200(b)(2)(A). For construction sites required to have a General Construction Permit, the annual fee is $200 plus $20 per acre, up to a maximum of $2,200. 23 Cal. Code Reg. § 2200(b)(3). The State shares none of these fees with the Cities.

G. IDENTIFICATION OF PRIOR MANDATE DETERMINATIONS MADE BY THE BOARD OF CONTROL OR THE COMMISSION ON STATE MANDATES THAT MAY BE RELATED TO THE ALLEGED MANDATE.

The Cities are not aware of any prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to these mandates.

Section 6

Declarations

SECTION 6. DECLARATIONS

DECLARATION OF HOWARD GEST

I, HOWARD GEST, hereby declare and state as follows:

1. I am an attorney admitted to practice before all of the courts of the State of California and am a partner in the firm of Burhenn & Gest LLP. Our firm represents the Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Vernon and Westlake Village (collectively, "Cities") in the test claim proceeding before the Commission on State Mandates involving Order No. 01-182 (the "Order") issued by the California Regional Water Quality Control Board, Los Angeles Region. On information provided to me by the Cities, I have personal knowledge of the facts set forth in this Declaration and could, if called upon, testify competently thereto.

2. Through my representation of the Cities and other municipalities in Los Angeles County with respect to stormwater issues, including with respect to the requirements of the Order, I am familiar both with the requirements of the Order and the efforts required by the Cities to comply with those requirements.

3. The activities required of the Cities under the Order that the Cities claim constitute a reimbursable state-mandated program include (1) the inspection of restaurants, automotive service facilities and retail gasoline outlets and automobile dealerships, as required by Part 4.C.2.(a) of the Order; (2) the inspection of "Phase I facilities" as required by Part 4.C.2.(b) of the Order; (3) the inspection of constructions sites of one acre in size or greater, and the inspection of construction sites of five acres in size or greater, as required by Part 4.E of the Order; and (4) the placement of trash receptacles at all transit stops within each City's jurisdiction, as required by Part 4.F.5.(c)(3) of the Order.

4. Part 4.C.2.(a) of the Order provides as follows:

2. Inspect Critical Sources
Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subjections.

(a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional

Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automotive shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensure that only watertight waste receptacles are used and that lids are closed; and

- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

5. Part 4.C.2.(b) of the Order provides as follows:

(b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provide that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity; and that a Storm Water Pollution Prevention Plan is available on-site; and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

6. Part 4.E.2.(b) of the Order provides as follows:

2. For construction sites one acre or greater, each Permittee shall comply with all conditions in section E.1 above and shall:

(b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2

weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

7. Part 4.E.3. of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1 and E.2.

8. Part 4.F.5.(c)(3) of the Order provides as follows:

5. Storm Drain Operation and Management

(c) Permittees not subject to a trash TMDL shall:

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

9. I am informed and believe, and therefore state, that the costs to be incurred by each of the Cities, or some of them, to comply with the mandates identified in Paragraphs 3-8 hereof during the fiscal year will exceed one thousand dollars ($1,000).

10. I am informed and believe, and therefore state, that the costs to be incurred by each of the Cities, or some of them to comply with the mandates identified in Paragraphs 3-8 hereof during the next fiscal year are presently unknown, but are estimated to exceed one thousand dollars ($1,000).

11. The Order names a total of 84 cities, the County of Los Angeles and the Los Angeles County Flood Control District as co-permittees. I am informed and believe, and therefore state, that the costs to be incurred collectively by these permittees or some of them to comply with the mandates identified in Paragraphs 3-8 hereof during the next fiscal year are presently unknown, but are estimated to exceed one thousand dollars ($1,000).

12. On information and belief, there are no dedicated state funds to pay for the costs of the mandates identified in Paragraphs 3-8 hereof.

13. On information and belief, there are no dedicated federal funds to pay for the costs of the mandates identified in Paragraphs 3-8 hereof.

14. On information and belief, there are no nonlocal agency funds available to pay for the cost of the mandates identified in Paragraphs 3-8 hereof.

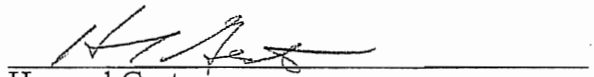
15. On information and belief, the Cities do not have general purpose funds available to pay for the cost of the mandates identified in Paragraphs 3-8 hereof, unless those funds are taken from other programs.

16. On information and belief, the Cities do not have fee authority to levy fees to offset the costs of the mandates identified in Paragraphs 3-8 hereof.

17. Included in Section 7 is a copy of Order No. 01-182. Also included in Section 7 are copies downloaded from the State Water Resources Control Board website of State Water Resources Control Board Water Quality Order No. 97-03-DWQ, relating to discharges of stormwater associated with industrial activities excluding construction activity, State Water Resources Control Board Order No. 99-08-DWQ, relating to discharges of stormwater runoff associated with construction activity, and a copy, downloaded from the Los Angeles Regional Water Quality Control Board website, of Los Angeles Region Water Quality Control Board Order No. 98-08.

I declare under penalty of perjury that the foregoing is true and correct, based on my own knowledge or information and belief.

Executed this 27 day of November, 2007 at Los Angeles, California.



Howard Gest

Section 7

Documentation

Los Angeles Regional Water Quality Control Board

Order No. 01-182

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

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The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. Existing Permit

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. Nature of Discharges and Sources of Pollutant

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of internal combustion engine

operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions: (i) a focus on setting contaminant limits rather than programmatic evaluations; (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., [*Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight*, Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Halle, R.W. et al. (1999); *Huntington Beach Closure Investigation: Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight*, Rachel T. Noble *et al.* (2001); *Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001)].

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water nor remove pollutants, and thus the natural purification characteristics are

lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In: Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B. (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization*, Water Resources Research, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System--Impacts, Solutions and Prognoses*, The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*, Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350, (1979), Dubuque, Iowa, Kendall/Hunt, Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

Source Selection and Monitoring Report, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list, contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry: Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp.; California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al.*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1993); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al.* editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, L.L. Tiefenthaler *et al.* Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil Grit Separators in Suburban MD*, Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff from Impervious Surfaces in Four Urban Catchments of Different*

Landuse, Rahabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) = (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   - Public Information and Participation
   - Development Planning
   - Development Construction
   - Public Agency Activities
   - Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. **Permit Coverage**

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing*, Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 84 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).
   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an Interpretative Policy Memorandum on Reapplication Requirements for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 - 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p)) provides that MS4 permits must require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants. The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000*, on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-06), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

- The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.
- The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

Malibu Creek and Rural Santa Monica Bay WMA
Ballona Creek and Urban Santa Monica Bay WMA
Los Angeles River WMA
San Gabriel River WMA
Dominguez Channel/Los Angeles Harbor WMA, and
Santa Clara River WMA

Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th Cir. 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999).

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways (*Headwaters, Inc. vs. Talent Irrigation District*, 243 F.3d. 526 (9th Cir. 2001)). This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. Implementation

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Terrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier; in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or
2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

   c) Category C - Flows incidental to urban activities:

      (1) Reclaimed and potable landscape irrigation runoff;

      (2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

      (3) Drains for foundations, footings, and crawl spaces;

      (4) Air conditioning condensate;

      (5) Dechlorinated/debrominated swimming pool discharges;

      (6) Dewatering of lakes and decorative fountains;

      (7) Non-commercial car washing by residents or by non-profit organizations; and

      (8) Sidewalk rinsing.

The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;

2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;

3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;

4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;

5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;

6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;

7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and

8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;

2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;

3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

a) "No Dumping" Message

Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

b) Countywide Hotline

The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002, and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1

Watershed	*Target Pollutants for Outreach*
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site; and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, Including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

Inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industrial/ Commercial*, (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. **Development Construction Program**

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1, above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes); if compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:
A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:
- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:
For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

(1) Investigation of any complaints received;

(2) Upon notification, immediate response to overflows for containment; and

(3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

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(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12-DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

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Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"**Authorized Discharge**" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"**Automotive Service Facilities**" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"**Basin Plan**" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"**Beneficial Uses**" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"**Best Management Practices (BMPs)**" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"**Commercial Development**" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"**Construction**" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single family, multi-unit or planned unit development), industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or; any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
   a) Vehicle or equipment fueling areas;
   b) Vehicle or equipment maintenance areas, including washing and repair;
   c) Commercial or industrial waste handling or storage;
   d) Outdoor handling or storage of hazardous materials;
   e) Outdoor manufacturing areas;
   f) Outdoor food handling or processing;
   g) Outdoor animal care, confinement, or slaughter; or
   h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)); and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint;

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1] Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.htm#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage or wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.
2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.
3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.
4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).
2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].
2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. **Duty to Mitigate [40 CFR 122.41 (d)]**

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. **Inspection and Entry [40 CFR 122.41(i), CWC § 13267]**

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. **Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]**

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. **Signatory Requirements [40 CFR 122.41(k) & 122.22]**

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. **Reopener and Modification [40 CFR 122.41(f) & 122.62]**

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

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modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][4]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);
2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;
3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,
4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][5]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

   a) Criminal Penalties for:

[5] *Supra*. See footnote number 3.

(1) Negligent Violations:
The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:
The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:
The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:
The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. **Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]**

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. **Rescission**

Regional Board Order No. 96-054 is hereby rescinded.

S. **Expiration**

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

_____

Dennis A. Dickerson
Executive Officer

State Water Resources Control Board

Water Quality Order No. 97-03-DWQ

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:

   a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.

   b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;

b. Submit a report that is approved by the Regional Water Board; or

c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.

b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:

i. The non-storm water discharges are in compliance with Regional Water Board requirements.

ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.

iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.

iv. The non-storm water discharges do not contain significant quantities of pollutants.

v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

vi. The non-storm water discharges are reported and described annually as part of the annual report.

c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.

d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.

2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.

3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in

accordance with Section B of this General Permit when industrial activities begin.

4. Facility operators of feedlots as defined in 40 CFR Part 412 that are in full compliance with Section 2560 to Section 2565, Title 23, California Code of Regulations (Chapter 15) will be in compliance with all effluent limitations and prohibitions contained in this General Permit. Facility operators of feedlots that comply with Chapter 15, however, must perform monitoring in compliance with the requirements of Section B.4.d. and B.14. of this General Permit. Facility operators of feedlots must also comply with any Regional Water Board WDRs or NPDES general permit regulating their storm water discharges.

5. All facility operators must comply with lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding storm water discharges and non-storm water discharges entering storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the Regional Water Boards to local agencies.

6. All facility operators must comply with the standard provisions and reporting requirements for each facility covered by this General Permit contained in Section C, Standard Provisions.

7. Facility operators that operate facilities with co-located industrial activities (facilities that have industrial activities that meet more than one of the descriptions in Attachment 1) that are contiguous to one another are authorized to file a single NOI to comply with the General Permit. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities are authorized if the SWPPP and Monitoring Program addresses each co-located industrial activity.

8. Upon reissuance of a successor NPDES general permit by the State Water Board, the facility operators subject to this reissued General Permit may be required to file an NOI.

9. Facility operators may request to terminate their coverage under this General Permit by filing a Notice of Termination (NOT) with the Regional Water Board. The NOT shall provide all documentation requested by the Regional Water Board. The facility operator will be notified when the NOT has been approved. Should the NOT be denied, facility operators are responsible for continued compliance with the requirements of this General Permit.

10. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall:

    a. Complete the 1996-97 activities required by those general permits. These include, but are not limited to, conducting any remaining visual observations, sample collection, annual site inspection, annual report submittal, and (for group monitoring leaders) Group Evaluation Reports; and

    b. Comply with the requirements of this General Permit no later than August 1, 1997.

11. If the Regional Water Board determines that a discharge may be causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, the Regional Water Board may order the facility operator to comply with the requirements described in Receiving Water Limitation C.3. The facility operator shall comply with the requirements within the time schedule established by the Regional Water Board.

12. If the facility operator determines that its storm water discharges or authorized non-storm water discharges are causing or contributing to an exceedance of any applicable water quality standards, the facility operator shall comply with the requirements described in Receiving Water Limitation C.3.

13. State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) and San Francisco Bay Regional Water Board Order No. 91-011 (as amended by Order No. 92-116) are hereby rescinded.

F. REGIONAL WATER BOARD AUTHORITIES

1. Following adoption of this General Permit, Regional Water Boards shall:

    a. Implement the provisions of this General Permit, including, but not limited to, reviewing SWPPPs, reviewing annual reports, conducting compliance inspections, and taking enforcement actions.

    b. Issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities, or facility operators in a watershed or geographic area. Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer

be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.

2. Regional Water Boards may provide guidance to facility operators on the SWPPP and the Monitoring Program and reporting implementation.

3. Regional Water Boards may require facility operators to conduct additional SWPPP and Monitoring Program and reporting activities necessary to achieve compliance with this General Permit.

4. Regional Water Boards may approve requests from facility operators whose facilities include co-located industrial activities that are not contiguous within the facilities (e.g., some military bases) to comply with this General Permit under a single NOI. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities and from other sources within the facility that may generate significant quantities of pollutants are authorized provided the SWPPP and Monitoring Program addresses each co-located industrial activity and other sources that may generate significant quantities of pollutants.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1997.

AYE: John P. Caffrey
John W. Brown
James M. Stubchaer
Marc Del Piero
Mary Jane Forster

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché

Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. *Implementation Schedule*

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.

b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.

2. *Objectives*

The SWPPP has two major objectives: (a) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and (b) to identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. BMPs may include a variety of pollution prevention measures or other low-cost and pollution control measures. They are generally categorized as non-structural BMPs (activity schedules, prohibitions of practices, maintenance procedures, and other low-cost measures) and as structural BMPs (treatment measures, run-off controls, over-head coverage.) To achieve these objectives, facility operators should consider the five phase process for SWPPP development and implementation as shown in Table A.

The SWPPP requirements are designed to be sufficiently flexible to meet the needs of various facilities. SWPPP requirements that are not applicable to a facility should not be included in the SWPPP.

A facility's SWPPP is a written document that shall contain a compliance activity schedule, a description of industrial activities and pollutant sources, descriptions of BMPs, drawings, maps, and relevant copies or references of parts of other plans. The SWPPP shall be revised whenever appropriate and shall be readily available for review by facility employees or Regional Water Board inspectors.

3. *Planning and Organization*

a. *Pollution Prevention Team*

The SWPPP shall identify a specific individual or individuals and their positions within the facility organization as members of a storm water pollution prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP implementation and revision, and conducting all monitoring program activities required in Section B of this General Permit. The SWPPP shall clearly identify the General Permit related responsibilities, duties, and activities of each team member. For small facilities, storm water pollution prevention teams may consist of one individual where appropriate.

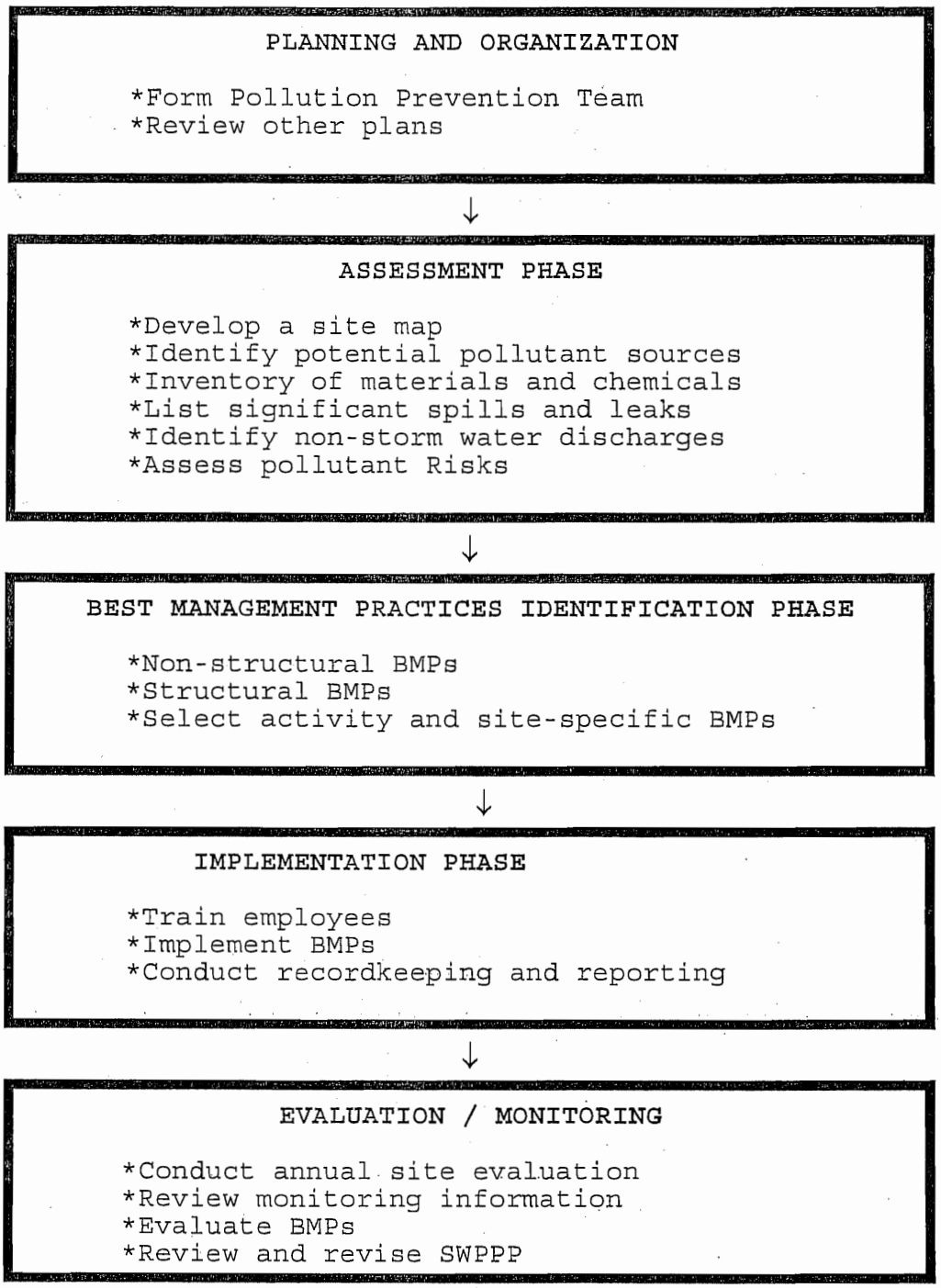
b. *Review Other Requirements and Existing Facility Plans*

The SWPPP may incorporate or reference the appropriate elements of other regulatory requirements. Facility operators should review all local, State, and Federal requirements that impact, complement, or are consistent with the requirements of this General Permit. Facility operators should identify any existing facility plans that contain storm water pollutant control measures or relate to the requirements of this General Permit. As examples, facility operators whose facilities are subject to Federal Spill Prevention Control and Countermeasures' requirements should already have instituted a plan to control spills of certain hazardous materials. Similarly, facility operators whose facilities are subject to air quality related permits and regulations may already have evaluated industrial activities that generate dust or particulates.

4. *Site Map*

The SWPPP shall include a site map. The site map shall be provided on an 8-½ x 11 inch or larger sheet and include notes, legends, and other data as appropriate to ensure that the site map is clear and understandable. If necessary, facility operators may provide the required information on multiple site maps.

TABLE A
FIVE PHASES FOR DEVELOPING AND IMPLEMENTING INDUSTRIAL STORM WATER POLLUTION PREVENTION PLANS



The following information shall be included on the site map:

a. The facility boundaries; the outline of all storm water drainage areas within the facility boundaries; portions of the drainage area impacted by run-on from surrounding areas; and direction of flow of each drainage area, on-site surface water bodies, and areas of soil erosion. The map shall also identify nearby water bodies (such as rivers, lakes, and ponds) and municipal storm drain inlets

where the facility's storm water discharges and authorized non-storm water discharges may be received.

b. The location of the storm water collection and conveyance system, associated points of discharge, and direction of flow. Include any structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on. Examples of structural control measures are catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers, etc.

c. An outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures.

d. Locations where materials are directly exposed to precipitation and the locations where significant spills or leaks identified in Section A.6.a.iv. below have occurred.

e. Areas of industrial activity. This shall include the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources.

5. *List of Significant Materials*

The SWPPP shall include a list of significant materials handled and stored at the site. For each material on the list, describe the locations where the material is being stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials shall include raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials.

6. *Description of Potential Pollutant Sources*

a. The SWPPP shall include a narrative description of the facility's industrial activities, as identified in Section A.4.e above, associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. At a minimum, the following items related to a facility's industrial activities shall be considered:

i. Industrial Processes

Describe each industrial process, the type, characteristics, and quantity of significant materials used in or resulting from the process, and a description of the manufacturing, cleaning, rinsing, recycling, disposal, or other activities related to the process. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

ii. Material Handling and Storage Areas

Describe each handling and storage area, type, characteristics, and quantity of significant materials handled or stored, description of the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

iii. Dust and Particulate Generating Activities

Describe all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle.

iv. Significant Spills and Leaks

Describe materials that have spilled or leaked in significant quantities in storm water discharges or non-storm water discharges since April 17, 1994. Include toxic chemicals (listed in 40 CFR, Part 302) that have been discharged to storm water as reported on U.S. Environmental Protection Agency (U.S. EPA) Form R, and oil and hazardous substances in excess of reportable quantities (see 40 Code of Federal Regulations [CFR], Parts 110, 117, and 302).

The description shall include the type, characteristics, and approximate quantity of the material spilled or leaked, the cleanup or remedial actions that have occurred or are planned, the approximate remaining quantity of materials that may be exposed to storm water or non-storm water

discharges, and the preventative measures taken to ensure spill or leaks do not reoccur. Such list shall be updated as appropriate during the term of this General Permit.

v. Non-Storm Water Discharges

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse water, wash water, etc.). Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

vi. Soil Erosion

Describe the facility locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges.

b. The SWPPP shall include a summary of all areas of industrial activities, potential pollutant sources, and potential pollutants. This information should be summarized similar to Table B. The last column of Table B, "Control Practices", should be completed in accordance with Section A.8. below.

7. *Assessment of Potential Pollutant Sources*

a. The SWPPP shall include a narrative assessment of all industrial activities and potential pollutant sources as described in A.6. above to determine:

i. Which areas of the facility are likely sources of

pollutants in storm water discharges and authorized non-storm water discharges, and

ii. Which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. Facility operators shall consider and evaluate various factors when performing this assessment such as current storm water BMPs; quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources.

b. Facility operators shall summarize the areas of the facility that are likely sources of pollutants and the corresponding pollutants that are likely to be present in storm water discharges and authorized non-storm water discharges.

Facility operators are required to develop and implement additional BMPs as appropriate and necessary to prevent or reduce pollutants associated with each pollutant source. The BMPs will be narratively described in Section 8 below.

8. Storm Water Best Management Practices

The SWPPP shall include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source identified in the site assessment phase (Sections A.6. and 7. above). The BMPs shall be developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Each pollutant and its source may require one or more BMPs. Some BMPs may be implemented for multiple pollutants and their sources, while other BMPs will be implemented for a very specific pollutant and its source.

TABLE B
EXAMPLE
ASSESSMENT OF POTENTIAL POLLUTION SOURCES AND CORRESPONDING BEST MANAGEMENT PRACTICES
SUMMARY

Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Vehicle & Equipment Fueling	Fueling	Spills and leaks during delivery	fuel oil	- Use spill and overflow protection - Minimize run-on of storm water into the fueling area - Cover fueling area - Use dry cleanup methods rather than hosing down area - Implement proper spill prevention control program - Implement adequate preventative maintenance program to preventive tank and line leaks - Inspect fueling areas regularly to detect problems before they occur - Train employees on proper fueling, cleanup, and spill response techniques.
		Spills caused by topping off fuel tanks	fuel oil	
		Hosing or washing down fuel area	fuel oil	
		Leaking storage tanks	fuel oil	
		Rainfall running off fueling area, and rainfall running onto and off fueling area	fuel oil	

The description of the BMPs shall identify the BMPs as (1) existing BMPs, (2) existing BMPs to be revised and implemented, or (3) new BMPs to be implemented. The description shall also include a discussion on the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. The SWPPP shall provide a summary of all BMPs implemented for each pollutant source. This information should be summarized similar to Table B.

Facility operators shall consider the following BMPs for implementation at the facility:

a. Non-Structural BMPs

Non-structural BMPs generally consist of processes, prohibitions, procedures, schedule of activities, etc., that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures. Facility operators should consider all possible non-structural BMPs options before considering additional structural BMPs (see Section A.8.b. below). Below is a list of non-structural BMPs that should be considered:

i. Good Housekeeping

Good housekeeping generally consist of practical procedures to maintain a clean and orderly facility.

ii. Preventive Maintenance

Preventive maintenance includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

iii. Spill Response

This includes spill clean-up procedures and necessary clean-up equipment based upon the quantities and locations of significant materials that may spill or leak.

iv. Material Handling and Storage

This includes all procedures to minimize the potential for spills and leaks and to minimize exposure of significant materials to storm water and authorized non-storm water discharges.

v. Employee Training

This includes training of personnel who are responsible for (1) implementing activities identified in the SWPPP, (2) conducting inspections, sampling, and visual observations, and (3) managing storm water. Training should address topics such as spill response, good housekeeping, and material handling procedures, and actions necessary to implement all BMPs identified in the SWPPP. The SWPPP shall identify periodic dates for such training. Records shall be maintained of all training sessions held.

vi. Waste Handling/Recycling

This includes the procedures or processes to handle, store, or dispose of waste materials or recyclable materials.

vii. Recordkeeping and Internal Reporting

This includes the procedures to ensure that all records of inspections, spills, maintenance activities, corrective actions, visual observations, etc., are developed, retained, and provided, as necessary, to the appropriate facility personnel.

viii. Erosion Control and Site Stabilization

This includes a description of all sediment and erosion control activities. This may include the planting and maintenance of vegetation, diversion of run-on and runoff, placement of sandbags, silt screens, or other sediment control devices, etc.

ix. Inspections

This includes, in addition to the preventative maintenance inspections identified above, an inspection schedule of all potential pollutant sources. Tracking and follow-up procedures shall be described to ensure adequate corrective actions are taken and SWPPPs are made.

x. Quality Assurance

This includes the procedures to ensure that all elements of the SWPPP and Monitoring Program are adequately conducted.

b. Structural BMPs

Where non-structural BMPs as identified in Section A.8.a. above are not effective, structural BMPs shall be considered. Structural BMPs generally consist of structural devices that reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Below is a list of structural BMPs that should be considered:

i. Overhead Coverage

This includes structures that provide horizontal coverage of materials, chemicals, and pollutant sources from contact with storm water and authorized non-storm water discharges.

ii. Retention Ponds

This includes basins, ponds, surface impoundments, bermed areas, etc. that do not allow storm water to discharge from the facility.

iii. Control Devices

This includes berms or other devices that channel or route run-on and runoff away from pollutant sources.

iv. Secondary Containment Structures

This generally includes containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills.

v. Treatment

This includes inlet controls, infiltration devices, oil/water separators, detention ponds, vegetative swales, etc. that reduce the pollutants in storm water discharges and authorized non-storm water discharges.

9. Annual Comprehensive Site Compliance Evaluation

The facility operator shall conduct one comprehensive site compliance evaluation (evaluation) in each reporting period (July 1-June 30). Evaluations shall be conducted within 8-16 months of each other. The SWPPP shall be revised, as appropriate, and the revisions implemented within 90 days of the evaluation. Evaluations shall include the following:

a. A review of all visual observation records, inspection records, and sampling and analysis results.

b. A visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system.

c. A review and evaluation of all BMPs (both structural and non-structural) to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed. A visual inspection of equipment needed to implement the SWPPP, such as spill response equipment, shall be included.

d. An evaluation report that includes, (i) identification of personnel performing the evaluation, (ii) the date(s) of the evaluation, (iii) necessary SWPPP revisions, (iv) schedule, as required in Section A.10.e, for implementing SWPPP revisions, (v) any incidents of non-compliance and the corrective actions taken, and (vi) a certification that the facility operator is in compliance with this General Permit. If the above certification cannot be provided, explain in the evaluation report why the facility operator is not in compliance with this General Permit. The evaluation report shall be submitted as part of the annual report, retained for at least five years, and signed and certified in accordance with Standard Provisions 9. and 10. of Section C. of this General Permit.

10. *SWPPP General Requirements*

a. The SWPPP shall be retained on site and made available upon request of a representative of the Regional Water Board and/or local storm water management agency (local agency) which receives the storm water discharges.

b. The Regional Water Board and/or local agency may notify the facility operator when the SWPPP does not meet one or more of the minimum requirements of this Section. As requested by the Regional Water Board and/or local agency, the facility operator shall submit an SWPPP revision and implementation schedule that meets the minimum requirements of this section to the Regional Water Board and/or local agency that requested the SWPPP revisions. Within 14 days after implementing the required SWPPP revisions, the facility operator shall provide written certification to the Regional Water Board and/or local agency that the revisions have been implemented.

c. The SWPPP shall be revised, as appropriate, and implemented prior to changes in industrial activities which (i) may significantly increase the quantities of pollutants in storm water discharge, (ii) cause a new area of industrial activity at the facility to be exposed to storm water, or (iii) begin an industrial activity which would introduce a new pollutant source at the facility.

d. Other than as provided in Provisions B.11, B.12, and E.2 of the General Permit, the SWPPP shall be revised and implemented in a timely manner, but in no case more than 90 days after a facility operator determines that the SWPPP is in violation of any requirement(s) of this General Permit.

e. When any part of the SWPPP is infeasible to implement by the deadlines specified in Provision E.2 or Sections A.1, A.9, A.10.c, and A.10.d of this General Permit due to proposed significant structural changes, the facility operator shall submit a report to the Regional Water Board prior to the applicable deadline that (i) describes the portion of the SWPPP that is infeasible to implement by the deadline, (ii) provides justification for a time extension, (iii) provides a schedule for completing and implementing that portion of the SWPPP, and (iv) describes the BMPs that will be implemented in the interim period to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Such reports are subject to Regional Water Board approval and/or modifications. Facility operators shall provide written notification to the Regional Water Board within 14 days after the SWPPP revisions are implemented.

f. The SWPPP shall be provided, upon request, to the Regional Water Board. The SWPPP is considered a report that shall be available to the public by the Regional Water Board under Section 308(b) of the Clean Water Act.

SECTION B. MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. *Implementation Schedule*

Each facility operator shall develop a written monitoring program for each facility covered by this General Permit in accordance with the following schedule:

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement a monitoring program no later than October 1, 1992. Facility operators beginning operations after October 1, 1992 shall develop and implement a monitoring program when the industrial activities begin.

b. Facility operators that submitted a Notice Of Intent (NOI) pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing monitoring program and implement any necessary revisions to their monitoring program in a timely manner, but in no case later than August 1, 1997. These facility operators may use the monitoring results conducted in accordance with those expired general permits to satisfy the pollutant/parameter reduction requirements in Section B.5.c., Sampling and Analysis Exemptions and Reduction certifications in Section B.12., and Group Monitoring Sampling credits in B.15.k. For facilities beginning industrial activities after the adoption of this General Permit, the monitoring program shall be developed and implemented when the facility begins the industrial activities.

2. *Objectives*

The objectives of the monitoring program are to:

a. Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit.

b. Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges are evaluated and revised to meet changing conditions.

c. Aid in the implementation and revision of the SWPPP required by Section A of this General Permit.

d. Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water

discharges and authorized non-storm water discharges. Much of the information necessary to develop the monitoring program, such as discharge locations, drainage areas, pollutant sources, etc., should be found in the Storm Water Pollution Prevention Plan (SWPPP). The facility's monitoring program shall be a written, site-specific document that shall be revised whenever appropriate and be readily available for review by employees or Regional Water Board inspectors.

3. *Non-storm Water Discharge Visual Observations*

a. Facility operators shall visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges;

b. Facility operators shall visually observe the facility's authorized non-storm water discharges and their sources;

c. The visual observations required above shall occur quarterly, during daylight hours, on days with no storm water discharges, and during scheduled facility operating hours[1]. Quarterly visual observations shall be conducted in each of the following periods: January-March, April-June, July-September, and October-December. Facility operators shall conduct quarterly visual observations within 6-18 weeks of each other.

d. Visual observations shall document the presence of any discolorations, stains, odors, floating materials, etc., as well as the source of any discharge. Records shall be maintained of the visual observation dates, locations observed, observations, and response taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

4. *Storm Water Discharge Visual Observations*

a. With the exception of those facilities described in Section B.4.d. below, facility operators shall visually

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[1] "Scheduled facility operating hours" are the time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed.

observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These visual observations shall occur during the first hour of discharge and at all discharge locations. Visual observations of stored or contained storm water shall occur at the time of release.

b. Visual observations are only required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days[2] without storm water discharges and that occur during scheduled facility operating hours.

c. Visual observations shall document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants. Records shall be maintained of observation dates, locations observed, observations, and response taken to reduce or prevent pollutants in storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

d. Feedlots (subject to Federal effluent limitations guidelines in 40 Code of Federal Regulations [CFR] Part 412) that are in compliance with Sections 2560 to 2565, Article 6, Chapter 15, Title 23, California Code of Regulations, and facility operators with storm water containment facilities shall conduct monthly inspections of their containment areas to detect leaks and ensure maintenance of adequate freeboard. Records shall be maintained of the inspection dates, observations, and any response taken to eliminate leaks and to maintain adequate freeboard.

5. *Sampling and Analysis*

a. Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled. Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.

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[2] Three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm water discharges occur during the three (3) working days and the non-working days.

b. Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least (3) three working days without storm water discharge.

c. The samples shall be analyzed for:

i. Total suspended solids (TSS) pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC; and

ii. Toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. If these pollutants are not detected in significant quantities after two consecutive sampling events, the facility operator may eliminate the pollutant from future sample analysis until the pollutant is likely to be present again; and

iii. Other analytical parameters as listed in Table D (located at the end of this Section). These parameters are dependent on the facility's standard industrial classification (SIC) code. Facility operators are not required to analyze a parameter listed in Table D when the parameter is not already required to be analyzed pursuant to Section B.5.c.i. and ii. or B.6 of this General Permit, and either of the two following conditions are met: (1) the parameter has not been detected in significant quantities from the last two consecutive sampling events, or (2) the parameter is not likely to be present in storm water discharges and authorized non-storm water discharges in significant quantities based upon the facility operator's evaluation of the facilities industrial activities, potential pollutant sources, and SWPPP. Facility operators that do not analyze for the applicable Table D parameters shall certify in the Annual Report that the above conditions have been satisfied.

iv. Other parameters as required by the Regional Water Board.

6. *Facilities Subject to Federal Storm Water Effluent Limitation Guidelines*

Facility operators with facilities subject to Federal storm water effluent limitation guidelines, in addition to the requirements in Section B.5. above, must complete the following:

a. Collect and analyze two samples for any pollutant specified in the appropriate category of 40 CFR Subchapter N. The sampling and analysis exemptions and reductions described in Section B.12. of this General Permit do not apply to these pollutants.

b. Estimate or calculate the volume of storm water discharges from each drainage area;

c. Estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 CFR Subchapter N; and

d. Identify the individual(s) performing the estimates or calculations in accordance with Subsections b. and c. above.

7. *Sample Storm Water Discharge Locations*

a. Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.

b. If the facility's storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event.

c. If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event.

d. Facility operators that determine that the industrial activities and BMPs within two or more drainage areas are substantially identical may either (i) collect samples from a reduced number of substantially identical drainage areas, or (ii) collect samples from each substantially identical drainage area and analyze a combined sample from each substantially identical drainage area. Facility operators must document such a determination in the annual report.

8. *Visual Observation and Sample Collection Exceptions*

Facility operators are required to be prepared to collect samples and conduct visual observations at the beginning of the wet season (October 1) and throughout the wet season

until the minimum requirements of Sections B.4. and B.5. are completed with the following exceptions:

a. A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual Report why the sampling or visual observations could not be conducted.

b. A facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied. The facility operator shall include an explanation in the Annual Report why the visual observations and sample collection should be conducted after the first hour of discharge.

9. *Alternative Monitoring Procedures*

Facility operators may propose an alternative monitoring program that meets Section B.2 monitoring program objectives for approval by the Regional Water Board. Facility operators shall continue to comply with the monitoring requirements of this Section and may not implement an alternative monitoring plan until the alternative monitoring plan is approved by the Regional Water Board. Alternative monitoring plans are subject to modification by the Regional Water Boards.

10. *Monitoring Methods*

a. Facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of Section B.2. This shall include:

i. Rationale and description of the visual observation methods, location, and frequency.

ii. Rationale and description of the sampling methods, location, and frequency; and

iii. Identification of the analytical methods and corresponding method detection limits used to detect pollutants in storm water discharges. This shall include justification that the method detection limits are adequate to satisfy the objectives of the monitoring program.

b. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association). All monitoring instruments and equipment (including a facility operator's own field instruments for measuring pH and Electro Conductivity) shall be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements. All laboratory analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this General Permit or by the Regional Water Board. All metals shall be reported as total metals. With the exception of analysis conducted by facility operators, all laboratory analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Facility operators may conduct their own sample analyses if the facility operator has sufficient capability (qualified employees, laboratory equipment, etc.) to adequately perform the test procedures.

11. *Inactive Mining Operations*
Inactive mining operations are defined in Attachment 1 of this General Permit. Where comprehensive site compliance evaluations, non-storm water discharge visual observations, storm water discharge visual observations, and storm water sampling are impracticable, facility operators of inactive mining operations may instead obtain certification once every three years by a Registered Professional Engineer that an SWPPP has been prepared for the facility and is being implemented in accordance with the requirements of this General Permit. By means of these certifications, the Registered Professional Engineer having examined the facility and being familiar with the provisions of this General Permit shall attest that the SWPPP has been prepared in accordance with good engineering practices. Facility operators of mining operations who cannot obtain a certification because of noncompliance must notify the appropriate Regional Water Board and, upon request, the local agency which receives the storm water discharge.

12. *Sampling and Analysis* Exemptions and Reductions

A facility operator who qualifies for sampling and analysis exemptions, as described below in Section B.12.a.i., or who qualifies for reduced sampling and analysis, as described below in Section B.12.b., must submit the appropriate certifications and required documentation to the Regional Water Boards prior to the wet season (October 1) and recertify as part of the Annual Report submittal. A facility operator that qualifies for either the Regional Water Board or local agency certification programs, as described below in Section B.12.a.ii. and iii., shall submit certification and documentation in accordance with the requirements of those programs. Facility operators who provide certifications in accordance with this Section are still required to comply with all other monitoring program and reporting requirements. Facility operators shall prepare and submit their certifications using forms and instructions provided by the State Water Board, Regional Water Board, or local agency or shall submit their information on a form that contains equivalent information. Facility operators whose facility no longer meets the certification conditions must notify the Regional Water Boards (and local agency) within 30 days and immediately comply with the Section B.5. sampling and analysis requirements. Should a Regional Water Board (or local agency) determine that a certification does not meet the conditions set forth below, facility operators must immediately comply with the Section B.5. sampling and analysis requirements.

a. Sampling and Analysis Exemptions

A facility operator is not required to collect and analyze samples in accordance with Section B.5. if the facility operator meets all of the conditions of one of the following certification programs:

i. No Exposure Certification (NEC)

This exemption is designed primarily for those facilities where all industrial activities are conducted inside buildings and where all materials stored and handled are not exposed to storm water. To qualify for this exemption, facility operators must certify that their facilities meet all of the following conditions:

(1) All prohibited non-storm water discharges have been eliminated or otherwise permitted.

(2) All authorized non-storm water discharges have been identified and addressed in the SWPPP.

(3) All areas of past exposure have been inspected and cleaned, as appropriate.

(4) All significant materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

(5) All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

(6) There is no exposure of storm water to significant materials associated with industrial activity through other direct or indirect pathways such as from industrial activities that generate dust and particulates.

(7) There is periodic re-evaluation of the facility to ensure conditions (1), (2), (4), (5), and (6) above are continuously met. At a minimum, re-evaluation shall be conducted once a year.

ii. Regional Water Board Certification Programs

The Regional Water Board may grant an exemption to the Section B.5. Sampling and Analysis Requirements if it determines a facility operator has met the conditions set forth in a Regional Water Board certification program. Regional Water Board certification programs may include conditions to (1) exempt facility operators whose facilities infrequently discharge storm water to waters of the United States, and (2) exempt facility operators

that demonstrate compliance with the terms and conditions of this General Permit.

iii. Local Agency Certifications

A local agency may develop a local agency certification program. Such programs must be approved by the Regional Water Board. An approved local agency program may either grant an exemption

from the Section B.5. Sampling and Analysis Requirements or reduce the frequency of sampling if it determines that a facility operator has demonstrated compliance with the terms and conditions of this General Permit.

b. Sampling and Analysis Reduction

i. A facility operator may reduce the number of sampling events required to be sampled for the remaining term of this General Permit if the facility operator provides certification that the following conditions have been met:

(1) The facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;

(2) All prohibited non-storm water discharges have been eliminated or otherwise permitted;

(3) The facility operator demonstrates compliance with the terms and conditions of the General Permit for the previous two years (i.e., completed Annual Reports, performed visual observations, implemented appropriate BMPs, etc.);

(4) The facility operator demonstrates that the facility's storm water discharges and authorized non-storm water discharges do not contain significant quantities of pollutants; and

(5) Conditions (2), (3), and (4) above are expected to remain in effect for a minimum of one year after filing the certification.

ii. Unless otherwise instructed by the Regional Water Board, facility operators shall collect and analyze samples from two additional storm events (or one additional storm event when certification filed for the wet season beginning October 1, 2001) during the remaining term of this General Permit in accordance with Table C below. Facility operators shall collect samples of the first

storm event of the wet season. Facility operators that do not collect samples from the first storm event of the wet season shall collect samples from another storm event during the same wet season. Facility operators that do not collect a sample in a required wet season shall collect the sample from another storm event in the next wet season. Facility operators shall explain in the Annual Report why the first storm event of a wet season was not sampled or a sample was not taken from any storm event in accordance with the Table C schedule.

Table C
REDUCED MONITORING SAMPLING SCHEDULE

Facility Operator Filing Sampling Reduction Certification By	Samples Shall be Collected and Analyzed in These Wet Seasons	
	Sample 1	Sample 2
Oct. 1, 1997	Oct. 1, 1997-May 31, 1998	Oct. 1, 1999-May 31, 2000
Oct. 1, 1998	Oct. 1, 1998-May 31, 1999	Oct. 1, 2000-May 31, 2001
Oct. 1, 1999	Oct. 1, 1999-May 31, 2000	Oct. 1, 2001-May 31, 2002
Oct. 1, 2000	Oct. 1, 2000-May 31, 2001	Oct. 1, 2001-May 31, 2002
Oct. 1, 2001	Oct. 1, 2001-May 31, 2002	-

13. *Records*

Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years. These records shall include:

a. The date, place, and time of site inspections, sampling, visual observations, and/or measurements;

b. The individual(s) who performed the site inspections, sampling, visual observations, and or measurements;

c. Flow measurements or estimates (if required by Section B.6);

d. The date and approximate time of analyses;

e. The individual(s) who performed the analyses;

f. Analytical results, method detection limits, and the analytical techniques or methods used;

g. Quality assurance/quality control records and results;

h. Non-storm water discharge inspections and visual observations and storm water discharge visual observation records (see Sections B.3. and 4.);

i. Visual observation and sample collection exception records (see Section B.5.a, 7.d, 8, and 12.b.ii.);

j. All calibration and maintenance records of on-site instruments used;

k. All Sampling and Analysis Exemption and Reduction certifications and supporting documentation (see Section B.12);

l. The records of any corrective actions and follow-up activities that resulted from the visual observations.

14. *Annual Report*

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).

The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit." The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

15. *Group Monitoring*

Facility operators may participate in group monitoring as described below. A facility operator that participates in group monitoring shall develop and implement a written site-specific SWPPP and monitoring program in accordance with the General Permit and must satisfy any group monitoring requirements. Group monitoring shall be subject to the following requirements:

a. A group monitoring plan (GMP) shall be developed and implemented by a group leader representing a group of

similar facility operators regulated by this General Permit or by a local agency which holds an NPDES permit (local agency permittee) for a municipal separate storm sewer system. GMPs with participants that discharge storm water within the boundaries of a single Regional Water Board shall be approved by that Regional Water Board. GMPs with participants that discharge storm water within the boundaries of multiple Regional Water Boards shall be approved by the State Water Board. The State Water Board and/or Regional Water Board(s) may disapprove a facility's participation in a GMP or require a GMP participant to conduct additional monitoring activities.

b. Each GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5. over the five-year period of this General Permit. The two storm event minimum applies to new and existing members. The group leader or local agency permittee shall schedule sampling to meet the following conditions: (i) to evenly distribute the sample collection over the five-year term of this General Permit, and (ii) to collect samples from the two storm events at each participant's facility in different and non-consecutive wet seasons. New participants who join in Years 4 and 5 of this General Permit are not subject to Condition (ii) above. Group leaders shall explain in the annual Group Evaluation Report why any scheduled samples were not collected and reschedule the sampling so that all required samples are collected during the term of this General Permit.

c. The group leader or local agency permittee must have the appropriate resources to develop and implement the GMP. The group leader or local agency permittee must also have the authority to terminate any participant who is not complying with this General Permit and the GMP.

d. The group leader or local agency permittee is responsible for:

   i. Developing, implementing, and revising the GMP;

   ii. Developing and submitting an annual Group Evaluation Report to the State Water Board and/or Regional Water Board by August 1 of each year that includes:

      (1) An evaluation and summary of all group monitoring data,

      (2) An evaluation of the overall performance of the GMP participants in complying with this General Permit and the GMP,

(3) Recommended baseline and site-specific BMPs that should be considered by each participant based upon Items (1) and (2) above, and

(4) A copy of each evaluation report and recommended BMPs as required in Section B.15.d.v. below.

iii. Recommending appropriate BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges;

iv. Assisting each participant in completing their Annual Comprehensive Site Compliance Evaluation and Annual Report;

v. Conducting a minimum of two on-site inspections of each participant's facility (it is recommended that these inspections be scheduled during the Annual Comprehensive Site Compliance Evaluation) during the term of this General Permit to evaluate the participant's compliance with this General Permit and the GMP, and to recommend any additional BMPs necessary to achieve compliance with this General Permit. Participants that join in Years 4 and 5 shall be scheduled for one evaluation. A copy of the evaluation and recommended BMPs shall be provided to the participants;

vi. Submitting a GMP (or revisions, as necessary), to the appropriate Regional Water Board(s) and State Water Board no later than September 1, 1997 (or August 1 in subsequent years). Once approved, a group leader or local agency permittee shall submit a letter of intent by August 1 of each year to continue the approved GMP. The letter of intent must include a roster of participants, participant's Waste Discharge Identification number (WDID#), updated sampling schedules, and any other revisions to the GMP;

vii. Revising the GMP as instructed by the Regional Water Board or the State Water Board; and

viii. Providing the State Water Board and/or Regional Water Board with quarterly updates of any new or deleted participants and corresponding changes in the sampling and inspection schedule.

e. The GMP shall:

i. Identify the participants of the GMP by name, location, and WDID number;

ii. Include a narrative description summarizing the industrial activities of participants of the GMP and explain why the participants, as a whole, have sufficiently similar industrial activities and BMPs to be covered by a group monitoring plan;

iii. Include a list of typical potential pollutant sources associated with the group participant's facilities and recommended baseline BMPs to prevent or reduce pollutants associated with industrial activity in the storm water discharges and authorized non-storm water discharges;

iv. Provide a five-year sampling and inspection schedule in accordance with Subsections b. and d.v. above.

v. Identify the pollutants associated with industrial activity that shall be analyzed at each participant's facility in accordance with Section B.5. The selection of these pollutants shall be based upon an assessment of each facility's potential pollutant sources and likelihood that pollutants associated with industrial activity will be present in storm water discharges and authorized non-storm water discharges in significant quantities.

f. Sampling and analysis shall be conducted in accordance with the applicable requirements of this Section.

g. Unless otherwise instructed by the Regional Water Board or the State Water Board Executive Director, the GMPs shall be implemented at the beginning of the wet season (October 1).

h. All participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section including the submittal of an Annual Report by July 1 of each year to the appropriate Regional Water Board.

i. GMP participants subject to Federal storm water effluent limitation guidelines must perform the monitoring described in Section B.6. and submit the results of the monitoring to the appropriate Regional Water Board within the facility operator's Annual Report.

j. GMPs and Group Evaluation Reports should be prepared in accordance with State Water Board (or Regional Water Board) guidance.

k. GMP participants may receive Sampling and Analysis Reduction sampling credit in accordance with the following conditions:

i. Current or prior participants (group participants) of approved GMPs, who have not collected and analyzed samples from six storm events as required in Section B.7.b.i.(1), may substitute credit earned through participation in a GMP for up to four of the six required storm events. Credits for GMP participation shall be calculated as follows:

(1) Credit may only be earned in years of participation where the GMP participant was not scheduled to sample and the GMP was approved.

(2) One credit will be earned for each year of valid GMP participation.

(3) One additional credit may be earned for each year the overall GMP sample collection performance is greater than 75 percent.

ii. GMP participants substituting credit as calculated above shall provide proof of GMP participation and certification that all the conditions in Section B.12.b.i. have been met. GMP participants substituting credit in accordance with Section B.15.k.i.(3) shall also provide GMP sample collection performance documentation.

iii. GMP participants that qualify for Sampling and Analysis Reduction and have already sampled a storm event after October 1, 1997 shall only be required to sample one additional storm event during the remainder of this General Permit in accordance with the "Sample 2" schedule (or "Sample 1" schedule when certification filed for the wet season beginning October 1, 2001) in Table C of this Section.

n. Group leaders shall furnish, within 60 days of receiving a request from the State Water Board or Regional Water Board, any GMP information and documentation necessary to verify the Section B.15.k. sampling credits. Group leaders may also provide this information and documentation to the group participants.

16. *Watershed Monitoring Option*

Regional Water Boards may approve proposals to substitute watershed monitoring for some or all of the requirements of this Section if the Regional Water Board finds that the watershed monitoring will provide substantially similar monitoring information in evaluating facility operator compliance with the requirements of this General Permit.

TABLE D
ADDITIONAL ANALYTICAL PARAMETERS

Subsector	SIC	Activity Represented	Parameters
SECTOR A. TIMBER PRODUCTS			
A1	2421	General Sawmills and Planing Mills	COD;TSS;Zn
A2	2491	Wood Preserving	As;Cu
A3	2411	Log Storage and Handling	TSS
A4	2426	Hardwood Dimension and Flooring Mills	COD;TSS
A4	2429	Special Product Sawmills, Not Elsewhere Classified	COD;TSS
A4	243X	Millwork, Veneer, Plywood, and Structural Wood	COD;TSS
A4	(except 2434--Wood Kitchen Cabinet Manufacturers)		
A4	244X	Wood Containers	COD;TSS
A4	245X	Wood Buildings and Mobile Homes	COD;TSS
A4	2493	Reconstituted Wood Products	COD;TSS
A4	2499	Wood Products, Not Elsewhere Classified	
SECTOR B. PAPER AND ALLIED PRODUCTS MANUFACTURING			
B1	261X	Pulp Mills	
B2	262X	Paper Mills	
B3	263X	Paperboard Mills	COD
B4	265X	Paperboard Containers and Boxes	
B5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes	
SECTOR C. CHEMICAL AND ALLIED PRODUCTS MANUFACTURING			
C1	281X	Industrial Inorganic Chemicals	Al;Fe;N+N
C2	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic, and Other Manmade Fibers Except Glass	Zn
C3	283X	Drugs	
C4	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations	N+N;Zn
C5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products	
C6	286X	Industrial Organic Chemicals	
C7	287X	Nitrogenous and Phosphatic Basic Fertilizers, Mixed Fertilizer, Pesticides, and Other Agricultural Chemicals	Fe;N+N;Pb;Zn;P
C8	289X	Miscellaneous Chemical Products	
	3952	Inks and Paints, Including China Painting Enamels, India Ink, (limited to list) Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints, and Artist's Watercolors	
SECTOR D. ASPHALT PAVING/ROOFING MATERIALS MANUFACTURERS AND LUBRICANT MANUFACTURERS			
D1	295X	Asphalt Paving and Roofing Materials	TSS
D2	2992	Lubricating Oils and Greases	

Parameter Names

Al - Aluminum; As - Arsenic; NH_3 - Ammonia; Zn - Zinc; Cd - Cadmium; CN - Cyanide; Hg - Mercury; TSS - Total Suspended Solids; Cu - Copper; Fe - Iron; P - Phosphorus; COD - Chemical Oxygen Demand; Mg - Magnesium; Ag - Silver; Se - Selenium; BOD - Biochemical Oxygen Demand; N + N - Nitrate & Nitrite Nitrogen; Pb - Lead

Subsector SIC Activity Represented Parameters

SECTOR E. GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCT MANUFACTURING			
E1	3211	Flat Glass	
E1	322X	Glass and Glassware, Pressed or Blown	
E1	323X	Glass Products Made of Purchased Glass	
E2	3241	Hydraulic Cement	
E3	325X	Structural Clay Products	Al
E3	326X	Pottery and Related Products	Al
E3	3297	Non-Clay Refractories	Al
E4	327X	Concrete, Gypsum, and Plaster Products (Except Lime) (except 3274).	TSS;Fe
E4	3295	Minerals and Earths, Ground, or Otherwise Treated	TSS;Fe
SECTOR F. PRIMARY METALS			
F1	331X	Steel Works, Blast Furnaces, Rolling & Finishing Mill	Al;Zn
F2	332X	Iron and Steel Foundries	Al;TSS;Cu;Fe;Zn
F3	333X	Primary Smelting and Refining of Nonferrous Metals	
F4	334X	Secondary Smelting and Refining of Nonferrous Metals	
F5	335X	Rolling, Drawing, and Extruding of Nonferrous Metals	Cu;Zn
F6	336X	Nonferrous Foundries (Castings)	Cu;Zn
F7	339X	Miscellaneous Primary Metal Products	
SECTOR G. METAL MINING (ORE MINING AND DRESSING) EXCEPT INACTIVE METAL MINING ACTIVITIES ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
G1	101X	Iron Ores	
G2	102X	Copper Ores	TSS;COD;N+N
G3	103X	Lead and Zinc Ores	
G4	104X	Gold and Silver Ores	
G5	106X	Ferroalloy Ores, Except Vanadium	
G6	108X	Metal Mining Services	
G7	109X	Miscellaneous Metal Ores	
SECTOR H. COAL MINES AND COAL MINING-RELATED FACILITIES			
NA	12XX	Coal Mines and Coal Mining-Related Facilities	TSS;Al;Fe
SECTOR I. COAL MINES AND COAL MINING-RELATED FACILITIES			
I1	131X	Crude Petroleum and Natural Gas	
I2	132X	Natural Gas Liquids	
I3	138X	Oil and Gas Field Services	
SECTOR J. MINERAL MINING AND DRESSING EXCEPT INACTIVE MINERAL MINING ACTIVITIES OCCURRING ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
J1	141X	Dimension Stone	TSS
J1	142X	Crushed and Broken Stone, Including Rip Rap	TSS
J1	148X	Nonmetallic Minerals, Except Fuels	TSS
J2	144X	Sand and Gravel	TSS;N+N
J3	145X	Clay, Ceramic, and Refractory Materials	
J4	147X	Chemical and Fertilizer Mineral Mining	
J4	149X	Miscellaneous Nonmetallic Minerals, Except Fuels	

Subsector	SIC	Activity Represented	Parameters
SECTOR K. HAZARDOUS WASTE TREATMENT STORAGE OR DISPOSAL FACILITIES			
NA	4953	Hazardous Waste Treatment Storage or Disposal	NH_3;Mg;COD;As Cd;CN;Pb Hg;Se;Ag
SECTOR L. LANDFILLS AND LAND APPLICATION SITES			
NA	4953	Landfills and Land Application Sites That Receive or Have Received Industrial Wastes, Except Inactive Landfills or Land Applications Sites Occurring on Federal Lands Where an Operator Cannot be Identified	TSS;Fe
SECTOR M. AUTOMOBILE SALVAGE YARDS			
NA	5015	Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale and for Scrap	TSS;Fe;Pb;Al
SECTOR N. SCRAP RECYCLING FACILITIES			
NA	5093	Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials	TSS;Fe;Pb Al;Cu;Zn;COD
SECTOR O. STEAM ELECTRIC GENERATING FACILITIES			
NA	4911	Steam Electric Power Generating Facilities	Fe
SECTOR P. LAND TRANSPORTATION FACILITIES THAT HAVE VEHICLE AND EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
P1	40XX	Railroad Transportation	
P2	41XX	Local and Highway Passenger Transportation	
P3	42XX	Motor Freight Transportation and Warehousing	
P4	43XX	United States Postal Service	
P5	5171	Petroleum Bulk Stations and Terminals	
SECTOR Q. WATER TRANSPORTATION FACILITIES THAT HAVE VEHICLE (VESSEL) & EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
NA	44XX	Water Transportation	Al;Fe;Pb;Zn
SECTOR R. SHIP AND BOAT BUILDING OR REPAIRING YARDS			
NA	373X	Ship and Boat Building or Repairing Yards	
SECTOR S. AIR TRANSPORTATION FACILITIES			
NA	45XX	Air Transportation Facilities That Have Vehicle Maintenance Ships, Material Handing Facilities, Equipment Cleaning Operations, or Airport and/or Aircraft Deicing/Anti-icing Operations	BOD;COD;NH_3;pH

Subsector	SIC	Activity Represented	Parameters
SECTOR T. TREATMENT WORKS			
NA	4952	Treatment Works Treating Domestic Sewage or Any Other Sewage Sludge or Wastewater Treatment Device or System Used in the Storage, treatment, recycling, or Reclamation of Municipal or Domestic Sewage with a Design Flow of 1.0 MGD or More or Required to Have an Approved Pretreatment Program	
SECTOR U. FOOD AND KINDRED PRODUCTS			
U1	201X	Meat Products	
U2	202X	Dairy Products	
U3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties	
U4	204X	Grain Mill Products	TSS
U5	205X	Bakery Products	
U6	206X	Sugar and Confectionery Products	
U7	207X	Fats and Oils	**BOD;COD;TSS;N+N**
U8	208X	Beverages	
U9	209X	Miscellaneous Food Preparations and Kindred Products	
NA	21XX	Tobacco Products	
SECTOR V. TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING			
V1	22XX	Textile Mill Products	
V2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials	
SECTOR W. FURNITURE AND FIXTURES			
NA	25XX	Furniture and Fixtures	
NA	2434	Wood Kitchen Cabinets	
SECTOR X. PRINTING AND PUBLISHING			
NA	2732	Book Printing	
NA	2752	Commercial Printing, Lithographic	
NA	2754	Commercial Printing, Gravure	
NA	2759	Commercial Printing, Nor Elsewhere Classified	
NA	2796	Platemaking and Related Services	
SECTOR Y. RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISC. MANUFACTURING INDUSTRIES			
Y1	301X	Tires and Inner Tubes	**Zn**
Y1	302X	Rubber and Plastics Footwear	**Zn**
Y1	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting	**Zn**
Y1	306X	Fabricated Rubber Products, Not Elsewhere Classified	**Zn**
Y2	308X	Miscellaneous Plastics Products	

Subsector	SIC	Activity Represented	Parameters
Y2	393X	Musical Instruments	
Y2	394X	Dolls, Toys, Games, and Sporting and Athletic Goods	
Y2	395X	Pens, Pencils, and Other Artists' Materials	
Y2	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal	
Y2	399X	Miscellaneous Manufacturing Industries	
SECTOR Z. LEATHER TANNING AND FINISHING			
NA	311X	Leather Tanning and Finishing	
NA	NA	Facilities that Make Fertilizer Solely From Leather Scraps and Leather Dust	
SECTOR AA. FABRICATED METAL PRODUCTS			
AA1	3429	Hardware, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	3441	Fabricated Structural Metal	**Zn;N+N;Fe;Al**
AA1	3442	Metal Doors, Sash, Frames, Molding, and Trim	**Zn;N+N;Fe;Al**
AA1	3443	Fabricated Plate Work (Boiler Shops)	**Zn;N+N;Fe;Al**
AA1	3444	Sheet Metal Work	**Zn;N+N;Fe;Al**
AA1	3451	Screw Machine Products	**Zn;N+N;Fe;Al**
AA1	3452	Bolts, Nuts, Screws, Rivets, and Washers	**Zn;N+N;Fe;Al**
1	3462	Iron and Steel Forgings	**Zn;N+N;Fe;Al**
1	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	**Zn;N+N;Fe;Al**
AA1	3494	Valves and Pipe Fittings, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	3496	Miscellaneous Fabricated Wire Products	**Zn;N+N;Fe;Al**
AA1	3499	Fabricated Metal Products, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	391X	Jewelry, Silverware, and Plated Ware	**Zn;N+N;Fe;Al**
AA2	3479	Coating, Engraving, and Allied Services	**Zn;N+N**
SECTOR AB. TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY			
NA	35XX	Industrial and Commercial Machinery (except 357X Computer and Office Equipment)	
NA	37XX	Transportation Equipment (except 373X Ship and Boat Building and Repairing	
SECTOR AC. ELECTRONIC, ELECTRICAL. PHOTOGRAPHIC, AND OPTICAL GOODS			
NA	36XX	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	
NA	38XX	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
NA	357X	Computer and Office Equipment	

Section C: STANDARD PROVISIONS

1. Duty to Comply

The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for (a) enforcement action for (b) General Permit termination, revocation and reissuance, or modification or (c) denial of a General Permit renewal application.

The facility operator shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the facility operator for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition, and the facility operator so notified.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a facility operator in an enforcement action that it would have been necessary to halt or reduce the general permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The facility operator shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The facility operator at all times shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the facility operator to achieve compliance with the conditions of this General Permit and with the requirements of storm water pollution prevention plans (SWPPPs). Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a facility operator when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The facility operator shall furnish the Regional Water Quality Control Board (Regional Water Board), State Water Resources Control Board (State Water Board), U.S. Environmental Protection Agency (U.S. EPA), or local storm water management agency, within a reasonable time specified by the agencies, any requested information to determine compliance with this General Permit. The facility operator shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The facility operator shall allow the Regional Water Board, State Water Board, U.S. EPA, and local storm water management agency, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the facility operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;

b. Have access to and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized non-storm water discharge; and

d. Conduct monitoring activities at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notices of Intent (NOIs) submitted to the State Water Board shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

b. All reports, certifications, or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be attached to the SWPPP prior to submittal of any reports, certifications, or information signed by the authorized representative.

10. Certification

Any person signing documents under Provision 9. above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Reporting Requirements

a. Planned changes: The facility operator shall give advance notice to the Regional Water Board and local storm water management agency of any planned physical alteration or additions to the general permitted facility. Notice is required under this provision only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

b. Anticipated noncompliance: The facility operator will give advance notice to the Regional Water Board and local storm water management agency of any planned changes at the permitted facility which may result in noncompliance with General Permit requirements.

c. Compliance schedules: Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this General Permit shall be submitted no later than 14 days following each scheduled date.

d. Noncompliance reporting: The facility operator shall report any noncompliance at the time monitoring reports are submitted. The written submission shall contain (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce and prevent recurrence of the noncompliance.

12. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the facility operator from any responsibilities, liabilities, or penalties to which the facility operator is or may be subject under Section 311 of the CWA.

13. Severability

The provisions of this General Permit are severable; and if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

14. Reopener Clause

This General Permit may be modified, revoked, and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5. This General Permit may be reopened to modify the provisions regarding authorized non-storm water discharges specified in Section D. Special Conditions.

15. Penalties for Violations of General Permit Conditions.

a. Section 309 of the CWA provides significant penalties for any person who violates a General Permit condition

implementing Sections 301, 302, 306, 307 308, 318, or 405 of the CWA, or any General Permit condition or limitation implementing any such section in a General Permit issued under Section 402. Any person who violates any General Permit condition of this General Permit is subject to a civil penalty not to exceed $25,000 per day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties in some cases greater than those under the CWA.

16. Availability

A copy of this General Permit shall be maintained at the facility and be available at all times to the appropriate facility personnel and to Regional Water Board and local agency inspectors.

17. Transfers

This General Permit is not transferable from one facility operator to another facility operator nor may it be transferred from one location to another location. A new facility operator of an existing facility must submit an NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit.

18. Continuation of Expired General Permit

This General Permit continues in force and effect until a new general permit is issued or the State Water Board rescinds the General Permit. Facility operators authorized to discharge under the expiring general permit are required to file an NOI to be covered by the reissued General Permit.

19. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both.

FACILITIES COVERED BY THIS GENERAL PERMIT

Industrial facilities include Federal, State, municipally owned, and private facilities from the following categories:

1. FACILITIES SUBJECT TO STORM WATER EFFLUENT LIMITATIONS GUIDELINES, NEW SOURCE PERFORMANCE STANDARDS, OR TOXIC POLLUTANT EFFLUENT STANDARDS (40 Code of Federal Regulations (CFR) SUBCHAPTER N). Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443).

2. MANUFACTURING FACILITIES: Standard Industrial Classifications (SICs) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441, and 373.

3. OIL AND GAS/MINING FACILITIES: SICs 10 through 14 including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l) because of performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for area of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990); oil and gas exploration, production, processing, or treatment operations; or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mined sites that are not being actively mined but which have an identifiable facility operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: Includes those operating under interim status or a general permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act (RCRA).

5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: Sites that receive or have received industrial waste from any of

the facilities covered by this General Permit, sites subject to regulation under Subtitle D of RCRA, and sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).

6. RECYCLING FACILITIES: SICs 5015 and 5093. These codes include metal scrapyards, battery reclaimers, salvage yards, motor vehicle dismantlers and wreckers, and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc.

7. STEAM ELECTRIC POWER GENERATING FACILITIES: Includes any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.

8. TRANSPORTATION FACILITIES: SICs 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.

9. SEWAGE OR WASTEWATER TREATMENT WORKS: Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of one million gallons per day or more or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.

10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE <u>EXPOSED</u> TO STORM WATER: SICs 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225.

State Water Resources Control Board

Water Quality Order No. 99-08-DWQ

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
ORDER NO. 99 - 08 - DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000002

WASTE DISCHARGE REQUIREMENTS (WDRS) FOR DISCHARGES OF STORM WATER RUNOFF ASSOCIATED WITH CONSTRUCTION ACTIVITY

The State Water Resources Control Board finds that:

1. Federal regulations for controlling pollutants in storm water runoff discharges were promulgated by the U.S. Environmental Protection Agency (USEPA) on November 16, 1990 (40 Code of Federal Regulations (CFR) Parts 122, 123, and 124). The regulations require discharges of storm water to surface waters associated with construction activity including clearing, grading, and excavation activities (except operations that result in disturbance of less than five acres of total land area and which are not part of a larger common plan of development or sale) to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate storm water pollution.

   On December 8, 1999 federal regulations promulgated by USEPA (40CFR Parts 9, 122, 123, and 124) expanded the NPDES storm water program to include storm water discharges from municipal separate storm sewer systems (MS4s) and construction sites that were smaller than those previously included in the program. Federal regulation 40 CFR § 122.26(b)(15) defines small construction activity as including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre or less than five acres or is part of a larger common plan of development or sale. Permit applications for small construction activities are due by March 10, 2003.

2. This General Permit regulates pollutants in discharges of storm water associated with construction activity (storm water discharges) to surface waters, except from those areas on Tribal Lands; Lake Tahoe Hydrologic Unit; construction projects which disturb less than one acre, unless part of a larger common plan of development or sale; and storm water discharges which are determined ineligible for coverage under this General Permit by the California Regional Water Quality Control Boards (RWQCBs). Attachment 1 contains addresses and telephone numbers of each RWQCB office.

3. This General Permit does not preempt or supersede the authority of local storm water management agencies to prohibit, restrict, or control storm water discharges to separate storm sewer systems or other watercourses within their jurisdiction, as allowed by State and Federal law.

4. To obtain authorization for proposed storm water discharges to surface waters, pursuant to this General Permit, the landowner (discharger) must submit a Notice of Intent (NOI) with a vicinity map and the appropriate fee to the SWRCB prior to commencement of construction activities. In addition, coverage under this General Permit shall not occur until the applicant develops a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the requirements of Section A of this permit for the project. For proposed construction activity conducted on easements or on nearby property by agreement or permission, or by an owner or lessee of a mineral estate (oil, gas, geothermal, aggregate, precious metals, and/or industrial minerals) entitled to conduct the activities, the entity responsible for the construction activity must submit the NOI and filing fee and shall be responsible for development of the SWPPP.

5. If an individual NPDES Permit is issued to a discharger otherwise subject to this General Permit or if an alternative General Permit is subsequently adopted which covers storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the subsequent General Permit.

6. This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with section 13389 of the California Water Code.

7. The SWRCB adopted the California Ocean Plan, and the RWQCBs have adopted and the SWRCB has approved Water Quality Control Plans (Basin Plans). Dischargers regulated by this General Permit must comply with the water quality standards in these Basin Plans and subsequent amendments thereto.

8. The SWRCB finds storm water discharges associated with construction activity to be a potential significant sources of pollutants. Furthermore, the SWRCB finds that storm water discharges associated with construction activities have the reasonable potential to cause or contribute to an excursion above water quality standards for sediment in the water bodies listed in Attachment 3 to this permit.

9. It is not feasible at this time to establish numeric effluent limitations for pollutants in storm water discharges from construction activities. Instead, the provisions of this General Permit require implementation of Best Management Practices (BMPs) to control and abate the discharge of pollutants in storm water discharges.

10. Discharges of non-storm water may be necessary for the completion of certain construction projects. Such discharges include, but are not limited to: irrigation of vegetative erosion control measures, pipe flushing and testing, street cleaning, and dewatering. Such discharges are authorized by this General Permit as long as they (a) do comply with Section A.9 of this General Permit, (b) do not cause or contribute to violation of any water quality standard, (c) do not violate any other provision of this

General Permit, (d) do not require a non-storm water permit as issued by some RWQCBs, and (e) are not prohibited by a Basin Plan. If a non-storm water discharge is subject to a separate permit adopted by a RWQCB, the discharge must additionally be authorized by the RWQCB permit.

11. Following adoption of this General Permit, the RWQCBs shall enforce the provisions herein including the monitoring and reporting requirements.

12. Following public notice in accordance with State and Federal laws and regulations, the SWRCB in a public meeting on June 8, 1998, heard and considered all comments. The SWRCB has prepared written responses to all significant comments.

13. This Order is an NPDES permit in compliance with section 402 of the Clean Water Act (CWA) and shall take effect upon adoption by the SWRCB provided the Regional Administrator of the USEPA has no objection. If the USEPA Regional Administrator objects to its issuance, the General Permit shall not become effective until such objection is withdrawn.

14. This General Permit does not authorize discharges of fill or dredged material regulated by the U.S. Army Corps of Engineers under CWA section 404 and does not constitute a waiver of water quality certification under CWA section 401.

15 The Monitoring Program and Reporting Requirements are modified in compliance with a judgment in the case of San Francisco BayKeeper, et al. v. State Water Resources Control Board. The modifications include sampling and analysis requirements for direct discharges of sediment to waters impaired due to sediment and for pollutants that are not visually detectable in runoff that may cause or contribute to an exceedance of water quality objectives.

16 Storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people are no longer exempt from the need to apply for or obtain a storm water discharge permit. A temporary exemption, which was later extended by USEPA, was provided under section 1068(c) of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991. Federal regulation 40 CFR § 122.26(e)(1)(ii) requires the above municipalities to submit permit application by March 10, 2003.

17 This permit may be reopened and modified to include different monitoring requirements for small construction activity than for construction activity over five (5) acres.

IT IS HEREBY ORDERED that all dischargers who file an NOI indicating their intention to be regulated under the provisions of this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Authorization pursuant to this General Permit does not constitute an exemption to applicable discharge prohibitions prescribed in Basin Plans, as implemented by the nine RWQCBs.

2. Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.

3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

4. Storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

B. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan.

3. Should it be determined by the discharger, SWRCB, or RWQCB that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, the discharger shall:

   a. Implement corrective measures immediately following discovery that water quality standards were exceeded, followed by notification to the RWQCB by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14-calender days to the appropriate RWQCB, unless otherwise directed by the RWQCB, describing (1) the nature and cause of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any additional BMPs which will be implemented to

prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance.

b. The discharger shall revise its SWPPP and monitoring program immediately after the report to the RWQCB to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring needed.

c. Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this General Permit while the discharger prepares and implements the above report.

C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

1. All dischargers shall file an NOI and pay the appropriate fee for construction activities conducted at each site as required by Attachment 2: Notice of Intent--General Instructions.

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of nonstorm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.

4. All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements.

5. All dischargers shall comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the RWQCBs to local agencies.

6. All dischargers shall comply with the standard provisions and reporting requirements contained in Section C: Standard Provisions.

7. The discharger may terminate coverage for a portion of the project under this General Permit when ownership of a portion of this project has been transferred or when a phase within this multi-phase project has been completed. When ownership has transferred, the discharger must submit to its RWQCB a Change of Information Form (COI) Attachment 4 with revised site map and the name, address and telephone number of the new owner(s). Upon transfer of title, the discharger should notify the new owner(s) of the need to obtain coverage under this General Permit. The new owner must comply with provisions of Sections A. 2. (c) and
B. 2. (b) of this General Permit. To terminate coverage for a portion of the project when a phase has been completed, the discharger must submit to its RWQCB a COI with a revised map that identifies the newly delineated site.

8. The discharger may terminate coverage under this General Permit for a complete project by submitting to its RWQCB a Notice of Termination Form (NOT), and the post-construction BMPs plan according to Section A.10 of this General Permit. Note that a construction project is considered complete only when all portions of the site have been transferred to a new owner; or the following conditions have been met:

   a. There is no potential for construction related storm water pollution,

   b. All elements of the SWPPP have been completed,

   c. Construction materials and waste have been disposed of properly,

   d. The site is in compliance with all local storm water management requirements, and

   e. A post-construction storm water management plan is in place as described in the site's SWPPP.

9. This General Permit expires five years from the date of adoption.

D. REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) AUTHORITIES:

1. RWQCBs shall:

   a. Implement the provisions of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPS, reviewing SWPPPs, reviewing monitoring reports, conducting compliance inspections, and taking enforcement actions.

   b. Issue permits as they deem appropriate to individual dischargers, categories of dischargers, or dischargers in a geographic area. Upon issuance of such permits by a RWQCB, the affected dischargers shall no longer be regulated by this General Permit.

2. RWQCBs may require, on a case-by-case basis, the inclusion of an analysis of potential downstream impacts on receiving waterways due to the permitted construction.

3. RWQCBs may provide information to dischargers on the development and implementation of SWPPPs and monitoring programs and may require revisions to SWPPPs and monitoring programs.

4. RWQCBs may require dischargers to retain records for more than three years.

5. RWQCBs may require additional monitoring and reporting program requirements including sampling and analysis of discharges to water bodies listed in Attachment 3 to this permit. Additional requirements imposed by the RWQCB should be consistent with the overall monitoring effort in the receiving waters.

6. RWQCBs may issue individual NPDES permits for those construction activities found to be ineligible for coverage under this permit.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 19, 1999.

AYE:	James M. Stubchaer Mary Jane Forster John W. Brown Arthur G. Baggett, Jr.
NO:	None
ABSENT:	None
ABSTAIN:	None

/s/
Maureen Marché
Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

1. Objectives

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit. The SWPPP shall be certified in accordance with the signatory requirements of section C, Standard Provision for Construction Activities (9). The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives:

a. Identify all pollutant sources including sources of sediment that may affect the quality of storm water discharges associated with construction activity (storm water discharges) from the construction site, and

b. Identify non-storm water discharges, and

c. Identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction, and

d. Develop a maintenance schedule for BMPs installed during construction designed to reduce or eliminate pollutants after construction is completed (post-construction BMPs).

e. Identify a sampling and analysis strategy and sampling schedule for discharges from construction activity which discharge directly into water bodies listed on Attachment 3. (Clean Water Act Section 303(d) [303(d)] Water Bodies listed for Sedimentation).

f. For all construction activity, identify a sampling and analysis strategy and sampling schedule for discharges that have been discovered through visual monitoring to be potentially contaminated by pollutants not visually detectable in the runoff.

2. Implementation Schedule

a. For construction activity commencing on or after adoption of this General Permit, the SWPPP shall be developed prior to the start of soil-disturbing activity in accordance with this Section and shall be implemented concurrently with commencement of soil-disturbing activities.

b. Existing permittees engaging in construction activities covered under the terms of the previous General Construction Permit SWPPP (WQ Order No.92-08-DWQ) shall continue to implement their existing SWPPP and shall implement any

necessary revisions to their SWPPP in accordance with this Section of the General Permit in a timely manner, but in no case more than 90-calender days from the date of adoption of this General Permit.

c. For ongoing construction activity involving a change of ownership of property, the new owner shall review the existing SWPPP and amend if necessary, or develop a new SWPPP within 45-calender days.

d. Existing permittees shall revise their SWPPP in accordance with the sampling and analysis modifications prior to August 1, 2001. For ongoing construction activity involving a change of ownership the new owner shall review the existing SWPPP and amend the sampling and analysis strategy, if required, within 45 days. For construction activity commencing after the date of adoption, the SWPPP shall be developed in accordance with the modification language adopted.

3. Availability

The SWPPP shall remain on the construction site while the site is under construction during working hours, commencing with the initial construction activity and ending with termination of coverage under the General Permit.

4. Required Changes

a. The discharger shall amend the SWPPP whenever there is a change in construction or operations which may affect the discharge of pollutants to surface waters, ground waters, or a municipal separate storm sewer system (MS4). The SWPPP shall also be amended if the discharger violates any condition of this General Permit or has not achieved the general objective of reducing or eliminating pollutants in storm water discharges. If the RWQCB determines that the discharger is in violation of this General Permit, the SWPPP shall be amended and implemented in a timely manner, but in no case more than 14-calendar days after notification by the RWQCB. All amendments should be dated and directly attached to the SWPPP.

b. The RWQCB or local agency with the concurrence of the RWQCB may require the discharger to amend the SWPPP.

5. Source Identification

The SWPPP shall include: (a) project information and (b) pollutant source identification combined with an itemization of those BMPs specifically chosen to control the pollutants listed.

a. Project Information

(1) The SWPPP shall include a vicinity map locating the project site with respect to easily identifiable major roadways, geographic features, or landmarks. At a minimum, the map must show the construction site perimeter, the geographic features surrounding the site, and the general topography.

(2) The SWPPP shall include a site map(s) which shows the construction project in detail, including the existing and planned paved areas and buildings.

(a) At a minimum, the map must show the construction site perimeter; existing and proposed buildings, lots, roadways, storm water collection and discharge points; general topography both before and after construction; and the anticipated discharge location(s) where the storm water from the construction site discharges to a municipal storm sewer system or other water body.

(b) The drainage patterns across the project area must clearly be shown on the map, and the map must extend as far outside the site perimeter as necessary to illustrate the relevant drainage areas. Where relevant drainage areas are too large to depict on the map, map notes or inserts illustrating the upstream drainage areas are sufficient.

(c) Temporary on-site drainages to carry concentrated flow shall be selected to comply with local ordinances, to control erosion, to return flows to their natural drainage courses, and to prevent damage to downstream properties.

3. Information presented in the SWPPP may be represented either by narrative or by graphics. Where possible, narrative descriptions should be plan notes. Narrative descriptions which do not lend themselves to plan notes can be contained in a separate document which must be referenced on the plan.

b. Pollutant Source and BMP Identification

The SWPPP shall include a description of potential sources which are likely to add pollutants to storm water discharges or which may result in nonstorm water discharges from the construction site. Discharges originating from off-site which flow across or through areas disturbed by construction that may contain pollutants should be reported to the RWQCB.

The SWPPP shall:

(1) Show drainage patterns and slopes anticipated after major grading activities are completed. Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place. The amount of anticipated storm water run-on must be considered to determine the appropriateness of the BMPs chosen. Show all calculations for anticipated storm water run-on, and describe all BMPs implemented to divert off-site drainage described in section A. 5 a. (2) (c) around or through the construction project.

(2) Show the drainage patterns into each on-site storm water inlet point or receiving water. Show or describe the BMPs that will protect operational storm water inlets or receiving waters from contaminated discharges other than sediment discharges, such as, but not limited to: storm water with elevated pH levels from contact with soil amendments such as lime or gypsum; slurry from sawcutting of concrete or asphalt ;washing of exposed aggregate concrete; concrete rinse water; building washing operations; equipment washing operations; minor street washing associated with street delineation; and/or sealing and paving activities occurring during rains.

(3) Show existing site features that, as a result of known past usage, may contribute pollutants to storm water, (e.g., toxic materials that are known to have been treated, stored, disposed, spilled, or leaked onto the construction site). Show or describe the BMPs implemented to minimize the exposure of storm water to contaminated soil or toxic materials.

(4) Show areas designated for the (a) storage of soil or waste, (b) vehicle storage and service areas, (c) construction material loading, unloading, and access areas, (d) equipment storage, cleaning, and maintenance areas.

(5) Describe the BMPs for control of discharges from waste handling and disposal areas and methods of on-site storage and disposal of construction materials and construction waste. Describe the BMPs designed to minimize or eliminate the exposure of storm water to construction materials, equipment, vehicles, waste storage areas, or service areas. The BMPs described shall be in compliance with Federal, State, and local laws, regulations, and ordinances.

(6) Describe all post-construction BMPs for the project, and show the location of each BMP on the map. (Post-construction BMPs consist of permanent features designed to minimize pollutant discharges, including sediment, from the site after construction has been completed.) Also, describe the agency or parties to be the responsible party for long-term maintenance of these BMPs.

(7) Show the locations of direct discharge from the construction site into a Section 303(d) list water body. Show the designated sampling locations in the receiving waters, which represent the prevailing conditions of the water bodies upstream of the construction site discharge and immediately downstream from the last point of discharge.

(8) Show the locations designated for sampling the discharge from areas identified in Section A. 5. b. (2), (3), and (4) and Section A. 5. c. (1) and (2). Samples shall be taken should visual monitoring indicate that there has been a breach, malfunction, leakage, or spill from a BMP which could result in the discharge in storm water of pollutants that would not be visually detectable, or if storm water comes into contact with soil amendments or other exposed materials or contamination and is allowed to be discharged. Describe the sampling procedure, location, and rationale for obtaining the uncontaminated sample of storm water.

c. Additional Information

(1) The SWPPP shall include a narrative description of pollutant sources and BMPs that cannot be adequately communicated or identified on the site map. In addition, a narrative description of preconstruction control practices (if any) to reduce sediment and other pollutants in storm water discharges shall be included.

(2) The SWPPP shall include an inventory of all materials used and activities performed during construction that have the potential to contribute to the discharge of pollutants other than sediment in storm water. Describe the BMPs selected and the basis for their selection to eliminate or reduce these pollutants in the storm water discharges.

(3) The SWPPP shall include the following information regarding the construction site surface area: the size (in acres or square feet), the runoff coefficient before and after construction, and the percentage that is impervious (e.g., paved, roofed, etc.) before and after construction.

(4) The SWPPP shall include a copy of the NOI, and the Waste Discharge Identification (WDID) number. Should a WDID number not be received from the SWRCB at the time construction commences, the discharger shall include proof of mailing of the NOI, e.g., certified mail receipt, copy of check, express mail receipt, etc.

(5) The SWPPP shall include a construction activity schedule which describes all major activities such as mass grading, paving, lot or parcel

improvements at the site and the proposed time frame to conduct those activities.

(6) The SWPPP shall list the name and telephone number of the qualified person(s) who have been assigned responsibility for prestorm, poststorm, and storm event BMP inspections; and the qualified person(s) assigned responsibility to ensure full compliance with the permit and implementation of all elements of the SWPPP, including the preparation of the annual compliance evaluation and the elimination of all unauthorized discharges.

6. Erosion Control

Erosion control, also referred to as "soil stabilization" is the most effective way to retain soil and sediment on the construction site. The most efficient way to address erosion control is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction. Particular attention must be paid to large mass-graded sites where the potential for soil exposure to the erosive effects of rainfall and wind is great. Mass graded construction sites may be exposed for several years while the project is being built out. Thus, there is potential for significant sediment discharge from the site to surface waters.

At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes, and building pads. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single-most important factor in reducing erosion at construction sites. The discharger shall consider measures such as: covering with mulch, temporary seeding, soil stabilizers, binders, fiber rolls or blankets, temporary vegetation, permanent seeding, and a variety of other measures.

The SWPPP shall include a description of the erosion control practices, including a time schedule, to be implemented during construction to minimize erosion on disturbed areas of a construction site. The discharger must consider the full range of erosion control BMPs. The discharger must consider any additional site-specific and seasonal conditions when selecting and implementing appropriate BMPs. The above listed erosion control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

a. The SWPPP shall include:

(1) An outline of the areas of vegetative soil cover or native vegetation onsite which will remain undisturbed during the construction project.

(2) An outline of all areas of soil disturbance including cut or fill areas which will be stabilized during the rainy season by temporary or permanent erosion control measures, such as seeding, mulch, or blankets, etc.

(3) An outline of the areas of soil disturbance, cut, or fill which will be left exposed during any part of the rainy season, representing areas of potential soil erosion where sediment control BMPs are required to be used during construction.

(4) A proposed schedule for the implementation of erosion control measures.

b. The SWPPP shall include a description of the BMPs and control practices to be used for both temporary and permanent erosion control measures.

c. The SWPPP shall include a description of the BMPs to reduce wind erosion at all times, with particular attention paid to stock-piled materials.

7. Stabilization

(1) All disturbed areas of the construction site must be stabilized. Final stabilization for the purposes of submitting a NOT is satisfied when:

-All soil disturbing activities are completed AND EITHER OF THE TWO FOLLOWING CRITERIA ARE MET:

-A uniform vegetative cover with 70 percent coverage has been established OR:

-equivalent stabilization measures have been employed. These measures include the use of such BMPs as blankets, reinforced channel liners, soil cement, fiber matrices, geotextiles, or other erosion resistant soil coverings or treatments.

(2) Where background native vegetation covers less than 100 percent of the surface, such as in arid areas, the 70 percent coverage criteria is adjusted as follows: If the native vegetation covers 50 percent of the ground surface, 70 percent of 50 percent (.70 X .50=.35) would require 35 percent total uniform surface coverage.

8. Sediment Control

The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. Sediment control BMPs are required at appropriate locations along the site perimeter and at all operational internal inlets to the storm drain system at all times during the rainy season. Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP. These are the most basic measures to prevent sediment from leaving the project site and moving into receiving waters. Limited exemptions may be authorized by the RWQCB when work on active areas precludes the use of sediment control BMPs temporarily. Under these conditions, the SWPPP must describe a plan to establish perimeter controls prior to the onset of rain.

During the nonrainy season, the discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm. The discharger shall consider a full range of sediment controls, in addition to the controls listed above, such as straw bale dikes, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, sandbag dikes, fiber rolls, or other controls. At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

If the discharger chooses to rely on sediment basins for treatment purposes, sediment basins shall, at a minimum, be designed and maintained as follows:

Option 1: Pursuant to local ordinance for sediment basin design and maintenance, provided that the design efficiency is as protective or more protective of water quality than Option 3.

OR

Option 2: Sediment basin(s), as measured from the bottom of the basin to the principal outlet, shall have at least a capacity equivalent to 3,600 cubic feet of storage per acre draining into the sediment basin. The length of the basin shall be more than twice the width of the basin. The length is determined by measuring the distance between the inlet and the outlet; and the depth must not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency.

OR

Option 3: Sediment basin(s) shall be designed using the standard equation:

$As=1.2Q/Vs$

Where: As is the minimum surface area for trapping soil particles of a certain size; Vs is the settling velocity of the design particle size chosen; and Q=C x I x A where Q is the discharge rate measured in cubic feet per second; C is the runoff coefficient; I is the precipitation intensity for the 10-year, 6-hour rain event and A is the area draining into the sediment basin in acres. The design particle size shall be the smallest soil grain size determined by wet sieve analysis, or the fine silt sized (0.01mm) particle, and the Vs used shall be 100 percent of the calculated settling velocity.

The length is determined by measuring the distance between the inlet and the outlet; the length shall be more than twice the dimension as the width; the depth shall not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency (two feet of storage, two feet of capacity). The basin(s) shall be located on the site where it can be maintained on a year-round basis and shall be maintained on a schedule to retain the two feet of capacity;

OR

Option 4: The use of an equivalent surface area design or equation, provided that the design efficiency is as protective or more protective of water quality than Option 3.

A sediment basin shall have a means for dewatering within 7-calendar days following a storm event. Sediment basins may be fenced if safety (worker or public) is a concern.

The outflow from a sediment basin that discharges into a natural drainage shall be provided with outlet protection to prevent erosion and scour of the embankment and channel.

The discharger must consider any additional site-specific and seasonal conditions when selecting and designing sediment control BMPs. The above listed sediment control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

The SWPPP shall include a description of the BMPs to reduce the tracking of sediment onto public or private roads at all times. These public and private roads shall be inspected and cleaned as necessary. Road cleaning BMPs shall be discussed in the SWPPP and will not rely on the washing of accumulated sediment or silt into the storm drain system.

9. Non-Storm Water Management

Describe all non-storm water discharges to receiving waters that are proposed for the construction project. Non-storm water discharges should be eliminated or reduced to the extent feasible. Include the locations of such discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. Onetime discharges shall be monitored during the time that such discharges are occurring. A qualified person should be assigned the responsibility for ensuring that no materials other than storm water are discharged in quantities which will have an adverse effect on receiving waters or storm drain systems (consistent with BAT/BCT), and the name and contact number of that person should be included in the SWPPP document.

Discharging sediment-laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited.

10. Post-Construction Storm Water Management

The SWPPP shall include descriptions of the BMPs to reduce pollutants in storm water discharges after all construction phases have been completed at the site (Post-Construction BMPs). Post-Construction BMPs include the minimization of land disturbance, the minimization of impervious surfaces, treatment of storm water runoff using infiltration, detention/retention, biofilter BMPs, use of efficient irrigation systems, ensuring that interior drains are not connected to a storm sewer system, and appropriately designed and constructed energy dissipation devices. These must be consistent with all local post-construction storm water management requirements, policies, and guidelines. The discharger must consider site-specific and seasonal conditions when designing the control practices. Operation and maintenance of control practices after construction is completed shall be addressed, including short-and long-term funding sources and the responsible party.

11. Maintenance, Inspection, and Repair

The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project. A qualified person will be assigned the responsibility to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending upon worker safety.

For each inspection required above, the discharger shall complete an inspection checklist. At a minimum, an inspection checklist shall include:

a. Inspection date.

b. Weather information: best estimate of beginning of storm event, duration of event, time elapsed since last storm, and approximate amount of rainfall (inches).

c. A description of any inadequate BMPs.

d. If it is possible to safely access during inclement weather, list observations of all BMPs: erosion controls, sediment controls, chemical and waste controls, and non-storm water controls. Otherwise, list result of visual inspection at relevant outfall, discharge point, or downstream location and projected required maintenance activities.

e. Corrective actions required, including any changes to SWPPP necessary and implementation dates.

f. Inspectors name, title, and signature.

The dischargers shall prepare their inspection checklists using the inspection checklist form provided by the SWRCB or RWQCB or on forms that contain the equivalent information.

12. Training

Individuals responsible for SWPPP preparation, implementation, and permit compliance shall be appropriately trained, and the SWPPP shall document all training. This includes those personnel responsible for installation, inspection, maintenance, and repair of BMPs. Those responsible for overseeing, revising, and amending the SWPPP shall also document their training. Training should be both formal and informal, occur on an ongoing basis when it is appropriate and convenient, and should include training/workshops offered by the SWRCB, RWQCB, or other locally recognized agencies or professional organizations.

13. List of Contractors/Subcontractors

The SWPPP shall include a list of names of all contractors, (or subcontractors) and individuals responsible for implementation of the SWPPP. This list should include telephone numbers and addresses. Specific areas of responsibility of each subcontractor and emergency contact numbers should also be included.

14. Other Plans

This SWPPP may incorporate by reference the appropriate elements of other plans required by local, State, or Federal agencies. A copy of any requirements incorporated by reference shall be kept at the construction site.

15. Public Access

The SWPPP shall be provided, upon request, to the RWQCB. The SWPPP is considered a report that shall be available to the public by the RWQCB under section 308(b) of the Clean Water Act.

16. Preparer Certification

The SWPPP and each amendment shall be signed by the landowner (discharger) or his representative and include the date of initial preparation and the date of each amendment.

SECTION B: MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. Required Changes

The RWQCB may require the discharger to conduct additional site inspections, to submit reports and certifications, or perform sampling and analysis.

2. Implementation

a. The requirements of this Section shall be implemented at the time of commencement of construction activity (see also Section A. 2. Implementation Schedule). The discharger is responsible for implementing these requirements until construction activity is complete and the site is stabilized.

b. For ongoing construction activity involving a change in ownership of property covered by this General Permit, the new owner must complete a NOI and implement the requirements of this Section concurrent with the change of ownership. For changes of information, the owner must follow instructions in C. 7. Special Provisions for Construction Activity of the General Permit.

3. Site Inspections

Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity. The name(s) and contact number(s) of the assigned inspection personnel shall be listed in the SWPPP. Pre-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately. During extended storm events, inspections shall be required each 24-hour period. Best Management Practices (BMPs) shall be evaluated for adequacy and proper implementation and whether additional BMPs are required in accordance with the terms of the General Permit (see language in Section A. 11. Maintenance, Inspection, and Repair). Implementation of nonstorm water discharge BMPs shall be verified and their

effectiveness evaluated. One time discharges of non-storm water shall be inspected when such discharges occur.

4. Compliance Certification

Each discharger or qualified assigned personnel listed by name and contact number in the SWPPP must certify annually that construction activities are in compliance with the requirements of this General Permit and the SWPPP. This Certification shall be based upon the site inspections required in Item 3 of this Section. The certification must be completed by July 1 of each year.

5. Noncompliance Reporting

Dischargers who cannot certify compliance, in accordance with Item 4 of this Section and/or who have had other instances of noncompliance excluding exceedances of water quality standards as defined in section B. 3. Receiving Water Limitations Language, shall notify the appropriate RWQCB within 30 days. Corrective measures should be implemented immediately following discovery that water quality standards were exceeded. The notifications shall identify the noncompliance event, including an initial assessment of any impact caused by the event; describe the actions necessary to achieve compliance; and include a time schedule subject to the modifications by the RWQCB indicating when compliance will be achieved. Noncompliance notifications must be submitted within 30-calendar days of identification of noncompliance.

6. Monitoring Records

Records of all inspections, compliance certifications, and noncompliance reporting must be retained for a period of at least three years from the date generated. With the exception of noncompliance reporting, dischargers are not required to submit these records.

7. Monitoring Program for Sedimentation/Siltation

Dischargers of storm water associated with construction activity that directly enters a water body listed in Attachment 3 shall conduct a sampling and analysis program for the pollutants (sedimentation/siltation or turbidity) causing the impairment. The discharger shall monitor for the applicable parameter. If the water body is listed for sedimentation or siltation, samples should be analyzed for Settleable Solids (ml/l) and Total Suspended Solids (mg/l). Alternatively or in addition, samples may be analyzed for suspended sediment concentration according to ASTM D3977-97. If the water body is listed for turbidity, samples should be analyzed for turbidity (NTU). Discharges that flow through tributaries that are not listed in Attachment 3 or that flow into Municipal Separate Storm Sewer Systems (MS4) are not subject to these sampling and analysis requirements. The sampling and analysis parameters and procedures must be designed to determine whether the BMPs installed and maintained prevent discharges of sediment from contributing to impairment in receiving waters.

Samples shall be collected during the first two hours of discharge from rain events which result in a direct discharge to any water body listed in Attachment 3. Samples shall be collected during daylight hours (sunrise to sunset). Dischargers need not collect more than four (4) samples per month. All samples shall be taken in the receiving waters and shall be representative of the prevailing conditions of the water bodies. Samples shall be collected from safely accessible locations upstream of the construction site discharge and immediately downstream from the last point of discharge.

For laboratory analysis, all sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136. Field samples shall be collected and analyzed according to the specifications of the manufacturer of the sampling devices employed. Portable meters shall be calibrated according to manufacturer's specification. All field and/or laboratory analytical data shall be kept in the SWPPP document, which is to remain at the construction site at all times until a Notice of Termination has been submitted and approved.

8. Monitoring Program for Pollutants Not Visually Detectable in Storm Water

A sampling and analysis program shall be developed and conducted for pollutants which are not visually detectable in storm water discharges, which are or should be known to occur on the construction site, and which could cause or contribute to an exceedance of water quality objectives in the receiving water. Pollutants that should be considered for inclusion in this sampling and analysis program are those identified in Sections A.5.b. and A.5.c.

Construction materials and compounds that are not stored in water-tight containers under a water-tight roof or inside a building are examples of materials for which the discharger may have to implement sampling and analysis procedures. The goal of the sampling and analysis is to determine whether the BMPs employed and maintained on site are effective in preventing the potential pollutants from coming in contact with storm water and causing or contributing to an exceedance of water quality objectives in the receiving waters. Examples of construction sites that may require sampling and analysis include: sites that are known to have contaminants spilled or spread on the ground; sites where construction practices include the application of soil amendments, such as gypsum, which can increase the pH of the runoff; or sites having uncovered stockpiles of material exposed to storm water. Visual observations before, during, and after storm events may trigger the requirement to collect samples. Any breach, malfunction, leakage, or spill observed which could result in the discharge of pollutants to surface waters that *would* not be visually detectable in storm water shall trigger the collection of a sample of discharge. Samples shall be collected at all discharge locations which drain the areas identified by the visual observations and which can be safely accessed. For sites where sampling and analysis is required, personnel trained in water quality sampling procedures shall collect storm water samples. A sufficiently large sample of storm water that has not come in contact with the disturbed soil or the materials stored or used on-site

(uncontaminated sample) shall be collected for comparison with the discharge sample. Samples shall be collected during the first two hours of discharge from rain events that occur during daylight hours and which generate runoff.

The uncontaminated sample shall be compared to the samples of discharge using field analysis or through laboratory analysis. Analyses may include, but are not limited to, indicator parameters such as: pH, specific conductance, dissolved oxygen, conductivity, salinity, and TDS.

For laboratory analysis, all sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136. Field discharge samples shall be collected and analyzed according to the specifications of the manufacturer of the sampling devices employed. Portable meters shall be calibrated according to manufacturer's specification. All field and/or analytical data shall be kept in the SWPPP document, which is to remain at the construction site at all times until a *Notice of* Termination has been submitted and approved.

SECTION C: STANDARD PROVISIONS FOR CONSTRUCTION ACTIVITY

1. Duty to Comply

The discharger must comply with all of the conditions of this General Permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.

The discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the discharger for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not annul any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the dischargers so notified.

3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The discharger shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit, which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The discharger shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this General Permit and with the requirements of Storm Water Pollution Prevention Plans (SWPPP). Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a discharger when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The discharger shall furnish the RWQCB, State Water Resources Control Board, or USEPA, within a reasonable time, any requested information to determine compliance with this General Permit. The discharger shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The discharger shall allow the RWQCB, SWRCB, USEPA, and/or, in the case of construction sites which discharge through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer system receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the discharger's premises at reasonable times where a regulated construction activity is being conducted or where records must be kept under the conditions of this General Permit;

b. Access and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times the complete construction site, including any off-site staging areas or material storage areas, and the erosion/sediment controls; and

d. Sample or monitor at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notice of Intents (NOIs), Notice of Terminations (NOTs), SWPPPs, certifications, and reports prepared in accordance with this Order submitted to the SWRCB shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer, ranking elected official, or duly authorized representative. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of USEPA).

b. All SWPPPs, reports, certifications, or other information required by the General Permit and/or requested by the RWQCB, SWRCB, USEPA, or the local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP; or

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the construction activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization must be attached to the SWPPP prior to submittal of any reports, information, or certifications to be signed by the authorized representative.

10. Certification

Any person signing documents under Section C, Provision 9 above, shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Anticipated Noncompliance

The discharger will give advance notice to the RWQCB and local storm water management agency of any planned changes in the construction activity which may result in noncompliance with General Permit requirements.

12. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years or by both.

13. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the discharger from any responsibilities, liabilities, or penalties to which the discharger is or may be subject to under Section 311 of the CWA.

14. Severability

The provisions of this General Permit are severable; and, if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

15. Reopener Clause

This General Permit may be modified, revoked and reissued, or terminated for cause due to promulgation of amended regulations, receipt of USEPA guidance concerning regulated activities, judicial decision, or in accordance with 40 Code of Federal Regulations (CFR) 122.62, 122.63, 122.64, and 124.5.

16. Penalties for Violations of Permit Conditions

a. Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any such section in a permit issued under Section 402. Any person who violates any permit condition of this General Permit is subject to a civil penalty not to exceed $27,500 per calendar day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties which in some cases are greater than those under the CWA.

17. Availability

A copy of this General Permit shall be maintained at the construction site during construction activity and be available to operating personnel.

18. Transfers

This General Permit is not transferable. A new owner of an ongoing construction activity must submit a NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit. An owner who sells property covered

by this General Permit shall inform the new owner of the duty to file a NOI and shall provide the new owner with a copy of this General Permit.

19. Continuation of Expired Permit

This General Permit continues in force and effect until a new General Permit is issued or the SWRCB rescinds this General Permit. Only those dischargers authorized to discharge under the expiring General Permit are covered by the continued General Permit.

Los Angeles Regional Water Quality Control Board

Resolution No. 98-08

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

Resolution No. 98-08

APPROVING BEST MANAGEMENT PRACTICES
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF MANAGEMENT PROGRAMS
IN
LOS ANGELES COUNTY

(NPDES NO. CAS614001)

WHEREAS, THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION FINDS:

1. Pursuant to the requirements of Order No. 96-054, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles (Permit), the Principal Permittee, in consultation with Permittees, has developed a model program for Industrial/Commercial Education. This program must include Best Management Practices (BMPs) to control/minimize the discharge of pollutants to receiving waters.

2. The Permit required the City of Los Angeles to conduct a study on pollutants entering storm drains from street and sidewalk washing operation by: (i) characterizing municipal street washing and sidewalk washing; (ii) assessing the impacts of such activities; and (iii) recommending appropriate BMPs to control any adverse impact. Accordingly, the City of Los Angeles has completed and submitted a final report entitled *A Study of Pollutants Entering Storm Drains from Street and Sidewalk Washing Operations in Los Angeles, California* that includes recommended BMPs for said activities.

3. The Permit also requires that the BMPs be approved by the Regional Board before the Permittees incorporate them into their regulatory programs.

4. The BMPs have been evaluated and are considered appropriate for the respective program/activity.

THEREFORE BE IT RESOLVED THAT:

1. The Best Management Practices contained in the following Attachments are approved:

   a. Attachment 1 -- Industrial/Commercial Program (Site Visit); and

   b. Attachment 2 -- Sidewalk and Street Washing.

2. Permittees consider these BMPs in their regulatory programs in accordance with the provisions of Order No. 96-054.

I, Dennis Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on April 13, 1998.

Dennis A. Dickerson

DENNIS A. DICKERSON
Executive Officer

BMP List Index

Table 1 is an index to all BMP lists and their SIC codes.

Table 1
Index of BMP Lists for Industrial/Commercial Facilities

Attachment 1

Page Section	*SIC Codes (exceptions in parentheses)*	*Industry Types*
A	24 (2434)	Timber Products Facilities
B	26	Paper and Allied Products Mfg Facilities
C	28 (283)	Chemicals and Allied Products Mfg Facilities
D	29	Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers
E	32	Glass, Clay, Concrete, and Gypsum Product Facilities
F	33	Primary Metals Facilities
G	10	Metal Mining Facilities
H	12	Coal Mines and Coal Mining-Related Facilities
I	13	Oil & Gas Extraction Facilities
J	14	Mineral Mining and Processing Facilities
K	4953	Hazardous Waste Treatment, Storage or Disposal Facilities
L	4953	Landfills and Land Application Sites
M	5015	Automobile Salvage Yards
N	5093	Scrap & Waste Recycling
O	4911	Steam Electric Power Generating Facilities
P	40 41 42 43 5171	Vehicle and Equipment Maintenance Areas at Land Transportation Facilities
Q	44	Vehicle and Equipment Maintenance Areas at Water Transportation Facilities
R	373	Ship & Boat Building or Repairing Yards
S	45	Vehicle and Equipment Maintenance and Deicing Areas at Air Transportation Facilities
T	4952	Treatment Works

Page Section Refers to the Best Management Practices List for the Industrial/Commercial Education Site Visit Program (January 5, 1998) 4/13/98

Table 1
Index of BMP Lists for Industrial/Commercial Facilities

Attachment 1		
Page Section	*SIC Codes (exceptions in parentheses)*	*Industry Types*
U	20 21	Food and Kindred Products Facilities
V	22 23	Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities
W	2434 25	Wood and Metal Furniture and Fixture Manufacturing Facilities
X	27	Printing and Publishing Facilities
Y	30 39	Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Z	31	Leather Tanning and Finishing Facilities
AA	34	Fabricated Metal Products Industry
AB	35 (357) 37 (373)	Facilities that Manufacture Transportation Equip., Industrial, or Commercial Machinery
AC	357 38 36	Manufacturers of Electronic and Electrical Equipment
Attachment 2		
Page Section	*SIC Codes (exceptions in parentheses)*	*Commercial Types*
AD	5013 5014 7532-7534 7536-7539	Vehicle Service Facilities
AE	5541	Gasoline Stations
AF	5812	Restaurants

Page Section Refers to the Best Management Practices List for the Industrial/Commercial Education Site Visit Program (January 5, 1998)

ATTACHMENT 2

Recommended Best Management Practices
for
Municipal Sidewalk and Street Washing Operations

TYPE OF DISCHARGE	RECOMMENDED BMPS
SIDEWALK WASH WATER	1. Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and 2. Use high-pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallon per square feet of sidewalk area.
STREET/ALLEY WASH WATER FROM AREAS WITH UNSANITARY CONDITIONS*	Collect and divert wash water to the sanitary sewer - publicly-owned treatment works (POTW). Note: POTW approval may be needed.

* This BMP is only to be applied in areas impacted by transient populations. Each Permittee is required to apply this BMP in areas where the congregation of transient populations can reasonably be expected to result in a significant threat to water quality.

4/13/98
p:\lactrm\bmpwsh98.doc

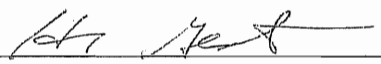
8. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the test claim submission. *

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Howard Gest, Esq.
Print or Type Name of Authorized Local Agency or School District Official

Attorney For Claimant
Print or Type Title


Signature of Authorized Local Agency or School District Official

November 27, 2007
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

RECEIVED
JAN 22 2008
COMMISSION ON
STATE MANDATES

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624 SOUTH GRAND AVENUE
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WRITER'S DIRECT NUMBER
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WRITER'S E-MAIL ADDRESS
hgest@burhenngest.com

January 18, 2008

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Test Claim No. 03-TC-21*

Dear Ms. Higashi:

I am in receipt of a letter dated December 28, 2007 from Elizabeth Miller Jennings, counsel for the State Water Resources Control Board. In this letter, Ms. Jennings inquires as to whether the claimants in the above-referenced test claim or related test claims will be limiting the issues raised in those claims.

Preliminarily, Ms. Jennings states that this office now represents the claimants in Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21. As this office has indicated in previous correspondence with the Commission, with respect to Test Claim No. 03-TC-20, this office represents the Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Vernon, and Westlake Village. With respect to Test Claim No. 03-TC-21, this office represents the Cities of Bellflower, Covina, Downey, Monterey Park and Signal Hill. With respect to Test Claim Nos. 03-TC-04 and 03-TC-19 filed by the County of Los Angeles, Leonard Kaye of the County continues to represent the County before the Commission, although this office has represented the County in the litigation and certain other matters regarding these claims and may do so in the future.

In her December 28, 2007 letter, Ms. Jennings inquires as to whether any of the claimants intend to limit the issues presented in their test claims. In order to further the orderly consideration of these test claims, please be advised that, with respect to Test Claim No. 03-TC-20, the test claim submitted by this office on or about November 28, 2007 sets forth fully the claims asserted, and those claimants are not limiting their claims in any fashion. With respect to Test Claim

No. 03-TC-21, the cities we represent are pursuing their test claims with respect to the mandates imposed by Parts 4.C, 4.E and 4.F of Los Angeles Regional Water Quality Control Board Order No. 01-182 as set forth on the test claim form, most specifically Parts 4.C.2.a; 4.C.2.b; 4.C.3; 4.E.2.b; 4.E.3; 4.F.5(a)-(c), and 4.F.6(a)-(b).

The cities we represent do not currently intend to pursue a claim that Parts 1 and 2 of Los Angeles Regional Water Quality Control Board Order No. 01-182 have currently created a reimbursable state mandate in that such claim is not currently ripe. This limitation is without prejudice and the cities reserve the right to contend that enforcement of Parts 1 and 2 do create a reimbursable state mandated program at such time when Parts 1 and 2 cause the cities to incur costs that meet the criteria for reimbursement.

We hope that this is of assistance to the Commission and the State Water Resources Control Board. If you have any question, please feel free to contact the undersigned.

Very truly yours,

Howard Gest

HDG:da

cc: Elizabeth Miller Jennings, Esq.
Michael J. Levy, Esq.
Dorothy Rice
Tracy Egoscue, Esq.
Carla Castaneda
Judith Fries, Esq.
Leonard Kaye
Richard Montevideo, Esq.

RECEIVED
JUL 30 2008
COMMISSION ON STATE MANDATES

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FACSIMILE (213) 688-7716

WRITER'S DIRECT NUMBER
(213) 629-8787

WRITER'S E-MAIL ADDRESS
hgest@burhenngest.com

July 29, 2008

VIA FEDERAL EXPRESS

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Test Claim Nos. 03-TC-20 and 03-TC-21*

Dear Ms. Higashi:

Pursuant to your request for information dated May 22, 2008, enclosed please find the following:

1. Written authorizations from the claimants in Test Claim Nos. 03-TC-20 and 03-TC-21, authorizing this office to represent the claimants in these proceedings.

2. An original and seven copies of an amended Test Claim form, using the current test claim form, for Test Claim No. 03-TC-21. Pursuant to your request, we have completed Sections 1 through 4, 6 and 8. Also, for your convenience, we have also included Sections 5 and 7. Sections 5 and 7 contain the same written narrative and documentation submitted last November, 2007, by the test claimants in 03-TC-20.

Please contact the undersigned if there are any questions with respect to this submittal. Thank you for your attention in this matter.

Very truly yours,

Howard Gest

HDG:da
Enclosures
cc: Richard Montevideo, Esq.
Mailing List (w/enclosures)

HOWARD GEST (SBN076514)
DAVID W. BURHENN (SBN 105482)
BURHENN & GEST LLP
624 South Grand Avenue, Suite 2200
Los Angeles, California 90017
Telephone: (213) 688-7715
Facsimile: (213) 688-7716

Attorneys for Test Claimants
Cities of Artesia, Azusa, Beverly Hills, Carson,
Commerce, Norwalk, Rancho Palos Verdes,
Westlake Village and Vernon

BEFORE THE COMMISSION ON STATE MANDATES

IN RE TEST CLAIMS OF THE CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, WESTLAKE VILLAGE, AND VERNON *IN RE* TEST CLAIMS OF THE CITIES OF BELLFLOWER, COVINA, DOWNEY, MONTEREY PARK AND SIGNAL HILL	Test Claim No. 03-TC-20 Test Claim No. 03-TC-21 PROOF OF SERVICE

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On July 29, 2008 I served the foregoing document, described as

AUTHORIZATIONS (Test Claim Nos. 03-TC-20 and 03-TC-21); AMENDED TEST CLAIM FORM (Test Claim No. 03-TC-21)

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☐ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☒ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 29, 2008 at Los Angeles, California.

Danette Armstead

Commission on State Mandates

Original List Date: 9/29/2003
Last Updated: 9/28/2007
List Print Date: 06/20/2008
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Mailing Information: Other

Mailing List

Related Matter(s)

03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

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Fax: (213) 576-6840

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Fax:

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Division of Audits
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Mr. Scott Nichols Albarez-Glasman & Clovin 13181 Crossroads Parkway North Suite 400 City of Industry, CA 91746	Tel: Fax:	(562) 699-5500 (562) 692-2244
Ms. Dorothy Rice State Water Resources Control Board P.O. Box 2815 Sacramento, CA 95812-2815	Tel: Fax:	(916) 341-5615 (916) 341-5621
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Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000	Tel: Fax:	(916) 485-8102 (916) 485-0111

Sacramento, CA 95841

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Fax: (916) 727-1734

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Division of Accounting & Reporting
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Ms. Elizabeth Miller Jennings
State Water Resources Control Board
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Tel: (916) 341-5161
Fax: (916) 341-5199

HOWARD GEST (SBN076514)
DAVID W. BURHENN (SBN 105482)
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Facsimile: (213) 688-7716

Attorneys for Test Claimants
Cities of Artesia, Azusa, Beverly Hills, Carson,
Commerce, Norwalk, Rancho Palos Verdes,
Vernon, and Westlake Village

BEFORE THE COMMISSION ON STATE MANDATES

IN RE TEST CLAIMS OF THE CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, VERNON, AND WESTLAKE VILLAGE	Test Claim No. 03-TC-20 WRITTEN AUTHORIZATIONS

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: July 25, 2008

CITY OF ARTESIA

By: Maria Madrid

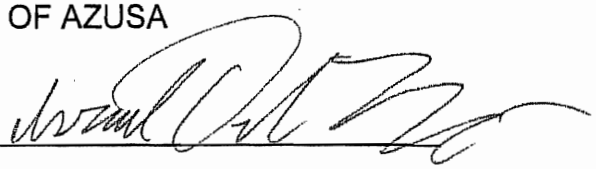
TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/14/08

CITY OF AZUSA

By: 

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7-17-08

CITY OF BEVERLY HILLS

By: _____

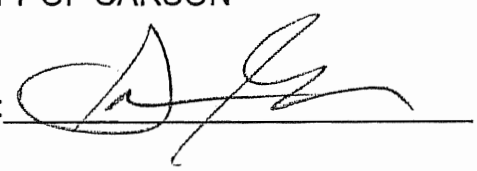
TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/1/08

CITY OF CARSON

By: 

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 07.25.2005

CITY OF COMMERCE

By: _____

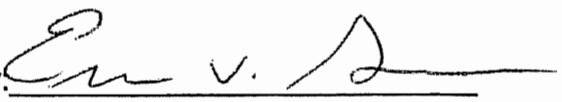
TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/3/08

CITY OF NORWALK

By: 

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/1/2008

CITY OF RANCHO PALOS VERDES

By: Carolyn Dehn

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/1/08

CITY OF VERNON

By: _____

City Attorney

TEST CLAIM NO. 03-TC-20

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: July 1, 2008

CITY OF WESTLAKE VILLAGE

By: Raymond B Boyle

HOWARD GEST (SBN076514)
DAVID W. BURHENN (SBN 105482)
BURHENN & GEST LLP
624 South Grand Avenue, Suite 2200
Los Angeles, California 90017
Telephone: (213) 688-7715
Facsimile: (213) 688-7716

Attorneys for Test Claimants
Cities of Bellflower, Covina, Downey,
Monterey Park and Signal Hill

BEFORE THE COMMISSION ON STATE MANDATES

IN RE TEST CLAIMS OF THE CITIES OF BELLFLOWER, COVINA, DOWNEY, MONTEREY PARK AND SIGNAL HILL	Test Claim No. 03-TC-21 WRITTEN AUTHORIZATIONS

TEST CLAIM NO. 03-TC-21

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: June 30, 2008

CITY OF BELLFLOWER

By: _____

Michael J. Egan, City Manager

TEST CLAIM NO. 03-TC-21

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/1/08

CITY OF COVINA

By:

TEST CLAIM NO. 03-TC-21

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7-25-2008

CITY OF DOWNEY

By: _____

DESI ALVAREZ

DEPUTY CITY MANAGER

TEST CLAIM NO. 03-TC-21

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7/29/08

CITY OF MONTEREY PARK

By: June Gotsis

TEST CLAIM NO. 03-TC-21

AUTHORIZATION

The undersigned claimant hereby designates Howard Gest, Burhenn & Gest LLP, to act on the claimant's behalf with respect to this test claim.

Date: 7.2.08

CITY OF SIGNAL HILL

By:

1. TEST CLAIM TITLE

Waste Discharge Requirements; Calif. Regional Water Quality Control Bd. Ord. No. 01-182 (12/13/01)

2. CLAIMANT INFORMATION

See Attached
Name of Local Agency or School District

Howard Gest, Esq.
Claimant Contact

Burhenn & Gest LLP
Title

624 S. Grand Ave., Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

213.688.7715
Telephone Number

213.688.7716
Fax Number

hgest@burhenngest.com
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Howard Gest, Esq.
Claimant Representative Name

Attorney For Claimants
Title

Burhenn & Gest LLP
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COMMISSION ON STATE MANDATES

Test Claim #: 03TC21

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Los Angeles Regional Quality Control Board Order No. 01-182, Parts 4.C.2.a; 4.C.2.b; 4.E; and 4.F.5.c.3 (December 13, 2001)

☑ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 19.
6. Declarations: pages 20 to 25.
7. Documentation: pages 26 to end.

(Revised 1/2005)

INSERT
2. CLAIMANT INFORMATION

NAME OF CLAIMANTS

City of Bellflower
City of Covina
City of Downey
City of Monterey Park
City of Signal Hill

Section 5

Written Narrative

Section 5: WRITTEN NARRATIVE IN SUPPORT OF TEST CLAIM OF THE CITIES OF BELLFLOWER, COVINA, DOWNEY, MONTEREY PARK AND SIGNAL HILL REGARDING MANDATES IMPOSED UNDER AN EXECUTIVE ORDER OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ORDER NUMBER 01-182

This written narrative is submitted on behalf of the Cities of Bellflower, Covina, Downey, Monterey Park and Signal Hill (hereinafter, "Cities") regarding the following mandates contained in California Regional Water Quality Control Board, Los Angeles Region (hereinafter, "RWQCB") Order Number 01-182 ("Order"):

5(A) DESCRIPTION OF NEW ACTIVITIES AND COSTS

1. The New Mandates

The Cities seek a subvention of funds for the following state mandates contained in the Order:

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Resources Control Board ("State Water Board") permits], page 31;

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], pages 42-45;

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], pages 48-49.

2. Description of Mandates

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], Order, pages 28-31

Part 4.C.2.a of the Order provides, in relevant part, as follows:

> Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

(a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented *in compliance with State law*, County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the

SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, *Regional Board Resolution 98-08*, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;

- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automotive shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensure that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

(Emphasis added.)

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Board permits], Order, page 31

Part 4.C.2.b of the Order provides, in relevant part, as follows:

> Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.
> . . .
>
> (b) Phase I Facilities
>
> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected each Permittee shall conduct compliance inspections as specified below.
>
> Frequency of Inspection
>
> Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

> Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provide that the Permittee inspects at least 20% of the facilities in Tier 2 each year.
>
> Level of Inspection: Each Permittee shall confirm that each operator:
>
> - *has a current Waste Discharge Identification (WDID) number* for facilities discharging storm water associated with industrial activity; and that *a Storm Water Pollution Prevention Plan is available on-site*; and
> - is effectively implementing BMPs in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP.

(Emphasis added.)

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], Order, pages 42-45

Part 4.E.2.b of the Order provides, in relevant part, as follows:

> 2. For construction sites one acre or greater, each Permittee shall comply with all conditions in section E.1 above and shall:
>
> . . .
>
> (b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their

local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Part 4.E.3. of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1 and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, *proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer.* A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require *proof of an NOI and a copy of the SWPPP at any time a transfer of ownership* takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

(Emphasis added.)

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], Order, pages 48-49.

Part 4.F.5.c.3 of the Order provides, in relevant part, as follows:

5. Storm Drain Operation and Management

. . .

(c) Permittees not subject to a trash TMDL shall:

. . .

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

3. The inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships are new programs or higher levels of service mandated by the State

a. The State has had responsibility for regulation of discharges from restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969

Part 4.C.2.a of the Order requires the Cities to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. The purpose of the inspection is to assure that these facilities are implementing programs, known as Best Management Practices ("BMPs"), to prevent the discharge of waste into locations where it will be picked up by stormwater and carried into the rivers and other waters of the state.

Since at least 1969, State agencies have had the responsibility to prevent or regulate the discharge of waste that could be carried into the rivers and other waters of the state. In that year the Legislature adopted the Porter-Cologne Water Quality Act, Water Code §§ 13000 et seq. Under the Porter-Cologne Act, the Legislature imposed on the State Water Board and the regional water quality control boards ("regional boards") responsibility for the coordination and control of water quality. Water Code § 13001.

This responsibility includes the regulation of discharges from any entity that could affect the quality of the water of the state, including inspection of those facilities. Under the Act, any person who discharges "waste" or proposes to discharge "waste" that could affect the quality of the "waters of the state," other than into a community sewer system, must file a report of the discharge with the regional board that has the authority over that discharge. Water Code §§ 13260 and 13263. "Waste" and "waters of the state" are defined broadly. "Waste" includes all waste substances associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operation. Water Code § 13050(d). "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state. Water Code § 13050(e). Upon receipt of the report of discharge, the regional board, after a hearing, issues a permit, known as waste discharge requirements, authorizing or conditioning (including disallowing) the discharge. Water Code § 13263. The regional board is given the authority to require any person to furnish technical and monitoring reports describing any discharge or proposed discharge of waste, and can inspect the facility of any such person to ascertain whether the purpose of the Act are being met. Water Code § 13267(b) and (c). The State Water Board is given this same authority if it will not duplicate the efforts of the Regional Board. *Id.*, subd. (f).

The Porter-Cologne Act contains no exceptions for discharges from restaurants, automotive service facilities, retail gas station, or automobile dealerships. Accordingly, the State, through the State Water Board and the regional water quality control boards, has had the responsibility since 1969 for regulating the discharge or proposed discharge of any waste from these facilities.

b. The purpose of the inspection obligations imposed by the Order is to prevent or minimize the discharge of waste into waters of the state

As set forth above, the purpose of the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships is to assure that these facilities are implementing BMPs that will prevent the discharge of waste into locations where it could be carried into rivers and other waters of the state. The restaurant inspections are to assure that oil, grease, trash or waste are not entering areas exposed to stormwater, all to prevent these materials from being picked up by stormwater and then being discharged into waters of the state. The automotive service facility inspections are to assure that materials at these facilities do not come into contact with stormwater or other runoff that would carry these materials into waters of the state. The retail gas outlet and automotive dealership inspections likewise are to assure that fuel, debris and waste does not enter storm drain and catch basins and then enter waters of the state.

These inspections are all tasks for which the State has been responsible since at least 1969. These are all obligations of the State and regional boards under the Porter-Cologne Act since 1969.

c. The Order requires the Cities to conduct these inspections to assure compliance with State law

The Order explicitly requires the Cities to conduct these inspections to assure compliance with State law, including a resolution issued by a state agency, i.e., the RWQCB. The Order specifically provides that inspections of restaurants are to be performed in order to assure that BMPs "are being effectively implemented *in compliance with state law,* County and municipal ordinances, *Regional Board Resolution No. 98-08,* and the SQMP." Order, Part 4.C.2.a(1) (emphasis added). The inspection of automotive service facilities, retail gasoline outlets and automobile dealerships similarly are to confirm that BMPs are being "effectively implemented . . . in compliance with *Regional Board Resolution No. 98-08.* Order, Parts 4.C.2.a(2) and (3) (emphasis added). (A copy of Resolution No. 98-08 is included in Section 7.)

d. These inspection obligations are new programs or higher levels of service.

The obligation to inspect restaurants, automotive service facilities, retail gas outlets and automotive dealerships is a new program or a higher level of service. A "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. These inspection obligations are such a program; inspections for the purpose of policing

compliance with state law are a uniquely governmental function and are uniquely imposed on the municipalities that are permittees under the Order.[1]

These inspection obligations are also new. A program is "new" if the local governmental entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. Here, the Order constitutes both waste discharge requirements issued by the RWQCB and a NPDES municipal stormwater permit issued under the federal Clean Water Act. This is the third such order issued to the Cities. The RWQCB previously issued orders to the Cities in 1991 and 1996. Neither the 1991 nor the 1996 order imposed these inspection obligations. The inspection obligations were imposed by the RWQCB for the first time in the Order issued in 2001.

e. The inspections are not required by the federal Clean Water Act

The federal Clean Water Act imposes certain obligations on the Cities. Under the Clean Water Act, the Cities are required to (i) prohibit non-stormwater discharges into the storm sewers, and (2) reduce the discharge of pollutants in stormwater to the maximum extent practicable. 33 U.S.C. §1342(p). As noted above, the Order itself constitutes both waste discharge requirements and NPDES permit issued under the federal Clean Water Act.

The federal Clean Water Act does not require Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships. The federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are solely municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). The federal regulations do not require inspections of restaurants, automotive service facilities, retail gas stations, or automotive dealerships.

Indeed, the 1991 and 1996 orders issued by the RWQCB to these Cities did not contain these inspection obligations. If the federal Clean Water Act had required Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships, the RWQCB could not have issued the prior orders without including these

[1] The inspections could also be considered a higher level of service. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in an increase in the actual level or quality of governmental services provided. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

inspections. The RWQCB, however, did issue the prior orders without requiring these inspections.[2]

It is possible that the State Water Board or the RWQCB may argue that, because the Order also constituted a federal NPDES permit, the inspections are federally mandated. This argument would lack merit. An NPDES permit can contain both federal and non-federal requirements. *See City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618, 628. Where state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *See Long Beach Unified School District v State of California* (1990) 225 Cal.App.3d 155, 172-173.

Moreover, a "new program or higher level of service" imposed by the State upon a municipality as a result of a federal law or federal program is not necessarily a "federal mandate." In order to be a federal mandate, the obligation must be imposed upon the municipality by federal law itself. The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has a "true choice" in the matter of implementation, *i.e.*, whether the state freely chose to impose that program on local municipalities as opposed to performing the obligation itself. *See Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

Here, the inspections are not required by federal statute or regulations; they exceed the requirements of the federal Clean Water Act. Here, the State has had the obligation to regulate restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969. This included the right to inspect such facilities to prevent activities that would result in the discharge of waste that could affect the quality of the waters of the state. Water Code § 13267(c). In 2001, the RWQCB freely chose to shift those inspection obligations to the Cities. Nothing under the federal Clean Water Act required the RWQCB to do so; nothing prevented the RWQCB from continuing to perform these inspections itself.

4. The inspections of industrial facilities that hold State Water Board stormwater permits for compliance with those permits are new programs or higher level of service mandated by the State

a. The Order imposes new inspection obligations that were required to be performed by the State

Part 4.c.2.b requires the cities to inspect industrial facilities to determine those facilities' compliance with the State's program for preventing waste from being discharged from those facilities, including permits issued by the State Water Board. As

[2] Because the current federal regulations were not in effect at the time of the issuance of 1991 order, it could be argued that the 1991 order was issued under a prior set of regulations. The current regulations however, were in existence at the time the 1996 order was issued.

with the inspection of restaurants, gas stations and the other facilities, the requirement to inspect industrial is also a new program, one formerly performed by the State itself.

The Clean Water Act requires certain industrial facilities to have permits for stormwater discharges associated with their industrial activity. 33 U.S.C. § 1342(p)(3); 40 C.F.R. § 122.26(c). These industrial stormwater permits are issued either by the State Water Board or the regional boards. In California, the State Water Board issues a general permit to which industrial facilities can subscribe. Alternatively, an industrial discharger can obtain its own permit from a regional water quality control board. The Order refers to these industrial facilities as "Phase I Facilities." Order, pp. 31, 62.

Under the Porter-Cologne Water Quality Act, the State Water Board and the regional boards have both the authority and the obligation to issue these permits to "Phase I Facilities." Water Code § 13377. The State Water Board has issued these industrial stormwater permits since 1991. (See State Water Board Order No. 91-013-DWQ.) The most current general permit was issued in 1997. See State Water Resources Control Board Order No. 97-03-WQ, a copy of which is included in Section 7.

Significantly, the Legislature has authorized the State Water Board and regional boards to charge these industrial dischargers a fee which is deposited in the State's Waste Discharge Permit Fund and separately accounted for. Water Code § 13260(d)(2)provides in pertinent part:

> (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created.
>
> (B) Notwithstanding subparagraph (A) the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the National Pollutant Discharge Elimination System (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

The Legislature has then directed that a portion of this fee should be spent specifically on inspection of these industrial facilities. "Not less than 50 percent in the Waste Discharge Permit Fund that is separately accounted for . . . is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out the stormwater programs in the region." Water Code § 13260(d)(2)(B)(ii). "Each regional board . . . shall spend not less than 50 percent of that money *solely on stormwater inspection and regulatory compliance issues* associated with industrial and construction stormwater programs." *Id.*, subd.(d)(2)(B)(iii) (emphasis added).

Like the inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships, the State Water Board and regional boards have had the

authority under the Porter-Cologne Act to regulate these discharges from "Phase I" facilities since 1969, including the authority to inspect these facilities. Water Code §§ 13260, 13263, 13267. The obligation to inspect these "Phase I" industrial facilities that hold the State Board issued stormwater permits has rested with the regional boards since 1991. The State Water Board, in adopting the general industrial permit it issues to these Phase I facilities, stated that "following adoption of this General Permit, *the Regional Water Boards shall enforce its provisions.*" Order No. 97-03-DWQ, Finding 13 (emphasis added).

In 2001, the RWQCB imposed this obligation on the Cities. There is no question that the RWQCB imposed this inspection requirement to assure Phase I facilities' compliance with state law. The inspection required to be performed by the cities is a "compliance inspection." Order, Part 4.2.b. The inspection shall include a determination as to whether the industrial discharger has a waste discharge identification number and a stormwater pollution prevention plan. The waste discharge identification number is a number assigned by the State in conjunction with its permit program. The stormwater pollution prevention plan is a requirement of the state-issued general permit. The inspection is also for the purpose of determining whether the industrial facility is implementing BMPs in compliance with Regional Board Resolution No. 98-08, a resolution of the RWQCB itself.

Accordingly, the inspections of Phase I facilities is a new program or higher level of service imposed on the cities:

(1) The State Board and the regional boards have had authority to regulate and inspect these facilities since 1969. Water Code §§ 13260, 13263, 13267.

(2) The inspection is to determine compliance with the general industrial stormwater permit issued by the State Board. The State Board has specifically provided that the regional board shall enforce the provisions of this permit. State Water Board Order No. 97-03-DWQ, Finding 13.

(3) The State Board and the regional board charge these industrial facilities a fee for this program. Water Code § 13260(d)(2).

(4) The Water Board and the regional boards do not share any of these fees with the cities.

(5) The inspections are compliance inspections to determine compliance with the State Water Board permit, and Regional Board Resolution No. 98-08.

(6) The inspection obligation is new. The RWQCB imposed this obligation on the Cities in 2001. Prior orders did not impose this obligation on the Cities.

b. The obligation to inspect industrial facilities with State-issued stormwater permits is not contained in the federal Clean Water Act

As discussed above, the federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). These regulations do not require inspections of industrial facilities with state-issued stormwater permits.

5. The inspection of construction sites that hold State Board permits for compliance with those permits is a new program mandated by the state

Under the Clean Water Act, the definition of industrial activities includes construction. See 40 C.F.R. § 122.26(b)(14)(x). In 2001, construction sites where activity resulted in the disturbance of greater than five acres of total land area were required to obtain stormwater permits. In 2003 this requirement was expanded to sites where the activities resulted in the disturbance of greater than one acre.

As with the industrial facilities, the State Water Board and the regional boards are charged with issuing these permits. Water Code § 13377. The State Water Board has issued a general construction stormwater permit since 1992. See State Water Resources Control Board Order No. 92-08-DWQ. The most current general construction stormwater permit was issued in 1999. See State Water Resources Control Board Order No. 99-08-DWQ. Like industrial facilities, the State charges a fee for these permits. Like industrial facilities, a portion of that fee is to go to regional boards to be spent "solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." Water Code § 13260(d)(2)(B)(iii).

Like general industrial stormwater permit, the general construction stormwater permit issued by the State Water Board imposes the inspection obligation on the regional boards. State Board Order No. 99-08-DWQ specifically provides that "[f]ollowing adoption of this General Permit, the RWQCBs shall enforce the provisions herein . . . ." State Board Order No. 99-08-DWQ, Finding 11. Part D.1 of that Order further specifically provided that "RWQCBs shall . . . implement the provision of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPs, reviewing SWPPPs, reviewing monitoring reports, conducting *compliance inspections*, and taking enforcement actions." Thus, the specific

responsibility for inspection of construction sites was allocated by the State Water Board to the regional boards, including the RWQCB.

The same analysis that applies the obligation to inspect industrial facilities applies to the obligation to inspect construction sites. Like inspection of the Phase I facilities in 2001, the RWQCB simply shifted this obligation from itself to the cities. The obligation to inspect these construction sites for compliance with the State Water Board's permit is a new program or higher level of service mandated on the Cities:

> (1) The State Water Board and the regional boards have had the authority and obligation to regulate these discharges since 1969. Water Code §§ 13260, 13263 and 13267.
>
> (2) The State Water Resources Board has issued permits to these facilities since 1992. See State Board Order No. 92-08-DWQ.
>
> (3) The State Board orders adopting the general permit imposed the obligation to inspect construction sites on the regional boards. See State Board Order No. 99-08-DWQ, part D.1.
>
> (4) The State Board and the regional boards charge a fee to the owners or developers of these construction sites. Water Code § 13260(d)(2). The Water Boards and the regional boards do not share any of these fees with the Cities.
>
> (5) The inspections are compliance inspections to determine compliance with the State Water Board program and permit.
>
> (6) The obligation is new. The RWQCB imposed the obligation on the Cities in 2001. Prior to 2001, the Cities did not have this obligation.

6. The installation and maintenance of trash receptacles at transit stops are new programs or higher levels of service mandated upon the Cities

Part 4.F.5.c.3. of the Order requires the cities to place trash receptacles at all transit stops within their jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary. This requirement also constitutes a new program or higher level of service mandated upon the Cities.

As set forth above, a "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. A program is "new" if the local government entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003)

110 Cal.App.4th 1176, 1189. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles v. State of California*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in increase in the actual level or quality of governmental services. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

The obligation to install trash receptacles at all transit stops is a new program or higher level of service. The collection of trash is a program that carries out a governmental function of providing services to the public. The Order directed the cities how and where to collect trash. It resulted in a new program or higher level of service along with a concomitant increase in costs.

Nothing in the federal Clean Water Act requires cities to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation. Indeed, this obligation is not found in other stormwater permits issued to the cities throughout the state. The fact that it does not exist in other stormwater permits demonstrates that it is not a federal requirement.

The Order mandated that the Cities install and maintain trash receptacles at all transit stops. This is a new program or higher level or service mandated upon the Cities.

7. The State Funding Disclaimers Under Government Code § 17556 Do Not Apply

The seven disclaimers specified in Government Code § 17556 do not apply to the instant test claim, as shown below.

Government Code § 17556(a): "The claim is submitted by a local agency . . . which requested legislative authority for that local agency . . . to implement the Program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority." This disclaimer is not applicable because the Cities did not request legislative authority for the Order.

Government Code § 17556(b): "The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts." This disclaimer is not applicable because the Order did not affirm what had been declared existing law or regulation by action of the courts.

Government Code § 17556(c): The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." This disclaimer is not applicable because no federal law or regulation is implemented in the Order, and the Order exceeds that mandated by federal law, as discussed above.

Government Code § 17556(d): "The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." This disclaimer is not applicable because the Cities do not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

Government Code § 17556(e): "The statute or executive order provides for offsetting savings to local agencies . . . which result in no net costs to the local agencies . . . , or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate." This disclaimer is not applicable as no offsetting savings are provided in the Order and no revenue to fund the implementation of the Order was provided.

Government Code § 17556(f): "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election." This disclaimer is not applicable as the Order does not impose duties imposed by a statewide ballot measure.

Government Code § 17556(g): "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." This disclaimer is not applicable as the Order did not create or eliminate a crime or infraction or change the penalty for a crime or infraction.

B. DESCRIPTION OF EXISTING ACTIVITIES AND COSTS THAT ARE MODIFED BY THE MANDATE

Not Applicable. The only possible exception is if the installation and maintenance of trash receptacles is viewed as a modification of the Cities' existing trash collection activities. See the discussion in Section 5(A) above.

C. INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE:

The actual increased costs incurred by the Cities during the current fiscal year exceeds $1,000.

D: ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The actual or estimated increased costs that will be incurred by the Cities during the next fiscal year will exceed $1,000.

E. STATEWIDE ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES OR SCHOOL DISTRICTS WILL INCUR TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The mandates in the Order, including those at issue in this test claim, apply to the County of Los Angeles, the Los Angeles Flood Control District, and 84 cities in the County of Los Angeles (except for the trash receptacle obligation, which does not apply to cities subject to a "Trash TMDL".) The increased costs that all the municipalities will incur to implement the mandates during the next fiscal year are not currently known, but will exceed $1,000. It is also not known the number of municipalities outside the County of Los Angeles that are subject to similar mandates.

F. IDENTIFICATION OF FUNDING SOURCES AVAILABLE FOR THIS PROGRAM:

(i) Dedicated state funds

There are no known dedicated state funds available to fund the inspection programs or placement of trash receptacles mandated by the Order.

(ii) Dedicated federal funds

There are no known dedicated federal funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iii) Other nonlocal agency funds

There are no known nonlocal agency funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iv) The local agency's general purpose funds

There are no general purpose funds available to fund the inspection programs or installation and maintenance of trash receptacles mandated by the Order without taking those funds from other programs.

(v) Fee authority to offset costs

The State collects fees for inspections but does not share those funds with the Cities. The State Water Board and the RWQCB have in fact received funds from permit fees associated with the General Industrial Permit and the General Construction Permit, fees that were specifically assessed to pay for the costs of implementing the stormwater

permit program. Water Code § 13260(d). The State receives an annual fee of $700 from every industrial facility, plus applicable surcharges (but subject to certain reductions) that is required to have a General Industrial Permit. 23 Cal. Code Reg. § 2200(b)(2)(A). For construction sites required to have a General Construction Permit, the annual fee is $200 plus $20 per acre, up to a maximum of $2,200. 23 Cal. Code Reg. § 2200(b)(3). The State shares none of these fees with the Cities.

G. IDENTIFICATION OF PRIOR MANDATE DETERMINATIONS MADE BY THE BOARD OF CONTROL OR THE COMMISSION ON STATE MANDATES THAT MAY BE RELATED TO THE ALLEGED MANDATE.

The Cities are not aware of any prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to these mandates.

Section 6

Declarations

SECTION 6. DECLARATIONS

DECLARATION OF HOWARD GEST

I, HOWARD GEST, hereby declare and state as follows:

1. I am an attorney admitted to practice before all of the courts of the State of California and am a partner in the firm of Burhenn & Gest LLP. Our firm represents the Cities of Bellflower, Covina, Downey, Monterey park and Signal Hill (collectively, "Cities") in the test claim proceeding before the Commission on State Mandates involving Order No. 01-182 (the "Order") issued by the California Regional Water Quality Control Board, Los Angeles Region. On information provided to me by the Cities, I have personal knowledge of the facts set forth in this Declaration and could, if called upon, testify competently thereto.

2. Through my representation of the Cities and other municipalities in Los Angeles County with respect to stormwater issues, including with respect to the requirements of the Order, I am familiar both with the requirements of the Order and the efforts required by the Cities to comply with those requirements.

3. The activities required of the Cities under the Order that the Cities claim constitute a reimbursable state-mandated program include (1) the inspection of restaurants, automotive service facilities and retail gasoline outlets and automobile dealerships, as required by Part 4.C.2.(a) of the Order; (2) the inspection of "Phase I facilities" as required by Part 4.C.2.(b) of the Order; (3) the inspection of constructions sites of one acre in size or greater, and the inspection of construction sites of five acres in size or greater, as required by Part 4.E of the Order; and (4) the placement of trash receptacles at all transit stops within each City's jurisdiction, as required by Part 4.F.5.(c)(3) of the Order.

4. Part 4.C.2.(a) of the Order provides as follows:

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subjections.

(a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional

Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automotive shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensure that only watertight waste receptacles are used and that lids are closed; and

- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

5. Part 4.C.2.(b) of the Order provides as follows:

(b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provide that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity; and that a Storm Water Pollution Prevention Plan is available on-site; and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

6. Part 4.E.2.(b) of the Order provides as follows:

2. For construction sites one acre or greater, each Permittee shall comply with all conditions in section E.1 above and shall:

(b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2

weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

7. Part 4.E.3. of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1 and E.2.

8. Part 4.F.5.(c)(3) of the Order provides as follows:

5. Storm Drain Operation and Management

(c) Permittees not subject to a trash TMDL shall:

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

9. I am informed and believe, and therefore state, that the costs to be incurred by each of the Cities, or some of them, to comply with the mandates identified in Paragraphs 3-8 hereof during the fiscal year will exceed one thousand dollars ($1,000).

10. I am informed and believe, and therefore state, that the costs to be incurred by each of the Cities, or some of them, to comply with the mandates identified in Paragraphs 3-8 hereof during the next fiscal year are presently unknown, but are estimated to exceed one thousand dollars ($1,000).

11. The Order names a total of 84 cities, the County of Los Angeles and the Los Angeles County Flood Control District as co-permittees. I am informed and believe, and therefore state, that the costs to be incurred collectively by these permittees or some of them to comply with the mandates identified in Paragraphs 3-8 hereof during the next fiscal year are presently unknown, but are estimated to exceed one thousand dollars ($1,000).

12. On information and belief, there are no dedicated state funds to pay for the costs of the mandates identified in Paragraphs 3-8 hereof.

13. On information and belief, there are no dedicated federal funds to pay for the costs of the mandates identified in Paragraphs 3-8 hereof.

14. On information and belief, there are no nonlocal agency funds available to pay for the cost of the mandates identified in Paragraphs 3-8 hereof.

15. On information and belief, the Cities do not have general purpose funds available to pay for the cost of the mandates identified in Paragraphs 3-8 hereof, unless those funds are taken from other programs.

16. On information and belief, the Cities do not have fee authority to levy fees to offset the costs of the mandates identified in Paragraphs 3-8 hereof.

17. Included in Section 7 is a copy of Order No. 01-182. Also included in Section 7 are copies downloaded from the State Water Resources Control Board website of State Water Resources Control Board Water Quality Order No. 97-03-DWQ, relating to discharges of stormwater associated with industrial activities excluding construction activity, State Water Resources Control Board Order No. 99-08-DWQ, relating to discharges of stormwater runoff associated with construction activity, and a copy, downloaded from the Los Angeles Regional Water Quality Control Board website, of Los Angeles Region Water Quality Control Board Order No. 98-08.

I declare under penalty of perjury that the foregoing is true and correct, based on my own knowledge or information and belief.

Executed this 16 day of July, 2008 at Los Angeles, California.

Howard Gest

Section 7

Documentation

Los Angeles Regional Water Quality Control Board

Order No. 01-182

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

COA 0028
001308

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
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WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. Existing Permit

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. Nature of Discharges and Sources of Pollutant

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of internal combustion engine

operation; nitrates; bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition; lead from fuels; copper from brake pad wear; zinc from tire wear; dioxins as products of combustion; and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment, of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions: (i) a focus on setting contaminant limits rather than programmatic evaluations, (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., *Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight*, Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Haile, R.W. et al. (1999); *Huntington Beach Closure Investigation Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight*, Rachel T. Noble *et al.* (2001); *Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001).

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants, providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water nor remove pollutants, and thus the natural purification characteristics are

lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Clayton. In: Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B. (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R. (1972), *Stream Channel Enlargement Due to Urbanization*, Water Resources Research, v. 8, p. 1530-1540; Booth, D. B. (1991), *Urbanization and the Natural Drainage System--Impacts, Solutions and Prognoses*, The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D. (1979), *Urbanization and Stream Quality Impairment*, Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E, *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979). Dubuque, Iowa: Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types: (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

Source Selection and Monitoring Report, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry: Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp. California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1998); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al*. editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, L.L. Tiefenthaler *et al*. Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil-Grit Separators in Suburban MD*, Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff from Impervious Surfaces in Four Urban Catchments of Different*

Landuse, Rahabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP), (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   - Public Information and Participation
   - Development Planning
   - Development Construction
   - Public Agency Activities
   - Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline monitoring requirement be incorprated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing*, Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 84 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).
   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an Interpretative Policy Memorandum on Reapplication Requirements for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 - 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p)) provides that MS4 permits must require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants. The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMP's costs would exceed any benefit to be derived (dated February 11, 1998).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38); for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000*, on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-06), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region; Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties,'* (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03).

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

- The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.
- The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

Malibu Creek and Rural Santa Monica Bay WMA
Ballona Creek and Urban Santa Monica Bay WMA
Los Angeles River WMA
San Gabriel River WMA
Dominguez Channel/Los Angeles Harbor WMA, and
Santa Clara River WMA

Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in *Defenders of Wildlife v. Browner* (9th Cir. 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999).

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways. (*Headwaters, Inc. vs. Talent Irrigation District*, 243 F.3d. 526 (9th Cir. 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. Implementation

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or
2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer.

a) Category A - Natural flow:

(1) Natural springs and rising ground water;

(2) Flows from riparian habitats or wetlands;

(3) Stream diversions, permitted by the State Board; and

(4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

b) Category B - Flows from emergency fire fighting activity.

c) Category C - Flows incidental to urban activities:

(1) Reclaimed and potable landscape irrigation runoff;

(2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

(3) Drains for foundations, footings, and crawl spaces;

(4) Air conditioning condensate;

(5) Dechlorinated/debrominated swimming pool discharges;

(6) Dewatering of lakes and decorative fountains;

(7) Non-commercial car washing by residents or by non-profit organizations; and

(8) Sidewalk rinsing.

The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

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BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;

2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;

3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;

4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;

5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;

6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;

7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and

8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;

2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;

3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

a) "No Dumping" Message

Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

b) Countywide Hotline

The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002 and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program. (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1

Watershed	*Target Pollutants for Outreach*
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. **Industrial/Commercial Facilities Control Program**

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004 and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections; and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

Inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee, in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff.

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industrial/ Commercial*, (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004 a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. **Development Construction Program**

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1, above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes); if compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:
A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:
- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:
For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

(1) Investigation of any complaints received;

(2) Upon notification, immediate response to overflows for containment; and

(3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management.

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management.

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including, but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12-DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes, fires, floods, landslides, or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"Areas of Special Biological Significance (ASBS)" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point thence due north to Laguna Point.

"Authorized Discharge" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"Automotive Service Facilities" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511; 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"Basin Plan" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"Beneficial Uses" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"Best Management Practices (BMPs)" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"Commercial Development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single family, multi-unit or planned unit development), industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
   a) Vehicle or equipment fueling areas;
   b) Vehicle or equipment maintenance areas, including washing and repair;
   c) Commercial or industrial waste handling or storage;
   d) Outdoor handling or storage of hazardous materials;
   e) Outdoor manufacturing areas;
   f) Outdoor food handling or processing;
   g) Outdoor animal care, confinement, or slaughter; or
   h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)); and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint;

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1] Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.htm#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/wildab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMP's, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14).

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage or wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.
2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.
3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.
4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board..

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).
2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].
2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. Duty to Mitigate [40 CFR 122.41 (d)]

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. Inspection and Entry [40 CFR 122.41(i), CWC § 13267]

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. Signatory Requirements [40 CFR 122.41(k) & 122.22]

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. Reopener and Modification [40 CFR 122.41(f) & 122.62]

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors; or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][4]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][6]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority, except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

   a) Criminal Penalties for:

[6] *Supra*. See footnote number 3.

(1) Negligent Violations:
The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:
The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:
The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:
The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. Rescission

Regional Board Order No. 96-054 is hereby rescinded.

S. Expiration

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

Dennis A. Dickerson
Executive Officer

State Water Resources Control Board

Water Quality Order No. 97-03-DWQ

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:

   a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.

   b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;

b. Submit a report that is approved by the Regional Water Board; or

c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.

b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:

i. The non-storm water discharges are in compliance with Regional Water Board requirements.

ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.

iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.

iv. The non-storm water discharges do not contain significant quantities of pollutants.

v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

vi. The non-storm water discharges are reported and described annually as part of the annual report.

c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.

d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.

2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.

3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in

accordance with Section B of this General Permit when industrial activities begin.

4. Facility operators of feedlots as defined in 40 CFR Part 412 that are in full compliance with Section 2560 to Section 2565, Title 23, California Code of Regulations (Chapter 15) will be in compliance with all effluent limitations and prohibitions contained in this General Permit. Facility operators of feedlots that comply with Chapter 15, however, must perform monitoring in compliance with the requirements of Section B.4.d. and B.14. of this General Permit. Facility operators of feedlots must also comply with any Regional Water Board WDRs or NPDES general permit regulating their storm water discharges.

5. All facility operators must comply with lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding storm water discharges and non-storm water discharges entering storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the Regional Water Boards to local agencies.

6. All facility operators must comply with the standard provisions and reporting requirements for each facility covered by this General Permit contained in Section C, Standard Provisions.

7. Facility operators that operate facilities with co-located industrial activities (facilities that have industrial activities that meet more than one of the descriptions in Attachment 1) that are contiguous to one another are authorized to file a single NOI to comply with the General Permit. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities are authorized if the SWPPP and Monitoring Program addresses each co-located industrial activity.

8. Upon reissuance of a successor NPDES general permit by the State Water Board, the facility operators subject to this reissued General Permit may be required to file an NOI.

9. Facility operators may request to terminate their coverage under this General Permit by filing a Notice of Termination (NOT) with the Regional Water Board. The NOT shall provide all documentation requested by the Regional Water Board. The facility operator will be notified when the NOT has been approved. Should the NOT be denied, facility operators are responsible for continued compliance with the requirements of this General Permit.

10. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall:

    a. Complete the 1996-97 activities required by those general permits. These include, but are not limited to, conducting any remaining visual observations, sample collection, annual site inspection, annual report submittal, and (for group monitoring leaders) Group Evaluation Reports; and

    b. Comply with the requirements of this General Permit no later than August 1, 1997.

11. If the Regional Water Board determines that a discharge may be causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, the Regional Water Board may order the facility operator to comply with the requirements described in Receiving Water Limitation C.3. The facility operator shall comply with the requirements within the time schedule established by the Regional Water Board.

12. If the facility operator determines that its storm water discharges or authorized non-storm water discharges are causing or contributing to an exceedance of any applicable water quality standards, the facility operator shall comply with the requirements described in Receiving Water Limitation C.3.

13. State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) and San Francisco Bay Regional Water Board Order No. 91-011 (as amended by Order No. 92-116) are hereby rescinded.

F. REGIONAL WATER BOARD AUTHORITIES

1. Following adoption of this General Permit, Regional Water Boards shall:

    a. Implement the provisions of this General Permit, including, but not limited to, reviewing SWPPPs, reviewing annual reports, conducting compliance inspections, and taking enforcement actions.

    b. Issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities, or facility operators in a watershed or geographic area. Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer

be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.

2. Regional Water Boards may provide guidance to facility operators on the SWPPP and the Monitoring Program and reporting implementation.

3. Regional Water Boards may require facility operators to conduct additional SWPPP and Monitoring Program and reporting activities necessary to achieve compliance with this General Permit.

4. Regional Water Boards may approve requests from facility operators whose facilities include co-located industrial activities that are not contiguous within the facilities (e.g., some military bases) to comply with this General Permit under a single NOI. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities and from other sources within the facility that may generate significant quantities of pollutants are authorized provided the SWPPP and Monitoring Program addresses each co-located industrial activity and other sources that may generate significant quantities of pollutants.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1997.

AYE: John P. Caffrey
John W. Brown
James M. Stubchaer
Marc Del Piero
Mary Jane Forster

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché

Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. *Implementation Schedule*

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.

b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.

2. *Objectives*

The SWPPP has two major objectives: (a) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and (b) to identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. BMPs may include a variety of pollution prevention measures or other low-cost and pollution control measures. They are generally categorized as non-structural BMPs (activity schedules, prohibitions of practices, maintenance procedures, and other low-cost measures) and as structural BMPs (treatment measures, run-off controls, over-head coverage.) To achieve these objectives, facility operators should consider the five phase process for SWPPP development and implementation as shown in Table A.

The SWPPP requirements are designed to be sufficiently flexible to meet the needs of various facilities. SWPPP requirements that are not applicable to a facility should not be included in the SWPPP.

A facility's SWPPP is a written document that shall contain a compliance activity schedule, a description of industrial activities and pollutant sources, descriptions of BMPs, drawings, maps, and relevant copies or references of parts of other plans. The SWPPP shall be revised whenever appropriate and shall be readily available for review by facility employees or Regional Water Board inspectors.

3. *Planning and Organization*

a. *Pollution Prevention Team*

The SWPPP shall identify a specific individual or individuals and their positions within the facility organization as members of a storm water pollution prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP implementation and revision, and conducting all monitoring program activities required in Section B of this General Permit. The SWPPP shall clearly identify the General Permit related responsibilities, duties, and activities of each team member. For small facilities, storm water pollution prevention teams may consist of one individual where appropriate.

b. *Review Other Requirements and Existing Facility Plans*

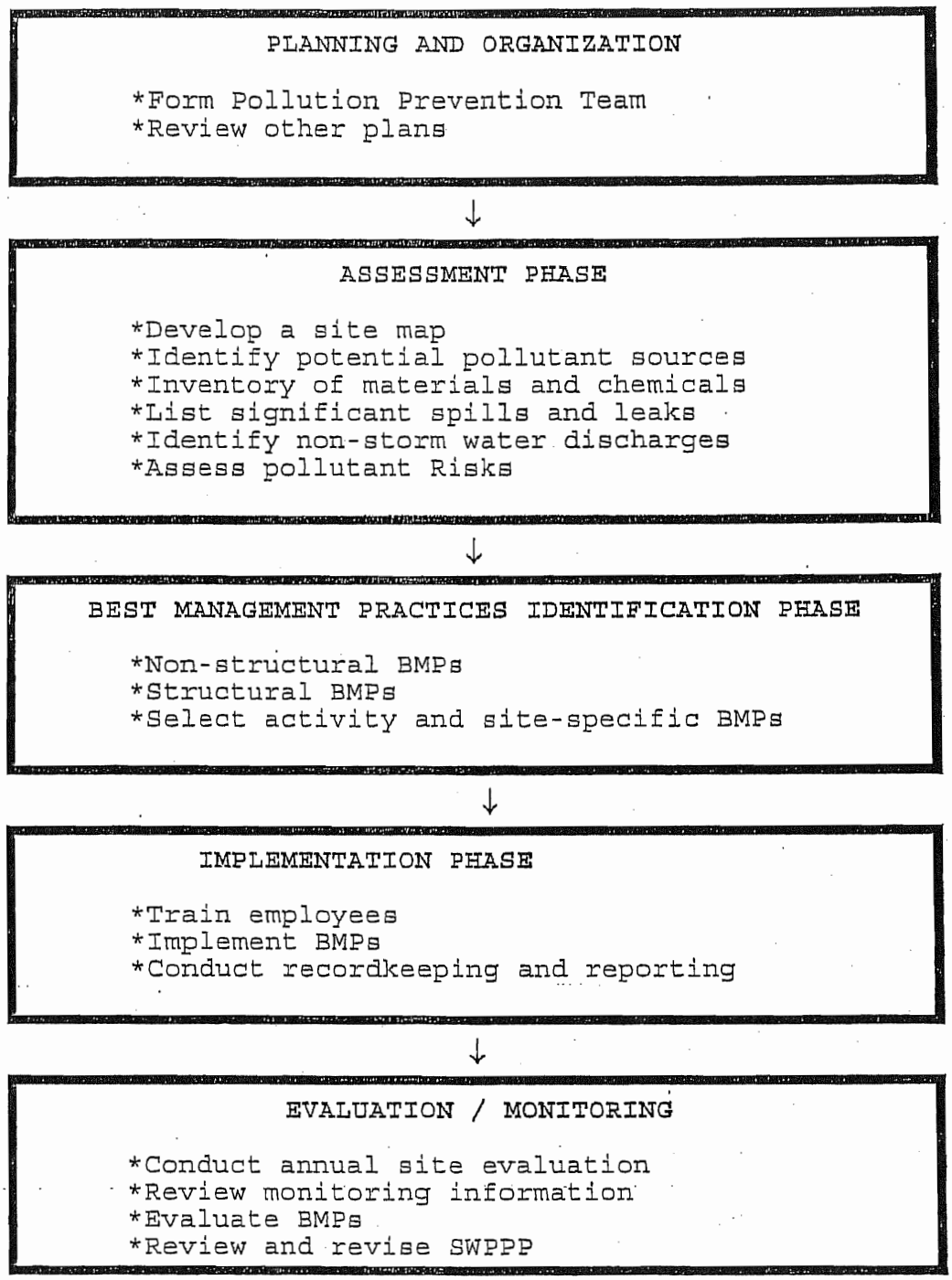
The SWPPP may incorporate or reference the appropriate elements of other regulatory requirements. Facility operators should review all local, State, and Federal requirements that impact, complement, or are consistent with the requirements of this General Permit. Facility operators should identify any existing facility plans that contain storm water pollutant control measures or relate to the requirements of this General Permit. As examples, facility operators whose facilities are subject to Federal Spill Prevention Control and Countermeasures' requirements should already have instituted a plan to control spills of certain hazardous materials. Similarly, facility operators whose facilities are subject to air quality related permits and regulations may already have evaluated industrial activities that generate dust or particulates.

4. *Site Map*

The SWPPP shall include a site map. The site map shall be provided on an 8-½ x 11 inch or larger sheet and include notes, legends, and other data as appropriate to ensure that the site map is clear and understandable. If necessary, facility operators may provide the required information on multiple site maps.

TABLE A

FIVE PHASES FOR DEVELOPING AND IMPLEMENTING INDUSTRIAL STORM WATER POLLUTION PREVENTION PLANS



The following information shall be included on the site map:

a. The facility boundaries; the outline of all storm water drainage areas within the facility boundaries; portions of the drainage area impacted by run-on from surrounding areas; and direction of flow of each drainage area, on-site surface water bodies, and areas of soil erosion. The map shall also identify nearby water bodies (such as rivers, lakes, and ponds) and municipal storm drain inlets

where the facility's storm water discharges and authorized non-storm water discharges may be received.

b. The location of the storm water collection and conveyance system, associated points of discharge, and direction of flow. Include any structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on. Examples of structural control measures are catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers, etc.

c. An outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures.

d. Locations where materials are directly exposed to precipitation and the locations where significant spills or leaks identified in Section A.6.a.iv. below have occurred.

e. Areas of industrial activity. This shall include the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources.

5. *List of Significant Materials*

The SWPPP shall include a list of significant materials handled and stored at the site. For each material on the list, describe the locations where the material is being stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials shall include raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials.

6. *Description of Potential Pollutant Sources*

a. The SWPPP shall include a narrative description of the facility's industrial activities, as identified in Section A.4.e above, associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. At a minimum, the following items related to a facility's industrial activities shall be considered:

i. Industrial Processes

Describe each industrial process, the type, characteristics, and quantity of significant materials used in or resulting from the process, and a description of the manufacturing, cleaning, rinsing, recycling, disposal, or other activities related to the process. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

ii. Material Handling and Storage Areas

Describe each handling and storage area, type, characteristics, and quantity of significant materials handled or stored, description of the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

iii. Dust and Particulate Generating Activities

Describe all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle.

iv. Significant Spills and Leaks

Describe materials that have spilled or leaked in significant quantities in storm water discharges or non-storm water discharges since April 17, 1994. Include toxic chemicals (listed in 40 CFR, Part 302) that have been discharged to storm water as reported on U.S. Environmental Protection Agency (U.S. EPA) Form R, and oil and hazardous substances in excess of reportable quantities (see 40 Code of Federal Regulations [CFR], Parts 110, 117, and 302).

The description shall include the type, characteristics, and approximate quantity of the material spilled or leaked, the cleanup or remedial actions that have occurred or are planned, the approximate remaining quantity of materials that may be exposed to storm water or non-storm water

discharges, and the preventative measures taken to ensure spill or leaks do not reoccur. Such list shall be updated as appropriate during the term of this General Permit.

v. Non-Storm Water Discharges

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse water, wash water, etc.). Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

vi. Soil Erosion

Describe the facility locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges.

b. The SWPPP shall include a summary of all areas of industrial activities, potential pollutant sources, and potential pollutants. This information should be summarized similar to Table B. The last column of Table B, "Control Practices", should be completed in accordance with Section A.8. below.

7. *Assessment of Potential Pollutant Sources*

a. The SWPPP shall include a narrative assessment of all industrial activities and potential pollutant sources as described in A.6. above to determine:

i. Which areas of the facility are likely sources of

pollutants in storm water discharges and authorized non-storm water discharges, and

ii. Which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. Facility operators shall consider and evaluate various factors when performing this assessment such as current storm water BMPs; quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources.

b. Facility operators shall summarize the areas of the facility that are likely sources of pollutants and the corresponding pollutants that are likely to be present in storm water discharges and authorized non-storm water discharges.

Facility operators are required to develop and implement additional BMPs as appropriate and necessary to prevent or reduce pollutants associated with each pollutant source. The BMPs will be narratively described in Section 8 below.

8. *Storm Water Best Management Practices*

The SWPPP shall include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source identified in the site assessment phase (Sections A.6. and 7. above). The BMPs shall be developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Each pollutant and its source may require one or more BMPs. Some BMPs may be implemented for multiple pollutants and their sources, while other BMPs will be implemented for a very specific pollutant and its source.

TABLE B
EXAMPLE
ASSESSMENT OF POTENTIAL POLLUTION SOURCES AND CORRESPONDING BEST MANAGEMENT PRACTICES
SUMMARY

Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Vehicle & Equipment Fueling	Fueling	Spills and leaks during delivery	fuel oil	- Use spill and overflow protection - Minimize run-on of storm water into the fueling area - Cover fueling area - Use dry cleanup methods rather than hosing down area - Implement proper spill prevention control program - Implement adequate preventative maintenance program to preventive tank and line leaks - Inspect fueling areas regularly to detect problems before they occur - Train employees on proper fueling, cleanup, and spill response techniques.
		Spills caused by topping off fuel tanks	fuel oil	
		Hosing or washing down fuel area	fuel oil	
		Leaking storage tanks	fuel oil	
		Rainfall running off fueling area, and rainfall running onto and off fueling area	fuel oil	

The description of the BMPs shall identify the BMPs as (1) existing BMPs, (2) existing BMPs to be revised and implemented, or (3) new BMPs to be implemented. The description shall also include a discussion on the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. The SWPPP shall provide a summary of all BMPs implemented for each pollutant source. This information should be summarized similar to Table B.

Facility operators shall consider the following BMPs for implementation at the facility:

a. Non-Structural BMPs

Non-structural BMPs generally consist of processes, prohibitions, procedures, schedule of activities, etc., that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures. Facility operators should consider all possible non-structural BMPs options before considering additional structural BMPs (see Section A.8.b. below). Below is a list of non-structural BMPs that should be considered:

i. Good Housekeeping

Good housekeeping generally consist of practical procedures to maintain a clean and orderly facility.

ii. Preventive Maintenance

Preventive maintenance includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

iii. Spill Response

This includes spill clean-up procedures and necessary clean-up equipment based upon the quantities and locations of significant materials that may spill or leak.

iv. Material Handling and Storage

This includes all procedures to minimize the potential for spills and leaks and to minimize exposure of significant materials to storm water and authorized non-storm water discharges.

v. Employee Training

This includes training of personnel who are responsible for (1) implementing activities identified in the SWPPP, (2) conducting inspections, sampling, and visual observations, and (3) managing storm water. Training should address topics such as spill response, good housekeeping, and material handling procedures, and actions necessary to implement all BMPs identified in the SWPPP. The SWPPP shall identify periodic dates for such training. Records shall be maintained of all training sessions held.

vi. Waste Handling/Recycling

This includes the procedures or processes to handle, store, or dispose of waste materials or recyclable materials.

vii. Recordkeeping and Internal Reporting

This includes the procedures to ensure that all records of inspections, spills, maintenance activities, corrective actions, visual observations, etc., are developed, retained, and provided, as necessary, to the appropriate facility personnel.

viii. Erosion Control and Site Stabilization

This includes a description of all sediment and erosion control activities. This may include the planting and maintenance of vegetation, diversion of run-on and runoff, placement of sandbags, silt screens, or other sediment control devices, etc.

ix. Inspections

This includes, in addition to the preventative maintenance inspections identified above, an inspection schedule of all potential pollutant sources. Tracking and follow-up procedures shall be described to ensure adequate corrective actions are taken and SWPPPs are made.

x. Quality Assurance

This includes the procedures to ensure that all elements of the SWPPP and Monitoring Program are adequately conducted.

b. Structural BMPs

Where non-structural BMPs as identified in Section A.8.a. above are not effective, structural BMPs shall be considered. Structural BMPs generally consist of structural devices that reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Below is a list of structural BMPs that should be considered:

i. Overhead Coverage

This includes structures that provide horizontal coverage of materials, chemicals, and pollutant sources from contact with storm water and authorized non-storm water discharges.

ii. Retention Ponds

This includes basins, ponds, surface impoundments, bermed areas, etc. that do not allow storm water to discharge from the facility.

iii. Control Devices

This includes berms or other devices that channel or route run-on and runoff away from pollutant sources.

iv. Secondary Containment Structures

This generally includes containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills.

v. Treatment

This includes inlet controls, infiltration devices, oil/water separators, detention ponds, vegetative swales, etc. that reduce the pollutants in storm water discharges and authorized non-storm water discharges.

9. Annual Comprehensive Site Compliance Evaluation

The facility operator shall conduct one comprehensive site compliance evaluation (evaluation) in each reporting period (July 1-June 30). Evaluations shall be conducted within 8-16 months of each other. The SWPPP shall be revised, as appropriate, and the revisions implemented within 90 days of the evaluation. Evaluations shall include the following:

a. A review of all visual observation records, inspection records, and sampling and analysis results.

b. A visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system.

c. A review and evaluation of all BMPs (both structural and non-structural) to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed. A visual inspection of equipment needed to implement the SWPPP, such as spill response equipment, shall be included.

d. An evaluation report that includes, (i) identification of personnel performing the evaluation, (ii) the date(s) of the evaluation, (iii) necessary SWPPP revisions, (iv) schedule, as required in Section A.10.e, for implementing SWPPP revisions, (v) any incidents of non-compliance and the corrective actions taken, and (vi) a certification that the facility operator is in compliance with this General Permit. If the above certification cannot be provided, explain in the evaluation report why the facility operator is not in compliance with this General Permit. The evaluation report shall be submitted as part of the annual report, retained for at least five years, and signed and certified in accordance with Standard Provisions 9. and 10. of Section C. of this General Permit.

10. *SWPPP General Requirements*

a. The SWPPP shall be retained on site and made available upon request of a representative of the Regional Water Board and/or local storm water management agency (local agency) which receives the storm water discharges.

b. The Regional Water Board and/or local agency may notify the facility operator when the SWPPP does not meet one or more of the minimum requirements of this Section. As requested by the Regional Water Board and/or local agency, the facility operator shall submit an SWPPP revision and implementation schedule that meets the minimum requirements of this section to the Regional Water Board and/or local agency that requested the SWPPP revisions. Within 14 days after implementing the required SWPPP revisions, the facility operator shall provide written certification to the Regional Water Board and/or local agency that the revisions have been implemented.

c. The SWPPP shall be revised, as appropriate, and implemented prior to changes in industrial activities which (i) may significantly increase the quantities of pollutants in storm water discharge, (ii) cause a new area of industrial activity at the facility to be exposed to storm water, or (iii) begin an industrial activity which would introduce a new pollutant source at the facility.

d. Other than as provided in Provisions B.11, B.12, and E.2 of the General Permit, the SWPPP shall be revised and implemented in a timely manner, but in no case more than 90 days after a facility operator determines that the SWPPP is in violation of any requirement(s) of this General Permit.

e. When any part of the SWPPP is infeasible to implement by the deadlines specified in Provision E.2 or Sections A.1, A.9, A.10.c, and A.10.d of this General Permit due to proposed significant structural changes, the facility operator shall submit a report to the Regional Water Board prior to the applicable deadline that (i) describes the portion of the SWPPP that is infeasible to implement by the deadline, (ii) provides justification for a time extension, (iii) provides a schedule for completing and implementing that portion of the SWPPP, and (iv) describes the BMPs that will be implemented in the interim period to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Such reports are subject to Regional Water Board approval and/or modifications. Facility operators shall provide written notification to the Regional Water Board within 14 days after the SWPPP revisions are implemented.

f. The SWPPP shall be provided, upon request, to the Regional Water Board. The SWPPP is considered a report that shall be available to the public by the Regional Water Board under Section 308(b) of the Clean Water Act.

SECTION B. MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. *Implementation Schedule*

Each facility operator shall develop a written monitoring program for each facility covered by this General Permit in accordance with the following schedule:

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement a monitoring program no later than October 1, 1992. Facility operators beginning operations after October 1, 1992 shall develop and implement a monitoring program when the industrial activities begin.

b. Facility operators that submitted a Notice Of Intent (NOI) pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing monitoring program and implement any necessary revisions to their monitoring program in a timely manner, but in no case later than August 1, 1997. These facility operators may use the monitoring results conducted in accordance with those expired general permits to satisfy the pollutant/parameter reduction requirements in Section B.5.c., Sampling and Analysis Exemptions and Reduction certifications in Section B.12., and Group Monitoring Sampling credits in B.15.k. For facilities beginning industrial activities after the adoption of this General Permit, the monitoring program shall be developed and implemented when the facility begins the industrial activities.

2. *Objectives*

The objectives of the monitoring program are to:

a. Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit.

b. Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges are evaluated and revised to meet changing conditions.

c. Aid in the implementation and revision of the SWPPP required by Section A of this General Permit.

d. Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water

discharges and authorized non-storm water discharges. Much of the information necessary to develop the monitoring program, such as discharge locations, drainage areas, pollutant sources, etc., should be found in the Storm Water Pollution Prevention Plan (SWPPP). The facility's monitoring program shall be a written, site-specific document that shall be revised whenever appropriate and be readily available for review by employees or Regional Water Board inspectors.

3. *Non-storm Water Discharge Visual Observations*

a. Facility operators shall visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges;

b. Facility operators shall visually observe the facility's authorized non-storm water discharges and their sources;

c. The visual observations required above shall occur quarterly, during daylight hours, on days with no storm water discharges, and during scheduled facility operating hours[1]. Quarterly visual observations shall be conducted in each of the following periods: January-March, April-June, July-September, and October-December. Facility operators shall conduct quarterly visual observations within 6-18 weeks of each other.

d. Visual observations shall document the presence of any discolorations, stains, odors, floating materials, etc., as well as the source of any discharge. Records shall be maintained of the visual observation dates, locations observed, observations, and response taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

4. *Storm Water Discharge Visual Observations*

a. With the exception of those facilities described in Section B.4.d. below, facility operators shall visually

[1] "Scheduled facility operating hours" are the time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed.

observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These visual observations shall occur during the first hour of discharge and at all discharge locations. Visual observations of stored or contained storm water shall occur at the time of release.

b. Visual observations are only required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days[2] without storm water discharges and that occur during scheduled facility operating hours.

c. Visual observations shall document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants. Records shall be maintained of observation dates, locations observed, observations, and response taken to reduce or prevent pollutants in storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

d. Feedlots (subject to Federal effluent limitations guidelines in 40 Code of Federal Regulations [CFR] Part 412) that are in compliance with Sections 2560 to 2565, Article 6, Chapter 15, Title 23, California Code of Regulations, and facility operators with storm water containment facilities shall conduct monthly inspections of their containment areas to detect leaks and ensure maintenance of adequate freeboard. Records shall be maintained of the inspection dates, observations, and any response taken to eliminate leaks and to maintain adequate freeboard.

5. *Sampling and Analysis*

a. Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled. Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.

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[2] Three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm water discharges occur during the three (3) working days and the non-working days.

b. Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least (3) three working days without storm water discharge.

c. The samples shall be analyzed for:

i. Total suspended solids (TSS) pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC; and

ii. Toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. If these pollutants are not detected in significant quantities after two consecutive sampling events, the facility operator may eliminate the pollutant from future sample analysis until the pollutant is likely to be present again; and

iii. Other analytical parameters as listed in Table D (located at the end of this Section). These parameters are dependent on the facility's standard industrial classification (SIC) code. Facility operators are not required to analyze a parameter listed in Table D when the parameter is not already required to be analyzed pursuant to Section B.5.c.i. and ii. or B.6 of this General Permit, and either of the two following conditions are met: (1) the parameter has not been detected in significant quantities from the last two consecutive sampling events, or (2) the parameter is not likely to be present in storm water discharges and authorized non-storm water discharges in significant quantities based upon the facility operator's evaluation of the facilities industrial activities, potential pollutant sources, and SWPPP. Facility operators that do not analyze for the applicable Table D parameters shall certify in the Annual Report that the above conditions have been satisfied.

iv. Other parameters as required by the Regional Water Board.

6. *Facilities Subject to Federal Storm Water Effluent Limitation Guidelines*

Facility operators with facilities subject to Federal storm water effluent limitation guidelines, in addition to the requirements in Section B.5. above, must complete the following:

a. Collect and analyze two samples for any pollutant specified in the appropriate category of 40 CFR Subchapter N. The sampling and analysis exemptions and reductions described in Section B.12. of this General Permit do not apply to these pollutants.

b. Estimate or calculate the volume of storm water discharges from each drainage area;

c. Estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 CFR Subchapter N; and

d. Identify the individual(s) performing the estimates or calculations in accordance with Subsections b. and c. above.

7. *Sample Storm Water Discharge Locations*

a. Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.

b. If the facility's storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event.

c. If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event.

d. Facility operators that determine that the industrial activities and BMPs within two or more drainage areas are substantially identical may either (i) collect samples from a reduced number of substantially identical

drainage areas, or (ii) collect samples from each substantially identical drainage area and analyze a combined sample from each substantially identical drainage area. Facility operators must document such a determination in the annual report.

8. *Visual Observation and Sample Collection Exceptions*

Facility operators are required to be prepared to collect samples and conduct visual observations at the beginning of the wet season (October 1) and throughout the wet season

until the minimum requirements of Sections B.4. and B.5. are completed with the following exceptions:

a. A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual Report why the sampling or visual observations could not be conducted.

b. A facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied. The facility operator shall include an explanation in the Annual Report why the visual observations and sample collection should be conducted after the first hour of discharge.

9. *Alternative Monitoring Procedures*

Facility operators may propose an alternative monitoring program that meets Section B.2 monitoring program objectives for approval by the Regional Water Board. Facility operators shall continue to comply with the monitoring requirements of this Section and may not implement an alternative monitoring plan until the alternative monitoring plan is approved by the Regional Water Board. Alternative monitoring plans are subject to modification by the Regional Water Boards.

10. *Monitoring Methods*

a. Facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of Section B.2. This shall include:

i. Rationale and description of the visual observation methods, location, and frequency.

ii. Rationale and description of the sampling methods, location, and frequency; and

iii. Identification of the analytical methods and corresponding method detection limits used to detect pollutants in storm water discharges. This shall include justification that the method detection limits are adequate to satisfy the objectives of the monitoring program.

b. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association). All monitoring instruments and equipment (including a facility operator's own field instruments for measuring pH and Electro Conductivity) shall be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements. All laboratory analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this General Permit or by the Regional Water Board. All metals shall be reported as total metals. With the exception of analysis conducted by facility operators, all laboratory analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Facility operators may conduct their own sample analyses if the facility operator has sufficient capability (qualified employees, laboratory equipment, etc.) to adequately perform the test procedures.

11. *Inactive Mining Operations*
Inactive mining operations are defined in Attachment 1 of this General Permit. Where comprehensive site compliance evaluations, non-storm water discharge visual observations, storm water discharge visual observations, and storm water sampling are impracticable, facility operators of inactive mining operations may instead obtain certification once every three years by a Registered Professional Engineer that an SWPPP has been prepared for the facility and is being implemented in accordance with the requirements of this General Permit. By means of these certifications, the Registered Professional Engineer having examined the facility and being familiar with the provisions of this General Permit shall attest that the SWPPP has been prepared in accordance with good engineering practices. Facility operators of mining operations who cannot obtain a certification because of noncompliance must notify the appropriate Regional Water Board and, upon request, the local agency which receives the storm water discharge.

12. *Sampling and Analysis* Exemptions and Reductions

A facility operator who qualifies for sampling and analysis exemptions, as described below in Section B.12.a.i., or who qualifies for reduced sampling and analysis, as described below in Section B.12.b., must submit the appropriate certifications and required documentation to the Regional Water Boards prior to the wet season (October 1) and recertify as part of the Annual Report submittal. A facility operator that qualifies for either the Regional Water Board or local agency certification programs, as described below in Section B.12.a.ii. and iii., shall submit certification and documentation in accordance with the requirements of those programs. Facility operators who provide certifications in accordance with this Section are still required to comply with all other monitoring program and reporting requirements. Facility operators shall prepare and submit their certifications using forms and instructions provided by the State Water Board, Regional Water Board, or local agency or shall submit their information on a form that contains equivalent information. Facility operators whose facility no longer meets the certification conditions must notify the Regional Water Boards (and local agency) within 30 days and immediately comply with the Section B.5. sampling and analysis requirements. Should a Regional Water Board (or local agency) determine that a certification does not meet the conditions set forth below, facility operators must immediately comply with the Section B.5. sampling and analysis requirements.

a. Sampling and Analysis Exemptions

A facility operator is not required to collect and analyze samples in accordance with Section B.5. if the facility operator meets all of the conditions of one of the following certification programs:

i. No Exposure Certification (NEC)

This exemption is designed primarily for those facilities where all industrial activities are conducted inside buildings and where all materials stored and handled are not exposed to storm water. To qualify for this exemption, facility operators must certify that their facilities meet all of the following conditions:

(1) All prohibited non-storm water discharges have been eliminated or otherwise permitted.

(2) All authorized non-storm water discharges have been identified and addressed in the SWPPP.

(3) All areas of past exposure have been inspected and cleaned, as appropriate.

(4) All significant materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

(5) All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

(6) There is no exposure of storm water to significant materials associated with industrial activity through other direct or indirect pathways such as from industrial activities that generate dust and particulates.

(7) There is periodic re-evaluation of the facility to ensure conditions (1), (2), (4), (5), and (6) above are continuously met. At a minimum, re-evaluation shall be conducted once a year.

ii. Regional Water Board Certification Programs

The Regional Water Board may grant an exemption to the Section B.5. Sampling and Analysis Requirements if it determines a facility operator has met the conditions set forth in a Regional Water Board certification program. Regional Water Board certification programs may include conditions to (1) exempt facility operators whose facilities infrequently discharge storm water to waters of the United States, and (2) exempt facility operators

that demonstrate compliance with the terms and conditions of this General Permit.

iii. Local Agency Certifications

A local agency may develop a local agency certification program. Such programs must be approved by the Regional Water Board. An approved local agency program may either grant an exemption

from the Section B.5. Sampling and Analysis Requirements or reduce the frequency of sampling if it determines that a facility operator has demonstrated compliance with the terms and conditions of this General Permit.

b. Sampling and Analysis Reduction

i. A facility operator may reduce the number of sampling events required to be sampled for the remaining term of this General Permit if the facility operator provides certification that the following conditions have been met:

(1) The facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;

(2) All prohibited non-storm water discharges have been eliminated or otherwise permitted;

(3) The facility operator demonstrates compliance with the terms and conditions of the General Permit for the previous two years (i.e., completed Annual Reports, performed visual observations, implemented appropriate BMPs, etc.);

(4) The facility operator demonstrates that the facility's storm water discharges and authorized non-storm water discharges do not contain significant quantities of pollutants; and

(5) Conditions (2), (3), and (4) above are expected to remain in effect for a minimum of one year after filing the certification.

ii. Unless otherwise instructed by the Regional Water Board, facility operators shall collect and analyze samples from two additional storm events (or one additional storm event when certification filed for the wet season beginning October 1, 2001) during the remaining term of this General Permit in accordance with Table C below. Facility operators shall collect samples of the first

storm event of the wet season. Facility operators that do not collect samples from the first storm event of the wet season shall collect samples from another storm event during the same wet season. Facility operators that do not collect a sample in a required wet season shall collect the sample from another storm event in the next wet season. Facility operators shall explain in the Annual Report why the first storm event of a wet season was not sampled or a sample was not taken from any storm event in accordance with the Table C schedule.

Table C
REDUCED MONITORING SAMPLING SCHEDULE

Facility Operator Filing Sampling Reduction Certification By	Samples Shall be Collected and Analyzed in These Wet Seasons	
	Sample 1	Sample 2
Oct. 1, 1997	Oct. 1, 1997-May 31, 1998	Oct. 1, 1999-May 31, 2000
Oct. 1, 1998	Oct. 1, 1998-May 31, 1999	Oct. 1, 2000-May 31, 2001
Oct. 1, 1999	Oct. 1, 1999-May 31, 2000	Oct. 1, 2001-May 31, 2002
Oct. 1, 2000	Oct. 1, 2000-May 31, 2001	Oct. 1, 2001-May 31, 2002
Oct. 1, 2001	Oct. 1, 2001-May 31, 2002	-

13. *Records*

Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years. These records shall include:

a. The date, place, and time of site inspections, sampling, visual observations, and/or measurements;

b. The individual(s) who performed the site inspections, sampling, visual observations, and or measurements;

c. Flow measurements or estimates (if required by Section B.6);

d. The date and approximate time of analyses;

e. The individual(s) who performed the analyses;

f. Analytical results, method detection limits, and the analytical techniques or methods used;

g. Quality assurance/quality control records and results;

h. Non-storm water discharge inspections and visual observations and storm water discharge visual observation records (see Sections B.3. and 4.);

i. Visual observation and sample collection exception records (see Section B.5.a, 7.d, 8, and 12.b.ii.);

j. All calibration and maintenance records of on-site instruments used;

k. All Sampling and Analysis Exemption and Reduction certifications and supporting documentation (see Section B.12);

l. The records of any corrective actions and follow-up activities that resulted from the visual observations.

14. *Annual Report*

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).

The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit.". The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

15. *Group Monitoring*

Facility operators may participate in group monitoring as described below. A facility operator that participates in group monitoring shall develop and implement a written site-specific SWPPP and monitoring program in accordance with the General Permit and must satisfy any group monitoring requirements. Group monitoring shall be subject to the following requirements:

a. A group monitoring plan (GMP) shall be developed and implemented by a group leader representing a group of

similar facility operators regulated by this General Permit or by a local agency which holds an NPDES permit (local agency permittee) for a municipal separate storm sewer system. GMPs with participants that discharge storm water within the boundaries of a single Regional Water Board shall be approved by that Regional Water Board. GMPs with participants that discharge storm water within the boundaries of multiple Regional Water Boards shall be approved by the State Water Board. The State Water Board and/or Regional Water Board(s) may disapprove a facility's participation in a GMP or require a GMP participant to conduct additional monitoring activities.

b. Each GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5. over the five-year period of this General Permit. The two storm event minimum applies to new and existing members. The group leader or local agency permittee shall schedule sampling to meet the following conditions: (i) to evenly distribute the sample collection over the five-year term of this General Permit, and (ii) to collect samples from the two storm events at each participant's facility in different and non-consecutive wet seasons. New participants who join in Years 4 and 5 of this General Permit are not subject to Condition (ii) above. Group leaders shall explain in the annual Group Evaluation Report why any scheduled samples were not collected and reschedule the sampling so that all required samples are collected during the term of this General Permit.

c. The group leader or local agency permittee must have the appropriate resources to develop and implement the GMP. The group leader or local agency permittee must also have the authority to terminate any participant who is not complying with this General Permit and the GMP.

d. The group leader or local agency permittee is responsible for:

   i. Developing, implementing, and revising the GMP;

   ii. Developing and submitting an annual Group Evaluation Report to the State Water Board and/or Regional Water Board by August 1 of each year that includes:

      (1) An evaluation and summary of all group monitoring data,

      (2) An evaluation of the overall performance of the GMP participants in complying with this General Permit and the GMP,

(3) Recommended baseline and site-specific BMPs that should be considered by each participant based upon Items (1) and (2) above, and

(4) A copy of each evaluation report and recommended BMPs as required in Section B.15.d.v. below.

iii. Recommending appropriate BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges;

iv. Assisting each participant in completing their Annual Comprehensive Site Compliance Evaluation and Annual Report;

v. Conducting a minimum of two on-site inspections of each participant's facility (it is recommended that these inspections be scheduled during the Annual Comprehensive Site Compliance Evaluation) during the term of this General Permit to evaluate the participant's compliance with this General Permit and the GMP, and to recommend any additional BMPs necessary to achieve compliance with this General Permit. Participants that join in Years 4 and 5 shall be scheduled for one evaluation. A copy of the evaluation and recommended BMPs shall be provided to the participants;

vi. Submitting a GMP (or revisions, as necessary), to the appropriate Regional Water Board(s) and State Water Board no later than September 1, 1997 (or August 1 in subsequent years). Once approved, a group leader or local agency permittee shall submit a letter of intent by August 1 of each year to continue the approved GMP. The letter of intent must include a roster of participants, participant's Waste Discharge Identification number (WDID#), updated sampling schedules, and any other revisions to the GMP;

vii. Revising the GMP as instructed by the Regional Water Board or the State Water Board; and

viii. Providing the State Water Board and/or Regional Water Board with quarterly updates of any new or deleted participants and corresponding changes in the sampling and inspection schedule.

e. The GMP shall:

i. Identify the participants of the GMP by name, location, and WDID number;

ii. Include a narrative description summarizing the industrial activities of participants of the GMP and explain why the participants, as a whole, have sufficiently similar industrial activities and BMPs to be covered by a group monitoring plan;

iii. Include a list of typical potential pollutant sources associated with the group participant's facilities and recommended baseline BMPs to prevent or reduce pollutants associated with industrial activity in the storm water discharges and authorized non-storm water discharges;

iv. Provide a five-year sampling and inspection schedule in accordance with Subsections b. and d.v. above.

v. Identify the pollutants associated with industrial activity that shall be analyzed at each participant's facility in accordance with Section B.5. The selection of these pollutants shall be based upon an assessment of each facility's potential pollutant sources and likelihood that pollutants associated with industrial activity will be present in storm water discharges and authorized non-storm water discharges in significant quantities.

f. Sampling and analysis shall be conducted in accordance with the applicable requirements of this Section.

g. Unless otherwise instructed by the Regional Water Board or the State Water Board Executive Director, the GMPs shall be implemented at the beginning of the wet season (October 1).

h. All participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section including the submittal of an Annual Report by July 1 of each year to the appropriate Regional Water Board.

i. GMP participants subject to Federal storm water effluent limitation guidelines must perform the monitoring described in Section B.6. and submit the results of the monitoring to the appropriate Regional Water Board within the facility operator's Annual Report.

j. GMPs and Group Evaluation Reports should be prepared in accordance with State Water Board (or Regional Water Board) guidance.

k. GMP participants may receive Sampling and Analysis Reduction sampling credit in accordance with the following conditions:

i. Current or prior participants (group participants) of approved GMPs, who have not collected and analyzed samples from six storm events as required in Section B.7.b.i.(1), may substitute credit earned through participation in a GMP for up to four of the six required storm events. Credits for GMP participation shall be calculated as follows:

(1) Credit may only be earned in years of participation where the GMP participant was not scheduled to sample and the GMP was approved.

(2) One credit will be earned for each year of valid GMP participation.

(3) One additional credit may be earned for each year the overall GMP sample collection performance is greater than 75 percent.

ii. GMP participants substituting credit as calculated above shall provide proof of GMP participation and certification that all the conditions in Section B.12.b.i. have been met. GMP participants substituting credit in accordance with Section B.15.k.i.(3) shall also provide GMP sample collection performance documentation.

iii. GMP participants that qualify for Sampling and Analysis Reduction and have already sampled a storm event after October 1, 1997 shall only be required to sample one additional storm event during the remainder of this General Permit in accordance with the "Sample 2" schedule (or "Sample 1" schedule when certification filed for the wet season beginning October 1, 2001) in Table C of this Section.

n. Group leaders shall furnish, within 60 days of receiving a request from the State Water Board or Regional Water Board, any GMP information and documentation necessary to verify the Section B.15.k. sampling credits. Group leaders may also provide this information and documentation to the group participants.

16. *Watershed Monitoring Option*

Regional Water Boards may approve proposals to substitute watershed monitoring for some or all of the requirements of this Section if the Regional Water Board finds that the watershed monitoring will provide substantially similar monitoring information in evaluating facility operator compliance with the requirements of this General Permit.

TABLE D
ADDITIONAL ANALYTICAL PARAMETERS

Subsector	SIC	Activity Represented	Parameters
SECTOR A. TIMBER PRODUCTS			
A1	2421	General Sawmills and Planing Mills	COD;TSS;Zn
A2	2491	Wood Preserving	As;Cu
A3	2411	Log Storage and Handling	TSS
A4	2426	Hardwood Dimension and Flooring Mills	COD;TSS
A4	2429	Special Product Sawmills, Not Elsewhere Classified	COD;TSS
A4	243X	Millwork, Veneer, Plywood, and Structural Wood	COD;TSS
A4	(except 2434--Wood Kitchen Cabinet Manufacturers)		
A4	244X	Wood Containers	COD;TSS
A4	245X	Wood Buildings and Mobile Homes	COD;TSS
A4	2493	Reconstituted Wood Products	COD;TSS
A4	2499	Wood Products, Not Elsewhere Classified	
SECTOR B. PAPER AND ALLIED PRODUCTS MANUFACTURING			
B1	261X	Pulp Mills	
B2	262X	Paper Mills	
B3	263X	Paperboard Mills	COD
B4	265X	Paperboard Containers and Boxes	
B5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes	
SECTOR C. CHEMICAL AND ALLIED PRODUCTS MANUFACTURING			
C1	281X	Industrial Inorganic Chemicals	Al;Fe;N+N
C2	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic, and Other Manmade Fibers Except Glass	Zn
C3	283X	Drugs	
C4	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations	N+N;Zn
C5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products	
C6	286X	Industrial Organic Chemicals	
C7	287X	Nitrogenous and Phosphatic Basic Fertilizers, Mixed Fertilizer, Pesticides, and Other Agricultural Chemicals	Fe;N+N;Pb;Zn;P
C8	289X	Miscellaneous Chemical Products	
	3952	Inks and Paints, Including China Painting Enamels, India Ink, (limited to list) Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints, and Artist's Watercolors	
SECTOR D. ASPHALT PAVING/ROOFING MATERIALS MANUFACTURERS AND LUBRICANT MANUFACTURERS			
D1	295X	Asphalt Paving and Roofing Materials	TSS
D2	2992	Lubricating Oils and Greases	

Parameter Names

Al - Aluminum; As - Arsenic; NH_3 - Ammonia; Zn - Zinc; Cd - Cadmium; CN - Cyanide; Hg - Mercury; TSS - Total Suspended Solids; Cu - Copper; Fe - Iron; P - Phosphorus; COD - Chemical Oxygen Demand; Mg - Magnesium; Ag - Silver; Se - Selenium; BOD - Biochemical Oxygen Demand; N + N - Nitrate & Nitrite Nitrogen; Pb - Lead

Subsector SIC Activity Represented Parameters

SECTOR E. GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCT MANUFACTURING			
E1	3211	Flat Glass	
E1	322X	Glass and Glassware, Pressed or Blown	
E1	323X	Glass Products Made of Purchased Glass	
E2	3241	Hydraulic Cement	
E3	325X	Structural Clay Products	Al
E3	326X	Pottery and Related Products	Al
E3	3297	Non-Clay Refractories	Al
E4	327X	Concrete, Gypsum, and Plaster Products (Except Lime) (except 3274).	TSS;Fe
E4	3295	Minerals and Earths, Ground, or Otherwise Treated	TSS;Fe
SECTOR F. PRIMARY METALS			
F1	331X	Steel Works, Blast Furnaces, Rolling & Finishing Mill	Al;Zn
F2	332X	Iron and Steel Foundries	Al;TSS;Cu;Fe;Zn
F3	333X	Primary Smelting and Refining of Nonferrous Metals	
F4	334X	Secondary Smelting and Refining of Nonferrous Metals	
F5	335X	Rolling, Drawing, and Extruding of Nonferrous Metals	Cu;Zn
F6	336X	Nonferrous Foundries (Castings)	Cu;Zn
F7	339X	Miscellaneous Primary Metal Products	
SECTOR G. METAL MINING (ORE MINING AND DRESSING) EXCEPT INACTIVE METAL MINING ACTIVITIES ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
G1	101X	Iron Ores	
G2	102X	Copper Ores	TSS;COD;N+N
G3	103X	Lead and Zinc Ores	
G4	104X	Gold and Silver Ores	
G5	106X	Ferroalloy Ores, Except Vanadium	
G6	108X	Metal Mining Services	
G7	109X	Miscellaneous Metal Ores	
SECTOR H. COAL MINES AND COAL MINING-RELATED FACILITIES			
H1	12XX	Coal Mines and Coal Mining-Related Facilities	TSS;Al;Fe
SECTOR I. COAL MINES AND COAL MINING-RELATED FACILITIES			
I1	131X	Crude Petroleum and Natural Gas	
I2	132X	Natural Gas Liquids	
I3	138X	Oil and Gas Field Services	
SECTOR J. MINERAL MINING AND DRESSING EXCEPT INACTIVE MINERAL MINING ACTIVITIES OCCURRING ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
J1	141X	Dimension Stone	TSS
J1	142X	Crushed and Broken Stone, Including Rip Rap	TSS
J1	148X	Nonmetallic Minerals, Except Fuels	TSS
J2	144X	Sand and Gravel	TSS;N+N
J3	145X	Clay, Ceramic, and Refractory Materials	
J4	147X	Chemical and Fertilizer Mineral Mining	
J4	149X	Miscellaneous Nonmetallic Minerals, Except Fuels	

Subsector	SIC	Activity Represented	Parameters
SECTOR K. HAZARDOUS WASTE TREATMENT STORAGE OR DISPOSAL FACILITIES			
NA	4953	Hazardous Waste Treatment Storage or Disposal	NH_3;Mg;COD;As Cd;CN;Pb Hg;Se;Ag
SECTOR L. LANDFILLS AND LAND APPLICATION SITES			
NA	4953	Landfills and Land Application Sites That Receive or Have Received Industrial Wastes, Except Inactive Landfills or Land Applications Sites Occurring on Federal Lands Where an Operator Cannot be Identified	TSS;Fe
SECTOR M. AUTOMOBILE SALVAGE YARDS			
NA	5015	Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale and for Scrap	TSS;Fe;Pb;Al
SECTOR N. SCRAP RECYCLING FACILITIES			
NA	5093	Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials	TSS;Fe;Pb Al;Cu;Zn;COD
SECTOR O. STEAM ELECTRIC GENERATING FACILITIES			
NA	4911	Steam Electric Power Generating Facilities	Fe
SECTOR P. LAND TRANSPORTATION FACILITIES THAT HAVE VEHICLE AND EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
P1	40XX	Railroad Transportation	
P2	41XX	Local and Highway Passenger Transportation	
P3	42XX	Motor Freight Transportation and Warehousing	
P4	43XX	United States Postal Service	
P5	5171	Petroleum Bulk Stations and Terminals	
SECTOR Q. WATER TRANSPORTATION FACILITIES THAT HAVE VEHICLE (VESSEL) & EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
NA	44XX	Water Transportation	Al;Fe;Pb;Zn
SECTOR R. SHIP AND BOAT BUILDING OR REPAIRING YARDS			
NA	373X	Ship and Boat Building or Repairing Yards	
SECTOR S. AIR TRANSPORTATION FACILITIES			
NA	45XX	Air Transportation Facilities That Have Vehicle Maintenance Ships, Material Handing Facilities, Equipment Cleaning Operations, or Airport and/or Aircraft Deicing/Anti-icing Operations	BOD;COD;NH_3;pH

Subsector	SIC	Activity Represented	Parameters
SECTOR T. TREATMENT WORKS			
NA	4952	Treatment Works Treating Domestic Sewage or Any Other Sewage Sludge or Wastewater Treatment Device or System Used in the Storage, treatment, recycling, or Reclamation of Municipal or Domestic Sewage with a Design Flow of 1.0 MGD or More or Required to Have an Approved Pretreatment Program	
SECTOR U. FOOD AND KINDRED PRODUCTS			
U1	201X	Meat Products	
U2	202X	Dairy Products	
U3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties	
U4	204X	Grain Mill Products	TSS
U5	205X	Bakery Products	
U6	206X	Sugar and Confectionery Products	
U7	207X	Fats and Oils	BOD;COD;TSS;N+N
U8	208X	Beverages	
U9	209X	Miscellaneous Food Preparations and Kindred Products	
NA	21XX	Tobacco Products	
SECTOR V. TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING			
V1	22XX	Textile Mill Products	
V2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials	
SECTOR W. FURNITURE AND FIXTURES			
NA	25XX	Furniture and Fixtures	
NA	2434	Wood Kitchen Cabinets	
SECTOR X. PRINTING AND PUBLISHING			
NA	2732	Book Printing	
NA	2752	Commercial Printing, Lithographic	
NA	2754	Commercial Printing, Gravure	
NA	2759	Commercial Printing, Nor Elsewhere Classified	
NA	2796	Platemaking and Related Services	
SECTOR Y. RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISC. MANUFACTURING INDUSTRIES			
Y1	301X	Tires and Inner Tubes	Zn
Y1	302X	Rubber and Plastics Footwear	Zn
Y1	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting	Zn
Y1	306X	Fabricated Rubber Products, Not Elsewhere Classified	Zn
Y2	308X	Miscellaneous Plastics Products	

Subsector	SIC	Activity Represented	Parameters
Y2	393X	Musical Instruments	
Y2	394X	Dolls, Toys, Games, and Sporting and Athletic Goods	
Y2	395X	Pens, Pencils, and Other Artists' Materials	
Y2	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal	
Y2	399X	Miscellaneous Manufacturing Industries	
SECTOR Z. LEATHER TANNING AND FINISHING			
NA	311X	Leather Tanning and Finishing	
NA	NA	Facilities that Make Fertilizer Solely From Leather Scraps and Leather Dust	
SECTOR AA. FABRICATED METAL PRODUCTS			
AA1	3429	Hardware, Not Elsewhere Classified	Zn;N+N;Fe;Al
AA1	3441	Fabricated Structural Metal	Zn;N+N;Fe;Al
AA1	3442	Metal Doors, Sash, Frames, Molding, and Trim	Zn;N+N;Fe;Al
AA1	3443	Fabricated Plate Work (Boiler Shops)	Zn;N+N;Fe;Al
AA1	3444	Sheet Metal Work	Zn;N+N;Fe;Al
AA1	3451	Screw Machine Products	Zn;N+N;Fe;Al
AA1	3452	Bolts, Nuts, Screws, Rivets, and Washers	Zn;N+N;Fe;Al
AA1	3462	Iron and Steel Forgings	Zn;N+N;Fe;Al
AA1	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	Zn;N+N;Fe;Al
AA1	3494	Valves and Pipe Fittings, Not Elsewhere Classified	Zn;N+N;Fe;Al
AA1	3496	Miscellaneous Fabricated Wire Products	Zn;N+N;Fe;Al
AA1	3499	Fabricated Metal Products, Not Elsewhere Classified	Zn;N+N;Fe;Al
AA1	391X	Jewelry, Silverware, and Plated Ware	Zn;N+N;Fe;Al
AA2	3479	Coating, Engraving, and Allied Services	Zn;N+N
SECTOR AB. TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY			
NA	35XX	Industrial and Commercial Machinery (except 357X Computer and Office Equipment)	
NA	37XX	Transportation Equipment (except 373X Ship and Boat Building and Repairing	
SECTOR AC. ELECTRONIC, ELECTRICAL. PHOTOGRAPHIC, AND OPTICAL GOODS			
NA	36XX	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	
NA	38XX	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
NA	357X	Computer and Office Equipment	

Section C: STANDARD PROVISIONS

1. Duty to Comply

The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for (a) enforcement action for (b) General Permit termination, revocation and reissuance, or modification or (c) denial of a General Permit renewal application.

The facility operator shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the facility operator for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition, and the facility operator so notified.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a facility operator in an enforcement action that it would have been necessary to halt or reduce the general permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The facility operator shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The facility operator at all times shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the facility operator to achieve compliance with the conditions of this General Permit and with the requirements of storm water pollution prevention plans (SWPPPs). Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a facility operator when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The facility operator shall furnish the Regional Water Quality Control Board (Regional Water Board), State Water Resources Control Board (State Water Board), U.S. Environmental Protection Agency (U.S. EPA), or local storm water management agency, within a reasonable time specified by the agencies, any requested information to determine compliance with this General Permit. The facility operator shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The facility operator shall allow the Regional Water Board, State Water Board, U.S. EPA, and local storm water management agency, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the facility operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;

b. Have access to and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized non-storm water discharge; and

d. Conduct monitoring activities at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notices of Intent (NOIs) submitted to the State Water Board shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

b. All reports, certifications, or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be attached to the SWPPP prior to submittal of any reports, certifications, or information signed by the authorized representative.

10. Certification

Any person signing documents under Provision 9. above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Reporting Requirements

a. Planned changes: The facility operator shall give advance notice to the Regional Water Board and local storm water management agency of any planned physical alteration or additions to the general permitted facility. Notice is required under this provision only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

b. Anticipated noncompliance: The facility operator will give advance notice to the Regional Water Board and local storm water management agency of any planned changes at the permitted facility which may result in noncompliance with General Permit requirements.

c. Compliance schedules: Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this General Permit shall be submitted no later than 14 days following each scheduled date.

d. Noncompliance reporting: The facility operator shall report any noncompliance at the time monitoring reports are submitted. The written submission shall contain (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce and prevent recurrence of the noncompliance.

12. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the facility operator from any responsibilities, liabilities, or penalties to which the facility operator is or may be subject under Section 311 of the CWA.

13. Severability

The provisions of this General Permit are severable; and if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

14. Reopener Clause

This General Permit may be modified, revoked, and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5. This General Permit may be reopened to modify the provisions regarding authorized non-storm water discharges specified in Section D. Special Conditions.

15. Penalties for Violations of General Permit Conditions.

a. Section 309 of the CWA provides significant penalties for any person who violates a General Permit condition

implementing Sections 301, 302, 306, 307 308, 318, or 405 of the CWA, or any General Permit condition or limitation implementing any such section in a General Permit issued under Section 402. Any person who violates any General Permit condition of this General Permit is subject to a civil penalty not to exceed $25,000 per day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties in some cases greater than those under the CWA.

16. Availability

A copy of this General Permit shall be maintained at the facility and be available at all times to the appropriate facility personnel and to Regional Water Board and local agency inspectors.

17. Transfers

This General Permit is not transferable from one facility operator to another facility operator nor may it be transferred from one location to another location. A new facility operator of an existing facility must submit an NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit.

18. Continuation of Expired General Permit

This General Permit continues in force and effect until a new general permit is issued or the State Water Board rescinds the General Permit. Facility operators authorized to discharge under the expiring general permit are required to file an NOI to be covered by the reissued General Permit.

19. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both.

FACILITIES COVERED BY THIS GENERAL PERMIT

Industrial facilities include Federal, State, municipally owned, and private facilities from the following categories:

1. FACILITIES SUBJECT TO STORM WATER EFFLUENT LIMITATIONS GUIDELINES, NEW SOURCE PERFORMANCE STANDARDS, OR TOXIC POLLUTANT EFFLUENT STANDARDS (40 Code of Federal Regulations (CFR) SUBCHAPTER N). Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443).

2. MANUFACTURING FACILITIES: Standard Industrial Classifications (SICs) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441, and 373.

3. OIL AND GAS/MINING FACILITIES: SICs 10 through 14 including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l) because of performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for area of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990); oil and gas exploration, production, processing, or treatment operations; or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mined sites that are not being actively mined but which have an identifiable facility operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: Includes those operating under interim status or a general permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act (RCRA).

5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: Sites that receive or have received industrial waste from any of

the facilities covered by this General Permit, sites subject to regulation under Subtitle D of RCRA, and sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).

6. RECYCLING FACILITIES: SICs 5015 and 5093. These codes include metal scrapyards, battery reclaimers, salvage yards, motor vehicle dismantlers and wreckers, and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc.

7. STEAM ELECTRIC POWER GENERATING FACILITIES: Includes any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.

8. TRANSPORTATION FACILITIES: SICs 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.

9. SEWAGE OR WASTEWATER TREATMENT WORKS: Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of one million gallons per day or more or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.

10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE <u>EXPOSED</u> TO STORM WATER: SICs 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225.

State Water Resources Control Board

Water Quality Order No. 99-08-DWQ

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
ORDER NO. 99 - 08 - DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000002

WASTE DISCHARGE REQUIREMENTS (WDRS) FOR DISCHARGES OF STORM WATER RUNOFF ASSOCIATED WITH CONSTRUCTION ACTIVITY

The State Water Resources Control Board finds that:

1. Federal regulations for controlling pollutants in storm water runoff discharges were promulgated by the U.S. Environmental Protection Agency (USEPA) on November 16, 1990 (40 Code of Federal Regulations (CFR) Parts 122, 123, and 124). The regulations require discharges of storm water to surface waters associated with construction activity including clearing, grading, and excavation activities (except operations that result in disturbance of less than five acres of total land area and which are not part of a larger common plan of development or sale) to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate storm water pollution.

   On December 8, 1999 federal regulations promulgated by USEPA (40CFR Parts 9, 122, 123, and 124) expanded the NPDES storm water program to include storm water discharges from municipal separate storm sewer systems (MS4s) and construction sites that were smaller than those previously included in the program. Federal regulation 40 CFR § 122.26(b)(15) defines small construction activity as including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre or less than five acres or is part of a larger common plan of development or sale. Permit applications for small construction activities are due by March 10, 2003.

2. This General Permit regulates pollutants in discharges of storm water associated with construction activity (storm water discharges) to surface waters, except from those areas on Tribal Lands; Lake Tahoe Hydrologic Unit; construction projects which disturb less than one acre, unless part of a larger common plan of development or sale; and storm water discharges which are determined ineligible for coverage under this General Permit by the California Regional Water Quality Control Boards (RWQCBs). Attachment 1 contains addresses and telephone numbers of each RWQCB office.

3. This General Permit does not preempt or supersede the authority of local storm water management agencies to prohibit, restrict, or control storm water discharges to separate storm sewer systems or other watercourses within their jurisdiction, as allowed by State and Federal law.

4. To obtain authorization for proposed storm water discharges to surface waters, pursuant to this General Permit, the landowner (discharger) must submit a Notice of Intent (NOI) with a vicinity map and the appropriate fee to the SWRCB prior to commencement of construction activities. In addition, coverage under this General Permit shall not occur until the applicant develops a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the requirements of Section A of this permit for the project. For proposed construction activity conducted on easements or on nearby property by agreement or permission, or by an owner or lessee of a mineral estate (oil, gas, geothermal, aggregate, precious metals, and/or industrial minerals) entitled to conduct the activities, the entity responsible for the construction activity must submit the NOI and filing fee and shall be responsible for development of the SWPPP.

5. If an individual NPDES Permit is issued to a discharger otherwise subject to this General Permit or if an alternative General Permit is subsequently adopted which covers storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the subsequent General Permit.

6. This action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with section 13389 of the California Water Code.

7. The SWRCB adopted the California Ocean Plan, and the RWQCBs have adopted and the SWRCB has approved Water Quality Control Plans (Basin Plans). Dischargers regulated by this General Permit must comply with the water quality standards in these Basin Plans and subsequent amendments thereto.

8. The SWRCB finds storm water discharges associated with construction activity to be a potential significant sources of pollutants. Furthermore, the SWRCB finds that storm water discharges associated with construction activities have the reasonable potential to cause or contribute to an excursion above water quality standards for sediment in the water bodies listed in Attachment 3 to this permit.

9. It is not feasible at this time to establish numeric effluent limitations for pollutants in storm water discharges from construction activities. Instead, the provisions of this General Permit require implementation of Best Management Practices (BMPs) to control and abate the discharge of pollutants in storm water discharges.

10. Discharges of non-storm water may be necessary for the completion of certain construction projects. Such discharges include, but are not limited to: irrigation of vegetative erosion control measures, pipe flushing and testing, street cleaning, and dewatering. Such discharges are authorized by this General Permit as long as they (a) do comply with Section A.9 of this General Permit, (b) do not cause or contribute to violation of any water quality standard, (c) do not violate any other provision of this

General Permit, (d) do not require a non-storm water permit as issued by some RWQCBs, and (e) are not prohibited by a Basin Plan. If a non-storm water discharge is subject to a separate permit adopted by a RWQCB, the discharge must additionally be authorized by the RWQCB permit.

11. Following adoption of this General Permit, the RWQCBs shall enforce the provisions herein including the monitoring and reporting requirements.

12. Following public notice in accordance with State and Federal laws and regulations, the SWRCB in a public meeting on June 8, 1998, heard and considered all comments. The SWRCB has prepared written responses to all significant comments.

13. This Order is an NPDES permit in compliance with section 402 of the Clean Water Act (CWA) and shall take effect upon adoption by the SWRCB provided the Regional Administrator of the USEPA has no objection. If the USEPA Regional Administrator objects to its issuance, the General Permit shall not become effective until such objection is withdrawn.

14. This General Permit does not authorize discharges of fill or dredged material regulated by the U.S. Army Corps of Engineers under CWA section 404 and does not constitute a waiver of water quality certification under CWA section 401.

15 The Monitoring Program and Reporting Requirements are modified in compliance with a judgment in the case of San Francisco BayKeeper, et al. v. State Water Resources Control Board. The modifications include sampling and analysis requirements for direct discharges of sediment to waters impaired due to sediment and for pollutants that are not visually detectable in runoff that may cause or contribute to an exceedance of water quality objectives.

16 Storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people are no longer exempt from the need to apply for or obtain a storm water discharge permit. A temporary exemption, which was later extended by USEPA, was provided under section 1068(c) of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991. Federal regulation 40 CFR § 122.26(e)(1)(ii) requires the above municipalities to submit permit application by March 10, 2003.

17 This permit may be reopened and modified to include different monitoring requirements for small construction activity than for construction activity over five (5) acres.

IT IS HEREBY ORDERED that all dischargers who file an NOI indicating their intention to be regulated under the provisions of this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Authorization pursuant to this General Permit does not constitute an exemption to applicable discharge prohibitions prescribed in Basin Plans, as implemented by the nine RWQCBs.

2. Discharges of material other than storm water which are not otherwise authorized by an NPDES permit to a separate storm sewer system (MS4) or waters of the nation are prohibited, except as allowed in Special Provisions for Construction Activity, C.3.

3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

4. Storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

B. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan.

3. Should it be determined by the discharger, SWRCB, or RWQCB that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, the discharger shall:

   a. Implement corrective measures immediately following discovery that water quality standards were exceeded, followed by notification to the RWQCB by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14-calender days to the appropriate RWQCB, unless otherwise directed by the RWQCB, describing (1) the nature and cause of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any additional BMPs which will be implemented to

prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance.

b. The discharger shall revise its SWPPP and monitoring program immediately after the report to the RWQCB to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring needed.

c. Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this General Permit while the discharger prepares and implements the above report.

C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

1. All dischargers shall file an NOI and pay the appropriate fee for construction activities conducted at each site as required by Attachment 2: Notice of Intent--General Instructions.

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

3. Discharges of non-storm water are authorized only where they do not cause or contribute to a violation of any water quality standard and are controlled through implementation of appropriate BMPs for elimination or reduction of pollutants. Implementation of appropriate BMPs is a condition for authorization of non-storm water discharges. Non-storm water discharges and the BMPs appropriate for their control must be described in the SWPPP. Wherever feasible, alternatives which do not result in discharge of nonstorm water shall be implemented in accordance with Section A.9. of the SWPPP requirements.

4. All dischargers shall develop and implement a monitoring program and reporting plan in accordance with Section B: Monitoring Program and Reporting Requirements.

5. All dischargers shall comply with the lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the RWQCBs to local agencies.

6. All dischargers shall comply with the standard provisions and reporting requirements contained in Section C: Standard Provisions.

7. The discharger may terminate coverage for a portion of the project under this General Permit when ownership of a portion of this project has been transferred or when a phase within this multi-phase project has been completed. When ownership has transferred, the discharger must submit to its RWQCB a Change of Information Form (COI) Attachment 4 with revised site map and the name, address and telephone number of the new owner(s). Upon transfer of title, the discharger should notify the new owner(s) of the need to obtain coverage under this General Permit. The new owner must comply with provisions of Sections A. 2. (c) and
B. 2. (b) of this General Permit. To terminate coverage for a portion of the project when a phase has been completed, the discharger must submit to its RWQCB a COI with a revised map that identifies the newly delineated site.

8. The discharger may terminate coverage under this General Permit for a complete project by submitting to its RWQCB a Notice of Termination Form (NOT), and the post-construction BMPs plan according to Section A.10 of this General Permit. Note that a construction project is considered complete only when all portions of the site have been transferred to a new owner; or the following conditions have been met:

   a. There is no potential for construction related storm water pollution,

   b. All elements of the SWPPP have been completed,

   c. Construction materials and waste have been disposed of properly,

   d. The site is in compliance with all local storm water management requirements, and

   e. A post-construction storm water management plan is in place as described in the site's SWPPP.

9. This General Permit expires five years from the date of adoption.

D. REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) AUTHORITIES:

1. RWQCBs shall:

   a. Implement the provisions of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPS, reviewing SWPPPs, reviewing monitoring reports, conducting compliance inspections, and taking enforcement actions.

   b. Issue permits as they deem appropriate to individual dischargers, categories of dischargers, or dischargers in a geographic area. Upon issuance of such permits by a RWQCB, the affected dischargers shall no longer be regulated by this General Permit.

2. RWQCBs may require, on a case-by-case basis, the inclusion of an analysis of potential downstream impacts on receiving waterways due to the permitted construction.

3. RWQCBs may provide information to dischargers on the development and implementation of SWPPPs and monitoring programs and may require revisions to SWPPPs and monitoring programs.

4. RWQCBs may require dischargers to retain records for more than three years.

5. RWQCBs may require additional monitoring and reporting program requirements including sampling and analysis of discharges to water bodies listed in Attachment 3 to this permit. Additional requirements imposed by the RWQCB should be consistent with the overall monitoring effort in the receiving waters.

6. RWQCBs may issue individual NPDES permits for those construction activities found to be ineligible for coverage under this permit.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 19, 1999.

AYE:	James M. Stubchaer Mary Jane Forster John W. Brown Arthur G. Baggett, Jr.
NO:	None
ABSENT:	None
ABSTAIN:	None

/s/
Maureen Marché
Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

1. Objectives

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and implemented to address the specific circumstances for each construction site covered by this General Permit. The SWPPP shall be certified in accordance with the signatory requirements of section C, Standard Provision for Construction Activities (9). The SWPPP shall be developed and amended or revised, when necessary, to meet the following objectives:

a. Identify all pollutant sources including sources of sediment that may affect the quality of storm water discharges associated with construction activity (storm water discharges) from the construction site, and

b. Identify non-storm water discharges, and

c. Identify, construct, implement in accordance with a time schedule, and maintain Best Management Practices (BMPs) to reduce or eliminate pollutants in storm water discharges and authorized nonstorm water discharges from the construction site during construction, and

d. Develop a maintenance schedule for BMPs installed during construction designed to reduce or eliminate pollutants after construction is completed (post-construction BMPs).

e. Identify a sampling and analysis strategy and sampling schedule for discharges from construction activity which discharge directly into water bodies listed on Attachment 3. (Clean Water Act Section 303(d) [303(d)] Water Bodies listed for Sedimentation).

f. For all construction activity, identify a sampling and analysis strategy and sampling schedule for discharges that have been discovered through visual monitoring to be potentially contaminated by pollutants not visually detectable in the runoff.

2. Implementation Schedule

a. For construction activity commencing on or after adoption of this General Permit, the SWPPP shall be developed prior to the start of soil-disturbing activity in accordance with this Section and shall be implemented concurrently with commencement of soil-disturbing activities.

b. Existing permittees engaging in construction activities covered under the terms of the previous General Construction Permit SWPPP (WQ Order No.92-08-DWQ) shall continue to implement their existing SWPPP and shall implement any

necessary revisions to their SWPPP in accordance with this Section of the General Permit in a timely manner, but in no case more than 90-calender days from the date of adoption of this General Permit.

c. For ongoing construction activity involving a change of ownership of property, the new owner shall review the existing SWPPP and amend if necessary, or develop a new SWPPP within 45-calender days.

d. Existing permittees shall revise their SWPPP in accordance with the sampling and analysis modifications prior to August 1, 2001. For ongoing construction activity involving a change of ownership the new owner shall review the existing SWPPP and amend the sampling and analysis strategy, if required, within 45 days. For construction activity commencing after the date of adoption, the SWPPP shall be developed in accordance with the modification language adopted.

3. Availability

The SWPPP shall remain on the construction site while the site is under construction during working hours, commencing with the initial construction activity and ending with termination of coverage under the General Permit.

4. Required Changes

a. The discharger shall amend the SWPPP whenever there is a change in construction or operations which may affect the discharge of pollutants to surface waters, ground waters, or a municipal separate storm sewer system (MS4). The SWPPP shall also be amended if the discharger violates any condition of this General Permit or has not achieved the general objective of reducing or eliminating pollutants in storm water discharges. If the RWQCB determines that the discharger is in violation of this General Permit, the SWPPP shall be amended and implemented in a timely manner, but in no case more than 14-calendar days after notification by the RWQCB. All amendments should be dated and directly attached to the SWPPP.

b. The RWQCB or local agency with the concurrence of the RWQCB may require the discharger to amend the SWPPP.

5. Source Identification

The SWPPP shall include: (a) project information and (b) pollutant source identification combined with an itemization of those BMPs specifically chosen to control the pollutants listed.

a. Project Information

(1) The SWPPP shall include a vicinity map locating the project site with respect to easily identifiable major roadways, geographic features, or landmarks. At a minimum, the map must show the construction site perimeter, the geographic features surrounding the site, and the general topography.

(2) The SWPPP shall include a site map(s) which shows the construction project in detail, including the existing and planned paved areas and buildings.

(a) At a minimum, the map must show the construction site perimeter; existing and proposed buildings, lots, roadways, storm water collection and discharge points; general topography both before and after construction; and the anticipated discharge location(s) where the storm water from the construction site discharges to a municipal storm sewer system or other water body.

(b) The drainage patterns across the project area must clearly be shown on the map, and the map must extend as far outside the site perimeter as necessary to illustrate the relevant drainage areas. Where relevant drainage areas are too large to depict on the map, map notes or inserts illustrating the upstream drainage areas are sufficient.

(c) Temporary on-site drainages to carry concentrated flow shall be selected to comply with local ordinances, to control erosion, to return flows to their natural drainage courses, and to prevent damage to downstream properties.

3. Information presented in the SWPPP may be represented either by narrative or by graphics. Where possible, narrative descriptions should be plan notes. Narrative descriptions which do not lend themselves to plan notes can be contained in a separate document which must be referenced on the plan.

b. Pollutant Source and BMP Identification

The SWPPP shall include a description of potential sources which are likely to add pollutants to storm water discharges or which may result in nonstorm water discharges from the construction site. Discharges originating from off-site which flow across or through areas disturbed by construction that may contain pollutants should be reported to the RWQCB.

The SWPPP shall:

(1) Show drainage patterns and slopes anticipated after major grading activities are completed. Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place. The amount of anticipated storm water run-on must be considered to determine the appropriateness of the BMPs chosen. Show all calculations for anticipated storm water run-on, and describe all BMPs implemented to divert off-site drainage described in section A. 5 a. (2) (c) around or through the construction project.

(2) Show the drainage patterns into each on-site storm water inlet point or receiving water. Show or describe the BMPs that will protect operational storm water inlets or receiving waters from contaminated discharges other than sediment discharges, such as, but not limited to: storm water with elevated pH levels from contact with soil amendments such as lime or gypsum; slurry from sawcutting of concrete or asphalt ;washing of exposed aggregate concrete; concrete rinse water; building washing operations; equipment washing operations; minor street washing associated with street delineation; and/or sealing and paving activities occurring during rains.

(3) Show existing site features that, as a result of known past usage, may contribute pollutants to storm water, (e.g., toxic materials that are known to have been treated, stored, disposed, spilled, or leaked onto the construction site). Show or describe the BMPs implemented to minimize the exposure of storm water to contaminated soil or toxic materials.

(4) Show areas designated for the (a) storage of soil or waste, (b) vehicle storage and service areas, (c) construction material loading, unloading, and access areas, (d) equipment storage, cleaning, and maintenance areas.

(5) Describe the BMPs for control of discharges from waste handling and disposal areas and methods of on-site storage and disposal of construction materials and construction waste. Describe the BMPs designed to minimize or eliminate the exposure of storm water to construction materials, equipment, vehicles, waste storage areas, or service areas. The BMPs described shall be in compliance with Federal, State, and local laws, regulations, and ordinances.

(6) Describe all post-construction BMPs for the project, and show the location of each BMP on the map. (Post-construction BMPs consist of permanent features designed to minimize pollutant discharges, including sediment, from the site after construction has been completed.) Also, describe the agency or parties to be the responsible party for long-term maintenance of these BMPs.

(7) Show the locations of direct discharge from the construction site into a Section 303(d) list water body. Show the designated sampling locations in the receiving waters, which represent the prevailing conditions of the water bodies upstream of the construction site discharge and immediately downstream from the last point of discharge.

(8) Show the locations designated for sampling the discharge from areas identified in Section A. 5. b. (2), (3), and (4) and Section A. 5. c. (1) and (2). Samples shall be taken should visual monitoring indicate that there has been a breach, malfunction, leakage, or spill from a BMP which could result in the discharge in storm water of pollutants that would not be visually detectable, or if storm water comes into contact with soil amendments or other exposed materials or contamination and is allowed to be discharged. Describe the sampling procedure, location, and rationale for obtaining the uncontaminated sample of storm water.

c. Additional Information

(1) The SWPPP shall include a narrative description of pollutant sources and BMPs that cannot be adequately communicated or identified on the site map. In addition, a narrative description of preconstruction control practices (if any) to reduce sediment and other pollutants in storm water discharges shall be included.

(2) The SWPPP shall include an inventory of all materials used and activities performed during construction that have the potential to contribute to the discharge of pollutants other than sediment in storm water. Describe the BMPs selected and the basis for their selection to eliminate or reduce these pollutants in the storm water discharges.

(3) The SWPPP shall include the following information regarding the construction site surface area: the size (in acres or square feet), the runoff coefficient before and after construction, and the percentage that is impervious (e.g., paved, roofed, etc.) before and after construction.

(4) The SWPPP shall include a copy of the NOI, and the Waste Discharge Identification (WDID) number. Should a WDID number not be received from the SWRCB at the time construction commences, the discharger shall include proof of mailing of the NOI, e.g., certified mail receipt, copy of check, express mail receipt, etc.

(5) The SWPPP shall include a construction activity schedule which describes all major activities such as mass grading, paving, lot or parcel

improvements at the site and the proposed time frame to conduct those activities.

(6) The SWPPP shall list the name and telephone number of the qualified person(s) who have been assigned responsibility for prestorm, poststorm, and storm event BMP inspections; and the qualified person(s) assigned responsibility to ensure full compliance with the permit and implementation of all elements of the SWPPP, including the preparation of the annual compliance evaluation and the elimination of all unauthorized discharges.

6. Erosion Control

Erosion control, also referred to as "soil stabilization" is the most effective way to retain soil and sediment on the construction site. The most efficient way to address erosion control is to preserve existing vegetation where feasible, to limit disturbance, and to stabilize and revegetate disturbed areas as soon as possible after grading or construction. Particular attention must be paid to large mass-graded sites where the potential for soil exposure to the erosive effects of rainfall and wind is great. Mass graded construction sites may be exposed for several years while the project is being built out. Thus, there is potential for significant sediment discharge from the site to surface waters.

At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes, and building pads. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single-most important factor in reducing erosion at construction sites. The discharger shall consider measures such as: covering with mulch, temporary seeding, soil stabilizers, binders, fiber rolls or blankets, temporary vegetation, permanent seeding, and a variety of other measures.

The SWPPP shall include a description of the erosion control practices, including a time schedule, to be implemented during construction to minimize erosion on disturbed areas of a construction site. The discharger must consider the full range of erosion control BMPs. The discharger must consider any additional site-specific and seasonal conditions when selecting and implementing appropriate BMPs. The above listed erosion control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

a. The SWPPP shall include:

(1) An outline of the areas of vegetative soil cover or native vegetation onsite which will remain undisturbed during the construction project.

(2) An outline of all areas of soil disturbance including cut or fill areas which will be stabilized during the rainy season by temporary or permanent erosion control measures, such as seeding, mulch, or blankets, etc.

(3) An outline of the areas of soil disturbance, cut, or fill which will be left exposed during any part of the rainy season, representing areas of potential soil erosion where sediment control BMPs are required to be used during construction.

(4) A proposed schedule for the implementation of erosion control measures.

b. The SWPPP shall include a description of the BMPs and control practices to be used for both temporary and permanent erosion control measures.

c. The SWPPP shall include a description of the BMPs to reduce wind erosion at all times, with particular attention paid to stock-piled materials.

7. Stabilization

(1) All disturbed areas of the construction site must be stabilized. Final stabilization for the purposes of submitting a NOT is satisfied when:

-All soil disturbing activities are completed AND EITHER OF THE TWO FOLLOWING CRITERIA ARE MET:

-A uniform vegetative cover with 70 percent coverage has been established OR:

-equivalent stabilization measures have been employed. These measures include the use of such BMPs as blankets, reinforced channel liners, soil cement, fiber matrices, geotextiles, or other erosion resistant soil coverings or treatments.

(2) Where background native vegetation covers less than 100 percent of the surface, such as in arid areas, the 70 percent coverage criteria is adjusted as follows: If the native vegetation covers 50 percent of the ground surface, 70 percent of 50 percent (.70 X .50=.35) would require 35 percent total uniform surface coverage.

8. Sediment Control

The SWPPP shall include a description or illustration of BMPs which will be implemented to prevent a net increase of sediment load in storm water discharge relative to preconstruction levels. Sediment control BMPs are required at appropriate locations along the site perimeter and at all operational internal inlets to the storm drain system at all times during the rainy season. Sediment control practices may include filtration devices and barriers (such as fiber rolls, silt fence, straw bale barriers, and gravel inlet filters) and/or settling devices (such as sediment traps or basins). Effective filtration devices, barriers, and settling devices shall be selected, installed and maintained properly. A proposed schedule for deployment of sediment control BMPs shall be included in the SWPPP. These are the most basic measures to prevent sediment from leaving the project site and moving into receiving waters. Limited exemptions may be authorized by the RWQCB when work on active areas precludes the use of sediment control BMPs temporarily. Under these conditions, the SWPPP must describe a plan to establish perimeter controls prior to the onset of rain.

During the nonrainy season, the discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm. The discharger shall consider a full range of sediment controls, in addition to the controls listed above, such as straw bale dikes, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, sandbag dikes, fiber rolls, or other controls. At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

If the discharger chooses to rely on sediment basins for treatment purposes, sediment basins shall, at a minimum, be designed and maintained as follows:

Option 1: Pursuant to local ordinance for sediment basin design and maintenance, provided that the design efficiency is as protective or more protective of water quality than Option 3.

OR

Option 2: Sediment basin(s), as measured from the bottom of the basin to the principal outlet, shall have at least a capacity equivalent to 3,600 cubic feet of storage per acre draining into the sediment basin. The length of the basin shall be more than twice the width of the basin. The length is determined by measuring the distance between the inlet and the outlet; and the depth must not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency.

OR

Option 3: Sediment basin(s) shall be designed using the standard equation:

$As=1.2Q/Vs$

Where: As is the minimum surface area for trapping soil particles of a certain size; Vs is the settling velocity of the design particle size chosen; and Q=C x I x A where Q is the discharge rate measured in cubic feet per second; C is the runoff coefficient; I is the precipitation intensity for the 10-year, 6-hour rain event and A is the area draining into the sediment basin in acres. The design particle size shall be the smallest soil grain size determined by wet sieve analysis, or the fine silt sized (0.01mm) particle, and the Vs used shall be 100 percent of the calculated settling velocity.

The length is determined by measuring the distance between the inlet and the outlet; the length shall be more than twice the dimension as the width; the depth shall not be less than three feet nor greater than five feet for safety reasons and for maximum efficiency (two feet of storage, two feet of capacity). The basin(s) shall be located on the site where it can be maintained on a year-round basis and shall be maintained on a schedule to retain the two feet of capacity;

OR

Option 4: The use of an equivalent surface area design or equation, provided that the design efficiency is as protective or more protective of water quality than Option 3.

A sediment basin shall have a means for dewatering within 7-calendar days following a storm event. Sediment basins may be fenced if safety (worker or public) is a concern.

The outflow from a sediment basin that discharges into a natural drainage shall be provided with outlet protection to prevent erosion and scour of the embankment and channel.

The discharger must consider any additional site-specific and seasonal conditions when selecting and designing sediment control BMPs. The above listed sediment control measures are examples of what should be considered and are not exclusive of new or innovative approaches currently available or being developed.

The SWPPP shall include a description of the BMPs to reduce the tracking of sediment onto public or private roads at all times. These public and private roads shall be inspected and cleaned as necessary. Road cleaning BMPs shall be discussed in the SWPPP and will not rely on the washing of accumulated sediment or silt into the storm drain system.

9. Non-Storm Water Management

Describe all non-storm water discharges to receiving waters that are proposed for the construction project. Non-storm water discharges should be eliminated or reduced to the extent feasible. Include the locations of such discharges and descriptions of all BMPs designed for the control of pollutants in such discharges. Onetime discharges shall be monitored during the time that such discharges are occurring. A qualified person should be assigned the responsibility for ensuring that no materials other than storm water are discharged in quantities which will have an adverse effect on receiving waters or storm drain systems (consistent with BAT/BCT), and the name and contact number of that person should be included in the SWPPP document.

Discharging sediment-laden water which will cause or contribute to an exceedance of the applicable RWQCB's Basin Plan from a dewatering site or sediment basin into any receiving water or storm drain without filtration or equivalent treatment is prohibited.

10. Post-Construction Storm Water Management

The SWPPP shall include descriptions of the BMPs to reduce pollutants in storm water discharges after all construction phases have been completed at the site (Post-Construction BMPs). Post-Construction BMPs include the minimization of land disturbance, the minimization of impervious surfaces, treatment of storm water runoff using infiltration, detention/retention, biofilter BMPs, use of efficient irrigation systems, ensuring that interior drains are not connected to a storm sewer system, and appropriately designed and constructed energy dissipation devices. These must be consistent with all local post-construction storm water management requirements, policies, and guidelines. The discharger must consider site-specific and seasonal conditions when designing the control practices. Operation and maintenance of control practices after construction is completed shall be addressed, including short-and long-term funding sources and the responsible party.

11. Maintenance, Inspection, and Repair

The SWPPP shall include a discussion of the program to inspect and maintain all BMPs as identified in the site plan or other narrative documents throughout the entire duration of the project. A qualified person will be assigned the responsibility to conduct inspections. The name and telephone number of that person shall be listed in the SWPPP document. Inspections will be performed before and after storm events and once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or design changes as soon as feasible depending upon field conditions. Equipment, materials, and workers must be available for rapid response to failures and emergencies. All corrective maintenance to BMPs shall be performed as soon as possible after the conclusion of each storm depending upon worker safety.

For each inspection required above, the discharger shall complete an inspection checklist. At a minimum, an inspection checklist shall include:

a. Inspection date.

b. Weather information: best estimate of beginning of storm event, duration of event, time elapsed since last storm, and approximate amount of rainfall (inches).

c. A description of any inadequate BMPs.

d. If it is possible to safely access during inclement weather, list observations of all BMPs: erosion controls, sediment controls, chemical and waste controls, and non-storm water controls. Otherwise, list result of visual inspection at relevant outfall, discharge point, or downstream location and projected required maintenance activities.

e. Corrective actions required, including any changes to SWPPP necessary and implementation dates.

f. Inspectors name, title, and signature.

The dischargers shall prepare their inspection checklists using the inspection checklist form provided by the SWRCB or RWQCB or on forms that contain the equivalent information.

12. Training

Individuals responsible for SWPPP preparation, implementation, and permit compliance shall be appropriately trained, and the SWPPP shall document all training. This includes those personnel responsible for installation, inspection, maintenance, and repair of BMPs. Those responsible for overseeing, revising, and amending the SWPPP shall also document their training. Training should be both formal and informal, occur on an ongoing basis when it is appropriate and convenient, and should include training/workshops offered by the SWRCB, RWQCB, or other locally recognized agencies or professional organizations.

13. List of Contractors/Subcontractors

The SWPPP shall include a list of names of all contractors, (or subcontractors) and individuals responsible for implementation of the SWPPP. This list should include telephone numbers and addresses. Specific areas of responsibility of each subcontractor and emergency contact numbers should also be included.

14. Other Plans

This SWPPP may incorporate by reference the appropriate elements of other plans required by local, State, or Federal agencies. A copy of any requirements incorporated by reference shall be kept at the construction site.

15. Public Access

The SWPPP shall be provided, upon request, to the RWQCB. The SWPPP is considered a report that shall be available to the public by the RWQCB under section 308(b) of the Clean Water Act.

16. Preparer Certification

The SWPPP and each amendment shall be signed by the landowner (discharger) or his representative and include the date of initial preparation and the date of each amendment.

SECTION B: MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. Required Changes

The RWQCB may require the discharger to conduct additional site inspections, to submit reports and certifications, or perform sampling and analysis.

2. Implementation

a. The requirements of this Section shall be implemented at the time of commencement of construction activity (see also Section A. 2. Implementation Schedule). The discharger is responsible for implementing these requirements until construction activity is complete and the site is stabilized.

b. For ongoing construction activity involving a change in ownership of property covered by this General Permit, the new owner must complete a NOI and implement the requirements of this Section concurrent with the change of ownership. For changes of information, the owner must follow instructions in C. 7. Special Provisions for Construction Activity of the General Permit.

3. Site Inspections

Qualified personnel shall conduct inspections of the construction site prior to anticipated storm events, during extended storm events, and after actual storm events to identify areas contributing to a discharge of storm water associated with construction activity. The name(s) and contact number(s) of the assigned inspection personnel shall be listed in the SWPPP. Pre-storm inspections are to ensure that BMPs are properly installed and maintained; post-storm inspections are to assure that the BMPs have functioned adequately. During extended storm events, inspections shall be required each 24-hour period. Best Management Practices (BMPs) shall be evaluated for adequacy and proper implementation and whether additional BMPs are required in accordance with the terms of the General Permit (see language in Section A. 11. Maintenance, Inspection, and Repair). Implementation of nonstorm water discharge BMPs shall be verified and their

effectiveness evaluated. One time discharges of non-storm water shall be inspected when such discharges occur.

4. Compliance Certification

Each discharger or qualified assigned personnel listed by name and contact number in the SWPPP must certify annually that construction activities are in compliance with the requirements of this General Permit and the SWPPP. This Certification shall be based upon the site inspections required in Item 3 of this Section. The certification must be completed by July 1 of each year.

5. Noncompliance Reporting

Dischargers who cannot certify compliance, in accordance with Item 4 of this Section and/or who have had other instances of noncompliance excluding exceedances of water quality standards as defined in section B. 3. Receiving Water Limitations Language, shall notify the appropriate RWQCB within 30 days. Corrective measures should be implemented immediately following discovery that water quality standards were exceeded. The notifications shall identify the noncompliance event, including an initial assessment of any impact caused by the event; describe the actions necessary to achieve compliance; and include a time schedule subject to the modifications by the RWQCB indicating when compliance will be achieved. Noncompliance notifications must be submitted within 30-calendar days of identification of noncompliance.

6. Monitoring Records

Records of all inspections, compliance certifications, and noncompliance reporting must be retained for a period of at least three years from the date generated. With the exception of noncompliance reporting, dischargers are not required to submit these records.

7. Monitoring Program for Sedimentation/Siltation

Dischargers of storm water associated with construction activity that directly enters a water body listed in Attachment 3 shall conduct a sampling and analysis program for the pollutants (sedimentation/siltation or turbidity) causing the impairment. The discharger shall monitor for the applicable parameter. If the water body is listed for sedimentation or siltation, samples should be analyzed for Settleable Solids (ml/l) and Total Suspended Solids (mg/l). Alternatively or in addition, samples may be analyzed for suspended sediment concentration according to ASTM D3977-97. If the water body is listed for turbidity, samples should be analyzed for turbidity (NTU). Discharges that flow through tributaries that are not listed in Attachment 3 or that flow into Municipal Separate Storm Sewer Systems (MS4) are not subject to these sampling and analysis requirements. The sampling and analysis parameters and procedures must be designed to determine whether the BMPs installed and maintained prevent discharges of sediment from contributing to impairment in receiving waters.

Samples shall be collected during the first two hours of discharge from rain events which result in a direct discharge to any water body listed in Attachment 3. Samples shall be collected during daylight hours (sunrise to sunset). Dischargers need not collect more than four (4) samples per month. All samples shall be taken in the receiving waters and shall be representative of the prevailing conditions of the water bodies. Samples shall be collected from safely accessible locations upstream of the construction site discharge and immediately downstream from the last point of discharge.

For laboratory analysis, all sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136. Field samples shall be collected and analyzed according to the specifications of the manufacturer of the sampling devices employed. Portable meters shall be calibrated according to manufacturer's specification. All field and/or laboratory analytical data shall be kept in the SWPPP document, which is to remain at the construction site at all times until a Notice of Termination has been submitted and approved.

8. Monitoring Program for Pollutants Not Visually Detectable in Storm Water

A sampling and analysis program shall be developed and conducted for pollutants which are not visually detectable in storm water discharges, which are or should be known to occur on the construction site, and which could cause or contribute to an exceedance of water quality objectives in the receiving water. Pollutants that should be considered for inclusion in this sampling and analysis program are those identified in Sections A.5.b. and A.5.c.

Construction materials and compounds that are not stored in water-tight containers under a water-tight roof or inside a building are examples of materials for which the discharger may have to implement sampling and analysis procedures. The goal of the sampling and analysis is to determine whether the BMPs employed and maintained on site are effective in preventing the potential pollutants from coming in contact with storm water and causing or contributing to an exceedance of water quality objectives in the receiving waters. Examples of construction sites that may require sampling and analysis include: sites that are known to have contaminants spilled or spread on the ground; sites where construction practices include the application of soil amendments, such as gypsum, which can increase the pH of the runoff; or sites having uncovered stockpiles of material exposed to storm water. Visual observations before, during, and after storm events may trigger the requirement to collect samples. Any breach, malfunction, leakage, or spill observed which could result in the discharge of pollutants to surface waters that *would* not be visually detectable in storm water shall trigger the collection of a sample of discharge. Samples shall be collected at all discharge locations which drain the areas identified by the visual observations and which can be safely accessed. For sites where sampling and analysis is required, personnel trained in water quality sampling procedures shall collect storm water samples. A sufficiently large sample of storm water that has not come in contact with the disturbed soil or the materials stored or used on-site

(uncontaminated sample) shall be collected for comparison with the discharge sample. Samples shall be collected during the first two hours of discharge from rain events that occur during daylight hours and which generate runoff.

The uncontaminated sample shall be compared to the samples of discharge using field analysis or through laboratory analysis. Analyses may include, but are not limited to, indicator parameters such as: pH, specific conductance, dissolved oxygen, conductivity, salinity, and TDS.

For laboratory analysis, all sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136. Field discharge samples shall be collected and analyzed according to the specifications of the manufacturer of the sampling devices employed. Portable meters shall be calibrated according to manufacturer's specification. All field and/or analytical data shall be kept in the SWPPP document, which is to remain at the construction site at all times until a *Notice of* Termination has been submitted and approved.

SECTION C: STANDARD PROVISIONS FOR CONSTRUCTION ACTIVITY

1. Duty to Comply

The discharger must comply with all of the conditions of this General Permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.

The discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the discharger for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not annul any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the dischargers so notified.

3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The discharger shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit, which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The discharger shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this General Permit and with the requirements of Storm Water Pollution Prevention Plans (SWPPP). Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a discharger when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The discharger shall furnish the RWQCB, State Water Resources Control Board, or USEPA, within a reasonable time, any requested information to determine compliance with this General Permit. The discharger shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The discharger shall allow the RWQCB, SWRCB, USEPA, and/or, in the case of construction sites which discharge through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer system receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the discharger's premises at reasonable times where a regulated construction activity is being conducted or where records must be kept under the conditions of this General Permit;

b. Access and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times the complete construction site, including any off-site staging areas or material storage areas, and the erosion/sediment controls; and

d. Sample or monitor at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notice of Intents (NOIs), Notice of Terminations (NOTs), SWPPPs, certifications, and reports prepared in accordance with this Order submitted to the SWRCB shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer, ranking elected official, or duly authorized representative. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of USEPA).

b. All SWPPPs, reports, certifications, or other information required by the General Permit and/or requested by the RWQCB, SWRCB, USEPA, or the local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP; or

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the construction activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization must be attached to the SWPPP prior to submittal of any reports, information, or certifications to be signed by the authorized representative.

10. Certification

Any person signing documents under Section C, Provision 9 above, shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Anticipated Noncompliance

The discharger will give advance notice to the RWQCB and local storm water management agency of any planned changes in the construction activity which may result in noncompliance with General Permit requirements.

12. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years or by both.

13. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the discharger from any responsibilities, liabilities, or penalties to which the discharger is or may be subject to under Section 311 of the CWA.

14. Severability

The provisions of this General Permit are severable; and, if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

15. Reopener Clause

This General Permit may be modified, revoked and reissued, or terminated for cause due to promulgation of amended regulations, receipt of USEPA guidance concerning regulated activities, judicial decision, or in accordance with 40 Code of Federal Regulations (CFR) 122.62, 122.63, 122.64, and 124.5.

16. Penalties for Violations of Permit Conditions

a. Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any such section in a permit issued under Section 402. Any person who violates any permit condition of this General Permit is subject to a civil penalty not to exceed $27,500 per calendar day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties which in some cases are greater than those under the CWA.

17. Availability

A copy of this General Permit shall be maintained at the construction site during construction activity and be available to operating personnel.

18. Transfers

This General Permit is not transferable. A new owner of an ongoing construction activity must submit a NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit. An owner who sells property covered

by this General Permit shall inform the new owner of the duty to file a NOI and shall provide the new owner with a copy of this General Permit.

19. Continuation of Expired Permit

This General Permit continues in force and effect until a new General Permit is issued or the SWRCB rescinds this General Permit. Only those dischargers authorized to discharge under the expiring General Permit are covered by the continued General Permit.

Los Angeles Regional Quality Control Board

Resolution No. 98-08

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

Resolution No. 98-08

APPROVING BEST MANAGEMENT PRACTICES
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF MANAGEMENT PROGRAMS
IN
LOS ANGELES COUNTY

(NPDES NO. CAS614001)

WHEREAS, THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION FINDS:

1. Pursuant to the requirements of Order No. 96-054, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles (Permit), the Principal Permittee, in consultation with Permittees, has developed a model program for Industrial/Commercial Education. This program must include Best Management Practices (BMPs) to control/minimize the discharge of pollutants to receiving waters.

2. The Permit required the City of Los Angeles to conduct a study on pollutants entering storm drains from street and sidewalk washing operation by: (i) characterizing municipal street washing and sidewalk washing; (ii) assessing the impacts of such activities; and (iii) recommending appropriate BMPs to control any adverse impact. Accordingly, the City of Los Angeles has completed and submitted a final report entitled *A Study of Pollutants Entering Storm Drains from Street and Sidewalk Washing Operations in Los Angeles, California* that includes recommended BMPs for said activities.

3. The Permit also requires that the BMPs be approved by the Regional Board before the Permittees incorporate them into their regulatory programs.

4. The BMPs have been evaluated and are considered appropriate for the respective program/activity.

THEREFORE BE IT RESOLVED THAT:

1. The Best Management Practices contained in the following Attachments are approved:

   a. Attachment 1 -- Industrial/Commercial Program (Site Visit); and

   b. Attachment 2 -- Sidewalk and Street Washing.

BMP List Index

Table 1 is an index to all BMP lists and their SIC codes.

Table 1
Index of BMP Lists for Industrial/Commercial Facilities

Attachment 1

Page Section	*SIC Codes (exceptions in parentheses)*	*Industry Types*
A	24 (2434)	Timber Products Facilities
B	26	Paper and Allied Products Mfg Facilities
C	28 (283)	Chemicals and Allied Products Mfg Facilities
D	29	Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers
E	32	Glass, Clay, Concrete, and Gypsum Product Facilities
F	33	Primary Metals Facilities
G	10	Metal Mining Facilities
H	12	Coal Mines and Coal Mining-Related Facilities
I	13	Oil & Gas Extraction Facilities
J	14	Mineral Mining and Processing Facilities
K	4953	Hazardous Waste Treatment, Storage or Disposal Facilities
L	4953	Landfills and Land Application Sites
M	5015	Automobile Salvage Yards
N	5093	Scrap & Waste Recycling
O	4911	Steam Electric Power Generating Facilities
P	40 41 42 43 5171	Vehicle and Equipment Maintenance Areas at Land Transportation Facilities
Q	44	Vehicle and Equipment Maintenance Areas at Water Transportation Facilities
R	373	Ship & Boat Building or Repairing Yards
S	45	Vehicle and Equipment Maintenance and Deicing Areas at Air Transportation Facilities
T	4952	Treatment Works

Page Section Refers to the Best Management Practices List for the Industrial/Commercial Education Site Visit Program (January 5, 1998) 4/13/98

2. Permittees consider these BMPs in their regulatory programs in accordance with the provisions of Order No. 96-054.

I, Dennis Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on April 13, 1998.

DENNIS A. DICKERSON
Executive Officer

Table 1 *Index of BMP Lists for Industrial/Commercial Facilities*		
Attachment 1		
Page Section	*SIC Codes (exceptions in parentheses)*	*Industry Types*
U	20 21	Food and Kindred Products Facilities
V	22 23	Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities
W	2434 25	Wood and Metal Furniture and Fixture Manufacturing Facilities
X	27	Printing and Publishing Facilities
Y	30 39	Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Z	31	Leather Tanning and Finishing Facilities
AA	34	Fabricated Metal Products Industry
AB	35 (357) 37 (373)	Facilities that Manufacture Transportation Equip., Industrial, or Commercial Machinery
AC	357 38 36	Manufacturers of Electronic and Electrical Equipment
Attachment 2		
Page Section	*SIC Codes (exceptions in parentheses)*	*Commercial Types*
AD	5013 5014 7532-7534 7536-7539	Vehicle Service Facilities
AE	5541	Gasoline Stations
AF	5812	Restaurants

Page Section Refers to the Best Management Practices List for the Industrial/Commercial Education Site Visit Program (January 5, 1998)

ATTACHMENT 2

Recommended Best Management Practices
for
Municipal Sidewalk and Street Washing Operations

TYPE OF DISCHARGE	RECOMMENDED BMPS
SIDEWALK WASH WATER	1. Remove trash, debris, and free standing oil/grease spills/leaks (use absorbent material, if necessary) from the area before washing; and 2. Use high-pressure, low volume spray washing using only potable water with no cleaning agents at an average usage of 0.006 gallon per square feet of sidewalk area.
STREET/ALLEY WASH WATER FROM AREAS WITH UNSANITARY CONDITIONS*	Collect and divert wash water to the sanitary sewer - publicly-owned treatment works (POTW). Note: POTW approval may be needed.

* This BMP is only to be applied in areas impacted by transient populations. Each Permittee is required to apply this BMP in areas where the congregation of transient populations can reasonably be expected to result in a significant threat to water quality.

4/13/98
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8. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the test claim submission. *

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Howard Gest, Esq.
Print or Type Name of Authorized Local Agency or School District Official

Attorney For Claimant
Print or Type Title

Signature of Authorized Local Agency or School District Official

July 25, 2008
Date

* *If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

BURHENN & GEST LLP
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WRITER'S DIRECT NUMBER
(213) 629-8787

WRITER'S E-MAIL ADDRESS
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November 13, 2008

RECEIVED
NOV 17 2008
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Test Claim No.03-TC-21: Request to Withdraw Certain Portions of Test Claim*

Dear Ms. Higashi:

In response to your letter of September 29, 2008, this letter is to clarify Test Claim No. 03-TC-21 and specifically identify those portions of Permit CAS004001 (Los Angeles Regional Water Quality Control Board Order No. 01-182) (the "Permit"), on which this test claim is based.

Please be advised that claimants base this test claim on the following parts of the Permit: Parts 4.C.2.a; 4.C.2.b; 4.E.; and 4.F.5.c.3.

To the extent that the original test claim alleged other portions of the Permit, claimants request that those portions of the test claim be withdrawn without prejudice. Specifically, claimants request that those portions of the test claim be withdrawn that are based on the following parts of the Permit: Parts 1; 2; 4.C.2.c; 4.F.5.a and b; and 4.F.6. This request to withdraw without prejudice is based on the fact that the claimants have not yet incurred increased costs as a result of these portions of the Permit.

With the withdrawal of these portions of the test claim, it is claimant's intent to proceed with a test claim identical to Test Claim No. 03-TC-20.

Thank you for your attention to this matter. Please contact the

undersigned if you have any questions.

Very truly yours,

Howard Gest

HDG:da

cc: Mailing List

Commission on State Mandates

Original List Date: 10/8/2003
Last Updated: 9/28/2007
List Print Date: 09/29/2008
Claim Number: 03-TC-21
Issue: Stormwater Pollution Control Requirements

Mailing Information: Other

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT C

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 27, 2008

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
APR 02 2008
COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

Re: CSM-03-TC-04, "Transit Trash Receptacles"
CSM-03-TC-19, "Inspection of Industrial/Commercial Facilities"
CSM-03-TC-20, "Waste Discharge Requirements"
CSM-03-TC-21, "Stormwater Pollution Control Requirements"

As requested in your letters referencing the California Regional Water Quality Control Board's Executive Order #01-182 (test claim permit), the Department of Finance (Finance) has reviewed the test claims submitted by the County of Los Angeles and several cities (claimants) asking the Commission on State Mandates (Commission) to determine whether specified costs incurred under the test claim permit are reimbursable state mandated costs. Commencing with specified sections of the test claim permit, as plead in the four test claims referenced above, the claimants have identified the following as new programs or higher levels of service, which they assert are reimbursable state mandates imposed on the local agencies.

1. Identify all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas. (Part 4, F.5.c.3.)

2. Select proper trash receptacle designs and evaluate proper placement of trash receptacles. (Part 4, F.5.c.3.)

3. Design receptacle pad improvement, if needed. (Part 4, F.5.c.3.)

4. Construct and install trash receptacle units. (Part 4, F.5.c.3.)

5. Collect trash and maintain receptacles. (Part 4, F.5.c.3.)

6. Inspect certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law. (Part 4, c.2.a.)

7. Inspect industrial facilities to determine compliance with the state's program that regulates discharge of storm water from industrial facilities, including compliance with State Water Resources Control Board's (Water Board) permits. (Part 4, c.2.b.)

8. Inspect construction sites to determine compliance with the state's program that regulates discharge of storm water from those sites, including compliance with the Water Board's permits. (Part 4, E.)

9. Increase street sweeping, catch basin cleaning, installing and maintaining other treatment devices to address trash impacts upon stormwater mitigation systems. (Part 4, F.5.c.3.)

10. Increase costs to comply with new industrial and construction inspection mandates. (Part 4, F.5.c.3.)

11. Increase inspections to be conducted of industrial discharges not currently regulated by the State of California. (Part 4, F.5.c.3.)

As a result of our review, Finance finds that the test claim permit does not impose a reimbursable state mandate on local agencies within the meaning of Section 6 of Article XIII B of the California Constitution. The permit conditions imposed on the local agencies are required by federal laws, and pursuant to the federal mandate exception in subdivision (c) of Section 17556 of the Government Code, the requirements of the permit are not reimbursable programs:

> Subdivision (c): The Commission on State Mandates shall not find costs mandated by the state if the "*statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.*"

When issuing a permit, the Water Board is acting as an administrator of the federal government and must require the local agencies to apply for a permit under the federal Clean Water Act (CWA) (33 U.S.C. §1342). The federal Environmental Protection Agency has delegated the federal permitting authority to the Water Board as a state-approved National Pollutant Discharge Elimination System (NPDES) permitting program. This authority allows the Water Board to act on behalf of the federal government to develop, administer, and enforce the NPDES program in compliance with Section 402 of the CWA. Pursuant to paragraph (5) of subdivision (a) of Section 402 of the CWA, "*the Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this Act, to issue permits for discharges into navigable waters in the jurisdiction of such State.*" This authority is extended to the nine regional boards that are the principal state agencies with the primary responsibility for the coordination and control of water quality under Section 401 of the CWA. In effect, the federal law authorized the Water Board, acting as the administrator, to exercise its federal permitting authority and set the detailed permit conditions specific to the claimants' region complying with the regulations of CWA. (Title 40, Code of Federal Regulations, Section 122, 123.25, and 124 and 33 U.S.C. § 1342(p)(3)(B)). Thus, the requirements of the permit are federally required to comply with the NPDES program. Further, compliance with the requirements is enforceable under the federal CWA (33 U.S.C § 1365).

The Water Board, acting as the federal government, is required to issue a permit to coordinate enforcement efforts of wastewater violations (Title 40 of Code of Federal Regulations, Section 122.44(k)). As stated in paragraph 22, on page 11 of the test claim permit "*...the USEPA*

guidance anticipates coordination of the state-administered program for industrial and construction activities with the local agencies program to reduce pollutant in storm water discharged to the MS4." The Water Board must issue a permit requiring the local agencies to carry out certain activities in order to enforce and regulate dischargers violating municipal ordinances. The permit process begins when the local agency applies for a permit and identifies the practices to be included and enforced.

Subdivisions (a) and (b) of Part 4.c.2 of the test claim permit refer to the permit condition of inspecting facilities under the *Industrial and Commercial Facilities Control Program.* The claimants allege that the permit condition requires the local agencies to inspect the facilities that have state-issued General Industrial and General Construction Stormwater permits, and claim this activity is new for the local agencies and had been the responsibility of the Water Board pursuant to the California Regional Water Quality Control Board Resolution 98-08, the Stormwater Quality Management Plan, and State Water Resources Control Board Order Nos. 97-03-DWQ and 99-08-DWQ. The claimants assert that the Water Board shifted the inspection obligations to the local agencies and imposed reimbursable new programs.

Although these inspections and other permit requirements may result in additional costs to the local agencies, those costs are not reimbursable because the conditions implement federal NPDES permit requirements and do not shift responsibilities from the state to local agencies. The claimants have not identified any state law requiring local agencies to inspect state-issued permit facilities for violating state permitting regulations, or discontinuing the state inspections of state-issued permit facilities. Therefore, Finance concludes that the municipal inspections are federally required for enforcing local ordinances and such a requirement does not shift responsibilities from the state to the local agencies.

Finance contends that the requirements of the test claim permit are federal laws imposed on the local agencies because the federal CWA mandates that local agencies must apply for and receive permits regulating discharges of pollutants from their municipal separate storm sewer systems (MS4) to the waters of the United States. The Water Board acts as the administrator for the federal government in approving these permits (Sections 13370 through 13389 of the Water Code). The local agencies first proposed permit requirements to the Water Board when submitting the application for the test claim permit. Local agencies were then allowed to publicly participate and influence the development, revision, and enforcement of any regulation, standard effluent limitation, and storm water prevention plan or program (Public Process section of the permit and Section 122.1 of Title 40 of the Codes of Federal Regulations). The Water Board approved the permit and the permit became effective when the United States Environmental Protection Agency did not veto the permit.

Additionally, the claimants had discretion over what activities and conditions to include in the permit application. First, the permittee submitted a Storm Water Quality Management Program prevention report with its application. These entities had the option to use "best management practices" to identify alternative practices to reduce pollution in water to the maximum extent practicable, but were required by federal law to include specific practices to be applicable in the particular region (subdivision (p) of Section 402 of the CWA). In some instances, agencies may elect a "rigid" numeric end-of-pipe permit limitation, where the permittee must satisfy specific

effluent limitations rather than implement best management practices. Here, the local agencies prescribed the activities to be included in the permit. The permitting authority allowed the permittees to publicly participate and influence the development, revision, and enforcement of any regulation, standard effluent limitation, and storm water prevention plan or program (Public Process section of the permit and Section 122.1 of Title 40 of the Code of Federal Regulations). As a result, the permit requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Such requirements are not reimbursable mandates.

Finance notes that the courts have held that increased costs associated with downstream activities of an underlying discretionary action are not reimbursable. Specifically, in *Department of Finance v. Commission on State Mandates (2003) (30 Cal. 4th 727, 745-746),* the court affirmed that where participation in the underlying program is voluntary, the resulting new consequential requirements do not constitute a reimbursable state mandate.

Finance also notes that some local agencies have set fees to be used toward funding the claimed permit activities. Should the Commission decide a reimbursable mandate exists, these fees should be considered as offsetting revenues toward the requirements of the permit.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your October 29, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosures

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NOs. CSM-03-TC-04, CSM-03-TC-19, CSM-03-TC-20, and CSM-03-TC-21

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

March 27, 2008
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Number/Name:
CSM-03-TC-04 Transit Trash Receptacles
CSM-03-TC-19 Inspection of Industrial/Commercial Facilities
CSM-03-TC-20 Waste Discharge Requirements
CSM-03-TC-21 Stormwater Pollution Control Requirements

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On March 25, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
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Executive Director
Commission on State Mandates
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Sacramento, CA 95814

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Mr. Sergio Ramirez
City of Foster City
Estero Municipal Improvement district
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Foster City, CA 94404

On I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 25, 2008, at Sacramento, California.

Kelly Montelongo

State Water Resources Control Board EXHIBIT D

Linda S. Adams
Secretary for
onmental Protection

Office of Chief Counsel
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Arnold Schwarzenegger
Governor

April 18, 2008

APR 18 2008
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

STORM WATER POLLUTION CONTROL REQUIREMENTS, FILES 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21: RESPONSE TO TEST CLAIMS 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

The State Water Resources Control Board ("State Water Board") and the Los Angeles Regional Water Quality Control Board ("Los Angeles Water Board") jointly file this opposition to Test Claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21. All of these test claims arise from a single permit that was issued by the Los Angeles Water Board as Order No. 01-182, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles, and the Incorporated Cities therein, Except the City of Long Beach ("the Permit").[1] The requests for reimbursement in the test claims arise almost entirely from two requirements in the Permit and consolidation is therefore proper.

The Permit was issued by the Los Angeles Water Board pursuant to requirements in the federal Clean Water Act ("CWA").[2] The State Water Board and Los Angeles Water Board have been authorized by the United States Environmental Protection Agency ("U.S. EPA") to issue NPDES permits—which are mandated by the CWA—in lieu of issuance of these permits by U.S. EPA. The Permit regulates the discharge of storm water runoff from the municipal separate storm sewer system (MS4) of 84 cities and County of Los Angeles to rivers and the Santa Monica Bay.

The federal Clean Water Act mandates that municipalities must apply for and receive permits regulating discharges of pollutants from their MS4s to waters of the United States. Pursuant to federal regulations, the Permit contains numerous requirements for the cities and County to take actions to reduce the flow of pollutants into the rivers and the Bay, known as Best Management Practices (BMPs). These test claims, filed by 20 cities and the County, seek reimbursement by the State of California for expenses they incur in implementing two of the requirements of the Permit: (1) Inspections of commercial and industrial facilities; and (2) Placement of trash receptacles at transit sites.

[1] The Permit serves as National Pollutant Discharge Elimination System permit (NPDES) No. CAS004001. It was issued by the Los Angeles Water Board on December 13, 2001.

[2] Federal Water Pollution Control Act [FWPCA; 33 U.S.C.A. §§ 1251 et seq.] The federal Act is referred to herein by its popular name, the Clean Water Act ("CWA") and the code sections used are those for the CWA.

In order to obtain reimbursement, the claimants must show that the requirements constitute a new program or higher level of service. They must prove either: (1) the program must carry out a governmental function of providing services to the public, or (2) the requirements, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. The claimants must also prove that the costs are mandated on them by the state, rather than by federal law. Finally, they must prove that any additional costs beyond the federal mandate are substantial and not *de minimis*. The claimants do not meet any of these tests.

The Permit as a whole, and including the inspection and trash receptacle provisions, is mandated on the local governments by federal law. The federal mandate applies to many dischargers of storm water, both public and private, and is not unique to local governments. The federal mandate requires that the Permit be issued to the local governments; it is not a question of "shifting" the costs from the state to the local governments. The specific requirements challenged are consistent with the minimum requirements of federal law. Even if the Permit were to be interpreted as going beyond federal law, any additional state requirements are *de minimis*. Moreover, the costs are not subject to reimbursement because the programs were proposed by the cities and County themselves, and because they have the ability to comply with these requirements through charges and fees, and are not required to raise taxes. The U.S. EPA has submitted a letter to the State Water Board dated April 10, 2008, in agreement with this position.[3]

Description of the Test Claims

The test claims focus on two discrete requirements in the Permit: the requirement to inspect certain industrial and commercial facilities that discharge into the MS4 and the requirement for some of the permittees to place and maintain trash receptacles at transit stops.

Industrial and Commercial Facilities Control Program (Part 4.C.)

Test claims 03-TC-19, 03-TC-20, and 03-TC-21 claim subvention for costs of complying with permit requirements to reduce pollutants from industrial and commercial facilities. Test claims 03-TC-19 and 03-TC-20 are limited to Part 4.C.2.a. and b., the requirements to inspect industrial and commercial facilities. Test Claim 03-TC-21 refers broadly to Part 4.C., the entire industrial and commercial facilities control program, but the costs discussed in the test claim are those associated with inspections. (See, Declaration of Richard Montevideo, No. 4.) Therefore, the Boards' analysis of the subvention claims for Part 4.C. is generally limited to the inspection requirements.

Part 4.C. of the Permit requires permittees to implement pollutant reduction and control measures at industrial and commercial facilities within their jurisdictions. Permittees may choose from various pollutant reduction and control measures, alone or in combination and

[3] Letter dated April 10, 2008, from Alexis Strauss, Director, Water Division, U.S. EPA to Tam M. Doduc, Chair, and Dorothy R. Rice, Executive Director, State Water Board, Attachment 3.

before, during, or after the activities that generate pollutants. The permittees are required to track, inspect, and ensure compliance at those facilities that are critical sources of pollutants in storm water.

Critical sources are specified commercial facilities (restaurants and automobile-related businesses), and industrial facilities that are required by federal regulations to obtain their own NPDES storm water permits.

Part 4.C.2.a. and b. contain inspection requirements, which are generally to conduct two inspections of facilities over a 5-year period. The Permit describes what the inspector must look at. (For example, inspectors at restaurants must see if operators pour grease into the street, and gas station inspectors must observe whether fuel-dispensing areas are swept.) The Permit states that for industrial sites, inspection requirements do not apply if the Los Angeles Water Board conducted an inspection of the site within two years.

Trash Receptacle Requirements (Part 4.F.5.c.3)

Test claims 03-TC-04, and 03-TC-20, and 03-TC-21 claim subvention for costs of complying with permit requirements for some of the permittees to place trash receptacles at public transit stops. Claim 03-TC-21 states that it challenges the entirety of the storm drain operation and maintenance and streets and road maintenance requirements, but the only costs in these sections for which it seeks reimbursement are for the placement and maintenance of trash receptacles. The claims are limited to the trash receptacle requirements for those municipalities that are not subject to a separate federal requirement, the "trash TMDL."[4] The requirements are to place trash receptacles at all transit stops and to maintain these receptacles.

Discharge Prohibitions and Receiving Water Limitations (Parts 1 and 2)

Test claim 03-TC-21 appears to claim subvention for costs associated with Parts 1 and 2 of the Permit, which include general prohibitions and requirements to protect water quality. The claim itself fails to specify any particular costs associated with this claim, other than a general study that considers a hypothetical treatment plant. As discussed below, storm water permits are written with the assumption that there will be no treatment plant and the permit certainly does not require one. In any event, there are no signed declarations to support this claim and no estimate of costs to the specific claimants.

Background of Federal Law Requirements for Storm Water Permits

In order to understand the federal mandate that required this permit, some background of the federal law and of MS4s is necessary. In 1972, the federal Clean Water Act was extensively amended to implement a permitting system for all discharges of pollutants from "point sources"

[4] As will be explained below, the Los Angeles Water Board has also adopted a federally-mandated total maximum daily load ("TMDL") for the deposition of trash into rivers and the Bay. The claimants do not claim subvention for the trash receptacle requirements for those cities and portions of the County subject to the TMDL, presumably conceding that those requirements are not reimbursable.

to waters of the United States.[5] The permits are issued pursuant to the national pollutant discharge elimination system, and are known as "NPDES permits." The 1972 amendments allowed U.S. EPA to authorize states to issue these permits.[6] California was the first state in the nation to obtain such authorization. In order to obtain this authorization, the California Legislature amended the Water Code, finding that the state should implement the federal law in order to avoid direct regulation by the federal government.[7] The California legislature mandated that California's permit program must ensure consistency with federal law.[8] The Water Boards are the state agencies charged with implementing the federal program.[9] The State Water Board incorporates the U.S. EPA regulations for implementing the federal permit program.[10] Therefore, both the CWA and U.S. EPA regulations are applicable to the permit program in California.[11] In California, permits to allow discharges into state waters are termed "waste discharge requirements."[12] The term "waste discharge requirements" is equivalent to the term "permit" in the CWA, when the waste discharge requirements are issued to comply with the CWA.[13] Thus, waste discharge requirements that the Water Boards issue to comply with the CWA are NPDES permits under federal law. When the Los Angeles Water Board, a state agency, adopts an NPDES permit in lieu of U.S. EPA, it must adopt as stringent a permit as the federal agency would have.[14]

The discharge of pollutants from point sources to waters of the United States is illegal, except in compliance with an NPDES permit.[15] In 1973, U.S. EPA issued regulations that exempted certain types of discharges it determined were administratively infeasible to regulate, including storm water runoff. The reason that such regulation is difficult, as will be more fully explained below, is that storm water runoff generally is not subjected to any treatment. Instead, it simply runs off urban streets, into gutters and drainage ways, and flows directly into streams, lakes, and the ocean.[16] This exemption was overruled in *Natural Resources Defense Council v. Costle* (1977) 568 F.2d 1369, which held that the exemption was illegal, and ordered U.S. EPA

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[5] CWA §§ 301 and 402.

[6] CWA § 402(b).

[7] Wat. Code, § 13370 *et seq.*, adding Chapter 5.5 to the Porter-Cologne Water Quality Control Act.

[8] Wat. Code, § 13372.

[9] Wat. Code, § 13370.

[10] Cal. Code of Regs., tit. 23, (C.C.R.) § 2235.2.

[11] The permits *may* also include additional state requirements. (C.C.R., tit. 23, § 2235.3; *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613.)

[12] Wat. Code, § 13263.

[13] Wat. Code, § 13374.

[14] CWA § 402(b).

[15] CWA § 301(a). In general, "navigable waters" or "waters of the United States," includes all surface waters, such as rivers, lakes, bays and the ocean. (CWA § 502.)

[16] The chief traditional categories of discharges subject to NPDES permits are industrial process wastewater and sanitary sewer effluent. Both of these discharges are typically processed in a treatment plant before they are discharged to surface waters.

to require NPDES permits for storm water runoff. In *Costle*, the court suggested innovative methods for permitting, including using general permits for numerous sources and issuing permits that "proscribe industry practices that aggravate the problem of point source Pollution."[17] Where permits proscribe actions that dischargers must implement, these requirements are commonly called "best management practices" ("BMPs").

Despite the *Costle* decision, U.S. EPA had not adopted regulations implementing a permitting program for storm water runoff by 1987. That year, Congress amended the CWA, specifically requiring storm water permits for industrial and municipal storm water runoff.[18] The amendments require NPDES permits for "[a] discharge from a municipal separate storm sewer system ["MS4"] serving a population of 250,000 or more."[19] The CWA contains three provisions specific to permits for MS4s: (1) Permits may be issued on a system- or jurisdiction-wide basis; (2) Permits must include a requirement to effectively prohibit non-storm water discharges into storm sewers; and (3) Permits must require controls to reduce the discharge of pollutants to the maximum extent practicable ("MEP").[20] In describing the controls that permits must include, the statute states that the controls shall include: "management practices, control techniques and system, design and engineering methods, and such other provisions as the [permit writer] determines appropriate for the control of such pollutants."[21] Thus, the federal law mandates that permits issued to MS4s must require management practices[22] that will result in reducing pollutants to the MEP. The state is required, by federal law, to select the BMPs.[23]

In 1990, U.S. EPA adopted regulations to implement section 402(p).[24] The regulations define which entities need to apply for permits and also the information they must include in permit applications. The regulations define "industrial activity" to include numerous categories of manufacturing, construction, and other typically private enterprises.[25] The regulations define MS4s as storm sewer systems operated by numerous public agencies, including cities, counties, states, and the federal government.[26] While both industrial activities and MS4s must

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[17] *Costle*, *supra*, at 1380.

[18] CWA § 402(p).

[19] CWA § 402(p)(2)(C). U.S. EPA defines municipal separate storm sewer systems (MS4s) that serve a population over 250,000 as "large" MS4s. The population of the County of Los Angeles is approximately 9.5 million. (Permit, D.1.)

[20] CWA § 402(p)(B).

[21] *Ibid.*

[22] These are commonly referred to as "best management practices," or "BMPs."

[23] *NRDC v. USEPA* (9th Cir. 1992) 966 F.2d 1292.

[24] Vol. 55, Federal Register (Fed.Reg.) 47990 and following.

[25] 40 C.F.R. § 122.26(b)(14).

[26] 40 C.F.R. § 122.26(b)(8).

obtain permits, the requirements in the industrial permits must be more stringent than in MS4 permits.[27]

In order to obtain coverage under an NPDES permit, as required by the CWA, entities seeking coverage file an application with the permitting authority and the permitting authority holds a public hearing on contested permits.[28] U.S. EPA regulations specify the information that applicants for MS4 permits must include in their applications.[29] For large and medium MS4s, the application requirements are extensive.[30] Some of the application requirements relevant to these Test Claims are: management programs including procedures to control pollution resulting from construction activities (at § 122.26(d)(1)(v)), legal authority to control the contribution of pollutants associated with industrial activity (at § 122.26(d)(2)(i)(A)), programs to control illicit discharges to the MS4 (at § 122.26(d)(1)(v)), and conducting inspections to determine compliance with permit conditions (at § 122.26(d)(2)(i)(F)). The permit applicants must propose management programs that the permitting authority will consider in adopting the permit.[31] The management programs must address oversight of discharges into the system from the general population and from industrial and construction activities within its jurisdiction, and also maintenance and control activities by the permittees.[32]

Most NPDES permits are largely comprised of numeric limitations for pollutants. Compliance is measured by sampling the treated effluent, which is discharged from a treatment plant into surface waters. These permits are written assuming that an engineered treatment plant can be built and operated to obtain a specified effluent. Storm water permits, on the other hand, usually require dischargers to implement BMPs that will result in lessening the pollutants in the runoff, since without a treatment plant the pollutants can flow directly into surface waters. Storm water permits apply to several types of entities—industries, construction, and municipalities—and all usually mandate BMPs. For municipalities that operate MS4s, the BMPs require the municipalities take actions that will lessen the incidence of pollutants *entering* storm drains by regulating the *behavior and practices* of the municipalities, their residents, and their businesses.[33]

U.S. EPA has issued regulations and guidance documents that discuss the types of BMPs that must be included in storm water permits in order to reduce the discharge of pollutants in storm

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[27] *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3rd 1159. The differences between municipal and industrial permits are complicated, but are relevant to the question whether this permit addresses a uniquely governmental program, and are therefore discussed in more detail below.

[28] CWA § 402(b)(3).

[29] 40 C.F.R. § 122.26(a)(4). The U.S. EPA regulations have varied requirements depending on the size of the population served by the MS4. A "large" MS4 serves a population of 250,000 or more. (40 C.F.R. § 122.26(b)(4).) Los Angeles County and the 84 cities regulated by this permit far exceed the minimum population for a large MS4.

[30] 40 C.F.R. § 122.26(d).

[31] 40 C.F.R. § 122.26(d)(2)(iv).

[32] *Ibid.*

[33] There may also be engineered solutions, and there are some in Los Angeles, but it is important to keep in mind that there is no single engineered storm sewer treatment plant as there is for sanitary sewage.

water to the "maximum extent practicable." Numerous guidance documents point to inspections of businesses and proper trash collection as important parts of an effective BMP program.[34] U.S. EPA has issued an MS4 Program Evaluation Guide, which includes a lengthy process for conducting inspections of businesses. This Guide makes clear that inspections of businesses are mandatory:

> Inspections
> Most effective industrial/commercial inspection programs maintain a complete facility inventory and group them according to priorities established by the permittee. An inspection frequency is determined based on priority, and a database is used to manage such information as inspection findings, enforcement actions, and required follow-up activities. Many permittees use and cross-train existing staff to perform industrial/commercial inspections, but some permittees may need to maintain an exclusive stormwater inspector due to a potentially large number of high-priority facilities. There should be an inspection standard operating procedure that has been formalized and documented. It should include a checklist to be used during the inspection and possibly a report format. Inspectors should be aware of federal, state, and local stormwater regulations that may apply to industrial/commercial facilities. Inspectors should be familiar with various types of BMPs commonly used at the types of facilities typically found in the permit area and should be able to educate facility operators about such BMPs. In addition, inspectors should understand and use the permittee's established enforcement escalation response plan to gain compliance as necessary. The inspection staff should be proficient in the enforcement escalation procedure and should properly document all enforcement actions accordingly. Inspections should be used not only to identify non-compliance issues, but as an opportunity to educate facility operators about proper stormwater BMPs.[35]

The Guide also states that MS4 programs must address trash and litter.[36]

Adoption of the Los Angeles MS4 Permit

Starting in 1990, pursuant to the CWA amendments of 1987, the Los Angeles Water Board issued storm water permits to the County of Los Angeles and to the cities therein.[37] Without such a permit, the cities would be discharging pollutants in violation of federal law.[38] The permit

[34] See, e.g., Guidance documents at http://cfpub.epa.gov/npdes/docs.cfm?document_type_id=1&view=Policy%20and%20Guidance%20Documents&program_id=6&sort=name , including http://www.epa.gov/npdes/pubs/owm0233.pdf (citing examples from MS4 permits throughout the country).

[35] MS4 Program Evaluation Guidance, at pp. 77-78.

[36] *Id.* at 79.

[37] For reasons not relevant to this matter, one city—Long Beach—has a separate permit. The current permit covers 84 cities.

[38] CWA §§ 301(a), 402(p)(3)(B).

that is the subject of these test claims is the third such permit, and was adopted December 13, 2001.[39] It is largely comprised of requirements to implement BMPs, most of which were proposed by the permittees.[40] The County and thirty-two of the cities challenged numerous aspects of the permit and the process by which it was issued, culminating in a court of appeal decision upholding the permit in its entirety.[41]

On February 1, 2001, the County, on behalf of all permittees,[42] submitted a Report of Waste Discharge (permit application), including a Stormwater Quality Management Plan (SQMP). The SQMP constituted the permittees' proposal for the BMPs that would be required in the permit.[43] (Permit C.) The permit that was ultimately adopted was based on the SQMP, with some revisions and additions necessary to meet minimum federal requirements. (*Id.*) The SQMP prepared by the County included several proposed BMPs that relate to inspections of commercial and industrial facilities and placement and maintenance of trash receptacles:

> (1) Municipalities must conduct site visits to industrial and commercial facilities, including automotive service businesses and restaurants, which must include, "a site walk-through to verify for, at a minimum, evidence of BMP implementation," and shall revisit facilities and take enforcement where illicit discharges are found;[44]
>
> (2) Municipalities will maintain a database of automotive and food service facilities, including whether they have "NPDES stormwater permit coverage;"[45] and
>
> (3) Municipalities must minimize trash from entering recreational water bodies,[46] remove trash from open channels;[47] and control litter and debris in streets.[48]

The SQMP included detailed requirements for municipalities to implement at construction sites, including inspections by the municipality.[49] The SQMP proposed that all municipalities be

[39] NPDES permits generally expire after 5 years, and must be reissued thereafter.

[40] A single permit applies to the County and 84 cities. Thus, while some entities may disagree with some provisions, other entities will agree and the entire group may propose permit terms that some cities oppose. The entire group submits a single proposed storm water management plan.

[41] *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985; referred to hereafter as *County of Los Angeles*.

[42] All permittees include the County and 84 cities. The County and the 21 cities that filed these Test Claims participated jointly with the application and permitting procedures with the remaining 63 cities who did not file Test Claims.

[43] The SQMP is several hundred pages. Relevant sections are attached; the entire SQMP is available should the Commission request it.

[44] SQMP, pp. 22-23 and 28.

[45] *Ibid.*

[46] SQMP, ES-6

[47] SQMP, ES-7

[48] *Ibid.*

[49] SQMP, pp. 24-26.

required to collect trash along open channels and encourage voluntary trash collection in natural stream channels.[50] The SQMP contains an Illicit Connection and Illicit Discharge Elimination Program, which includes education of inspectors employed by the permittees who will investigate businesses.[51]

Following adoption of the permit and a petition to the State Water Resources Control Board ("State Water Board"), the County, 32 cities,[52] the Los Angeles County Flood Control District and industry groups representing builders filed suit challenging numerous provisions in the Permit. The Superior Court upheld the Permit, and the Court of Appeal affirmed the judgment in its entirety.[53] First, the court held that the permit as a whole "imposes reasonable pollutant discharge requirements." Because the minimum federal requirement is that the permit require the municipalities to reduce pollutants to the maximum extent practicable, the court clearly determined that the permit's requirement are MEP. In its discussion of the consideration of costs to the municipalities, the court found that the permit did not exceed any federal requirements:

> "The permit explicitly states it is intended to provide a cost-effective storm water pollution program to the maximum extent possible. The permit applies the same cost-effective analysis to efforts to reduce the flow of pollutants into receiving waters. Moreover, the [Los Angeles Water Board] in its finding referred to a report specifying how the 'maximum extent practicable' requirement includes considerations of costs and benefits."[54]

The court also discussed various cost analysis reports and U.S. EPA Guidance. It rejected the claim that the permit's requirements exceeded the federal mandatory standard. The court specifically upheld the inspection requirements, stating: "there is federal regulatory authority that required [the Los Angeles Water Board] to consider imposing the inspection requirements."

Several of the permittees filed these test claims with the Commission on State Mandates. The Commission rejected the claims, basing its determination on Government Code section 17516, subdivision (c), which exempted Water Board permits from the requirements to reimburse state-mandated local funds. That action also resulted in a Court of Appeal decision finding that subdivision to be unconstitutional and remanding to the Commission to determine the test claims.[55] In its decision, the court stated that the Commission must address factual issues

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[50] SQMP, p. 28

[51] SQMP, App. D

[52] These include 18 of the cities that filed the Test Claims, and Bellflower, Claremont, Diamond Bar, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Paramount, Rosemead, Santa Clarita, Santa Fe Springs, Torrance, Walnut, and Whittier.

[53] *County of Los Angeles, supra.* Some of the determinations of the appellate court discussed here were not published and thus cannot be cited as precedent in other cases. They are binding on the claimants. A copy of the entire decision is attached.

[54] Unpublished decision, at p. 20.

[55] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898.

regarding the requirements to conduct inspections and to place and maintain trash receptacles constitute state or federal mandates.

Following *Commission on State Mandates*, each of the four test claims was re-filed without any revisions.[56] All of the test claims are based upon requirements in the permit. Test Claim 03-TC-04 was filed by the County of Los Angeles, and challenges the requirement to place trash receptacles at transit stops.[57] Test Claim 03-TC-19 was filed by the County of Los Angeles, and challenges the requirements to inspect industrial and commercial businesses.[58] Test Claim 03-TC-20 was filed by nine cities[59] and challenges the requirements for trash receptacles and inspections, and the general requirements for a construction program.[60] Test Claim 03-TC-21 was re-filed by ten cities[61] and challenges the following permit requirements: discharge prohibitions, receiving water limitations, industrial program, construction program, storm drain program, and street and road maintenance[62]. While Test Claims 03-TC-20 and 03-TC-21 appear to assert broader requests for reimbursement, they address in detail only the requirements for inspections and trash receptacles, and these are the only requirements that the court in *Commission on State Mandates* stated were subject to the test claims.[63] In light of the absence of the necessary information for such claims and the court's remand, we assume that any claims additional to the inspections and trash receptacles are not valid claims.

In addition to the litigation over this permit, cities made similar arguments against an MS4 permit adopted by the Santa Ana Regional Water Quality Control Board. In a published decision, an appellate court in that case made additional findings applicable to the arguments in this matter[64]. It found that there was no evidence to support an argument that the permit "exceeded federal requirements." This finding is important because the cities in *Rancho Cucamonga* had argued that a ground for overturning that permit was that it used the same provisions as had

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[56] The State Water Board and Los Angeles Water Board received several Notices of Complete Test Filing: a letter dated October 16, 2007, stated 03-TC-21 was complete; a letter dated October 29, 2007, stated that 03-TC-04 was complete; a letter dated October 29, 2007, stated that 03-TC-19 was complete; and a letter dated December 12, 2007, stated 03-TC-20 was complete. On December 21, 2007, the Commission extended time to respond to all four test claims until April 21, 2008.

[57] 03-TC-04 challenges Permit Part 4.F.5.c.3.

[58] 03-TC-19 challenges Permit Part 4.C.2.a. and b.

[59] The cities that filed the test claim are Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Westlake Village, and Vernon.

[60] 03-TC-20 challenges Permit Part 4.C.2.a. and b., 4.E, and 4.F.5.C.3.

[61] The cities that filed the test claim are Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina.

[62] 03-TC-21 challenges Permit Parts 1, 2, 4.C, 4.E, 4.F.5 and 6. In a letter dated January 18, 2008, sent to the Commission from Howard Gest, he states that the cities he represents, which include five of the cities that filed the claim, "do not currently intend to pursue a claim" as to Parts 1 and 2, but that the limitation is "without prejudice." In light of the fact that Mr. Gest apparently does not represent all of the cities that filed the claim and the limited nature of this limitation, we will address Parts 1 and 2 and ask the Commission to determine that these parts do not create a reimbursable mandate.

[63] 150 Cal.App.4th 898, 903.

[64] *City of Rancho Cucamonga v. Regional Water Quality Control Board*, 135 Cal.App.4th 1377.

been crafted for other permittees, including the Los Angeles MS4 permit. The *Rancho Cucamonga* court specifically addressed inspection requirements, holding that federal law, either expressly or by implication, required NPDES permittees to perform inspections for illicit discharge prevention and detection, including inspection of industrial facilities and construction sites. Because the Los Angeles MS4 permit is based on BMPs and courts have determined that it is consistent with MEP, it is necessarily no more stringent than required by federal law.

State Mandate Law

Article XIIIB, Section 6 of the California Constitution requires subvention of funds to reimburse local governments for state-mandated programs in specified situations. There are several exceptions and limitations to the subvention requirements that provide bases for the Commission to determine that the Test Claims are not subject to subvention. Article XIIIB, Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service."

Implementing statutes clarify that no subvention of funds is required if: (1) the mandate imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation (Govt. Code, § 17556(c)); or (2) the local agency has the authority to levy service charges, fees, or assessments sufficient to pay (Govt. Code, § 17556(d)); or (3) the local agency proposed the mandate (Govt. Code, § 17556(a)). Each of these exceptions to subvention applies to these Test Claims. All of the mandates for which the Test Claims seek reimbursement are mandated by federal law or regulation. The County and cities can assess fees for all of the costs incurred. The claimants themselves, as part of the group of the County and 84 cities who applied for the permit, proposed most of the specific requirements challenged.

Numerous judicial decisions have further defined limitations on the requirements for subvention of funds. Specifically, subvention is only required if expenditure of tax monies is required, and not if the costs can be reallocated or paid for with fees.[65] In addition, reimbursement to local agencies is required only for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not entitled to subvention.[66] The fact that a requirement may single out local governments is not dispositive; where local agencies are required to perform the same functions as private industry, no subvention is required.[67]

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[65] *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976.

[66] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

[67] *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

The Permit is not subject to subvention; it meets each of these exceptions. The requirements that are the subject of the claims are part of permits that meet, but do not exceed, the minimum federal requirements. The federal mandate is specifically directed at the municipalities and not at the state in general. The costs for the programs can be paid for by levying service charges, including charges to companies for conducting their businesses, fees for collection of refuse, fees for transit services, and fees especially enacted for storm water programs.[68] Compliance with NPDES permits, and specifically with storm water permits, is required by private industry also. In fact, the requirements for industrial and construction entities are more stringent than for government dischargers. In addition, the government requirements apply to all governmental entities that operate MS4s, including state and federal facilities; local government is not singled out. The local agencies can assess fees to perform the required tasks; tax monies are not required. Finally, to the extent that any portion of the claims would otherwise qualify for subvention, they are *de minimis* and therefore do not qualify.

In its remand, the court stated that the most significant issue is "whether the two obligations in question constitute federal or state mandates" and that these present factual issues for the Commission to decide.[69] The court pointed to four cases that the Commission stated would apply in making this determination.[70] Each case is discussed below:

City of Sacramento v. State of California (1990) 50 Cal.3d 51: The court held that application of unemployment insurance law to state and local agencies was not subject to subvention. In discussing whether the requirement was a federal mandate, the court held that the issue is whether compliance with the federal law was "mandatory" or "optional," which is based on the following factors: "A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal."[71]

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564: The court considered claims for subvention for a special education mandate. It concluded that, although the program was a federal mandate, the state had freely chosen to shift the costs to local governments and that subvention was proper. The court held that the test for whether there is a federal mandate is whether compliance with federal requirements is "a matter of true choice," in other words whether participation in the federal program is "truly voluntary."[72] The court listed the significant factual determinations: "In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately

[68] The claimants refer to limitations on assessing services fees under California law. The referenced law concerns only the percent of voters who must approve the assessment. In fact, the largest entity subject to the permit, the City of Los Angeles, has successfully adopted such an assessment.

[69] *Commission on State Mandates*, 150 Cal.App.4th 898, 918.

[70] *Id.*, at 919.

[71] 50 Cal.3d 51, 76.

[72] 11 Cal.App.4th 1564, 1582.

forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[73]

Long Beach Unified School District v. State of California (1990) 225 Cal.App.3rd 155: The court held that subvention does apply where actions are mandated by the state, which go beyond the federal constitution or case law. Because federal law clearly would not have required steps for de-segregation where there was no finding of segregation, subvention applied.

San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal.4th 859: A school district sought subvention of funds to conduct expulsion hearings. The federal law made expulsions discretionary, but where expulsions occurred, the federal law mandated certain hearing procedures. The state law mandated expulsions whenever firearms were involved, and made all other expulsions discretionary. It also mandated some hearing procedures in addition to the federal requirements. The Supreme Court held that for firearms expulsions, the state mandated a higher level of service, and that all hearing costs for these expulsions were reimbursable, even those attributable to procedures mandated by federal law. It also held that no hearing costs are reimbursable for expulsions that are discretionary under state law. Even if the hearing procedures are mandated by state law, the court found they are incidental to federal due process requirements and are *de minimis* and therefore not reimbursable. In determining that any additional state-mandated hearing costs were *de minimis*, the court found that the state reasonably set forth requirements that were intended to implement the federal hearing requirements: "challenged state rules or procedures that are intended to implement an applicable federal law-and whose costs are, in context, *de minimis*-should be treated as part and parcel of the underlying federal mandate."[74]

The Claims do not Qualify for Subvention

The Programs are Federal Mandates that Apply Directly to Local Governments; the State has not Shifted the Burden; and the Mandates do not Exceed Federal Law

The challenged provisions are mandated by federal law. Two appellate courts have determined that the provisions in this permit constitute MEP—the minimum requirements mandated by federal law. The court in *Los Angeles* has determined that the Permit is cost-effective and based on the MEP standard. The court in *Rancho Cucamonga* found that a very similar permit met the MEP standard and did not exceed the minimum federal standard. That case specifically stated that the requirement to conduct inspections reflected MEP. The federal law specifically requires that permits be issued to the local governments that operate MS4s and that permits must require programs and actions that will result in reducing the pollutants that discharge from the MS4 to waters of the United States to the maximum extent practicable. The permit is a federal mandate on the local governments. It is the local governments that must apply for and obtain a permit. Without the permit, the cities are discharging pollutants in violation of federal

[73] *Id.* at 1593-4.

[74] 33 Cal.4th 859, 889.

law.[75] If the Water Boards had not been authorized to issue the permit in lieu of U.S. EPA, that federal agency would have issued a similar permit directly to the local governments.

The claimants contend that the Los Angeles Water Board exercised discretion to impose requirements beyond those required by federal law because the Los Angeles Water Board had a choice in establishing the mandated programs and "[t]he [Water Boards] cannot point to any provisions of the Clean Water Act or related regulations that require the programs at issue in this claim."[76] The fact that some discretion is exercised in implementing a federal program does not mean that subvention is required. The court in *Hayes* explained that, where the state has some discretion in mandating the program but ultimately the factual situation requires some type of mandate, there is a federal mandate:

> "The remaining question is whether the state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far as the state is concerned the Education of the Handicapped Act constitutes a federal mandate."[77]

The central issue before the Commission is whether the requirements to conduct inspections and to place trash receptacles at bus and train stops exceed the federal mandate for MS4 permits. As to the inspections, the claimants appear to concede that federal law specifically requires MS4s to conduct inspections of industrial facilities and construction sites, but claim that the Los Angeles Water Board could have conducted all of the inspections and instead exercised its discretion to "shift" the responsibility to the claimants. They base this contention on a permit issued by the State Water Board to industrial facilities[78] and contend that permit obligates the Regional Water Boards, including Los Angeles, to conduct inspections. Therefore, they claim, the Los Angeles Water Board has shifted that responsibility to the municipalities. They also contend that the federal law does not specify that restaurants and automobile-related businesses must be inspected. As to the trash receptacles, they claim that the federal law does not specify this particular BMP.

In order to evaluate these contentions, some more detailed discussion of the storm water permitting scheme established by U.S. EPA is necessary. Of particular importance are: the process of selecting BMPs that are included in MS4 permits; the obligation of MS4s to regulate discharges from businesses into their systems, including discharges that are simultaneously regulated by separate NPDES permits; the process for selecting which businesses to regulate; and the requirement for MS4s to conduct inspections.

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[75] CWA §§ 301(a), 402(p)(3)(B).

[76] Test Claim 03-TC-21, at page 10.

[77] 11 Cal.App.4th 1564, 1593.

[78] Order No. 97-03-DWQ; http://www.waterboards.ca.gov/stormwtr/docs/induspmt.pdf

The Process for Selecting BMPs

The chief argument regarding trash receptacles is that the federal law does not specify this particular BMP and that, therefore, it exceeds federal law. The claimants appear to rely on *Hayes* to argue that the exercise of any discretion in selecting requirements automatically results in a reimbursable state mandate. As discussed above, however, the federal law specifically requires that the Water Boards prescribe the BMPs that the MS4 must implement. This issue was addressed succinctly in *Rancho Cucamonga*:

> In creating a permit system for dischargers from municipal storm sewers, Congress intended to implement actual programs. [Cite to *NRDC, supra*.] The Clean Water Act authorizes the imposition of permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." [Cite to CWA § 402(p)(3)(B)(iii).] The Act authorizes states to issue permits with conditions necessary to carry out its provisions. [Cite to § 402(a)(1).] The permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants. [Cite to *NRDC*.] That is what the Regional Board has created in the 2002 permit."[79]

Because the federal mandate requires the Water Boards to choose specific BMPs that are included in MS4 permits as requirements, the "discretion" exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a "free choice." The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP standard. "The [Water Board] must comply with federal law requiring detailed conditions for NPDES permits."[80] This is completely different from the state discretion exercised in *San Diego*, where the state law compelled expulsions for bringing firearms to school, while the federal law clearly did not mandate such expulsions. Therefore, it is clear that the mere exercise of discretion in selecting BMPs, does not create a reimbursable mandate.

It is conceivable that an MS4 permit issued in California could require practices that exceed the federal requirement of MEP. It is clear, however, that inspection requirements do not exceed MEP. That issue has been specifically ruled on by *Rancho Cucamonga* and there are federal regulations, discussed below, that require these inspections. The claimants allege, however, that there is no similar requirement for the placement of trash receptacles at transit stops. The trash receptacle requirements in the Permit are different for those cities subject to a "trash TMDL" than for other cities. The Los Angeles Water Board has adopted TMDLs for some of the water bodies that receive discharges from MS4s subject to the permit. As required by the TMDL and federal law, the permit contains specific provisions for permittees that are subject to the trash TMDLs. The claimants do not seek subvention for those requirements. For

[79] *Rancho Cucamonga, supra*, at 1389.

[80] *Ibid.*

permittees not subject to a trash TMDL, the permit requires they implement BMPs to reduce trash entering the MS4s, including placing trash receptacles at all transit stops that have shelters by August 1, 2002, and at all other transit stops by February 3, 2003, and that they maintain trash receptacles as necessary. (Permit, Part 4.F.5.c.3.)

The requirements regarding trash receptacles are found in the section of the Permit concerning public agency activities. (Part 4.F.) This section imposes BMPs concerning sewage treatment overflows, construction by public agencies, storm drain maintenance and operation, and municipal construction projects. In other words, these are BMPs concerning the municipalities' own activities, as opposed to its regulation of discharges into its system by others. U.S. EPA storm water regulations address BMP requirements for the MS4s' maintenance and operation of the storm sewer system. Specifically, the MS4s' plan must include maintenance activities and schedules, including a "description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems. . ."[81] As early as 1993, the Executive Officer of the Los Angeles Water Board directed all of the cities regulated by the permit to "increase cleaning frequency of and number of roadside trash receptacles in areas where needed."[82]

The requirements to control the release of trash into MS4s and surface waters are at the heart of the storm water program. "Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), *floatable trash*, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States."[83] In carrying out the federal mandate to select BMPs, the decision to require trash receptacles at transit stops is a reasonable, practicable, and cost-effective method to reduce trash in storm water runoff. The claimants have not, and cannot, explain how such a requirement exceeds the federal standard of actions that reflect the "maximum extent practicable." The Permit also allows individual permittees to substitute BMPs for specific requirements in the Permit.[84]

At bottom, the trash receptacle requirements reflect the federal requirement to reduce pollutants from the MS4 to the maximum extent practicable. It is federal law that animates the requirement and federal law that mandates specificity in describing the BMPs.

The Role of MS4s in Regulating Discharges from Industrial and Commercial Activities

The claimants allege that because the Water Boards have a role in directly regulating businesses within the jurisdiction of MS4s, and therefore conduct inspections at such sites, that the requirements in the Permit for the MS4s to conduct inspections reflect a decision to shift the costs of a federal mandate from the state to local government. The court in *Hayes* discussed

[81] 40 C.F.R. § 122.26(d)(2)(iv)(A)(3).

[82] Letter dated June 17, 1993, from Robert P. Ghirelli to Thomas A. Tidemanson. Attachment 34.

[83] *Environmental Defense Center v. U.S. EPA* (9th Cir. 2003) 344 F.3d 832, 841; emphasis added.

[84] Permit, Part 4.A.1.

this issue. There, the mandate was to the state generally, and the state government decided to shift the cost for implementing special education to local school districts. Here, there is no general mandate addressed to the entire state. Instead, the federal law clearly required that municipalities that operate MS4s must obtain and comply with a permit. The state does not operate the MS4; the mandate is directed to the municipalities.

In addition to the requirements for permits issued to municipalities, the Water Boards are also mandated to issue permits to entities that discharge storm water "associated with industrial activity."[85] As part of its responsibilities for its in lieu program, the State Boards must administer and enforce all of its permits.[86] The State Water Board has issued permits for industrial and construction discharges of storm water, and the Los Angeles Water Board administers those permits within its jurisdiction. Therefore, the Los Angeles Water Board does conduct inspections at businesses in Los Angeles County to ensure compliance with the state permits. In addition, the MS4 Permit requires the permittees also to conduct inspections. This approach, which may result in two different entities inspecting the same businesses to review storm water practices, was specifically envisioned and required by U.S. EPA in adopting its storm water regulations.[87]

In promulgating its regulations for MS4s and industrial dischargers, U.S. EPA made clear its intent to require industrial facilities that discharge into municipal storm sewers to obtain their own NPDES permits and *also* to require MS4s to regulate and be liable for these same discharges. In 1990, U.S. EPA adopted the regulations that spell out the federal mandates for MS4s to develop and implement plans for regulation of industrial facilities. In its Preamble to the regulations, it explained that MS4 permits "are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system." It presented the rationale for this dual regulatory approach:

> "[U.S. EPA] believes that municipal operators of large and medium municipal systems have an important role in source identification and the development of pollutant controls for industries that discharge storm water through municipal separate storm sewer systems is appropriate. Under the CWA, large and medium municipalities are responsible for reducing pollutants in discharges from municipal separate storm sewers to the [MEP]. Because storm water from industrial facilities may be a major contributor of pollutants to municipal separate storm sewer systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program."[88]

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[85] CWA § 402(p)(2)(B).

[86] CWA § 402(b).

[87] In fact, the Los Angeles Water Board acted to lessen any duplication of effort and costs to the municipal permittees by exempting them from inspection requirements if the same facility has been inspected by the Board.

[88] Vol. 55, Federal Register (Fed.Reg.), at 48009.

Thus, U.S. EPA specifically mandated that industrial facilities were to be subject to permits issued directly to them by the Water Boards and also through MS4 permits, where municipalities must regulate the facilities: "Dischargers of storm water associated with industrial activity through municipal separate storm sewer systems will be subject to municipal management programs that address such discharges as well as to an individual or general NPDES permit for those discharges."[89]

Requirements for MS4s to Conduct Inspections

The federal regulations also specifically require local storm water agencies, as part of their responsibilities under NPDES permits, to conduct inspections.[90] Throughout the federal law, there are numerous requirements for entities that discharge pollutants to waters of the United States to monitor and inspect their facilities and their effluent.[91] The claimants are the dischargers of pollutants into surface waters; as part of their permit allowing these dischargers, they must conduct inspections. The Los Angeles Water Board is charged with administering and enforcing the permit. Its policing responsibilities may also include inspecting the facilities and waters it regulates, but that does not mean it is shifting its responsibilities when it properly mandates inspections by MS4s.

The Process of Selecting Which Businesses MS4s Must Regulate

The claimants contend that federally mandated inspections do not include restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. Instead, they claim that the federal mandate is limited to municipal landfills, hazardous waste sites, industrial facilities listed under the federal Superfund law, and industrial facilities that the permittees themselves determined are contributing substantial pollutants to their systems.

They base this contention on the U.S. EPA's regulations for MS4 applications. The federal regulation states that the storm water management plan that MS4s must submit must address the municipalities' enforcement against pollutants from "municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of [the federal Superfund law], and *industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system.*"[92] The claim is essentially that, after MS4s submitted their first application for a permit, which was required by the U.S. EPA regulations in 1990,[93] and listed any industrial facilities they deemed to be contributors of substantial pollutant loading, the federal law did not mandate any further actions, regardless of whether new information or monitoring might reveal such

[89] *Id.* at 48058.

[90] 40 C.F.R. § 122.26(d)(2)(iv)(C). While the U.S. EPA regulations are phrased as "application requirements," wherein the MS4 must propose the various BMPs that will achieve MEP, these requirements must be included in the mandatory storm water management program. (*Los Angeles, supra,* 143 Cal.App.4th 985, 993.)

[91] See, e.g. CWA § 402(b)(2)(B); 40 C.F.R. § 122.44(i).

[92] 40 C.F.R. § 122.26(d)(2)(iv)(C); emphasis added.

[93] Vol. 55, Fed.Reg. 47990.

contributors. This is not a reasonable reading of the federal regulation. In adopting this regulation, U.S. EPA acknowledged that this initial selection by MS4s was only a starting point and that the mandate was to follow where information and monitoring led:

> "The object of [the requirements in 122.26(d)(2)(iv)(C)] is initially to set priorities for monitoring requirements. Then, if the situation requires controls can be developed and instituted. . . . the selection of facilities is only a means of setting priorities for facilities for the development of municipal plans. ¶ EPA agrees. . . that there will be other facilities that are significant sources of pollutants and should be addressed by municipalities as soon as possible under management programs."

As early as 1993, the Executive Officer of the Los Angeles Water Board directed all of the cities regulated by the permit to implement facility inspections of "auto repair shops, auto body shops, auto parts and accessory shops, gasoline stations, and restaurants."[94] The letter noted that the BMPs listed therein constitute the minimum required for area-wide implementation, and that the list "is not an additional requirement, but incorporates BMPs already proposed by some permittees." Thus, it appears that the inspection requirements were, in fact, proposed by permittees.[95] In any event, MEP is not limited to the sources and controls proposed by the permittees. U.S. EPA Guidance documents make clear that MEP requires an iterative process, where municipalities assess sources, conduct investigations, and improve their programs.[96]

The Local Governments have the Authority to Levy Service Charges, Fees, or Assessments to Pay for the Programs

The County and cities need not spend tax monies to comply with the Permit. They can and do adopt fees from their residents and businesses that fund their storm water programs. The City of Los Angeles (the largest entity covered by the permit, and which has not filed any test claims) adopted a fee ordinance, based on property assessments, for implementation of the program. All of the municipalities have the ability to charge fees to businesses to cover inspection costs. The cities' trash collection responsibilities, which include placement of trash receptacles, are also paid for through existing fees. Moreover, the trash receptacle requirements that are the subject of the Test Claims are limited to public transit stops. Any additional costs associated with trash removal at these transit stops, a service cities already provide, could be borne by transit users through higher transit fees.

The cities and the County have failed to show that they must use tax monies to pay for these requirements. It is also clear that any "additional" costs that could conceivably be considered additional to the federal mandate would be *de minimis* and would not require payment from tax monies. For example, it is assumed that most cities routinely place trash receptacles at bus stops. In fact, the claimants make no allegation of any increased costs from this requirement;

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[94] Letter dated June 17, 1993, from Robert P. Ghirelli to Thomas A. Tidemanson. Attachment 34.

[95] The issue of proposals by the permittees is discussed below.

[96] See, e.g. U.S. EPA document on Evaluating the Effectiveness of Municipal Storm Water Programs.

instead, they conflate any costs by listing "estimated trash receptacles, catch basin, and/or other treatment devices – capital and installation costs."[97]

The Local Governments Applied for the Permit and Proposed the Programs

The County and cities bound by the permit requested the mandate and the Permit allows alternatives in the manner of compliance. The County and cities jointly applied for the permit and proposed a management plan that is consistent with many of the requirements in the permit. Relevant portions of the Report of Waste Discharge that the County submitted are attached. The entire Report of Waste Discharge is available upon request. It is clear from these attachments, which include not only proposed programs but a draft permit, that many of the programs subject to the claims—including regulation of industrial and commercial sites, and specifically restaurants and automobile-service businesses—were proposed in the permittees' original plan submitted in February 2001. For example, the permittees proposed that the permit prohibit discharge of wash waters from gas stations, auto repair garages, and other automotive service facilities.[98] In addition, the permittees proposed a requirement that they "visit" automotive service and food service facilities every two years, and that they "revisit" facilities and take enforcement action if there is evidence of continuing illicit discharges.[99] The permittees submitted a lengthy list of proposed BMPs that site inspectors should look for during site visits.[100] Whether the term is "site visit" or "inspection," it is clear that the permittees proposed the mandate. The permittees also proposed that the permit mandate trash collection alongside, or in improved open channels.[101]

The permit was issued upon the joint request of all of the petitioners, with the County acting as the lead. Where the County and 84 cities apply for a single area-wide permit, the permit writer obviously is not required to write separate requirements for each entity and the County may be presumed to speak for the whole.

The Programs are not Mandates Peculiar to Government

Finally, the NPDES permit program, and the storm water requirements specifically, are not peculiar to local government. Industrial and construction facilities must also obtain NPDES storm water permits. These permits, however, are more stringent than municipal permits because the federal law requires that they meet more stringent technology-based standards and that they attain strict compliance with water quality standards in receiving waters.[102] As such, the only difference between the municipal storm water program and other storm water requirements is that federal law provides separate, more lax requirements for the municipalities.

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[97] Claim 03-TC-21, at p.2.

[98] Report of Waste Discharge at R0000026.

[99] *Id.* at R0000031.

[100] *Id.* at R0000273 – R0000360.

[101] *Id.* at R0000036.

[102] *Defenders of Wildlife v. Browner, supra.*

The Water Boards' implementation of federal law reflects this dichotomy and the fact that the municipalities receive their own permit, as required by CWA section 402(p)(3)(B) does not change the fact that storm water permit requirements are not peculiar to local government.

It is the municipalities who operate MS4s and who discharge pollutants to surface waters. It is the municipalities who must obtain permits and comply with those permits. Similarly, industrial dischargers who discharge storm water runoff to waters of the United States must also obtain and comply with permits. The state is not the discharger (except in those situations where state agencies operate MS4s, such as the Department of Transportation, where they are themselves subject to permits), and the state is not uniquely shifting a new program or higher level of service onto municipalities.[103]

Discussion of Test Claims that were not Substantiated

Development Construction Program (Part 4.E)

Test claim 03-TC-21 claims subvention of costs for the development construction program. It did not, however, include any substantiation of this claim.

Public Agency Activities Program (Part 4.F.5 and 6)

Test claims 03-TC-04, 03-TC-20, and 03-TC-21 claim subvention for portions of the public agency activities program. Test claim 03-TC-21 claims subvention for the all requirements concerning storm drain operation and streets and roads maintenance, while test claims 03-TC-04 and 03-TC-20 are limited to the requirements to place trash receptacles at transit stops and to maintain these receptacles. Test claim 03-TC-21, however, did not include any substantiation of this claim, apart from the discussion of trash receptacles, above.

Discharge Prohibitions and Receiving Water Limitations (Parts 1 and 2)

Test claim 03-TC-21 challenges the discharges prohibitions and receiving water limitations in the Permit. Parts 1 and 2 contain the basic prohibitions and requirements for attaining compliance with water quality standards through an iterative process. The whole of the claim is that, "if enforced and read to literarily [*sic*] to require the City to prevent any and all exceedances from urban runoff of all water quality standards or water quality objectives" the costs would be excessive. The court in *County of Los Angeles, supra,* rejected this exaggeration of the permit's terms and found the requirements to be entirely reasonable. In addition, the *Rancho Cucamonga* and *Building Industry Association* both upheld identical provisions and found them to be reasonable and to be consistent with the minimum federal standard of MEP.

[103] The State Water Board issues a separate permit to the Department of Transportation, for both its municipal activities (roads and freeways) and its industrial facilities (construction and maintenance yards). The permit is available at http://www.waterboards.ca.gov/stormwtr/docs/caltrans/caltranspmt.pdf.

Conclusion

For all the reasons set forth above, the Test Claims must be dismissed. The Permit requirements have already been upheld by the courts as reflecting the federal Clean Water Act's requirements for municipal storm water permitting. The permit in its entirety, including the Test Claim provisions, reflects the federally mandated, federal minimum standard of reducing pollutants to the "maximum extent practicable." Further, the cities can pay for any costs associated with the requirements by levying service charges or fees. Finally, to the extent that any portion of the claims would otherwise qualify for subvention, they are *de minimis* and therefore do not warrant subvention.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on April 18, 2008, at Sacramento, California.

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PROOF OF SERVICE

I, JEANNETTE L. BASHAW, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, I served the within documents:

LETTER TO COMMISSION ON STATE MANDATES DATED APRIL 18, 2008, REGARDING STORM WATER POLLUTION CONTROL REQUIREMENTS, FILES 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21: RESPONSE TO TEST CLAIMS 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

	BY FACSIMILE: I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
X	**BY HAND DELIVERY:** I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
X	**BY FIRST CLASS MAIL TO ALL PARTIES LISTED:** I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in separate, sealed envelopes addressed to:

See Exhibit A attached hereto and made a part hereof.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on April 18, 2008, at Sacramento, California.

Jeannette L. Bashaw

JEANNETTE L. BASHAW

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FEDERAL STATUTES

ATTACHMENT NO. 1

CWA § 301

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter III. Standards and Enforcement (Refs & Annos)
§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved--

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

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(B) Repealed. Pub.L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or

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medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.
(g) Modifications for certain nonconventional pollutants

(1) General authority

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that--

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants

(A) General authority

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing

(i) Sufficient information

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

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(ii) Toxic criteria determination

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

(iii) Listing as toxic pollutant

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

(iv) Nonconventional criteria determination

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions

A petition for listing of a pollutant under this paragraph--

(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;

(ii) may be filed before promulgation of such guideline; and

(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(E) Burden of proof

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants

The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that--

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in

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combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstand-

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ing any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(i) Municipal time extensions

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and--

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection,

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but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of--

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later that [FN1] the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) Compliance requirements under subsection (g)

(A) Effect of filing

An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.

(B) Effect of disapproval

Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

(4) Deadline for subsection (g) decision

An application for a modification with respect to a pollutant filed under subsection (g) of this section must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a

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petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(5) Extension of application deadline

(A) In general

In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) Application

An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will--

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional conditions

The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) Preliminary decision deadline

The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

(*l*) Toxic pollutants

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Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that--

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or non-point source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractural [FN2] obligation to use funds in the amount required (but not less than $250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if

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a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors

(1) General rule

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that--

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application--

(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) Time limit for applications

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) Time limit for decision

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) Submission of information

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to

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comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

(o) Application fees

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remining operations

(1) In general

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

(3) Definitions

For purposes of this subsection--

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(A) Coal remining operation

The term "coal remining operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

(B) Remined area

The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(C) Pre-existing discharge

The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C.A. § 1201 et seq.] to any coal remining operation, including the application of such Act to suspended solids.

CREDIT(S)

(June 30, 1948, c. 758, Title III, § 301, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 844, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 42-47, 53(c), 91 Stat. 1582-1586, 1590; Dec. 29, 1981, Pub.L. 97-117, §§ 21, 22(a)-(d), 95 Stat. 1631, 1632; Jan. 8, 1983, Pub.L. 97-440, 96 Stat. 2289; Feb. 4, 1987, Pub.L. 100-4, Title III, §§ 301(a) to (e), 302(a) to (d), 303(a), (b)(1), (c) to (f), 304(a), 305, 306(a), (b), 307, 101 Stat. 29-37; Nov. 18, 1988, Pub.L. 100-688, Title III, § 3202(b), 102 Stat. 4154; Oct. 31, 1994, Pub.L. 103-431, § 2, 108 Stat. 4396; Dec. 21, 1995, Pub.L. 104-66, Title II, § 2021(b), 109 Stat. 727.)

[FN1] So in original. Probably should be "than".

[FN2] So in original. Probably should be "contractual".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts.Senate Report No. 92-414 and Senate Conference Report No. 92-1236, see 1972 U.S. Code Cong. and Adm. News, p. 3668.

1977 Acts.Senate Report No. 95-370 and House Conference Report No. 95-830, see 1977 U.S. Code Cong. and Adm. News, p. 4326.

1981 Acts.House Report No. 97-270 andHouse Conference Report No. 97-408, see 1981 U.S. Code Cong. and Adm. News, p. 2629.

1987 Acts. Section-by-Section Analysis, see 1987 U.S. Code Cong. and Adm. News, p. 5.

1988 Acts. Senate Report No. 100-431, House Conference Report No. 100-1090, and Statement by President, see 1988 U.S. Code Cong. and Adm. News, p. 5867.

1995 Acts. House Report No. 104-327, see 1995 U.S. Code Cong. and Adm. News, p. 674.

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References in Text

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (p)(4), is Pub.L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (section 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

Amendments

1995 Amendments. Subsec. (n)(8). Pub.L. 104-66, § 2021(b), substituted "By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure" for "Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation".

1994 Amendments. Subsec. (j)(1). Pub.L. 103-431, § (2)(1), inserted ", and except as provided in paragraph (5)" before the semicolon at the end of subpar. (A).

Subsec. (j)(5). Pub.L. 103-431, § 2(2), added par. (5).

1988 Amendments. Subsec. (f). Pub.L. 100-688, § 3202(b), substituted ", any high-level radioactive waste, or any medical waste," for "or high-level radioactive waste".

1987 Amendments. Subsec. (b)(2)(C). Pub.L. 100-4, § 301(a), struck out "not later than July 1, 1984," preceding "with respect" and inserted "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989" after "of this paragraph".

Subsec. (b)(2)(D). Pub.L. 100-4, § 301(b), substituted "as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989" for "not later than three years after the date such limitations are established".

Subsec. (b)(2)(E). Pub.L. 100-4, § 301(c), substituted "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with" for "not later than July 1, 1984,".

Subsec. (b)(2)(F). Pub.L. 100-4, § 301(d), substituted "as expeditiously as practicable but in no case" for "not" and "and in no case later than March 31, 1989" for "or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987".

Subsec. (b)(3). Pub.L. 100-4, § 301(e), added par. (3).

Subsec. (g)(1). Pub.L. 100-4, § 302(a), substituted provision authorizing the Administrator to modify the requirements of subsec. (b)(2)(A) of this section with respect to discharge from any point source of ammonia, chlorine, color, iron, and total phenols and other pollutants which the Administrator lists under par. (4) for provision authorizing the Administrator to modify the requirements of subsec. (b)(2)(A) of this section with respect to discharge of any pollutant, other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic

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pollutants subject to section 1317(a) of this title, and the thermal component of discharges and designated provision relating to requirements for granting modifications, including subpars. (A) to (C), as par. (2).

Subsec. (g)(2). Pub.L. 100-4, § 302(a), designated provision relating to requirements for granting modifications, including subpars. (A) to (C), formerly contained in par. (1) as par. (2). Former par. (2) redesignated as (3).

Pub.L. 100-4, § 302(d)(2), realigned subpars. (A) to (C) with subpar. (A) of par. (4).

Subsec. (g)(3). Pub.L. 100-4, § 302(a), redesignated former par. (2) as (3).

Pub.L. 100-4, § 302(d)(1), inserted paragraph heading "Limitation on authority to apply for subsection (c) modification" and aligned par. (3) with par. (4).

Subsec. (g)(4), (5). Pub.L. 100-4, § 302(b), added pars. (4) and (5).

Subsec. (h)(2). Pub.L. 100-4, § 303(a), substituted "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in any combination with pollutants from other sources," for "such modified requirements will not interfere".

Subsec. (h)(3). Pub.L. 100-4, § 303(b)(1), inserted ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge" after "extent practicable".

Subsec. (h)(6). Pub.L. 100-4, § 303(c), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(7). Pub.L. 100-4, § 303(c), redesignated former par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (h)(8). Pub.L. 100-4, § 303(c), (d)(1), redesignated former par. (7) as (8) and substituted a semicolon for a period at the end thereof.

Subsec. (h)(9). Pub.L. 100-4, § 303(d)(1), added par. (9).

Subsec. (h). Pub.L. 100-4, § 303(d)(2), in provision following par. (9) inserted provision defining "primary or equivalent treatment" for purposes of par. (9).

Pub.L. 100-4, § 303(e), in provision following par. (9) inserted provision placing limitations on issuance of permits for discharge of a pollutant into marine waters and saline estuarine waters and prohibiting issuance of a permit for discharge of a pollutant into the New York Bight Apex.

Subsec. (i)(1). Pub.L. 100-4, § 304(a), substituted "February 4, 1987" for "December 27, 1977".

Subsec. (j)(1)(A). Pub.L. 100-4, § 303(f), inserted provision relating to application for ocean discharge modification.

Subsec. (j)(2). Pub.L. 100-4, § 302(c)(1), substituted "Subject to paragraph (3) of this section, any" for "Any".

Subsec. (j)(3), (4). Pub.L. 100-4, § 302(c)(2), added pars. (3) and (4).

Subsec. (k). Pub.L. 100-4, § 305, substituted "two years after the date for compliance with such effluent limita-

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tion which would otherwise be applicable under such subsection" for "July 1, 1987" and inserted "or (b)(2)(E)" after "(b)(2)(A)" in two places.

Subsec. (l). Pub.L. 100-4, § 306(b), substituted "Other than as provided in subsection (n) of this section, the" for "The".

Subsecs. (n), (o). Pub.L. 100-4, § 306(a), added subsecs. (n) and (o).

Subsec. (p). Pub.L. 100-4, § 307, added subsec. (p).

1983 Amendments. Subsec. (m). Pub.L. 97-440 added subsec. (m).

1981 Amendments. Subsec. (b)(2)(B). Pub.L. 97-117, § 21(b), struck out subpar. (B), which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(g)(2)(A) of this title be achieved.

Subsec. (h). Pub.L. 97-117, § 22(a) to (c), struck out in provision preceding par. (1) "in an existing discharge" following "discharge of any pollutant", struck out par. (8), which required the applicant to demonstrate to the satisfaction of the Administrator that any funds available to the owner of such treatment works under subchapter II of this chapter be used to achieve the degree of effluent reduction required by section 1281(b) and (g)(2)(A) of this title or to carry out the requirements of this subsection, and inserted in provision following par. (7) a further provision that a municipality which applies secondary treatment be eligible to receive a permit which modifies the requirements of subsec. (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters and that no permit issued under this subsection authorize the discharge of sewage sludge into marine waters.

Subsec. (i)(1), (2)(B). Pub.L. 97-117, § 21(a), substituted "July 1, 1988," for "July 1, 1983," wherever appearing. Par. (2)(B) contained a reference to "July 1, 1983;" which was changed to "July 1, 1988;" as the probable intent of Congress in that reference to July 1, 1983, was to the outside date for compliance for a point source other than a publicly owned treatment works and subpar. (B) allows a time extension for such a point source up to the date granted in an extension for a publicly owned treatment works, which date was extended to July 1, 1988, by Pub.L. 97-117.

Subsec. (j)(1)(A). Pub.L. 97-117, § 22(d), substituted "that the 365th day which begins after December 29, 1981" for "than 270 days after December 27, 1977".

1977 Amendments. Subsec. (b)(2)(A). Pub.L. 95-217, § 42(b), substituted "for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph" for "not later than July 1, 1983".

Subsec. (b)(2)(C) to (F). Pub.L. 95-217, § 42(a), added subpars. (C) to (F).

Subsec. (g). Pub.L. 95-217, § 43, added subsec. (g).

Subsec. (h). Pub.L. 95-217, § 44, added subsec. (h).

Subsec. (i). Pub.L. 95-217, § 45, added subsec. (i).

Subsec. (j). Pub.L. 95-217, § 46, added subsec. (j).

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Subsec. (k). Pub.L. 95-217, § 47, added subsec. (k).

Subsec. (*l*). Pub.L. 95-217, § 53(c), added subsec. (*l*).

Change of Name

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Public Works and Transportation of the House of Representatives treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives, see section 1(a)(9) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Effective and Applicability Provisions

1987 Acts. Section 302(e) of Pub.L. 100-4 provided that:

"(1) General Rule.--Except as provided in paragraph (2), the amendments made by this section [amending subsecs. (g) and (j) of this section] shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act [subsec. (g) of this section] pending on the date of the enactment of this Act [Feb. 4, 1987] and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act [subsec. (j)(1)(B) of this section].

"(2) Exception.--The amendments made by this section [amending subsecs. (g) and (j) of this section] shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act [subsec. (g) of this section] pending on the date of the enactment of this Act [Feb. 4, 1987]; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment [Feb. 4, 1987]."

Section 303(b)(2) of Pub.L. 100-4 provided that: "The amendment made by subsection (b) [amending subsec. (h)(3) of this section] shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act [Feb. 4, 1987]."

Section 303(g) of Pub.L. 100-4 provided that: "The amendments made by subsections (a) [amending subsec. (h)(2) of this section], (c) [enacting subsec. (h)(6) of this section and redesignating former subsec. (h)(6) and (7) as (h)(7) and (8)], (d) [enacting subsec. (h)(9) of this section and inserting provision defining primary and equivalent treatment in provision following subsec. (h)(9)], and (e) [inserting provision relating to issuance of permit to discharge pollutants into marine waters in provision following subsec. (h)(9)] of this section shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act [subsec. (h) of this title] which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act [Feb. 4, 1987]; except that such amendments shall apply to all renewals of such permits after such date of enactment."

Section 304(b) of Pub.L. 100-4 provided that: "The amendment made by subsection (a) [amending subsec. (i)(1) of this section] shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act [Feb. 4, 1987] by a court order or a final administrative order."

1981 Acts. Section 22(e) of Pub.L. 97-117 provided that: "The amendments made by this section [amending

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subsecs. (h) and (j)(1)(A) of this section] shall take effect on the date of enactment of this Act [Dec. 29, 1981], except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act [subsec. (h) of this section] which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act [subsec. (b)(1)(B) of this section] shall receive such permit during the one-year period which begins on the date of enactment of this Act."

Phosphate Fertilizer Effluent Limitation

Amendment by section 306(a), (b) of Pub.L. 100-4 not to be construed (A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters, (B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 1342(a)(1)(B) of this title, and (C) to affect the authority of any State to deny or condition certification under section 1314 of this title with respect to the issuance of permits under section 1342(a)(1)(B) of this title, see section 306(c) of Pub.L. 100-4, set out as a note under 33 U.S.C.A. § 1342.

Territorial Sea and Contiguous Zone of United States

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under 43 U.S.C.A. § 1331.

Deadlines for Regulations for Certain Toxic Pollutants

Section 301(f) of Pub.L. 100-4 provided that: "The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act [subsec. (b)(2)(A) of this section and section 1317(b)(1) of this title] for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

"Category	Date by which the final regulation shall be promulgated
"Organic chemicals and plastics and synthetic fibers.....	.....
	December 31, 1986.
"Pesticides.....	.....
	December 31, 1986."

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Public Works and Transportation of the House of Representatives treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives, see section 1(a)(9) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

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Discharges From Point Sources in United States Virgin Islands Attributable to Manufacture of Rum; Exemption From Federal Water Pollution Control Requirements; Conditions

Pub. L. 98-67, Title II, § 214(g), Aug. 5, 1983, 97 Stat. 393, provided that:

"Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection [Aug. 5, 1983] which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954 [section 7652(c)(3) of Title 26, Internal Revenue Code]) shall not be subject to the requirements of section 301 [this section] (other than toxic pollutant discharges), section 306 [section 1316 of this title] or section 403 [section 1343 of this title] of the Federal Water Pollution Control Act if--

"(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

"(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities."

Certain Municipal Compliance Deadlines Unaffected; Exception

Section 21(a) of Pub.L. 97-117 provided in part that: "The amendment made by this subsection [amending subsec. (i)(1) and (2)(B) of this section] shall not be interpreted or applied to extend the date for compliance with section 301(b)(1)(B) or (C) of the Federal Water Pollution Control Act [subsec. (b)(1)(B) or (C) of this section] beyond schedules for compliance in effect as of the date of enactment of this Act [Dec. 29, 1981], except in cases where reductions in the amount of financial assistance under this Act [Pub.L. 97-117, see Short Title of 1981 Amendment set out under section 1251 of this title] or changed conditions affecting the rate of construction beyond the control of the owner or operator will make it impossible to complete construction by July 1, 1983."

CROSS REFERENCES

Criminal penalties for violation of this section, see 33 USCA § 1319.
Definition of "effluent standard or limitation" for purposes of citizen suits, see 33 USCA § 1365.
Definition of "treatment works", see 33 USCA § 1292.
Development and publication of information on factors necessary for protection of public water supplies, see 33 USCA § 1314.
Employee protection, deliberate violations by employee acting without direction from employer, see 33 USCA § 1367.
Guidelines for cost-effectiveness analysis, see 33 USCA § 1297.
Identification of areas with insufficient effluent limitations, see 33 USCA § 1313.
National Study Commission, establishment, see 33 USCA § 1325.
Permits for discharge of pollutants, see 33 USCA § 1342.

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Permits for dredged or fill material, see 33 USCA § 1344.
Research and demonstration projects to carry out the purposes of this section, see 33 USCA § 1255.
Review of Administrator's actions, see 33 USCA § 1369.
State certification of applicants for federal license, see 33 USCA § 1341.
Thermal discharges, effluent limitations for protection and propagation of shellfish, etc., see 33 USCA § 1326.
Toxic and pretreatment effluent standards, see 33 USCA § 1317.
Water quality related effluent limitations, see 33 USCA § 1312.

CODE OF FEDERAL REGULATIONS

Criteria and standards for the National Pollutant Discharge Elimination System, see 40 CFR § 125.1 et seq.
Effluent guidelines and standards, see 40 CFR § 401.10 et seq.
Guidelines establishing test procedures for analysis of pollutants, see 40 CFR § 136.1 et seq.
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Am. Jur. 2d Pollution Control § 768, Civil Penalties.

Am. Jur. 2d Pollution Control § 770, Imposition of Penalty.

Am. Jur. 2d Pollution Control § 804, Variance Requests.

Am. Jur. 2d Pollution Control § 893, Approval or Promulgation of Effluent Limitations.

Am. Jur. 2d Waters § 132, Navigable Waters of the United States.

Forms

Federal Procedural Forms § 51:7, Permits for Dredging, Filling, and Similar Activities--Generally; Preapplication Consultation.

Federal Procedural Forms § 29:31, Scope of Division.

Federal Procedural Forms § 51:28, Citizen Suits.

Federal Procedural Forms § 51:35, Complaint in District Court--To Enjoin Discharge of Dredged or Fill Materials Without Permit--Imposition of Civil Penalty [33 U.S.C.A. §§ 1311, 1319, 1365; Fed. R. Civ. P. 8(A), 65].

Federal Procedural Forms § 50:214.50, Complaint in District Court--For Order Requiring Repeal of 40 C.F.R. § 122.3(H) as Ultra Vires to the Clean Water Act [40 C.F.R. § 122.3; 33 U.S.C.A. §§ 1251, 1311, 1342, 1362; 5 U.S.C.A. §§ 551 T.

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2A West's Federal Forms § 1717, Action Seeking Penalties for Discharge of Industrial Effluent.

2A West's Federal Forms § 1719, Enjoining Storm Water Discharge.

Am. Jur. Pl. & Pr. Forms Pollution Control § 91, Complaint in Federal District Court--Citizen Suit to Compel Compliance With Fwpca--Discharge of Pollutants from Chicken Processing Plant--Counts for Nuisance, Trespass, Negligence, and Viol.

Am. Jur. Pl. & Pr. Forms Pollution Control § 92, Complaint in Federal District Court--Citizen Suit for Declaratory and Injunctive Relief to Compel Compliance With Wastewater Discharge Permit--Against Polluter--Excessive Discharge of Indus.

Am. Jur. Pl. & Pr. Forms Pollution Control § 93, Complaint in Federal District Court--Citizen Suit for Declaratory and Injunctive Relief and Civil Penalties--Under Fwpca, Rcra and State Unfair Business Practices Law--Landfill Operating in.

Am. Jur. Pl. & Pr. Forms Waters § 135, Complaint in Federal Court--Private Action Under Federal Water Pollution Control Statute--For Injunction and Penalties--Discharge of Wastes and Pollutants Without Permit.

Am. Jur. Pl. & Pr. Forms Waters § 136, Complaint in Federal Court--Private Action Under Federal Water Pollution Control Statute--For Injunction and Penalties--Discharge of Dredged or Fill Materials Without Permit.

Treatises and Practice Aids

Bankruptcy Service Lawyers Edition § 19:1531, Judgments.

Federal Procedure, Lawyers Edition § 32:802, Alternative Requirements Based on Fundamentally Different Factors.

Federal Procedure, Lawyers Edition § 32:803, Alternative Requirements Based on Fundamentally Different Factors--How to Apply.

Federal Procedure, Lawyers Edition § 32:804, Economic Variance from Best Available Technology Requirement.

Federal Procedure, Lawyers Edition § 32:807, Modifications for Unconventional Pollutants.

Federal Procedure, Lawyers Edition § 32:808, Modifications for Unconventional Pollutants--Petition for Listing of Pollutants Eligible for Modification.

Federal Procedure, Lawyers Edition § 32:809, Modifications for Unconventional Pollutants--Stay of Other Pollution Control Requirements.

Federal Procedure, Lawyers Edition § 32:817, Issuance of Compliance Order--Delayed Compliance Order.

Federal Procedure, Lawyers Edition § 32:829, Civil Penalties.

Federal Procedure, Lawyers Edition § 32:831, Imposition of Penalty.

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Federal Procedure, Lawyers Edition § 32:865, Variance Requests.

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1. Construction with other laws

In the definitional scheme of the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, discharge standards under this chapter are "rules," not "orders," and the process is "rule making," not "adjudication"; accordingly, the procedures set forth in section 554 of Title 5 are inapplicable. Hercules, Inc. v. Environmental Protection Agency, C.A.D.C.1978, 598 F.2d 91, 194 U.S.App.D.C. 172. Administrative Law And Procedure 442; Environmental Law 183

References in legislative history to regulation of ocean dumping under section 1343 of this title setting forth special criteria for ocean disposal of pollutants may be interpreted as standing for the proposition that this chapter, not the Marine Protection, Research, and Sanctuaries Act of 1972, section 1401 et seq. of this title, regulates outfalls and territorial seas, rather than for proposition that section 1343 of this title and not this section requiring public treatment works to apply secondary treatment techniques regulates outfalls and the territorial seas. Pacific Legal Foundation v. Quarles, C.D.Cal.1977, 440 F.Supp. 316, affirmed 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law 173

2. Purpose

Environmental Protection Agency's (EPA) inclusion of effluent limitations for suspended solids in its coal remining subcategory was not arbitrary or capricious; effluent limitations for solids was not inconsistent with the purpose of Clean Water Act (CWA) and would provide sufficient incentives for remining abandoned mine lands. Citizens Coal Council v. U.S. E.P.A., C.A.6 2006, 447 F.3d 879. Environmental Law 186

This chapter was enacted in an effort by Congress to deal with the regulatory problems that had hindered efforts to control water pollution. Hercules, Inc. v. Environmental Protection Agency, C.A.D.C.1978, 598 F.2d 91, 194 U.S.App.D.C. 172. Environmental Law 165

In this chapter, Congress intended to control both the discharge of pollutants directly into navigable waters and the discharge of pollutants into nonnavigable tributaries which flow into the navigable waters. U.S. v. Saint Bernard Parish, E.D.La.1984, 589 F.Supp. 617. Environmental Law 173

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This chapter is broad and remedial, and is intended to restore and maintain natural chemical, physical and biological integrity of nation's waters and to eliminate discharge of pollutants into navigable waters by 1985. U. S. v. Velsicol Chemical Corp., W.D.Tenn.1976, 438 F.Supp. 945. Environmental Law 165

3. Retroactive effect

Permitting scheme established by administrative rule promulgated by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) to regulate the emission of water pollutants by concentrated animal feeding operations (CAFO), requiring that every CAFO owner or operator either apply for a permit, and comply with the effluent limitations contained in the permit, or affirmatively demonstrate that no permit was needed because there was no potential to discharge, exceeded statutory authority granted by the CWA to regulate and control the actual discharge of pollutants; the CWA gave the EPA the authority to regulate only actual discharges, not potential discharges and not point sources themselves. Waterkeeper Alliance, Inc. v. U.S. E.P.A., C.A.2 2005, 399 F.3d 486. Environmental Law 196

Amendments adopted in 1977 to this chapter which required best available technology limitations for discharges of toxic substances are not to operate retroactively so as to possibly retract any variance previously issued to an industry which happened to be discharging toxic substances. Appalachian Power Co. v. Train, C.A.4 1980, 620 F.2d 1040. Environmental Law 168

Shopping plaza owner did not violate Clean Water Act (CWA) by failing to obtain National Pollution Discharge Elimination System (NPDES) permit for stormwater discharge from parking lot, since discharge had been left unregulated before CWA Phase II regulations went into effect, and neither Environmental Protection Agency (EPA) nor state agency had exercised residual designation authority to require permit. Conservation Law Foundation v. Hannaford Bros. Co., D.Vt.2004, 327 F.Supp.2d 325, affirmed 139 Fed.Appx. 338, 2005 WL 1712899. Environmental Law 196

Clean Water Act (CWA) complaint failed to state claim upon which relief could be granted where discharge alleged in complaint was derived from continued leaching from pre-1954 disposal of chromium-bearing waste. Interfaith Community Organization v. AlliedSignal, Inc., D.N.J.1996, 928 F.Supp. 1339. Environmental Law 673

"Upset" defense available under federal and state regulations for exceptional incidents was not available to alleged water polluter for violations of discharge permit effluent limitations prior to August 13, 1979 in action under the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], as regulations providing upset defense became effective on that date. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

4. State regulation or control

Environmental Protection Agency (EPA), based on its statutory obligations under Clean Water Act (CWA), was required to give notice to public and afford it opportunity to comment on issues relevant to its determination that new definition of "zones of deposit" would reasonably ensure compliance with Alaska's water quality standards, although certification of the National Pollutant Discharge Elimination System (NPDES) general permit was vested with Alaska Department of Environmental Conservation (ADEC); EPA sought opinion of ADEC when determining that new definition would ensure compliance with Alaska's water quality standards. Natural Resources Defense Council v. U.S. E.P.A., C.A.9 2002, 279 F.3d 1180. Environmental Law 220

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Environmental Protection Agency's (EPA's) approval of provision of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), pursuant to which approval of a publicly owned treatment works (POTW) regional facility plan met the requirements for an antidegradation review, was not arbitrary and capricious, although procedure did not require a show of public necessity as mandated by the CWA, where EPA reviewed relevant regulations and determined that the components designed for a development of a regional facility plan in Kentucky met the required decision making process under the CWA, and was in fact the equivalent of an antidegradation review. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law 191

Cornerstone of the Clean Water Act is that the discharge of any pollutant from a point source into navigable waters of the United States is unlawful unless the discharge is made according to the terms of an National Pollutant Discharge Elimination System (NPDES) permit obtained from either the United States Environmental Protection Agency (EPA) or from an authorized state agency. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law 196

The United States Supreme Court's decision in City of Milwaukee v. Illinois did not fatally undermine authority of previous decision of the Court of Appeals for the Seventh Circuit concerning whether this chapter preempted state regulation of water pollution caused by out-of-state dischargers and district courts remain bound by controlling courts of appeals' determinations on the point unless and until the latter are reversed or clearly repudiated. People of State of Ill. v. Lever Bros. Co., N.D.Ill.1981, 530 F.Supp. 293. Courts 96(4)

5. Power of court

Federal courts lack authority to impose more stringent effluent limitations under federal common law than those imposed by the agency charged by Congress with administering this chapter. City of Milwaukee v. Illinois and Michigan, U.S.Ill.1981, 101 S.Ct. 1784, 451 U.S. 304, 68 L.Ed.2d 114, on remand 731 F.2d 403. Environmental Law 170

This chapter preempted federal common law of public nuisance in area of interstate water pollution, at least to extent of displacing authority of district court to impose more stringent effluent limitations upon sewer systems than those promulgated pursuant to this section. Matter of Oswego Barge Corp., C.A.2 (N.Y.) 1981, 664 F.2d 327, rehearing denied 673 F.2d 47. Environmental Law 170

While federal court has no authority to direct Administrator of Environmental Protection Agency to grant permit for demonstration sewage disposal project, court does have authority to direct Administrator to consider fully application on merits and Administrator has no discretion to reject, out of hand, such applications; neither does Administrator have discretion to impose arbitrary geographical limitations which were never intended by Congress. RITE--Research Improves Environment, Inc. v. Costle, C.A.5 (Fla.) 1981, 650 F.2d 1312. Environmental Law 196

6. Rules and regulations

Environmental Protection Agency (EPA) regulations, which provide that National Pollution Discharge Elimination System (NPDES) permit may not be issued if the imposition of conditions would not insure compliance with the applicable water quality requirements of all affected states, were a reasonable exercise of EPA's authority. Arkansas v. Oklahoma, U.S.1992, 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law 197

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Environmental Protection Agency's (EPA) performance standard for froth-flotation mill operations, rather than regulatory definition of "fill material," governed permit for the discharge of process wastewater from a froth-flotation mill into a body of water protected by the Clean Water Act; "fill material" regulation did not contain an implied exception to the requirements of performance standards for froth-flotation mill discharges whenever a proposed discharge would meet the regulatory definition of "fill material," and more specific regulation concerning froth-flotation mill operations was not submerged by later enacted general regulation covering "fill material." Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, C.A.9 (Alaska) 2007, 486 F.3d 638. Environmental Law 196

Permitting scheme established by administrative rule promulgated by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) to regulate the emission of water pollutants by concentrated animal feeding operations violated the CWA's public participation requirements and was otherwise arbitrary and capricious under the Administrative Procedure Act; although the preamble to the rule indicated that the EPA expected that the permitting authority would make the information available to the public upon request, the rule provided no assurance that the EPA's expectations would be satisfied. Waterkeeper Alliance, Inc. v. U.S. E.P.A., C.A.2 2005, 399 F.3d 486. Environmental Law 196; Environmental Law 218

Settlement agreement between the Environmental Protection Agency and environmental groups, relating to program for developing and promulgating toxic waste discharge regulations under this chapter, did not impermissibly infringe on Agency discretion, given that agreement did not prescribe substantive outcome and was not product of judicially imposed program but, in fact, was embodied in decree with Environmental Protection Agency consent. Citizens for a Better Environment v. Gorsuch, C.A.D.C.1983, 718 F.2d 1117, 231 U.S.App.D.C. 79, certiorari denied 104 S.Ct. 2668, 467 U.S. 1219, 81 L.Ed.2d 373; rehearing denied 104 S.Ct. 3573, 468 U.S. 1204, 82 L.Ed.2d 872. Compromise And Settlement 7.1

Under subsec. (h) of this section, which allows municipalities to apply for variance from minimum sewage treatment standard and which authorizes Administrator of Environmental Protection Agency to issue a permit with respect to the discharge of any pollutant in an "existing discharge" from a treatment plant, regulation promulgated by Administrator which allowed permit applications based on either the "current discharge" or an "improved discharge" was proper, in that while Congress was silent as to whether permits based on improved discharges were allowed, purpose of subsec. (h) of this section, that of allowing treatment plants that can discharge into marine waters and meet certain environmental standards to receive a permit, is served by allowing treatment plants that have planned improvements to apply for permits. Natural Resources Defense Council, Inc. v. U. S. Environmental Protection Agency, C.A.D.C.1981, 656 F.2d 768, 211 U.S.App.D.C. 179. Environmental Law 201

Environmental Protection Agency did not fail to comply with Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, on asserted ground that final regulations governing discharge of organic pesticide-manufacturing pollutants into navigable waters were so different from interim final regulations that the interims were not notice of Agency's decision to consolidate rather than expand categories and to limit regulations or its determination as to treatability, in that changes were clearly signaled in interim regulations. BASF Wyandotte Corp. v. Costle, C.A.1 1979, 598 F.2d 637, certiorari denied 100 S.Ct. 1063, 444 U.S. 1096, 62 L.Ed.2d 784. Environmental Law 186

Prohibition that, with named exceptions, discharge of any pollutant by any person shall be unlawful is central to this entire chapter and requires no promulgation. American Frozen Food Institute v. Train, C.A.D.C.1976, 539

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F.2d 107, 176 U.S.App.D.C. 105. Environmental Law ⚿ 175

Army Corps of Engineers acted impermissibly when it adopted Clean Water Act (CWA) regulations in 1986 and thereafter which eliminated the upstream or landward component of ordinary high water mark (OHWM) jurisdiction; in its 1975 regulations, the applicable limit of the Corps' jurisdiction was the perceptible OHWM caused by the upstream or landward flow from navigable water, but by 2000, it was the perceptible OHWM caused by the flow of water toward navigable waters, a reinterpretation of the jurisdictional significance of an OHWM which was an invalid extension of the Corps' jurisdiction. U.S. v. RGM Corp., E.D.Va.2002, 222 F.Supp.2d 780, vacated. Environmental Law ⚿ 173

Army Corps of Engineers was given authority over wetlands pursuant to the Clean Water Act as early as July 25, 1975 when regulations were published stating that waters of the United States included fresh water wetlands, even though certain regulations clarifying the Corps' responsibilities under the Clean Water Act did not go into effect until 1986. Slagle v. U.S. By and Through Baldwin, D.Minn.1992, 809 F.Supp. 704. Environmental Law ⚿ 118

Regulations adopted by United States Environmental Protection Agency to interpret and enforce policies of this chapter are aimed at carrying out this chapter even if promulgated since enactment of W.S.A. 147.04 et seq., authorizing State Department of Natural Resources to implement a Wisconsin Pollution Discharge Elimination System program, and as such are binding on State under W.S.A. 147.021 providing that rules promulgated by DNR pursuant to WPDES program relating to effluent limitations "shall comply with and not exceed" requirements of this chapter and regulations adopted pursuant thereto. Niagara of Wisconsin Paper Corp. v. Wisconsin Dept. of Natural Resources, Wis.1978, 268 N.W.2d 153, 84 Wis.2d 32. Environmental Law ⚿ 183

7. Mandatory nature of section

Clean Water Act's requirement that all discharges covered by statute have appropriate permit is unconditional and absolute. Hudson River Fishermen's Ass'n v. Arcuri, S.D.N.Y.1994, 862 F.Supp. 73. Environmental Law ⚿ 196

8. Persons subject to limitations

Clean Water Act requires Forest Service to comply with all state water quality requirements. Marble Mountain Audubon Soc. v. Rice, C.A.9 (Cal.) 1990, 914 F.2d 179. Environmental Law ⚿ 188

Environmental Protection Agency has been authorized by this section, after orchestrating a process of study, proposal, notice and comment, to issue two sets of progressively more stringent regulations precisely limiting the effluent discharges of every "category [or] class of [existing] point sources," i.e., generally, every industry that pollutes the nation's waters. Weyerhaeuser Co. v. Costle, C.A.D.C.1978, 590 F.2d 1011, 191 U.S.App.D.C. 309. Environmental Law ⚿ 183

1977 effluent standards of this chapter apply to publicly owned sewage treatment plants which have not received federal grants under this chapter. State Water Control Bd. v. Train, C.A.4 (Va.) 1977, 559 F.2d 921. Environmental Law ⚿ 179

Where defendants never obtained or applied for a permit, any discharge of pollutants by them would be unlawful under this chapter even though no effluent standards were applicable to them. U.S. v. Frezzo Bros., Inc.,

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E.D.Pa.1978, 461 F.Supp. 266, affirmed 602 F.2d 1123, certiorari denied 100 S.Ct. 1020, 444 U.S. 1074, 62 L.Ed.2d 756, post-conviction relief denied 491 F.Supp. 1339, reversed 642 F.2d 59, on remand 546 F.Supp. 713. Environmental Law ⚷ 743

9. Pollutants subject to limitation

Chemical pesticide, antimycin, applied intentionally and aimed at eliminating a pestilent fish species, in accordance with a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) label, and with no residue or unintended effect was not "waste" and thus not a "pollutant" for the purposes of the Clean Water Act and not subject to the CWA's permit requirements. Fairhurst v. Hagener, C.A.9 (Mont.) 2005, 422 F.3d 1146. Environmental Law ⚷ 196

There was sufficient evidence that pollutants were contained in waters discharged from mill to support defendants' convictions for knowingly discharging pollutants without having obtained permit; environmental consultant for asbestos-removal project at mill testified that defendant was present at pre-project meeting where there was discussion about how all the drains at mill led to bay, and worker saw asbestos going down the drains and he testified that defendant told him not to worry about the asbestos that they were washing down the drains because "it'll go down to the bottom of the ocean--or bottom of the bay." U.S. v. Technic Services, Inc., C.A.9 (Alaska) 2002, 314 F.3d 1031. Environmental Law ⚷ 743

Environmental Protection Agency's classification of settleable solids as nonconventional pollutant and thus subject to BAT standards was both reasonable and permissible construction of Clean Water Act, where Congress had not designated settleable solids as either conventional or toxic pollutant. Rybachek v. U.S. E.P.A., C.A.9 1990, 904 F.2d 1276. Environmental Law ⚷ 186

Under this chapter, Environmental Protection Agency had no jurisdiction to require electric-generating plant to remove pollutants which entered plant through its intake stream. Appalachian Power Co. v. Train, C.A.4 1976, 545 F.2d 1351. Environmental Law ⚷ 212

Despite developer's claim that there was inadequate evidentiary support to sustain a finding that his canal excavations violated this section the lower court properly found that the discharge of "sediment" from the developer's dredging amounted to a violation of this section's prohibition against the discharge of a "pollutant". Weiszmann v. District Engineer, U. S. Army Corps of Engineers, C.A.5 (Fla.) 1976, 526 F.2d 1302, on remand 545 F.Supp. 721. Environmental Law ⚷ 206

Ditches that coastal landowners' dug on their tract of land were "point sources" under the Clean Water Act (CWA), so as to be subject to discharge permit requirements, where ditches served to channel and collect stormwater and other pollutants that were subsequently discharged into waters of the United States. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law ⚷ 175

Genuine issues of material fact as to whether fecal coliform, a pollutant, traveled from coastal landowners' tract of land to water covered by the Clean Water Act (CWA), and as to whether alleged increase in fecal coliform levels in such navigable water was related to landowners' ditching activities, precluded summary judgment in citizen suit under CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Federal Civil Procedure ⚷ 2498.3

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Wastewater flowing from piles of spent mushroom substrate (SMS), waste generated by the mushroom industry, would be "pollutant," in context of the Clean Water Act (CWA) and Pennsylvania Clean Streams Law (PCSL); state, after testing wastewater, concluded that it was "extremely polluted," and independent consultants hired by neighboring property owners concluded that the wastewater contained high levels of ammonia, total dissolved solids, and other pollutants, in excess of state and federal water quality standards, although mushroom waste processor had implemented vegetation boundaries. Reynolds v. Rick's Mushroom Service, Inc., E.D.Pa.2003, 246 F.Supp.2d 449. Environmental Law 175

Acid mine drainage flowing into creeks and containing high concentrations of aluminum, cadmium, copper, zinc, iron and sulfuric acid was "pollutant" for which Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) required permit, regardless of historical levels of pollution. Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law 178

Water itself is not pollutant; therefore, simply moving water from one place to another does not constitute discharge of pollutant under Clean Water Act (CWA). Bettis v. Town of Ontario, N.Y., W.D.N.Y.1992, 800 F.Supp. 1113. Environmental Law 175

City violated Clean Water Act by discharging chlorine and alum floc into reservoir on navigable river, as result of adding chlorine and alum to water pumped from another river, without first obtaining a pollution emissions permit; chlorine residual, when discharged into navigable waters, was a "pollutant" within meaning of the Act, even though its intended use was beneficial, and alum sludge or floc was also a pollutant. Hudson River Fishermen's Ass'n v. City of New York, S.D.N.Y.1990, 751 F.Supp. 1088, affirmed 940 F.2d 649. Environmental Law 206

Discharge of raw sewage into river from privately owned septic system violated the Clean Water Act, in absence of permit. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Environmental Law 206

10. Discharge of pollutant or fill

The evidence was sufficient to establish that defendant discharged pollutants into a creek, as element of offense of violating Clean Water Act by discharging and causing to be discharged pollutants into waters of the United States without a permit; even if defendant only ran heavy equipment in the creek bed, had log structures constructed in creek, and moved gravel and other materials during the periods of the year when the section of the creek he impacted was dry due to the operation of an irrigation diversion structure upstream, he still deposited pollutants in the creek, and the evidence supported a determination that defendant created a situation in which pollutants, including disturbed and moved materials and log structures, remained in the creek when the water was flowing. U.S. v. Moses, C.A.9 (Idaho) 2007, 2007 WL 2215954.

Army Corps of Engineers' failure to obtain a certificate of waiver prior to discharging dredged material in navigable waters from the Puerto Rico Environmental Quality Board in violation of Puerto Rico law and the Clean Water Act was not the proximate cause under Puerto Rico law of landowners' alleged damages caused by dredged material being blown onto their property after Corps deposited it on a nearby beach. Montijo-Reyes v. U.S., C.A.1 (Puerto Rico) 2006, 436 F.3d 19. United States 78(10)

Inasmuch as discharges of groundwater derived from coal bed methane (CBM) extraction process altered river's water quality, those discharges caused "pollution" as defined by Clean Water Act (CWA). Northern Plains Resource Council v. Fidelity Exploration and Development Co., C.A.9 (Mont.) 2003, 325 F.3d 1155, certiorari

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denied 124 S.Ct. 434, 540 U.S. 967, 157 L.Ed.2d 312, on subsequent appeal 185 Fed.Appx. 679, 2006 WL 1722474. Environmental Law ⚿ 178

Environmental Protection Agency (EPA) was not required by Clean Water Act (CWA) to take enforcement action against all illegal discharges of pollutants, and therefore its issuance of permit to mine operator was not mandated by statute and did not support request for attorney fees, under catalyst theory, of environmental groups that had sued to compel EPA to act. Bravos v. E.P.A., C.A.10 (N.M.) 2003, 324 F.3d 1166, 190 A.L.R. Fed. 643. Environmental Law ⚿ 716

There was sufficient evidence that there was no national pollutant discharge elimination system (NPDES) permit in place to support conviction for knowingly discharging pollutants without having obtained permit, in connection with asbestos remediation project at closed pulp mill; representative of Environmental Protection agency (EPA) testified that, although owner of pulp mill had NPDES permit for discharge of pollutants, permit remained in effect only until mill closed, that defendant itself had not obtained NPDES permit, and that general stormwater permit issued to mill owner did not cover discharge of asbestos. U.S. v. Technic Services, Inc., C.A.9 (Alaska) 2002, 314 F.3d 1031. Environmental Law ⚿ 743

For purposes of Clean Water Act's (CWA) definition of "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source," the transfer of water containing pollutants from one body of water to another, distinct body of water is an "addition," and thus a "discharge" that demands National Pollutant Discharge Elimination System (NPDES) permit. Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, C.A.2 (N.Y.) 2001, 273 F.3d 481, on remand 207 F.Supp.2d 3, adhered to on reconsideration 451 F.3d 77, certiorari denied 127 S.Ct. 1373.

Defendants' conduct in severing 250-ton concrete and rebar block from stern of ferrous concrete barge and dumping it into bay, severing approximately one hundred pieces of rebar and attached concrete from barge's stern and dropping it into lagoon, and conducting sandblasting operations on floating barge that projected sand and paint chip residue into bay constituted discharge of pollutant from point source, and thus violated Clean Water Act, in that barge was "floating craft" expressly included within definition of "point source." U.S. v. West Indies Transport, Inc., C.A.3 (Virgin Islands) 1997, 127 F.3d 299, certiorari denied 118 S.Ct. 700, 522 U.S. 1052, 139 L.Ed.2d 644, denial of post-conviction relief affirmed 60 Fed.Appx. 412, 2003 WL 1564255. Environmental Law ⚿ 206

Environmental Protection Agency's (EPA's) approval of provisions of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), which permitted discharges with increased pollutant loadings of less than 20%, was not arbitrary and capricious, where EPA reviewed more than 60 possible discharge dilution scenarios, and checked past permit procedures and approvals, in determining that 20% increase in pollutants would result only in de minimis effect on water quality. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law ⚿ 191

County was not "discharger" of pollution into waters of United States, and could not be held liable under Clean Water Act (CWA), for stormwater runoff from state highway owned, maintained, operated, and controlled by state. Jones v. E.R. Snell Contractor, Inc., N.D.Ga.2004, 333 F.Supp.2d 1344, affirmed 120 Fed.Appx. 786, 2004 WL 2157261, certiorari denied 125 S.Ct. 1735, 544 U.S. 962, 161 L.Ed.2d 603. Environmental Law ⚿ 226

Environmental organization that brought citizen's suit against timber companies and Environmental Protection

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Agency (EPA) properly alleged that company employed unpermitted conduits to discharge stormwater and pollutants from logging activities into creek, as required to state claim under Clean Water Act (CWA); complaint averred that company's culverts and drainage ditches on logging sites constituted discharge "point sources" for which National Pollutant Discharge Elimination System (NPDES) permit was required. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2004, 301 F.Supp.2d 1102, motion to certify denied 2004 WL 838160. Environmental Law 206

Navigable-in-fact waters that were directly adjacent to coastal landowners' tract of land and which were classified by State of North Carolina as "SA" water, indicating that they were saltwater of high quality suitable for production and harvesting of shellfish for human consumption, were traditional navigable waters, i.e., "waters of the United States," and thus subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA); waters at issue included a sound and a saltwater estuarine creek that flowed into the sound. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 125; Environmental Law 126; Environmental Law 173

Sediment, consisting of sand and dirt, that was discharged into waters covered by the Clean Water Act (CWA) by coastal landowners' ditching activities constituted discharge of "pollutant" into waters of the United States, for which landowners were required to obtain discharge permit under the CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 196

Fruit processor's discharge of water, produced in process of drying fruit, to irrigate fields, was not a discharge from a point source, as required to support Clean Water Act (CWA) citizen suit against processor, although processor allegedly applied wastewater to its fields in excess of crops' actual absorption of water. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law 175

Property owners' use of earth-moving equipment to excavate, move and deposit dirt, rocks and other indigenous materials on property was "discharge of pollutant," not "incidental fallback," and thus owners were required to obtain permit under Clean Water Act (CWA). U.S. v. Sartori, S.D.Fla.1999, 62 F.Supp.2d 1362. Environmental Law 196

Marina owners' dumping of fill on natural marshlands of hook-like peninsula extending into waters within the national park violated the Clean Water Act, although owners' construction of docks and filling in of shoreline did not. U.S. v. Schmitt, E.D.N.Y.1998, 999 F.Supp. 317, affirmed 28 Fed.Appx. 63, 2002 WL 108564. Environmental Law 136; Navigable Waters 43(2)

Discharges of Acid mine drainage into navigable creeks without valid National Pollutant Discharge Elimination System (NPDES) permits violated Clean Water Act (CWA), even though mining company had applied to state for Montana Pollutant Discharge Elimination System (MPDES) storm water permit. Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law 206

Environmental organizations alleging that solid waste, wrecked or discarded equipment, garbage, rock, sand, and dirt were and continued to be discharged from abandoned construction site into creek, which was tributary of navigable waterway, without any permit stated valid cause of action under the Clean Water Act against owners of site. Hudson River Fishermen's Ass'n v. Arcuri, S.D.N.Y.1994, 862 F.Supp. 73. Environmental Law 196

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Property owner violated Clean Water Act by constructing feeder ditches and basins and discharging "fill," which was defined pollutant, into areas that district court had found to be subject to jurisdiction of Act, without obtaining permit required by Act. Leslie Salt Co. v. U.S., N.D.Cal.1992, 820 F.Supp. 478, affirmed in part 55 F.3d 1388, certiorari denied 116 S.Ct. 407, 516 U.S. 955, 133 L.Ed.2d 325. Environmental Law 136

Town's alleged diversion of natural stream and resultant flooding which damaged landowners' property and alleged fraud in connection with sale of subdivision lots to landowners did not constitute violations of Clean Water Act (CWA); there was no indication that any pollutants were discharged either into stream or from stream into another body of water, and alleged fraud actions suggested state claims, not federal ones. Bettis v. Town of Ontario, N.Y., W.D.N.Y.1992, 800 F.Supp. 1113. Waters And Water Courses 78

Filling in and grading or changing of the bottom elevations of stream constituted "discharge of a pollutant" under the Clean Water Act and discharge of "fill" under Army Corps of Engineers regulations. U.S. v. Zanger, N.D.Cal.1991, 767 F.Supp. 1030. Environmental Law 196; Environmental Law 136

Sewage spills from city's wastewater collection system were violations of the terms of city's National Pollutant Dischage Elimination System (NPDES) permits, and therefore of the Clean Water Act, and were also violations of California Water Code; furthermore, most spills also violated Clean Water Act prohibitions on unpermitted discharges. U.S. People of State of California ex rel. California Regional Water Quality Control Bd. v. City of Los Angeles, C.D.Cal.2002, 2002 WL 31915814, Unreported. Environmental Law 206

11. Waters into which discharge prohibited

Creek that defendant rerouted and reshaped constituted a water of the United States, for purposes of the Clean Water Act prohibition against discharging and causing to be discharged pollutants into waters of the United States without a permit; although, due to an irrigation diversion structure installed upstream of section of creek that defendant altered, water only flowed in that section for about two months per year during spring runoff, the creek was a tributary of a river that qualified as a water of the United States. U.S. v. Moses, C.A.9 (Idaho) 2007, 2007 WL 2215954. Environmental Law 196

River and pond were two distinct "waters of the United States," within meaning of the Clean Water Act (CWA) and, thus, proposed transfer of water from river through skiing facility's snowmaking pipes to pond, resulting in transfer of pollutants, constituted addition of pollutants to pond from point source requiring National Pollutant Discharge Elimination System (NPDES) permit; although water was hydrologically connected by flow down from pond to river, water could not flow naturally from river up to pond, river undisputedly contained pollutants not found in pond, and water would be subject to private control during passage through pipes. Dubois v. U.S. Dept. of Agriculture, C.A.1 (N.H.) 1996, 102 F.3d 1273, certiorari denied 117 S.Ct. 2510, 521 U.S. 1119, 138 L.Ed.2d 1013. Environmental Law 196; Environmental Law 173

Where prior to 1968 privately owned city area was not a wetland and exhibited none of characteristics associated with wetland, where area's subsequent wetland characteristics resulted entirely as inadvertent, unintended by-product of Army Corps of Engineers' river dredging activity, and where area, which once provided city residents with many benefits, was now devoid of wildlife and was not conducive to recreation or other significant use, area was not a protected wetland under this chapter. U.S. v. City of Fort Pierre, S.D., C.A.8 (S.D.) 1984, 747 F.2d 464. Environmental Law 128

Wetlands on defendants' properties were "waters of the United States" for purposes of the Clean Water Act

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(CWA), and therefore Government had jurisdiction to bring action alleging that defendants' unauthorized dredging and filling of those wetlands violated CWA; there was a significant nexus between the wetlands and a traditional navigable-in-fact water, since defendants' activities diminished the wetlands' ability to store water and filter or trap sediment, affecting the chemical, physical, and biological integrity of a navigable river. U.S. v. Cundiff, W.D.Ky.2007, 2007 WL 957346. Environmental Law 136

Given uncertain state of law as to whether Clean Water Act applies to isolated wetlands, counsel for defendant charged with illegally discharging fill material into wetlands without permit did not render ineffective assistance in failing to preserve issue of applicability of Act to isolated wetlands. U.S. v. Suarez, D.Guam 1994, 846 F.Supp. 892. Criminal Law 641.13(2.1)

Clean Water Act prohibition against discharge of pollutants into navigable waters does not apply to excavation or dredging activities occurring on wetlands. Salt Pond Associates v. U.S. Army Corps of Engineers, D.Del.1993, 815 F.Supp. 766. Environmental Law 175; Environmental Law 136

Lake which was hydrologically connected to a river which fed into a second lake, from which a second river emptied into the Mississippi River, was a tributary of waters used in interstate commerce and thus was "waters of the United States," as was adjacent wetland. Slagle v. U.S. By and Through Baldwin, D.Minn.1992, 809 F.Supp. 704. Navigable Waters 1(6); Environmental Law 128

Winds of 41 miles per hour were not "strong winds" as contemplated by regulation excluding tides affected by strong winds such as those accompanying hurricane or other intense storm from definition of high tide line for purposes of landward limit of Clean Water Act jurisdiction in tidal waters. U.S. v. Malibu Beach, Inc., D.N.J.1989, 711 F.Supp. 1301. Environmental Law 173

Party unlawfully "discharges pollutant" in violation of the Clean Water Act when, inter alia, he unlawfully dumps fill dirt on wetlands without permit. Matter of Alameda County Assessor's Parcel Nos. 537-801-2-4 and 537-850-9, N.D.Cal.1987, 672 F.Supp. 1278. Environmental Law 196

Discharge of waste materials, including methylene chloride, trichloroethane, and toluene into ditch on property, which flowed from there into a brook and ultimately into a navigable water, without discharge permit, violated the Clean Water Act. U.S. v. Ottati & Goss, Inc., D.N.H.1985, 630 F.Supp. 1361. Environmental Law 206

Canal that was six miles long, 100 to 150 feet wide, and over six feet deep, that was integrally linked with waters that fed directly into gulf outlet of the Mississippi river, and that was a tributary of adjacent wetlands, fell within definition of "waters of the United States" under this chapter, even though there were pumps between the canal and the adjacent wetlands that controlled the flow of water to the wetlands. U.S. v. Saint Bernard Parish, E.D.La.1984, 589 F.Supp. 617. Environmental Law 173

Since defendants' wetlands were adjacent to river which even if nontidal had not been shown to have a flow less than five cubic feet per minute, fill was not placed above "headwaters" as defined in regulation, and thus the pollution of fill in wetlands by defendant constituted a series of violations of this chapter, which began in or about 1977 and ended in or about March 1982. U.S. v. Lambert, M.D.Fla.1984, 589 F.Supp. 366. Environmental Law 136

In Rhode Island, a municipal corporation may not acquire prescriptive right to deposit sewage in waters of Narragansett Bay and expense of avoiding discharge of sewage is no defense to an order to abate pollution. U. S. v.

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City of Providence, D.C.R.I.1980, 492 F.Supp. 602. Environmental Law ⚷ 210; Environmental Law ⚷ 176

Where marina operator caused fill to be placed into the Hudson River without first obtaining a permit, the marina operator violated this section which prohibits discharge of any pollutant into navigable waters. U. S. v. Alleyne, S.D.N.Y.1978, 454 F.Supp. 1164. Environmental Law ⚷ 136

That defendant might discharge polluted waters through conveyances owned by another party did not remove defendant's actions from scope of this chapter, where defendant knew or should have known that city sewers, into which it discharged pollutants, led directly into Mississippi River; this was sufficient to constitute a discharge into "waters of the United States" within purview of this chapter. U. S. v. Velsicol Chemical Corp., W.D.Tenn.1976, 438 F.Supp. 945. Environmental Law ⚷ 175

With respect to marina being constructed on Bald Head island, lying at mouth of the Cape Fear river, Brunswick County, North Carolina, approximately ten acres of salt meadow wetlands, which were within disposal site and which were subject to periodic inundation by tides, constituted "waters of the United States" so as to be subject to requirements of this chapter. Conservation Council of North Carolina v. Costanzo, E.D.N.C.1975, 398 F.Supp. 653, affirmed 528 F.2d 250. Environmental Law ⚷ 128

Discharges of sand, rock, biological and dredged material by means of a dragline and bulldozer into mangrove wetlands at site of apartment-hotel-condominium complex being developed by plaintiff at Vacia Talega near San Juan, Puerto Rico, constituted violations of this section. P. F. Z. Properties, Inc. v. Train, D.C.D.C.1975, 393 F.Supp. 1370. Environmental Law ⚷ 136

Scope of control of this chapter must extend to all pollutants which are discharged into any waterway, including normally dry arroyos, where any water which might flow therein could reasonably end up in any body of water, to which or in which there is some public interest, including underground waters. U. S. v. Phelps Dodge Corp., D.C.Ariz.1975, 391 F.Supp. 1181. Environmental Law ⚷ 175; Environmental Law ⚷ 173

Disposal of chemical wastes into underground waters which have not been alleged to flow into or otherwise affect surface water does not constitute "discharge of a pollutant" within this chapter; this chapter does not apply to subsurface wells. U. S. v. GAF Corp., S.D.Tex.1975, 389 F.Supp. 1379. Environmental Law ⚷ 173

Pond formed from old gravel mining pit and subterranean groundwater that flows through it were "tributaries" within meaning of regulation extending National Pollutant Discharge Elimination System (NPDES) permit requirement to all wetlands adjacent to navigable or interstate waters and their tributaries. Northern California River Watch v. City of Healdsburg, N.D.Cal.2004, 2004 WL 201502, Unreported, affirmed 457 F.3d 1023. Environmental Law ⚷ 196

12. Groundwater discharges

Any pollutants that enter surface waters either directly or through groundwater are subject to regulation by national pollutant discharge elimination system (NPDES) permit, as Clean Water Act's (CWA) goal is to protect quality of surface waters. Williams Pipe Line Co. v. Bayer Corp., S.D.Iowa 1997, 964 F.Supp. 1300. Environmental Law ⚷ 196; Environmental Law ⚷ 175

Allegations that refinery discharged pollutants into soils and groundwater beneath refinery which then made

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their way to creek through groundwater stated cause of action under Clean Water Act; Act's preclusion of discharge of pollutant into navigable waters included such discharge which reached navigable waters through groundwater. Sierra Club v. Colorado Refining Co., D.Colo.1993, 838 F.Supp. 1428. Environmental Law 673

13. Effluent limitations--Generally

With respect to existing point sources under this chapter, 1983 effluent limitations are to be set by regulation and not on an individual basis during the permit issuance process, and this section authorizes 1977 limitations as well as the 1983 limitations to be set by regulation, so long as some allowance is made for variation in individual plants. E. I. du Pont de Nemours & Co. v. Train, U.S.Va.1977, 97 S.Ct. 965, 430 U.S. 112, 51 L.Ed.2d 204. Environmental Law 184

Provision of administrative rule promulgated by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) to regulate the emission of water pollutants by concentrated animal feeding operations allowing permitting authorities to issue permits without reviewing the terms of nutrient management plans violated statutory provisions of CWA requiring permitting authorities to assure compliance with all effluent limitations and standards for land applications of manure, litter, and process waste water, and was otherwise arbitrary and capricious under the Administrative Procedure Act (APA). Waterkeeper Alliance, Inc. v. U.S. E.P.A., C.A.2 2005, 399 F.3d 486. Environmental Law 196

Environmental Protection Agency (EPA), in promulgating whole effluent toxicity (WET) test methods for discharges, adequately accounted for failure to establish detection limits, as required under Clean Water Act (CWA); since WET testing was biological and experimental method, rather than instrumental, detection limit concepts were inapplicable. Edison Elec. Institute v. E.P.A., C.A.D.C.2004, 391 F.3d 1267, 364 U.S.App.D.C. 60. Environmental Law 207

Under provisions of Clean Water Act requiring Environmental Protection Agency to establish effluent limitations for categories and classes of point sources, and requiring Agency to designate category or categories of sources to which pretreatment standards apply, agency need not account for all possible differences among plants and may fix single-pretreatment standard. Reynolds Metals Co. v. U.S.E.P.A., C.A.4 1985, 760 F.2d 549. Environmental Law 183

Application of objective stated in Pub.L. 89-298, Title III, § 301, Oct. 27, 1965, 79 Stat. 1089, that State of Indiana, prior to construction of harbor project, shall furnish assurance satisfactory to Secretary of Army that water and air pollution sources will be controlled to maximum extent feasible in order to minimize any adverse effects on public recreational areas in general vicinity of Burns Harbor to pollutant discharge elimination system permit does not result in adoption of standard more stringent than applicable standards under this section. Porter County Chapter of Izaak Walton League of America, Inc. v. Costle, C.A.7 1978, 571 F.2d 359, certiorari denied 99 S.Ct. 115, 439 U.S. 834, 58 L.Ed.2d 130. Environmental Law 250; Environmental Law 170

Environmental Protection Agency's promulgation of effluent limitations on existing sources was a reasonable exercise of congressionally delegated power, despite contention that under this chapter effluent limitations on existing sources could be imposed only by permit issuer. American Petroleum Institute v. E.P.A., C.A.10 1976, 540 F.2d 1023, certiorari denied 97 S.Ct. 1340, 430 U.S. 922, 51 L.Ed.2d 601. Environmental Law 184

Plainly expressed purpose of Congress to require nationally uniform interim limitations upon like sources of pol-

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lution would be defeated if the Administrator did not have authority to issue "effluent limitations" under this chapter. American Frozen Food Institute v. Train, C.A.D.C.1976, 539 F.2d 107, 176 U.S.App.D.C. 105. Environmental Law ⚿ 183

This section is a source of authority to promulgate effluent limitations independent of the permit-issuing process. American Meat Institute v. E.P.A., C.A.7 1975, 526 F.2d 442.

Environmental organization satisfied Clean Water Act's (CWA) prerequisite to citizen suit to enforce effluent standard or limitation, which required them to allege violation of such standard or limitation, when they alleged in their complaint that state officials discharged pollutants or industrial stormwater without National Pollutant Discharge Elimination System (NPDES) permit. Northwest Enviromental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law ⚿ 226

For purposes of Clean Water Act (CWA), "effluent limitation" is measurement and restriction of end-of-pipe discharge, whereas "state water quality standard" is not direct measurement of pollutant discharge, but is measurement of surrounding ocean and is expressed in narrative and numerical form. Save Our Bays and Beaches v. City and County of Honolulu, D.Hawai'i 1994, 904 F.Supp. 1098. Environmental Law ⚿ 183

"Effluent standard or limitation," violations of which are actionable under the citizen suit provision of the Clean Water Act, includes effluent standards or limits prescribed in National Pollution Discharge Elimination System (NPDES) permits and, additionally, violations of terms contained in NPDES permits are generally enforceable of their own accord in citizen suits. Citizens for a Better Environment-California v. Union Oil Co. of California, N.D.Cal.1994, 861 F.Supp. 889, affirmed 83 F.3d 1111, as amended , certiorari denied 117 S.Ct. 789, 519 U.S. 1101, 136 L.Ed.2d 731. Environmental Law ⚿ 226

Discharge permit effluent limitations imposed to achieve water quality standards which have been adopted control waterway discharge, even if those permit limitations are stricter than general technology-based effluent limitations, in action under the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.]. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

"Effluent limitations," for purposes of this chapter, is a measurement of pollutant discharge; it is measured at the source. Niagara of Wisconsin Paper Corp. v. Wisconsin Dept. of Natural Resources, Wis.1978, 268 N.W.2d 153, 84 Wis.2d 32. Environmental Law ⚿ 183

14. ---- Heat discharge, effluent limitations

Term "effluent limitations", defined in this chapter, includes restrictions on discharges of heat or controls of thermal component of any discharge. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law ⚿ 186

Environmental Protection Agency thermal backfit requirements in regulations establishing limitations on discharge of heat from steam electric-generating plants into navigable waters were invalid, in that they relied upon figures which did not indicate whether regulations would result in reasonable further progress toward eliminating water pollution. Appalachian Power Co. v. Train, C.A.4 1976, 545 F.2d 1351. Environmental Law ⚿ 186

15. ---- Internal waste streams, effluent limitations

Clean Water Act authorizes Environmental Protection Agency (EPA) to impose effluent limitations on internal

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waste streams of National Pollutant Discharge Elimination System (NPDES) permittee when such limitations would be impracticable to monitor at point of discharge into waters of United States. Public Service Co. of Colorado, Fort St. Vrain Station v. U.S. E.P.A., C.A.10 1991, 949 F.2d 1063. Environmental Law 197

16. ---- Pesticide, effluent limitations

In promulgating regulations governing discharge of pollutants into navigable waters by the pesticide industry, decision of Environmental Protection Agency that plants which both manufacture and formulate pesticides must meet limits for manufacturing plants with no credit for any discharge from formulation process was not unreasonable. BASF Wyandotte Corp. v. Costle, C.A.1 1979, 598 F.2d 637, certiorari denied 100 S.Ct. 1063, 444 U.S. 1096, 62 L.Ed.2d 784. Environmental Law 186

17. ---- Miscellaneous effluent limitations

In issuing permit to mining company for use of lake as a disposal site, Corps of Engineers (Corps) violated the Clean Water Act (CWA), even though mine's discharge facially met regulatory definition of "fill material"; discharge would violate effluent limitations and performance standards applicable to mining company's froth-flotation mill. Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, C.A.9 (Alaska) 2007, 479 F.3d 1148. Environmental Law 196

Environmental Protection Agency (EPA) did not violate *Chevron* or act arbitrarily or capriciously in promulgating, pursuant to Clean Water Act (CWA), rule establishing effluent limitation guidelines for reclamation areas at coal mining sites in the arid Western United States; EPA's determination that alternative controls were appropriate for the new subcategory of reclamation areas was based on several reasons supported in the administrative record, namely that sediment was a natural component of runoff in western watersheds, sediment was typically the only parameter of concern in runoff in western alkaline reclamation areas, 'best management practices" (BMPs) were proven to be effective at controlling sediment, and computer modeling procedures could accurately predict sediment runoff conditions, and EPA sufficiently demonstrated that continued use of current effluent limitations for settleable solids and pH was infeasible, and that replacing them with BMPs was supported by the record and was not arbitrary and capricious. Citizens Coal Council v. U.S. E.P.A., C.A.6 2006, 447 F.3d 879. Environmental Law 186

Genuine issues of material fact existed as to whether abandoned mine shaft was the source of polluted water flowing through a tunnel to a navigable waterway, precluding summary judgment for environmental groups in their citizen suit alleging that mine owner violated Clean Water Act (CWA) by discharging pollutants without a permit; experts did not agree on whether pollutants coming from the shaft were ever discharged into the navigable waterway. Sierra Club v. El Paso Gold Mines, Inc., C.A.10 (Colo.) 2005, 421 F.3d 1133, corrected, rehearing granted in part, certiorari denied 126 S.Ct. 1653, 164 L.Ed.2d 411. Federal Civil Procedure 2498.3

Environmental Protection Agency (EPA) did not act arbitrarily or capriciously in its proposed Clean Water Act rules governing effluent standards for bleached papergrade kraft (BPK) subcategory of pulp and paper mill processes, by setting monthly maximum effluent limitation at 95th percentile of distribution of monthly measurements rather than 99th percentile; agency explained that purpose of setting monthly average limitations at lower level was to ensure that mills achieved long-term average effluent levels. National Wildlife Federation v. E.P.A., C.A.D.C.2002, 286 F.3d 554, 351 U.S.App.D.C. 42, rehearing en banc denied , supplemented 351 F.3d 1157, 359 U.S.App.D.C. 13. Environmental Law 186

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Water pollution effluent limitations imposed on iron and steel manufacturing industry should have been established on net, rather than gross, basis, and any individual point source was entitled to adjustment in effluent limitation applicable to it if it could show that its inability to meet limitation was attributable to significant amounts of pollutants in intake water. American Iron and Steel Institute v. E.P.A., C.A.3 1975, 526 F.2d 1027, amended 560 F.2d 589, certiorari denied 98 S.Ct. 1467, 435 U.S. 914, 55 L.Ed.2d 505. Environmental Law 186

The effect of winter temperatures on anaerobic and aerobic lagoons, and the effect of summer weather on aerobic lagoons, did not render 1977 limitations on discharges of BOD5 and TSS by slaughterhouses and packinghouses unattainable, and with the exception of the TSS limitation for complex slaughterhouses, the 1977 and 1983 limitations were based on a reasoned analysis supported by the record. American Meat Institute v. E.P.A., C.A.7 1975, 526 F.2d 442. Environmental Law 186

Environmental Protection Agency's (EPA's) approval of provisions of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), which permitted a new or expanding non-domestic discharger to a high quality water to accept permit limits that were no more than one-half of the water quality-based effluent limitations that would have been allowed at standard design conditions, was not arbitrary and capricious, where EPA reviewed past permits, to determine how often facilities had been permitted to expand and estimate the potential number of expansions that could occur in the future, in finding that the provision preserved almost all remaining assimilative capacity, and would not result in a significant degradation of high quality waters. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law 197

Genuine issue of material fact as to whether testing method employed by zinc mine operator to measure turbidity was equivalent to that required by its National Pollutant Discharge Elimination System (NPDES) permit precluded summary judgment in action against operator under Clean Water Act for failing to collect 24-hour composite sample for turbidity. Adams v. Teck Cominco Alaska, Inc., D.Alaska 2006, 414 F.Supp.2d 925. Federal Civil Procedure 2498.3

18. Downstream state requirements

Placing limits on affected state's direct participation in permitting decision concerning the granting of NPDES permit to discharge effluent into interstate waterways did not constrain Environmental Protection Agency's (EPA) authority to require that point source comply with downstream water quality standards. Arkansas v. Oklahoma, U.S.1992, 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law 193

Clean Water Act requires point sources to comply with the federally approved water quality standards of affected downstream states. State of Okl. v. E.P.A., C.A.10 1990, 908 F.2d 595, certiorari granted 111 S.Ct. 1412, 499 U.S. 946, 113 L.Ed.2d 465, reversed 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law 193

19. Best available technology economically achievable

Term "best technology economically achievable" with respect to 1983 existing source effluent limitations under this section does not refer to any individual plant. E. I. du Pont de Nemours & Co. v. Train, U.S.Va.1977, 97 S.Ct. 965, 430 U.S. 112, 51 L.Ed.2d 204. Environmental Law 184

Environmental Protection Agency (EPA) acted reasonably in choosing as best available technology for beef and

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cattle concentrated animal feeding operations (CAFOs) an option requiring that groundwater-related requirements be implemented, as necessary, on a case-by-case basis, rather than uniformly imposed, when promulgating rule under the Clean Water Act (CWA) to regulate the emission of water pollutants by CAFOs; studies showed that variability in topography, climate, distance to surface water, and geologic facts influenced whether and how pollutant discharges at a particular site entered surface water via groundwater, and EPA's final economic analysis showed a nearly six-fold increase in the number of beef, dairy, and heifer CAFOs projected to close were the option requiring uniform, rather than case-by-case implementation, adopted. Waterkeeper Alliance, Inc. v. U.S. E.P.A., C.A.2 2005, 399 F.3d 486. Environmental Law 186

In determining economic achievability of technology, Environmental Protection Agency must consider "cost" of meeting BAT limitations, but need not compare such cost with benefits of effluent reduction in promulgating regulations under Clean Water Act; EPA has considerable discretion in weighing technology's costs, which are less important factors than in setting BPT limitations. Rybachek v. U.S. E.P.A., C.A.9 1990, 904 F.2d 1276. Environmental Law 184

Pursuant to Federal Water Pollution Control Act Amendments of 1972, § 301(b)(2)(F), 33 U.S.C.A. § 1311(b)(2)(F), requiring that Environmental Protection Agency promulgate best available technology economically achievable-based effluent limitation guidelines applicable to nonconventional pollutants not later than July 1, 1987, Agency was authorized to impose best available technology economically achievable limitation on nonconventional pollutants until such guidelines were promulgated. American Petroleum Institute v. E.P.A., C.A.5 1986, 787 F.2d 965. Environmental Law 186

Since the Environmental Protection Agency had previously disclosed its methodology for establishing the best available technology economically achievable for the nonferrous metals manufacturing industry, and since it was foreseeable that the agency's pretreatment standards for existing sources would be the same as the BAT, the agency did not fail to provide adequate notice on the PSES. Kennecott v. U.S.E.P.A., C.A.4 1985, 780 F.2d 445, certiorari denied 107 S.Ct. 67, 479 U.S. 814, 93 L.Ed.2d 25. Environmental Law 186

Although the 1983 best available technology economically achievable effluent guidelines can be based on information from a single model plant, the study must demonstrate the effectiveness of the required technology. Association of Pacific Fisheries v. E.P.A., C.A.9 1980, 615 F.2d 794. Environmental Law 184

In determining effluent limitations, for existing water pollution sources, to be employed by 1983, under language of this section requiring best available technology economically achievable, Environmental Protection Agency could look to best performer in industry and even assess technologies that had not been applied as long as record demonstrated that there was reasonable basis to believe that technology might be available by 1983. Tanners' Council of America, Inc. v. Train, C.A.4 1976, 540 F.2d 1188. Environmental Law 184

No formal cost-benefit analysis is required in determining the "best available" 1983 technology in setting effluent limitations, though the Administrator is to take cost into consideration. American Meat Institute v. E.P.A., C.A.7 1975, 526 F.2d 442. Environmental Law 184

20. Best practicable control technology currently available

Although Congress, sought to do more than simply have Environmental Protection Agency, in promulgating best practicable technology regulations, relocate the same amount of effluent discharge, it did not prohibit Agency from requiring relocation of that discharge where environmental benefits of such a relocation have been demon-

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strated. Association of Pacific Fisheries v. E.P.A., C.A.9 1980, 615 F.2d 794. Environmental Law 184

Pollution control under a permit issued under this chapter for discharge of pollutants must not only require application of best practicable control technology currently available but must also meet any more stringent standard established pursuant to any other federal law or regulation. Porter County Chapter of Izaak Walton League of America, Inc. v. Costle, C.A.7 1978, 571 F.2d 359, certiorari denied 99 S.Ct. 115, 439 U.S. 834, 58 L.Ed.2d 130. Environmental Law 197

Selecting technology already in place in some plants for best practicable control technology currently available (BPCTCA) and thereafter performing a cost-benefit analysis on technology selected through challenged procedure was all that Environmental Protection Agency was required to do under this chapter and, hence it was irrelevant that Agency selected BPCTCA by visualizing a control technology that would achieve desired effluent limitations. American Iron and Steel Institute v. E.P.A., C.A.3 1977, 568 F.2d 284. Environmental Law 184

Under this section requiring point sources of pollution to utilize the best practicable control technology currently available, Environmental Protection Agency cannot impose a higher standard without violating this section. Marathon Oil Co. v. E.P.A., C.A.9 1977, 564 F.2d 1253. Environmental Law 184

Where applicable "best practicable control technology" has not already been determined, appropriate inquiry for Environmental Protection Agency, in National Pollutant Discharge Elimination System permit proceedings, would be not what constitutes best practicable technology for particular source for which permit is sought, but what constitutes best practicable technology for category and class of point sources of which source in question is member. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law 220

Term "practicable" within subsec. (b)(1)(A) of this section providing that 1977 existing plant guidelines are to be determined by the use of the best practicable control technology currently available is intended to limit the use of available technology only where additional technology necessary to achieve a marginal level of effluent reduction is wholly out of proportion to the cost realized. CPC Intern., Inc. v. Train, C.A.8 1976, 540 F.2d 1329, certiorari denied 97 S.Ct. 1646, 430 U.S. 966, 52 L.Ed.2d 357. Environmental Law 184

21. Technology transfer

To determine that technology from one industry can be applied to another, agency must show that the transfer technology is available outside the industry, determine that the technology is transferable to the industry and make a reasonable prediction that the technology if used in the industry will be capable of removing the increment required by the effluent standards. Kennecott v. U.S.E.P.A., C.A.4 1985, 780 F.2d 445, certiorari denied 107 S.Ct. 67, 479 U.S. 814, 93 L.Ed.2d 25. Environmental Law 184

22. Compliance deadline--Generally

Mandatory compliance deadline contained in this chapter requires point sources to achieve effluent limitations based on best practicable control technology or state law, not merely to be in process of achieving them; this chapter does not allow deadline to be met simply by beginning action on schedule of compliance which will eventually result in achieving limitations based on best possible technology or state regulations. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law 184

This chapter entails an entirely new approach to water pollution control by setting forth the goal of completely

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eliminating all discharges of pollutants into the nation's waters by 1985 or as soon thereafter as may be. American Frozen Food Institute v. Train, C.A.D.C.1976, 539 F.2d 107, 176 U.S.App.D.C. 105. Environmental Law 165

National Pollutant Discharge Elimination System permit of municipal owner-operator of sewage treatment works did not extend municipality's deadline for abiding by secondary-treatment standards rather than interim standards after July 1, 1983; Clean Water Act Amendments established that EPA had no authority to extend secondary-treatment standard deadlines beyond July 1, 1983, applicable provisions of permit itself established that municipality was to meet secondary-treatment standards by July 1, 1983, and even if requirement that municipality comply with secondary-treatment standards after July 1, 1983, were not clearly stated in permit, NPDES permit was to be governed by regulatory parameters set down by Congress and interpretation of EPA plan. U.S. v. City of Hoboken, D.N.J.1987, 675 F.Supp. 189. Environmental Law 185

To violate a national pollutant discharge elimination system permit is to violate the Federal Water Pollution Control Act. Chesapeake Bay Foundation v. Bethlehem Steel Corp., D.C.Md.1985, 608 F.Supp. 440. Environmental Law 206

Water Supply and Pollution Control Commission's certification to United States Environmental Protection Agency that proposed sewage treatment facility would comply with applicable state and federal law governing water quality standards and effluent discharge limitations was proper, in view of fact that this section did not require that treatment facility be fully operational by July 1, 1977, and Commission's representation that treatment facility would be in compliance with phase in schedule established by Commission not later than July 1, 1977, was not disputed. Town of Sutton v. Water Supply and Pollution Control Commission, N.H.1976, 355 A.2d 867, 116 N.H. 154. Environmental Law 196

Goal of the permit system under National Pollutant Discharge Elimination System is a limitation of discharge of point source pollutants into navigable waters by the best practicable water pollution control technology currently available by July 1, 1977 and the best available technology economically achievable by July 1, 1983. U. S. Steel Corp. v. Illinois Pollution Control Bd., Ill.App. 2 Dist.1977, 367 N.E.2d 327, 9 Ill.Dec. 893, 52 Ill.App.3d 1. Environmental Law 196

23. ---- Extension, compliance deadline

Industrial plant operators were not denied substantive due process by Environmental Protection Agency's failure to promulgate toxic waste water limitation regulations with sufficient lead time for compliance; Agency's postdeadline enforcement policy provided adequate time extension for industry members that would not have sufficient time to install technology required to meet limitations. Chemical Mfrs. Ass'n v. U.S. E.P.A., C.A.5 1989, 870 F.2d 177, decision clarified on rehearing 885 F.2d 253, certiorari denied 110 S.Ct. 1936, 495 U.S. 910, 109 L.Ed.2d 299. Constitutional Law 4323; Environmental Law 186; Constitutional Law 4327

Interpretation by Administrator of Environmental Protection Agency of subsec. (h) of this section, which allows municipalities to apply for variance from minimum sewage treatment standard, to allow the granting of permits under such subsection based on improved discharges, was not impermissible on ground that it necessarily required unauthorized extensions of the July 1, 1977 deadline for achievement of secondary treatment, in that a period of noncompliance was assumed in the subsection itself, and Administrator's regulations did not encourage noncompliance. Natural Resources Defense Council, Inc. v. U. S. Environmental Protection Agency,

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C.A.D.C.1981, 656 F.2d 768, 211 U.S.App.D.C. 179. Environmental Law ⚷ 201

This section does not authorize extensions regarding water quality based effluent limitations or more stringent state or federal requirements. U. S. v. Homestake Min. Co., C.A.8 (S.D.) 1979, 595 F.2d 421.

Environmental Protection Agency had authority to extend July 1, 1977, best practicable technology compliance deadline in National Pollutant Discharge Elimination System permit. Monongahela Power Co. v. Environmental Protection Agency, C.A.4 1978, 586 F.2d 318. Environmental Law ⚷ 203

Congress intended the procedure outlined in this chapter to be the exclusive avenue of relief from the dictates of a mandatory and unconditional July 1, 1977, deadline for industrial discharges to comply with effluent limitations for point sources requiring the application of the best practicable control technology currently available; thus, the July 1, 1977, deadline cannot be waived by the courts, and to the extent that noncompliance occurs despite good-faith efforts as defined in this chapter, relief is available only by a discretionary extension of the deadline by the Administrator. Republic Steel Corp. v. Costle, C.A.6 1978, 581 F.2d 1228, certiorari denied 99 S.Ct. 1219, 440 U.S. 909, 59 L.Ed.2d 457. Environmental Law ⚷ 203

The Environmental Protection Agency has no authority to extend in National Pollutant Discharge Elimination System permit the July 1, 1977 date fixed in this chapter for conformity with effluent limitations for point sources. Bethlehem Steel Corp. v. Train, C.A.3 1976, 544 F.2d 657, certiorari denied 97 S.Ct. 1666, 430 U.S. 975, 52 L.Ed.2d 369. Environmental Law ⚷ 201

Neither the Environmental Protection Agency nor its state agent had authority to extend secondary treatment deadlines or grant permits to discharge at less than secondary levels beyond statutory deadline; accordingly, provisions in 1985 consent order between city and state agency which purportedly lowered effluent limitations for city's water treatment plant were of no effect after statutory compliance deadline. Hawaii's Thousand Friends v. City and County of Honolulu, D.Hawai'i 1993, 821 F.Supp. 1368. Environmental Law ⚷ 185; Environmental Law ⚷ 201

Effluent discharge limitations and deadlines imposed upon publicly owned sewage treatment plants by this chapter would not be extended until federal funds authorized to assist municipalities were available to municipalities, in view of fact that plain meaning of this section required strict adherence to limitations and deadlines, regardless of federal funding, and in view of fact that Congress had notice that authorized federal funds might be insufficient to complete assigned tasks and was urged to provide for extension of deadlines, but saw fit not to do so. State Water Control Bd. v. Train, E.D.Va.1976, 424 F.Supp. 146, affirmed 559 F.2d 921. Environmental Law ⚷ 201

Respondent pulp mill operator's schedule of compliance with this subchapter, as contained in respondent's National Pollutant Discharge Elimination System permit, could not be carried out in the absence of final standards applicable to its discharges; the permit's footnote f gave respondent the irrevocable right to complete appeal of Environmental Protection Agency guidelines before the standards in the permit were final, and EPA's failure to meet the timetables for guideline issuance necessarily excused respondent from the compliance schedule dependent upon the guidelines; the compliance schedule was deferred until the guidelines were final after appeal. ITT Rayonier, Inc. v. State, Dept. of Ecology, Wash.1978, 586 P.2d 1155, 91 Wash.2d 682, amended 593 P.2d 1308, 91 Wash.2d 682. Environmental Law ⚷ 197

24. Conformance

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Water Quality Act did not require that Environmental Protection Agency recognize affirmative "upset defense" to noncompliance with water quality-based limits as it does for noncompliance with technology based permit limitations when there is an exceptional incident in which there is a temporary and unintentional noncompliance with permit effluence limitations because of factors beyond the reasonable control of the permittee. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Environmental Law ⚿ 208

Environmental Protection Agency's (EPA's) approval of provision of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), pursuant to which coal mining discharges were subject to regulation under the Surface Mining Control and Reclamation Act (SMCRA), and were not subject to antidegradation review, was not arbitrary and capricious, where Kentucky procedure for approving coal mining discharge permits was consistent with language of the CWA, and the Court agrees with the EPA. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law ⚿ 196

Neither "upset" nor "bypass" defense was available to violator of pollutant discharge permit where language authorizing defenses was not included in its permits. U.S. v. Allegheny Ludlum Corp., W.D.Pa.2000, 118 F.Supp.2d 615.

It was violation of Federal Water Pollution Control Act for towns to exceed effluent limitations imposed by National Pollutant Discharge Elimination System permit, notwithstanding their contention that they had intended to conform to permit but that nonconformance was unavoidable to prevent loss of life or severe property damage. U.S. v. Town of Lowell, Ind., N.D.Ind.1985, 637 F.Supp. 254. Environmental Law ⚿ 197

25. Variances

Legislative history of amendment to the Clean Water Act prohibiting modification of standards for toxic pollutants did not show an unambiguous congressional intent to forbid all fundamentally different factor variances with respect to toxic materials, so that, grant of fundamentally different factor variances with respect to toxic pollutants does not threaten to frustrate the goals and operation of the statutory scheme of the Clean Water Act set up by Congress. Chemical Mfrs. Ass'n v. Natural Resources Defense Council, Inc., U.S.1985, 105 S.Ct. 1102, 470 U.S. 116, 84 L.Ed.2d 90. Environmental Law ⚿ 202

In passing 1977 amendments to this section it could not be said that Congress implicitly approved court of appeals' reading of variance provision applicable to 1987 "best available technology economically achievable" effluent limitations as applying as well to the 1977 "best practicable control technology currently available" standard since although the decision was discussed in a document prepared for House Committee on Public Works, the document merely noted that at the time there was a conflict in circuit courts over validity of variance provision and in no way indicated that subject decision was the correct interpretation, consequently, although economic capability is a ground under this section for a variance from the 1987 "best available technology economically achievable" standard for effluent limitations, economic capability is not a necessary condition of a variance with regard to the 1977 "best practicable control technology currently available" standard for effluent limitations from categories of point sources. E.P.A. v. National Crushed Stone Ass'n, U.S.1980, 101 S.Ct. 295, 449 U.S. 64, 66 L.Ed.2d 268, on remand 643 F.2d 163. Environmental Law ⚿ 184

Environmental Protection Agency did not contravene Clean Water Act by limiting miners' ability to obtain variances because of its classification of settleable solids as toxic pollutant indicator; although BAT limitations for nonconventional pollutants were normally subject to modification under Act, modification for settleable solids

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would be unavailable because of their status as an indicator in toxic pollutants; however, miners might still apply for fundamentally different factors (FDF) variance. Rybachek v. U.S. E.P.A., C.A.9 1990, 904 F.2d 1276. Environmental Law ⚷ 203; Environmental Law ⚷ 202

Since receiving water quality is clearly excluded in setting of generic "best practicable technology" limitations under this chapter, it must also be excluded in determining whether to grant variance from those general limitations. Appalachian Power Co. v. U.S. E.P.A., C.A.4 1982, 671 F.2d 801. Environmental Law ⚷ 203; Environmental Law ⚷ 184

Subsec. (h) of this section, which allows municipalities to apply for variance from minimum sewage treatment standard, is not restricted in application only to discharge as located on the west coast and island jurisdictions, in that nothing in language of the subsection limits availability of a variance, and in amending this chapter Congress amended a law of general application, and thus the amendment was also a provision of general application. Natural Resources Defense Council, Inc. v. U. S. Environmental Protection Agency, C.A.D.C.1981, 656 F.2d 768, 211 U.S.App.D.C. 179. Environmental Law ⚷ 201

Provision of 1977 amendments to this chapter that the Administrator of the Environmental Protection Agency may not modify any requirement as it applies to specific pollutants which are on the toxic pollutant list does not apply to best practicable technology variances. Appalachian Power Co. v. Train, C.A.4 1980, 620 F.2d 1040. Environmental Law ⚷ 203

Environmental Protection Agency's variance clause for 1977 "best practicable" water pollution regulations must parallel the statutory variance clause for 1983 "best available" regulations, i.e., the clause must allow consideration of the factors used for setting "best practicable" for each industrial subcategory, in order to allow particular paper mill operators to seek a variance from regulations that, as a whole, demand more of them than the EPA may demand of the industry. Weyerhaeuser Co. v. Costle, C.A.D.C.1978, 590 F.2d 1011, 191 U.S.App.D.C. 309. Environmental Law ⚷ 203

Provisions for variances are appropriate to regulatory process under this chapter, particularly in case of regulations having presumptive applicability throughout nation. Appalachian Power Co. v. Train, C.A.4 1976, 545 F.2d 1351. Environmental Law ⚷ 201

Environmental Protection Agency's (EPA's) approval of provision of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), pursuant to which discharges subject to storm water general permits were not subject to antidegradation review, was not arbitrary and capricious, where EPA took important economic and social interests into consideration and found that Kentucky had right to exercise its discretion when assigning or renewing general permits, and that any potential storm water discharges under the general permit would be a de minimis lowering of the water quality. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law ⚷ 191; Environmental Law ⚷ 196

26. Monitored discharge

Each infringement upon permit limitation is violation of Federal Water Pollution Control Act even if defendant monitored its discharge more than required under its permit. Public Interest Research Group of New Jersey v. Star Enterprise, D.N.J.1991, 771 F.Supp. 655, amendment denied. Environmental Law ⚷ 206

27. Exemptions or exclusions

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Sugar cane farm's discharge of water resulting from rainfall into lake was "agricultural stormwater discharge" within meaning of Clean Water Act (CWA) exemption, even if stormwater was pumped into lake rather than flowing there naturally, and thus any pollutants originating on farm that were thereby discharged into lake via rainwater did not require a National Pollutant Discharge Elimination System (NPDES) permit. Fishermen Against Destruction of Environment, Inc. v. Closter Farms, Inc., C.A.11 (Fla.) 2002, 300 F.3d 1294, rehearing and rehearing en banc denied 52 Fed.Appx. 489, 2002 WL 31415798. Environmental Law 175; Environmental Law 196

Environmental Protection Agency's explanation of substantial ambiguities arising from, on one hand, publication of appendix in code of federal regulations to enumerate industrial subcategories exempted from regulation pursuant to consent decree permitting EPA to exclude certain categories from regulation under clean water standards if there is adequate justification, which appendix listed "bright dipping" as one of these subcategories, and, on the other hand, promulgation of electroplating and metal finishing standards making bright dipping a type of chemical etching subject to categoral pretreatment standards for both electroplating and metal finishing, that the appendix referred only to combined waste stream formula and was intended to apply only to plants that emit streams containing two or more regulated pollutants, provided coherent result which was sufficiently rational to preclude court from substituting its judgment for that of the agency. Modine Mfg. Corp. v. Kay, C.A.3 1986, 791 F.2d 267. Environmental Law 682

Since purpose and effect of landowners' land-clearing activities in a wetlands area, which constituted a discharge of a pollutant into the waters of the United States, was to bring an area of the navigable waters into a use to which it was not previously subject, the land-clearing activities were not exempt farming activities and therefore engaging in those activities without a dredge-and-fill permit was a violation of this section. Avoyelles Sportsmen's League, Inc. v. Marsh, C.A.5 (La.) 1983, 715 F.2d 897. Environmental Law 137

District court properly found that petitioners' mushroom composting operation was not agricultural activity but was manufacturing in nature, and therefore that pollution that resulted from petitioners' conduct was not exempted from criminal sanctions for willfully and negligently discharging pollutants into waterways of the United States. U.S. v. Frezzo Bros., Inc., C.A.3 (Pa.) 1983, 703 F.2d 62, certiorari denied 104 S.Ct. 106, 464 U.S. 829, 78 L.Ed.2d 109. Environmental Law 743

Agricultural and silvicultural activities, construction activity, and mining activities are not exempt from enforcement regulations under this chapter; such activities may involve discharges from both point and nonpoint sources, and those from point sources are subject to regulation. U. S. v. Earth Sciences, Inc., C.A.10 (Colo.) 1979, 599 F.2d 368. Environmental Law 175

Existence of uniform national effluent limitations is not a necessary precondition for incorporating into the National Pollutant Discharge Elimination System program pollution from agricultural, silvicultural, and storm water runoff point sources; technological or administrative infeasibility of such limitations may result in adjustments in permit programs but does not authorize Administrator to exclude relevant point sources from program. Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.1977, 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law 175; Environmental Law 196

Environmental Protection Agency is not permitted to exempt pollutants from point source limitations established under this chapter. American Iron and Steel Institute v. E.P.A., C.A.3 1977, 568 F.2d 284. Environmental Law 175

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Discharge of stormwater from ditches alongside logging roads in state forest did not require National Pollutant Discharge Elimination System (NPDES) permit under statute governing effluent limitations. Northwest Environmental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law ⚷ 196

Property owners were not entitled to exemption from Army Corps of Engineers permit for construction of dikes and levees in wetland area for harvesting forest products, promoting upland soil conservation, or construction of stock pond; property owners constructed dikes and levees for purpose of bringing wetlands under cultivation, a use to which the site was not previously subject. U.S. v. Larkins, W.D.Ky.1987, 657 F.Supp. 76, affirmed 852 F.2d 189, rehearing denied, certiorari denied 109 S.Ct. 1131, 489 U.S. 1016, 103 L.Ed.2d 193. Environmental Law ⚷ 137

City was not entitled to be relieved from strictures of amended consent decree specifying dates upon which wastewater treatment plant would become operable and would comply with effluent quality standards of national pollutant discharge elimination system permit, despite its claim of impossibility of compliance, especially since city was unable to state when, if ever, it would comply. U. S. v. City of Providence, D.C.R.I.1980, 492 F.Supp. 602. Federal Civil Procedure ⚷ 2397.4

28. Discharge of radioactive waste

Legislative history of this chapter making it unlawful to discharge pollutants into navigable waters without permit and defining term "pollutants" to include radioactive materials showed congressional intention not to alter the control of the Atomic Energy Commission, succeeded in this capacity by the Nuclear Regulatory Commission, with respect to the discharge of source, by-product and special nuclear materials, and the Administrator properly disclaimed any authority to regulate discharge of these three types of radioactive materials covered by the Atomic Energy Act, section 2011 et seq. of Title 42. Train v. Colorado Public Interest Research Group, Inc., U.S.Colo.1976, 96 S.Ct. 1938, 426 U.S. 1, 48 L.Ed.2d 434. Environmental Law ⚷ 485

The Nuclear Regulatory Commission has no discretion to consider whether to permit prohibited discharge of high-level radioactive waste into navigable waters. Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor, C.A.3 (Pa.) 1980, 619 F.2d 231, certiorari denied 101 S.Ct. 893, 449 U.S. 1096, 66 L.Ed.2d 824. Environmental Law ⚷ 484; Environmental Law ⚷ 196

29. Toxic pollutants

Language of provision of the Clean Water Act prohibiting the Environmental Protection Agency from modifying effluent limitations insofar as toxic materials are concerned did not foreclose EPA's view of the statute as allowing it to issue fundamentally different factor variances with respect to toxic pollutants and that interpretation was permissible. Chemical Mfrs. Ass'n v. Natural Resources Defense Council, Inc., U.S.1985, 105 S.Ct. 1102, 470 U.S. 116, 84 L.Ed.2d 90. Environmental Law ⚷ 202

30. Compatible pollutants

Within meaning of federal regulations setting forth general pretreatment standards of effluent discharges from new plants in independent rendering industry under this chapter "compatible pollutants" are those which treatment facilities are designed to remove and may be introduced into public treatment works subject to certain limitations while "incompatible pollutants" are not treatable and must be reduced to levels identified by this chapter. National Renderers Ass'n v. E.P.A., C.A.8 1976, 541 F.2d 1281. Environmental Law ⚷ 181

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31. Environmental impact statement

Even if this section requiring public treatment works to apply secondary treatment techniques were not applicable to ocean pollution, environmental impact statement for alleged national policy against disposal of sludge into ocean would not be necessary. Pacific Legal Foundation v. Quarles, C.D.Cal.1977, 440 F.Supp. 316, affirmed 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law ⚿ 595(6)

32. Jurisdiction

City's claims challenging criteria under which Environmental Protection Agency rejected its application for federal funds for its project to eliminate completely discharge of city's wastewater effluent into bay by routing effluent from expanded wastewater treatment plan into spray irrigation system that would spread wastewater over agricultural land instead of discharging it into bayou, could not be classified as money claims as that term is understood in Tucker Act jurisprudence, so that district court, rather than Claims Court, was proper forum for suit to be heard. Sarasota, Florida v. E.P.A., C.A.11 (Fla.) 1986, 799 F.2d 674. Federal Courts ⚿ 1139

Court of Appeals had jurisdiction to review challenged regulations implementing subsec. (h) of this section, which allows municipality to apply for variance from minimum sewage treatment standard, pursuant to section 1369(b) of this title, which allows review of action by Administrator of Environmental Protection Agency "in approving or promulgating any effluent limitation," where such regulations as a practical matter restricted discharge of sewage by limiting availability of a variance to a class of applicants which did not include all coastal municipalities, in that such regulations were "effluent limitations" under section 1369(b) of this title. Natural Resources Defense Council, Inc. v. U. S. Environmental Protection Agency, C.A.D.C.1981, 656 F.2d 768, 211 U.S.App.D.C. 179. Environmental Law ⚿ 641

Even if this section authorized extensions with regard to more stringent limitations necessary to meet state water quality standards, district court was without authority to determine extension question and, by doing so without remanding matter to Environmental Protection Agency, district court not only preempted fact-finding function of the Agency, but also invaded its primary jurisdiction. U. S. v. Homestake Min. Co., C.A.8 (S.D.) 1979, 595 F.2d 421.

Under the significant nexus test as defined by Justice Kennedy in his concurrence in *Rapanos v. United States,* party seeking to invoke jurisdiction under the Clean Water Act (CWA) must present evidence that the wetlands in question possess a significant nexus to waters that are or were navigable in fact or that could reasonably be so made. U.S. v. Cundiff, W.D.Ky.2007, 2007 WL 957346. Environmental Law ⚿ 128

Property adjacent to neighboring tributaries of navigable water and with significant nexus to waters of United States was subject to Clean Water Act (CWA) jurisdiction. Carabell v. U.S. Army Corps of Engineers, E.D.Mich.2003, 257 F.Supp.2d 917, affirmed 391 F.3d 704, rehearing en banc denied , certiorari granted 126 S.Ct. 415, 163 L.Ed.2d 316, miscellaneous rulings 126 S.Ct. 617, 163 L.Ed.2d 502, miscellaneous rulings 126 S.Ct. 1295, 163 L.Ed.2d 1147, vacated and remanded 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law ⚿ 173

District court had jurisdiction over claim alleging unpermitted discharges of pollutants in violation of Clean Water Act. Sierra Club v. Colorado Refining Co., D.Colo.1993, 838 F.Supp. 1428. Environmental Law ⚿ 641

District court had jurisdiction over wet weather combined sewer overflow standards established in proposed Na-

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tional Pollutant Discharge Elimination System (NPDES) permits including time and manner in which parties had to deal with wet weather flow violations where at time dry weather issues were resolved, parties entered into consent judgment which reserved district court jurisdiction over wet weather combined sewer overflow issues. U.S. v. State of Mich., E.D.Mich.1991, 777 F.Supp. 1365. Federal Civil Procedure ⚷ 2397.6

Timely assertion of jurisdiction by United States Army Corps of Engineers, especially insofar as its jurisdiction was claimed under this section, precluded finding that United States Army Corps of Engineers had surrendered its regulatory jurisdiction over areas of shoreline property shoreward beyond the mean high-water line. Leslie Salt Co. v. Froehlke, N.D.Cal.1974, 403 F.Supp. 1292, supplemented 412 F.Supp. 1096, reversed in part , modified in part 578 F.2d 742. Environmental Law ⚷ 173

Where Administrator failed to carry out his statutory duty to establish effluent limitations, there could be no violation of effluent limitations under this chapter, and, in absence of such violation and where it was not claimed that defendant was otherwise in violation of this chapter, federal district court had no jurisdiction of enforcement action by Administrator. U. S. v. GAF Corp., S.D.Tex.1975, 389 F.Supp. 1379. Environmental Law ⚷ 634; Environmental Law ⚷ 206

Court of Federal Claims lacked jurisdiction over landowner's claim that 220.85 acres were illegally exacted by the government when landowner was required to dedicate those acres as a wetland and wildlife habitat pursuant to Clean Water Act permit, because the Army Corps of Engineers violated appropriations act by expending funds for wetland delineation based upon 1989 manual; although appropriations act might have been violated through the expenditure of the funds, it was not through that specific misapplication of the statute that the property was "exacted" from the landowner. Norman v. U.S., Fed.Cl.2003, 56 Fed.Cl. 255, affirmed 429 F.3d 1081, certiorari denied 126 S.Ct. 2288, 164 L.Ed.2d 813. Federal Courts ⚷ 1085

The Court of Appeals lacked subject matter jurisdiction over action seeking declaratory and injunctive relief to compel the United States Forest Service to remove or treat timber, pursuant to the National Forest Management Act, the Clean Water Act, the Endangered Species Act, and the Administrative Procedure Act (APA), absent assertions by plaintiffs that Service failed to take some discrete agency action that it was required to take. Grant School Dist. No. 3 v. Dombeck, C.A.9 (Or.) 2005, 126 Fed.Appx. 823, 2005 WL 660677, Unreported. Declaratory Judgment ⚷ 203; Environmental Law ⚷ 700

Refusal by district office of the Army Corps of Engineers to assert jurisdiction over pond formed from old gravel mining pit, on ground that pit was not "waters of the United States," did not preclude District Court from exercising jurisdiction over environmental group's citizen suit under the Clean Water Act against city, alleging that city discharged pollutants from its waste-treatment facility into a pond which then drained via an aquifer into nearby river without permit required under the National Pollutant Discharge Elimination System (NPDES); district office's decision and investigation preceding it were not thorough, and office was biased against environmental group. Northern California River Watch v. City of Healdsburg, N.D.Cal.2004, 2004 WL 201502, Unreported, affirmed 457 F.3d 1023. Environmental Law ⚷ 682

33. Ripeness

Issue of validity of exclusion of economic capability as a ground for variance from 1977 "best practicable control technology currently available" standard of effluent limitations for point sources was ripe for judicial review prior to application of the regulation to a particular discharger's request for a variance, as issue involved only a question of law, failure to review the matter would cause hardship to both sides, variance clause was an integral

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part of the challenged regulations and one court of appeals had held the variance provision invalid while another had upheld it. E.P.A. v. National Crushed Stone Ass'n, U.S.1980, 101 S.Ct. 295, 449 U.S. 64, 66 L.Ed.2d 268, on remand 643 F.2d 163. Environmental Law ⚷ 662

Landowners' motion for preliminary injunction to enjoin potential future prosecution for Clean Water Act violations did not present "case or controversy" under Article III, as their claims were based on contingent future events and were thus not "ripe"; there was no certainty that government would bring enforcement action, that Department of Justice would authorize criminal proceedings, or that grand jury would return indictment against landowners. Hartford Associates v. U.S., D.N.J.1992, 792 F.Supp. 358, appeal dismissed 981 F.2d 1247. Federal Courts ⚷ 13.15

34. Limitations

Where alleged violation of Clean Water Act (CWA), which was premised on discharge of polluted water without permit, had not ceased before filing of initial complaint but had ceased at time of amendment, amended complaint related back, for purpose of associational standing inquiry, to date of initial complaint. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law ⚷ 652

Alleged discharge of fill materials into wetlands was not "continuing violation" while adverse effects of fill continued but, rather, limitations period ran from date of discharge for purposes of civil enforcement action under Clean Water Act (CWA); defendant developer was not presently discharging pollutants and, thus, no present or continuing violation existed for limitations purposes, even though continuing impact existed from developer's past violations. U.S. v. Telluride Co., D.Colo.1995, 884 F.Supp. 404, reversed 146 F.3d 1241. Limitation Of Actions ⚷ 58(1)

35. Persons liable--Generally

Public utility director, as an "individual," was a "person" subject to criminal liability under the Clean Water Act for violation of national pollutant discharge elimination system permit. U.S. v. Brittain, C.A.10 (Okla.) 1991, 931 F.2d 1413. Environmental Law ⚷ 743

An indirect discharger cannot be held liable under prohibited discharge standard of pretreatment regulations promulgated under this chapter unless it is by cause of a publicly owned treatment work's permit violation or sludge problem, and causation requirement is satisfied if an indirect discharge is both the cause of and significantly contributes to the POTW's permit violation. National Ass'n of Metal Finishers v. E.P.A., C.A.3 1983, 719 F.2d 624, certiorari granted 104 S.Ct. 2167, 466 U.S. 957, 80 L.Ed.2d 551, reversed on other grounds 105 S.Ct. 1102, 470 U.S. 116, 84 L.Ed.2d 90. Environmental Law ⚷ 206

Manager of wastewater treatment facility exercised sufficient actual control over operations of facility and had sufficient personal involvement in decision to discharge effluent into Mississippi sound to be individually liable for Clean Water Act (CWA) violations; manager held himself out as being in ultimate control, corresponded with authorities and attended meetings and hearings on behalf of facility, and signed letters to gulf coast authority regarding facility's compliance with court orders. U.S. v. Gulf Park Water Co., Inc., S.D.Miss.1997, 972 F.Supp. 1056. Corporations ⚷ 336

Cause of action for violation of Clean Water Act (CWA) and Rivers and Harbors Act (RHA), to extent injunct-

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ive relief is sought, survives death of violator and may be maintained against violator's estate, though civil penalties do not survive violator's death. U.S. v. Lambert, S.D.W.Va.1996, 915 F.Supp. 797. Abatement And Revival ⚷ 55(1)

Even if compliance with Johnston Amendment is prerequisite to indictment for Clean Water Act violations and even if Army Corps of Engineers failed to comply, landowners could only raise noncompliance as defense to any indictment which government might secure; such noncompliance would not preclude government from pursuing enforcement action. Hartford Associates v. U.S., D.N.J.1992, 792 F.Supp. 358, appeal dismissed 981 F.2d 1247. Environmental Law ⚷ 743

National Pollutant Discharge Elimination System (NPDES) permit holder's failure to include results of monitoring of particular pollutants in its monthly discharge monitoring reports violated the terms of its consent decree with state environmental agency, and thus violated the Clean Water Act; there was no indication that state agency agreed to permit holder's request for modification of permit. Natural Resources Defense Council, Inc. v. Loewengart & Co., Inc., M.D.Pa.1991, 776 F.Supp. 996. Federal Civil Procedure ⚷ 2397.6

Owner of private septic system, providing service to residential development, was liable under Clean Water Act for discharge of raw sewage into river caused by failure of system. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Environmental Law ⚷ 206

Municipal owner-operator of sewage treatment work was liable under Clean Water Act for violations of National Pollutant Discharge Elimination permit effluent limitations that were established through copies of discharge monitoring reports filed by municipality. U.S. v. City of Hoboken, D.N.J.1987, 675 F.Supp. 189. Environmental Law ⚷ 206

Defendant steelmaker's discharged monitoring reports, submitted as required by national pollutant discharge elimination system program, established its liability for violation of conditions of state and local permits, issued pursuant to Federal Water Pollution Control Act, limiting discharges into navigable waters; however, genuine issues of material fact existed as to whether 57 incidents of noncompliance could be excused as upsets. Chesapeake Bay Foundation v. Bethlehem Steel Corp., D.C.Md.1985, 608 F.Supp. 440. Federal Civil Procedure ⚷ 2498.3; Environmental Law ⚷ 230

Defendants could not escape liability for willfully or negligently discharging pollutants into navigable waters without a permit on ground of regulation providing exemption for pollution from agricultural activities, where defendants were not aware of the regulation and never claimed that they relied thereon when they made decision to pollute creek. U. S. v. Frezzo Bros., Inc., E.D.Pa.1982, 546 F.Supp. 713, affirmed 703 F.2d 62, certiorari denied 104 S.Ct. 106, 464 U.S. 829, 78 L.Ed.2d 109. Environmental Law ⚷ 743

Provision of this section to effect that it is unlawful for a person to discharge pollution without obtaining a permit and complying with its terms does not impose liability on local government officials for a third party's failure to obtain permit or to comply with its environment standards. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law ⚷ 206

Chapter 12 debtors, who purchased llama ranch on which pond had been constructed, were not liable for Clean Water Act (CWA) violations allegedly committed in conjunction with construction of pond by dredging slough and deposit of dredge materials near banks of wetland, as they did not own land when pond was constructed, they did not order the work done or pay for the work, they did not specify how, when, or where the work would

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be done, they did not select who would do the work, and they did not provide plans for the work. In re Carsten, Bkrtcy.D.Mont.1997, 211 B.R. 719. Environmental Law ⚷ 136

36. ---- Intent to pollute, persons liable

With exception of purely jurisdictional elements, mens rea of knowledge applies to each element of Clean Water Act (CWA) offenses of knowingly discharging pollutant from point source into navigable water of United States without permit, and knowingly operating source in violation of pretreatment standard; those CWA violations do not fall into judicially created exception for "public welfare offenses," under which some regulatory crimes do not require showing of mens rea. U.S. v. Ahmad, C.A.5 (Tex.) 1996, 101 F.3d 386, rehearing and suggestion for rehearing en banc denied 108 F.3d 335. Environmental Law ⚷ 743

Evidence in support of misdemeanor counts of discharging pollutants into waters of United States was sufficient to link discharges to willful or negligent conduct on part of defendant who had primary operational responsibility for wastewater treatment plant. U.S. v. Brittain, C.A.10 (Okla.) 1991, 931 F.2d 1413. Environmental Law ⚷ 756

This chapter does not prohibit only intentional discharges of pollutants; regulatory provisions of this chapter are written without regard to intentionality, making the person responsible for the discharge of any pollutant strictly liable. U. S. v. Earth Sciences, Inc., C.A.10 (Colo.) 1979, 599 F.2d 368. Environmental Law ⚷ 206

Facility operator's statements in notice of intent (NOI) and storm water pollution prevention plan (SWPPP) documents, which were submitted to obtain National Pollutant Discharge Elimination System (NPDES) permit coverage, could not serve as sole basis for holding operatory liable under Clean Water Act (CWA) for unpermitted point source discharges. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2006, 430 F.Supp.2d 996. Environmental Law ⚷ 230

Clean Water Act (CWA) imposes strict liability for violation of permit requirement for discharge of dredged or fill material into navigable waters; "no discharge" provision was written without regard to intentionality, making person responsible for discharge of any pollutant strictly liable. U.S. v. Lambert, S.D.W.Va.1996, 915 F.Supp. 797. Environmental Law ⚷ 136; Environmental Law ⚷ 206

The liability imposed for permit violations under this chapter is a variety of strict liability where neither fault nor intent is relevant to determination thereof. U.S. v. Saint Bernard Parish, E.D.La.1984, 589 F.Supp. 617. Environmental Law ⚷ 206

So long as defendants dumped pollutants into a navigable stream without a permit, their view as to legality of their actions was irrelevant; this section does not require the government to prove that defendants specifically intended to violate this section. U. S. v. Frezzo Bros., Inc., E.D.Pa.1982, 546 F.Supp. 713, affirmed 703 F.2d 62, certiorari denied 104 S.Ct. 106, 464 U.S. 829, 78 L.Ed.2d 109. Environmental Law ⚷ 743

37. Persons entitled to sue

Allegations of environmental organization's complaint, that individual members of organization used two rivers for recreation and that at least one member had been injured by discharges into the rivers, satisfied "injury in fact" requirement for representational standing to sue Oregon officials and timber companies under Clean Water Act (CWA) for discharging stormwater into rivers from ditches alongside logging roads in state forests without

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National Pollutant Discharge Elimination System (NPDES) permits. Northwest Enviromental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law 652

Members of shellfish growers and environmental associations adequately alleged injury in fact, resulting from coastal landowners' alleged actions of violating the Clean Water Act (CWA) and contaminating shellfish beds and surrounding waters with their ditching activities, so as to support finding that associations had representational standing to maintain suit under CWA; members alleged they used area at issue, and that their recreational, aesthetic, and economic interests in area had been impaired or threatened as result of landowners' ditching activities. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 652

Non-profit sport fishing associations had standing under Clean Water Act (CWA) to bring suit on behalf of their members for damages arising from city's use of tunnel to transfer drinking water from reservoir into trout stream without discharge permit; members of each association testified that discharge had interfered with their enjoyment of fishing creek, both aesthetically and in their ability to fish safely, and decision in associations' favor, requiring city to reduce turbidity of water flowing through tunnel, would redress their injuries. Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, N.D.N.Y.2003, 244 F.Supp.2d 41, affirmed in part and remanded 451 F.3d 77, certiorari denied 127 S.Ct. 1373. Environmental Law 652

Citizen plaintiffs under Clean Water Act (CWA) lacked standing to enforce receiving water quality limitations included in national pollutant discharge elimination system (NPDES) permits which had not been translated into end-of-pipe effluent limitations, even though permits contained specific water quality standards imposing "quantitative," rather than "narrative," conditions, and explicitly allowed dischargers to escape liability for violations caused by others. Save Our Bays and Beaches v. City and County of Honolulu, D.Hawai'i 1994, 904 F.Supp. 1098. Environmental Law 656

38. Intervention

Trial court erred in denying citizens leave to intervene in Environmental Protection Agency's (EPA's) Clean Water Act action since Act expressly provides for intervention as of right; however, error was harmless inasmuch as commencing enforcement action was discretionary rather than mandatory duty in the first instance and hence, ultimately settling action also was within EPA's discretion. U.S. E.P.A. v. City of Green Forest, Ark., C.A.8 (Ark.) 1990, 921 F.2d 1394, rehearing denied, certiorari denied 112 S.Ct. 414, 502 U.S. 956, 116 L.Ed.2d 435. Environmental Law 657; Environmental Law 690

In action brought by the United States under former section 1160 of this title [now covered by this chapter] to abate discharges of taconite tailings into Lake Superior by a company located in Minnesota, the State of Michigan was entitled to intervene as plaintiff as of right since it had interest in the action in its capacity as parens patriae, charged with representation of its citizens' recreational, aesthetic and property interests, since the possibility of binding judgment or of inconsistent or excessive litigation demonstrated that ability of State to protect its interest might be impaired or impeded if it were not allowed to intervene, and since the representation of the State's interest by United States might be inadequate. U. S. v. Reserve Mining Co., D.C.Minn.1972, 56 F.R.D. 408. Federal Civil Procedure 338

39. Burden of proof

Clean Water Act does not establish a prescribed statutory maximum penalty in prosecution for discharging a

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pollutant without a permit in violation of Act, and thus, number of days on which Act was violated, which is a sentencing factor under Act, is not required under *Apprendi* to be proven beyond a reasonable doubt. U.S. v. Chemetco, Inc., C.A.7 (Ill.) 2001, 274 F.3d 1154. Sentencing And Punishment ⚷ 973

To establish violation of the Clean Water Act, the United States need only show that: it has jurisdiction over the subject waters; defendants discharged or placed fill in those waters; and defendants did so without a permit from the Army Corps of Engineers. U.S. v. Zanger, N.D.Cal.1991, 767 F.Supp. 1030. Environmental Law ⚷ 136

Burden is on alleged water polluter charged with violating the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.] to demonstrate that each of its discharge permit violations satisfy all requirements of federal and state "upset" regulations excepting discharge permit violations in exceptional incidents. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

To establish a violation of this section prohibiting discharge of any pollutant into waters of the United States except in compliance with permit specifying conditions of discharge or analogous state law, plaintiffs must prove that defendants have discharged pollutants from a point source into navigable waters and that such discharge does not comply with a permit condition. State of Mich. v. City of Allen Park, E.D.Mich.1980, 501 F.Supp. 1007. Environmental Law ⚷ 206

Criminal prosecution for violating the Clean Water Act (CWA) did not require government to prove that defendant's discharges caused a degradation of aquatic resources. U.S. v. Phillips, C.A.9 (Mont.) 2004, 87 Fed.Appx. 650, 2004 WL 193258, Unreported, certiorari denied 125 S.Ct. 479, 543 U.S. 980, 160 L.Ed.2d 358. Environmental Law ⚷ 743

40. Deference to administrative interpretation

On a question of statutory interpretation involving legislation enacted with the Environmental Protection Agency's advice and cooperation, Agency's view of the legislative intent concerning its ongoing efforts deserves some deference. Hercules, Inc. v. Environmental Protection Agency, C.A.D.C.1978, 598 F.2d 91, 194 U.S.App.D.C. 172. Statutes ⚷ 219(6.1)

41. Injunction

Preliminary injunction against construction was warranted in environmental organization's action under Clean Water Act (CWA) and National Environmental Policy Act (NEPA), challenging Army Corps of Engineers' issuance of permit for private developer to construct 66 road crossings over federally owned waters as part of planned residential development in desert parcel; substantial questions existed whether Corps had applied too narrow scope of review in looking only at waters and immediately adjacent areas, since waters, though composing only five percent of parcel, were not isolated from rest of parcel but were scattered across it. Save Our Sonoran, Inc. v. Flowers, C.A.9 (Ariz.) 2005, 408 F.3d 1113. Environmental Law ⚷ 701

Permanent injunction prohibiting developer from discharging any stormwater runoff as violation of Clean Water Act (CWA) was unenforceable "obey the law" injunction in absence of operative command capable of enforcement; injunction did not indicate whether developer was to stop rain from falling, build retention pond to control stormwater discharges, or construct water treatment plant. Hughey v. JMS Development Corp., C.A.11 (Ga.) 1996, 78 F.3d 1523, rehearing and suggestion for rehearing en banc denied 89 F.3d 857, certiorari denied 117 S.Ct. 482, 519 U.S. 993, 136 L.Ed.2d 377. Environmental Law ⚷ 700

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The 1981 amendments to Clean Water Act, which extended time which publicly owned water treatment works had to comply with Act [Federal Water Pollution Control Act Amendments of 1972, § 301(i), as amended, 33 U.S.C.A. § 1311(i)], applied only to public works whose funding was reduced pursuant to 1981 amendments or which could not comply with Act due to changed circumstances beyond their control so that municipality which did not come within either category, and which continued to discharge pollutants into stream beyond expiration date of permits, was properly enjoined for violating Act. Franklin Tp. Sewerage Authority v. Middlesex County Utilities Authority, C.A.3 (N.J.) 1986, 787 F.2d 117, certiorari denied 107 S.Ct. 109, 479 U.S. 828, 93 L.Ed.2d 57. Environmental Law ⚿ 700

Environmental Protection Agency and courts retain equitable discretion to determine whether and to what extent fines and injunctive sanctions should be imposed for violations brought about by good-faith inability to comply with 1977 deadline of this chapter. State Water Control Bd. v. Train, C.A.4 (Va.) 1977, 559 F.2d 921. Environmental Law ⚿ 223; Environmental Law ⚿ 700

Although town officials, by failing to issue stop order may have encouraged illegal discharge of pollution into pond and stream that traversed plaintiffs' land, that would not warrant injunctive relief against town and officials under provision of this section making it unlawful to discharge pollution without obtaining permit and complying with its terms. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law ⚿ 700

United States was entitled to order requiring city to remove fill material placed in wetlands and to refrain from future discharge of fill material into wetlands in absence of permit where fill was discharged in violation of 1972 amendments to this chapter and Department of Army Corps of Engineers properly followed its own regulations before requesting city to remove fill. Parkview Corp. v. Department of Army, Corps of Engineers, Chicago Dist., E.D.Wis.1980, 490 F.Supp. 1278. Environmental Law ⚿ 136

42. Contempt

City which provided no justifiable excuse for its failure to comply with amended consent decree, which set specific date upon which waterwaste treatment plant would comply with effluent quality standards of national pollutant discharge elimination system permit, was in contempt of the decree and would be allowed 90 days to demonstrate compliance with decree. U. S. v. City of Providence, D.C.R.I.1980, 492 F.Supp. 602. Contempt ⚿ 20

43. Review of Administrator's action

See Notes of Decisions under section 1369 of this title.

Total maximum daily loads (TMDLs) for pollutants established by the Environmental Protection Agency (EPA) under section 1313 of the Clean Water Act (CWA) did not constitute effluent limitations or other limitations "under section 1311" and, thus, the Court of Appeals lacked subject-matter jurisdiction for direct review of EPA's approval and establishment of the TMDLs. Friends of Earth v. U.S. E.P.A., C.A.D.C.2003, 333 F.3d 184, 357 U.S.App.D.C. 63, transferred to 346 F.Supp.2d 182, reversed and remanded 446 F.3d 140, 371 U.S.App.D.C. 1, certiorari denied 127 S.Ct. 1121, 166 L.Ed.2d 907. Environmental Law ⚿ 186; Environmental Law ⚿ 192; Federal Courts ⚿ 1134

Determination of the Administrator of the Environmental Protection Agency that § 301(g) of the Clean Water

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Act [33 U.S.C.A. § 1311(g)] does not authorize modification of categorical-pretreatment standards was not unreasonable. Koppers Co., Inc. v. U.S. E.P.A., C.A.3 1985, 767 F.2d 57. Environmental Law ⚿ 682

33 U.S.C.A. § 1311, **33 USCA § 1311**
Current through P.L. 110-198 approved 3-24-08

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ATTACHMENT NO. 2

CWA § 402

Effective: December 21, 2000

United States Code Annotated Currentness
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter IV. Permits and Licenses (Refs & Annos)
§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

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(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operat-

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ing, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) Limitations on partial permit program returns and withdrawals.

A State may return to the Administrator administration, [FN1] and the Administrator may withdraw under paragraph (3) of this subsection approval, of--

(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

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(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previ-

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ously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(*l*) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas

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exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if--

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(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for trans-

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lating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers--

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(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of--

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater dis-

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charges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the "CSO control policy").

(2) Water quality and designated use review guidance

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) Report

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

CREDIT(S)

(June 30, 1948, c. 758, Title IV, § 402, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 880, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, 91 Stat. 1577, 1588, 1591, 1599, 1600; Feb. 4, 1987, Pub.L. 100-4, Title IV, §§ 401 to 404(a), (c), formerly (d), 405, 101 Stat. 65 to 67, 69; Oct. 31, 1992, Pub.L. 102-580, Title III, § 364, 106 Stat. 4862; Dec. 21, 1995, Pub.L. 104-66, Title II, § 2021(e)(2), 109 Stat. 727; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(4) [Div. B, Title I, § 112(a)], 114 Stat. 2763, 2763A-224.)

[FN1] So in original.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts.Senate Report No. 92-414 and Senate Conference Report No. 92-1236, see 1972 U.S. Code Cong. and Adm. News, p. 3668.

1977 Acts.Senate Report No. 95-370 and House Conference Report No. 95-830, see 1977 U.S. Code Cong. and Adm. News, p. 4326.

1987 Acts. Section-by-Section Analysis, see 1987 U.S. Code Cong. and Adm. News, p. 5.

1995 Acts. House Report No. 104-327, see 1995 U.S. Code Cong. and Adm. News, p. 674.

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2000 Acts.House Report No. 106-645 and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

References in Text

This chapter, referred to in subsec. (q), originally read "this Act", meaning the Federal Water Pollution Control Act, June 30, 1948, c. 758, 62 Stat. 1155, which is classified principally to this chapter. See Tables for complete classification.

Amendments

2000 Amendments. Subsec. (q). Pub.L. 106-554, § 1(a)(4) [Div. B, Title I, § 112(a)], added subsec. (q).

1995 Amendments. Pub.L. 104-66, § 2021(e)(2), redesignated section 404(c) of Pub.L. 100-4 as section 404(d) of Pub.L. 100-4.

1992 Amendments. Subsec. (p)(1). Pub.L. 102-580, § 364(1), substituted "October 1, 1994" for "October 1, 1992".

Subsec. (p)(6). Pub.L. 102-580, § 364(2), substituted "October 1, 1993" for "October 1, 1993".

1987 Amendments. Subsec. (a)(1). Pub.L. 100-4, § 404(c), as redesignated by section 2021(e)(2) of Pub.L. 104-66, inserted "(A)" after "either" and "(B)" after "1343 of this title,".

Subsec. (c)(1). Pub.L. 100-4, § 403(b)(2), substituted "as to those discharges" for "as to those navigable waters".

Subsec. (c)(4). Pub.L. 100-4, § 403(b)(1), added par. (4).

Subsec. (l). Pub.L. 100-4, § 401, inserted subsection heading "Limitation on permit requirement", designated existing provision as par. (1), and in par. (1) as so designated, inserted paragraph heading "Agricultural return flows", added par. (2), and aligned pars. (1) and (2).

Subsec. (m). Pub.L. 100-4, § 402, added subsec. (m).

Subsec. (n). Pub.L. 100-4, § 403(a), added subsec. (n).

Subsec. (o). Pub.L. 100-4, § 404(a), added subsec. (o).

Subsec. (p). Pub.L. 100-4, § 405, added subsec. (p).

1977 Amendments. Subsec. (a)(5). Pub.L. 95-217, § 50, substituted "section 1314(i)(2)" for "section 1314(h)(2)".

Subsec. (b). Pub.L. 95-217, § 50, substituted in the material preceding par. (1) "subsection (i)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (b)(8). Pub.L. 95-217, § 54(c)(1), added reference to the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section

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1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.

Subsec. (c)(1), (2). Pub.L. 95-217, § 50, substituted "section 1314(i)(2)" for "section 1314(h)(2)".

Subsec. (d)(2). Pub.L. 95-217, § 65(b), added provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.

Subsec. (d)(4). Pub.L. 95-217, § 65(a), added par. (4).

Subsec. (e). Pub.L. 95-217, § 50, substituted "subsection (i)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (h). Pub.L. 95-217, § 66, substituted "where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit," for "where no State program is approved,".

Subsec. (*l*). Pub.L. 95-217, § 33(c), added subsec. (*l*).

Transfer of Functions

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to compliance with national pollutant discharge elimination system permits with respect to preconstruction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg.Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees.

Stormwater Permit Requirements

Pub.L. 102-240, Title I, § 1068, Dec. 18, 1991, 105 Stat. 2007, provided that:

"(a) General rule.--Notwithstanding the requirements of sections 402(p)(2)(B), (C), and (D) of the Federal Water Pollution Control Act [subsec. (p)(2)(B), (C), and (D) of this section], permit application deadlines for stormwater discharges associated with industrial activities from facilities that are owned or operated by a municipality shall be established by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') pursuant to the requirements of this section.

"(b) Permit applications.--

"(1) Individual applications.--The Administrator shall require individual permit applications for discharges described in subsection (a) on or before October 1, 1992; except that any municipality that has participated in a timely part I group application for an industrial activity discharging stormwater that is denied such participation in a group application or for which a group application is denied shall not be required to submit an

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individual application until the 180th day following the date on which the denial is made.
"(2) **Group applications.**--With respect to group applications for permits for discharges described in subsection (a), the Administrator shall require--

"(A) part I applications on or before September 30, 1991, except that any municipality with a population of less than 250,000 shall not be required to submit a part I application before May 18, 1992; and
"(B) part II applications on or before October 1, 1992, except that any municipality with a population of less than 250,000 shall not be required to submit a part II application before May 17, 1993.

"(c) **Municipalities with less than 100,000 population.**--The Administrator shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any stormwater discharge associated with an industrial activity other than an airport, powerplant, or uncontrolled sanitary landfill owned or operated by such municipality before October 1, 1992, unless such permit is required by section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [subsec. (p)(2)(A) or (E) of this section].

"(d) **Uncontrolled sanitary landfill defined.**--For the purposes of this section, the term 'uncontrolled sanitary landfill' means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act [section 6941 et seq. of Title 42, The Public Health and Welfare].

"(e) **Limitation on statutory construction.**--Nothing in this section shall be construed to affect any application or permit requirement, including any deadline, to apply for or obtain a permit for stormwater discharges subject to section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [subsec. (p)(2)(A) or (E) of this section].

"(f) **Regulations.**--The Administrator shall issue final regulations with respect to general permits for stormwater discharges associated with industrial activity on or before February 1, 1992."

Phosphate Fertilizer Effluent Limitation

Section 306(c) of Pub.L. 100-4 provided that:

"(1) **Issuance of permit.**--As soon as possible after the date of the enactment of this Act [Feb. 4, 1987], but not later than 180 days after such date of enactment [Feb. 4, 1987], the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [subsec. (a)(1)(B) of this section] with respect to facilities--

"(A) which were under construction on or before April 8, 1974, and
"(B) for which the Administrator is proposing to revise the applicability of the effluent limitation established under section 301(b) of such Act [section 1311(b) of this title] for phosphate subcategory of the fertilizer manufacturing point source category to exclude such facilities.

"(2) **Limitations on statutory construction.**--Nothing in this section shall be construed--

"(A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters,
"(B) to affect the procedures and standards applicable to the Administrator in issuing permits under section

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402(a)(1)(B) of the Federal Water Pollution Control Act [subsec. (a)(1)(B) of this section], and

"(C) to affect the authority of any State to deny or condition certification under section 401 of such Act [section 1341 of this title] with respect to the issuance of permits under section 402(a)(1)(B) of such Act [subsec. (a)(1)(B) of this section]."

Log Transfer Facilities

Section 407 of Pub.L. 100-4 provided that:

"**(a) Agreement.**--The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act [this section and section 1344 of this title], where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

"**(b) Applications and permits before October 22, 1985.**--Where both of sections 402 and 404 of the Federal Water Pollution Control Act [this section and section 1344 of this title] apply, log transfer facilities which have received a permit under section 404 of such Act [section 1344 of this title] before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act [this section]. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act [section 1344 of this title] satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act [sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title] a separate application for a permit under section 402 of such Act [this section] shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act [section 1344 of this title] do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act [sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title], modifications to the existing permit under section 404 of such Act [section 1344 of this title] to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act [this section].

"**(c) Log transfer facility defined.**--For the purposes of this section, the term 'log transfer facility' means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft."

Allowable Delay in Modifying Existing Approved State Permit Programs to Conform to 1977 Amendment

Section 54(c)(2) of Pub.L. 95-217 provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub.L. 95-217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

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CROSS REFERENCES

Aquaculture, discharges of specific pollutants under controlled conditions, see 33 USCA § 1328.
Certification by owner of treatment works of compliance with permit specifications, see 33 USCA § 1284.
Citizen suits for violation of permit, see 33 USCA § 1365.
Control of specific pollutants as requirement for permit under this section, see 33 USCA § 1314.
Discharge of dredged or fill material not prohibited by this section, see 33 USCA § 1344.
Enforcement for violations of permits, see 33 USCA § 1319.
Establishment and maintenance of records, see 33 USCA § 1318.
Exclusion of discharge in compliance with permit from definition of "discharge", see 33 USCA § 1321.
Federal facilities pollution control, waiver of conditions, see 33 USCA § 1323.
Federally permitted release as meaning discharges in compliance with a permit under this section, see 42 USCA § 9601.
Grants for reasonable costs of administering an approved program under this section, see 33 USCA § 1285.
Illegality of pollutant discharges except in compliance with this section, see **33 USCA § 1311** .
Issuance of permits after promulgation of guidelines for determination of degradation of waters of territorial seas, see 33 USCA § 1343.
Land disposal restrictions and solid waste treatment system, see 42 USCA § 6924.
Necessity of permit for construction of facility lawfully commenced on certain date, see 33 USCA § 1341.
Permit for disposal or use of sewage sludge, see 33 USCA § 1345.
Permit under this section deemed major Federal action, see 33 USCA § 1371.
Permit under this section not to conflict with a plan approved pursuant to § 1288 of this title, see 33 USCA § 1288.
Public health agency coordination, see 33 USCA § 1373.
Review of Administrator's action in issuing or denying permit, see 33 USCA § 1369.
Solid or dissolved material in domestic sewage or solid or dissolved materials or industrial discharges which are point sources subject to permits under this section excluded from definition of "solid waste", see 42 USCA § 6903.
State implementation of permit programs under this section, see 33 USCA § 1251.

CODE OF FEDERAL REGULATIONS

Criteria and standards for National Pollutant Discharge Elimination System, see 40 CFR § 125.1 et seq.
Environmental Protection Agency administered permit programs: the National Pollutant Discharge Elimination System, see 40 CFR § 122.1 et seq.
General pretreatment regulations for existing and new sources of pollution, see 40 CFR § 403.1 et seq.
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NOTES OF DECISIONS

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I. GENERALLY

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1. Construction

Language of this section will be given a common sense interpretation in harmony with the discernible intent of Congress. National Wildlife Federation v. Gorsuch, D.C.D.C.1982, 530 F.Supp. 1291, reversed on other grounds 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law ⚿ 167

2. Construction with other laws

Clean Water Act requires that permits issued by Environmental Protection Agency (EPA) allowing discharge of effluent into interstate waterway comply with requirements for permit issued under approved state plan and with section of Clean Water Act which appears to prohibit issuance of federal permit over objection of affected state unless compliance with affected state's water quality requirements can be insured. Arkansas v. Oklahoma, U.S.1992, 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law ⚿ 196

Purported tension between flexible approach to water quality problems presented by combined stormwater-sewer systems taken by Combined Sewer Overflow Control (CSO) Policy and allegedly rigid mandates imposed by total maximum daily loads (TMDLs) required by Clean Water Act (CWA) for waters not achieving water quality standards did not provide basis for interpreting term "daily," as used in CWA provision requiring TMDLs, to mean timeframe other than daily; subsequent amendments to CWA requiring permits for discharges from combined systems to conform to CSO Policy did not provide context in which phrase "total maximum daily load" had to be read, and nothing in CSO Policy validated interpreting "daily" to mean something else. Friends of Earth, Inc. v. E.P.A., C.A.D.C.2006, 446 F.3d 140, 371 U.S.App.D.C. 1, certiorari denied 127 S.Ct. 1121, 166 L.Ed.2d 907. Environmental Law ⚿ 192

Environmental Protection Agency's (EPA's) regulation of storm water discharges from inactive mines under provision of Clean Water Act (CWA) requiring permit for any storm water discharge associated with industrial activity did not conflict with Surface Mining Control and Regulation Act's (SMCRA's) Abandoned Mine Lands (AML) program and was not arbitrary and capricious. American Min. Congress v. U.S. E.P.A., C.A.9 1992, 965 F.2d 759. Environmental Law ⚿ 170

Statute dealing with state assumption of the NPDES permit program does not require that citizen suit provisions of Clean Water Act be extended to the states; statute governing assumption by states does not require that states copy the federal minimum public participation requirements. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Environmental Law ⚿ 226

Pub.L. 89-298, Title III, § 301, Oct. 27, 1965, 79 Stat. 1089, providing that State of Indiana, prior to construction of harbor project, shall furnish assurance satisfactory to Secretary of Army that water and air pollution sources will be controlled to maximum extent feasible in order to minimize any adverse effects on public recreational areas in general vicinity of Burns Harbor has no application to Environmental Protection Agency or to National Pollutant Discharge Elimination System permit issued under this section. Porter County Chapter of Izaak Walton League of America, Inc. v. Costle, C.A.7 1978, 571 F.2d 359, certiorari denied 99 S.Ct. 115, 439 U.S. 834, 58 L.Ed.2d 130. Environmental Law ⚿ 250; Environmental Law ⚿ 170

Even if issuance of National Pollutant Discharge Elimination System (NPDES) permit by state, pursuant to Clean Water Act (CWA), constituted "major federal action" within meaning of NEPA, Environmental Protection Agency (EPA) was not required to perform NEPA analysis before sewage pipeline project could go forward, ab-

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sent showing that project would necessitate issuance of new permit to sewage authority. Citizens Alert Regarding the Environment v. U.S. E.P.A., D.D.C.2003, 259 F.Supp.2d 9, affirmed 102 Fed.Appx. 167, 2004 WL 1336644. Environmental Law ⚷ 595(6)

Under CERCLA, county and cities were not liable for property owner's response costs, associated with stormwater discharges from storm drains that they owned/maintained; county and cities had, and complied with, National Pollution Discharge Elimination System (NPDES) permits, which authorized discharges of stormwater containing pollutants, and no pre-permit releases of contaminants were shown to have occurred. Carson Harbor Village, Ltd. v. Unocal Corp., C.D.Cal.2003, 287 F.Supp.2d 1118, affirmed 433 F.3d 1260. Environmental Law ⚷ 445(1)

Reporting provisions and financial penalties found in this section providing for changes in permits and enforcement of more stringent controls over discharges even during life of an existing permit in cases where circumstances have changed since issuance of original permit act as sufficient deterrent to undesirable activities and would make application of penalties under section 1321 of this title governing discharge of hazardous substances redundant and wholly unnecessary. Manufacturing Chemists Ass'n v. Costle, W.D.La.1978, 455 F.Supp. 968. Environmental Law ⚷ 223; Environmental Law ⚷ 457

Under CERCLA, county and cities were not liable for property owner's response costs, associated with stormwater discharges from storm drains that they owned/maintained; county and cities had, and complied with, National Pollution Discharge Elimination System (NPDES) permits, which authorized discharges of stormwater containing pollutants, and no pre-permit releases of contaminants were shown to have occurred. Carson Harbor Village Ltd. v. Unocal Corp., C.D.Cal.2003, 2003 WL 22005933, Unreported, amended and superseded 287 F.Supp.2d 1118, affirmed 433 F.3d 1260. Environmental Law ⚷ 445(1)

3. Rules and regulations

Environmental Protection Agency's (EPA's) regulation of discharges from inactive mines under the Clean Water Act (CWA) provision authorizing EPA to require permit for any storm water discharge "associated with industrial activity" was consistent with statute's plain language and was reasonable. American Min. Congress v. U.S. E.P.A., C.A.9 1992, 965 F.2d 759. Environmental Law ⚷ 196

4. Temporary nature of permits

This chapter establishes series of steps which impose progressively stricter standards until final elimination of all pollutant discharges is achieved, but purity is not to be achieved or required instantaneously, and thus permitting interim discharge of pollutants is in accordance with comprehensive regulatory scheme of this chapter. Committee for Consideration of Jones Falls Sewage System v. Train, C.A.4 (Md.) 1976, 539 F.2d 1006. Environmental Law ⚷ 165

5. Pollutants or facilities requiring permit

Dam used to collect acid mine drainage from abandoned mine site was subject to Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit requirement; admission that drainage was collected in dam reservoir and, from time to time, passed over spillway or through a valve into river and another reservoir conclusively established discharge of pollutant from mine facility within meaning of Act. Committee To Save Mokelumne River v. East Bay Mun. Utility Dist., C.A.9 (Cal.) 1993, 13 F.3d 305, certiorari denied 115 S.Ct.

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198, 513 U.S. 873, 130 L.Ed.2d 130. Environmental Law ⚿ 178

Concentrated animal feeding operation that violates the Clean Water Act by discharging without permit remains in continuing state of violation until it either obtains National Pollutant Discharge Elimination System (NPDES) permit or no longer meets definition of point source. Carr v. Alta Verde Industries, Inc., C.A.5 (Tex.) 1991, 931 F.2d 1055, rehearing denied. Environmental Law ⚿ 206

Hydro-electric facility's movement of pollutants already in water was not "addition of pollutants" to navigable waters so as to require permit under National Pollutant Discharge Elimination System. National Wildlife Federation v. Consumers Power Co., C.A.6 (Mich.) 1988, 862 F.2d 580. Environmental Law ⚿ 196

Tennessee Valley Authority was not required to obtain state permit for reconstruction and operation of dam and flume on navigable river from State Water Quality Control Board, where water affected by dam was only "polluted" by changes in its physical and chemical properties occurring while it flowed through riverbed between dam and power plant, and there was no claim that any pollutants as defined in this chapter were added to river water by diversion into or through flume. U.S. ex rel. Tennessee Valley Authority v. Tennessee Water Quality Control Bd., C.A.6 (Tenn.) 1983, 717 F.2d 992, certiorari denied 104 S.Ct. 1909, 466 U.S. 937, 80 L.Ed.2d 458. Environmental Law ⚿ 196

Where Environmental Protection Agency's construction of this chapter's requirement for regulation of water quality changes caused by dams under National Pollutant Discharge Elimination System was made contemporaneously with passage of this chapter and was subsequently consistently adhered to and where Congress, during major revision of this chapter, did not object to the Agency's characterization of dams as nonpoint sources, federal district court in action for declaration that Administrator of the Agency had nondiscretionary duty to require dam operators to apply for pollutant discharge permits erred in failing to give enough deference to Agency's construction of this chapter. National Wildlife Federation v. Gorsuch, C.A.D.C.1982, 693 F.2d 156, 224 U.S.App.D.C. 41. Statutes ⚿ 219(6.1)

Discharges of a compost runoff from a holding tank were not from agricultural point sources within meaning of applicable regulation and therefore discharge of such pollutants into navigable waters did not require a permit, assuming the pollution was agricultural. U.S. v. Frezzo Bros., Inc., C.A.3 (Pa.) 1981, 642 F.2d 59, on remand 546 F.Supp. 713. Environmental Law ⚿ 175

Steel company's discharge of "chemical wastes" into deep well could properly be regulated by National Pollutant Discharge Elimination System permit-granting authorities. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law ⚿ 175

In the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, no statutory obligation of point sources to comply with Environmental Protection Agency (EPA) regulations for point source discharges, and no statutory obligation of point sources to seek or obtain an National Pollutant Discharge Elimination System (NPDES) permit in the first instance. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law ⚿ 196; Environmental Law ⚿ 206

Ditches that coastal landowners' dug on their tract of land were "point sources" under the Clean Water Act (CWA), so as to be subject to discharge permit requirements, where ditches served to channel and collect stormwater and other pollutants that were subsequently discharged into waters of the United States. North Carolina

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Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law ⚷ 175

Genuine issues of material fact as to whether fecal coliform, a pollutant, traveled from coastal landowners' tract of land to water covered by the Clean Water Act (CWA), and as to whether alleged increase in fecal coliform levels in such navigable water was related to landowners' ditching activities, precluded summary judgment in citizen suit under CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Federal Civil Procedure ⚷ 2498.3

Fruit processor's discharge of water, produced in process of drying fruit, to irrigate fields, was not a discharge from a point source, as required to support Clean Water Act (CWA) citizen suit against processor, although processor allegedly applied wastewater to its fields in excess of crops' actual absorption of water. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law ⚷ 175

Pesticides, when used for their intended purpose, were not a "pollutant" within meaning of Clean Water Act (CWA), and thus township residents failed to state CWA claim against township based on township's application of pesticides for mosquito control in wetland areas without state or national pollutant discharge elimination system (SPDES or NPDES) permits, absent allegations that the pesticides used in the township's spraying program were used other than in the manner in which they were intended and as approved by the Environmental Protection Agency (EPA). Altman v. Town of Amherst, N.Y., W.D.N.Y.2001, 190 F.Supp.2d 467, vacated 47 Fed.Appx. 62, 2002 WL 31132139. Environmental Law ⚷ 175; Environmental Law ⚷ 196

Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program does not apply to discharges to groundwater, even if that groundwater is hydrologically connected to surface water. Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen Foods, Inc., D.Or.1997, 962 F.Supp. 1312. Environmental Law ⚷ 175

National Pollutant Discharge Elimination System (NPDES) permit was not required for runoff from hillside from which lake fill material was cut, as such was storm water which was not covered by NPDES permits at time that project was authorized. Coeur D'Alene Lake v. Kiebert, D.Idaho 1992, 790 F.Supp. 998. Environmental Law ⚷ 196

Environmental Protection Agency had authority over in-stream treatment upon construction and disposal of coal mining waste or spoil material so that it could lawfully object to and prohibit fills and ponds on the grounds that discharges did not comply with Clean Water Act and that Secretary of Army had ceded to EPA control of fill material not used for primary purpose of replacing aquatic area with dry land or of changing bottom elevation of water body. West Virginia Coal Ass'n v. Reilly, S.D.W.Va.1989, 728 F.Supp. 1276, affirmed 932 F.2d 964. Environmental Law ⚷ 136

NPDES permit is required in particular situation when pollutant is added to navigable waters from point source. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Environmental Law ⚷ 196

This section which provides that discharge of pollutants without permit is violation of this chapter did not apply to hog farm, which was closed, "no discharge" system. Higbee v. Starr, E.D.Ark.1984, 598 F.Supp. 323, affirmed 782 F.2d 1048. Environmental Law ⚷ 175

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In enacting this chapter, Congress did not intend that only the definitional list of pollutants, strictly interpreted, be controlled under the National Pollution Discharge Elimination System Program and that all other problems subsumed under the broader definition of pollution, i.e., man-made or man-induced alteration of chemical, physical, biological and radiological integrity of water, be relegated to other programs under this chapter and other federal and state laws whether emitted from a point source and whether amenable to technological control and effluent monitoring. National Wildlife Federation v. Gorsuch, D.C.D.C.1982, 530 F.Supp. 1291, reversed on other grounds 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law 175

To discharge heated water and waste into Atlantic ocean from nuclear power facility a utility would need both a permit from Water Supply and Pollution Control Commission and a finding from site evaluation committee that the discharge would not adversely affect water quality. Society for Protection of New Hampshire Forests v. Site Evaluation Committee, N.H.1975, 337 A.2d 778, 115 N.H. 163. Electricity 8.7(2); Environmental Law 196

The State of Ohio having been granted interim authority to issue permits for discharges into navigable waters, any discharge of pollutant into the waters within the jurisdiction of Ohio must be pursuant to permit issued by the state. State v. Republic Steel Corp., Ohio Mun.1973, 311 N.E.2d 911, 38 Ohio Misc. 43, 67 O.O.2d 232. Environmental Law 196

Operation of drainage basin system required national pollutant discharge elimination system permit from Department of Ecology, even though such drainage system substantially reduced amount of pollutants flowing into body of navigable water. Pedersen v. Washington State Dept. of Transp., Wash.App.1980, 611 P.2d 1293, 25 Wash.App. 781, review denied. Environmental Law 196

6. State permits--Generally

Environmental Protection Agency (EPA) erred, when granting State of Maine permitting authority, under the Clean Water Act (CWA), with regard to regulation of pollutant discharges, in exempting from that authority two Indian tribe-owned facilities, located on tribal lands, which discharged pollutants into territorial waters of the tribes, even if such discharge had no substantial effect on non-members; environmental regulation was not an internal tribal matter within the meaning of the Maine Settlement Acts. Maine v. Johnson, C.A.1 2007, 498 F.3d 37. Indians 211

By the contemplation of minimum federal standards, Congress, in this chapter, did not intend to relegate the states to the status of enforcement agents for the executive branch of the federal government. Mianus River Preservation Committee v. Administrator, Environmental Protection Agency, C.A.2 (Conn.) 1976, 541 F.2d 899. Environmental Law 165

Although National Pollutant Discharge Elimination System (NPDES) permit that state issued to sewage authority allegedly contained deficiencies, which were made apparent by pipeline sewage project, exception to Clean Water Act (CWA) provision exempting actions taken by Environmental Protection Agency (EPA), under CWA, from NEPA requirements, did not apply, so as to require EPA to perform NEPA analysis before project could go forward; permit was issued by state, not EPA, and neither state nor EPA had obligation to comply with NEPA before permit was issued. Citizens Alert Regarding the Environment v. U.S. E.P.A., D.D.C.2003, 259 F.Supp.2d 9, affirmed 102 Fed.Appx. 167, 2004 WL 1336644. Environmental Law 595(6)

State pollution discharge permit issued under the National Pollutant Discharge Elimination System (SPDES Per-

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mit) prohibits only discharges of pollutants which it expressly restricts and only when they are discharged in excess of the levels permitted in the permit; thus discharge of pollutant never referenced in permit cannot form the basis of a permit violation. Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., W.D.N.Y.1992, 809 F.Supp. 1040, affirmed 12 F.3d 353, as amended , certiorari denied 115 S.Ct. 62, 513 U.S. 811, 130 L.Ed.2d 19. Environmental Law ⚿ 196

City's obtaining a permit under state statute, not related to discharge of pollutants, prior to adding chlorine and alum to water pumped into reservoir on a navigable river would not abrogate need for a federal permit under the Clean Water Act. Hudson River Fishermen's Ass'n v. City of New York, S.D.N.Y.1990, 751 F.Supp. 1088, affirmed 940 F.2d 649. Environmental Law ⚿ 196

Although Interstate Sanitation Commission's regulations set forth their own effluent standards separate from federal standards, enforcement of ISC regulations could be had through Clean Water Act in precisely the same manner as federal standards were enforced, where ISC's regulatory standards were set forth in National Pollutant Discharge Elimination System permits issued by state of New Jersey as designated permit authority, in accordance with the Act; such permits made ISC's standards enforceable NPDES restrictions, and violation of standards constituted violation of Act. U.S. v. City of Hoboken, D.N.J.1987, 675 F.Supp. 189. Environmental Law ⚿ 197

Water quality-based limitations in discharge permit imposed by state, which were more stringent than otherwise applicable technology-based federally imposed limitation in discharge permit, controlled permittee's discharge into waterway, for purposes of the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.]. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

Congress created in the National Pollution Discharge Elimination Systems program established by this section, a system of concurrent state-federal jurisdiction, with leading role granted to the Environmental Protection Agency to set the parameters of state's authority, to determine minimum standards for regulation, to oversee state's implementation of program and to step in where, in administrator's judgment it is necessary, but Congress intended Agency to use that extensive authority sparingly and only where necessary to preserve integrity of national effort to cleanse nation's waters. U. S. v. Cargill, Inc., D.C.Del.1981, 508 F.Supp. 734. Environmental Law ⚿ 216; Environmental Law ⚿ 165

Issuance of national pollutant discharge elimination system permits by a state is basically state matter, which is merely subject to minimum federal requirements. Chesapeake Bay Foundation, Inc. v. Virginia State Water Control Bd., E.D.Va.1978, 453 F.Supp. 122. Environmental Law ⚿ 196

National Pollutant Discharge Elimination System permit established by this section was not intended to preempt the authority of state to issue permits for discharge into navigable waters within a state but rather to induce the cooperation of the states in the establishment of a program to be administered by the states within certain federal guidelines with regard to uniform national standards. State v. Republic Steel Corp., Ohio Mun.1973, 311 N.E.2d 911, 38 Ohio Misc. 43, 67 O.O.2d 232. States ⚿ 18.31

7. ---- Approval of State program, state permits

Decision to transfer its permitting power under the National Pollution Discharge Elimination System (NPDES) to state officials, once the Environmental Protection Agency (EPA) determined that each of the nine statutory re-

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quirements for transfer was satisfied, was not decision committed to discretion of the EPA, such that transfer application did not trigger the Endangered Species Act's (ESA's) consultation and no-jeopardy requirements and compel the EPA to consult with agencies designated by the Secretaries of Commerce and of the Interior to ensure that proposed transfer of permitting authority was not likely to jeopardize any endangered or threatened species. National Ass'n of Home Builders v. Defenders of Wildlife, U.S.2007, 127 S.Ct. 2518. Environmental Law 537

United States Environmental Protection Agency remains dominant agency for achieving purposes and goals of this chapter even if a state permit program has been approved. U. S. v. Epstein, C.A.D.C.1979, 608 F.2d 1, 197 U.S.App.D.C. 207.

Environmental Protection Agency Administrator's approval of the Illinois water pollution program, without his prior promulgation of guidelines regarding citizen participation in the state enforcement process, violated the terms of this chapter. Citizens for a Better Environment v. E.P.A., C.A.7 1979, 596 F.2d 720. Environmental Law 205

Only the most egregious flouting of federal requirements in the context of an individual permit would authorize the Environmental Protection Agency to revoke a state agency's delegated National Pollutant Discharge Elimination System authority under this chapter on the basis of the state agency's handling of a single permit. Save the Bay, Inc. v. Administrator of Environmental Protection Agency, C.A.5 (Miss.) 1977, 556 F.2d 1282, rehearing denied 560 F.2d 1023. Environmental Law 216

8. ---- Administrator's objections to issuance, state permits

Environmental Protection Agency regulation allowing regional administrator to veto a proposed state-issued NPDES permit if, in absence of formally promulgated effluent limitations, the proposed permit fails in the judgment of administrator to comport with Clean Water Act or regulations promulgated thereunder was within authority of the EPA. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Environmental Law 196

Without finding a fundamental difference as to any factor or combination of factors considered by the Environmental Protection Agency in setting effluent limitations for pulp mills discharging into navigable waters, the California State Water Resources Control Board could not, consistently with this section, grant variances to pulp mills on basis of receiving water quality. Crown Simpson Pulp Co. v. Costle, C.A.9 1981, 642 F.2d 323, certiorari denied 102 S.Ct. 596, 454 U.S. 1053, 70 L.Ed.2d 588. Environmental Law 202

No permit to discharge effluents into navigable waters may be issued where United States Environmental Protection Agency objects on the ground that issuance would be outside lines of requirements of this chapter. Cleveland Elec. Illuminating Co. v. E.P.A., C.A.6 1979, 603 F.2d 1. Environmental Law 196

Administrator's veto of permit issued by State of Washington to paper company for discharge of sulphite wastes into waters of Puget Sound was ineffectual where it was based on an ad hoc determination of what constituted the best practicable technology for the plant and not on uniform effluent limitations standards expressed as best practicable technology on an industrywide basis; Administrator could not rely on interim guidance documents allegedly providing technical data approximating best practicable technology values which would have been applicable had effluent limitation guidelines for pulp and paper point sources been timely issued in the form of regulations. State of Wash. v. U.S. Environmental Protection Agency, C.A.9 (Wash.) 1978, 573 F.2d 583. Envir-

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onmental Law ⚿ 196

Environmental Protection Agency has limited review powers over issuance of proposed permit submitted by state pursuant to state's own National Pollution Discharge Elimination System permit program under this section. Ford Motor Co. v. U.S. E.P.A., C.A.6 1977, 567 F.2d 661. Environmental Law ⚿ 222

Ninety-day period of this section within which Administrator was required to determine that state permit program met demands of this chapter should have alerted petitioner to expect action by Administrator on or about ninetieth day, as against contention of petitioner, whose petition for review was untimely, that he had no official notice of Administrator's action until publication. Peabody Coal Co. v. Train, C.A.6 1975, 518 F.2d 940. Environmental Law ⚿ 195

Environmental Protection Agency's failure to object to state's decision to issue National Pollutant Discharge Elimination System (NPDES) permit cannot be classified as "major federal action" that would trigger NEPA analysis. Citizens Alert Regarding the Environment v. U.S. E.P.A., D.D.C.2003, 259 F.Supp.2d 9, affirmed 102 Fed.Appx. 167, 2004 WL 1336644. Environmental Law ⚿ 595(3)

Environmental Protection Agency's (EPA's) letter stating that state permit under National Pollutant Discharge Elimination System could not issue "under Section 301(i)(2) variance until the 301(i)(1) variance" for city's publicly owned treatment works has been approved satisfied statutory requirement to state why EPA objects to issuance of permit as outside guidelines and requirements of Clean Water Act; EPA was not required to set forth text or interpretation of statute governing request for modification permit where point source will not achieve statutory requirements. U.S. v. City of Menominee, Mich., W.D.Mich.1989, 727 F.Supp. 1110. Environmental Law ⚿ 220

9. ---- Veto, state permits

States which are affected by another state's discharge of effluent into a waterway may not block issuance of discharge permit but must apply to Environmental Protection Agency (EPA) administrator, who has discretion to disapprove permit if he concludes that discharges will have undue impact on interstate waters. Arkansas v. Oklahoma, U.S.1992, 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law ⚿ 220

Promulgation by the Environmental Protection Agency of effluent limitation guidelines is not precondition for the veto by a regional administrator of the Environmental Protection Agency of a discharge permit issued by state which has assumed the NPDES program. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Environmental Law ⚿ 196

Environmental Protection Agency (EPA) did not have override authority over Ohio Environmental Protection Agency's (OEPA) approval of mine operator's emergency bypass plan, to bypass operator's normally used treatment facilities when evacuating from mine water containing higher levels of minerals than normally occur in natural waterways in area around mine, on ground that West Virginia waters would be affected by the pumping; EPA failed to produce sufficient evidence to support its contention that West Virginia waters would be unduly affected, West Virginia had not challenged evacuation to EPA, and EPA's override authority in interstate impact situation extended only to disapproval of state issued permits and challenge in this case would be to proposed evacuation plan and not to operator's National Pollution Discharge Elimination System (NPDES) permit. Southern Ohio Coal Co. v. Office of Surface Min. Reclamation and Enforcement, Dept. of Interior, S.D.Ohio 1993,

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831 F.Supp. 1324, stay granted 1993 WL 642401, reversed 20 F.3d 1418, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 316, 513 U.S. 927, 130 L.Ed.2d 278. Environmental Law 222

10. ---- Waiver, state permits

Alleged inaction of Environmental Protection Agency (EPA) after sending letter objecting to state permit under National Pollutant Discharge Elimination System did not waive objection; statute governing waiver concerned EPA's waiver of power to object to state-proposed permits before issuance. U.S. v. City of Menominee, Mich., W.D.Mich.1989, 727 F.Supp. 1110. Environmental Law 220

11. ---- Review, state permits

Court of Appeals lacked jurisdiction to review issue of whether Environmental Protection Agency (EPA), after granting State of Maine permitting authority, under the Clean Water Act (CWA) and the Maine "Settlement Acts," with regard to regulation of pollutant discharges, retained authority to review State-issued permits in light of a general trust relationship between the federal government and two Indian tribes; issue was not yet ripe for review, since EPA had not objected to any State permit. Maine v. Johnson, C.A.1 2007, 498 F.3d 37. Environmental Law 662

This chapter does not imply a federal right of action for persons attacking state's issuance of permit for advanced wastewater treatment plant. District of Columbia v. Schramm, C.A.D.C.1980, 631 F.2d 854, 203 U.S.App.D.C. 272. Environmental Law 226

Court would defer to New Jersey Department of Environmental Protection determination that discharge permit held by manufacturer of electroplated copper circuit foil imposed limitation on bioassay effluent, particularly in light of wording of permit itself. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 790 F.Supp. 511. Environmental Law 682

This chapter does not explicitly provide a federal cause of action in favor of persons seeking to challenge a state agency's decisions regarding National Pollutant Discharge Elimination System permit applications. Chesapeake Bay Foundation, Inc. v. Virginia State Water Control Bd., E.D.Va.1980, 495 F.Supp. 1229, motion denied 501 F.Supp. 821. Environmental Law 226

12. Compliance with permits

Evidence supported finding that National Pollution Discharge Elimination System (NPDES) permit covered combined sewer overflow (CSO) outfalls, even though CSO's were not separately listed in permit and permit lacked effluent limitations for CSO's as required by regulations under Clean Water Act (CWA); CSO's were listed generally as permitted activity under permit, permit required city to work toward upgrading system to separate sewage and storm water, permit's author indicated CSO's were covered, and state and federal environmental agencies approved permit despite clear existence of CSO's. Northwest Environmental Advocates v. City of Portland, C.A.9 (Or.) 1995, 56 F.3d 979, rehearing and suggestion for rehearing en banc denied 74 F.3d 945, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Environmental Law 196

Polluters may discharge pollutants not specifically listed in permits under state or national pollutant discharge elimination system (SPDES) (NPDES), so long as they comply with appropriate reporting requirements and abide by new limitations when imposed on such pollutants. Atlantic States Legal Foundation, Inc. v. Eastman

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Kodak Co., C.A.2 (N.Y.) 1993, 12 F.3d 353, as amended , certiorari denied 115 S.Ct. 62, 513 U.S. 811, 130 L.Ed.2d 19. Environmental Law 196

Clean Water Act deals with unfortunate inevitability of pollution, shifts costs from third parties to polluters by allowing pollution only pursuant to permit, and explicitly protects legitimate interests of those discharging permissible quantities of pollutants under valid permits. Sierra Club v. U.S. E.P.A., C.A.9 (Ariz.) 1993, 995 F.2d 1478. Environmental Law 196

As regards provision of subsec. (k) of this section stating that "Compliance with a permit issued pursuant to this section shall be deemed compliance [with the statutory standards] * * * except any standard imposed under [section 1317] for a toxic pollutant injurious to human health," the phrase "injurious to human health" refers to toxic substances that would injure humans in relatively small quantities, not substances creating a human health hazard in the amount presently being discharged. Hercules, Inc. v. Environmental Protection Agency, C.A.D.C.1978, 598 F.2d 91, 194 U.S.App.D.C. 172. Environmental Law 196

Legislative history clearly shows that Congress intended that the National Pollution Discharge Elimination System permit be the only means by which a discharger of pollutant may escape total prohibition of discharges from point sources found in this chapter. Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.1977, 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law 196

Cornerstone of the Clean Water Act is that the discharge of any pollutant from a point source into navigable waters of the United States is unlawful unless the discharge is made according to the terms of an National Pollutant Discharge Elimination System (NPDES) permit obtained from either the United States Environmental Protection Agency (EPA) or from an authorized state agency. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law 196

Inability of Air Force base to comply absolutely with pollutant discharge permit did not excuse it from doing anything to reduce its effluent discharges; it would be required to come as close as possible to limits set in permit. Public Interest Research Group of New Jersey, Inc. v. Rice, D.N.J.1991, 774 F.Supp. 317. Environmental Law 208

Burden is on plaintiff to comply with Clean Water Act, not on Environmental Protection Agency (EPA) to insure compliance. U.S. v. City of Menominee, Mich., W.D.Mich.1989, 727 F.Supp. 1110. Environmental Law 205

Holders of National Pollutant Discharge Elimination System permit were bound to employ best practical control technology currently available in meeting requirements of permit, and whether they complied with terms of their application or project specifications did not excuse them from fulfilling conditions of permit. Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton, W.D.Pa.1980, 506 F.Supp. 902, affirmed 644 F.2d 995. Environmental Law 197

Provision of this section granting immunity from suit for discharge made pursuant to application extended to enforcement actions by the Administrator under section 1319 of this title. Committee for Consideration of Jones Falls Sewage System v. Train, D.C.Md.1975, 387 F.Supp. 526. Environmental Law 221

This section, which provides that " * * * Until December 31, 1974, in any case where a permit for a discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been

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made, such discharge shall not be a violation of * * * the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application" was intended to have a prospective effect only and was not intended to apply to pending litigation. U. S. v. Consolidation Coal Co., N.D.W.Va.1973, 354 F.Supp. 173. Navigable Waters 3

This section providing that compliance with National Pollutant Discharge Elimination System permit shall be deemed in compliance with specified sections of this chapter except any standard imposed for a toxic pollutant injurious to human health does not mean that only those toxic pollutants injurious to human health could be subsequently incorporated into a permit holder's permit after the permit is issued and all other toxic pollutants standards subsequently adopted could not be incorporated into permit if they were not injurious to human health. U. S. Steel Corp. v. Illinois Pollution Control Bd., Ill.App. 2 Dist.1977, 367 N.E.2d 327, 9 Ill.Dec. 893, 52 Ill.App.3d 1. Environmental Law 198

13. Availability of permits

Clean Water Act's (CWA) zero discharge standard for stormwater runoff from construction activities in absence of National Pollutant Discharge Elimination System (NPDES) permit did not apply to developer when compliance was factually impossible due to fact that Georgia Environmental Protection Division was only agency authorized to issue NPDES permits for stormwater runoff but did not offer any such permits at time in question; developer also was in good faith compliance with local pollution control requirements that substantially mirrored proposed NPDES discharge standards, and discharges at issue were minimal. Hughey v. JMS Development Corp., C.A.11 (Ga.) 1996, 78 F.3d 1523, rehearing and suggestion for rehearing en banc denied 89 F.3d 857, certiorari denied 117 S.Ct. 482, 519 U.S. 993, 136 L.Ed.2d 377. Environmental Law 206

14. Extension of time

Sewer authority, which never asserted it was engaged in any construction which would have achieved NPDES limitation under Clean Water Act [Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.] and which never sought federal financial assistance for that construction, was not entitled to extension of time to comply with its NPDES permit. Stoddard v. Western Carolina Regional Sewer Auth., C.A.4 (S.C.) 1986, 784 F.2d 1200. Environmental Law 201

15. Violations

In Clean Water Act (CWA) case, assessment of actual number of violations and civil penalties with respect to claimed violations of National Pollutant Discharge Elimination System (NPDES) permit effluent limitations and deadlines to construct and operate capital improvement project for wastewater treatment plant was more appropriately dealt with at later date than in ruling on motion for partial summary judgment on those claims; environmental groups seeking penalties had filed more definite statement with respect to another claim that was related to the other two, and it was appropriate to wait to make assessments until after all possible violations had been conclusively established as to each count in complaint in order to avoid any double counting of violations. Sierra Club, Hawaii Chapter v. City and County of Honolulu, D.Hawai'i 2007, 486 F.Supp.2d 1185. Federal Civil Procedure 2553

Residents of village located near mouth of river, who obtained their drinking water and food from river, failed to show that there were ongoing violations of National Pollutant Discharge Elimination System permit's daily cad-

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mium discharge limit on part of corporation engaged in business of zinc mining, where there was no evidence that same inadequately addressed source of trouble was causing violations. Adams v. Teck Cominco Alaska, Inc., D.Alaska 2005, 396 F.Supp.2d 1095. Environmental Law ⚷ 206

Discharge of pollutants into creek in absence of permit constituted violation of Clean Water Act for each day that such material remained in creek. Hudson River Fishermen's Ass'n v. Arcuri, S.D.N.Y.1994, 862 F.Supp. 73. Environmental Law ⚷ 206

Surface water discharge permit holder is responsible for terms of its discharge permit and violations of permit are unlawful. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 757 F.Supp. 438, reconsideration granted in part 790 F.Supp. 511. Environmental Law ⚷ 196

16. Defenses

National Pollutant Discharge Elimination System permittee violated permit's daily cadmium discharge limit; permittee's sampling error claim was not a viable defense to reported violation of permit. Adams v. Teck Cominco Alaska, Inc., D.Alaska 2005, 396 F.Supp.2d 1095. Environmental Law ⚷ 208

Stipulated Consent Order (SCO) issued by state, pertaining to limitations upon discharge of processing waste by seafood company, did not insulate company from liability in action alleging Clean Water Act (CWA) violations, since SCO was not considered by state to be equivalent of National Pollution Discharge Elimination System (NPDES) permit. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2005, 361 F.Supp.2d 1232. Environmental Law ⚷ 226

Holder of National Pollutant District Elimination System permit could not assert "upset" in defense following discharge of untreated water due to its failure to notify agency of violations within 24 hours. Public Interest Research Group of New Jersey v. U.S. Metals Refining Co., D.N.J.1987, 681 F.Supp. 237. Environmental Law ⚷ 208

Violations of permit limitations for nearly every day during approximately two and one-half month period were not exceptional or temporary and, therefore, were not "upsets," which would be excused violations of clean water standards. Chesapeake Bay Foundation, Inc. v. Bethlehem Steel Corp., D.Md.1987, 652 F.Supp. 620. Environmental Law ⚷ 208

Nuclear generating facility's violations of federal and state water pollution permits were not excused by Environmental Protection Agency's "upset" regulation regarding exceptional incidents in which there was unintentional and temporary noncompliance because of factors beyond reasonable control of permittee where noncompliance with effluent limitations of permits were clearly not temporary. Student Public Interest Research Group of New Jersey, Inc. v. Jersey Cent. Power & Light Co., D.N.J.1986, 642 F.Supp. 103. Environmental Law ⚷ 208; Environmental Law ⚷ 485

17. Authority of Environmental Protection Agency

Environmental Protection Agency (EPA) did not err in giving State of Maine permitting authority, under the Clean Water Act (CWA) and the Maine "Settlement Acts," with regard to 19 facilities which discharged pollutants into territorial waters of two Indian tribes. Maine v. Johnson, C.A.1 2007, 498 F.3d 37. Environmental Law ⚷ 196

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Environmental Protection Agency's (EPA) decision to transfer Clean Water Act (CWA) pollution permitting program for Arizona to that State was arbitrary and capricious, in violation of the Administrative Procedure Act (APA), in that it was internally inconsistent and inadequately explained; EPA relied on legally contradictory positions, during the administrative proceedings, regarding its obligations to consult regarding effect of a permitting transfer on listed species. Defenders of Wildlife v. U.S. Environmental Protection Agency, C.A.9 2005, 420 F.3d 946, rehearing en banc denied 450 F.3d 394, certiorari granted 127 S.Ct. 852, 166 L.Ed.2d 681, miscellaneous rulings 2007 WL 957193, certiorari granted 127 S.Ct. 853, 166 L.Ed.2d 681, miscellaneous rulings 2007 WL 957194. Environmental Law 220; Environmental Law 537

Clean Water Act (CWA) granted Environmental Protection Agency (EPA) authority to impose pollution control requirements, even to extent of requiring cities to regulate their residents, as condition of issuing requisite storm water discharge permit. City of Abilene v. U.S. E.P.A., C.A.5 2003, 325 F.3d 657, rehearing en banc denied 71 Fed.Appx. 443, 2003 WL 21418155. Environmental Law 197

Environmental Protection Agency (EPA) is not prohibited from requiring, under Clean Water Act, that municipal storm-sewer discharges strictly comply with state water-quality standards, but has discretion to determine appropriate pollution controls. Defenders of Wildlife v. Browner, C.A.9 (Cal.) 1999, 191 F.3d 1159, opinion amended on denial of rehearing 197 F.3d 1035. Environmental Law 197

18. Jurisdiction

Conditions set forth in state-issued National Pollutant Discharge Elimination System (NPDES) permit, which was approved by Environmental Protection Agency (EPA), qualified as "an effluent standard or limitation under this chapter," within meaning of citizen-suit provision of Clean Water Act (CWA), and federal court thus had jurisdiction over property's owner's CWA claims against owner of adjoining property, alleging violations of state-issued permit. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 226

District court had jurisdiction over implementation of wet weather combined sewer overflow standards established in proposed National Pollutant Discharge Elimination System (NPDES) permit based on preeminence of federal law in regulating and remedying pollution. U.S. v. State of Mich., E.D.Mich.1991, 777 F.Supp. 1365. Environmental Law 634

19. Stay of order

Salmon farms did not establish that they would suffer irreparable harm unless granted stay pending appeal challenging order and injunction which prevented them from depositing new year-class of fish into the water, pursuant to Clean Water Act (CWA), inasmuch as farms' economic performance was trumped by their duty to operate in compliance with requirements of CWA and court's rulings aimed at securing that compliance. U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC., D.Me.2003, 273 F.Supp.2d 126. Environmental Law 705

Massachusetts was not entitled to order staying for 120 days an order imposing sewer moratorium on some residential, commercial, and industrial sewer connections within area served by Massachusetts District Commission systems, in Clean Water Act litigation relating to pollution in Boston Harbor; Commonwealth sought stay while it appointed independent commission to determine whether selected landfill site was environmentally suitable and to evaluate alternative sites and technologies but Commonwealth did not produce facts in support of its op-

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position to selected site which it had previously approved. U.S. v. Metropolitan Dist. Com'n, D.Mass.1991, 761 F.Supp. 209, affirmed 930 F.2d 132. Action 68

20. Sovereign immunity

Congress did not waive national government's sovereign immunity from liability for civil fines imposed by state for past violations of Clean Water Act (CWA) or Resource Conservation and Recovery Act (RCRA). U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. United States 125(9)

II. FEDERAL PERMITS

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41. Discharge without permit, federal permits

Mining company was not entitled to National Pollution Discharge Elimination System (NPDES) permit under Clean Water Act (CWA) in connection with new copper mine, even though permit was conditioned on company partially remediating discharge from another mine, where creek was already impaired by excess of copper pol-

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lutant, permit allowed company to discharge additional amounts of dissolved copper into creek, and there was no indication of any compliance schedule that would bring creek within water quality standards. Friends of Pinto Creek v. U.S. E.P.A., C.A.9 2007, 504 F.3d 1007. Environmental Law ⚿ 196

Factual issue raised by owners and operators of abandoned mine facility concerning historical level of pollution compared to current level of pollution emanating from facility was not material to resolution of Clean Water Act claim that owners and operators were discharging pollutants into reservoir and river without National Pollutant Discharge Elimination System (NPDES) permit in violation of Clean Water Act and, therefore, any question as to that issue did not preclude summary judgment on issue of liability. Committee To Save Mokelumne River v. East Bay Mun. Utility Dist., C.A.9 (Cal.) 1993, 13 F.3d 305, certiorari denied 115 S.Ct. 198, 513 U.S. 873, 130 L.Ed.2d 130. Federal Civil Procedure ⚿ 2498.3

Skeet and trap club's operation of shooting range on state property without pollution discharge permit did not violate Clean Water Act (CWA), where club ceased operating range eighteen months before suit was filed, state instructed club that it would not authorize reopening of range until it was physically reconfigured to ensure that no lead shot could reach areas protected by CWA, and state repeatedly rejected plans that did not comply with CWA. Potomac Riverkeeper, Inc. v. National Capital Skeet and Trap Club, Inc., D.Md.2005, 388 F.Supp.2d 582. Environmental Law ⚿ 196

County was not "discharger" of pollution into waters of United States, and could not be held liable under Clean Water Act (CWA), for stormwater runoff from state highway owned, maintained, operated, and controlled by state. Jones v. E.R. Snell Contractor, Inc., N.D.Ga.2004, 333 F.Supp.2d 1344, affirmed 120 Fed.Appx. 786, 2004 WL 2157261, certiorari denied 125 S.Ct. 1735, 544 U.S. 962, 161 L.Ed.2d 603. Environmental Law ⚿ 226

Clean Water Act (CWA) does not require Environmental Protection Agency (EPA) to regulate all stormwater discharges, nor does it require EPA to use National Pollution Discharge Elimination System (NPDES) permits to regulate those discharges EPA does designate for regulation. Conservation Law Foundation v. Hannaford Bros. Co., D.Vt.2004, 327 F.Supp.2d 325, affirmed 139 Fed.Appx. 338, 2005 WL 1712899. Environmental Law ⚿ 196

Clean Water Act's requirement [33 U.S.C.A. § 1342] that all discharges covered by statute must have national pollution discharge elimination system permit is unconditional and absolute; any discharge except pursuant to permit is illegal. U.S. v. Tom-Kat Development, Inc., D.C.Alaska 1985, 614 F.Supp. 613. Environmental Law ⚿ 196

42. Conduit for pollutants, federal permits

Environmental organization that brought citizen's suit against timber companies and Environmental Protection Agency (EPA) properly alleged that company employed unpermitted conduits to discharge stormwater and pollutants from logging activities into creek, as required to state claim under Clean Water Act (CWA); complaint averred that company's culverts and drainage ditches on logging sites constituted discharge "point sources" for which National Pollutant Discharge Elimination System (NPDES) permit was required. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2004, 301 F.Supp.2d 1102, motion to certify denied 2004 WL 838160. Environmental Law ⚿ 206

Once person creates conduit for pollutants, no further act is necessary to violate Clean Water Act, regardless of

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whether conduit meets technical permit requirements; if permit coverage is required for conduit and it is not obtained, conduit is in continual violation of Act. Molokai Chamber of Commerce v. Kukui (Molokai), Inc., D.Hawai'i 1995, 891 F.Supp. 1389. Environmental Law ⚿ 206

43. Persons required to obtain permits, federal permits

Owners and operators of oil and gas sites were exempted under Energy Policy Act from National Pollutant Discharge Elimination System (NPDES) general permit requirements for uncontaminated storm water discharges from construction activities, and thus organizations representing owners and operators did not have standing under Clean Water Act (CWA) to challenge validity of general permit as applied to uncontaminated discharges. Texas Independent Producers and Royalty Owners Ass'n v. E.P.A., C.A.7 2006, 435 F.3d 758. Environmental Law ⚿ 652

Water management district's pumping station, which moved water from navigable body of water, which contained pollutants, into another distinct body of navigable water into which water would not have otherwise flowed, was point source which added pollutants, within meaning of Clean Water Act (CWA), and thus national pollution discharge elimination system (NPDES) permit was required. Miccosukee Tribe of Indians of Florida v. South Florida Water Management Dist., C.A.11 (Fla.) 2002, 280 F.3d 1364, rehearing and rehearing en banc denied 45 Fed.Appx. 880, 2002 WL 1424348, certiorari granted in part 123 S.Ct. 2638, 539 U.S. 957, 156 L.Ed.2d 655, vacated 124 S.Ct. 1537, 541 U.S. 95, 158 L.Ed.2d 264, rehearing denied 124 S.Ct. 2198, 541 U.S. 1057, 158 L.Ed.2d 758, miscellaneous rulings 124 S.Ct. 2926, 542 U.S. 934, 159 L.Ed.2d 809, miscellaneous rulings 125 S.Ct. 242, 543 U.S. 805, 160 L.Ed.2d 7. Environmental Law ⚿ 175; Environmental Law ⚿ 196

Under this chapter, federal agencies are required to obtain state discharge permits, however, Army Corps of Engineers is not required to obtain discharge permits from the State of Minnesota either under the state's National Pollutant Discharge Elimination System program, which has been approved by the Environmental Protection Agency, or under the Minnesota disposal system, which has not been authorized by federal law and has not been submitted to the Agency for approval. State of Minn. by Spannaus v. Hoffman, C.A.8 (Minn.) 1976, 543 F.2d 1198, certiorari denied 97 S.Ct. 1672, 430 U.S. 977, 52 L.Ed.2d 373. Environmental Law ⚿ 196

Evidence supported conclusion that city violated Clean Water Act by discharging raw sewage into local bodies of water without permit from Environmental Protection Agency (EPA). Hawaii's Thousand Friends, Life of Land, Inc. v. City and County of Honolulu, D.Hawai'i 1992, 806 F.Supp. 225. Environmental Law ⚿ 230

State transportation department and Federal Highway Administration (FHwA) were not required to obtain National Pollutant Discharge Elimination System (NPDES) permit to allow runoff from stripping of hillside to go into lake, despite allegations that such runoff violated conditions in Clean Water Act § 404 permit; only § 404 permit was required for placement of fill in lake and failure to comply with conditions of § 404 permit would not give rise to need for additional permit. Coeur D'Alene Lake v. Kiebert, D.Idaho 1992, 790 F.Supp. 998. Environmental Law ⚿ 136; Environmental Law ⚿ 196

Postal Service did not violate National Pollutant Discharge Elimination System (NPDES) section of Clean Water Act in proposed construction of mail processing facility on site which contained wetlands, even though Postal Service did not comply with permit procedures, but did address concerns in its amended assessment and, as design plan changes resulted in decision not to construct in wetland area, Postal Service did not need to obtain permit. City of Waltham v. U.S. Postal Service, D.Mass.1992, 786 F.Supp. 105, affirmed 11 F.3d 235. Environ-

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mental Law 206; Environmental Law 196

Under Michigan law, both counties that operated sewage disposal facilities and municipalities responsible for sewage discharges, rather than counties alone, were proper National Pollutant Discharge Elimination System permittees under Clean Water Act; construction of new facilities and creation of indebtedness for that construction could only be accomplished by voluntary agreement between counties and municipalities under state law. U.S. v. State of Mich., E.D.Mich.1991, 781 F.Supp. 1230. Environmental Law 196; Environmental Law 179

Discharger of pollutant could not escape liability for failing to satisfy its responsibility under Clean Water Act for obtaining national pollutant discharge elimination system permit by asserting that Pennsylvania Department of Environmental Resources was party charged with duty of complying with Act. Wiconisco Creek Watershed, Ass'n v. Kocher Coal Co., M.D.Pa.1986, 646 F.Supp. 177. Environmental Law 206

44. Failure to obtain permit, federal permits

Under the Clean Water Act, discharges of dredged or fill materials into waters of the United States, regulated under § 404, did not require § 402 permit, and, thus, city could not as matter of law be found liable for failure to obtain § 402 for local dredging project, despite contention by community group that adequate environmental safeguards were absent unless §§ 402 and 404 both applied. Canada Community Imp. Soc., Inc. v. City of Michigan City, Ind., N.D.Ind.1990, 742 F.Supp. 1025. Environmental Law 196; Environmental Law 136

Where defendants alleged that there was no requirement that National Pollutant Discharge Elimination System permit be obtained in advance of actual construction, and there was no allegation that defendants had failed or refused to comply with terms and conditions of any permit so required nor was there any indication that required permit would not be issued, failure to obtain permit for proposed rail commuter terminal did not render Secretary of Transportation's decision to provide $240,000,000 grant to city for construction of tunnel in violation of this chapter. Philadelphia Council of Neighborhood Organizations v. Coleman, E.D.Pa.1977, 437 F.Supp. 1341, motion denied 451 F.Supp. 114, affirmed 578 F.2d 1375. Environmental Law 180

45. Issuance by Administrator, federal permits

Environmental Protection Agency (EPA) was not required by Clean Water Act (CWA) to take enforcement action against all illegal discharges of pollutants, and therefore its issuance of permit to mine operator was not mandated by statute and did not support request for attorney fees, under catalyst theory, of environmental groups that had sued to compel EPA to act. Bravos v. E.P.A., C.A.10 (N.M.) 2003, 324 F.3d 1166, 190 A.L.R. Fed. 643. Environmental Law 716

Vesting of initial decision on applications for effluent limitation permits by operators of offshore oil platforms and onshore facility in the Regional Administrator, who asked for further hearings before the administrative law judge and reviewed matter prior to issuance of initial license, did not violate due process, contrary to claim of applicants that the Administrator's review of draft permits which he originally issued did violate due process. Marathon Oil Co. v. E.P.A., C.A.9 1977, 564 F.2d 1253. Constitutional Law 4323

46. Discretion of Administrator, federal permits

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Environmental Protection Agency (EPA) established substantive controls for municipal storm water discharges required by amendments to Clean Water Act as result of administrator's discretion to determine which controls were necessary. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.9 1992, 966 F.2d 1292. Environmental Law ⚷ 175

Environmental Protection Agency's (EPA's) exemption from permit requirements under Clean Water Act storm water discharge rule for uncontaminated runoff from mining, oil, and gas facilities was not arbitrary and capricious; conference report gave administrator discretion to determine when contamination had occurred with respect to overburden, raw materials, waste products, and other items. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.9 1992, 966 F.2d 1292. Environmental Law ⚷ 176

Use of word "may" in this section providing that the Administrator may issue permit for discharge of any pollutant means only that the Administrator has the discretion either to issue permit or to leave pollutant discharger subject to total proscription of section 1311 of this title making discharge of any pollutant by any person unlawful except as provided in section 1311 of this title. Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.1977, 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law ⚷ 196

The Administrator of Environmental Protection Agency did not have latitude under section 407 of this title or this section to exempt categories of "point" sources, such as uncontaminated storm runoff from storm sewers, silvicultural activities and irrigation return flow from "point" sources when the flow is from less than 3,000 acres, from the permit requirements pursuant to the National Pollutant Discharge Elimination System. Natural Resources Defense Council, Inc. v. Train, D.C.D.C.1975, 396 F.Supp. 1393, affirmed 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law ⚷ 201

47. Factors considered, federal permits

Environmental groups' claim that copper discharge from diversion channels and cutoff walls to be built in connection with proposed new copper mine had to be considered in determining whether to issue National Pollution Discharge Elimination System (NPDES) permit under Clean Water Act (CWA) was timely raised and should not have been deemed forfeited, but it should have been considered by Environmental Protection Agency's (EPA) Appeals Board, even though groups did not raise additional sources in first comment period for permit, where total maximum daily load (TMDL) for copper discharges had not been established before end of initial comment period, and groups raised claims during comment period after TMDL was performed. Friends of Pinto Creek v. U.S. E.P.A., C.A.9 2007, 504 F.3d 1007. Environmental Law ⚷ 222

No grounds existed warranting reconsideration of determination that presence of pollutants in interbasin transfer was an "addition" of pollutant so as to trigger Clean Water Act's (CWA's) permit requirements; federal regulation of interbasin water transfers would not lead to the termination of those transfers in contravention of the rights explicitly reserved to the states. Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, C.A.2 (N.Y.) 2006, 451 F.3d 77, certiorari denied 127 S.Ct. 1373. Environmental Law ⚷ 708

Environmental Protection Agency (EPA) had an independent duty, under section 7 of Endangered Species Act (ESA), to insure its decision, to transfer Clean Water Act (CWA) pollution permitting program for Arizona to that State, was not likely to jeopardize protected species or adversely modify their habitat, and therefore EPA erred in concluding it was required to disregard impact of the transfer on listed species; transfer decision was within EPA's decision-making authority, and would trigger consultation requirement inasmuch as it would be a cause of harm resulting from loss of consultation. Defenders of Wildlife v. U.S. Environmental Protection

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Agency, C.A.9 2005, 420 F.3d 946, rehearing en banc denied 450 F.3d 394, certiorari granted 127 S.Ct. 852, 166 L.Ed.2d 681, miscellaneous rulings 2007 WL 957193, certiorari granted 127 S.Ct. 853, 166 L.Ed.2d 681, miscellaneous rulings 2007 WL 957194. Environmental Law 537

In determining whether to issue permits allowing operators of underground coal mines to discharge water from their mines, any failure on part of Environmental Protection Agency to consider potential impact of other planned mines was not error, for opening of mines in consideration did not represent a practical commitment to others. Webb v. Gorsuch, C.A.4 1983, 699 F.2d 157. Environmental Law 604(5)

In issuing National Pollutant Discharge Elimination System permit to pipe company, it was appropriate for the Environmental Protection Agency to rely principally upon its own "personalized", "best practicable technology", as established in consent decree negotiated in suit brought by Agency against applicant for permit. State of Ala. ex rel. Baxley v. Environmental Protection Agency, C.A.5 (Ala.) 1977, 557 F.2d 1101. Environmental Law 220

Check dams and sediment traps that were constructed in ditches on coastal landing tract in effort to reduce discharge of pollutants into bodies of water were "point sources" under the Clean Water Act (CWA), and thus dams and traps were subject to CWA discharge permit requirements; testimony indicated that check dams on tract had been completely buried by sediment and that sediment had been discharged from dams and traps into waters of the United States. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 175

Downstream state's color standard was "relevant factor" that Environmental Protection Agency was entitled to consider when it determined that discharge levels contained in permit issued by upstream state would have undue impact on interstate waters and when it assumed permitting authority in connection with waste-water discharge in upstream state, in that dispute did not involve common-law nuisance for which law of point source state was to be applied. Champion Intern. Corp. v. U.S. E.P.A., W.D.N.C.1987, 652 F.Supp. 1398. Environmental Law 193

Ocean discharge criteria must be satisfied before Department of Environmental Protection (DEP) can issue national pollutant discharge elimination system permit, even though criteria are not included in Environmental Protection Agency's (EPA) list of regulatory sections applicable to all states. Matter of Issuance of a Permit by Dept. of Environmental Protection to Ciba-Geigy Corp., N.J.1990, 576 A.2d 784, 120 N.J. 164. Environmental Law 196

48. Exclusions, federal permits

Environmental Protection Agency's (EPA's) rules excluding various types of light industry and construction sites of less than five acres from application of Clean Water Act storm water discharge rule were arbitrary and capricious absent support in record for assumption that industrial activity or light industry would take place indoors and generate minimal amounts of particles and emissions. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.9 1992, 966 F.2d 1292. Environmental Law 175

Timber harvesting activities and timber companies' use of logging roads fell within silvicultural exemption promulgated by Environmental Protection Agency (EPA), such that discharge of stormwater from ditches alongside logging roads in state forest did not require National Pollutant Discharge Elimination System (NPDES) permit pursuant to Clean Water Act (CWA) provision relating to stormwater discharges associated with industrial activ-

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ity. Northwest Enviromental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law 201

Shopping plaza owner did not violate Clean Water Act (CWA) by failing to obtain National Pollution Discharge Elimination System (NPDES) permit for stormwater discharge from parking lot, since discharge had been left unregulated before CWA Phase II regulations went into effect, and neither Environmental Protection Agency (EPA) nor state agency had exercised residual designation authority to require permit. Conservation Law Foundation v. Hannaford Bros. Co., D.Vt.2004, 327 F.Supp.2d 325, affirmed 139 Fed.Appx. 338, 2005 WL 1712899. Environmental Law 196

49. State conditions or limitations, federal permits

Administrator, in National Pollutant Discharge Elimination System permit proceedings, had no authority to consider applicant's challenges to validity of state water quality standards, but was required to include in permit any more stringent state limitations, including those necessary to meet state water quality standards. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law 197

50. Determination of effluent limitations, federal permits

When Environmental Protection Agency (EPA) has not yet issued national effluent guidelines for category of point sources, EPA is authorized under the Clean Water Act (CWA) to develop such limitations in a National Pollutant Discharge Elimination System (NPDES) permit on a case-by-case basis. American Min. Congress v. U.S. E.P.A., C.A.9 1992, 965 F.2d 759. Environmental Law 197

Where numeric effluent limitations are infeasible, point of discharge permits may proscribe industry practices which aggravate problems of point source pollution as well as require monitoring and reporting of effluent levels contrary to claim that any limitations must be issued in terms of a numerical effluent standard. Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.1977, 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law 197

Under this section relating to National Pollutant Discharge Elimination System permit proceedings, Environmental Protection Agency has power to set limitations for pollutant discharge permits lower than those that would result from use of arbitrary multiplier contained in Agency's own guidelines for industry. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law 197

Discharge of selenium in excess of numeric standard set forth in oil refinery's interim National Pollution Discharge Elimination System (NPDES) permit was sufficient to prove violation of permit; although permit stated that limits were intended to be "a cap on current performance," showing of change in current performance was not necessary to prove violation, where purpose of "current performance" language was only to show how numeric standard was derived and how water board might choose to exercise its enforcement authority. California Public Interest Research Group v. Shell Oil Co., N.D.Cal.1993, 840 F.Supp. 712. Environmental Law 206

51. Army refuse permits, federal permits

Permit, granted by the Department of the Army in 1948, which authorized taconite processing company to construct a steel sheet pile dock and to deposit tailings from its ore processing mill into Lake Superior, was valid as it related to possible impediments in navigation, but did not sanction the continued dumping of refuse matter in-

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to Lake Superior. Reserve Mining Co. v. Environmental Protection Agency, C.A.8 (Minn.) 1975, 514 F.2d 492, modified on other grounds 529 F.2d 181, on remand 408 F.Supp. 1212, on remand 412 F.Supp..705, on remand 417 F.Supp. 789. Environmental Law ⚷ 196; Navigable Waters ⚷ 25

52. Environmental impact statements, federal permits

Since temporary landfill project to dispose of Los Angeles waste water treatment plant's sludge product was a condition of National Pollutant Discharge Elimination System permit, which included compliance schedule requiring Los Angeles to gradually abandon its practice of discharging sludge into the ocean, it came within exemptions to environmental impact statement requirement for compliance schedules in NPDES old source permits, notwithstanding contention that in issuing permit the Environmental Protection Agency anticipated a decision belonging to the grant process, namely, decisions to provide financial aid for a particular project of construction and equipment modification. Kilroy v. Quarles, C.A.9 (Cal.).1980, 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law ⚷ 595(6)

53. Agreements to obtain permit, federal permits

Agreement entered into between Environmental Protection Agency and Department of Energy permitting breeder reactor project to commence site preparation activities but prohibiting project from making any point source discharges of waste water until project obtained National Pollution Discharge Elimination System permit was a legally binding agreement, since it contained effluent limitation and was judicially enforceable by citizens and states, it was binding and could be enforced within executive branch, and Environmental Protection Agency could redress violations of agreement by refusing to issue the permit. Natural Resources Defense Council, Inc. v. Zeller, C.A.11 (Ga.) 1982, 688 F.2d 706. Environmental Law ⚷ 485; Environmental Law ⚷ 196

54. Public hearings, federal permits--Generally

National Pollutant Discharge Elimination System permit was issued in full compliance with public participation requirement even though the Environmental Protection Agency incorporated into the permit the same limitations contained in consent decree negotiated in Agency suit against applicant where adequate public participation was afforded and the consent decree merely served as the starting point of the permit proceedings and the effluent limitations contained in the consent decree were negotiated with the intention of complying with this chapter. State of Ala. ex rel. Baxley v. Environmental Protection Agency, C.A.5 (Ala.) 1977, 557 F.2d 1101. Environmental Law ⚷ 220

55. ---- Necessity, public hearings, federal permits

The Environmental Protection Agency did not err in not holding an adjudicatory hearing on issues raised in request for such hearing with respect to extension of permit for discharge of sewage into the Pacific Ocean, where request did not raise material issues of fact pertinent to the question of whether the permit should be extended. Costle v. Pacific Legal Foundation, U.S.Cal.1980, 100 S.Ct. 1095, 445 U.S. 198, 63 L.Ed.2d 329, rehearing denied 100 S.Ct. 2177, 446 U.S. 947, 64 L.Ed.2d 804. Environmental Law ⚷ 220

Environmental Protection Agency (EPA) acted within its authority in denying Puerto Rico Aqueduct and Sewer Authority (PRASA) evidentiary hearing to contest resolution of National Pollution Discharge Elimination System (NPDES) proceedings in which PRASA was denied relief from secondary treatment requirements concerning its publicly owned treatment work (POTW), where PRASA's studies failed to draw direct conclusions, re-

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quired by regulations, regarding future impacts respecting its facility under stressed waters analysis. Puerto Rico Aqueduct and Sewer Authority v. U.S. E.P.A., C.A.1 1994, 35 F.3d 600, certiorari denied 115 S.Ct. 1096, 513 U.S. 1148, 130 L.Ed.2d 1065. Health ⚷ 374

Clean Water Act requires promotion of public participation in process of issuing permits for discharge, in form of notice and opportunity for hearing, at both federal and state level, and public notice and opportunity to comment in rule-making proceedings is mandated by the Administrative Procedure Act. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Administrative Law And Procedure ⚷ 394; Environmental Law ⚷ 220

The Administrator of the Environmental Protection Agency was required to conduct a hearing for purpose of allowing parties challenging pollutant discharge permits issued by the EPA to Alaska gold miners to present evidence on effluent limitations for arsenic and mercury and on appropriate monitoring requirements. Trustees for Alaska v. E.P.A., C.A.9 1984, 749 F.2d 549. Environmental Law ⚷ 228

56. ---- Rules and regulations, public hearings, federal permits

Regulations which the Environmental Protection Agency promulgated to implement congressional policy of "opportunity for public hearing" with respect to issuance, denial of modification of permit for discharge of pollutants into navigable waters, under which hearing is to be held if regional administrator finds a significant degree of public interest in proposed permit and, after determination is made, adjudicatory hearing is to be granted if request for hearing sets forth material issues of fact, were valid and the Agency is not required to hold a public hearing on every permit action unless it can show that the material facts supporting this action "are not subject to dispute". Costle v. Pacific Legal Foundation, U.S.Cal.1980, 100 S.Ct. 1095, 445 U.S. 198, 63 L.Ed.2d 329, rehearing denied 100 S.Ct. 2177, 446 U.S. 947, 64 L.Ed.2d 804. Environmental Law ⚷ 220

Regulations requiring that objections to issuance of National Pollution Discharge Elimination System (NPDES) permit be raised during public comment period are intended to alert Environmental Protection Agency (EPA) to potential problems with draft permit and to ensure that it has opportunity to address those problems before permit becomes final. Adams v. U.S. E.P.A., C.A.1 1994, 38 F.3d 43. Environmental Law ⚷ 220

Regulations issued by the Environmental Protection Agency pursuant to this chapter, were not sufficient to satisfy Agency duty to establish guidelines regarding public participation in state National Pollutant Discharge Elimination System enforcement process. Citizens for a Better Environment v. E.P.A., C.A.7 1979, 596 F.2d 720. Environmental Law ⚷ 205

57. Form and content of permit, federal permits

In issuing case-by-case National Pollutant Discharge Elimination System permits establishing effluent standards for toxic and conventional pollutants, prior to implementation of national, industry-wide standards, on best professional judgment basis, EPA does not have unlimited discretion in establishing permit effluent limitations; rather, EPA's own regulations implementing statutory authorization for issuance of permits enumerates statutory factors that must be considered in writing permits. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.9 1988, 863 F.2d 1420. Environmental Law ⚷ 197

This chapter required the Administrator of the Environmental Protection Agency to include in gold placer mining pollutant discharge permits whatever effluent limitations it determined were necessary to achieve Alaskan

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water quality standards. Trustees for Alaska v. E.P.A., C.A.9 1984, 749 F.2d 549. Environmental Law ⚷ 197

This chapter merely requires that point of discharge permits be in compliance with section 1311 of this title and as a result the use of area or general permits is allowed. Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.1977, 568 F.2d 1369, 186 U.S.App.D.C. 147. Environmental Law ⚷ 196

Provision of this chapter requiring Regional Administrator, in National Pollutant Discharge Elimination System permit proceedings, to put state limitations in permit, is not limited to restrictions based on water quality standards, but extends to any more stringent limitation adopted by state; administrator has no authority to inquire into whether limitations adopted by state were necessary to achieve water quality standards. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law ⚷ 197

Department of Environmental Protection (DEP) must determine whether final permit under national pollutant discharge elimination system permit satisfies ocean discharge criteria and must state in both draft and final permit whether finding is based on regulatory criteria to determine whether there is unreasonable degradation of marine environment or on presumption of no unreasonable degradation. Matter of Issuance of a Permit by Dept. of Environmental Protection to Ciba-Geigy Corp., N.J.1990, 576 A.2d 784, 120 N.J. 164. Environmental Law ⚷ 196

58. Conditions of permit, federal permits

Environmental Protection Agency (EPA) requirement for National Pollution Discharge Elimination System (NPDES) permit that discharge of effluent from Arkansas sewage treatment plant comply with Oklahoma's water quality standards was reasonable exercise of agency's statutory discretion; discharge into Illinois River would travel through Arkansas and over Oklahoma border. Arkansas v. Oklahoma, U.S.1992, 112 S.Ct. 1046, 503 U.S. 91, 117 L.Ed.2d 239, on remand 962 F.2d 996. Environmental Law ⚷ 197

Conditions imposed on storm water discharge permits issued to cities under Clean Water Act (CWA) were not arbitrary or capricious, even if it was inevitable that pollutants discharged by third parties would enter storm sewer system; permit expressly exempted cities from liability for third-party discharges. City of Abilene v. U.S. E.P.A., C.A.5 2003, 325 F.3d 657, rehearing en banc denied 71 Fed.Appx. 443, 2003 WL 21418155. Environmental Law ⚷ 197

Regulation prohibiting National Pollution Discharge Elimination System permittee from bypassing any portion of treatment facility, even when effluent limitations were not exceeded, was authorized by Clean Water Act and consistent with Act's policies. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.D.C.1987, 822 F.2d 104, 261 U.S.App.D.C. 372. Environmental Law ⚷ 186

Environmental Protection Agency has authority to impose a sewer hookup moratorium or diversion to land treatment as a condition of the national pollution discharge elimination system permit issued to a municipal sewage treatment facility; characterizing diversion to land treatment as best practical waste treatment technology, a standard not applicable to municipal systems not receiving federal grants until 1983, does not automatically bring it outside scope of agency authority to impose permit conditions necessary to assure compliance with effluent limitations. Montgomery Environmental Coalition v. Costle, C.A.D.C.1980, 646 F.2d 568, 207 U.S.App.D.C. 233. Environmental Law ⚷ 197

This section, which does not purport to address question of permit modification but allows permitholder an ab-

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solute defense if he can demonstrate compliance with his permit unless standard sought to be enforced is a toxic pollutant standard relating to human health, did not prohibit Environmental Protection Agency from including in permit allowing steel manufacturer to discharge certain pollutants in wastewater from its integrated steel-manufacturing facility a condition that permit would be modified to reflect subsequently adopted more stringent toxic pollutant standards. Inland Steel Co. v. E.P.A., C.A.7 1978, 574 F.2d 367. Environmental Law ⚿ 197

Environmental Protection Agency in writing a formal upset provision in an effluent permit is free to place burden on permit holder of producing relevant data and proving that upset could not have been prevented. Marathon Oil Co. v. E.P.A., C.A.9 1977, 564 F.2d 1253. Environmental Law ⚿ 208

Under this chapter when no effluent limitations or guidelines are yet available with respect to a particular class or category of point source, National Pollutant Discharge Elimination System permits are to be issued upon such conditions as Administrator determines are necessary to carry out provisions of this chapter. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law ⚿ 197

Administrator, as incident to his power to issue permits authorizing discharge of pollutants into surface waters, did not have authority to place conditions in such permits controlling disposal of wastes into deep wells. Exxon Corp. v. Train, C.A.5 (Ala.) 1977, 554 F.2d 1310. Environmental Law ⚿ 197

Water and sewer authority did not violate terms and conditions of its National Pollutant Discharge Elimination System (NPDES) permit by failing to install odor controlled carbon filters on vents located on Park Service property, and thus odor control could not be enforced by means of citizen suit under Clean Water Act (CWA), despite contentions that odor control was implied condition of permit's maintenance and operations (M & O) clause, and that authority had duty to Park Service to install and maintain filters, where permit did not refer to authority's duty to Park Service, or explicitly require authority to install carbon filters or odor control. American Canoe Ass'n, Inc. v. District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law ⚿ 196; Environmental Law ⚿ 197

As long as there exists a practical land disposal method for water treatment plant's pollutants, the Environmental Protection Agency need not evaluate the alternative of deep ocean dumping when it formulates conditions for a National Pollutant Discharge Elimination System permit or when it authorizes a grant of federal funds to develop a project designed to achieve compliance with this chapter. Pacific Legal Foundation v. Quarles, C.D.Cal.1977, 440 F.Supp. 316, affirmed 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law ⚿ 604(6)

59. Termination or modification, federal permits

Regional Water Quality Control Board's cease-and-desist order, providing deferred compliance schedule for selenium discharges as part of settlement with oil company to avoid state enforcement action, did not effectively modify terms of oil company's National Pollution Discharge Elimination System (NPDES) permit so as to preclude citizen suit to enforce effluent standards under Clean Water Act (CWA), but rather was merely exercise of state's prosecutorial discretion; language of order did not purport to modify NPDES permit, procedural requirements for formal modification of NPDES permits were not followed, and CWA expressly precluded modification of NPDES permit to allow less stringent effluent limitations than in previous permit. Citizens for a Better Environment-California v. Union Oil Co. of California, C.A.9 (Cal.) 1996, 83 F.3d 1111, as amended , certiorari denied 117 S.Ct. 789, 519 U.S. 1101, 136 L.Ed.2d 731. Environmental Law ⚿ 198

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"Technical mistakes," such as would permit Court of Appeals to disturb Environmental Protection Agency's denial of petition to modify waste discharge permit, include only clerical or computer errors, mathematical mistakes and the like; term cannot be interpreted to refer to any erroneous findings of technical fact. Texas Mun. Power Agency v. Administrator of U.S. E.P.A., C.A.5 1988, 836 F.2d 1482. Administrative Law And Procedure 785; Environmental Law 682

"For cause", as used in this section giving Administrator authority to issue permits that can be terminated or modified for cause including but not limited to change in any condition that requires either temporary or permanent reduction or elimination of permitted discharge, does not refer only to conduct of permitholder and in fact seems broad enough to cover adoption of more stringent toxic pollutant standards, and thus this section does not limit Administrator's authority to modify permits to reflect subsequently adopted more stringent toxic pollutant standards. Inland Steel Co. v. E.P.A., C.A.7 1978, 574 F.2d 367. Environmental Law 198

If effluent limitations in a federally issued permit proved to be unreasonable or cannot be met for cause beyond the control of the permittee, permit may be revised. CPC Intern., Inc. v. Train, C.A.8 1976, 540 F.2d 1329, certiorari denied 97 S.Ct. 1646, 430 U.S. 966, 52 L.Ed.2d 357. Environmental Law 198

Informal and unilateral action such as letters from the state Environmental Protection Agency to a National Pollution Discharge Elimination System permittee were insufficient to modify conditions of NPDES permit. U.S. v. Ohio Edison Co., N.D.Ohio 1989, 725 F.Supp. 928. Environmental Law 198

Designation of substances as hazardous is a change in circumstances that gives rise to allowable changes in permits and enforcement of more stringent controls over discharges even during life of an existing permit in cases where circumstances have changed since issuance of original permit, but new limitations must be issued and implemented in a manner which is reasonable and fair, and which attempts to cause as little economic inconvenience to dischargers whose permits are being revised as possible under circumstances. Manufacturing Chemists Ass'n v. Costle, W.D.La.1978, 455 F.Supp. 968. Environmental Law 198; Environmental Law 432

60. Anticipatory breach, federal permits

Principle of anticipatory breach, a contract concept, is contrary to statutory scheme of Clean Water Act (CWA), which provides for modification of National Pollutant Discharge Elimination System (NPDES) permits issued under state programs, so as to allow revisions to obligations prior to effective date of those obligations. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, N.D.Ga.1996, 953 F.Supp. 1541. Environmental Law 198

61. Restrictions or prohibitions, federal permits

Requirement in storm water discharge permits issued to Texas home-rule cities under Clean Water Act (CWA), that cities ensure that they had legal authority to implement permit conditions, was not arbitrary or capricious; there was no evidence that cities lacked authority to implement permits or that any Texas statute precluded implementation. City of Abilene v. U.S. E.P.A., C.A.5 2003, 325 F.3d 657, rehearing en banc denied 71 Fed.Appx. 443, 2003 WL 21418155. Environmental Law 197

Court-imposed ban on new sewer hookups to Boston Harbor discharge system until Massachusetts legislature gave to Massachusetts Water Resources Authority right to acquire suitable landfill site was reasonable remedy for violation of Clean Water Act, even though new commission was created to propose alternative to Authority's

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preferred site within four months, and even though construction did not need to start at landfill for 17 months. U.S. v. Metropolitan Dist. Com'n, C.A.1 (Mass.) 1991, 930 F.2d 132. Environmental Law ⚷ 695

Order imposing ban on some new sewer hookups as part of Boston Harbor cleanup was authorized by Federal Clean Water Act. U.S. v. Metropolitan Dist. Com'n, D.Mass.1991, 761 F.Supp. 206, modification denied 761 F.Supp. 209, affirmed 930 F.2d 132. Environmental Law ⚷ 176

62. Administrative review, federal permits

By failing to identify with sufficient clarity and specificity its objections, the Michigan Department of Environmental Quality procedurally defaulted at the administrative appeals level its objections to the actions of Administrator of Environmental Protection Agency (EPA) in issuing, under the Federal Water Pollution Control Act, a National Pollutant Discharge Elimination System permit to a wastewater treatment facility; instead of explaining to the Environmental Appeals Board why the Region's detailed responses to its comments were clearly erroneous, Michigan simply repackaged its comments and EPA's response as unmediated appendices to its petition to the Board. Michigan Dept. of Environmental Quality v. U.S. E.P.A., C.A.6 2003, 318 F.3d 705. Environmental Law ⚷ 222

Opponent of National Pollution Discharge Elimination System (NPDES) permit under Clean Water Act, and other participants in public comment period, submitted statements which satisfied threshold requirement of materiality, as required to preserve issues for administrative review, regarding Environmental Protection Agency's (EPA's) compliance with Ocean Discharge Criteria (ODC) by alerting EPA to their concern that EPA had not adequately complied with mandates of ODC when it issued draft permit allowing discharge of effluent from proposed municipal wastewater treatment facility; opponent specifically referred to ODC, challenged design and location of outfall and accuracy of information presented by engineers regarding outfall, questioned whether dilution calculations were correct, and raised concerns as to detrimental impact on beaches, shellfish and other marine life. Adams v. U.S. E.P.A., C.A.1 1994, 38 F.3d 43. Environmental Law ⚷ 222

63. First Amendment

Public education requirements imposed by Environmental Protection Agency (EPA) on cities as condition of issuing Clean Water Act (CWA) storm water discharge permits, did not violate cities' First Amendment rights; cities were given legitimate choice of accepting permits with such requirements or permits with more stringent numeric effluent limitations. City of Abilene v. U.S. E.P.A., C.A.5 2003, 325 F.3d 657, rehearing en banc denied 71 Fed.Appx. 443, 2003 WL 21418155. Constitutional Law ⚷ 1590; Environmental Law ⚷ 197

64. Tenth Amendment

Environmental Protection Agency's (EPA's) requirement that cities set up pollution control programs, as condition of issuing Clean Water Act (CWA) storm water discharge permits, did not violate Tenth Amendment, even if programs required cities to regulate their residents according to federal standards; cities were given legitimate choice of accepting regulatory programs or numeric effluent limitations. City of Abilene v. U.S. E.P.A., C.A.5 2003, 325 F.3d 657, rehearing en banc denied 71 Fed.Appx. 443, 2003 WL 21418155. Environmental Law ⚷ 197; States ⚷ 4.16(1)

33 U.S.C.A. § 1342, 33 USCA § 1342
Current through P.L. 110-198 approved 3-24-08

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ATTACHMENT NO. 3

CWA § 502

Effective: August 8, 2005

United States Code Annotated Currentness
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter V. General Provisions
§ 1362. Definitions

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland

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waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D--Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

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(20) The term "medical waste" means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

(21) Coastal recreation waters

(A) In general

The term "coastal recreation waters" means--

(i) the Great Lakes; and

(ii) marine coastal waters (including coastal estuaries) that are designated under section 1313(c) of this title by a State for use for swimming, bathing, surfing, or similar water contact activities.

(B) Exclusions

The term "coastal recreation waters" does not include--

(i) inland waters; or

(ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

(22) Floatable material

(A) In general

The term "floatable material" means any foreign matter that may float or remain suspended in the water column.

(B) Inclusions

The term "floatable material" includes--

(i) plastic;

(ii) aluminum cans;

(iii) wood products;

(iv) bottles; and

(v) paper products.

(23) Pathogen indicator

The term "pathogen indicator" means a substance that indicates the potential for human infectious disease.

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(24) Oil and gas exploration and production

The term "oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

CREDIT(S)

(June 30, 1948, c. 758, Title V, § 502, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 886, and amended Dec. 27, 1977, Pub.L. 95-217, § 33(b), 91 Stat. 1577; Feb. 4, 1987, Pub.L. 100-4, Title V, §§ 502(a), 503, 101 Stat. 75; Nov. 18, 1988, Pub.L. 100-688, Title III, § 3202(a), 102 Stat. 4154; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title III, § 325(c)(3), 110 Stat. 259; Oct. 10, 2000, Pub.L. 106-284, § 5, 114 Stat. 875; Aug. 8, 2005, Pub.L. 109-58, Title III, § 323, 119 Stat. 694.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

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Amendments

2005 Amendments. Par. (24). Pub.L. 109-58, § 323, added par. (24).

2000 Amendments. Pars. (21) to (23). Pub.L. 106-284, § 5, added pars. (21) to (23).

1996 Amendments. Par. (6)(A). Pub.L. 104-106, § 325(c)(3), substituted "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" for "sewage from vessels".

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1987 Amendments. Par. (3). Pub.L. 100-4, § 502(a), inserted "the Commonwealth of the Northern Mariana Islands," after "Samoa,".

Par. (14). Pub.L. 100-4, § 503, inserted "agricultural stormwater discharges and" after "does not include".

1977 Amendments. Par. (14). Pub.L. 95-217 added provision that the term "point source" does not include return flows from irrigated agriculture.

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding 48 U.S.C.A. § 1681.

Territorial Sea and Contiguous Zone of United States

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under 43 U.S.C.A. § 1331.

Term "Point Source" to Include Landfill Leachate Collection System

Section 507 of Pub.L. 100-4 provided that: "For purposes of the Federal Water Pollution Control Act [this chapter], the term 'point source' includes a landfill leachate collection system."

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Criminal penalties, see 33 USCA § 1319.
Violation of permits, see 33 USCA § 1344.
Definition of "territorial sea" and "contiguous zone", see 42 USCA § 9601.
Ocean thermal energy conversion facility or plantship not deemed vessel for purposes of this section, see 42 USCA § 9117.
State certifying authority, amortization of pollution control facilities, see 26 USCA § 169.
Vessel or other floating craft engaged in commercial recovery or exploration as vessel under this section, see 30 USCA § 1419.

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1. Constitutionality

In enacting the Clean Water Act, Congress did not unconstitutionally delegate its legislative authority to the Army Corps of Engineers by allowing the Corps to define "waters of the United States" as including "wetlands," and to define "wetlands" as encompassing land that is not "wet" in the ordinary sense of the word, notwithstanding that violations of the Act may incur criminal penalties. U.S. v. Mills, N.D.Fla.1993, 817 F.Supp. 1546, affirmed 36 F.3d 1052, certiorari denied 115 S.Ct. 1966, 514 U.S. 1112, 131 L.Ed.2d 856. Constitutional Law 2419; Environmental Law 116

2. Person

Language in both Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) defined "person" for purposes of entire section in which term occurs so that inclusion of United States as "person" occurs only in clauses subjecting United States to suit. U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. Environmental Law 428; Environmental Law 175; Environmental Law 353

Fuels division director at naval air station was "person" subject to criminal enforcement provisions of Clean Water Act (CWA), and thus, director was properly convicted of discharging pollutant into surface water of United States in violation of CWA. U.S. v. Curtis, C.A.9 (Alaska) 1993, 988 F.2d 946, certiorari denied 114 S.Ct. 177, 510 U.S. 862, 126 L.Ed.2d 137. Environmental Law 743; United States 52

Public utility director, as an "individual," was a "person" subject to criminal liability under the Clean Water Act for violation of national pollutant discharge elimination system permit. U.S. v. Brittain, C.A.10 (Okla.) 1991, 931 F.2d 1413. Environmental Law 743

Massachusetts Bay Transportation Authority was a "person" within meaning of this chapter prohibiting discharge of oil and hazardous substances into navigable waters and was subject to civil penalties for causing oil spills into navigable waters. U. S. v. Massachusetts Bay Transp. Authority, C.A.1 (Mass.) 1980, 614 F.2d 27. Environmental Law 223; Environmental Law 177

Municipality which owned and operated sewage collection and treatment plants was a "person" within meaning of the Clean Water Act (CWA), so as to allow United States to bring action against municipality under the Act for alleged violation of its National Pollutant Discharge Elimination System (NPDES) permit issued by state department of environmental resources. U.S. v. Municipality of Penn Hills, W.D.Pa.1998, 6 F.Supp.2d 432. Environmental Law 206

"Citizen suit" and accompanying provisions of Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) waived Indian tribe's sovereign immunity in citizen suit brought by environmental organizations against tribe in its capacity as operator of landfill; term "person," as used in relevant sections of Acts, un-

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equivocally included Indian tribes. Atlantic States Legal Foundation v. Salt River Pima-Maricopa Indian Community, D.Ariz.1993, 827 F.Supp. 608. Indians ⚷ 235

3. Pollutant--Generally

Clean Water Act's definition of pollutant, while broad, is not unduly vague in light of fact that discharged liquid had been used as cleaning agent for undergoing storage tank and had a strong petroleum odor and a dirty, oily appearance; ordinary person should have understood that petroleum-based, sludge-like substance was industrial waste within meaning of Act. U.S. v. Eidson, C.A.11 (Fla.) 1997, 108 F.3d 1336, certiorari denied 118 S.Ct. 248, 522 U.S. 899, 139 L.Ed.2d 177, certiorari denied 118 S.Ct. 578, 522 U.S. 1004, 139 L.Ed.2d 416. Environmental Law ⚷ 177

Fact that toxicity is an attribute of pollutants rather than a pollutant itself does not preclude use of toxicity as measure to regulate effluents that are pollutants. Natural Resources Defense Council, Inc. v. U.S.E.P.A., C.A.D.C.1988, 859 F.2d 156, 273 U.S.App.D.C. 180. Environmental Law ⚷ 183

Expressed goal of Congress, to eliminate "the discharge of pollutants," did not necessarily require expansive construction of term "pollutant," which Congress specifically defined in this chapter. National Wildlife Federation v. Gorsuch, C.A.D.C.1982, 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law ⚷ 175

Employment of broad generic terms in defining "pollutant" in this section was an expression of congressional intent to encompass at a minimum what was covered by section 407 of this title, which in turn bars the discharge of all foreign substances outside the scope of its exception. U.S. v. Hamel, C.A.6 (Mich.) 1977, 551 F.2d 107. Environmental Law ⚷ 175

4. ---- Particular substances, pollutant

Groundwater derived from extraction of coal bed methane (CBM) was "pollutant" within the meaning of, and subject to regulation under, Clean Water Act (CWA), inasmuch as such water qualified as "industrial waste" under statutory definition of "pollutant," in that it was unwanted byproduct from production of methane gas for commercial sale, water was also "produced water," in that it was brought up from coal seams underlying basin to extract methane gas but did not fall within CWA's exemption for water derived from gas extraction disposed of in well, and conclusion that CBM groundwater was pollutant was consistent with CWA's definition of "pollution," given that its discharge altered water quality of river into which it was discharged. Northern Plains Resource Council v. Fidelity Exploration and Development Co., C.A.9 (Mont.) 2003, 325 F.3d 1155, certiorari denied 124 S.Ct. 434, 540 U.S. 967, 157 L.Ed.2d 312, on subsequent appeal 185 Fed.Appx. 679, 2006 WL 1722474. Environmental Law ⚷ 178

Natural materials released by mussels during commercial harvest were not "pollutants" under Clean Water Act (CWA), notwithstanding inclusion of "biological materials" in list of pollutants covered by statute, and thus discharge of such materials did not contravene CWA; shells and natural byproducts of living mussels were result of natural biological processes, not waste product of transforming human process, and CWA specified that living shellfish were to be protected under statute. Association to Protect Hammersley, Eld, and Totten Inlets v. Taylor Resources, Inc., C.A.9 (Wash.) 2002, 299 F.3d 1007. Environmental Law ⚷ 175

Uranium mill tailings are not "pollutants" for purposes of Clean Water Act (CWA) and hence are not subject to Environmental Protection Agency's (EPA) national pollutant discharge elimination system (NPDES) permit re-

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quirements. Waste Action Project v. Dawn Min. Corp., C.A.9 (Wash.) 1998, 137 F.3d 1426. Environmental Law ⚷ 178; Environmental Law ⚷ 196

Produced water from oil drilling waste treatment facility discharged into bay was "chemical wastes" or "industrial waste" within definition of "pollutant" subject to ban on discharges under Clean Water Act (CWA), in light of definition's specific exclusion of produced water under limited circumstances of approved well injection, in light of Environmental Protection Agency's (EPA) recognition of citizens' right to sue coastal oil well operators for discharging produced water without permit and reference to produced water as "pollutant" in permits for other types of oil well operators, and in light of fact that several components of produced wastes are listed as toxic or conventional pollutants in other EPA regulations. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Environmental Law ⚷ 177

Landowners' discharge of fill materials into wetlands constituted discharge of "pollutants" into water within meaning of Clean Water Act; term "pollutant" includes dredged soil, rock, and sand, which are constituents of fill material used by landowners, which included concrete rubble and cinder block. U.S. v. Pozsgai, C.A.3 (Pa.) 1993, 999 F.2d 719, rehearing denied, certiorari denied 114 S.Ct. 1052, 510 U.S. 1110, 127 L.Ed.2d 373. Environmental Law ⚷ 175

"Shotcrete," a combination of sand and cement produced when its dry components are fed into a hopper and driven under pressure through hose to nozzle where they are mixed with water, is a "pollutant" under Clean Water Act, for purposes of offense of discharging pollutant without a permit. U.S. v. Schallom, C.A.4 (W.Va.) 1993, 998 F.2d 196, certiorari denied 114 S.Ct. 277, 510 U.S. 902, 126 L.Ed.2d 228. Environmental Law ⚷ 743

Through operation of canon expressio unius est exclusio alterius upon provision of this section defining pollutant as not meaning "water, gas, or other material which is injected into a well to facilitate production of oil or gas * * * ", listed materials are "pollutants" when injected into wells under any other circumstances. U. S. Steel Corp. v. Train, C.A.7 (Ill.) 1977, 556 F.2d 822. Environmental Law ⚷ 175

Sediment, consisting of sand and dirt, that was discharged into waters covered by the Clean Water Act (CWA) by coastal landowners' ditching activities constituted discharge of "pollutant" into waters of the United States, for which landowners were required to obtain discharge permit under the CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law ⚷ 196

Fruit processor's discharge of water, produced in process of drying fruit, to irrigate fields, was not a discharge from a point source, as required to support Clean Water Act (CWA) citizen suit against processor, although processor allegedly applied wastewater to its fields in excess of crops' actual absorption of water. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law ⚷ 175

Effluent from sewage treatment plants is "pollutant" under Clean Water Act (CWA). U.S. v. Gulf Park Water Co., Inc., S.D.Miss.1997, 972 F.Supp. 1056. Environmental Law ⚷ 176

Manure-laden water used as fertilizer by defendants was "pollutant," for purposes of determining whether Clean Water Act violation had occurred. Concerned Area Residents for The Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1410. Environmental Law ⚷ 175

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Water itself is not pollutant; therefore, simply moving water from one place to another does not constitute discharge of pollutant under Clean Water Act (CWA). Bettis v. Town of Ontario, N.Y., W.D.N.Y.1992, 800 F.Supp. 1113. Environmental Law 175

Dirt, rock, bricks, sheet metal and other debris deposited by defendant, or at his direction, along shoreline area constituted a "pollutant" under Clean Water Act. Hanson v. U.S., E.D.Tex.1989, 710 F.Supp. 1105. Environmental Law 175

Dead fish and fish remains which power plant discharged into lake along with its turbine generating water constituted "pollutants" for purposes of the Clean Water Act. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Environmental Law 175

Just as elements such as nitrogen and phosphorous, entirely natural and harmless under most circumstances, are considered pollutants when added to water because they contribute to biological oxygen demand, the entrainment and solution of naturally occurring atmospheric gases in water caused by operation of a dam and resulting in supersaturation lethal to aquatic life is a "pollutant" for purpose of this chapter. National Wildlife Federation v. Gorsuch, D.C.D.C.1982, 530 F.Supp. 1291, reversed on other grounds 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law 175

Fill material dumped and spread on defendant's property for construction of a road constituted a "pollutant" under this chapter. U. S. v. Weisman, M.D.Fla.1980, 489 F.Supp. 1331. Environmental Law 175

Pesticides endrin and heptachlor fell within purview of "pollutants" as defined in this section. U. S. v. Velsicol Chemical Corp., W.D.Tenn.1976, 438 F.Supp. 945. Environmental Law 175

5. Pollution

Requirement, under Clean Water Act's (CWA) definition of "pollution," that physical, biological, or chemical integrity of water be a "man-induced" alteration refers to effect of discharge on receiving water; it does not require that discharged water be altered by man. Northern Plains Resource Council v. Fidelity Exploration and Development Co., C.A.9 (Mont.) 2003, 325 F.3d 1155, certiorari denied 124 S.Ct. 434, 540 U.S. 967, 157 L.Ed.2d 312, on subsequent appeal 185 Fed.Appx. 679, 2006 WL 1722474. Environmental Law 175

Under the federal Clean Water Act's definition of "pollution," man-induced alteration of streamflow level is "pollution." State, Dept. of Ecology v. Public Utility Dist. No. 1 of Jefferson County, Wash.1993, 849 P.2d 646, 121 Wash.2d 179, certiorari granted 114 S.Ct. 55, 510 U.S. 810, 126 L.Ed.2d 25, affirmed 114 S.Ct. 1900, 511 U.S. 700, 128 L.Ed.2d 716. Environmental Law 175

6. Navigable waters--Generally

Clean Water Act's definition of "navigable waters" as "the waters of the United States, including the territorial seas" does not refer to water in general; rather, term includes only relatively permanent, standing or flowing bodies of water. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 173

Terms "navigable waters" and "waters of the United States," as used in the Clean Water Act provisions prohibiting discharge of pollutants into such waters without a permit, are not limited to traditional definition of navig-

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able waters, namely, interstate waters that are navigable in fact or readily susceptible of being rendered so. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 196

Remand for new criminal trial, as opposed to judgments of acquittal, was appropriate remedy for district court's erroneous definition of "navigable water" in criminal proceedings brought pursuant to the Clean Water Act (CWA); the district court erroneously defined "navigable water" and made it clear to the parties far in advance of trial that it would continue to use its erroneous definition throughout the case, and, that decision deprived the government of any incentive to present evidence that might have cured any resulting insufficiency. U.S. v. Robison, C.A.11 (Ala.) 2007, 2007 WL 3087419. Criminal Law 1181.5(3.1)

To implement Clean Water Act's mandate to restore and maintain chemical, physical, and biological integrity of nation's waters, Congress chose to define waters covered by Act broadly, and navigable waters under Act reach to the full extent permissible under Constitution; term "navigable" as used in Act is of limited import and Act regulates waters that would not be deemed navigable under classical understanding of term. U.S. v. Eidson, C.A.11 (Fla.) 1997, 108 F.3d 1336, certiorari denied 118 S.Ct. 248, 522 U.S. 899, 139 L.Ed.2d 177, certiorari denied 118 S.Ct. 578, 522 U.S. 1004, 139 L.Ed.2d 416. Environmental Law 173

Congress wanted to give the term "navigable waters" as used in this section the broadest possible constitutional interpretation. U. S. v. Byrd, C.A.7 (Ind.) 1979, 609 F.2d 1204. See, also, Leslie Salt Co. v. Froehlke, C.A.Cal.1978, 578 F.2d 742; U.S. v. Saint Bernard Parish, E.D.La.1984, 589 F.Supp. 617; U.S. v. Robinson, M.D.Fla.1983, 570 F.Supp. 1157. Environmental Law 173

Congress intended that the term "waters of the United States" within the Clean Water Act be interpreted as broadly as constitutionally possible under the commerce clause. U.S. v. Zanger, N.D.Cal.1991, 767 F.Supp. 1030. Environmental Law 173; Environmental Law 123

Terms "navigable waters" and "waters of the United States" within this chapter are not void for vagueness. U. S. v. Oxford Royal Mushroom Products, Inc., E.D.Pa.1980, 487 F.Supp. 852. Environmental Law 166

This section's definition of navigable waters as "waters of the United States, including the territorial seas", determines the scope of regulatory jurisdiction not only for Corps of Engineers under this chapter, but also for the Environmental Protection Agency and Coast Guard under other provisions of this chapter. State of Wyoming v. Hoffman, D.C.Wyo.1977, 437 F.Supp. 114. Navigable Waters 2

6a. ---- Continuous flow, navigable waters

A relatively continuous flow of water is a necessary, though not adequate, condition for qualification as a "water of the United States" that is subject to the Clean Water Act. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 173

7. ---- Navigability in fact, navigable waters

Under *Rapanos v. United States*, a fractured opinion from the Supreme Court, test set forth by Justice Kennedy in a concurring opinion for the definition of navigable waters under the Clean Water Act (CWA), specifically,

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that water can only be "navigable" under the CWA if it possesses a significant nexus to waters that are or were navigable in fact or that could reasonably be so was the least far-reaching, and thus the controlling rule of the case. U.S. v. Robison, C.A.11 (Ala.) 2007, 2007 WL 3087419. Courts ⚷ 90(2)

Term "navigable waters of the United States," as used in this chapter, does not require navigability in fact. U. S. v. Oxford Royal Mushroom Products, Inc., E.D.Pa.1980, 487 F.Supp. 852. Environmental Law ⚷ 173

Expression "navigable waters" effectively excludes from consideration any concept of navigability, in law or in fact. U. S. v. GAF Corp., S.D.Tex.1975, 389 F.Supp. 1379. Environmental Law ⚷ 173

8. ---- Canals, navigable waters

Irrigation canals were "waters of the United States," and thus subject to Clean Water Act (CWA), even though canals were separated from natural streams by system of closed waste gates, where canals exchanged water with number of natural streams and at least one lake, and leaks from canals into local creeks had occurred in past. Headwaters, Inc. v. Talent Irrigation Dist., C.A.9 (Or.) 2001, 243 F.3d 526. Environmental Law ⚷ 173

Ditches and canals, as well as streams and creeks, can be "waters of the United States" under Clean Water Act. U.S. v. Eidson, C.A.11 (Fla.) 1997, 108 F.3d 1336, certiorari denied 118 S.Ct. 248, 522 U.S. 899, 139 L.Ed.2d 177, certiorari denied 118 S.Ct. 578, 522 U.S. 1004, 139 L.Ed.2d 416. Environmental Law ⚷ 173

Waters of nonnavigable, man-made mosquito canals, which emptied into a bayou arm of Tampa Bay, were "waters of the United States" within this chapter. U.S. v. Holland, M.D.Fla.1974, 373 F.Supp. 665. Environmental Law ⚷ 128; Environmental Law ⚷ 173

8a. ---- Channels, navigable waters

Because channels and conduits that carry intermittent flows of water are included in definition of "point source," under Clean Water Act, which prohibits discharge of pollutants from point sources to navigable waters, such ditches, channels, and conduits are generally not "waters of the United States" and thus not "navigable waters" under the Act. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law ⚷ 173; Environmental Law ⚷ 175

9. ---- Rivers and streams, navigable waters

Although term "navigable waters," under Clean Water Act, includes only relatively permanent, standing or flowing bodies of water, term does not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought, nor does term necessarily exclude seasonal rivers, which contain continuous flow during some months of the year but no flow during dry months. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law ⚷ 173

River and pond were two distinct "waters of the United States," within meaning of the Clean Water Act (CWA) and, thus, proposed transfer of water from river through skiing facility's snowmaking pipes to pond, resulting in transfer of pollutants, constituted addition of pollutants to pond from point source requiring National Pollutant Discharge Elimination System (NPDES) permit; although water was hydrologically connected by flow down from pond to river, water could not flow naturally from river up to pond, river undisputedly contained pollutants

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not found in pond, and water would be subject to private control during passage through pipes. Dubois v. U.S. Dept. of Agriculture, C.A.1 (N.H.) 1996, 102 F.3d 1273, certiorari denied 117 S.Ct. 2510, 521 U.S. 1119, 138 L.Ed.2d 1013. Environmental Law ⚷ 196; Environmental Law ⚷ 173

Waters of unnamed tributary, which was contaminated by spill from oil pipeline, which was flowing small amount at time of spill, and which flowed, at least during times of significant rainfall, into major river, were "navigable waters" within meaning of this chapter even if the stream, at time of the spill, was not discharging water continuously into a river navigable in traditional sense, and thus the discharge violated this chapter. U. S. v. Texas Pipe Line Co., C.A.10 (Okla.) 1979, 611 F.2d 345. Environmental Law ⚷ 173

Stream which supported trout and beaver and which was used for agricultural irrigation, with the resulting agricultural products sold in interstate commerce, was covered by the definition of navigable waters under this chapter, despite fact that the stream was not navigable in fact and was not used to transport goods or materials. U. S. v. Earth Sciences, Inc., C.A.10 (Colo.) 1979, 599 F.2d 368. Environmental Law ⚷ 173

Genuine issue of material fact existed as to whether streams in dispute had significant nexus to water quality of navigable water, precluding summary judgment on claim under Clean Water Act (CWA) alleging discharge of sediment, as pollutant, into navigable water without securing National Pollutant Discharge Elimination System (NPDES) permit. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Federal Civil Procedure ⚷ 2498.3

Intermittent stream was one of the "waters of the United States" within scope of the Clean Water Act where it was or could be used for recreational purposes, had been used for commercial fishing and was a tributary of other waters of the United States. U.S. v. Zanger, N.D.Cal.1991, 767 F.Supp. 1030. Environmental Law ⚷ 173; Environmental Law ⚷ 126

Aberjona River falls within definition of "navigable waters" for purposes of 1972 amendments to this chapter. U. S. v. D'Annolfo, D.C.Mass.1979, 474 F.Supp. 220. Navigable Waters ⚷ 1(6)

10. ---- Tributaries, navigable waters

Stream located on property owned by defendant owner of property on which scrap metal business was operated, which was tributary of river, was "navigable water" or "water of the United States," within meaning of Clean Water Act (CWA). Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law ⚷ 173

Brook into which defendant's employees discharged waste slurry from asbestos removal project qualified as "waters of the United States" under Clean Water Act, notwithstanding defendant's claim that brook was "municipal separate storm sewer" which was part of municipal "waste treatment system" excluded from Act's coverage; brook was not owned or operated by public body, as required for it to be "municipal separate storm sewer," nor was it man-made, as required to fall within "waste treatment system" exclusion, but rather brook was natural tributary of creek that was undisputed navigable waterway, even though, in some places, it had been channeled into underground pipes to make room for development. U.S. v. TGR Corp., C.A.2 (Conn.) 1999, 171 F.3d 762, 160 A.L.R. Fed. 789. Environmental Law ⚷ 173; Environmental Law ⚷ 743

Congress did not intend to exclude tributaries that flow intermittently from "waters of the United States" under Clean Water Act as pollutants need not reach interstate bodies of water immediately or continuously to inflict

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serious environmental damage; as long as tributary would flow into navigable body of water during significant rainfall, it is capable of spreading environmental damage and thus is a "water of the United States." U.S. v. Eidson, C.A.11 (Fla.) 1997, 108 F.3d 1336, certiorari denied 118 S.Ct. 248, 522 U.S. 899, 139 L.Ed.2d 177, certiorari denied 118 S.Ct. 578, 522 U.S. 1004, 139 L.Ed.2d 416. Environmental Law 173

Navigable-in-fact waters that were directly adjacent to coastal landowners' tract of land and which were classified by State of North Carolina as "SA" water, indicating that they were saltwater of high quality suitable for production and harvesting of shellfish for human consumption, were traditional navigable waters, i.e., "waters of the United States," and thus subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA); waters at issue included a sound and a saltwater estuarine creek that flowed into the sound. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 125; Environmental Law 126; Environmental Law 173

Ditches flowing into coastal landing tract's onsite lake were tributaries of "waters of the United States" subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA); lake itself was considered water of the United States. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 126; Environmental Law 173

Clean Water Act (CWA) does not give Army Corps of Engineers jurisdiction over wetlands which are merely adjacent to non-navigable tributaries of navigable waters. FD & P Enterprises, Inc. v. U.S. Army Corps of Engineers, D.N.J.2003, 239 F.Supp.2d 509.

Tributary of actually navigable waterway was itself "navigable water of the United States" within meaning of Clean Water Act, even though it flowed through underground pipeline on its way to waterway. California Sportfishing Protection Alliance v. Diablo Grande, Inc., E.D.Cal.2002, 209 F.Supp.2d 1059.

Tributary of navigable waterway was "water of United States" under Clean Water Act, and thus Army Corps of Engineers had jurisdiction to prosecute landowner for discharging pollutants during unauthorized excavation adjacent to tributary, even though tributary itself and wetlands surrounding it were not navigable in fact and did not connect with navigable waterway for at least 235 miles; pollutants would eventually reach waters affecting interstate commerce. U.S. v. Buday, D.Mont.2001, 138 F.Supp.2d 1282. Environmental Law 173; Environmental Law 743

11. ---- Wetlands, navigable waters

Only those wetlands with a continuous surface connection to bodies that are waters of the United States, pursuant to the Clean Water Act, in their own right, so that there is no clear demarcation between "waters" and wetlands, are adjacent to such waters and covered by the Act; wetlands with only an intermittent, physically remote hydrologic connection to waters of the United States lack the necessary connection to covered waters to establish the significant nexus required for coverage under the Act. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 128

Wetlands drained by ditch that ran into nonnavigable creek that ran into nonnavigable river, which in turn ran into navigable river, were "waters of the United States," for purposes of Clean Water Act, and thus could not be filled without first obtaining permit from Army Corps of Engineers, despite contentions that filling in tract of

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wetlands in question did not have measurable effect on navigable river, and that broad definition of "wetlands" employed by Corps infringed on state's power. U.S. v. Gerke Excavating, Inc., C.A.7 (Wis.) 2005, 412 F.3d 804, rehearing and rehearing en banc denied , vacated 126 S.Ct. 2964, 165 L.Ed.2d 947, on remand 464 F.3d 723. Environmental Law 136

Evidence did not support conclusion of Environmental Protection Agency's (EPA) Chief Judicial Officer, that small area which would occasionally fill with water was subject to regulation as possibly affecting interstate commerce, based on its alleged attractiveness to migratory water fowl; only testimony as to presence of water fowl applied to 50-acre area on other side of tract of land, on which birds were seen, which differed from area in question by bordering a stream, adjoining large wetland, and having no source of moisture other than rainfall. Hoffman Homes, Inc. v. Administrator, U.S. E.P.A., C.A.7 1993, 999 F.2d 256. Environmental Law 150

Land supported wetland vegetation "under normal circumstances," within meaning of Clean Water Act definition of wetlands, regardless of fact that wetlands were man-made; phrase "under normal circumstances" was meant to exclude those areas which were not aquatic, but which experienced abnormal presence of aquatic vegetation. Leslie Salt Co. v. U.S., C.A.9 (Cal.) 1990, 896 F.2d 354, certiorari denied 111 S.Ct. 1089, 498 U.S. 1126, 112 L.Ed.2d 1194, on remand 820 F.Supp. 478. Environmental Law 128

Low lying land areas where water sometimes stands and where vegetation requiring moist conditions grows but located miles from a navigable waterway were not "wetlands" within the meaning of this chapter. U.S. v. Riverside Bayview Homes, Inc., C.A.6 (Mich.) 1984, 729 F.2d 391, certiorari granted 105 S.Ct. 1166, 469 U.S. 1206, 84 L.Ed.2d 318, reversed 106 S.Ct. 455, 474 U.S. 121, 88 L.Ed.2d 419. Environmental Law 128

Vernal pond on gun club's property did not constitute "navigable waters" of the United States for purposes of Clean Water Act (CWA) under standard of Justice Kennedy's concurrence in *Rapanos v. U.S.*, notwithstanding proximity of river to pond and seasonal flooding of area, where data from testing was inconclusive as to effect of lead from shooting range on river. Simsbury-Avon Preservation Soc., LLC v. Metacon Gun Club, Inc., D.Conn.2007, 472 F.Supp.2d 219. Environmental Law 173

Evidence that property on which landowner, without obtaining a permit, built road was a wetland adjacent to a navigable water within the meaning of the Clean Water Act (CWA), was sufficient to establish that Corps of Engineers had jurisdiction to require restoration of that wetland; three government experts established 46 sample points at the site which provided evidence which met the criteria of the 1987 Corps of Engineers Wetlands Delineation Manual and Corps memoranda interpreting the Manual. U.S. v. Bailey, D.Minn.2007, 516 F.Supp.2d 998. Environmental Law 150

Wetlands that were adjacent to a traditional navigable water were "waters of the United States," subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA). North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 173

Wetlands adjacent to nonnavigable tributary of traditional navigable water were "waters of the United States" subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA), since bodies of water were hydrologically connected, such that discharges into adjacent wetlands could move downstream, degrading quality of navigable water. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 128; Environmental Law 173

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Doctrine of primary jurisdiction precluded judicial review of United States Army Corps of Engineers' determination that property on which fish ponds were being constructed was a "wetland" or "water of the United States" within meaning of Clean Water Act. Fercom Aquaculture Corp. v. U.S., E.D.Mo.1990, 740 F.Supp. 736. Administrative Law And Procedure 228.1; Environmental Law 664

Wetlands at beach were adjacent to waters of United States for purposes of Clean Water Act's requirement that permit be obtained to fill on property; pool on property was subject to ebb and flow of tide, wetlands were adjacent to that pool, and wetlands were separated from navigable inlet only by beach dunes and sand. U.S. v. Malibu Beach, Inc., D.N.J.1989, 711 F.Supp. 1301. Environmental Law 136

Administrative record established that tract of land was durationally inundated or saturated, was supportive of vegetation dependent on or adapted to saturated soils, and contained saturated soils, and thus was "wetlands" subject to jurisdiction of Army Corps of Engineers; Corps conducted soil and photo analysis, collected field data, and consulted aerial photographs in reaching its conclusion. Stoeco Development, Ltd. v. Department of the Army Corps of Engineers of U.S., D.N.J.1988, 701 F.Supp. 1075, appeal dismissed 879 F.2d 860, appeal dismissed 879 F.2d 861. Environmental Law 150

Soil analysis by expert in charge of training Army Corps of Engineers personnel in use of soil analysis for wetland identification, which analysis revealed that area impounded by dikes and levees and area lying southwest thereof contained hydric soil, was strong, but not conclusive, indicator that impoundment in southwest areas were "wetlands," for purpose of determining whether construction of dikes and levees violated Clean Water Act; given glacial pace at which soil types change and fact that recent changes in land use are not reflected by soil analysis, corroborative finding of wetland vegetation was required. U.S. v. Larkins, W.D.Ky.1987, 657 F.Supp. 76, affirmed 852 F.2d 189, rehearing denied, certiorari denied 109 S.Ct. 1131, 489 U.S. 1016, 103 L.Ed.2d 193. Evidence 571(6)

The Army Corps of Engineers had jurisdiction over a tract of land under section 301 of the Clean Water Act, making it illegal to discharge fill into "navigable waters" unless such discharge is in compliance with the Act, even though the land was not natural wetland, where various acts of state and local authorities, including construction of a highway and a storm sewage system, had changed the character of the tract into an artificial wetland and the Corps had not created the wetland. Track 12, Inc. v. District Engineer, U.S. Army Corps of Engineers, St. Paul, Minn., D.C.Minn.1985, 618 F.Supp. 448. Environmental Law 128

Wetlands are part of the "waters of the United States," and therefore are subject to strictures of this chapter. Florida Wildlife Federation v. Goldschmidt, S.D.Fla.1981, 506 F.Supp. 350. Environmental Law 128

Under this chapter, Congress intended to protect waters of the United States in a plenary, geographic sense, and wetlands were specifically included within such protection. U. S. v. Weisman, M.D.Fla.1980, 489 F.Supp. 1331. Environmental Law 128; Environmental Law 173

Jurisdiction over "waters of the United States" extends well beyond the mean high-water mark to marsh wetlands which are regularly or periodically inundated. Conservation Council of North Carolina v. Costanzo, E.D.N.C.1975, 398 F.Supp. 653, affirmed 528 F.2d 250. Navigable Waters 36(3)

12. ---- Miscellaneous waters, navigable waters

Phrase "waters of the United States," which defines term "navigable waters" in the Clean Water Act, does not

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include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 173

District court's erroneous instruction that a continuous or intermittent flow into a navigable-in-fact body of water would be sufficient to bring creek within the reach of the Clean Water Act (CWA) was not harmless error, requiring remand in criminal proceedings brought pursuant to the CWA; although expert testified that in his opinion there was a continuous uninterrupted flow between the creek in question and river that was navigable-in-fact water, he did not testify as to any "significant nexus" between creek and the river and the government did not present any evidence about the possible chemical, physical, or biological effect that the creek may have on the river, and, there was also no evidence presented of any actual harm suffered by the river. U.S. v. Robison, C.A.11 (Ala.) 2007, 2007 WL 3087419. Criminal Law 1172.1(3)

Creek that defendant rerouted and reshaped constituted a water of the United States, for purposes of the Clean Water Act prohibition against discharging and causing to be discharged pollutants into waters of the United States without a permit; although, due to an irrigation diversion structure installed upstream of section of creek that defendant altered, water only flowed in that section for about two months per year during spring runoff, the creek was a tributary of a river that qualified as a water of the United States. U.S. v. Moses, C.A.9 (Idaho) 2007, 2007 WL 2215954. Environmental Law 196

Drainage ditch that wastewater disposal business dumped industrial wastewater into was tributary of Tampa Bay and, thus, was "water of the United States" under Clean Water Act; violator discharged pollutants into storm sewer that was part of storm drainage system designed to discharge storm water into bay, and during heavy rainfall and high tide water from drainage ditch that storm sewer emptied into flowed into drainage canal and emptied into creek that was tributary to bay. U.S. v. Eidson, C.A.11 (Fla.) 1997, 108 F.3d 1336, certiorari denied 118 S.Ct. 248, 522 U.S. 899, 139 L.Ed.2d 177, certiorari denied 118 S.Ct. 578, 522 U.S. 1004, 139 L.Ed.2d 416. Environmental Law 173

Clean Water Act is broad statute reaching waters and wetlands that are not navigable or even directly connected to navigable waters, but neither Act nor interpretive regulations of Environmental Protection Agency (EPA) assert authority over groundwaters merely on basis that they may be hydrologically connected with surface waters. Village of Oconomowoc Lake v. Dayton Hudson Corp., C.A.7 (Wis.) 1994, 24 F.3d 962, certiorari denied 115 S.Ct. 322, 513 U.S. 930, 130 L.Ed.2d 282. Environmental Law 123; Environmental Law 173

Seasonal ponding in pits formerly used for salt production constituted "other waters" within Army Corps of Engineers' jurisdiction under Clean Water Act. Leslie Salt Co. v. U.S., C.A.9 (Cal.) 1990, 896 F.2d 354, certiorari denied 111 S.Ct. 1089, 498 U.S. 1126, 112 L.Ed.2d 1194, on remand 820 F.Supp. 478. Environmental Law 127

National Pollutant Discharge Elimination System permit regulating discharge of pollutants from oil and gas operations in Gulf of Mexico that covered only discharges in waters seaward beyond three mile belt of territorial seas, "navigable waters," did not require state certification, although Florida claimed its maritime boundaries extended three marine leagues under the Submerged Lands Act. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.9 1988, 863 F.2d 1420. Environmental Law 196

Jurisdiction of the Army Corps of Engineers under this chapter extends at least to waters which are no longer

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subject to tidal inundation because of dikes without regard to the location of historic tidal water lines in their unobstructed, natural state. Leslie Salt Co. v. Froehlke, C.A.9 (Cal.) 1978, 578 F.2d 742. Environmental Law 173

Vernal pond on gun club's property did not have continuous surface connection with river, and pond thus did not constitute "navigable waters" of the United States for purposes of Clean Water Act (CWA) under standard of *Rapanos v. U.S.* plurality, notwithstanding proximity of river to pond and seasonal flooding of area, inasmuch as any surface connection was not continuous. Simsbury-Avon Preservation Soc., LLC v. Metacon Gun Club, Inc., D.Conn.2007, 472 F.Supp.2d 219. Environmental Law 128

Non-profit environmental organization demonstrated that hydrologic connection existed between navigable water and streams in question, as required on claim under Clean Water Act (CWA) alleging discharge of sediment, as pollutant, into navigable water without securing National Pollutant Discharge Elimination System (NPDES) permit, on evidence that lumber companies' geographic information system (GIS) maps demonstrated hydrological connection between each of streams in dispute and navigable water. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law 206

On-site lake on coastal tract of land, which was connected to traditional navigable water by a pond outlet drainage way, was water of the United States subject to pollution discharge permit and fill discharge permit requirements of the Clean Water Act (CWA); any pollutant or fill material discharged into lake could reach navigable water via the drainage way and degrade quality of traditional navigable water. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 127; Environmental Law 173

Ditches on tract of land that flowed into nonnavigable tributary of traditional navigable water were "waters of the United States," subject to pollution discharge permit and fill discharge permit requirements of Clean Water Act (CWA). North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 126; Environmental Law 173

Water and sewer utility was liable under Clean Water Act (CWA), where utility discharged treated wastewater from its facility into bayous that eventually reached Mississippi sound without a national pollutant discharge elimination system (NPDES) permit. U.S. v. Gulf Park Water Co., Inc., S.D.Miss.1997, 972 F.Supp. 1056. Environmental Law 206

Manmade ponds did not constitute "navigable waters" within meaning of Clean Water Act (CWA); Environmental Protection Agency's (EPA's) definition of navigable waters included only "natural" ponds. Washington Wilderness Coalition v. Hecla Min. Co., E.D.Wash.1994, 870 F.Supp. 983. Environmental Law 173

Tidal creeks connected to river, which was navigable water of the United States traversing landowner's property, were navigable waters. U. S. v. Weisman, M.D.Fla.1980, 489 F.Supp. 1331. Navigable Waters 1(6)

This chapter and regulations promulgated thereunder are applicable to the nonnavigable waters of the Commonwealth of Puerto Rico, despite contention that such waters are areas of purely local concern and that federal regulation of areas is inapplicable under Puerto Rican Federal Relations Act, section 731 et seq. of Title 48. Com. of Puerto Rico v. Alexander, D.C.D.C.1977, 438 F.Supp. 90. Territories 18

Legal definition of "navigable waters" or "waters of the United States", within scope of this chapter, includes

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any waterway within United States and also normally dry arroyos through which water may flow, where such water will ultimately end up in public waters such as a river or stream, tributary to a river or stream, lake, reservoir, bay, gulf, sea or ocean either within or adjacent to the United States. U. S. v. Phelps Dodge Corp., D.C.Ariz.1975, 391 F.Supp. 1181. Environmental Law 173

13. ---- Regulations, navigable waters

Army Corps of Engineers exceeded its congressional authorization under Clean Water Act when it promulgated regulation defining "waters of the United States," as used in Act, to include intrastate waters which need not have anything to do with navigable or interstate waters and whose use, degradation, or destruction could affect interstate or foreign commerce; therefore, regulation was invalid. U.S. v. Wilson, C.A.4 (Md.) 1997, 133 F.3d 251. Environmental Law 173

This section's definition of navigable waters as "waters of the United States, including the territorial seas", determines the scope of regulatory jurisdiction not only for Corps of Engineers under this chapter, but also for the Environmental Protection Agency and Coast Guard under other provisions of this chapter. State of Wyoming v. Hoffman, D.C.Wyo.1977, 437 F.Supp. 114. Navigable Waters 2

Regulations of United States Army Corps of Engineers which further define "navigable waters of the United States" as extending landward to the mean higher high-water line for Pacific Coast purposes is a reasonable interpretation of congressional definition "waters of the United States" in this section. Leslie Salt Co. v. Froehlke, N.D.Cal.1974, 403 F.Supp. 1292, supplemented 412 F.Supp. 1096, reversed in part , modified in part 578 F.2d 742. Environmental Law 173

Secretary of the Army and Chief of the Army Corps of Engineers are without authority to amend or change this section's definition of navigable waters and they acted unlawfully and in derogation of their responsibilities under this chapter by adopting regulation which defined navigable waters as those which had been, are, or may be, used for interstate or foreign commerce. Natural Resources Defense Council, Inc. v. Callaway, D.C.D.C.1975, 392 F.Supp. 685. Environmental Law 173; Environmental Law 123

14. Effluent limitation

"Effluent limitation" under specified sections of this chapter is a term of art in the context of this chapter, and is a set of standards restricting the quantities of pollutants that enterprises in a given industry may discharge. Crown Simpson Pulp Co. v. Costle, C.A.9 1979, 599 F.2d 897, rehearing denied , reversed on other grounds 100 S.Ct. 1093, 445 U.S. 193, 63 L.Ed.2d 312, on remand 642 F.2d 323. Environmental Law 183

15. Discharge of pollutant

Operation of dam to produce hydroelectricity raises potential for "discharge" within meaning of Clean Water Act (CWA), triggering statutory requirement of state certification that laws protecting water quality standards will not be violated. S.D. Warren Co. v. Maine Bd. of Environmental Protection, U.S.Me.2006, 126 S.Ct. 1843, 164 L.Ed.2d 625. Environmental Law 196

The evidence was sufficient to establish that defendant discharged pollutants into a creek, as element of offense of violating Clean Water Act by discharging and causing to be discharged pollutants into waters of the United States without a permit; even if defendant only ran heavy equipment in the creek bed, had log structures con-

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structed in creek, and moved gravel and other materials during the periods of the year when the section of the creek he impacted was dry due to the operation of an irrigation diversion structure upstream, he still deposited pollutants in the creek, and the evidence supported a determination that defendant created a situation in which pollutants, including disturbed and moved materials and log structures, remained in the creek when the water was flowing. U.S. v. Moses, C.A.9 (Idaho) 2007, 2007 WL 2215954.

Regulatory exemption for agricultural stormwater discharges contained in rule promulgated by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) to regulate the emission of water pollutants by concentrated animal feeding operations did not violate the CWA. Waterkeeper Alliance, Inc. v. U.S. E.P.A., C.A.2 2005, 399 F.3d 486. Environmental Law 196

Sidecasting, which involves deposit of dredged or excavated material from a wetland back into that same wetland, constitutes discharge of a pollutant under the Clean Water Act; even though sidecasting results in no net increase in the amount of material present in the wetland, it amounts to addition of a pollutant that was not present before. U.S. v. Deaton, C.A.4 (Md.) 2000, 209 F.3d 331. Environmental Law 175

Landowners' wetlands filling activities constituted discharge of pollutants into "water" within meaning of Clean Water Act. U.S. v. Pozsgai, C.A.3 (Pa.) 1993, 999 F.2d 719, rehearing denied, certiorari denied 114 S.Ct. 1052, 510 U.S. 1110, 127 L.Ed.2d 373. Environmental Law 175; Environmental Law 173

Placer mining is subject to regulation by Environmental Protection Agency under Clean Water Act, which charges EPA with developing comprehensive programs to prevent, reduce or eliminate pollution of navigable waters and which prevents the discharge of any pollutant by any person except in compliance with Act; words "navigable waters" are defined simply as waters of United States, and include placer mine discharge into nearby streams and rivers; also placer mining discharges "pollutants" within meaning of Act, which includes dredged soil rock, sand and cellular dirt, even if material discharged originally comes from streambed itself, since resuspension of material may be interpreted as addition of pollutant. Rybachek v. U.S. E.P.A., C.A.9 1990, 904 F.2d 1276. Environmental Law 178

Landowners' removal of vegetation in wetlands area and redeposit of the material constituted a "discharge" within meaning of this section and the material discharged into the wetlands was "fill material" subject to regulation of Army Corps of Engineers under this section; furthermore, removal of the vegetation constituted "dredging" since the vegetation was part of the wetlands. Avoyelles Sportsmen's League, Inc. v. Marsh, C.A.5 (La.) 1983, 715 F.2d 897. Environmental Law 136

In action challenging Army Corps of Engineers' installation and operation of hydroelectric generator at dam, district court did not err in holding that operation of dam did not result in "discharge of pollutant" as that term is defined in par. (12) of this section, since discharge of pollutant requires addition of pollutant from point source, and neither term applied to soil erosion or oxygen content of water. State of Mo. ex rel. Ashcroft v. Department of the Army, C.A.8 (Mo.) 1982, 672 F.2d 1297. Environmental Law 175

Whether the discharge of a particular substance defined as a "pollutant" in this chapter constitutes the discharge of a "pollutant" under this chapter does not depend upon the purpose for which the discharge is made. Minnehaha Creek Watershed Dist. v. Hoffman, C.A.8 (Minn.) 1979, 597 F.2d 617. Environmental Law 175

Real estate developer's point source discharges violated the Clean Water Act, where developer did not have appropriate stormwater discharge permit, its inadequate system for managing erosion helped create gullies that

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deepened over time despite subsequent efforts at mitigation, and it left behind piles of dredged sand and gravel that the storm water carried into protected waters. Center for Biological Diversity v. Marina Point Development Associates, C.D.Cal.2006, 434 F.Supp.2d 789, amended 2006 WL 2403937. Environmental Law ⚷ 206

County was not "discharger" of pollution into waters of United States, and could not be held liable under Clean Water Act (CWA), for stormwater runoff from state highway owned, maintained, operated, and controlled by state. Jones v. E.R. Snell Contractor, Inc., N.D.Ga.2004, 333 F.Supp.2d 1344, affirmed 120 Fed.Appx. 786, 2004 WL 2157261, certiorari denied 125 S.Ct. 1735, 544 U.S. 962, 161 L.Ed.2d 603. Environmental Law ⚷ 226

Addition of materials such as sand and sediment to covered waters caused by coastal landowners' ditching activities constituted "discharge" within meaning of Clean Water Act (CWA), which prohibited discharge of pollutants into waters of the United States without permit. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law ⚷ 196

Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program does not apply to discharges to groundwater, even if that groundwater is hydrologically connected to surface water. Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen Foods, Inc., D.Or.1997, 962 F.Supp. 1312. Environmental Law ⚷ 175

Pollution of creek and river caused by cattle grazing constituted "discharge" into navigable waters within meaning of Clean Water Act (CWA) section requiring state certification prior to issuance of federal permit for any activity resulting in discharge into navigable waters and, thus, state certification was required before Forest Service issued cattle grazing permits. Oregon Natural Desert Ass'n v. Thomas, D.Or.1996, 940 F.Supp. 1534, reversed 172 F.3d 1092, certiorari denied 120 S.Ct. 397, 528 U.S. 964, 145 L.Ed.2d 310. Environmental Law ⚷ 196

Pursuant to indemnity provision in connection with corporate asset purchase, providing that buyer assumed seller's liability for "the discharge at or by the [plant] of industrial products, waste or other materials into the air, streams, lakes, rivers or otherwise," buyer assumed seller's CERCLA liability based on benzine contamination of soil at plant, even though transaction pre-dated CERCLA, and despite buyer's claim that "discharge into" connoted only operational discharges from plant into air or body of water beyond plant's boundaries; drafters were charged with knowledge of statutory definitions of "discharge" and, interchangeably, "disposal," in Clean Water Act and Resource Conservation and Recovery Act (RCRA), which were directly known to parties, it was reasonable to conclude that drafters relied on RCRA's definition of "disposal," given provision's use of term "waste," but not "pollutants," and under court's construction of provision read with "at," and one of court's readings with term "by," events occurring within plant's boundaries were covered. City of Toledo v. Beazer Materials and Services, Inc., N.D.Ohio 1995, 912 F.Supp. 1051, reversed 103 F.3d 128. Indemnity ⚷ 33(6)

Act of "discharging of a pollutant," within meaning of Clean Water Act (CWA), occurred when lot owner utilized dump trucks, bulldozers and other equipment to place rock-pit fill, manure fill, silt, organic debris and other fill material on lots. U.S. v. Banks, S.D.Fla.1995, 873 F.Supp. 650, affirmed 115 F.3d 916, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 752, rehearing denied 118 S.Ct. 1341, 523 U.S. 1041, 140 L.Ed.2d 501. Environmental Law ⚷ 175

Filling wetland is "discharge of a pollutant into navigable waters of the United States," and therefore, is prohibited by Clean Water Act (CWA) without permit. Fox Bay Partners v. U.S. Corps of Engineers, N.D.Ill.1993, 831

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F.Supp. 605. Environmental Law ⚿ 196; Environmental Law ⚿ 136

Property owner's construction of concrete bulkhead and tide gate on bird refuge violated Clean Water Act in light of "recapture" provisions of Act that precluded defenses for maintenance of existing structures if activities caused change in use from wetlands to nonwetlands, and in light of facts that tide gate was new construction rather than maintenance of existing gate, and that installation of gate caused discharge of pollutants from side-casting and redeposit of excavated wetlands and from pouring of concrete. Leslie Salt Co. v. U.S., N.D.Cal.1992, 820 F.Supp. 478, affirmed in part 55 F.3d 1388, certiorari denied 116 S.Ct. 407, 516 U.S. 955, 133 L.Ed.2d 325. Environmental Law ⚿ 137

Town's alleged diversion of natural stream and resultant flooding which damaged landowners' property and alleged fraud in connection with sale of subdivision lots to landowners did not constitute violations of Clean Water Act (CWA); there was no indication that any pollutants were discharged either into stream or from stream into another body of water, and alleged fraud actions suggested state claims, not federal ones. Bettis v. Town of Ontario, N.Y., W.D.N.Y.1992, 800 F.Supp. 1113. Waters And Water Courses ⚿ 78

City violated Clean Water Act by discharging chlorine and alum floc into reservoir on navigable river, as result of adding chlorine and alum to water pumped from another river, without first obtaining a pollution emissions permit; chlorine residual, when discharged into navigable waters, was a "pollutant" within meaning of the Act, even though its intended use was beneficial, and alum sludge or floc was also a pollutant. Hudson River Fishermen's Ass'n v. City of New York, S.D.N.Y.1990, 751 F.Supp. 1088, affirmed 940 F.2d 649. Environmental Law ⚿ 206

Term "navigable waters," as used in Clean Water Act's definition of "discharge of pollutant" [33 U.S.C.A. § 1362(12)], did not include groundwater; thus, citizens' suit could not be maintained against federal government based on Coast Guard's release of contaminants into the ground, even though contaminants eventually were discharged into bay. Kelley for and on Behalf of People of State of Mich. v. U.S., W.D.Mich.1985, 618 F.Supp. 1103. Environmental Law ⚿ 226; Environmental Law ⚿ 173

Term "navigable waters," as used in Clean Water Act's definition of "discharge of pollutant" [33 U.S.C.A. § 1362(12)], did not include groundwater; thus, citizens' suit could not be maintained against federal government based on Coast Guard's release of contaminants into the ground, even though contaminants eventually were discharged into bay. Kelley for and on Behalf of People of State of Mich. v. U.S., W.D.Mich.1985, 618 F.Supp. 1103. Environmental Law ⚿ 226; Environmental Law ⚿ 173

Fill placed in wetlands on defendants' property was a "discharge of a pollutant" within purview of this chapter. U.S. v. Lambert, M.D.Fla.1984, 589 F.Supp. 366. Environmental Law ⚿ 175

For purpose of this chapter, a "discharge of a pollutant" occurred when defendant utilized dump trucks and bulldozers to deposit and spread fill material into wetlands adjacent to navigable water without benefit of Army Corps of Engineer's permit and defendants also violated this chapter when they discharged wet cement on top of the fill to create a patio for a house trailer. U.S. v. Robinson, M.D.Fla.1983, 570 F.Supp. 1157. Environmental Law ⚿ 175

Although operation of hydroelectric generator at dam involved discharge of several thousand cubic feet per second of water into river channel below dam, and associated rise and fall of water level in river dislodged and carried away silt and other material defined as "pollutants" under this section, such did not constitute "runoff of

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a pollutant" within meaning of section, and thus operation of generator was not subject to state and local water quality laws under this chapter. State of Mo., ex rel. Ashcroft v. Department of Army, Corps of Engineers, W.D.Mo.1980, 526 F.Supp. 660, affirmed 672 F.2d 1297. Environmental Law 175

The term "discharge" comprehends any addition of any pollutant to navigable waters from any point source and, though not limited to intentional or foreseen direct additions, extends to the indirect and accidental or unintentional such as might result by an act of God upon an enclosed processing facility, the structure of which would appear to preclude the possibility of the addition of process pollutants to navigable waters. SED, Inc. v. City of Dayton, S.D.Ohio 1981, 519 F.Supp. 979. Environmental Law 175

Disposal of chemical wastes into underground waters which have not been alleged to flow into or otherwise affect surface water does not constitute "discharge of a pollution" within this chapter; this chapter does not apply to subsurface wells. U. S. v. GAF Corp., S.D.Tex.1975, 389 F.Supp. 1379. Environmental Law 173

As applied to storm water runoff systems, word "addition" in par. (12) of this section and section 1342 of this title requiring a permit for addition of any pollutant to navigable waters means a discharge into navigable waters, not an increase in amount of pollutant introduced into the system. Pedersen v. Washington State Dept. of Transp., Wash.App.1980, 611 P.2d 1293, 25 Wash.App. 781, review denied. Environmental Law 196

16. Point source--Generally

Depressions, rills, and gullies that had formed along ditches on coastal landing tract as result of landowners' active and purposeful ditching of tract were "point sources" under the Clean Water Act (CWA), so as to support finding that they were subject to CWA discharge permit requirements. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 175

Concept of "point source," for purposes of Clean Water Act (CWA), embraces broadest possible definition of any identifiable conveyance from which pollutants might enter waters of United States; as such, bulldozers, backhoes, draglines and other earthmoving equipment are all point sources under CWA. U.S. v. Lambert, S.D.W.Va.1996, 915 F.Supp. 797. Environmental Law 175

Designation as "nonpoint source" of pollution under Clean Water Act (CWA) is limited to uncollected runoff water which is difficult to ascribe to single polluter. Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law 175

Term "point source," within meaning of Clean Water Act (CWA) section defining discharge of pollutant as addition of any pollutant to navigable waters from any point source, includes bulldozers, dump trucks and other equipment used to place dredged or fill material in waters of United States. U.S. v. Banks, S.D.Fla.1995, 873 F.Supp. 650, affirmed 115 F.3d 916, certiorari denied 118 S.Ct. 852, 522 U.S. 1075, 139 L.Ed.2d 752, rehearing denied 118 S.Ct. 1341, 523 U.S. 1041, 140 L.Ed.2d 501. Environmental Law 175

Essence of point source discharge under par. (14) of this section is that discharge be from "discernible, confined, and discrete conveyance," which has nothing to do with intent of operators or reasonableness of existing collection system, and though it may result from such natural phenomena as rainfall and gravity, surface runoff of contaminated waters, once channeled or collected, constitutes discharge by "point source," for purposes of such paragraph. O'Leary v. Moyer's Landfill, Inc., E.D.Pa.1981, 523 F.Supp. 642. Environmental Law 175

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If plaintiff environmental groups' proof brought proposed dam and/or its turbines within provision of this section defining point source of pollution, project would be held to be such, despite failure of administrator to arrive at a similar conclusion. South Carolina Wildlife Federation v. Alexander, D.C.S.C.1978, 457 F.Supp. 118. Environmental Law 175

While discharge facility which was being constructed by electric utility and which called for intersection of a surfing site by walls of a transit basin came within literal definition of a "source" within this section, it could not be considered a "source" and, hence, could not be considered a "new source" so as to require Environmental Protection Agency to prepare an environmental impact statement prior to issuance of a permit under National Pollutant Discharge Elimination System, where the facility was merely the proposed method of controlling an existing source of pollution from the generating plants maintained by the utility and, as a method of control, could not also have been the source. Mahelona v. Hawaiian Elec. Co., Inc., D.C.Hawai'i 1976, 418 F.Supp. 1328. Environmental Law 595(3); Environmental Law 595(4)

17. ---- Particular point sources

Debris and construction equipment on property on which scrap metal business was operated qualified as a "point source" under the Clean Water Act (CWA), for purpose of claim of CWA violation asserted against owner of property by plaintiff owner of adjoining property; piles of debris collected water, which then flowed into a nearby stream, and it did not matter whether erosion gullies from which the water flowed into the stream were constructed by defendants. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 175

Use of bulldozers and tractors to pull large metal prongs through soil, in deep ripping wetlands, comes within Clean Water Act's (CWA) broad definition of "point source." Borden Ranch Partnership v. U.S. Army Corps of Engineers, C.A.9 (Cal.) 2001, 261 F.3d 810, certiorari granted 122 S.Ct. 2355, 536 U.S. 903, 153 L.Ed.2d 178, affirmed 123 S.Ct. 599, 537 U.S. 99, 154 L.Ed.2d 508. Environmental Law 175

Defendants' conduct in severing 250-ton concrete and rebar block from stern of ferrous concrete barge and dumping it into bay, severing approximately one hundred pieces of rebar and attached concrete from barge's stern and dropping it into lagoon, and conducting sandblasting operations on floating barge that projected sand and paint chip residue into bay constituted discharge of pollutant from point source, and thus violated Clean Water Act, in that barge was "floating craft" expressly included within definition of "point source." U.S. v. West Indies Transport, Inc., C.A.3 (Virgin Islands) 1997, 127 F.3d 299, certiorari denied 118 S.Ct. 700, 522 U.S. 1052, 139 L.Ed.2d 644, denial of post-conviction relief affirmed 60 Fed.Appx. 412, 2003 WL 1564255. Environmental Law 206

Vehicles used to spread liquid manure generated as part of large dairy farm were each a "point source" under Clean Water Act; manure was collected into vehicles and discharged into fields from which manure flowed into navigable waters. Concerned Area Residents for Environment v. Southview Farm, C.A.2 (N.Y.) 1994, 34 F.3d 114, certiorari denied 115 S.Ct. 1793, 514 U.S. 1082, 131 L.Ed.2d 721. Environmental Law 175

Culvert running under railroad at boundary of landfill connecting two portions of a marsh was a "point source" for discharge of pollutants within meaning of Clean Water Act even if culvert did not "add" pollutants to navigable waters. Dague v. City of Burlington, C.A.2 (Vt.) 1991, 935 F.2d 1343, certiorari granted in part 112 S.Ct. 964, 502 U.S. 1071, 117 L.Ed.2d 130, reversed in part 112 S.Ct. 2638, 505 U.S. 557, 120 L.Ed.2d 449, on remand 976 F.2d 801. Environmental Law 175

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Cattle feedlot was point source as defined by the Clean Water Act; feedlot had in past and might in future discharge pollutants into navigable waters as result of rain that would not amount to a 25-year, 24-hour storm event. Carr v. Alta Verde Industries, Inc., C.A.5 (Tex.) 1991, 931 F.2d 1055, rehearing denied.

Deep injection wells utilized by steel companies for disposal of unwanted byproduct liquid waste containing ammonia and hazardous chemicals did not fall within exemption from requirements of Hazardous and Solid Waste Amendments of Resource Conservation and Recovery Act for point sources required to have discharge permits under Clean Water Act. Inland Steel Co. v. E.P.A., C.A.7 1990, 901 F.2d 1419, rehearing denied. Environmental Law 430

Pipes or spillways through which water flows from reservoir through dam into downstream river fall within definition of "point source" within purview of regulation of water quality changes caused by dams under National Pollutant Discharge Elimination System. National Wildlife Federation v. Gorsuch, C.A.D.C.1982, 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law 175

A point source of pollution may be present where miners design spoil piles from discharged overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharge into a navigable body of water by means of ditches, gullies and similar conveyances, even if miners have done nothing beyond mere collection of rock and other materials. Sierra Club v. Abston Const. Co., Inc., C.A.5 (Ala.) 1980, 620 F.2d 41. Environmental Law 178

Discharges of sodium cyanide-sodium hydroxide leachate solution from a reserve sump used in gold leaching operations, which discharges were caused by flaws in the construction or inadequate size to handle the fluids utilized, were discharges from a "point source" under this chapter. U. S. v. Earth Sciences, Inc., C.A.10 (Colo.) 1979, 599 F.2d 368. Environmental Law 178

Unpaved logging roads, as sources of sediment that was discharged via inboard ditches to stream crossing culverts, ditch relief culverts, and cross drain culverts, and rolling dips, could be point source under Clean Water Act (CWA), although those road features were best management practice (BMPs) in compliance with California Forest Practice Rules which had been designed to disperse storm water on hillside in order to promote natural filtration and lessen runoff; points of failure can be point sources when device or system designed to channel or diffuse runoff failed and instead channels runoff into navigable water. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law 175

Ditches that coastal landowners' dug on their tract of land were "point sources" under the Clean Water Act (CWA), so as to be subject to discharge permit requirements, where ditches served to channel and collect stormwater and other pollutants that were subsequently discharged into waters of the United States. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 175

Check dams and sediment traps that were constructed in ditches on coastal landing tract in effort to reduce discharge of pollutants into bodies of water were "point sources" under the Clean Water Act (CWA), and thus dams and traps were subject to CWA discharge permit requirements; testimony indicated that check dams on tract had been completely buried by sediment and that sediment had been discharged from dams and traps into waters of the United States. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 175

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System designed to prevent discharge of pollutants from spent mushroom substrate (SMS) would be a "point source," in context of Clean Water Act (CWA) and Pennsylvania Clean Streams Law (PCSL), where system leaked and resulted in discharge of polluted wastewater into navigable water. Reynolds v. Rick's Mushroom Service, Inc., E.D.Pa.2003, 246 F.Supp.2d 449. Environmental Law 175

Salmon farm operator's offshore net pens were "concentrated aquatic animal production facilities" (CAAPF), and thus were "point sources," within meaning of Clean Water Act (CWA); release of pollutants from pens into bay constituted identifiable, discernible, confined, and discrete emission or conveyance into water. U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC., D.Me.2002, 215 F.Supp.2d 239. Environmental Law 175

Bulldozer used by defendant to spread waste, specifically screw press rejects, into lake was "point source" under the Clean Water Act (CWA), prohibiting discharge of pollutants from point source into navigable waters of the United States. Colvin v. U.S., C.D.Cal.2001, 181 F.Supp.2d 1050. Environmental Law 175

Pipeline's facility on which operation of above-ground tanks had resulted in petroleum release into swamp was "point source" under Clean Water Act (CWA). Williams Pipe Line Co. v. Bayer Corp., S.D.Iowa 1997, 964 F.Supp. 1300. Environmental Law 177

Secondary lead smelting plant was "point source" subject to Clean Water Act's (CWA) reporting and disclosure requirements, even though wastewater generated by plant was treated at publicly-owned treatment works (POTW) before it was discharged into river, such that plant did not discharge pollutants directly into navigable waters. RSR Corp. v. Browner, S.D.N.Y.1996, 924 F.Supp. 504, affirmed 1997 WL 134413, vacated. Environmental Law 207

For purposes of motion to dismiss for failure to state claim, allegations of complaint were sufficient to establish that mining company's tailing ponds were each "point source" within meaning of Clean Water Act (CWA), despite claim that ponds were merely areas of low topography into which tailing from mineral processing activities had been deposited and through which water could percolate; tailings ponds were point sources, as they collected and channeled contaminated water into discrete conveyance. Washington Wilderness Coalition v. Hecla Min. Co., E.D.Wash.1994, 870 F.Supp. 983. Environmental Law 175

Defendant who placed vials of human blood in river bulkhead was properly convicted for violating provision of Clean Water Act making it an offense for any person to discharge pollutant into navigable waters from a point source; defendant himself could be found to be a "point source," and even if he was not, rocks forming bulkhead came within definition of "point source." U.S. v. Villegas, E.D.N.Y.1991, 784 F.Supp. 6, affirmed in part , reversed in part 3 F.3d 643, certiorari denied 114 S.Ct. 2764, 512 U.S. 1245, 129 L.Ed.2d 878. Environmental Law 743

Culvert through which water flowed from city landfill into adjacent wetland constituted "point source," within meaning of provisions prohibiting discharge of pollutant into waters of United States from any "point source" unless authorized under Clean Water Act, even though city did not own land on which culvert was located. Dague v. City of Burlington, D.Vt.1989, 732 F.Supp. 458. Environmental Law 196

Hazardous waste overflows from lagoon of owner of hazardous waste storage site into nearby stream without permit constituted discharge of pollutants to navigable waters from a "point source" within meaning of Clean Water Act of 1977, even though owner did not intend that the discharges take place. Fishel v. Westinghouse

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Elec. Corp., M.D.Pa.1986, 640 F.Supp. 442. Environmental Law ⚿ 175

Bulldozers and dump trucks used to dump and spread fill material for construction of road on wetlands were "point sources of pollution" within meaning of this chapter. U. S. v. Weisman, M.D.Fla.1980, 489 F.Supp. 1331. Environmental Law ⚿ 175

National Pollutant Discharge Elimination System requirements did pertain to piped diversion of river water into another body of water. Del-Aware Unlimited, Inc. v. Com., Dept. of Environmental Resources, Pa.Cmwlth.1986, 508 A.2d 348, 96 Pa.Cmwlth. 361, appeal denied 523 A.2d 1132, 514 Pa. 644. Environmental Law ⚿ 175

18. ---- Particular nonpoint sources

Human being was not "point source" subject to criminal liability under Clean Water Act; Act was at best ambiguous as to whether "point source" applied to human being, and rule of lenity required that ambiguity be resolved in defendant's favor. U.S. v. Plaza Health Laboratories, Inc., C.A.2 (N.Y.) 1993, 3 F.3d 643, certiorari denied 114 S.Ct. 2764, 512 U.S. 1245, 129 L.Ed.2d 878. Environmental Law ⚿ 743; Environmental Law ⚿ 736

Environmental Protection Agency's (EPA) approval of West Virginia's antidegradation procedures under Clean Water Act (CWA), which stated that nonpoint sources would be deemed in compliance if best management practices were installed and maintained, although degradation of Tier 2 waters from point sources might occur after Tier 2 review, was reasonable; EPA reasonably concluded that best management practices for nonpoint source pollution would be "achieved," as required by EPA regulations, if those practices were "installed and maintained," as required by West Virginia's procedures. Ohio Valley Environmental Coalition v. Horinko, S.D.W.Va.2003, 279 F.Supp.2d 732. Environmental Law ⚿ 191

Building from which some trash had allegedly fallen into river, and into which rain water allegedly leaked and passed into river through runoff, was not "point source" within meaning of Clean Water Act. Hudson Riverkeeper Fund, Inc. v. Harbor at Hastings Associates, S.D.N.Y.1996, 917 F.Supp. 251. Environmental Law ⚿ 175

Diffuse runoff of farmer's liquid manure application was not "point source" discharge, and thus not covered by Clean Water Act; evidence showed only that liquid flowed to and through lowest areas of field without ever being "collected" by human activity. Concerned Area Residents for the Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1422, reversed 34 F.3d 114, certiorari denied 115 S.Ct. 1793, 514 U.S. 1082, 131 L.Ed.2d 721. Environmental Law ⚿ 175

Uncollected surface runoff may, but does not necessarily, constitute discharge from a point source within this chapter. U. S. v. Oxford Royal Mushroom Products, Inc., E.D.Pa.1980, 487 F.Supp. 852. Environmental Law ⚿ 175

19. Schedule of compliance

Modifications of originally planned upgrades at water pollution control plants (WCPC) pursuant to revised phosphorus control plan made originally planned tunnel, filters, and step-feed system unnecessary to comply with phosphorus effluent limitation and, thus, such upgrades were not remedial measures "leading to compliance" with effluent limitation, and failure to complete upgrades therefore did not violate "schedule of compliance"

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within meaning of Clean Water Act (CWA). Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, N.D.Ga.1996, 953 F.Supp. 1541. Environmental Law ⚿ 206

20. Evidence

Corps of Engineers' use of facultative plants as an indicator of hydrophytic vegetation did not render unreliable, for purposes of action under the Clean Water Act (CWA), expert's opinion that the wetlands extended to the lake; presence of hydrophytic vegetation was only one of three criteria used to define wetlands and Corps' use of other criteria ensured that its methods were reliable, and in any case, 1987 Corps of Engineers Wetlands Delineation Manual, which permitted use of facultative plants to identify wetlands, was entitled to deference. U.S. v. Bailey, D.Minn.2007, 516 F.Supp.2d 998. Environmental Law ⚿ 148

33 U.S.C.A. § 1362, **33 USCA § 1362**
Current through P.L. 110-198 approved 3-24-08

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ATTACHMENT NO. 4

33 U.S.C.A. § 1251

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter I. Research and Related Programs (Refs & Annos)
§ 1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter--

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant pro-

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gram under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

CREDIT(S)

(June 30, 1948, c. 758, Title I, § 101, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 816, and amended Dec. 27, 1977, Pub.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575; Feb. 4, 1987, Pub.L. 100-4, Title III, § 316(b), 101 Stat. 60.)

HISTORICAL AND STATUTORY NOTES

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Revision Notes and Legislative Reports

1972 Acts.Senate Report No. 92-414 and Senate Conference Report No. 92-1236, see 1972 U.S. Code Cong. and Adm. News, p. 3668.

1977 Acts.Senate Report No. 95-370 and House Conference Report No. 95-830, see 1977 U.S. Code Cong. and Adm. News, p. 4326.

1987 Acts. Section-by-Section Analysis, see 1987 U.S. Code Cong. and Adm. News, p. 5.

Codifications

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by Act June 30, 1948, c. 758, 62 Stat. 1155, and amended by Acts July 17, 1952, c. 927, 66 Stat. 755; July 9, 1956, c. 518, 70 Stat. 498; June 25, 1959, Pub.L. 86-70, 73 Stat. 141; July 12, 1960, Pub.L. 86-624, 74 Stat. 411; July 20, 1961, Pub.L. 87-88, 75 Stat. 204; Oct. 2, 1965, Pub.L. 89-234, 79 Stat. 903; Nov. 3, 1966, Pub.L. 89-753, 80 Stat. 1246; Apr. 3, 1970, Pub.L. 91-224, 84 Stat. 91; Dec. 31, 1970, Pub.L. 91-611, 84 Stat. 1818; July 9, 1971, Pub.L. 92-50, 85 Stat. 124; Oct. 13, 1971, Pub.L. 92-137, 85 Stat. 379; Mar. 1, 1972, Pub.L. 92-240, 86 Stat. 47, and was formerly classified first to section 466 et seq. of this title and later to section 1151 et seq. of this title. The Act is shown herein, however, as having been added by Pub.L. 92-500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the Act's provisions by Pub.L. 92-500.

Amendments

1987 Amendments. Subsec. (a)(7). Pub.L. 100-4 added par. (7).

1977 Amendments. Subsec. (b). Pub.L. 95-217, § 26(b), added provisions expressing Congressional policy that the States manage the construction grant program under this chapter and implement the permit program under sections 1342 and 1344 of this title.

Subsec. (g). Pub.L. 95-217, § 5(a), added subsec. (g).

Savings Provisions

Section 4 of Pub.L. 92-500 provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations or other

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actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

"(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act."

Severability of Provisions

Section 512 of Act June 30, 1948, c. 758, Title V, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 894, provided that: "If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby."

Short Title

2002 Amendments. Pub.L. 107-303, § 1(a), Nov. 27, 2002, 116 Stat. 2355, provided that: "This Act [enacting 33 U.S.C.A. § 1271a, amending 33 U.S.C.A. §§ 1254, 1266, 1268, 1270, 1285, 1290, 1324, 1329, 1330 and 1375, enacting provisions set out as notes under this section, 31 U.S.C.A. § 1113 and 33 U.S.C.A. § 1254, and repealing provisions set out as a note under 20 U.S.C.A. § 50] may be cited as the 'Great Lakes and Lake Champlain Act of 2002'."

Pub.L. 107-303, Title I, § 101, Nov. 27, 2002, 116 Stat. 2355, provided that: "This Title [enacting 33 U.S.C.A. § 1271a, and amending 33 U.S.C.A. § 1268] may be cited as the 'Great Lakes Legacy Act of 2002'."

Pub.L. 107-303, Title II, § 201, Nov. 27, 2002, 116 Stat. 2358, provided that: "This Title [amending 33 U.S.C.A. § 1270] may be cited as the 'Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002'."

2000 Amendments. Pub.L. 106-457, Title VI, § 601, Nov. 7, 2000, 114 Stat. 1975, provided that: "This title [enacting section 1300 of this title] may be cited as the 'Alternative Water Sources Act of 2000'."

Pub.L. 106-457, Title V, § 501, Nov. 7, 2000, 114 Stat. 1973, provided that: "This title [enacting section 1273 of this title] may be cited as the 'Lake Pontchartrain Basin Restoration Act of 2000'."

Pub.L. 106-457, Title IV, § 401, Nov. 7, 2000, 114 Stat. 1973, provided that: "This title [amending section 1269 of this title] may be cited as the 'Long Island Sound Restoration Act'."

Pub.L. 106-457, Title II, § 201, Nov. 7, 2000, 114 Stat. 1967, provided that: "This title [amending section 1267 of this title and enacting provisions set out as a note under section 1267 of this title] may be cited as the

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'Chesapeake Bay Restoration Act of 2000'."

Pub.L. 106-284, § 1, Oct. 10, 2000, 114 Stat. 870, provided that: "This Act [enacting sections 1346 and 1375a of this title and amending sections 1254, 1313, 1314, 1362, and 1377 of this title] may be cited as the 'Beaches Environmental Assessment and Coastal Health Act of 2000'."

1994 Amendments. Pub.L. 103-431, § 1, Oct. 31, 1994, 108 Stat. 4396, provided that: "This Act [amending section 1311 of this title] may be cited as the 'Ocean Pollution Reduction Act'."

1990 Amendments. Pub.L. 101-596, § 1, Nov. 16, 1990, 104 Stat. 3000, provided that: "This Act [enacting sections 1269 and 1270 and amending sections 1268 and 1324 of this title, and enacting note provisions under this section and section 1270 of this title] may be cited as the 'Great Lakes Critical Programs Act of 1990'."

Pub.L. 101-596, Title II, § 201, Nov. 16, 1990, 104 Stat. 3004, provided that: "This part [enacting section 1269 and amending section 1416 of this title] may be cited as the 'Long Island Sound Improvement Act of 1990'."

Pub.L. 101-596, Title III, § 301, Nov. 16, 1990, 104 Stat. 3006, provided that: "This title [enacting section 1270 and amending section 1324(d)(2) of this title and enacting note provision under section 1270 of this title] may be cited as the 'Lake Champlain Special Designation Act of 1990'."

1988 Amendments. Pub.L. 100-653, Title X, § 1001, Nov. 14, 1988, 102 Stat. 3835, provided that: "This title [amending section 1330(a)(2)(B) of this title and enacting provisions set out as notes under section 1330 of this title] may be cited as the 'Massachusetts Bay Protection Act of 1988'."

1987 Amendments. Section 1(a) of Pub.L. 100-4 provided that: "This Act [enacting sections 1254a, 1267, 1268, 1281b, 1329, 1330, 1377, 1381, 1382, 1383, 1384, 1385, 1386, 1387, and 1414a of this title, amending sections 1251, 1254, 1256, 1262, 1281, 1282, 1283, 1284, 1285, 1287, 1288, 1291, 1311, 1312, 1313, 1314, 1317, 1318, 1319, 1321, 1322, 1324, 1342, 1344, 1345, 1361, 1362, 1365, 1369, 1375, and 1376 of this title, and enacting provisions set out as notes under sections 1251, 1284, 1311, 1317, 1319, 1330, 1342, 1345, 1362, 1375, and 1414a of this title and section 1962d-20 of Title 42, The Public Health and Welfare] may be cited as the 'Water Quality Act of 1987'."

1981 Amendments. Pub.L. 97-117, § 1, Dec. 29, 1981, 95 Stat. 1623, provided that: "This Act [enacting sections 1298, 1299, and 1313a of this title, amending sections 1281 to 1285, 1287, 1291, 1292, 1296, 1311, and 1314 of this title, and enacting provisions set out as notes under sections 1311 and 1375 of this title] may be cited as the 'Municipal Wastewater Treatment Construction Grant Amendments of 1981'."

1977 Amendments. Section 1 of Pub.L. 95-217 provided: "That this Act [enacting sections 1281a, 1294 to 1296, and 1297 of this title, amending sections 1251, 1252, 1254 to 1256, 1259, 1262, 1263, 1281, 1282 to 1288, 1291, 1292, 1311, 1314, 1315, 1317 to 1319, 1321 to 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375, and 1376 of this title, enacting provisions set out as notes under sections 1251, 1284, 1286, 1314, 1321, 1342, 1344, and 1376 of this title, and amending a provision set out as a note under this section] may be cited as the 'Clean Water Act of 1977'."

1972 Acts. Section 519, formerly section 518, of Act June 30, 1948, c. 758, Title V, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 896, amended Dec. 27, 1977, Pub.L. 95-217, § 2, 91 Stat. 1566, and renumbered Feb. 4, 1987, Pub.L. 100-4, Title V, § 506, 101 Stat. 76, provided that: "This Act [enacting this chapter] may be

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cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act)."

Section 1 of Pub.L. 92-500 provided: "That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'."

Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

Seafood Processing Study; Submittal of Results to Congress Not Later Than January 1, 1979

Pub.L. 95-217, § 74, Dec. 27, 1977, 91 Stat. 1609, provided that the Administrator of the Environmental Protection Agency conduct a study to examine the geographical, hydrological, and biological characteristics of marine waters to determine the effects of seafood processes which dispose of untreated natural wastes into such waters and to include in this study an examination of technologies which may be used in such processes to facilitate the use of the nutrients in these wastes or to reduce the discharge of such wastes into the marine environment and to submit the result of this study to Congress not later than Jan. 1, 1979.

Oversight Study

Section 5 of Pub.L. 92-500 authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution conducted, supported, or assisted by any Federal agency pursuant to any federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

International Trade Study

Section 6 of Pub.L. 92-500 provided that:

"(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine--

"(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

"(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of

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such programs;
"(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation--

"(A) does not require its manufacturers to implement pollution abatement and control programs,
"(B) requires a lesser degree of pollution abatement and control in its programs, or
"(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;
"(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and
"(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

"(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months."

International Agreements

Section 7 of Pub.L. 92-500 provided that: "The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums."

National Policies and Goal Study

Section 10 of Pub.L. 92-500 authorized the President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report the results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

Efficiency Study

Section 11 of Pub.L. 92-500 authorized the President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report the results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

Sex Discrimination

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Section 13 of Pub.L. 92-500 provided that: "No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Assistance under this Act [see Short Title note above], the Federal Water Pollution Control Act [this chapter], or the Environmental Financing Act [set out as a note under section 1281 of this title]. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

National Shellfish Indicator Program

Pub.L. 102-567, Title III, § 308, Oct. 29, 1992, 106 Stat. 4286, as amended Pub.L. 105-362, Title II, § 201(b), Nov. 10, 1998, 112 Stat. 3282, provided that:

"(a) **Establishment of a research program.**--The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the 'Program') for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Consortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for--

"(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of fecal contamination and human enteric pathogens;
"(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;
"(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;
"(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;
"(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and
"(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

"(b) **Advisory committee.**--(1) For the purpose of providing oversight of the Program on a continuing basis, an

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advisory committee (hereafter in this section referred to as the 'Committee') shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

"(2) The Committee shall--

"(A) identify priorities for achieving the purpose of the Program;
"(B) review and recommend approval or disapproval of Program work plans and plans of operation;
"(C) review and comment on all subcontracts and grants to be awarded under the Program;
"(D) receive and review progress reports from the Consortium and program subcontractors and grantees; and
"(E) provide such other advice on the Program as is appropriate.

"(3) The Committee shall consist of at least ten members and shall include--

"(A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;
"(B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;
"(C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and
"(D) one member representing the Shellfish Institute of North America.

"(4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

"(5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

"(6) Members of the Committee and its scientific subcommittee established under this subsection shall not be paid for serving on the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code [section 5703 of Title 5, Government Organization and Employees].

"(c) **Contract with consortium.**--Within 30 days after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will--

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"(1) be the academic administrative organization and fiscal agent for the Program;
"(2) award and administer such grants and subcontracts as are approved by the Committee under subsection (b);
"(3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;
"(4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;
"(5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and
"(6) make available to the Committee such staff, information, and assistance as the Committee may reasonably require to carry out its activities.

"(d) **Authorization of appropriations.**--(1) Of the sums authorized under section 4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) [section 4(a) of Pub.L. 98-210, Dec. 6, 1983, 97 Stat. 1409, which is not classified to the Code], there are authorized to be appropriated to the Secretary of Commerce $5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

"(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

"(e) **Definitions.**--As used in this section, the term--

"(1) 'Consortium' means the Louisiana Universities Marine Consortium; and
"(2) 'shellfish' means any species of oyster, clam, or mussel that is harvested for human consumption."

Definition of "Administrator"

Section 1(d) of Pub.L. 100-4 provided that: "For purposes of this Act [see Short Title of 1987 Amendment note set out above], the term 'Administrator' means the Administrator of the Environmental Protection Agency."

Limitation on Payments

Section 2 of Pub.L. 100-4 provided that: "No payments may be made under this Act [see Short Title of 1987 Amendment note set out above] except to the extent provided in advance in appropriation Acts."

Contiguous Zone of United States

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under 43 U.S.C.A. § 1331.

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11548

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, set out as a note under section 1321 of this title.

EXECUTIVE ORDER NO. 11742

<Oct. 23, 1973, 38 F.R. 29457>

Delegation of Functions to Secretary of State Respecting Negotiation of International Agreements Relating to Enhancement of Environment

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

CROSS REFERENCES

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Federal Procedure, Lawyers Edition § 32:1432, Parties.

Federal Procedure, Lawyers Edition § 32:1898, Standing.

Federal Procedure, Lawyers Edition § 32:1899, Availability of Other Remedies.

Federal Procedure, Lawyers Edition § 32:2003, Hearings Under the Federal Water Pollution Control Act.

Federal Procedure, Lawyers Edition § 56:2059, Removal of Actions.

Norton Bankruptcy Law and Practice 2d § 149:1, Introduction.

Norton Bankruptcy Law and Practice 2d § 363:21, Asset Purchase Agreement (Hospital).

Norton Creditor's Rights Handbook App 2A, Loan Agreement.

Restatement (Third) of Foreign Relations § 601, State Obligations With Respect to Environment of Other States and the Common Environment.

Restatement (Third) of Foreign Relations § 603, State Responsibility for Marine Pollution.

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West's Federal Administrative Practice § 835, Subject Matter Jurisdiction--Water Pollution and Control.

West's Federal Administrative Practice § 5263, The Clean Water Act.

West's Federal Administrative Practice § 5920, Coal--Terms of Leases.

13B Wright & Miller: Federal Prac. & Proc. § 3562, The Meaning of "Arising Under".

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1. Constitutionality

To satisfy standing requirement of Article III in citizen suit under the Clean Water Act (CWA), plaintiff must show (1) actual or threatened injury, (2) "fairly traceable" to the defendant's action, and (3) likely redress if plaintiff prevails in the lawsuit. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law ⚿ 650; Environmental Law ⚿ 651

Congress did not unconstitutionally delegate its legislative authority to Army Corps of Engineers by allowing Corps' to define "waters of the United States" within meaning of Clean Water Act to include wetlands adjacent to navigable waters. Mills v. U.S., C.A.11 (Fla.) 1994, 36 F.3d 1052, certiorari denied 115 S.Ct. 1966, 514 U.S. 1112, 131 L.Ed.2d 856. Constitutional Law ⚿ 62(10); Environmental Law ⚿ 116

This chapter is constitutional. U. S. v. Ashland Oil & Transp. Co., C.A.6 (Ky.) 1974, 504 F.2d 1317.

Claim brought by landowner, seeking to halt runoff onto land from methane production activities, sought punitive damages against state agency officials for their alleged failure to enforce Clean Water Act (CWA) and federal constitution, and thus district court maintained subject matter jurisdiction over claim to extent that it applied to officials in their individual capacities, notwithstanding Eleventh Amendment restrictions on claims against state officials. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Courts ⚿ 269

United States Army Corps of Engineers did not exceed its authority under Clean Water Act by regulating intrastate isolated wetlands as "waters of the United States." U.S. v. Hallmark Const. Co., N.D.Ill.1998, 14 F.Supp.2d 1069. Environmental Law ⚿ 128

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The Army Corps of Engineers reasonably interpreted the statutory term "waters of the United States," within the meaning of the Clean Water Act (CWA), to include intrastate waters that provide a habitat for migratory birds; the Commerce Clause power, and thus, the Clean Water Act, was broad enough to extend the Corps' jurisdiction to local waters which might provide habitat to migratory birds and endangered species. Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, N.D.Ill.1998, 998 F.Supp. 946, affirmed 191 F.3d 845, certiorari granted 120 S.Ct. 2003, 529 U.S. 1129, 146 L.Ed.2d 954, reversed 121 S.Ct. 675, 531 U.S. 159, 148 L.Ed.2d 576, on remand 6 Fed.Appx. 364, 2001 WL 312372. Commerce 52.10; Environmental Law 525; Environmental Law 123

Federal regulatory control over navigable waters for the purposes of this chapter is not unconstitutional. Leslie Salt Co. v. Froehlke, N.D.Cal.1974, 403 F.Supp. 1292, supplemented 412 F.Supp. 1096, reversed in part , modified in part 578 F.2d 742. Navigable Waters 3

Term "waters of the United States", as used in this chapter, is not vague and indefinite on theory that it fails to give fair warning of conduct that it makes criminal and thus is in violation of due process clause of U.S.C.A. Const.Amend. 5. U. S. v. Phelps Dodge Corp., D.C.Ariz.1975, 391 F.Supp. 1181. Constitutional Law 4509(1); Navigable Waters 3

2. Power of Congress

Congress has power to regulate activities such as dredging and filling which cause water pollution, and Congress is not limited by "navigable waters" test in its authority to control pollution under U.S.C.A. Const. Art. 1, § 8, cl. 3. U.S. v. Holland, M.D.Fla.1974, 373 F.Supp. 665.

3. Purpose

Clean water is not the only purpose of the Clean Water Act; so is the preservation of primary state responsibility for ordinary land-use decisions. (Per Justice Scalia with the Chief Justice and two Justices joining and one Justice concurring in the judgment.) Rapanos v. U.S., U.S.2006, 126 S.Ct. 2208, 165 L.Ed.2d 159, on remand 2007 WL 470555. Environmental Law 165

Congress' intent in enacting this chapter was to establish an all-encompassing program of water pollution and regulation. City of Milwaukee v. Illinois and Michigan, U.S.Ill.1981, 101 S.Ct. 1784, 451 U.S. 304, 68 L.Ed.2d 114, on remand 731 F.2d 403.

This chapter provides comprehensive program for controlling and abating water pollution. Train v. City of New York, U.S.Dist.Col.1975, 95 S.Ct. 839, 420 U.S. 35, 43 L.Ed.2d 1. Environmental Law 165

Environmental Protection Agency (EPA) had discretion to accept state certification of proposed discharge permit under Clean Water Act beyond 60-day limitation; regulatory provision authorized longer period upon finding that unusual circumstances required additional time, and legislative intent was to encourage state certification to protect nation's waterways through dual federal and state permitting process. Ackels v. U.S. E.P.A., C.A.9 1993, 7 F.3d 862. Environmental Law 220.

Clean Water Act is not statute designed to provide protection to industrial employees who work with hazardous substances, but, rather, objective of Act is to restore and maintain chemical, physical, and biological integrity of nation's waters. U.S. v. Borowski, C.A.1 (Mass.) 1992, 977 F.2d 27. Environmental Law 165

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It is intent of Clean Water Act [33 U.S.C.A. § 1251 et seq.] to cover, as much as possible, all waters of the United States instead of just some. Quivira Min. Co. v. U.S.E.P.A., C.A.10 1985, 765 F.2d 126, certiorari denied 106 S.Ct. 791, 474 U.S. 1055, 88 L.Ed.2d 769.

Clean Water Act expresses congressional insistence on eliminating water pollution within short time span through use of uniform effluent limitations imposed on industry-wide basis. Reynolds Metals Co. v. U.S.E.P.A., C.A.4 1985, 760 F.2d 549. Environmental Law ⚿ 183

This chapter was designed to regulate to fullest extent possible those sources emitting pollution into rivers, streams and lakes; the touchstone of the regulatory scheme is that those needing to use waters for waste distribution must seek and obtain a permit to discharge that waste, with quantity and quality of discharge regulated. U. S. v. Earth Sciences, Inc., C.A.10 (Colo.) 1979, 599 F.2d 368. Environmental Law ⚿ 196

Intent of the drafters of this chapter was to rely on the Environmental Protection Agency's ingenuity backed up by comprehensive system under this chapter of administrative rule making and stiff penalties, to force each industry on its own to develop the technology necessary to achieve aspiring goal under this chapter of eliminating the discharge of pollutants into the nation's navigable waters within the short span of 13 years. Weyerhaeuser Co. v. Costle, C.A.D.C.1978, 590 F.2d 1011, 191 U.S.App.D.C. 309. Environmental Law ⚿ 184

Overall intention of Congress in enacting this chapter was to eliminate or to reduce as much as possible all water pollution throughout the United States. Quarles Petroleum Co., Inc. v. U. S., Ct.Cl.1977, 551 F.2d 1201, 213 Ct.Cl. 15. Environmental Law ⚿ 165

This chapter was intended to extend its jurisdiction to the constitutional limit. State of Minn. by Spannaus v. Hoffman, C.A.8 (Minn.) 1976, 543 F.2d 1198, certiorari denied 97 S.Ct. 1672, 430 U.S. 977, 52 L.Ed.2d 373. Environmental Law ⚿ 165

Ultimate objective of this chapter is to eliminate completely the discharge of pollution into navigable waters by 1985. American Paper Institute v. Train, C.A.D.C.1976, 543 F.2d 328, 177 U.S.App.D.C. 181, certiorari dismissed 97 S.Ct. 398, 429 U.S. 967, 50 L.Ed.2d 335. Navigable Waters ⚿ 3

This chapter was designed to enlist aid of states in fighting water pollution and, through state action, to achieve final objective of purity of waters. Committee for Consideration of Jones Falls Sewage System v. Train, C.A.4 (Md.) 1976, 539 F.2d 1006.

Congress, in enacting this chapter intended to require step-by-step improvement in quality of discharged effluent, rather than a zig-zag course with total purity demanded forthwith only to be succeeded by varying stages of impurity. Stream Pollution Control Bd. of State of Ind. v. U.S. Steel Corp., C.A.7 (Ind.) 1975, 512 F.2d 1036. Environmental Law ⚿ 183

Central purpose of Clean Water Act is to restore and maintain chemical, physical, and biological integrity of the nation's waters. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚿ 165

Purpose of Clean Water Act was to achieve compliance with new standards and not simply compensate for injuries caused by existing practices; Congress intended to actually change existing practices and to coerce polluters by providing that injunctions and sanctions were among the federal and state enforcement mechanisms to

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which all polluters, including federal facilities, must submit. Metropolitan Sanitary Dist. of Greater Chicago v. U.S. Dept. of Navy, N.D.Ill.1989, 722 F.Supp. 1565, on reconsideration in part 737 F.Supp. 51. Environmental Law 205; Environmental Law 165; Environmental Law 700

This chapter focuses primarily on technological control of pollution at its source rather than on achievement of water quality standards for receiving waters. Pacific Legal Foundation v. Quarles, C.D.Cal.1977, 440 F.Supp. 316, affirmed 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law 188; Environmental Law 184

This chapter was enacted to prevent entry of pollutants into navigable waters and to control pollution at its source before it endangers coastal environment. P. F. Z. Properties, Inc. v. Train, D.C.D.C.1975, 393 F.Supp. 1370. Navigable Waters 3

This chapter, in its amended form, was designed to deal with all facets of recapturing and preserving the biological integrity of the nation's water by creating a web of complex interrelated regulatory programs. U.S. v. Holland, M.D.Fla.1974, 373 F.Supp. 665. Environmental Law 165

Ultimate objective of the Federal Water Pollution Control Act is the total elimination of discharge of pollutants into the nation's navigable waters. Rayle Coal Co. v. Chief, Div. of Water Resources, State Dept. of Natural Resources, W.Va.1990, 401 S.E.2d 682, 184 W.Va. 549. Environmental Law 165

4. Construction

Federal Energy Regulatory Commission's (FERC) interpretation of Clean Water Act (CWA) is not entitled to deference. California Trout, Inc. v. F.E.R.C., C.A.9 2002, 313 F.3d 1131, certiorari denied 124 S.Ct. 85, 540 U.S. 818, 157 L.Ed.2d 36. Statutes 219(6.1)

This chapter is to be given a reasonable interpretation which is not parsed and dissected with the meticulous technicality applied in testing other statutes and instruments. Environmental Defense Fund, Inc. v. Costle, C.A.D.C.1981, 657 F.2d 275, 211 U.S.App.D.C. 313. Environmental Law 167

In construing this chapter, the guiding star is the intent of Congress to improve and preserve the quality of the nation's waters and all issues must be viewed in light of such intent. Kennecott Copper Corp. v. E.P.A., C.A.10 1979, 612 F.2d 1232. Environmental Law 167

Any interpretation of this chapter that operates to deny the Environmental Protection Agency the power to set nationally effective effluent standards would be a clear refusal to follow the intent of the Congress and a gross misinterpretation of this chapter itself. American Frozen Food Institute v. Train, C.A.D.C.1976, 539 F.2d 107, 176 U.S.App.D.C. 105. Environmental Law 183

The Clean Water Act is entitled to broad construction to implement its objective of protecting human health, welfare, and environment. U.S. v. Aluminum Co. of America, E.D.Tex.1993, 824 F.Supp. 640. Environmental Law 167

In administering and enforcing the Clean Water Act, the Environmental Protection Agency (EPA) and the Army Corps of Engineers share responsibility; Corps has nondiscretionary duty to regulate discharge of dredged or fill materials by issuing permits after applying guidelines established by the EPA and has authority to enforce permit violations, while EPA holds ultimate responsibility for wetlands protection, has authority to seek penalties

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for unpermitted discharges of pollutants into United States waters and, after consultation with the Corps, can block or overrule Corps' decision to issue permit. Orange Environment, Inc. v. County of Orange, S.D.N.Y.1993, 811 F.Supp. 926. Environmental Law 136; Environmental Law 145

5. Construction with other laws

Section of the Outer Continental Shelf Lands Act (OCSLA) stating that Department of Interior's regulations shall include provisions for the suspension of any operation if there is a threat of seriousharmto the human environment did not authorize suspension of lease contracts giving oil companies rights to explore for and develop oil off the North Carolina coast pursuant to report of panel created by the subsequently enacted Outer Banks Protection Act (OBPA), where the Department of the Interior had determined that oil companies' exploration plan fully complied with the OCSLA, as no new requirement was incorporated into the contracts. Mobil Oil Exploration and Producing Southeast, Inc. v. U.S., U.S.2000, 120 S.Ct. 2423, 530 U.S. 604, 147 L.Ed.2d 528, on remand 236 F.3d 1313, rehearing denied. Mines And Minerals 5.1(5)

Clean Water Act(CWA) and Oil Pollution Act (OPA) are not so broad as to permit federal government to impose regulations over tributaries that are neither themselves navigable nor truly adjacent to navigable waters. In re Needham, C.A.5 (La.) 2003, 354 F.3d 340. Environmental Law 173; Environmental Law 437

Interagency Coordination Agreement (ICA) executed by United States Army Corps of Engineers and other federal, state, and local agencies, which sought to coordinate federal regulation of soil erosion and sediment flows under Clean Water Act's permit regime with the work of various federal- and local-level agencies, did not amount to agency action by which "rights or obligations have been determined" or from which "legal consequences will flow" under second prong of the *Bennett* test, and so did not constitute final agency action under the Administrative Procedure Act (APA); ICA established only procedural framework under which Corps intended to operate, it expressly provided that Corps retained right to make final decisions regarding opinions, actions, or findings within Corps' jurisdiction, and it imposed no new legal requirements on regulated parties, nor altered in any way the legal regime to which such parties were subject, and Corps did not use ICA to leverage its regulatory authority beyond that provided for by statute. Home Builders Ass'n of Greater Chicago v. U.S. Army Corps of Engineers, C.A.7 (Ill.) 2003, 335 F.3d 607. Environmental Law 661

In action brought by environmental organizations, seeking to preliminarily enjoin golf course development in riparian area containing bald eagle habitat, language within Endangered Species Act (ESA) governing "adverse impacts" to individual species was improper benchmark for assessing irreparable harm in event that injunction were not to be granted, since action was brought under Clean Water Act (CWA) and National Environmental Policy Act (NEPA), not ESA; issue of whether development would harm individual animals was irrelevant to assessment of whether project would have adverse impact on aquatic ecosystem as whole. Greater Yellowstone Coalition v. Flowers, C.A.10 (Wyo.) 2003, 321 F.3d 1250, on subsequent appeal 359 F.3d 1257. Environmental Law 701

Endangered Species Act does not, by its terms, enlarge the jurisdiction of the Corps of Engineers under the Clean Water Act; however, it imposes on agencies a mandatory obligation to consider the environmental impacts of the projects that they authorize or fund. Riverside Irr. Dist. v. Andrews, C.A.10 (Colo.) 1985, 758 F.2d 508. Environmental Law 536

In light of past compliance issues, injunction was warranted in United States' action under Clean Water Act (CWA) against the Government of the Virgin Islands, under which any future contracts for sewer repairs re-

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quired by amended consent decree had to comply with competitive bidding requirements of Virgin Islands law, unless there was valid reason to bypass them and all applicable rules and regulations were followed to the letter, and under which the Government of the Virgin Islands was required to comply with other provisions of Virgin Islands Code, file reports with court for contracts in excess of $250,000, promptly repair any new sewer system breakdowns resulting in sewage bypasses, and hire private contractor to operate and maintain specified waste water collection system and pump station for at least 18 months. U.S. v. Government of Virgin Islands, D.Virgin Islands 2003, 248 F.Supp.2d 420, affirmed in part, vacated in part and remanded 363 F.3d 276. Environmental Law 700

Fifth Amendment takings claim brought under § 1983 by landowner against state Department of Environmental Quality (DEQ) and gas company, seeking to halt runoff onto land from methane production activities, was predicated upon independent constitutional violation, not upon violations of Clean Water Act (CWA) also alleged by landowner, and thus takings claim was not precluded under *National Sea Clammers* doctrine, notwithstanding comprehensive enforcement scheme of CWA. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Civil Rights 1310; Eminent Domain 266

Hydroelectric facilities subject to the Federal Power Act are also subject to federal water pollution control laws and those laws are not preempted by the Federal Power Act. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Environmental Law 175

This chapter preempted the provisions of sections 407, 411 and 412 of this title. U. S. v. M/V Big Sam, E.D.La.1979, 480 F.Supp. 290, affirmed in part, reversed in part on other grounds 681 F.2d 432, rehearing denied 693 F.2d 451, certiorari denied 103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367.

General demarcation line between jurisdiction of this chapter and of the Marine Protection, Research, and Sanctuaries Act of 1972, section 1401 et seq. of this title, with exceptions of pipes or outfalls, was the three-mile limit of the territorial seas. Pacific Legal Foundation v. Quarles, C.D.Cal.1977, 440 F.Supp. 316, affirmed 614 F.2d 225, certiorari denied 101 S.Ct. 88, 449 U.S. 825, 66 L.Ed.2d 29. Environmental Law 514; Environmental Law 164

In enacting this chapter, it was intent of Congress that provisions of section 407 of this title remain in effect as part of its overall water pollution control scheme. U. S. v. Consolidation Coal Co., N.D.W.Va.1973, 354 F.Supp. 173. Navigable Waters 3

The New York Harbor Act, section 441 et seq. of this title, was not impliedly repealed by this chapter. U. S. v. Vulcan Materials Co., D.C.N.J.1970, 320 F.Supp. 1378. Navigable Waters 3

6. Common law

Federal common law of nuisance in area of water pollution is entirely preempted by more comprehensive scope of this chapter and Marine Protection, Research, and Sanctuaries Act of 1972, section 1401 et seq. of this title. Middlesex County Sewerage Authority v. National Sea Clammers Ass'n, U.S.N.J.1981, 101 S.Ct. 2615, 453 U.S. 1, 69 L.Ed.2d 435. Nuisance 60; Environmental Law 170; Environmental Law 520

This chapter has displaced any federal common law of nuisance, at least as applied to claims of State of Illinois against City of Milwaukee with respect to discharges of untreated sewage into Lake Michigan and claims related to overflows from the Milwaukee sewage system. City of Milwaukee v. Illinois and Michigan, U.S.Ill.1981, 101

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S.Ct. 1784, 451 U.S. 304, 68 L.Ed.2d 114, on remand 731 F.2d 403. Environmental Law ⚿ 170

Application of federal common law to abate public nuisance in interstate or navigable waters is not inconsistent with this chapter. Illinois v. City of Milwaukee, Wis., U.S.1972, 92 S.Ct. 1385, 406 U.S. 91, 31 L.Ed.2d 712. Nuisance ⚿ 59

Maritime law was preempted by enactment of this chapter to extent that it afforded a damage remedy for pollution of navigable waters based on a common-law nuisance theory. Conner v. Aerovox, Inc., C.A.1 (Mass.) 1984, 730 F.2d 835, certiorari denied 105 S.Ct. 1747, 470 U.S. 1050, 84 L.Ed.2d 812. Environmental Law ⚿ 170

State courts are free to apply state nuisance law more rigidly in regard to water pollution, but federal courts may not, in local intrastate controversies, turn to body of federal common law governing public nuisances in one state which infringe upon environmental rights of another state so as to impose stricter standards than provided by statutes. Committee for Consideration of Jones Falls Sewage System v. Train, C.A.4 (Md.) 1976, 539 F.2d 1006. Federal Courts ⚿ 433

Plaintiffs' common-law causes of action against United States Fish and Wildlife Service and regional director alleging breach of public trust and breach of fiduciary duty to protect waters and fish and wildlife of Lake Champlain region failed to state a claim; even assuming that private citizens had standing to challenge federal agency's actions under common-law theories asserted by plaintiffs, subject matter was entirely preempted by federal statutes. Elliott v. U.S. Fish and Wildlife Service, D.Vt.1991, 769 F.Supp. 588. Fish ⚿ 11; Game ⚿ 6; States ⚿ 18.33

7. State regulation or control

Clean Water Act sections providing that state's authority to allocate quantities of water within its jurisdiction could not be superseded, abrogated, or otherwise impaired by the Act and that nothing in the Act could be construed as impairing or affecting state's right or jurisdiction with respect to state's waters, did not exclude water quantity issues from direct regulation under federally controlled water quality standards authorized in Clean Water Act; sections preserved state's authority to allocate water quantity as between users, but did not limit scope of water pollution controls that could be imposed on users who had obtained, pursuant to state law, water allocation. PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, U.S.Wash.1994, 114 S.Ct. 1900, 511 U.S. 700, 128 L.Ed.2d 716. Environmental Law ⚿ 171

Florida Oil-Spill Prevention and Pollution Control Act, Laws Fla.1970, c. 70-244, providing for the state's recovery of cleanup costs and imposing strict, no-fault liability on waterfront oil-handling facilities and ships destined for or leaving such facilities for any oil-spill damage to the state or private persons, does not, per se, invade a regulatory area preempted by this chapter. Askew v. American Waterways Operators, Inc., U.S.Fla.1973, 93 S.Ct. 1590, 411 U.S. 325, 36 L.Ed.2d 280, rehearing denied 93 S.Ct. 2746, 412 U.S. 933, 37 L.Ed.2d 162, on remand. States ⚿ 18.31

Environmental Protection Agency (EPA) did not err in giving State of Maine permitting authority, under the Clean Water Act (CWA) and the Maine "Settlement Acts," with regard to 19 facilities which discharged pollutants into territorial waters of two Indian tribes. Maine v. Johnson, C.A.1 2007, 498 F.3d 37. Environmental Law ⚿ 196

State law could not create exemption from requirements of Clean Water Act (CWA) for discharges of ground-

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water derived from extraction of coal bed methane (CBM), inasmuch as CWA did not give either Environmental Protection Agency (EPA) or state authority to create such exemptions. Northern Plains Resource Council v. Fidelity Exploration and Development Co., C.A.9 (Mont.) 2003, 325 F.3d 1155, certiorari denied 124 S.Ct. 434, 540 U.S. 967, 157 L.Ed.2d 312, on subsequent appeal 185 Fed.Appx. 679, 2006 WL 1722474. Environmental Law ⚿ 178; Environmental Law ⚿ 201

Even if denial of a nationwide permit is considered an impairment of state's authority to allocate water, Army Corps of Engineers acted within its authority in denying nationwide permit based on its determination that depletion in water flow resulting from increased consumptive use of water would adversely affect the critical habitat of the whooping crane. Riverside Irr. Dist. v. Andrews, C.A.10 (Colo.) 1985, 758 F.2d 508. Environmental Law ⚿ 536; Environmental Law ⚿ 196

New Jersey township's prohibition of "floating homes" was not preempted by this chapter. Bass River Associates v. Mayor, Tp. Com'r, Planning Bd. of Bass River Tp., C.A.3 (N.J.) 1984, 743 F.2d 159.

Statement in this section, that it is policy of Congress that state authority to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this chapter, was not intended to take precedence over legitimate and necessary water quality considerations. National Wildlife Federation v. Gorsuch, C.A.D.C.1982, 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law ⚿ 171

In considering this chapter, Congress carefully constructed legislative scheme that imposed major responsibility for control of water pollution on the states. District of Columbia v. Schramm, C.A.D.C.1980, 631 F.2d 854, 203 U.S.App.D.C. 272. Environmental Law ⚿ 165

Varied topographies and climates in country called for varied water quality solutions, and Congress placed primary authority for establishing water quality standards with states. Mississippi Commission on Natural Resources v. Costle, C.A.5 (Miss.) 1980, 625 F.2d 1269. Environmental Law ⚿ 188

Under Hawai'i frustration of purpose doctrine, tenant's obligation to comply with environmental standards was foreseeable to the parties at the time that they entered into lease, and thus, compliance with those standards did not excuse tenant's obligation under the lease; lease explicitly required tenant to comply with all present and future laws, including those concerning water pollution, hazardous wastes, and environmental contamination, and tenant and its assignee were subject to, and presumptively aware of, the provisions of the Clean Water Act from the commencement of their tenure on the land. Lindner v. Meadow Gold Dairies, Inc., D.Hawai'i 2007, 2007 WL 2320669. Landlord And Tenant ⚿ 199.5

State law claims of negligence, private nuisance, and trespass brought by private landowners against corporate landowner and biosolids recycling company, stemming from dispersal of by-product from wastewater treatment facilities, did not implicate substantial federal question under Clean Water Act (CWA), and thus were not preempted; elements of private landowners' nuisance, trespass, and negligence claims were well-settled under Virginia common law and subject to CWA savings clause. Wyatt v. Sussex Surry, LLC, E.D.Va.2007, 482 F.Supp.2d 740. Negligence ⚿ 205; States ⚿ 18.15; Trespass ⚿ 16

Performance of regionalized analysis of "minimal adverse environmental effects" that nationwide permits (NWPs) under Clean Water Act (CWA) would have on environment was not arbitrary, capricious, or abuse of discretion; United States Army Corps of Engineers, in essence, reasonably concluded that questions necessitating technical certainty should be developed at local level, not national level, by setting baseline that was low and

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more protective of navigable waters of United States against discharge of pollutants. National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.D.C.2006, 453 F.Supp.2d 116. Environmental Law ⚷ 136

Environmental Protection Agency's (EPA's) approval of provisions of Kentucky's water quality antidegradation rules under the Clean Water Act (CWA), which set forth effluent limitations for pollutants commonly found in the wastewater from domestic sewage facilities, and permitted a new and expanding domestic sewage discharger to be issued a discharge permit without having to undergo further antidegradation review, was not arbitrary and capricious, where EPA reviewed Kentucky's procedures and found that offering the discharger an option of stringent effluent limitations or antidegradation review was consistent with the CWA and EPA regulations because the ultimate goal was to minimize the water quality effects of the discharge. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612. Environmental Law ⚷ 191; Environmental Law ⚷ 196

Scheme of federal regulation emanating from Safe Drinking Water Act (SDWA) did not actually conflict with New York Department of Environmental Conservation (DEC) regulatory scheme governing underground liquid petroleum gas (LPG) storage, and thus state regulations would not be preempted; state's requirement of sonar surveys for LPG storage permits did not impede federal objective of protecting underground sources of drinking water, and State Pollutant Discharge Elimination System (SPDES) permit program, as authorized by Clean Water Act (CWA), was intended to complement SDWA. Bath Petroleum Storage, Inc. v. Sovas, N.D.N.Y.2004, 309 F.Supp.2d 357, appeal dismissed 155 Fed.Appx. 23, 2005 WL 3086669. Environmental Law ⚷ 351; States ⚷ 18.31

Environmental Protection Agency's (EPA) approval of West Virginia's antidegradation procedures under Clean Water Act (CWA), which gave the state discretion in certain circumstances to determine whether particular waters were overall of high quality, was reasonable; when water segment either did not support minimum fishable/swimable uses, or when water segment did not have assimilative capacity remaining for some parameters, it was consistent with EPA's regulations to permit discretion the state to determine whether such waters were overall of high quality. Ohio Valley Environmental Coalition v. Horinko, S.D.W.Va.2003, 279 F.Supp.2d 732. Environmental Law ⚷ 191

Clean Water Act (CWA) did not bar Oklahoma city from asserting Arkansas law nuisance claim against poultry business that disposed of poultry waste, containing phosphorus, at Arkansas city's wastewater treatment plant, although wastewater treatment plant had Clean Water Act (CWA) permit authorizing discharge of phosphorus. City of Tulsa v. Tyson Foods, Inc., N.D.Okla.2003, 258 F.Supp.2d 1263, vacated pursuant to settlement. States ⚷ 18.91; Waters And Water Courses ⚷ 196

There is rebuttable presumption that water quality standards promulgated by states should be protective of fishable/swimmable use that Clean Water Act (CWA) seeks to achieve. Kansas Natural Resource Council, Inc. v. Whitman, D.Kan.2003, 255 F.Supp.2d 1208. Environmental Law ⚷ 188; Environmental Law ⚷ 229

Clean Water Act leaves regulation of irrigation return flows and agricultural runoff to the states, regardless of the quality of the water used to irrigate the fields. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law ⚷ 175

Effluent standard or limitation under Clean Water Act (CWA) includes effluent standard or limitation established by state to further goals of CWA. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law ⚷ 183

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Equitable claim by owners of private septic system against homeowners using system, relating to liability under state water pollution law for discharging raw sewage into river, was not preempted by the Clean Water Act; equitable suit would not change liability of system owners under Clean Water Act, nor would it affect owners' responsibility to erect new septic system if ordered to do so, but rather would merely determine whether homeowners had obligation to indemnify, partially or fully, system owners for their expenses. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Indemnity ⚷ 68; States ⚷ 18.15

Statutory powers of Hackensack Meadowlands Development Commission were not preempted by United States Environmental Protection Agency and United States Army Corps of Engineers under Clean Water Act, such that underlying legislative presumption for tax sharing under Hackensack Meadowland Reclamation and Development Act was rendered invalid or nugatory; although both federal agencies played preemptive role in development of wetlands, upland acreage in district remained for development, and in any event no more than 800 acres of wetlands had been realistically developable through HMDC approval process, irrespective of preemptive land use control of federal agencies. Township of North Bergen v. Borough of Teterboro, N.J.Super.L.1991, 604 A.2d 216, 254 N.J.Super. 704. Municipal Corporations ⚷ 53

State Water Quality Control Board could set limitations on waste discharges from station's private secondary sewage treatment plant equal to federal limitations imposed on municipal sewage treatment facilities. Southern California Edison Co. v. State Water Resources Control Bd., Cal.App. 4 Dist.1981, 172 Cal.Rptr. 306, 116 Cal.App.3d 751. Environmental Law ⚷ 176

Town oil spillage ordinance, which required that persons unloading fuel or oil from vessels obtain permit, give advance notice of unloading and pay into special fund to provide for cleaning costs resulting from oil spillage, did not impose undue burden upon interstate commerce, was not inconsistent with this chapter and did not impermissibly infringe on federal admiralty jurisdiction. Mobil Oil Corp. v. Town of Huntington, N.Y.Sup.1975, 380 N.Y.S.2d 466, 85 Misc.2d 800. Admiralty ⚷ 4; Commerce ⚷ 61(1)

In enactment of federal water pollution legislation there was strong policy and intention not only to preserve to states the right to adopt standards more stringent than federal standards but also to insure that abatement activities of states would continue for public benefit. Metropolitan Sanitary Dist. of Greater Chicago v. U. S. Steel Corp., Ill.App. 1 Dist.1975, 332 N.E.2d 426, 30 Ill.App.3d 360, certiorari denied 96 S.Ct. 1482, 424 U.S. 976, 47 L.Ed.2d 746. Environmental Law ⚷ 165

Suit against city, State Department of Natural Resources and county regional planning commission, seeking to enjoin the building of sewerage disposal plant pursuant to this chapter, was not subject to dismissal on ground of federal preemption. Kegonsa Joint Sanitary Dist. v. City of Stoughton, Wis.1979, 274 N.W.2d 598, 87 Wis.2d 131. States ⚷ 18.61

Federal preemption doctrine did not apply to preclude state's action where the Washington State Department of Ecology was imposing state water quality standards on federal license applicants as part of its federally mandated role in a comprehensive federal scheme embodied in the Clean Water Act; state's certification of a federal applicant must assure compliance with water quality standards under the Act. State, Dept. of Ecology v. Public Utility Dist. No. 1 of Jefferson County, Wash.1993, 849 P.2d 646, 121 Wash.2d 179, certiorari granted 114 S.Ct. 55, 510 U.S. 810, 126 L.Ed.2d 25, affirmed 114 S.Ct. 1900, 511 U.S. 700, 128 L.Ed.2d 716. Environmental Law ⚷ 171; States ⚷ 18.31

8. Interstate compacts

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Mere fact of congress' approval of interstate compact relating to certain navigable waterway did not limit congressional authority to thereafter enact this chapter, even though this chapter affected state water rights in manner inconsistent with the compact. Riverside Irr. Dist. v. Andrews, D.C.Colo.1983, 568 F.Supp. 583, affirmed 758 F.2d 508. States 6

8a. Interagency agreements

Association of home builders could not prevail in its facial challenge to Interagency Coordination Agreement (ICA) executed by United States Army Corps of Engineers and other federal, state, and local agencies, which sought to coordinate federal regulation of soil erosion and sediment flows under Clean Water Act's (CWA) permit regime with the work of various federal- and local-level agencies; although association asserted that CWA's implementing regulations did not authorize Corps to execute joint-procedures agreements with local agencies, one regulation specifically stated that district engineer could take into account controls imposed under local programs, and so it was impossible for association to maintain that there was no set of circumstances under which coordination with local authorities was permissible. Home Builders Ass'n of Greater Chicago v. U.S. Army Corps of Engineers, C.A.7 (Ill.) 2003, 335 F.3d 607. Environmental Law 196

9. Use attainability analysis

Clean Water Act requirement to perform use attainability analysis (UAA) arises from state's choice to submit a use designation to Environmental Protection Agency (EPA) that does not include a use specified under Clean Water Act, and state need not present any evidence in support of a decision not to downgrade a water body by eliminating certain designated uses. Kelso v. Rybachek, Alaska 1996, 912 P.2d 536. Environmental Law 189

10. Remedial measures

Choice of contractor made by Government of the Virgin Islands (GVI) in purported attempt to remedy wastewater system problems in accordance with court order entered in United States government's Clean Water Act enforcement action against GVI was not entitled to deference, in view of district court's findings that negotiation of contract was fraught with political influence and possibly corruption, and GVI's failure to provide adequate justification for declaring state of emergency that allowed it to award contracts by negotiation rather than competitive bidding. U.S. v. Government of Virgin Islands, C.A.3 (Virgin Islands) 2004, 363 F.3d 276. Territories 25

Landowners seeking to invalidate permit to be issued to company by Army Corps of Engineers under Clean Water Act (CWA) for construction of sewer line failed to demonstrate cognizable injury to themselves as result of issuance, as required for proper standing to bring claim; asserted threatened injury was remote, not imminent, and its occurrence was improperly predicated on surmise that Corps would make specific decision, which court could not forecast. Crutchfield v. U.S. Army Corps. of Engineers, E.D.Va.2002, 230 F.Supp.2d 687. Environmental Law 656

Claim brought by landowner, seeking to halt runoff onto land from methane production activities, sought prospective injunctive relief against state agency to prevent continuing violations of Clean Water Act (CWA) and federal constitution, and thus district court maintained subject matter jurisdiction over claim under *Ex parte Young* doctrine, notwithstanding Eleventh Amendment restrictions on claims against state officials. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Courts 269; Federal Courts 272

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While potential effectiveness of remedial relief under Clean Water Act was questionable where developers abandoned construction site and there was little likelihood of renewal of activity by current owner, appropriate remedial measures which might be necessary or required so that property would be administered in accordance with environmental protection laws could be reconsidered should any new activity be initiated. Hudson River Fishermen's Ass'n v. Arcuri, S.D.N.Y.1994, 862 F.Supp. 73. Environmental Law ⚷ 695

Minor amount of spraying of insecticides directly over rivers, bays, sound, and ocean surrounding New York City as part of a prevention program did not violate the Clean Water Act (CWA). No Spray Coalition, Inc. v. City of New York, S.D.N.Y.2002, 2002 WL 31682387, Unreported, vacated 351 F.3d 602, on remand 2005 WL 1354041. Environmental Law ⚷ 206

11. Mootness

Voluntary conduct of defendant Government of the Virgin Islands (GVI) in terminating contract with company for repairing and restoring Virgin Islands' wastewater system did not render moot plaintiff United States's motion for injunction against performance of such contract, in Clean Water Act enforcement action; contract was terminated just five days after United States moved to invalidate it, and just two days before District Court's hearing on the motion, governor gave only general reason for its termination, and GVI continued to defend validity and soundness of contract. U.S. v. Government of Virgin Islands, C.A.3 (Virgin Islands) 2004, 363 F.3d 276. Environmental Law ⚷ 663; Environmental Law ⚷ 700

Case arising from city's disagreement with Environmental Protection Agency's (EPA) approval of water quality standards set by Indian tribe recognized as state under Clean Water Act (CWA) was not mooted by agreement among city, EPA, New Mexico, and tribe concerning new National Pollution Discharge Elimination System (NPDES) permit for city, given that agreement failed to mention case, that EPA's regulations and tribe's revised water quality standards were still in effect, and that parties still disagreed about whether EPA's approval of standards was lawful and whether EPA's regulations were consistent with CWA. City of Albuquerque v. Browner, C.A.10 (N.M.) 1996, 97 F.3d 415, certiorari denied 118 S.Ct. 410, 522 U.S. 965, 139 L.Ed.2d 314. Environmental Law ⚷ 663

Corporation's ceasing operations did not render environmental organization's claim for injunctive relief under Water Pollution Control Act Amendments moot, where corporation proved at most that recommencement of its operations would require sizeable investment in new equipment, and not that such recommencement could not be done, particularly in that corporation could stipulate to consent decree at no prejudice to itself if cessation of operations was permanent. Sierra Club v. Hanna Furnace Corp., W.D.N.Y.1985, 636 F.Supp. 527. Injunction ⚷ 22

12. Jurisdiction

Agreement by Government of the Virgin Islands (GVI) to enter amended consent decree with United States government, in Clean Water Act enforcement action, amounted to GVI's consent to suit to enforce such decree, which remedied violations of federal statute, and remedial order entered by District Court, requiring GVI to perform or refrain from performing certain acts, was reasonable exercise of court's equitable powers to enforce federal decree to which GVI had consented. U.S. v. Government of Virgin Islands, C.A.3 (Virgin Islands) 2004, 363 F.3d 276. Federal Courts ⚷ 1023

Compliance by Army Corps of Engineers with the Clean Water Act (CWA) is subject to judicial review. North

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Dakota v. U.S. Army Corps of Engineers, D.N.D.2003, 270 F.Supp.2d 1115. Environmental Law 641

Claim brought by landowner, seeking to halt runoff onto land from methane production activities, sought prospective injunctive relief against state agency to prevent continuing violations of Clean Water Act (CWA) and federal constitution, and thus district court maintained subject matter jurisdiction over claim under *Ex parte Young* doctrine, notwithstanding Eleventh Amendment restrictions on claims against state officials. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Courts 269; Federal Courts 272

33 U.S.C.A. § 1251, **33 USCA § 1251**
Current through P.L. 110-198 approved 3-24-08

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FEDERAL REGULATIONS

ATTACHMENT NO. 5

40 C.F.R. § 122.26

C

Effective: June 12, 2006

Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 122. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (Refs & Annos)
Subpart B. Permit Application and Special Npdes Program Requirements

→§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from the following:

(i) Mining operations composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations, except in accordance with paragraph (c)(1)(iv) of this section.

(ii) All field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with para-

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graph (c)(1)(iii) of this section. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are not subject to the provisions of paragraph (c)(1)(iii)(C) of this section.

Note to paragraph (a)(2)(ii): EPA encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.

(3) Large and medium municipal separate storm sewer systems.

(i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(C) A regional authority may be responsible for submitting a permit application under the following guidelines:

(1) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

(2) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

(3) Each of the operators of municipal separate storm sewers within the systems described in paragraphs (b)(4)(i), (ii), and (iii) or (b)(7)(i), (ii), and (iii) of this section, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph (d) of this section.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide,

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jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(4) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of paragraph (c) of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

(5) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. See 40 CFR part 35, subpart I, appendix A(b)H.2.j.

(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

(A) The discharge is from a small MS4 required to be regulated pursuant to § 122.32;

(B) The discharge is a storm water discharge associated with small construction activity pur-

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suant to paragraph (b)(15) of this section;

(C) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(D) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(ii) Operators of small MS4s designated pursuant to paragraphs (a)(9)(i)(A), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with §§ 122.33 through 122.35. Operators of non-municipal sources designated pursuant to paragraphs (a)(9)(i)(B), (a)(9)(i)(C), and (a)(9)(i)(D) of this section shall seek coverage under an NPDES permit in accordance with paragraph (c)(1) of this section.

(iii) Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter).

(b) Definitions.

(1) Co-permittee means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) Illicit discharge means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) Incorporated place means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.

(4) Large municipal separate storm sewer system means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or

(ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; and

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(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4)(i), (ii), (iii) of this section.

(5) Major municipal separate storm sewer outfall (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) Major outfall means a major municipal separate storm sewer outfall.

(7) Medium municipal separate storm sewer system means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or

(ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7) (i), (ii), (iii) of this section.

(8) Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized

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Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) Outfall means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) Overburden means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) Runoff coefficient means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

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(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the dis-

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turbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25;

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 1200 Pennsylvania Ave., NW., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

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Exhibit 1 to § 122.26(b)(15).--Summary of Coverage of "Storm Water Discharges Associated with Small Construction Activity" Under the NPDES Storm Water Program

Automatic Designation: Required Nationwide Coverage	. Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres. . Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (see § 122.26(b)(15)(i).)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator.	. Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants. (see § 122.26(b)(15)(ii).)
Potential Waiver: Waiver from Requirements as Determined by the NPDES Permitting Authority.	Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five, or (2) That the activity will occur within an area where controls are not needed based on a TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern. (see § 122.26(b)(15)(i).)

(16) Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as sys-

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tems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(17) Small MS4 means a small municipal separate storm sewer system.

(18) Municipal separate storm sewer system means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v) of this section.

(19) MS4 means a municipal separate storm sewer system.

(20) Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(c) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity--

(1) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph.

(i) Except as provided in § 122.26(c)(1)(ii)-(iv), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid

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wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(1) Any pollutant limited in an effluent guideline to which the facility is subject;

(2) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(4) Any information on the discharge required under § 122.21(g)(7)(vi) and (vii);

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21(g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and

(G) Operators of new sources or new discharges (as defined in § 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) An operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section or is associated with small construction activity solely under paragraph (b)(15) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. Such operator shall provide a narrative description of:

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(A) The location (including a map) and the nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.

(iv) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Applicants shall provide such other information the Director may reasonably require under § 122.21(g)(13) of this part to determine whether to issue a permit and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) [Reserved]

(d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include;

(1) Part 1. Part 1 of the application shall consist of;

(i) General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) Legal authority. A description of existing legal authority to control discharges to the municipal

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separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) Source identification.

(A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(1) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(2) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(3) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(4) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(5) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(6) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) Discharge characterization.

(A) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(1) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(2) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expec-

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ted to meet water quality standards or water quality goals;

(3) Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(4) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(5) Areas of concern of the Great Lakes identified by the International Joint Commission;

(6) Designated estuaries under the National Estuary Program under section 320 of the CWA;

(7) Recognized by the applicant as highly valued or sensitive waters;

(8) Defined by the State or U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and

(9) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(D) Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(2) All cells that contain a segment of the

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storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(3) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(4) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(5) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(6) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(7) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (1) through (6) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) Characterization plan. Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) Management programs.

(A) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures;

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best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) Fiscal resources.

(A) A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) Part 2. Part 2 of the application shall consist of:

(i) Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) Source identification. The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(1) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

(iii) Characterization data. When "quantitative data" for a pollutant are required under paragraph (d)(2)(iii)(A)(3) of this section, the applicant must collect a sample of effluent in accordance with § 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Quantitative data from representative outfalls designated by the Director (based on information received in part 1 of the application, the Director shall designate between five and

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ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

(1) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at § 122.21(g)(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(2) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(3) For samples collected and described under paragraphs (d)(2)(iii)(A)(1) and (A)(2) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

COD

BOD_5

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(4) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under § 122.21(c)(7)) for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(1) of this sec-

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tion of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(1) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(4) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(5) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorit-

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ies and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(6) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);

(2) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(3) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

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(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(C) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(2) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: Any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under § 122.21(g)(7)(vi) and (vii).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(2) A description of requirements for nonstructural and structural best management practices;

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(4) A description of appropriate educational and training measures for construction site operators.

(v) Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

(vi) Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

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(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective NPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) Storm water discharges associated with industrial activity.

(i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14)(i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or that is not authorized by a storm water general permit, a permit application made pursuant to paragraph (c) of this section must be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(i) Part 1.

(A) Except as provided in paragraph (e)(2)(i)(B) of this section, part 1 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by September 30, 1991;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 18, 1992.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(ii) Based on information in the part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving part 1 of the group application.

(iii) Part 2.

(A) Except as provided in paragraph (e)(2)(iii)(B) of this section, part 2 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by October 1, 1992;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 17, 1993.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

(iv) Rejected facilities.

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(A) Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(B) Facilities that are owned or operated by a municipality and that are rejected as members of part 1 group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or October 1, 1992, whichever is later.

(v) A facility listed under paragraph (b)(14) (i)-(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18,1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

(3) For any discharge from a large municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Director by November 18, 1991;

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application;

(iii) Part 2 of the application shall be submitted to the Director by November 16, 1992.

(4) For any discharge from a medium municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Director by May 18, 1992.

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application.

(iii) Part 2 of the application shall be submitted to the Director by May 17, 1993.

(5) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director (see § 124.52(c) of this chapter), for:

(i) A storm water discharge that the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraphs (a)(1)(v) and (b)(15)(ii) of this section);

(ii) A storm water discharge subject to paragraph (c)(1)(v) of this section.

(6) Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) (Form 1, Form 2F, and other applicable Forms) 180 days before the expiration of such permits.

(7) The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

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(i)(A) Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after receipt of a complete permit application;

(iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

(8) For any storm water discharge associated with small construction activities identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(9) For any discharge from a regulated small MS4, the permit application made under § 122.33 must be submitted to the Director by:

(i) March 10, 2003 if designated under § 122.32(a)(1) unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) (see § 122.33(c)(1)); or

(ii) Within 180 days of notice, unless the NPDES permitting authority grants a later date, if designated under § 122.32(a)(2) (see § 122.33(c)(2)).

(f) Petitions.

(1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Director for the designation of a large, medium, or small municipal

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separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(g) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) Qualification. To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

(ii) Complete and sign (according to § 122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five years;

(iv) Allow the Director to inspect the facility to determine compliance with the "no exposure" conditions;

(v) Allow the Director to make any "no exposure" inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) Limitations.

(i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the dis-

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charge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see § 122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 122.22: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to

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make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

[54 FR 255, Jan. 4, 1989; 55 FR 48063, Nov. 16, 1990; 56 FR 12100. March 21, 1991; 56 FR 56554, Nov. 5, 1991; 57 FR 11412, April 2, 1992; 57 FR 60447, Dec. 18, 1992; 60 FR 17956, April 7, 1995; 60 FR 40235, Aug. 7, 1995; 64 FR 68838, Dec. 8, 1999; 65 FR 30907, May 15, 2000; 68 FR 11329, March 10, 2003; 70 FR 11563, March 9, 2005; 71 FR 33639, June 12, 2006]

40 C. F. R. § 122.26, 40 CFR § 122.26

Current through April 10, 2008; 73 FR 19705

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END OF DOCUMENT

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ATTACHMENT NO. 6

40 C.F.R. § 122.44

C

Effective: April 11, 2007

Code of Federal Regulations Currentness
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 122. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (Refs & Annos)
Subpart C. Permit Conditions

→§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a)(1) Technology-based effluent limitations and standards based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(2) Monitoring waivers for certain guideline-listed pollutants.

(i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

(b)(1) Other effluent limitations and standards under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

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(2) Standards for sewage sludge use or disposal under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(3) Requirements applicable to cooling water intake structures under section 316(b) of the CWA, in accordance with part 125, subparts I, J, and N of this chapter.

(c) Reopener clause: For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, non-conventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard,. the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit

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must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources estab-

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lished under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions to a State certification under section 401 of the CWA that meets the requirements of § 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the Agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125, Subpart D;

(9) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321 et seq. and section 511 of the CWA, when EPA is the permit issuing authority. (See § 122.29(c)).

(e) Technology-based controls for toxic pollutants. Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c) of this chapter; or

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraphs (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

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(f) Notification level. A "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii), or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(g) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) Durations for permits, as set forth in § 122.46.

(i) Monitoring requirements. In addition to § 122.48, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants or another method is required under 40 CFR subchapters N or O. In the case of pollutants for which there are no approved methods under 40 CFR Part 136 or otherwise required under 40 CFR subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants.

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan

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are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(l) (1), (4), (5), and (6) at least annually.

(j) Pretreatment program for POTWs. Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under section 307(b) of CWA and 40 CFR part 403.

(2)(i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(ii) Provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance.

(3) For POTWs which are "sludge-only facilities," a requirement to develop a pretreatment program under 40 CFR Part 403 when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

(k) Best management practices (BMPs) to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Note to paragraph (k)(4): Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93- 004, NTIS No. PB 94-178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92- 235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Prac-

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tices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260-7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276-0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at http://www.epa.gov/owm. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

(l) Reissued permits.

(1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions--A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may

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reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

(m) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) Grants. Any conditions imposed in grants made by the Administrator to POWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) Sewage sludge. Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.59 of this chapter.

(r) Great Lakes. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(s) Qualifying State, Tribal, or local programs.

(1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site.

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that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is one that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

[49 FR 31842, Aug. 8, 1984; 49 FR 38049, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985; 54 FR 256, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 54 FR 23895, 23896, June 2, 1989; 57 FR 11413, April 2, 1992; 57 FR 33049, July 24, 1992; 58 FR 18016, April 7, 1993; 60 FR 15386, March 23, 1995; 64 FR 42469, Aug. 4, 1999; 64 FR 43426, Aug. 10, 1999; 64 FR 68847, Dec. 8, 1999; 65 FR 30908, May 15, 2000; 65 FR 43661, July 13, 2000; 66 FR 53048, Oct. 18, 2001; 66 FR 65337, Dec. 18, 2001; 68 FR 13608, March 19, 2003; 69 FR 41682, July 9, 2004; 70 FR 60191, Oct. 14, 2005; 71 FR 35040, June 16, 2006; 72 FR 11212, March 12, 2007]

40 C. F. R. § 122.44, **40 CFR § 122.44**

Current through April 10, 2008; 73 FR 19705

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STATE STATUTES

ATTACHMENT NO. 7

GOV. CODE, § 17516(c)

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 2. General Provisions (Refs & Annos)
§ 17516. Executive order

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.

(b) Any officer or official serving at the pleasure of the Governor.

(c) Any agency, department, board, or commission of state government.

"Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. "Major" means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility.

CREDIT(S)

(Added by Stats.1984, c. 1459, § 1.)

VALIDITY

Subsection (c) of this statute was held unconstitutional in the decision of County of Los Angeles v. Commission on State Mandates (App. 2 Dist. 2007) 58 Cal.Rptr.3d 762, 150 Cal.App.4th 898.

NOTES OF DECISIONS

Questions of fact 1

1. Questions of fact

In proceedings initiated by county and cities against California Commission on State Mandates for reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out oblig-

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ations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board, the question of whether the obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by the Commission; although provision of Government Code would have excluded from subvention any order that included a permit issued by Regional Water Boards, that section was unconstitutional under article imposing subvention requirement whenever the Legislature "or any state agency" mandated a new program or higher level of service, making it necessary to determine whether state mandates existed. County of Los Angeles v. Commission on State Mandates (App. 2 Dist. 2007) 58 Cal.Rptr.3d 762, 150 Cal.App.4th 898. States ⇦ 111

West's Ann. Cal. **Gov. Code § 17516**, CA GOVT § 17516
Current with urgency legislation through Ch. 6 of 2008 Reg.Sess. and Ch. 6 of 2007-2008 Third Ex.Sess., and Props. 98 and 99

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ATTACHMENT NO. 8

GOV. CODE, § 17556(c)

C

Effective: January 1, 2007

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)
→ **§ 17556. Findings; costs not mandated upon certain conditions**

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

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(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

CREDIT(S)

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2004 Legislation

For state reimbursement provisions relating to Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

For Governor's signing message regarding Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

2005 Legislation

Urgency effective provisions relating to Stats.2005, c. 72 (A.B.138), see Historical and Statutory Notes under Elections Code § 13304.

2006 Legislation

Stats.2006, c. 538 (S.B.1852), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2006, c. 538 (S.B.1852), to other 2006 legislation, see Historical and Statutory Notes under Business and Professions Code § 690.

CROSS REFERENCES

Local education agencies, Los Angeles Unified School District, report on illegal activity and enforcement power, see Education Code § 35401.

State-mandated special education programs and services; additional revenue, see Education Code § 56836.156.

CODE OF REGULATIONS REFERENCES

Filing request for reimbursement, see 2 Cal. Code of Regs. § 1184.

LAW REVIEW AND JOURNAL COMMENTARIES

Emergency vehicles on the side of the highway: Move over and slow down. Vincent L. Jamison, 38 McGeorge L. Rev. 353 (2007).

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RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d State of California § 104, What Constitutes Reimbursable Mandate--Statutory Exclusions.

CA Jur. 3d State of California § 105, What Constitutes Reimbursable Mandate--Federally Mandated Costs.

Other References

ANN.2000 ATLA - Convention Reference Material 1945, ERISA Preemption-A Slow Death Coming.

Treatises and Practice Aids

9 Witkin, California Summary 10th Taxation § 121, Reimbursement Not Required.

NOTES OF DECISIONS

Ability to collect, water districts 3
Authority, water districts 2
Validity 1
Water districts--Authority 2
Water districts--Authority - Ability to collect 3

1. Validity

This section prohibiting commission on state mandates from finding costs mandated by State if it finds that local government has authority to levy service charges, fees, or assessments sufficient to pay for mandated program or increased level of service is facially constitutional under state constitutional provision requiring State to provide subvention of funds to reimburse local government for costs of state-mandated new program or higher level of service; considered in its context, section effectively and properly construes term "costs" in constitutional provision as excluding expenses that are recoverable from sources other than taxes. County of Fresno v. State of California (1991) 280 Cal.Rptr. 92, 53 Cal.3d 482, 808 P.2d 235. Taxation 3237

2. Water districts--Authority

Water district statute on its face authorized local water districts to levy fees sufficient to pay costs involved with state regulation amendment increasing level of purity required for use of reclaimed wastewater in irrigation, and thus, regulation did not trigger entitlement to reimbursement of local water districts from state for costs of complying with state-mandated increase in purity requirements. Connell v. Superior Court (App. 3 Dist. 1997) 69 Cal.Rptr.2d 231, 59 Cal.App.4th 382, review denied. States 111

3. ---- Ability to collect, water districts

Statute precluding state reimbursement of local agency for cost of program or level of service mandated by state if local agency has "authority" to level sufficient fees is triggered if local agency has power or right to levy fees sufficient to cover costs of state-mandated program, regardless of practical ability of local agency to collect sufficient fees in light of surrounding economic circumstances. Connell v. Superior Court (App. 3 Dist. 1997) 69 Cal.Rptr.2d 231, 59 Cal.App.4th 382, review denied. States 111

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West's Ann. Cal. **Gov. Code § 17556**, CA GOVT § 17556
Current with urgency legislation through Ch. 6 of 2008 Reg.Sess. and Ch. 6 of 2007-2008 Third Ex.Sess., and Props. 98 and 99

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ATTACHMENT NO. 9

WAT. CODE, § 13263

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 4. Regional Water Quality Control (Refs & Annos)
Article 4. Waste Discharge Requirements (Refs & Annos)

→§ 13263. Discharge requirements; considerations by regional board; review of requirements; notice of requirements; no vested right; master reclamation permit

(a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The regional board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.

(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:

(1) The discharges are produced by the same or similar operations.

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(2) The discharges involve the same or similar types of waste.

(3) The discharges require the same or similar treatment standards.

(4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.

(j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.

CREDIT(S)

(Added by Stats.1969, c. 482, p. 1063, § 18, operative Jan. 1, 1970. Amended by Stats.1992, c. 211 (A.B.3012), § 3; Stats.1995, c. 28 (A.B.1247), § 21; Stats.1995, c. 421 (S.B.572), § 2.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

1995 Legislation

Under the provision of § 3 of Stats.1995, c. 421 (S.B.572), the 1995 amendments of this section by c. 28 and c. 421 were given effect and incorporated in the form set forth in § 2 of c. 421. An amendment of this section by § 1 of Stats.1995, c. 421, failed to become operative under the provisions of § 3 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

1992 Main Volume

Derivation: Former § 13002, added by Stats.1949, c. 1549, p. 2782, § 1, amended by Stats.1959, c. 1299, p. 3449, § 4; Stats.1967, c. 1447, p. 3375, § 5.3.

Former § 13054.2, added by Stats.1959, c. 1299, p. 3453, § 17.

Former § 13054.3, added by Stats.1959, c. 1299, p. 3453, § 18, amended by Stats.1967, c. 1447, p. 3377, § 11.

CROSS REFERENCES

Integrated on-farm drainage management, solar evaporator in compliance with authorization to operate, exclusion from certain provisions of the Water Code, see Health & Safety Code § 25209.17.

Notice and public comment periods prior to adoption of waste discharge requirements, water reclamation requirements, time schedule orders and other orders, method of notification, see Water Code § 13167.5

Water reuse, permit for landscape irrigation uses of recycled water, persons subject to general or individual waste discharge requirements, see Water Code § 13552.5.

CODE OF REGULATIONS REFERENCES

Water monitoring, see 27 Cal. Code of Regs. § 20380 et seq.

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Water resources control board, adjudicatory proceedings, see 23 Cal. Code of Regs. § 648 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Consideration of economics under California's Porter-Cologne Act. David Sunding and David Zilberman, 13 Hastings W.-N.W. J. Envtl. L. & Pol'y 73 (2007).

General industrial storm water permits and the construction industry: What does the Clean Water Act require? John H. Minan, 9 Chap. L. Rev. 265 (2006).

Municipal separate storm sewer system (MS4) regulation under the federal Clean Water Act: The role of water quality standards? John H. Minan, 42 San Diego L.Rev. 1215 (Nov.-Dec. 2005).

Property owner liability for environmental contamination in California. Michael B. Hingerty, 22 U.S.F.L.Rev. 31 (1987).

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Miller and Starr California Real Estate § 23:22, Notice to Governmental Agencies.
Miller and Starr California Real Estate § 23:54, The Porter-Cologne Water Quality Control Act -- in General.

NOTES OF DECISIONS

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1/4 . Preemption

Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. City of Burbank v. State Water Resources Control Bd. (2005) 26 Cal.Rptr.3d 304, 35 Cal.4th 613, 108 P.3d 862, rehearing denied. Environmental Law ⚿ 197; States ⚿ 18.31

1/2 . Due process

Due process did not require that operators of dairy receive hearing before issuance of cleanup and abatement order, as order did not impose criminal or civil penalties, did not shut down dairy or prevent its operation, but merely prohibited discharge of polluted water, required compliance inspections, and called for modifications of waste water distribution system, hearing procedures provided for in water quality control act minimized risk of erroneous deprivation of dairy operators' interest, order was issued only after water quality control board employee observed unlawful discharges from dairy, and requiring preorder hearing would delay remedial action and exacerbate dangerous situation. Machado v. State Water Resources Control Bd. (App. 3 Dist. 2001) 109 Cal.Rptr.2d 116, 90 Cal.App.4th 720, as modified. Constitutional Law ⚿ 4323; Environmental Law ⚿ 210

1. Construction with other laws

California Integrated Waste Management Act (CIWMA) provision prohibiting local bans on land application of biosolids did not conflict with California's Water Code, or with the Federal Clean Water Act. City of Los Angeles v. County of Kern, C.D.Cal.2007, 509 F.Supp.2d 865. States ⚿ 18.31

That Water Pollution Control Act adopted as an amendment to Water Code made no change in Fish & G.C. §

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5650 forbidding water pollution, and was passed at same time as legislative addition to Fish & G.C. § 5651 whereby department of fish and game was directed to report chronic water pollution violations to regional boards created by water pollution control act indicated that civil proceedings against violators under water pollution control act were intended to supplement, not supplant, criminal proceedings under water pollution § 5650 of Fish and Game Code. People v. Union Oil Co. (App. 2 Dist. 1968) 74 Cal.Rptr. 78, 268 Cal.App.2d 566. Nuisance 60

1.5. Construction with federal law

California Regional Water Quality Control Board (Regional Board), considering whether to approve power plant's modification project and issue permit under the National Pollutant Discharge Elimination System (NPDES), acted within its discretion in finding that once-through cooling was the best technology available (BTA) for minimizing adverse environmental impact of point sources' cooling water intake structures under Clean Water Act (CWA), and that benefits of alternatives were wholly disproportionate to their cost. Voices of Wetlands v. California State Water Resources Control Bd. (App. 6 Dist. 2007) 69 Cal.Rptr.3d 487, 157 Cal.App.4th 1268, modified on denial of rehearing, review filed. Environmental Law 186

Substantial evidence supported trial court's factual determination that California Regional Water Quality Control Board (Regional Board), considering whether to approve power plant's modification project and issue permit under the National Pollutant Discharge Elimination System (NPDES), did not adopt mitigation plan as a substitute for the best technology available (BTA) for minimizing adverse environmental impact of point sources' cooling water intake structures under Clean Water Act (CWA), but instead considered mitigation plan only for its relevance in monetizing environmental impacts and benefits. Voices of Wetlands v. California State Water Resources Control Bd. (App. 6 Dist. 2007) 69 Cal.Rptr.3d 487, 157 Cal.App.4th 1268, modified on denial of rehearing, review filed. Environmental Law 186

Requirements contained in municipal storm sewer permit issued by regional water quality control board were not overly prescriptive and did not illegally dictate the manner of compliance; the federal Clean Water Act authorized imposition of permit conditions, and the permitting agency had discretion to decide what practices, techniques, methods, and other provisions were appropriate and necessary to control the discharge of pollutants. City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region (App. 4 Dist. 2006) 38 Cal.Rptr.3d 450, 135 Cal.App.4th 1377, as modified. Environmental Law 197

Municipal storm sewer permit issued by regional water quality control board did not violate Clean Air Act by failing to include "safe harbor" provisions providing that, if permitee was in full compliance with permit conditions, it could not be found in violation of Clean Water Act; there was no statutory right to a "safe harbor" provision to be included as a term of the permit, and, in any event, such protection was already included in the Act. City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region (App. 4 Dist. 2006) 38 Cal.Rptr.3d 450, 135 Cal.App.4th 1377, as modified. Environmental Law 197

Provision of California State Water Resources Control Board's implementation policy for priority pollutant criteria under Clean Water Act, stating that dischargers would be deemed out of compliance with an effluent limitation if the concentration of priority pollutant in monitoring sample was greater than the effluent limitation and greater than or equal to the reported "minimum level" (ML), was ambiguous, where provision appeared to give ML's, the lowest level of concentration in a sample that could be accurately quantified, the same legal effect as the effluent limitations when the ML was higher than the effluent limitation. WaterKeepers Northern California

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v. State Water Resources Control Bd. (App. 1 Dist. 2002) 126 Cal.Rptr.2d 389, 102 Cal.App.4th 1448. Environmental Law ⚿ 206

Provision of California State Water Resources Control Board's implementation policy for priority pollutant criteria under Clean Water Act, stating that dischargers would be deemed out of compliance with an effluent limitation if the concentration of priority pollutant in monitoring sample was greater than the effluent limitation and greater than or equal to the reported "minimum level" (ML), was to be interpreted narrowly, giving effect to ML's, the lowest level of concentration in a sample that could be accurately quantified, only for purposes of defining reporting requirements and providing a guideline for enforcement by Regional Water Quality Control Boards, and not for purposes of permit-compliance determinations. WaterKeepers Northern California v. State Water Resources Control Bd. (App. 1 Dist. 2002) 126 Cal.Rptr.2d 389, 102 Cal.App.4th 1448. Environmental Law ⚿ 206; Environmental Law ⚿ 207

2. Discharge requirements, generally

Landowners claiming that treatment and discharge of effluent into river caused natural vegetation growth that increased risk of flooding of their lands were not entitled to damages or injunctive relief against city and community services district on theories of private and public nuisance or inverse condemnation; landowners had not alleged violation of any standards imposed in National Pollutant Discharge Elimination System (NPDES) permit, neither city nor district were responsible for maintaining riverbed, there was evidence of other causes contributing to growth of vegetation, vegetative clearing would have necessitated involvement of nonparties, any damages claimed were speculative, and it was not shown that city or district had acted unreasonably. Jordan v. City of Santa Barbara (App. 2 Dist. 1996) 54 Cal.Rptr.2d 340, 46 Cal.App.4th 1245, review denied. Eminent Domain ⚿ 2.27(1); Eminent Domain ⚿ 300; Municipal Corporations ⚿ 835; Waters And Water Courses ⚿ 96

Requirements for discharge of waste from property may be established by a regional water quality control board even though a regional water control plan has not been adopted, but when a plan has been adopted, discharge requirements must implement plan. Hampson v. Superior Court for Inyo County (App. 4 Dist. 1977) 136 Cal.Rptr. 722, 67 Cal.App.3d 472. Waters And Water Courses ⚿ 196

The powers of the state water resources control board and the regional water quality control boards are not so limited and they not only can, but must consider the effects of a proposed discharge upon all aspects of the environment. 57 Op.Atty.Gen. 19, 1-16-74.

Under former § 13064, regional quality control board does not have authority to prescribe requirements which restrict the volume of flow of a discharge, or which prohibits a discharge, of sewage or industrial waste; however, the board may prescribe requirements that become more or less onerous as volume of discharge increases or decreases. 48 Op.Atty.Gen. 85, 9-7-66.

A regional water quality control board had power to enforce prohibition against waste discharge that was prescribed pursuant to former § 13054.3. 48 Op.Atty.Gen. 85, 9-7-66.

It is the responsibility of the water pollution control boards to prevent or eliminate pollution and nuisance by the issuance and enforcement of waste discharge requirements. 27 Op.Atty.Gen. 217 (1956).

Under the statute which provided that regional water pollution control boards should prescribed requirements as

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to nature of discharge with relation to conditions existing in disposal area, boards might have formulated sewage and industrial waste disposal requirements by describing discharge characteristics or by describing discharge in terms of condition to be maintained in regional waters or other disposal areas or by both. 16 Op.Atty.Gen. 203 (1950).

The regional water quality control boards, as provided in former § 13040 et seq., had primary responsibility for the control of water pollution, nuisance, and in obtaining coordinated action in water quality control; hence, these boards had authority to prescribe requirements for the indirect discharge of industrial wastes within its region which was causing or threatened to cause pollution or nuisance. Op.Leg.Counsel, 1967 A.J. 6115.

3. Sewage

Regional water quality control board orders prohibiting, inter alia, discharge of untreated sewage and further connections to sewage treatment facilities, was reasonable exercise of state's police power. Morshead v. California Regional Water Quality Control Bd. (App. 1 Dist. 1975) 119 Cal.Rptr. 586, 45 Cal.App.3d 442. Environmental Law ⚿ 176

The San Francisco Bay regional water quality control board does not have authority to prohibit discharge of sewage from certain subsurface septic tank disposal systems connected with individual residences in San Geronimo Valley, Marin County. 48 Op.Atty.Gen. 85, 9-7-66.

Regional water pollution control boards might, under §§ 13053, 13054, establish requirements as to sewer well discharges without regard to Health & S.C. § 4458, absolutely prohibiting certain sewer wells, but no ruling of such boards was a limitation on powers or rights of cities, counties, state agencies or persons as set forth in § 13001 (repealed. See, now § 13002). 19 Op.Atty.Gen. 192 (1952).

Under the statute which provided that regional water pollution control boards were to prescribe requirements as to nature of discharge with relation to conditions existing in sewage or industrial waste disposal areas, regional boards must establish discharge requirements for privately operated sewage disposal devices such as septic tanks and cesspools, but requirements might be prescribed in advance and might merely prescribe that compliance be had with local health ordinances of such prescribed satisfactory standards. 16 Op.Atty.Gen. 112 (1950).

Former § 13054.3, as amended in 1967, authorized a regional quality control board to prescribe same type of requirements which it was authorized under existing law to prescribe, which should be applicable to all indirect discharge of sewage from family dwellings within a designated area, as specified. Op.Leg.Counsel, 1967 A.J. 4365.

Language in former §§ 13054, 13054.1, authorized regional board to prescribe requirements for the indirect discharge of sewage as well as the direct discharge of sewage. Op.Leg.Counsel, 1967, A.J. 4365.

Distinction was drawn within the language of former §§ 13054, 13054.1 between "disposal area" and "receiving waters," a distinction that could only relate to difference between discharging of sewage on the ground "an indirect discharge" or discharging directly into the receiving waters "a direct discharge", and no modifying restrictive language appeared in either section with respect to the type of discharge which a regional board was authorized to regulate. Op.Leg.Counsel, 1967, A.J. 4365.

4. Mining wastes

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Under the Dickey Water Pollution Act, §§ 13000 to 13064, drainage of water from inoperative or abandoned mining operations, consisting of outflows from mine tunnels and shafts of water that has leached through ore dumps and tailings constitutes a discharge of industrial waste, and a regional water pollution control board has jurisdiction, to extent that such water contains harmful materials which, but for mining operations, would not be present at all or in amounts now found. 26 Op.Atty.Gen. 88 (1955).

5. Natural source of waste

Regional water pollution control board has no authority to regulate discharge of waste entering the region through natural streams, but may regulate discharges entering through drainage canals, except where the canals are operated by the state of California or by the United States. 43 Op.Atty.Gen. 317, 6-23-64.

6. Dischargers

When fee in land on which an abandoned mine was located was owned separately from mineral rights, both owner of fee and owner of mineral rights were "waste dischargers" within former § 13054, upon whom waste discharge requirements should have been imposed in respect to harmful drainage from abandoned mine. 26 Op.Atty.Gen. 88 (1955).

7. Beneficial use

Const. Art. 1, § 25, does not require the Los Angeles regional water quality control board to recognize fish and aquatic life as beneficial use of the Los Angeles-Long Beach Inner Harbor in establishing waste discharge requirements pursuant to this section. 51 Op.Atty.Gen. 92, 5-7-68.

8. Underground areas

In light of subsequent legislation, a regional water quality control board has authority under Porter-Cologne Water Quality Control Act to prohibit direct or indirect discharge of industrial waste into underground areas or strata. 58 Op.Atty.Gen. 531, 7-25-75.

Regional water quality control board does not have authority to prohibit sewage discharge or industrial waste into underground areas or strata, unless discharge is made directly into underground water. 48 Op.Atty.Gen. 85, 9-7- 66.

9. Environmental impact statements

Water Resources Control Board's refusal to prepare and consider environmental impact report prior to disapproving landfill operator's revised waste discharge requirements (WDRs) for expanded use of landfill under Porter-Cologne Water Quality Act did not conflict with any prior judicial order or decision rendered by Court of Appeal or superior court in connection with challenge to Board's earlier order approving operator's WDRs. Main San Gabriel Basin Watermaster v. State Water Resources Control Bd. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 288, 12 Cal.App.4th 1371, review denied. Environmental Law ⚿ 595(6)

Fact that parties challenging Water Resources Control Board's earlier approval of landfill operator's application for revised waste discharge requirements (WDRs) in prior proceedings argued that preparation and consideration of environmental impact report (EIR) was necessary before approval of application did not mandate that Board prepare and consider EIR prior to its subsequent disapproval of application. Main San Gabriel Basin Watermas-

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ter v. State Water Resources Control Bd. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 288, 12 Cal.App.4th 1371, review denied. Environmental Law ⚿ 595(6)

Landfill operator was not deprived of fair and impartial hearing and opportunity to present evidence for agency's consideration by Water Resources Control Board's disapproving its application for revised waste discharge requirements (WDRs) without first preparing and considering environmental impact report; record memorialized years of scrutiny by Board and regional water control board of revised WDRs for expansion of operator's nonhazardous solid waste landfill and operator was free to challenge Board's exercise of discretion under standards of Porter-Cologne Water Quality Act. Main San Gabriel Basin Watermaster v. State Water Resources Control Bd. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 288, 12 Cal.App.4th 1371, review denied. Environmental Law ⚿ 595(6)

Water Resources Control Board was not required under any provision of Environmental Quality Act (EQA) or under Environmental Quality Act Guidelines to prepare and consider environmental impact report (EIR) prior to disapproving on merits landfill operator's revised waste discharge requirements; requirement of EIR is not triggered under EQA unless public agency proposes to carry out or approve project which may have significant effect on environment, and so EQA does not apply to projects which public agency rejects or disapproves. Main San Gabriel Basin Watermaster v. State Water Resources Control Bd. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 288, 12 Cal.App.4th 1371, review denied. Environmental Law ⚿ 595(6)

Under § 13389 providing that neither state board nor regional board shall be required to comply with the Environmental Quality Act prior to adoption of any waste discharge requirement, regional water quality control board properly prescribed by order waste discharge requirements for city without preparation of environmental impact report. Pacific Water Conditioning Ass'n , Inc. v. City Council of City of Riverside (App. 4 Dist. 1977) 140 Cal.Rptr. 812, 73 Cal.App.3d 546. Environmental Law ⚿ 595(6)

10. Regulation by other agencies

Extraction of minerals from stream beds may result in industrial waste within meaning of Dickey Water Pollution Act and fact that discharger of industrial waste holds license from California Debris Commission or lease from State Lands Commission does not exempt him from requirements established by Water Pollution Control Board. 32 Op.Atty.Gen. 139 (1958).

11. Exemptions

Even though waste discharge resolution of regional water quality control board authorized executive officer of board to make initial determination as to whether landowner had met prerequisites for an exemption, board could not relinquish its right and duty to overrule such preliminary determination if it determined that to grant an exemption would constitute a modification of water control plan or waste discharge requirement included in that plan. Hampson v. Superior Court for Inyo County (App. 4 Dist. 1977) 136 Cal.Rptr. 722, 67 Cal.App.3d 472. Waters And Water Courses ⚿ 196

12. Orders

Regional water quality control board's order requiring nuclear generating station to remove pollutants entering its generating station through its ocean water intake valve rather than regulating only those pollutants which it actually added to the water was insufficient in that the board's findings did not include factual evidence support-

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ing a conclusion of gross limitations were necessary to protect any specific beneficial uses of the ocean. Southern California Edison Co. v. State Water Resources Control Bd. (App. 4 Dist. 1981) 172 Cal.Rptr. 306, 116 Cal.App.3d 751. Environmental Law 212

13. Economic factors

When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. City of Burbank v. State Water Resources Control Bd. (2005) 26 Cal.Rptr.3d 304, 35 Cal.4th 613, 108 P.3d 862, rehearing denied. Environmental Law 197

13.5. Admissibility of evidence

California Regional Water Quality Control Board (Regional Board), considering whether to approve power plant's modification project and issue permit under the National Pollutant Discharge Elimination System (NPDES), was not required to admit into evidence environmental group's submitted rebuttal letter, where letter was untimely as direct written testimony, letter exceeded scope of issues before the Regional Board, and environmental group was able to offer far more extensive and effective evidence and analysis through other means. Voices of Wetlands v. California State Water Resources Control Bd. (App. 6 Dist. 2007) 69 Cal.Rptr.3d 487, 157 Cal.App.4th 1268, modified on denial of rehearing, review filed. Environmental Law 228

14. Sufficiency of evidence

Substantial evidence supported regional water quality control board's findings in issuing municipal storm sewer permit; board adopted recommendations of its staff, which were based on previous permits and other reports, and which established that board did not simply copy similar permit for other counties. City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region (App. 4 Dist. 2006) 38 Cal.Rptr.3d 450, 135 Cal.App.4th 1377, as modified. Environmental Law 230

West's Ann. **Cal. Water Code § 13263,** CA WATER § 13263

Current with urgency legislation through Ch. 6 of 2008 Reg.Sess. and Ch.6 of 2007-2008 Third Ex.Sess., and Props. 98 and 99

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ATTACHMENT NO. 10

WAT. CODE, § 13370

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972 (Refs & Annos)

§ 13370. Legislative findings and declaration

The Legislature finds and declares as follows:

(a) The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program.

CREDIT(S)

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972. Amended by Stats.1978, c. 746, p. 2343, § 1; Stats.1980, c. 676, p. 2028, § 319; Stats.1987, c. 1189, § 1.)

CROSS REFERENCES

Exemption from penalty for discharging hazardous waste, see Water Code §§ 13261, 13265, 13268.

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General industrial storm water permits and the construction industry: What does the Clean Water Act require? John H. Minan, 9 Chap. L. Rev. 265 (2006).

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Municipal storm water permitting in California. John H. Minan, 40 San Diego L.Rev. 245 (2003).

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Cal. Civ. Prac. Environmental Litigation § 7:5, Relationship of Statute to Federal Clean Water Act.

Cal. Civ. Prac. Environmental Litigation § 7:9, Grounds for Assessment of Liability.

Cal. Civ. Prac. Environmental Litigation § 9:2, Environmental Statutes Giving Rise to Potential Criminal Liability.

Cal. Civ. Prac. Environmental Litigation § 7:16, Grounds for Review.

Cal. Civ. Prac. Environmental Litigation § 7:26, Grounds for Civil Monetary Remedies.

Treatises and Practice Aids

2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 392, Pollution.

12 Witkin, California Summary 10th Real Property § 893, Porter-Cologne Water Quality Control Act.

12 Witkin, California Summary 10th Real Property § 896, Federal Clean Water Act.

West's Ann. Cal. Water Code § 13370, CA WATER § 13370
Current with urgency legislation through Ch. 4 of 2008 Reg.Sess. and Ch. 6 of 2007-2008 Third Ex.Sess., and Props. 98 and 99

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ATTACHMENT NO. 11

WAT. CODE, § 13372

C

Effective: January 1, 2004

West's Annotated California Codes Currentness
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972 (Refs & Annos)

§ 13372. Construction and application of chapter

(a) This chapter shall be construed to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. To the extent other provisions of this division are consistent with the provisions of this chapter and with the requirements for state programs implementing the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, those provisions apply to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

(b) The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material.

CREDIT(S)

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972. Amended by Stats.1987, c. 1189, § 3; Stats.2003, c. 683 (A.B.897), § 5.)

RESEARCH REFERENCES

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CA Jur. 3d Pollution and Conservation Laws § 155, Construction, Application, and Effect of Compliance Law.

Cal. Civ. Prac. Environmental Litigation § 2:34, Cause of Action Alleging Negligence in Action by Lessor Against Lessee for Contamination of Leased Property When the Release of Toxic Materials Violates Statute or Regulation.

NOTES OF DECISIONS

Construction with federal law 1

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1. Construction with federal law

Environmental Protection Agency's (EPA) administrative interpretation was relevant to court's interpretation of California State Water Resources Control Board's implementation policy for priority pollutant criteria under Clean Water Act in light of the Board's obligation to carry out the objectives of federal law. WaterKeepers Northern California v. State Water Resources Control Bd. (App. 1 Dist. 2002) 126 Cal.Rptr.2d 389, 102 Cal.App.4th 1448.

West's Ann. Cal. Water Code § 13372, CA WATER § 13372
Current with urgency legislation through Ch. 4 of 2008 Reg.Sess. and Ch. 6 of 2007-2008 Third Ex.Sess., and Props. 98 and 99

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ATTACHMENT NO. 12

WAT. CODE, § 13374

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Water Code (Refs & Annos)
Division 7. Water Quality (Refs & Annos)
Chapter 5.5. Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972 (Refs & Annos)

§ 13374. Waste discharge requirements; equivalent to "permits" under federal act

The term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act, as amended.

CREDIT(S)

(Added by Stats.1972, c. 1256, p. 2485, § 1, eff. Dec. 19, 1972.)

LAW REVIEW AND JOURNAL COMMENTARIES

General industrial storm water permits and the construction industry: What does the Clean Water Act require? John H. Minan, 9 Chap. L. Rev. 265 (2006).

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CA Jur. 3d Pollution and Conservation Laws § 156, Definitions.

Cal. Civ. Prac. Environmental Litigation § 7:5, Relationship of Statute to Federal Clean Water Act.

NOTES OF DECISIONS

Minimum federal requirements 1

1. Minimum federal requirements

Provision of this section that term "waste discharge requirements" is the equivalent of term "permits" in the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.] requires equivalency only for purposes of state compliance with the minimum requirements of federal law. Tahoe-Sierra Preservation Council v. State Water Resources Control Bd. (App. 3 Dist. 1989) 259 Cal.Rptr. 132, 210 Cal.App.3d 1421, rehearing denied and modified , review denied. Environmental Law ⚿ 170

West's Ann. Cal. Water Code § 13374, CA WATER § 13374
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STATE REGULATIONS

ATTACHMENT NO. 13

CALIFORNIA CODE OF REGULATIONS, TITLE 23, § 2235.2

C

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS
CHAPTER 9. WASTE DISCHARGE REPORTS AND REQUIREMENTS
ARTICLE 3. WASTE DISCHARGES FROM POINT SOURCES TO NAVIGABLE WATERS

This database is current through 4/4/08, Register 2008, No. 14

§ 2235.2. Compliance with Regulations of the U.S. Environmental Protection Agency.

Waste discharge requirements for discharge from point sources to nagivable waters shall be issued and administered in accordance with the currently applicable federal regulations for the National Pollutant Discharge Elimination System (NPDES) program.

Note: Authority cited: Section 1058, Water Code. Reference: Chapter 5.5 (commencing with Section 13370) of Division 7, Water Code.

23 CCR § 2235.2, 23 CA ADC § 2235.2

1CAC

23 CA ADC § 2235.2
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ATTACHMENT NO. 14

CALIFORNIA CODE OF REGULATIONS, TITLE 23, § 2235.3

C

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS
CHAPTER 9. WASTE DISCHARGE REPORTS AND REQUIREMENTS
ARTICLE 3. WASTE DISCHARGES FROM POINT SOURCES TO NAVIGABLE WATERS

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§ 2235.3. Additional Requirements.

In addition to the federal regulations, waste discharge requirements prescribed for discharges to navigable water shall be in compliance with applicable state regulations, including, when appropriate, the requirements of Sections 2230(c), 2232 and 2233.

Note: Authority cited: Sections 185 and 1058, Water Code. Reference: Section 13263, Water Code.

HISTORY

1. Amendment filed 4-16-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 16).

23 CCR § 2235.3, 23 CA ADC § 2235.3

1CAC

23 CA ADC § 2235.3
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FEDERAL COURT DECISIONS

ATTACHMENT NO. 15

Defenders of Wildlife v. Browner (9th Cir. 1999) 191 F.3rd 1159

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Defenders of Wildlife v. Browner
C.A.9 (Cal.),1999.

United States Court of Appeals,Ninth Circuit.
DEFENDERS OF WILDLIFE and The Sierra Club, Petitioners,
v.
Carol M. BROWNER, in her official capacity as Administrator of the United States Environmental Protection Agency, Respondent.
City of Tempe, Arizona; City of Tucson, Arizona; City of Mesa, Arizona; Pima County, Arizona; and City of Phoenix, Arizona, Intervenors-Respondents.
No. 98-71080.

Argued and Submitted Aug. 11, 1999.
Decided Sept. 15, 1999.

Environmental organizations sought review of Environmental Protection Agency (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits to five municipalities, for their separate storm sewers, without requiring numeric limitations to ensure compliance with state water-quality standards. The Court of Appeals, Graber, Circuit Judge, held that: (1) organizations had standing; (2) municipal storm-sewer discharges did not have to strictly comply with state water-quality standards; but (3) EPA had discretion to require that municipal discharges comply with such standards.

Petition denied.

West Headnotes

[1] Environmental Law 149E ⚿651

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek651 k. Cognizable Interests and Injuries, in General. Most Cited Cases
(Formerly 199k25.15(4.1) Health and Environment)
For purpose of statute authorizing any interested person to seek judicial review of Environmental Protection Agency (EPA) decision issuing or denying any National Pollution Discharge Elimination System (NPDES) permit, "any interested person" means any person that satisfies the injury-in-fact requirement for Article III standing. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

[2] Environmental Law 149E ⚿652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases
(Formerly 199k25.15(4.1) Health and Environment)
Environmental organizations had standing to seek judicial review of Environmental Protection Agency (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits for municipalities' storm sewers based on allegation that organizations' members used and enjoyed ecosystems affected by storm water discharges and sources thereof governed by the permits. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Water Pollution Control Act Amendments of 1972, § 509(b)(1)(F), 33 U.S.C.A. § 1369(b)(1)(F).

[3] Environmental Law 149E ⚿220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
(Formerly 199k25.7(13.1), 199k25.7(11) Health

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and Environment)
Although best practicable control technology (BPT) requirement for National Pollution Discharge Elimination System (NPDES) permits takes into account issues of practicability, the Environmental Protection Agency (EPA) also is under a specific obligation to require that level of effluent control which is needed to implement existing water quality standards without regard to the limits of practicability. Federal Water Pollution Control Act Amendments of 1972, §§ 301(b)(1)(A, C), 402(a)(1), 33 U.S.C.A. §§ 1311(b)(1)(A, C), 1342(a)(1).

[4] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(13.1) Health and Environment)
Water Quality Act amendments to the Clean Water Act do not require municipal storm-sewer discharges to strictly comply with state water-quality standards, in order to obtain National Pollution Discharge Elimination System (NPDES) permit, but instead prescribe separate standard requiring reduction of discharge of pollutants to maximum extent practicable, in view of Act's distinction between municipal and industrial discharges. Federal Water Pollution Control Act Amendments of 1972, §§ 301(b)(1)(C), 402(p)(3)(B)(iii), 33 U.S.C.A. §§ 1311(b)(1)(C), 1342(p)(3)(B)(iii).

[5] Statutes 361 ⚿219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
Questions of congressional intent that can be answered with traditional tools of statutory construction are still firmly within the province of the courts under *Chevron*, which governs review of an agency's interpretation of a statute.

[6] Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

Statutes 361 ⚿205

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In General. Most Cited Cases
Using traditional tools of statutory construction when interpreting a statute, courts look first to the words that Congress used, and, rather than focusing just on the word or phrase at issue, courts look to the entire statute to determine Congressional intent.

[7] Statutes 361 ⚿195

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k195 k. Express Mention and Implied Exclusion. Most Cited Cases
Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

[8] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications

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149Ek197 k. Conditions and Limitations. Most Cited Cases
(Formerly 199k25.7(10.1) Health and Environment)
Environmental Protection Agency (EPA) is not prohibited from requiring, under Clean Water Act, that municipal storm-sewer discharges strictly comply with state water-quality standards, but has discretion to determine appropriate pollution controls. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).

***1160** Jennifer Anderson and David Baron, Arizona Center for Law in the Public Interest, Phoenix, Arizona, for the petitioners.
Alan Greenberg, Attorney, U.S. Department of Justice, Environment & Natural Resources Division, Denver, Colorado, for the respondent.
Craig Reece, Phoenix City Attorney's Office, Phoenix, Arizona; Stephen J. Burg, Mesa City Attorney's Office, Mesa, Arizona; Timothy Harrison, Tucson City Attorney's Office, Tucson, Arizona; Harlan C. Agnew, Deputy County Attorney, Tucson, Arizona; and Charlotte Benson, Tempe City Attorney's Office, Tempe, Arizona, for the intervenors-respondents.
***1161** David Burchmore,Squire, Sanders & Dempsey, Cleveland, Ohio, for amici curiae.

Petition to Review a Decision of the Environmental Protection Agency. EPA No. 97-3.

Before: NOONAN, THOMPSON, and GRABER, Circuit Judges.

GRABER, Circuit Judge:
Petitioners challenge the Environmental Protection Agency's (EPA) decision to issue National Pollution Discharge Elimination System (NPDES) permits to five municipalities, for their separate storm sewers, without requiring numeric limitations to ensure compliance with state water-quality standards. Petitioners sought administrative review of the decision within the EPA, which the Environmental Appeals Board (EAB) denied. This timely petition for review ensued. For the reasons that follow, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Title 26 U.S.C. § 1342(a)(1) authorizes the EPA to issue NPDES permits, thereby allowing entities to discharge some pollutants. In 1992 and 1993, the cities of Tempe, Tucson, Mesa, and Phoenix, Arizona, and Pima County, Arizona (Intervenors), submitted applications for NPDES permits. The EPA prepared draft permits for public comment; those draft permits did not attempt to ensure compliance with Arizona's water-quality standards.

Petitioner Defenders of Wildlife objected to the permits, arguing that they must contain numeric limitations to ensure strict compliance with state water-quality standards. The State of Arizona also objected.

Thereafter, the EPA added new requirements:

> To ensure that the permittee's activities achieve timely compliance with applicable water quality standards (Arizona Administrative Code, Title 18, Chapter 11, Article 1), the permittee shall implement the [Storm Water Management Program], monitoring, reporting and other requirements of this permit in accordance with the time frames established in the [Storm Water Management Program] referenced in Part I.A.2, and elsewhere in the permit. This timely implementation of the requirements of this permit shall constitute a schedule of compliance authorized by Arizona Administrative Code, section R18-11-121(C).

The Storm Water Management Program included a number of structural environmental controls, such as storm-water detention basins, retention basins, and infiltration ponds. It also included programs to remove illegal discharges.

With the inclusion of those "best management practices," the EPA determined that the permits ensured compliance with state water-quality standards. The

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Arizona Department of Environmental Quality agreed:

> The Department has reviewed the referenced municipal NPDES storm-water permit pursuant to Section 401 of the Federal Clean Water Act to ensure compliance with State water quality standards. We have determined that, based on the information provided in the permit, and the fact sheet, adherence to provisions and requirements set forth in the final municipal permit, will protect the water quality of the receiving water.

On February 14, 1997, the EPA issued final NPDES permits to Intervenors. Within 30 days of that decision, Petitioners requested an evidentiary hearing with the regional administrator. *See*40 C.F.R. § 124.74. Although Petitioners requested a hearing, they conceded that they raised only a legal issue and that a hearing was, in fact, unnecessary. Specifically, Petitioners raised only the legal question whether the Clean Water Act (CWA) requires numeric limitations to ensure strict compliance with state water-quality standards; they did not raise the factual question whether the management practices that the EPA chose would be effective.

***1162** On June 16, 1997, the regional administrator summarily denied Petitioners' request. Petitioners then filed a petition for review with the EAB. *See*40 C.F.R. § 124.91(a). On May 21, 1998, the EAB denied the petition, holding that the permits need not contain numeric limitations to ensure strict compliance with state water-quality standards. Petitioners then moved for reconsideration, *see*40 C.F.R. § 124.91(i), which the EAB denied.

JURISDICTION

[1][2] Title 33 U.S.C. § 1369(b)(1)(F) authorizes "any interested person" to seek review in this court of an EPA decision "issuing or denying any permit under section 1342 of this title." "Any interested person" means any person that satisfies the injury-in-fact requirement for Article III standing. *See Natural Resources Defense Council, Inc. v. EPA,* 966 F.2d 1292, 1297 (9th Cir.1992) [*NRDC II*]. It is undisputed that Petitioners satisfy that requirement. Petitioners allege that "[m]embers of Defenders and the Club use and enjoy ecosystems affected by storm water discharges and sources thereof governed by the above-referenced permits," and no other party disputes those facts. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 565-66, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) ("[A] plaintiff claiming injury from environmental damage must use the area affected by the challenged activity."); *see also NRDC II,* 966 F.2d at 1297 ("NRDC claims, inter alia, that [the] EPA has delayed unlawfully promulgation of storm water regulations and that its regulations, as published, inadequately control storm water contaminants. NRDC's allegations ... satisfy the broad standing requirement applicable here.").

Intervenors argue, however, that they were not parties when this action was filed and that this court cannot redress Petitioners' injury without them. Their real contention appears to be that they are indispensable parties under Federal Rule of Civil Procedure 19. We need not consider that contention, however, because in fact Intervenors have been permitted to intervene in this action and to present their position fully. In the circumstances, Intervenors have suffered no injury.

DISCUSSION

A. *Standard of Review*

The Administrative Procedures Act (APA), 5 U.S.C. §§ 701-06, provides our standard of review for the EPA's decision to issue a permit. *See American Mining Congress v. EPA,* 965 F.2d 759, 763 (9th Cir.1992). Under the APA, we generally review such a decision to determine whether it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

On questions of statutory interpretation, we follow the approach from *Chevron U.S.A. Inc. v. Natural*

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Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). *See NRDC II*, 966 F.2d at 1297 (so holding). In *Chevron*, 467 U.S. at 842-44, 104 S.Ct. 2778, the Supreme Court devised a two-step process for reviewing an administrative agency's interpretation of a statute that it administers. *See also Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445, 1452 (9th Cir.1996) ("The Supreme Court has established a two-step process for reviewing an agency's construction of a statute it administers."). Under the first step, we employ "traditional tools of statutory construction" to determine whether Congress has expressed its intent unambiguously on the question before the court. *Chevron*, 467 U.S. at 843 n. 9, 104 S.Ct. 2778. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43, 104 S.Ct. 2778 (footnote omitted). If, instead, Congress has left a gap for the administrative agency to fill, we proceed to step two. *See id.* at 843, 104 S.Ct. 2778. At step two, we must uphold the administrative regulation unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 844, 104 S.Ct. 2778.

***1163** B. *Background*

The CWA generally prohibits the "discharge of any pollutant," 33 U.S.C. § 1311(a), from a "point source" into the navigable waters of the United States. *See*33 U.S.C. § 1362(12)(A). An entity can, however, obtain an NPDES permit that allows for the discharge of some pollutants. *See*33 U.S.C. § 1342(a)(1).

[3] Ordinarily, an NPDES permit imposes effluent limitations on such discharges. *See*33 U.S.C. § 1342(a)(1) (incorporating effluent limitations found in 33 U.S.C. § 1311). First, a permit-holder "shall ... achiev [e] ... effluent limitations ... which shall require the application of the best practicable control technology [BPT] currently available." 33 U.S.C. § 1311(b)(1)(A). Second, a permit-holder *shall...achiev[e]...any more stringent limitation*, including those *necessary to meet water quality standards*, treatment standards or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title)." 33 U.S.C. § 1311(b)(1)(C) (emphasis added). Thus, although the BPT requirement takes into account issues of practicability, *see Rybachek v. EPA*, 904 F.2d 1276, 1289 (9th Cir.1990), the EPA also "is under a specific obligation to require that level of effluent control which is needed to implement existing water quality standards without regard to the limits of practicability,"*Oklahoma v. EPA*, 908 F.2d 595, 613 (10th Cir.1990) (internal quotation marks omitted), *rev'd on other grounds sub nom. Arkansas v. Oklahoma*, 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239 (1992). *See also Ackels v. EPA*, 7 F.3d 862, 865-66 (9th Cir.1993) (similar).

The EPA's treatment of storm-water discharges has been the subject of much debate. Initially, the EPA determined that such discharges generally were exempt from the requirements of the CWA (at least when they were uncontaminated by any industrial or commercial activity). *See*40 C.F.R. § 125.4 (1975).

The Court of Appeals for the District of Columbia, however, invalidated that regulation, holding that "the EPA Administrator does not have authority to exempt categories of point sources from the permit requirements of § 402 [33 U.S.C. § 1342]." *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1377 (D.C.Cir.1977). "Following this decision, [the] EPA issued proposed and final rules covering storm water discharges in 1980, 1982, 1984, 1985 and 1988. These rules were challenged at the administrative level and in the courts." *American Mining Congress*, 965 F.2d at 763.

Ultimately, in 1987, Congress enacted the Water Quality Act amendments to the CWA. *See NRDC II*, 966 F.2d at 1296 ("Recognizing both the environmental threat posed by storm water runoff and [the] EPA's problems in implementing regulations,

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Congress passed the Water Quality Act of 1987 containing amendments to the CWA.") (footnotes omitted). Under the Water Quality Act, from 1987 until 1994,[FN1] most entities discharging storm water did not need to obtain a permit. *See*33 U.S.C. § 1342(p).

> FN1. As enacted, the Water Quality Act extended the exemption to October 1, 1992. Congress later amended the Act to change that date to October 1, 1994. *See*Pub.L. No. 102-580.

Although the Water Quality Act generally did not require entities discharging storm water to obtain a permit, it did require such a permit for discharges "with respect to which a permit has been issued under this section before February 4, 1987,"33 U.S.C. § 1342(p)(2)(A); discharges "associated with industrial activity," 33 U.S.C. § 1342(p)(2)(B); discharges from a "municipal separate sewer system serving a population of [100,000] or more,"33 U.S.C. § 1342(p)(2)(C) & (D); and "[a] discharge for which the Administrator ... determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States,"33 U.S.C. § 1342(p)(2)(E).

***1164** When a permit is required for the discharge of storm water, the Water Quality Act sets two different standards:

(A) Industrial discharges

> Permits for discharges associated with industrial activity shall meet all applicable provisions of this section *and section 1311* of this title.

(B) Municipal discharge

> Permits for discharges from municipal storm sewers-
>
> (i) may be issued on a system or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) *shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants.*

33 U.S.C. § 1342(p)(3) (emphasis added).

C. *Application of Chevron*

[4] The EPA and Petitioners argue that the Water Quality Act is ambiguous regarding whether Congress intended for municipalities to comply strictly with state water-quality standards, under 33 U.S.C. § 1311(b)(1)(C). Accordingly, they argue that we must proceed to step two of *Chevron* and defer to the EPA's interpretation that the statute does require strict compliance. *See Zimmerman v. Oregon Dep't of Justice*, 170 F.3d 1169, 1173 (9th Cir.1999) ("At step two, we must uphold the administrative regulation unless it is arbitrary, capricious, or manifestly contrary to the statute.") (citation and internal quotation marks omitted), *cert. denied*,531 U.S. 1189, 121 S.Ct. 1186, 149 L.Ed.2d 103, 68 USLW 3129 (1999).

Intervenors and *amici*, on the other hand, argue that the Water Quality Act expresses Congress' intent unambiguously and, thus, that we must stop at step one of *Chevron*. *See, e.g., National Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 118 S.Ct. 927, 938-39, 140 L.Ed.2d 1 (1998) ("Because we conclude that Congress has made it clear that the *same* common bond of occupation must unite each member of an occupationally defined federal credit union, we hold that the NCUA's contrary interpretation is impermissible under the first step of *Chevron*.") (emphasis in original); *Sierra Club v. EPA*, 118 F.3d 1324, 1327 (9th Cir.1997) ("Congress has spoken clearly on the

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subject and the regulation violates the provisions of the statute. Our inquiry ends at the first prong of *Chevron.*"). We agree with Intervenors and *amici:* For the reasons discussed below, the Water Quality Act unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C). That being so, we end our inquiry at the first step of the *Chevron* analysis.

[5][6] "[Q]uestions of congressional intent that can be answered with 'traditional tools of statutory construction' are still firmly within the province of the courts" under *Chevron. NRDC II,* 966 F.2d at 1297 (citation omitted). "Using our 'traditional tools of statutory construction,' *Chevron,* 467 U.S. at 843 n. 9, 104 S.Ct. 2778, 81 L.Ed.2d 694, when interpreting a statute, we look first to the words that Congress used." *Zimmerman,* 170 F.3d at 1173 (alterations, citations, and internal quotation marks omitted). "Rather than focusing just on the word or phrase at issue, we look to the entire statute to determine Congressional intent." *Id.* (alterations, citations, and internal quotation marks omitted).

As is apparent, Congress expressly required *industrial* storm-water discharges to comply with the requirements of 33 U.S.C. § 1311. *See*33 U.S.C. § 1342(p)(3)(A) ("Permits for discharges associated with industrial activity *shall meet all applicable provisions of* this section and *section 1311* of this title.") (emphasis added). By incorporation, then, industrial***1165** storm-water discharges "*shall...achiev[e]...any more stringent limitation,* including those necessary to meet water quality standards, treatment standards or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 1370 of this title)." 33 U.S.C. § 1311(b)(1)(C) (emphasis added); *see also* Sally A. Longroy, *The Regulation of Storm Water Runoff and its Impact on Aviation,* 58 J. Air. L. & Com. 555, 565-66 (1993) ("Congress further *singled out* industrial storm water dischargers, all of which are on the high-priority schedule, and requires them to satisfy all provisions of section 301 of the CWA [33 U.S.C. § 1311].... Section 301 further mandates that NPDES permits include requirements that receiving waters meet water quality based standards.") (emphasis added). In other words, industrial discharges must comply strictly with state water-quality standards.

Congress chose not to include a similar provision for municipal storm-sewer discharges. Instead, Congress required municipal storm-sewer discharges "to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii).

[7] The EPA and Petitioners argue that the difference in wording between the two provisions demonstrates ambiguity. That argument ignores precedent respecting the reading of statutes. Ordinarily, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States,* 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (citation and internal quotation marks omitted); *see also United States v. Hanousek,* 176 F.3d 1116, 1121 (9th Cir.1999) (stating the same principle), *petition for cert. filed,*68 USLW 3138 (Aug. 23, 1999). Applying that familiar and logical principle, we conclude that Congress' choice to require industrial storm-water discharges to comply with 33 U.S.C. § 1311, but not to include the same requirement for municipal discharges, must be given effect. When we read the two related sections together, we conclude that 33 U.S.C. § 1342(p)(3)(B)(iii) does not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Application of that principle is significantly strengthened here, because 33 U.S.C. § 1342(p)(3)(B)*is not merely silent* regarding whether

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municipal discharges must comply with 33 U.S.C. § 1311. Instead, § 1342(p)(3)(B)(iii)*replaces* the requirements of § 1311 with the requirement that municipal storm-sewer dischargers "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator ... determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). In the circumstances, the statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Indeed, the EPA's and Petitioners' interpretation of 33 U.S.C. § 1342(p)(3)(B)(iii) would render that provision superfluous, a result that we prefer to avoid so as to give effect to all provisions that Congress has enacted. *See Government of Guam ex rel. Guam Econ. Dev. Auth. v. United States,* 179 F.3d 630, 634 (9th Cir.1999) ("This court generally refuses to interpret a statute in a way that renders a provision superfluous."), *as amended,*1999 WL 604218 (9th Cir. Aug.12, 1999). As all parties concede, § 1342(p)(3)(B)(iii) creates a lesser standard than § 1311. Thus, if § 1311 continues to apply to municipal storm-sewer discharges,***1166** the more stringent requirements of that section always would control.

Contextual clues support the plain meaning of § 1342(p)(3)(B)(iii), which we have described above. The Water Quality Act contains other provisions that undeniably exempt certain discharges from the permit requirement altogether (and therefore from § 1311). For example, "[t]he Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture." 33 U.S.C. § 1342(*l*)(1). Similarly, a permit is not required for certain storm-water runoff from oil, gas, and mining operations. *See*33 U.S.C. § 1342(*l*)(2). Read in the light of those provisions, Congress' choice to exempt municipal storm-sewer discharges from strict compliance with § 1311 is not so unusual that we should hesitate to give effect to the statutory text, as written.

Finally, our interpretation of § 1342(p)(3)(B)(iii) is supported by this court's decision in *NRDC II.*There, the petitioner had argued that "the EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments." *NRDC II,* 966 F.2d at 1308. This court disagreed with the petitioner's interpretation of the amendments:

> Prior to 1987, municipal storm water dischargers were subject to the same substantive control requirements as industrial and other types of storm water. In the 1987 amendments, *Congress retained the existing, stricter controls for industrial storm water dischargers but prescribed new controls for municipal storm water discharge.*

Id. (emphasis added). The court concluded that, under 33 U.S.C. § 1342(p)(3)(B)(iii), "*Congress did not mandate a minimum standards approach.* " *Id.* (emphasis added). The question in *NRDC II* was not whether § 1342(p)(3)(B)(iii) required strict compliance with state water-quality standards, *see*33 U.S.C. § 1311(b)(1)(C). Nonetheless, the court's holding applies equally in this action and further supports our reading of 33 U.S.C. § 1342(p).

In conclusion, the text of 33 U.S.C. § 1342(p)(3)(B), the structure of the Water Quality Act as a whole, and this court's precedent all demonstrate that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

D. *Required Compliance with 33 U.S.C. § 1311(b)(1)(C)*

[8] We are left with Intervenors' contention that the EPA may not, under the CWA, require strict compliance with state water-quality standards, through numerical limits or otherwise. We disagree.

Although Congress did not require municipal

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storm-sewer discharges to comply strictly with § 1311(b)(1)(C), § 1342(p)(3)(B)(iii) states that "[p]ermits for discharges from municipal storm sewers ... shall require *...such other provisions as the Administrator ... determines appropriate for the control of such pollutants.*" (Emphasis added.) That provision gives the EPA discretion to determine what pollution controls are appropriate. As this court stated in *NRDC II,* "Congress gave the administrator discretion to determine what controls are necessary.... NRDC's argument that the EPA rule is inadequate cannot prevail in the face of the clear statutory language." 966 F.2d at 1308.

Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards. The EPA has adopted an interim approach, which "uses best management practices (BMPs) in first-round storm water permits ... to provide for the attainment of water quality standards." The EPA applied that approach to the permits at issue here. Under 33 U.S.C. § 1342(p)(3)(B)(iii), the EPA's choice to include***1167** either management practices or numeric limitations in the permits was within its discretion. *See NRDC II,* 966 F.2d at 1308 ("Congress did not mandate a minimum standards approach or specify that [the] EPA develop minimal performance requirements."). In the circumstances, the EPA did not act arbitrarily or capriciously by issuing permits to Intervenors.

PETITION DENIED.

C.A.9 (Cal.),1999.
Defenders of Wildlife v. Browner
191 F.3d 1159, 30 Envtl. L. Rep. 20,116, 99 Cal. Daily Op. Serv. 7618, 1999 Daily Journal D.A.R. 9661, 1999 Daily Journal D.A.R. 12,369

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ATTACHMENT NO. 16

Environmental Defense Center v. U.S. EPA (9th Cir. 2003) 344 F.3d 832

Environmental Defense Center, Inc. v. U.S. E.P.A. C.A.9 (Cal.),2003.

United States Court of Appeals,Ninth Circuit.
ENVIRONMENTAL DEFENSE CENTER, INC., Petitioner,
Natural Resources Defense Council, Inc., Petitioner-Intervenor,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.
American Forest & Paper Association; National Association of Home Builders, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Applicant-Intervenor.
Texas Cities Coalition on Stormwater; Texas Counties Storm Water Coalition, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Respondent-Intervenor.
Nos. 00-70014, 00-70734, 00-70822.

Argued and Submitted Dec. 3, 2001.
Filed Sept. 15, 2003.

Environmental, municipal, and industry groups brought petitions for review of Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements. On denial of rehearing, the Court of Appeals, James R. Browning, Circuit Judge, held that: (1) EPA had authority to impose rule; (2) rule did not violate the Tenth Amendment; (3) rule improperly failed to provide for review of notices of intent and public participation in NPDES permitting process; (4) EPA's failure to designate industrial sources of storm water pollution for permitting requirements was not arbitrary and capricious; (5) challenge to rule's exclusion of forest roads was not time-barred; (6) forestry trade association lacked standing to challenge rule; (7) EPA properly consulted with state and local officials; (8) sites subject to rule were properly designated; and (9) EPA properly retained authority to designate future sources of storm water pollution for regulation.

Petitions for review granted in part and denied in part.

Tallman, Circuit Judge, filed opinion concurring in part and dissenting in part, and would have granted petition for rehearing.

Opinion, 319 F.3d 398, vacated.

West Headnotes

[1] Environmental Law 149E ⚿176

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek176 k. Sewage and Sewers. Most Cited Cases

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

Storm sewers are established "point sources" subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E ⚿175

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149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
Diffuse runoff, such as rainwater that is not channeled through point source, is considered "nonpoint source" pollution and is not subject to federal regulation under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[3] Constitutional Law 92 ⚿976

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k976 k. Resolution of Non-Constitutional Questions Before Constitutional Questions. Most Cited Cases
(Formerly 92k46(1))
Court of Appeals avoids considering constitutionality of a rule if an issue may be resolved on narrower grounds.

[4] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) interpretation of rule promulgated under Clean Water Act (CWA), whereby EPA would require that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, was reasonable, and thus EPA acted within its statutory mandate in formulating permit program under rule; even though permitting was not included on statutory list of elements for EPA's comprehensive program to regulate small sewer systems, list was non-exclusive, and statutory language requiring imposition of permits for "municipal storm sewers" was reasonably interpreted to extend to small systems. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6).

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
Minimum measures set forth by rule as conditions for issuance of stormwater discharge permit to operator of small municipal storm sewers did not exceed authority of Environmental Protection Agency (EPA) under Clean Water Act (CWA), as statute's list of elements for regulatory program was nonexclusive, and rule included at least one alternative to minimum measures. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6); 40 C.F.R. §§ 122.26(d), 122.26, 122.33(b)(1), 122.34(b), (d)(1)(i).

[6] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs. U.S.C.A. Const.Amend. 10.

[7] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and In-

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fringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the federal government may not force the States to regulate third parties in furtherance of a federal program. U.S.C.A. Const.Amend. 10.

[8] States 360 ⚿4.16(1)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(1) k. In General. Most Cited Cases
Protections of Tenth Amendment, whereby federal government may not compel States to implement federal regulatory programs by legislation or executive action, nor force the States to regulate third parties in furtherance of a federal program, extend to municipalities. U.S.C.A. Const.Amend. 10.

[9] United States 393 ⚿82(2)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
While federal government may not compel them to do so, it may encourage States and municipalities to implement federal regulatory programs; for example, the federal government may make certain federal funds available only to those States or municipalities that enact a given regulatory regime. U.S.C.A. Const.Amend. 10.

[10] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
The crucial proscribed element under the Tenth Amendment, as to federal government's ability to have states implement federal programs, is coercion; the residents of the State or municipality must retain the ultimate decision as to whether or not the State or municipality will comply with the federal regulatory program, but as long as the alternative to implementing a federal regulatory program does not offend the Constitution's guarantees of federalism, the fact that the alternative is difficult, expensive, or otherwise unappealing is insufficient to establish a Tenth Amendment violation. U.S.C.A. Const.Amend. 10.

[11] Environmental Law 149E ⚿166

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek166 k. Validity. Most Cited Cases

States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Environmental Protection Agency (EPA) rule promulgated under Clean Water Act (CWA), whereby discharges from small municipal storm sewers and construction sites were subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, did not wrongfully compel municipalities to regulate third parties under federal law as condition of receiving permit to operate, as would contravene Tenth Amendment; although one means of obtaining permit would require municipality to adopt various enforcement procedures, permit applicants retained option of applying for Alternative Permit. U.S.C.A. Const.Amend. 10; Federal Water

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Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(d), 122.34.

[12] Constitutional Law 92 ⚿1681

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1681 k. Political Speech, Beliefs, or Activity in General. Most Cited Cases
(Formerly 92k90.1(4))

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) adoption of "Public Education" and "Illicit Discharge" Minimum Measures within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), did not wrongfully compel municipalities to deliver EPA's political messages, and thus did not violate municipalities' free speech rights under First Amendment; requiring providers of storm sewers that discharged into national waters to educate public about impacts of storm water discharge, and to inform affected parties, including public, about hazards of improper waste disposal fell short of compelling political speech, since they did not dictate specific ideological message. U.S.C.A. Const.Amend. 1; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[13] Administrative Law and Procedure 15A ⚿395

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak392 Proceedings for Adoption
15Ak395 k. Notice and Comment, Sufficiency. Most Cited Cases
In determining whether notice to interested parties was adequate under informal rulemaking strictures of Administrative Procedure Act (APA) when final regulation has varied from proposal, court must consider whether new round of notice and comment would have provided first opportunity for interested parties to offer comments that could have persuaded agency to modify its ruling. 5 U.S.C.A. § 553.

[14] Environmental Law 149E ⚿218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) adoption of Alternative Permit option within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), properly complied with minimum notice and comment procedures required in informal rulemaking under Administrative Procedure Act (APA), since Alternative Permit option was logical outgrowth of comments received by EPA in response to proposed rule, and option contained no elements that were not part of proposed rule, even though it was configured differently. 5 U.S.C.A. § 553; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[15] Environmental Law 149E ⚿662

149E Environmental Law
149EXIII Judicial Review or Intervention

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149Ek662 k. Ripeness. Most Cited Cases
Challenge to Environmental Protection Agency (EPA) rule allowing operators of small municipal storm sewers to pursue general permit option to meet National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA) was ripe for review, as issue did not involve merits of any specific permit but was purely one of statutory interpretation that would not benefit from further factual development; issue specifically was whether EPA accomplished the substantive controls for municipal stormwater that Congress mandated in the CWA. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[16] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
General permitting scheme of Environmental Protection Agency (EPA) rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA), improperly allowed sewer system operators to design storm water pollution control programs without adequate regulatory and public oversight, and thus contravened CWA, since permitting scheme did not require EPA to review content of dischargers' notices of intent, and did not contain express requirements for public participation in NPDES permitting process. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3), 33 U.S.C.A. § 1342(p)(3); 40 C.F.R. § 122.34.

[17] Administrative Law and Procedure 15A ⚿413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases

Administrative Law and Procedure 15A ⚿753

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak753 k. Theory and Grounds of Administrative Decision. Most Cited Cases
Court of Appeals normally defers to an agency's interpretations of its own regulations, but it may decline to defer to the post hoc rationalizations of appellate counsel.

[18] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Failure of Environmental Protection Agency (EPA) to designate industrial sources of storm water pollution for discharge permit program, whereby such discharges would become subject to National Pollutant Discharge Elimination System (NPDES) requirements, was not arbitrary and capricious, and thus did not violate Clean Water Act (CWA); rather than designating industrial discharge sources on nationwide basis under NPDES program, EPA sought to establish local and regional designation authority for such sources. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[19] Environmental Law 149E ⚿671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases

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Petitioners' challenge to failure of Environmental Protection Agency (EPA) to regulate stormwater drainage from forest roads did not have to be raised either when EPA initially promulgated silviculture regulations excluding certain silvicultural activities from National Pollutant Discharge Elimination System (NPDES) permitting requirements, or when EPA considered amending such regulations but chose not to do so, and challenge was thus not time-barred, to extent that present challenge was made to EPA's decision not to address forest roads under later-enacted portion of Clean Water Act (CWA) directed to municipal and industrial stormwater discharges. Federal Water Pollution Control Act Amendments of 1972, §§ 402(p), 509(b)(1), 33 U.S.C.A. §§ 11342(p), 1369(b)(1); 40 C.F.R. § 122.27(b)(1).

[20] Environmental Law 149E ⚿641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
Petitioners' comments during rulemaking process in connection with Environmental Protection Agency (EPA) rule governing municipal and industrial stormwater discharges pursuant to Clean Water Act (CWA) were not so inadequate as to preclude appellate court jurisdiction to hear petitioners' subsequent challenge to rule's failure to address stormwater drainage from forest roads; comments comprised two paragraphs, with footnotes, stating objections and providing support, EPA was aware of forest road sedimentation problem at time of rulemaking, and EPA responded to comments without disputing that problem was serious. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[21] Environmental Law 149E ⚿652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases
Forestry and paper association lacked sufficient standing to challenge Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), since association's interest in avoiding future regulation of forest roads was not actually or imminently affected by rule at issue. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[22] Environmental Law 149E ⚿220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, properly consulted with state and local officials, and thus did not violate Clean Water Act (CWA); draft of first report pertaining to proposed rule was circulated to states and municipalities, EPA regional offices, professional associations and other stakeholders, and rule was revised based upon comments received. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[23] Environmental Law 149E ⚿652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing

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149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases

Environmental Law 149E ⚿654

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek654 k. Government Entities, Agencies, and Officials. Most Cited Cases
Home builders' association and municipalities possessed sufficient standing to challenge designation by Environmental Protection Agency (EPA) of municipal storm sewers and construction sites for regulation under Clean Water Act (CWA), whereby National Pollutant Discharge Elimination System (NPDES) permits would be required for discharges by such entities, since association and municipalities were able to allege procedural harm from purported lack of notice or from effects of regulation itself. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[24] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Designation by Environmental Protection Agency (EPA) of municipal storm sewers to be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, according to areas defined by Census Bureau as "urbanized," was not arbitrary and capricious, as would violate Clean Water Act (CWA), since EPA articulated reasoned basis for its conclusion that Census Bureau's designation was correlated to actual levels of pollution runoff in storm water; record evidence demonstrated compelling and widespread relationship between urban storm water runoff and deleterious impacts on water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[25] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Decision by Environmental Protection Agency (EPA) to subject construction sites disturbing between one and five acres of land to National Pollutant Discharge Elimination System (NPDES) permitting requirements was not arbitrary and capricious, as would violate Clean Water Act (CWA); record evidence included numerous studies of sedimentation from construction sites, which EPA specifically reviewed in promulgating challenged regulation, and EPA's extrapolation of data from studies involving larger sites had reasonable basis. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[26] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Allowance by Environmental Protection Agency (EPA) of regulatory waivers for small construction sites not likely to cause adverse water quality impacts, as would exempt such sites from National Pollutant Discharge Elimination System (NPDES) permit requirements, was not arbitrary and capricious, as would violate Clean Water Act (CWA); EPA's waiver approach promoted fairness and efficiency in permitting process, and did not create presumption applicable to evidentiary hearing. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[27] Environmental Law 149E ⚿196

149E Environmental Law

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149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

Decision by Environmental Protection Agency (EPA) to subject small construction sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements was consistent with its decisions to exempt other potential storm water runoff sources from such requirements, notwithstanding alleged lack of quantifiable data regarding runoff, and thus was not arbitrary and capricious, as would violate Clean Water Act (CWA); record evidence demonstrated that construction sites of all sizes had greater erosion rates than almost any other land use, and thus were not similarly situated to potential polluters that EPA chose not to regulate. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[28] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases

Language in Clean Water Act (CWA) conferring authority to Environmental Protection Agency (EPA) to regulate "a discharge" determined to threaten water quality does not preclude EPA from designating entire categories of discharge sources for regulation. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[29] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system was not ultra vires as to Clean Water Act (CWA); applicable statutory sections authorized designation of class of discharges to be identified on case-by-case, location-specific bases by NPDES permitting authority, consistent with comprehensive program to protect water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[30] Constitutional Law 92 ⚿2419

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2410 To Executive, Particular Issues and Applications
92k2419 k. Environment and Natural Resources. Most Cited Cases
(Formerly 92k62(10))

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA) did not effect unconstitutional delegation of legislative power, since such authority manifested statutory directive to restore and maintain chemical, physical and biological integrity of national waters. U.S.C.A. Const. Art. 1, § 1; Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[31] Environmental Law 149E ⚿218

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149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) provided proper notice and comment for rule allowing agency to retain residual designation authority subjecting categories of storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA), even though proposed rule would have only allowed such designation on case-by-case basis, since final rule was logical outgrowth of comments received by EPA; elements in proposed rule explicitly envisioned categorical designation of sources at watershed level. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[32] Administrative Law and Procedure 15A ⚷405.5

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak404 Form
15Ak405.5 k. Economic or Social Impact Statement. Most Cited Cases
Under Regulatory Flexibility Act (RFA), federal agency must prepare regulatory flexibility analysis and assessment of economic impact of proposed rule on small business entities, unless agency certifies that proposed rule will not have significant economic impact on a substantial number of small entities, and provides a factual basis for that certification. 5 U.S.C.A. § 604.

[33] Environmental Law 149E ⚷220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule subjecting categories of storm water discharge sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), reasonably certified that rule would not have significant economic impact on small business entities, as required under Regulatory Flexibility Act (RFA); EPA convened small business advocacy review panel before publishing notice of proposed rule, and included provisions in rule designed to minimize impacts on such entities. 5 U.S.C.A. § 604; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

***839** Victoria Clark, Environmental Defense Center, Santa Barbara, CA, for petitioner Environmental Defense Center, Inc.
Andrew G. Frank and Arlene Yang, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, and Nancy K. Stoner, Natural Resources Defense Council, Washington, DC, for intervenor National Resources Defense Council, Inc.
R. Timothy McCrum, Ellen B. Steen, and Donald J. Kochan, Crowell & Moring, Washington, DC, for petitioners American Forest & Paper Association and National Association of Home Builders.
Steven P. Quarles and J. Michael Klise, Crowell & Moring, Washington, DC, and William R. Murray, American Forest & Paper Association, Washington, DC, for petitioner American Forest & Paper Association.
Jim Mathews and Clarence Joe Freeland, Mathews & Freeland, Austin, TX, for petitioner Texas Cities Coalition on Stormwater.
Sydney W. Falk, Jr. and William D. Dugat III, Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, Austin, TX, for petitioner Texas Counties Storm Water Coalition.
John C. Cruden, Daniel M. Flores and Kent E. Hanson, United States Department of Justice, Washington, DC, and Stephen J. Sweeny, United States En-

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vironmental Protection Agency, Washington, DC, for respondent United States Environmental Protection Agency.

On Petition for Review of an Order of the Environmental Protection Agency. EPA No. Clean Water 40 CFR.

Before BROWNING, REINHARDT, and TALLMAN, Circuit Judges.

Opinion by Judge JAMES R. BROWNING; Partial Concurrence and Partial Dissent by Judge TALLMAN.

ORDER AND OPINION

ORDER

The opinion and dissent filed in this case on January 14, 2003, and published at 319 F.3d 398 are vacated. They are replaced by the Opinion and Dissent filed today.

With the filing of the new Opinion and Dissent, the panel has voted to deny the petitions for rehearing and the petition for rehearing en banc. (Judge Tallman would grant the petition for rehearing filed by ***840** the Environmental Protection Agency.) The full court has been advised of the new Opinion, new Dissent, and petition for rehearing en banc. No judge has requested a vote on the petition for rehearing en banc. Fed. R.App. P. 35.

The petitions for rehearing and the petition for rehearing en banc are DENIED. The clerk is instructed not to accept for filing any new petitions for rehearing or petitions for rehearing en banc in this case.

Each party shall bear its own costs in this appeal.

OPINION

JAMES R. BROWNING, Circuit Judge.

Petitioners challenge a rule issued by the United States Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§ 1251-1387, to control pollutants introduced into the nation's waters by storm sewers.

Storm sewers drain rainwater and melted snow from developed areas into water bodies that can handle the excess flow. Draining stormwater picks up a variety of contaminants as it filters through soil and over pavement on its way to sewers. Sewers are also used on occasion as an easy (if illicit) means for the direct discharge of unwanted contaminants. Since storm sewer systems generally channel collected runoff into federally protected water bodies, they are subject to the controls of the Clean Water Act.

In October of 1999, after thirteen years in process, the Environmental Protection Agency ("EPA") promulgated a final administrative rule (the "Phase II Rule"[FN1] or "the Rule") under § 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), mandating that discharges from small municipal separate storm sewer systems and from construction sites between one and five acres in size be subject to the permitting requirements of the National Pollutant Discharge Elimination System ("NPDES"), 33 U.S.C. §§ 1311(a), 1342. EPA preserved authority to regulate other harmful stormwater discharges in the future.

> FN1. The "Phase II Rule" reviewed here is the product of the second stage of EPA's two-phase stormwater rulemaking effort. The "Phase I Rule," governing larger-scale stormwater discharges, was issued in 1990 and reviewed by this court in *Natural Res. Def. Council v. EPA*, 966 F.2d 1292 (9th Cir.1992).

In the three cases consolidated here, petitioners and intervenors challenge the Phase II Rule on twenty-two constitutional, statutory, and procedural grounds. We remand three aspects of the Rule con-

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cerning the issuance of notices of intent under the Rule's general permitting scheme, and a fourth aspect concerning the regulation of forest roads. We affirm the Rule against all other challenges.

I.

BACKGROUND

A. The Problem of Stormwater Runoff

Stormwater runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources."[FN2] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, ***841** and estuaries across the United States.[FN3] In 1985, three-quarters of the States cited urban stormwater runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment.[FN4] Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters.[FN5] Among the sources of stormwater contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[FN6]

FN2. Richard G. Cohn-Lee and Diane M. Cameron, *Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation,* THE ENVIRONMENTAL PROFESSIONAL, Vol. 14, p. 10, at 10 (1992); *see also Natural Res. Def. Council,* 966 F.2d at 1295 (citing a study by the Nationwide Urban Runoff Program).

FN3. Regulation for Revision of the Water Pollution Control Program Addressing Storm Water, 64 Fed. Reg. 68,722, 68,724, 68,727 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

FN4. *Id.* at 68,726.

FN5. *Id.*

FN6. *Id.* at 68,725-31.

B. Stormwater and the Clean Water Act

Congress enacted the Clean Water Act in 1948 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (originally codified as the Federal Water Pollution Control Act, 62 Stat. 1155). The Clean Water Act prohibits the discharge of pollutants from a "point source"[FN7] into the waters of the United States without a permit issued under the terms of the National Pollutant Discharge Elimination System, 33 U.S.C. §§ 1311(a), 1342, which requires dischargers to comply with technology-based pollution limitations (generally according to the "best available technology economically achievable," or "BAT" standard). 33 U.S.C. § 1311(b)(2)(A). NPDES permits are issued by EPA or by States that have been authorized by EPA to act as NPDES permitting authorities. 33 U.S.C. § 1342(a)-(b). The permitting authority must make copies of all NPDES permits and permit applications available to the public, 33 U.S.C. §§ 1342(j), 1342(b)(3); state permitting authorities must provide EPA notice of each permit application, 33 U.S.C. § 1342(b)(4); and a permitting authority must provide an opportunity for a public hearing before issuing any permit, 33 U.S.C. §§ 1342(a)(1), 1342(b)(3); *cf.* 33 U.S.C. § 1251(e) (requiring public participation).

FN7. A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other

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floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[1][2] Storm sewers are established point sources subject to NPDES permitting requirements. *Natural Res. Def. Council v. Costle,* 568 F.2d 1369, 1379 (D.C.Cir.1977) (holding unlawful EPA's exemption of stormwater discharges from NPDES permitting requirements); *Natural Res. Def. Council v. EPA,* 966 F.2d 1292, 1295 (9th Cir.1992).FN8 In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a ***842** two-phase overall program of stormwater regulation. *Id.* at § 1342(p)(2)-(4); *Natural Res. Def. Council,* 966 F.2d at 1296. In 1990, pursuant to § 402(p)(4), EPA issued the Phase I Rule regulating large discharge sources.FN9

FN8. Diffuse runoff, such as rainwater that is not channeled through a point source, is considered nonpoint source pollution and is not subject to federal regulation. *Oregon Natural Desert Ass'n v. Dombeck,* 172 F.3d 1092, 1095 (9th Cir.1998).

FN9. National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges, 55 Fed. Reg. 47,990 (Nov. 16, 1990) (codified at 40 C.F.R. pt. 122-124). The Phase I rule was challenged in this court in *Natural Res. Def. Council,* 966 F.2d at 1292. We held, *inter alia,* that EPA must impose deadlines for permit approvals, *id.* at 1300, that EPA's decision to regulate construction sites only over five acres in size was arbitrary and capricious, *id.* at 1306, and that EPA did not act capriciously in defining "municipal," *id.* at 1304, or in placing differently-sized municipalities on different permitting schedules, *id.* at 1301.

C. The Phase II Stormwater Rule

In Clean Water Act § 402(p), Congress also directed a second stage of stormwater regulation by ordering EPA to identify and address sources of pollution not covered by the Phase I Rule. Section 402(p)(1) placed a temporary moratorium (expiring in 1994) on the permitting of other stormwater discharges pending the results of studies mandated in § 402(p)(5) to identify the sources and pollutant content of such discharges and to establish procedures and methods to control them as "necessary to mitigate impacts on water quality." 33 U.S.C. § 1342(p)(5). Section 402(p)(6) required that EPA establish "a comprehensive program to regulate" these stormwater discharges "to protect water quality," following the studies mandated in § 402(p)(5) and consultation with state and local officials. *Id.* at § 1342(p)(6).

EPA proposed the Phase II Rule in January of 1998.FN10 In October, 1999, Congress passed legislation precluding EPA from promulgating the new Rule until EPA submitted an additional report to Congress supporting certain anticipated aspects of the Rule.FN11 EPA was also required to publish its report in the Federal Register for public comment. Pub. L. No. 106-74, § 431(c), 113 Stat. at 1097. Later that month, EPA submitted the required ("Appropriations Act") study and promulgated the Rule.FN12

FN10. Proposed Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 63 Fed. Reg. 1536 (proposed Jan. 9, 1998).

FN11. Pub. L. No. 106-74, § 431(a), 113 Stat. 1047, 1096 (1999) ("Appropriations, 2000-Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies").

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FN12. Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68,722 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

Under the Phase II Rule, NPDES permits are required for discharges from small municipal separate storm sewer systems ("small MS4s") and stormwater discharges from construction activity disturbing between one and five acres ("small construction sites"). 40 C.F.R. §§ 122.26(a)(9)(i)(A)-(B). Small MS4s may seek permission to discharge by submitting an individualized set of best-management plans in six specified categories, *id.* at § 122.34, either in the form of an individual permit application, or in the form of a notice of intent to comply with a general permit. *Id.* at § 122.33(b). Small MS4s may also seek permission to discharge through an alternative process, under which a permit may be sought without requiring the operator to regulate third parties, *id.* at §§ 122.33(b)(2)(ii), 122.26(d).[FN13] Small construction sites may ***843** apply for individual NPDES permits or seek coverage under a promulgated general permit. *Id.* at § 122.26(c). EPA also preserved authority to regulate other categories of harmful stormwater discharges on a regional, as-needed basis. *Id.* at § 122.26(a)(9)(i)(C)-(D).

FN13. The Rule also allows a small MS4 to be regulated under an individual NPDES permit covering a nearby large or medium MS4, with provisions adapted to address the small MS4. 40 C.F.R. § 122.33(b)(3).

D. Facial Challenges to the Phase II Rule

The Rule was challenged in the Fifth, Ninth, and D.C. Circuits in three separate actions ultimately consolidated before the Ninth Circuit.

The Texas Cities Coalition on Stormwater and the Texas Counties Stormwater Coalition (collectively, "the Municipal Petitioners") assert that EPA lacked authority to require permitting, that its promulgation of the Rule was procedurally defective, that the Rule establishes categories that are arbitrary and capricious, and that the Rule impermissibly requires municipalities to regulate their own citizens in contravention of the Tenth Amendment and to communicate a federally mandated message in contravention of the First Amendment. The Natural Resources Defense Council ("NRDC") intervened on behalf of EPA.

Environmental Defense Center, joined by petitioner-intervenor NRDC ("the Environmental Petitioners"), asserts that the regulations fail to meet minimum Clean Water Act statutory requirements because they constitute a program of impermissible self-regulation, fail to provide required avenues of public participation, and neglect to address stormwater runoff associated with forest roads and other significant sources of runoff pollution.

The American Forest & Paper Association ("AF&PA") and the National Association of Home Builders ("the Industrial Petitioners") assert that promulgation of the Rule was procedurally defective and violated the Regulatory Flexibility Act, that EPA's retention of authority to regulate future sources of runoff pollution is *ultra vires,* and that the decision to regulate discharge from construction sites one to five acres in size is arbitrary and capricious. NRDC again intervened on behalf of EPA.

We have jurisdiction pursuant to section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1) (assigning review of EPA effluent and permitting regulations to the Federal Courts of Appeals).

II.

DISCUSSION

A. The Permit Requirements

[3] The Municipal Petitioners' primary contention is that the Phase II Rule compels small MS4s to regu-

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late citizens as a condition of receiving a permit to operate, and that EPA lacks both statutory and constitutional authority to impose such a requirement. Because we avoid considering constitutionality if an issue may be resolved on narrower grounds, *Greater New Orleans Broadcasting Ass'n v. United States,* 527 U.S. 173, 184, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999), we first ask whether the Phase II Rule is supported by statutory authority.

1. Statutory Authority

[4] The Municipal Petitioners assert that the statutory command in Clean Water Act § 402(p)(6) that EPA develop a "comprehensive program to regulate" small MS4s did not authorize a program based on NPDES permits. Petitioners argue that because § 402(p)(6) explicitly indicates elements that the program may *844 contain (performance standards, guidelines, etc.) without mentioning "permits," Congress must have intended that the program exclude permitting.FN14

> FN14. The text of that section reads: "Not later than October 1, 1993, [EPA], in consultation with state and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate." 33 U.S.C. § 1342(p)(6).

The fact that "permitting" is not included on a statutory list of elements that the program "may" include is not determinative, because the list is manifestly nonexclusive. The only constraints are that the § 402(p)(6) regulations be based on the § 402(p)(5) studies, that they be issued in consultation with state and local officials, and that-"at a minimum"-they establish priorities, requirements for state stormwater management programs, and expeditious deadlines, and constitute a comprehensive program "to protect water quality." 33 U.S.C. § 1342(p)(6). EPA was free to adopt any regulatory program, including a permitting program, that included these elements. *See Chevron, U.S.A. v. Natural Res. Def. Council,* 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) (deference to an agency's reasonable interpretation is required unless Congress expressed its intent unambiguously). It is more reasonable to interpret congressional silence about permits as an indication of EPA's flexibility not to use them than as an outright prohibition.FN15

> FN15. The lesser category of "permits" may also be implied by the inclusion of "performance standards" in the list of possible program features.

The Municipal Petitioners further contend that their interpretation is supported by the structure of § 402(p), which expressly requires permits for large and medium sized MS4s in a separate section, § 402(p)(3)(B).FN16 However, as EPA counters, the language in § 402(p)(3) requiring permits for municipal storm sewers may be interpreted to apply both to Phase I *and* Phase II MS4s. Moreover, as respondent-intervenor NRDC notes, the mere existence of the § 402(p)(1) permitting moratorium, designed to apply only to Phase II dischargers, necessarily implies that EPA has the authority to require permits from these sources after the 1994 expiration of the moratorium.

> FN16. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate

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> inclusion or exclusion." *Bates v. United States,* 522 U.S. 23, 29-30, 118 S.Ct. 285, 139 L.Ed.2d 215 (1997).

Since there would have been no need to establish a permitting moratorium for these sources if the sources could *never* be subject to permitting requirements, petitioners' interpretation violates the bedrock principle that statutes not be interpreted to render any provision superfluous. *See Burrey v. Pacific Gas & Elec. Co.,* 159 F.3d 388, 394 (9th Cir.1998). EPA's interpretation of its mandate under § 402(p)(6) was reasonable and EPA acted within its statutory authority in formulating the Phase II Rule as a permitting program.

2. The Tenth Amendment

The Municipal Petitioners contend that the Phase II Rule on its face compels ***845** operators of small MS4s to regulate third parties in contravention of the Tenth Amendment. We conclude that the Rule does not violate the Tenth Amendment, because it directs no unconstitutional coercion.

The Phase II Rule contemplates several avenues through which a small MS4 may obtain permission to discharge. First, if the NPDES Permitting Authority overseeing the small MS4 has issued an applicable general permit, the small MS4 may submit a notice of intent wherein the small MS4 agrees to comply with the terms of the general permit and specifies plans for implementing six "Minimum Measures" designed to protect water quality. 40 C.F.R. §§ 122.33(b)(1), 122.34(d)(1)(i), 122.34(b). Second, the small MS4 may apply for an individual permit under 40 C.F.R. § 122.34, which would again require compliance with the six Minimum Measures. *Id.* at §§ 122.33(b)(2)(i), 122.34(a), 122.34(b). Third, under an "Alternative Permit" option, the small MS4 may apply for an individualized permit under 40 C.F.R. § 122.26(d), the permitting program established by the Phase I Rule for large and medium-sized MS4s. *Id.* at §§ 122.33(b)(2)(ii), 122.26(d).[FN17]

> FN17. The Phase II Rule also allows a small MS4 to be regulated under an NPDES permit covering a nearby large or medium-sized MS4, with provisions adapted to address the small MS4. 40 C.F.R. § 122.33(b)(3).

[5] The Minimum Measures mentioned above require small MS4s to implement programs for: (1) conducting public education and outreach on stormwater impacts, *id.* at § 122.34(b)(1); (2) engaging public participation in the development of stormwater management programs, *id.* at § 122.34(b)(2); (3) detecting and eliminating illicit discharges to the MS4, *id.* at § 122.34(b)(3); (4) reducing pollution to the MS4 from construction activities disturbing one acre or more, *id.* at § 122.34(b)(4); (5) minimizing water quality impacts from development and redevelopment activities that disturb one acre or more, *id.* at § 122.34(b)(5); and (6) preventing or reducing pollutant runoff from municipal activities, *id.* at § 122.34(b)(6).[FN18]

> FN18. The Municipal Petitioners argue that the Minimum Measures exceed EPA's statutory authority under § 402(p) of the Clean Water Act. We disagree. The list of elements for a regulatory program that appears in § 402(p)(6) is nonexclusive, and EPA's adoption of the Minimum Measures represents a permissible interpretation of its authority under § 402(p)(6). *See Chevron,* 467 U.S. at 843-44, 104 S.Ct. 2778.

The Municipal Petitioners argue that EPA is not entitled to *Chevron* deference, and that the Minimum Measures must be rejected absent a clear statement of congressional intent that EPA enact the Minimum Measures. The Municipal Petitioners argue that this clear statement requirement arises because there are "significant constitutional questions" about the permissibility of the Minimum Measures under the Tenth Amendment, and because the Minimum Measures alter "the federal-state framework by permitting federal encroachment upon a traditional state power." *Solid Waste Agency of N. Cook*

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County v. Army Corps of Eng'rs, 531 U.S. 159, 173, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001).

As we explain, because the Phase II Rule includes at least one alternative to the Minimum Measures, *i.e.*, the option of seeking a permit under 40 C.F.R. § 122.26(d), the Minimum Measures do not present significant Tenth Amendment problems demanding a clear statement of congressional intent. Nor does the Phase II Rule alter the federal-state balance. To the contrary, the option of seeking a permit under 40 C.F.R. § 122.26(d) maintains precisely the same federal-state balance as existed prior to the Phase II Rule. *See, e.g., Natural Res. Def. Council v. EPA,* 966 F.2d 1292 (9th Cir.1992) (reviewing Phase I Rule); *Natural Res. Def. Council v. Costle,* 568 F.2d 1369, 1379 (D.C.Cir.1977) (denying EPA authority to exempt MS4s from regulation under the Clean Water Act). Furthermore, even if a clear statement of congressional intent were necessary, § 402(p) of the Clean Water Act is replete with clear statements that Congress intended EPA to require MS4s either to obtain NPDES permits or to stop discharging stormwater.

***846** The Municipal Petitioners contend that the measures regulating illicit discharges, small construction sites, and development activities unconstitutionally compel small MS4 operators to regulate third parties, *i.e.*, upstream dischargers. The Illicit Discharge Detection and Elimination measure requires that a permit seeker prohibit non-stormwater discharges to the MS4 and implement appropriate enforcement procedures. 40 C.F.R. § 122.34(b)(3)(ii)(B).[FN19] The Construction Site Stormwater Runoff Control measure requires a permit seeker to implement and enforce a program to reduce stormwater pollutants from small construction sites. *Id.* at §§ 122.34(b)(4)(i)-(ii).[FN20] It mandates erosion and sedimentation controls, site plan reviews that take account of water quality impacts, site inspections, and the consideration of public comment, and requires that construction site operators implement erosion, sedimentation, and waste management best management practices. *Id.* The Post-Construction/New Development measure requires permit seekers to address post-construction runoff from new development and redevelopment projects disturbing one acre or more. *Id.* at § 122.34(b)(5)(ii)(B).[FN21]

FN19. This subsection provides that permit seekers must, "[t]o the extent allowable under State, Tribal, or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into your storm sewer systems and implement appropriate enforcement procedures and actions...."40 C.F.R. § 122.34(b)(3)(ii)(B).

FN20. This subsection provides that permit seekers "must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.... [The] program must include the development and implementation of, at a minimum: (A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law; (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; (D) Procedures for site plan review which incorporate consideration of potential water quality impacts; (E) Procedures for receipt and consideration of information submitted by the public, and (F) Procedures for site inspection and enforcement control measures." 40 C.F.R. §§ 122.34(b)(4)(i)-(ii).

FN21. This subsection provides that permit

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> seekers must "[u]se an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects [disturbing one acre or more] to the extent allowable under State, Tribal or local law." 40 C.F.R. §§ 122.34(b)(5)(ii)(B).

Noting that most MS4s are operated by municipal governments, and that "[t]he drainage of a city in the interest of the public health and welfare is one of the most important purposes for which the police power can be exercised,"*New Orleans Gaslight Co. v. Drainage Comm'n,* 197 U.S. 453, 460, 25 S.Ct. 471, 49 L.Ed. 831 (1905), the Municipal Petitioners argue that requiring operators of small MS4s to implement "through ordinance or other regulatory mechanism" the regulations required by the Minimum Measures contravenes the Tenth Amendment. *See, e.g., New York v. United States,* 505 U.S. 144, 188, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992).

EPA counters that the Phase II Rule does not violate the Tenth Amendment because operators of small MS4s may opt to avoid the Minimum Measures by seeking a permit under the Alternative Permit ***847** option, 40 C.F.R. § 122.33(b)(2)(ii).[FN22]

> FN22. EPA and NRDC also argue that the Minimum Measures are facially constitutional, and that the Phase II Rule presents no Tenth Amendment difficulties because operators of small MS4s may avoid stormwater regulation entirely by electing not to discharge stormwater into federal waters in the first place. In light of our holding with regard to the Alternative Permit option, we do not consider these arguments.

[6][7][8] Under the Tenth Amendment, "the Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs." *Printz v. United States,* 521 U.S. 898, 925, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997); *see also New York,* 505 U.S. at 188, 112 S.Ct. 2408. Similarly, the federal government may not force the States to regulate third parties in furtherance of a federal program. *See Reno v. Condon,* 528 U.S. 141, 151, 120 S.Ct. 666, 145 L.Ed.2d 587 (2000) (upholding a federal statutory scheme because it "does not require the States in their sovereign capacity to regulate their own citizens"). These protections extend to municipalities. *See, e.g., Printz* 521 U.S. at 931 n. 15, 117 S.Ct. 2365.

[9][10] However, while the federal government may not *compel* them to do so, it may *encourage* States and municipalities to implement federal regulatory programs. *See New York,* 505 U.S. at 166-68, 112 S.Ct. 2408. For example, the federal government may make certain federal funds available only to those States or municipalities that enact a given regulatory regime. *See, e.g., South Dakota v. Dole,* 483 U.S. 203, 205-08, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987) (upholding federal statute conditioning state receipt of federal highway funds on state adoption of minimum drinking age of twenty-one). The crucial proscribed element is coercion; the residents of the State or municipality must retain "the ultimate decision" as to whether or not the State or municipality will comply with the federal regulatory program. *New York,* 505 U.S. at 168, 112 S.Ct. 2408. However, as long as "the alternative to implementing a federal regulatory program does not offend the Constitution's guarantees of federalism, the fact that the alternative is difficult, expensive or otherwise unappealing is insufficient to establish a Tenth Amendment violation." *City of Abilene v. EPA,* 325 F.3d 657, 662 (5th Cir.2003).

[11] With the Phase II Rule, EPA gave the operators of small MS4s a choice: either implement the regulatory program spelled out by the Minimum Measures described at 40 C.F.R. § 122.34(b), or pursue the Alternative Permit option and seek a permit under the Phase I Rule as described at 40 C.F.R. § 122.26(d). Thus, unless § 122.26(d) itself offends the Constitution's guarantees of federalism, the Phase II Rule does not violate the Tenth Amendment.

Pursuing a permit under the Alternative Permit op-

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tion does require permit seekers, in their application for a permit to discharge, to propose management programs that address substantive concerns similar to those addressed by the Minimum Measures. *See*40 C.F.R. § 122.26(d). However, § 122.26(d) lists the requirements for an *application* for a permit to discharge, not the requirements of the permit itself. Therefore, nothing in § 122.26(d) requires the operator of an MS4 to implement a federal regulatory program in order to receive a permit to discharge, because nothing in § 122.26(d) specifies the contents of the permit that will result from the application process.

City of Abilene, 325 F.3d 657, provides a helpful illustration. The cities of Abilene and Irving, Texas, have populations between 100,000 and 250,000, and so were ***848** required to apply for permits under the Phase I Rule, 40 C.F.R. § 122.26(d). *City of Abilene,* 325 F.3d at 659-60. Under § 122.26(d) the cities were required to submit proposed stormwater management programs. *Id.* at 660. They negotiated the terms of those programs with EPA, and EPA eventually presented the cities with proposed management permits that contained conditions requiring the implementation of stormwater regulatory programs, and potentially requiring the regulation of third parties. *Id.* But, as the Fifth Circuit noted, this did not mean that the cities had no choice but to implement a federal regulatory program. Instead:

> The Cities filed comments objecting to those conditions, and negotiations continued until the EPA offered the Cities the option of pursuing numeric end-of-pipe permits, which would have required the Cities to satisfy specific effluent limitations rather than implement management programs. The Cities declined this offer, electing to continue negotiations on the management permits.

Id. The Fifth Circuit rejected the cities' contention that the resulting permits violated the Tenth Amendment by requiring the cities to regulate third parties according to federal standards. *Id.* at 661-63. Because the cities chose to pursue the management permits despite the fact that EPA provided them with an option for obtaining permits that would not have involved implementing a management program or regulating third parties, no unconstitutional coercion occurred. *Id.* at 663. The ultimate decision to implement the federal program remained with the cities.

Any operator of a small MS4 that wishes to avoid the Minimum Measures may seek a permit under § 122.26(d), and, as *City of Abilene* demonstrates, nothing in § 122.26(d) will compel the operator of a small MS4 to implement a federal regulatory program or regulate third parties, because § 122.26(d) specifies application requirements, not permit requirements. Therefore, by presenting the option of seeking a permit under § 122.26(d), the Phase II Rule avoids any unconstitutional coercion. The Municipal Petitioners' claim that the Phase II Rule violates the Tenth Amendment therefore fails.

3. The First Amendment and the Minimum Measures

The Municipal Petitioners contend that the Public Education and Illicit Discharge Minimum Measures compel municipalities to deliver EPA's political message in violation of the First Amendment. The Phase II Rule's "Public Education and Outreach" Minimum Measure directs regulated small MS4s to "distribute educational materials to the community ... about the impacts of stormwater discharges on water bodies and the steps the public can take to reduce pollutants in stormwater runoff." 40 C.F.R. § 122.34(b)(1)(i). The "Illicit Discharge Detection and Elimination" measure requires regulated small MS4s to "[i]nform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste." 40 C.F.R. § 122.34(b)(3)(ii)(D).

[12] The Municipal Petitioners argue that the First Amendment prohibits EPA from compelling small MS4s to communicate messages that they might not otherwise wish to deliver. They further contend that EPA's interpretation of § 402(p) as authorizing

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these Measures does not warrant *Chevron* deference because it raises serious constitutional issues, but that even if deference were given, the resulting rule is unconstitutional because neither Congress nor EPA may dictate the speech of MS4s. They contend that municipalities are protected by the First Amendment, ***849** *Pacific Gas & Elec. v. Public Utilities Comm'n,* 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) ("Corporations and other associations, like individuals, contribute to the [discourse] that the First Amendment seeks to foster...."), which applies as much to compelled statements of "fact" as to those of "opinion." *Riley v. Nat'l Fed. of the Blind,* 487 U.S. 781, 797-98, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988).

We conclude that the purpose of the challenged provisions is legitimate and consistent with the regulatory goals of the overall scheme of the Clean Water Act, *cf. Glickman v. Wileman Bros. & Elliott, Inc.,* 521 U.S. 457, 476, 117 S.Ct. 2130, 138 L.Ed.2d 585 (1997), and does not offend the First Amendment.[FN23] The State may not constitutionally require an individual to disseminate an ideological message, *Wooley v. Maynard,* 430 U.S. 705, 713, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977), but requiring a provider of storm sewers that discharge into national waters to educate the public about the impacts of stormwater discharge on water bodies and to inform affected parties, including the public, about the hazards of improper waste disposal falls short of compelling such speech.[FN24] These broad requirements do not dictate a specific message. They require appropriate educational and public information activities that need not include any specific speech at all. A regulation is facially unconstitutional only when every possible reading compels it, *Meinhold v. U.S. Dep't of Def.,* 34 F.3d 1469, 1476 (9th Cir.1994),[FN25] but this is clearly not the case here.

FN23. We decline to address two further arguments raised by EPA: first, that municipalities do not receive full First Amendment protections, under *Muir v. Alabama Educational Television Commission,* 688 F.2d 1033, 1038 n. 12 (5th Cir.1982) (*en banc*) ("Government expression, being unprotected by the First Amendment, may be subject to legislative limitation which would be impermissible if sought to be applied to private expression ...."), and *Aldrich v. Knab,* 858 F.Supp. 1480, 1491 (W.D.Wash.1994) (holding that "unlike private broadcasters, the state itself does not enjoy First Amendment rights"), and second, that even if the First Amendment were fully applicable, the Phase II regulations would satisfy them because MS4s may avoid the compulsion to speak by seeking a permit under the Alternative option, 40 C.F.R. § 122.26(d)(2)(iv), rather than under the Minimum Measures.

FN24. As a subsidiary matter, we note that it also falls short of compelling the MS4 to "regulate" third parties in contravention of the Tenth Amendment. Dispensing information to facilitate public awareness about safe disposal of toxic materials constitutes "encouragement," not regulation.

FN25. "When the constitutional validity of a statute or regulation is called into question, it is a cardinal rule that courts must first determine whether a construction is possible by which the constitutional problem may be avoided." *Meinhold,* 34 F.3d at 1476.

As in *Zauderer v. Office of Disciplinary Counsel of the Sup. Ct. of Ohio,* 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985), where the Supreme Court upheld certain disclosure requirements in attorney advertising, "[t]he interests at stake in this case are not of the same order as those discussed in *Wooley* [invalidating a law requiring that drivers display the motto 'Live Free or Die' on New Hampshire license plates] ... and *Barnette* [forbidding the requirement that public school students salute the flag because the State may not impose on the individual

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'a ceremony so touching matters of opinion and political attitude']." *Id.* at 651. EPA has not attempted to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Bd. of Ed. v. Barnette,* 319 U.S. 624, 642, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).

***850** Informing the public about safe toxin disposal is non-ideological; it involves no "compelled recitation of a message" and no "affirmation of belief." *PruneYard Shopping Ctr. v. Robins,* 447 U.S. 74, 88, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980) (upholding state law protecting petitioning in malls and noting that "*Barnette* is inapposite because it involved the compelled recitation of a message containing an affirmation of belief"). It does not prohibit the MS4 from stating its own views about the proper means of managing toxic materials, or even about the Phase II Rule itself. Nor is the MS4 prevented from identifying its dissemination of public information as required by federal law, or from making available federally produced informational materials on the subject and identifying them as such.

Even if such a loosely defined public information requirement could be read as compelling speech, the regulation resembles another regulation that the Supreme Court has held permissible. In *Glickman,* 521 U.S. 457, 117 S.Ct. 2130, 138 L.Ed.2d 585, the Court upheld a generic advertising assessment promulgated by the Department of Agriculture on behalf of California tree fruit growers because the order was consistent with an overall regulatory program that did not abridge protected speech:

> Three characteristics of the regulatory scheme at issue distinguish it from laws that we have found to abridge the freedom of speech protected by the First Amendment. First, the marketing orders impose no restraint on the freedom of any producer to communicate any message to any audience. Second, they do not compel any person to engage in any actual or symbolic speech. Third, they do not compel the producers to endorse or to finance any political or ideological views. Indeed, since all of the respondents are engaged in the business of marketing California nectarines, plums, and peaches, it is fair to presume that they agree with the central message of the speech that is generated by the generic program.

Id. at 469-70, 117 S.Ct. 2130 (footnotes omitted). Here, as in *Glickman,* the Phase II regulations impose no restraint on the freedom of any MS4 to communicate any message to any audience. They do not compel any specific speech, nor do they compel endorsement of political or ideological views. And since all permittees are engaged in the handling of stormwater runoff that must be conveyed in reasonably unpolluted form to national waters, it is similarly fair to presume that they will agree with the central message of a public safety alert encouraging proper disposal of toxic materials.[FN26] The Phase II regulation departs only from the second element in the *Glickman* analysis, because the public information requirement may compel a ***851** regulated party to engage in some speech at some time; but unlike the offensive messages in *Maynard* and *Barnette* (and even the inoffensive advertising messages at issue in *Glickman*) that speech is not specified by the regulation.[FN27]

> FN26. In its most recent treatment of compelled speech, the Supreme Court held that a generic advertising campaign violated free speech where the message was specific and antagonistic to the preferred advertising message of the plaintiff, and the regulation compelling participation was not part of a broader regulatory apparatus already constraining the plaintiff's autonomy in the relevant arena. *United States Dep't. of Agriculture v. United Foods,* 533 U.S. 405, 410-17, 121 S.Ct. 2334, 150 L.Ed.2d 438 (2001). The court distinguished this advertising program from the one in *Glickman* on the latter point: "[t]he program sustained in *Glick-*

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man differs from the one under review in a most fundamental respect. In *Glickman* the mandated assessments for speech were ancillary to a more comprehensive program restricting market autonomy." *Id.* at 411, 121 S.Ct. 2334. Although the Phase II Rule is not an advertising or marketing regulation, it constitutes a "comprehensive program" restricting the autonomy of MS4s in the relevant arena of controlling toxic discharges to storm sewers that drain to U.S. waters.

FN27. In deciding the similar question of whether a regulation impermissibly compelled speech by requiring manufacturers of mercury-containing products to inform consumers how to dispose safely of the toxic material, the Second Circuit held that "mandated disclosure of accurate, factual, commercial information does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests." *Nat'l Elec. Mfrs. Ass'n v. Sorrell,* 272 F.3d 104, 114 (2d Cir.2001). What speech may follow from the Phase II directive will not be "commercial" in the same sense that manufacturer labeling is, but it will be similar in substance to *Sorrell* to the extent that it informs the public how to dispose safely of toxins. We think the policy considerations underlying the commercial speech treatment of labeling requirements, *see, e.g.,* the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333-39, apply similarly in the context of the market-participant municipal storm sewer provider.

The public information requirement does not impermissibly compel speech, and nothing else in the Phase II Rule offends the First Amendment.[FN28] The Rule does not compel a recitation of a specific message, let alone an affirmation of belief. To the extent MS4s are regulated by the public information requirement, the regulation is consistent with the overall regulatory program of the Clean Water Act and the responsibilities of point source dischargers.

FN28. The Alternative option contains a public education requirement that is similar but even less specific, and therefore even less burdensome, than the requirements in the Minimum Measures. *See* § 122.26(d)(2)(iv)(B)(6) (requiring permit seekers to propose programs to counter illicit discharges, including a "description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials").

4. Notice and Comment on the Alternative Permit Option

The Municipal Petitioners contend that, in adopting the Alternative Permit option, EPA did not comply with the minimum notice and comment procedures required in informal rulemaking by the Administrative Procedures Act ("APA"), 5 U.S.C. § 553. The APA requires an agency to publish notice of a proposed rulemaking that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved." *Id.* at § 553(b)(3).

[13] We have held that a "final regulation that varies from the proposal, even substantially, will be valid as long as it is 'in character with the original proposal and a logical outgrowth of the notice and comments.' " *Hodge v. Dalton,* 107 F.3d 705, 712 (9th Cir.1997). In determining whether notice was adequate, we consider whether the complaining party should have anticipated that a particular requirement might be imposed. The test is whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule. *Am. Water Works Ass'n v. EPA,* 40 F.3d

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1266, 1274 (D.C.Cir.1994).

The Municipal Petitioners argue that the Alternative Permit option is not a logical outgrowth of EPA's proposed rule because, although numerous alternatives were discussed in the Preamble to the proposed rule, 63 Fed. Reg. at 1554-1557, the Alternative Permit option eventually adopted was not. EPA counters that the proposed rule included a supplementary alternative permitting system based on concepts similar to those in the Minimum ***852** Measures, including "simplified individual permit application requirements."[FN29] EPA contends that the Alternative Permit option was a logical outgrowth of the comments it received on the proposal expressing concern that the Minimum Measures might violate the Tenth Amendment. 64 Fed. Reg. at 68,765.

> FN29. Municipal Petitioners concede that "simplified individual permit application requirements" were discussed, but they contend that the permit requirements discussed are not sufficiently similar to those promulgated to establish a logical outgrowth.

[14] The Alternative Permit option passes the *Hodge* test. The proposed rule suggested an individualized permitting option to be developed in response to comments during the notice and comment period. The Alternative option contains no elements that were not part of the original rule, even if they are configured differently in the final rule. Petitioners had, and took, their opportunity to object to the aspects of the Rule that they did not support in their comments on the Minimum Measures.

B. The General Permit Option and Notices of Intent

The Environmental Petitioners contend that the general permitting scheme of the Phase II Rule allows regulated small MS4s to design stormwater pollution control programs without adequate regulatory and public oversight, and that it contravenes the Clean Water Act because it does not require EPA to review the content of dischargers' notices of intent and does not contain express requirements for public participation in the NPDES permitting process.

In reviewing a federal administrative agency's interpretation of a statute it administers, we first determine whether Congress has expressed its intent unambiguously on the question before the court. *See Chevron,* 467 U.S. 837, 842-44, 104 S.Ct. 2778, 81 L.Ed.2d 694 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."). "If, instead, Congress has left a gap for the administrative agency to fill, we proceed to step two. At step two, we must uphold the administrative regulation unless it is arbitrary, capricious, or manifestly contrary to the statute." *Defenders of Wildlife v. Browner,* 191 F.3d 1159, 1162,*amended by*197 F.3d 1035 (9th Cir.1999) (citations and internal quotations omitted).

[15] We conclude that the Phase II General Permit option violates the Clean Water Act's requirement that permits for discharges "require controls to reduce the discharge of pollutants to the maximum extent practicable,"33 U.S.C. § 1342(p)(3)(B)(iii). We also conclude that the Phase II General Permit option violates the Clean Water Act because it does not contain express requirements for public participation in the NPDES permitting process. We remand these aspects of the Phase II Rule.[FN30]

> FN30. EPA argues that the Environmental Petitioner's challenge is not ripe for review because "the question of whether some general permit somewhere might fail to assure that pollutants are reduced to the maximum extent practicable is not ripe for review." But we are not addressing the merits of any specific permit. Rather, the question before us "is purely one of statutory interpretation that would not benefit from

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> further factual development of the issues presented." *Whitman v. American Trucking,* 531 U.S. 457, 479, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). Specifically, we are addressing whether EPA, in promulgating the Phase II Rule, has accomplished the substantive controls for municipal stormwater that Congress mandated in § 402(p) of the Clean Water Act. As we held in *Natural Resources Defense Council v. EPA,* 966 F.2d at 1296-97, 1308, this question is ripe for review.

853** ***1. Phase II General Permits and Notices of Intent

Primary responsibility for enforcement of the requirements of the Clean Water Act is vested in the Administrator of the EPA. 33 U.S.C. § 1251(d); *see also*33 U.S.C. § 1361(a) ("The Administrator [of EPA] is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter."). The Clean Water Act renders illegal any discharge of pollutants not specifically authorized by a permit. 33 U.S.C. § 1311(a) ("Except in compliance with this section and [other sections detailing permitting requirements] of this title, the discharge of any pollutant by any person shall be unlawful."). Under the Phase II Rule, dischargers may apply for an individualized permit with the relevant permitting authority, or may file a "Notice of Intent" ("NOI") to seek coverage under a "general permit." 40 C.F.R. § 122.33(b).

A general permit is a tool by which EPA regulates a large number of similar dischargers. Under the traditional general permitting model, each general permit identifies the output limitations and technology-based requirements necessary to adequately protect water quality from a class of dischargers. Those dischargers may then acquire permission to discharge under the Clean Water Act by filing NOIs, which embody each discharger's agreement to abide by the terms of the general permit. Because the NOI represents no more than a formal acceptance of terms elaborated elsewhere, EPA's approach does not require that permitting authorities review an NOI before the party who submitted the NOI is allowed to discharge. General permitting has long been recognized as a lawful means of authorizing discharges. *Natural Res. Def. Council v. Costle,* 568 F.2d 1369 (D.C.Cir.1977).

The Phase II general permitting scheme differs from the traditional general permitting model. The Clean Water Act requires EPA to ensure that operators of small MS4s "reduce the discharge of pollutants to the maximum extent practicable." 33 U.S.C. § 1342(p)(3)(B). To ensure that operators of small MS4s achieve this "maximum extent practicable" standard, the Phase II Rule requires that each NOI contain information on an individualized pollution control program that addresses each of the six general criteria specified in the Minimum Measures; thus, according to the Phase II Rule, submitting an NOI and implementing the Minimum Measures it contains "constitutes compliance with the standard of reducing pollutants to the 'maximum extent practicable.' " 40 C.F.R. § 122.34(a).

Because a Phase II NOI establishes what the discharger will do to reduce discharges to the "maximum extent practicable," the Phase II NOI crosses the threshold from being an item of procedural correspondence to being a substantive component of a regulatory regime. The text of the Rule itself acknowledges that a Phase II NOI is a permit application that is, at least in some regards, functionally equivalent to a detailed application for an individualized permit. *See, e.g.,*40 C.F.R. § 122.34(d)(1) ("In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information...."). For this reason, EPA rejected the possibility of providing a "form NOI" to Phase II permittees, explaining that "[w]hat will be required on an MS4's NOI ... is more extensive than what is usually required on ***854** an NOI, so a 'form' NOI for MS4s may be impractical." 64 Fed. Reg. at 68,764.

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2. Failure to Regulate

The Environmental Petitioners argue that, by allowing NPDES authorities to grant dischargers permits based on unreviewed NOIs, the Rule creates an impermissible self-regulatory system.[FN31] Petitioners contend the Rule impermissibly fails to require that the permitting authority review an NOI to assure compliance with Clean Water Act standards, including the standard that municipal stormwater pollution be reduced to "the maximum extent practicable." 33 U.S.C. § 1342(p)(3)(B)(iii). *See*40 C.F.R. § 123.35 (setting out requirements for permitting authorities, but not requiring review of NOI); 64 Fed. Reg. at 68,764 ("EPA disagrees that formal approval or disapproval by the permitting authority is needed").

> FN31. Petitioners suggest that EPA should be held to the standard it espoused to procure judicial approval for the Phase I program. In 1991, responding to NRDC's assertion that the Phase I Rule failed to set "hard criteria" for review of MS4 stormwater programs, EPA responded that "inadequate proposals will result in the denial of permit applications." Respondent's Brief at 67, *Natural Res. Def. Council v. EPA,* 966 F.2d 1292 (9th Cir.1992) (Nos. 91-70200, 91-70176, & 90-70671). Petitioners contend that this court relied on that representation in ruling for EPA on that issue. *Natural Res. Def. Council v. EPA,* 966 F.2d at 1308 n. 17 ("Individual NPDES permit writers ... will decide whether application proposals are adequate:...").

EPA maintains that the Phase II permit system is fully consistent with the authorizing statute. It contends that § 402(p)(6) granted EPA flexibility in designing the Phase II "comprehensive program," and notes that while the statute does not require general permits, neither does it preclude them. EPA contends that Congress delegated the task of designing the program to EPA, and that EPA reasonably adopted a "flexible version" of the NPDES permit program to suit the unique needs of the Phase II program. It disputes that the general permit program creates "paper tigers," especially since EPA, States, and citizens may initiate enforcement actions. Finally, EPA argues that the Rule does not create a self-regulatory program, but that even if it did, nothing in § 402(p)(6) precludes such a program.

Reviewing the Phase II Rule under the first step of *Chevron,* we note that the plain language of § 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), expresses unambiguously Congress's intent that EPA issue no permits to discharge from municipal storm sewers unless those permits "require controls to reduce the discharge of pollutants to the maximum extent practicable."

Phase II general permits will likely impose requirements that ensure that operators of small MS4s comply with many of the standards of the Clean Water Act. Thus, general permits issued under Phase II will ordinarily contain numerous substantive requirements, just as did the permits issued under Phase I. *See*40 C.F.R. §§ 123.35 & 123.35(a) ("§ 123.35 As the NPDES Permitting Authority for regulated small MS4s, what is my role? (a) You must comply with the requirements for all NPDES permitting authorities under Parts 122, 123, 124 and 125 of this chapter."); *see also*40 C.F.R. § 122.28 (outlining requirements for NPDES authorities issuing general permits). And every operator of a small MS4 who files an NOI under Phase II "must comply with other applicable NPDES permit requirements, standards, and conditions established in ***855** the ... general permit." *See*40 C.F.R. §§ 122.34 & 122.34(f).

[16] However, while each Phase II general permit will likely ensure that operators of small MS4s comply with certain standards of the Clean Water Act, they will not "require controls to reduce the discharge of pollutants to the maximum extent practicable." According to the Phase II Rule, the operator of a small MS4 has complied with the re-

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quirement of reducing discharges to the "maximum extent practicable" when it implements its stormwater management program, *i.e.*, when it implements its Minimum Measures. 40 C.F.R. § 122.34(a); *see also*64 Fed. Reg. at 68753 (stating EPA's anticipation that limitations more stringent that the minimum control measures "will be unnecessary"). Nothing in the Phase II regulations requires that NPDES permitting authorities review these Minimum Measures to ensure that the measures that any given operator of a small MS4 has decided to undertake will *in fact* reduce discharges to the maximum extent practicable.[FN32]

> FN32. That the Rule allows a permitting authority to review an NOI is not enough; every permit must comply with the standards articulated by the Clean Water Act, and unless every NOI issued under a general permit is reviewed, there is no way to ensure that such compliance has been achieved.

The regulations do require NPDES permitting authorities to provide operators of small MS4s with "menus" of management practices to assist in implementing their Minimum Measures, *see*40 C.F.R. § 123.35(g), but again, nothing requires that the combination of items that the operator of a small MS4 selects from this "menu" will have the combined effect of reducing discharges to the maximum extent practicable.

Nor is the availability of citizen enforcement actions a substitute for EPA's enforcement responsibility, especially because, as discussed below, the Rule does not require that NOIs be publicly available. Absent review on the front end of permitting, the general permitting regulatory program loses meaning even as a procedural exercise.

*See*40 C.F.R. § 123.35 ("As the NPDES Permitting Authority for regulated small MS4s, what is my role?"). Therefore, under the Phase II Rule, nothing prevents the operator of a small MS4 from misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable.

In fact, under the Phase II Rule, in order to receive the protection of a general permit, the operator of a small MS4 needs to do nothing more than decide for itself what reduction in discharges would be the maximum practical reduction. No one will review that operator's decision to make sure that it was reasonable, or even good faith.[FN33] Therefore, as the Phase II Rule stands, EPA would allow permits to issue that would do less than *require* controls to reduce the discharge of pollutants to the maximum extent practicable.[FN34] *See**856 64 Fed. Reg. at 68753 (explaining that the minimum control measures will protect water quality if they are "properly implemented"). We therefore must reject this aspect of the Phase II Rule as contrary to the clear intent of Congress. *Cf. Natural Res. Def. Council*, 966 F.2d at 1305 (rejecting as arbitrary and capricious a permitting system that allowed regulated industrial stormwater dischargers to "self-report" whether they needed permit coverage).

> FN33. EPA identifies no other general permitting program that leaves the choice of substantive pollution control requirements to the regulated entity, and we are not persuaded by the analogy it urges to the traditional model of general permitting (where NOIs routinely are not reviewed), because, as we have noted, the Phase II general permit model is substantially dissimilar.

> FN34. In its petition for rehearing, EPA argues for the first time that because the regulations require NPDES Permitting Authorities to include in general permits "any additional measures necessary" to ensure that the maximum extent practicable standard is met, 40 C.F.R. §§ 123.35(h)(1), 123.35(f) (incorporating by reference the "maximum extent practicable" requirement of 40 C.F.R. §§ 122.34(a)), 122.34(f) (requiring small MS4s to comply with additional measures), the Phase II Rule en-

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sures that discharges will be reduced to the maximum extent practicable.

The trouble with EPA's reasoning is that the Phase II Rule defines the "maximum extent practicable" standard in such a way that no "additional measures" will ever be necessary under § 123.35(h)(1). While a Permitting Authority may impose additional measures, nothing compels it to do so because, merely by implementing the best management practices that the operator of a small MS4 has chosen for itself, that small MS4 will already have met the "maximum extent practicable" standard. *See*40 C.F.R. § 122.34(a).

Involving regulated parties in the development of individualized stormwater pollution control programs is a laudable step consistent with the directive to consult with state and local authorities in the development of the § 402(p)(6) comprehensive program. But EPA is still required to ensure that the individual programs adopted are consistent with the law. Our holding should not prevent the Phase II general permitting program from proceeding mostly as planned. Our holding does not preclude regulated parties from designing aspects of their own stormwater management programs, as contemplated under the Phase II Rule. However, stormwater management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable. We therefore remand this aspect of the Rule.

3. Public Participation

The Environmental Petitioners contend that the Phase II Rule fails to provide for public participation as required by the Clean Water Act, because the public receives neither notice nor opportunity for hearing regarding an NOI. The EPA replies on the one hand by arguing that NOIs are not "permits" and therefore are not subject to the public availability and public hearing requirements of the Clean Water Act, and on the other hand by arguing that the combination of the public involvement minimum measure, 40 C.F.R. § 122.34(b)(2), the Federal Freedom of Information Act, 5 U.S.C. § 552, and state freedom of information acts would fulfill any such requirements if NOIs were permits.

Reviewing the Phase II Rule under *Chevron* step one, we conclude that clear Congressional intent requires that NOIs be subject to the Clean Water Act's public availability and public hearings requirements. The Clean Water Act requires that "[a] copy of each permit application and each permit issued under [the NPDES permitting program] shall be available to the public,"33 U.S.C. § 1342(j), and that the public shall have an opportunity for a hearing before an permit application is approved, 33 U.S.C. § 1342(a)(1). Congress identified public participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act's approach and philosophy. *See*33 U.S.C. § 1251(e); *see also Costle v. Pacific Legal Found.*, 445 U.S. 198, 216, 100 S.Ct. 1095, 63 L.Ed.2d 329 (1980) (noting the "general policy of encouraging public participation is applicable to the administration of the NPDES permit program"). EPA has acknowledged that technical issues relating to the issuance of NPDES permits should be decided in "the most open, accessible forum possible,***857** and at a stage where the [permitting authority] has the greatest flexibility to make appropriate modifications to the permit." 44 Fed. Reg. 32,854, 32,885 (June 7, 1979).

As we noted above, under the Phase II Rule it is the NOIs, and not the general permits, that contain the substantive information about how the operator of a small MS4 will reduce discharges to the maximum extent practicable. Under the Phase II Rule, NOIs are functionally equivalent to the permit applications Congress envisioned when it created the Clean Water Act's public availability and public hearing requirements. Thus, if the Phase II Rule does not make NOIs "available to the public," and does not provide for public hearings on NOIs, the Phase II Rule violates the clear intent of Congress.

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EPA's first argument-that NOIs are not subject to the public availability and public hearings requirements of the Clean Water Act-therefore fails.

We therefore reject the Phase II Rule as contrary to the clear intent of Congress insofar as it does not provide for public hearings on NOIs as required by 33 U.S.C. § 1342(a)(1). However, Congress has not directly addressed the question of what would constitute an NOI being "available to the public" as required by 33 U.S.C. § 1342(j). Under *Chevron* step two, we must defer to EPA's interpretation of "available to the public" unless it is arbitrary, capricious, or manifestly contrary to the statute.

[17] EPA argues that the NOIs are "available to the public" as a result of the combined effects of the public participation minimum measures, and of federal and state freedom of information acts. This argument is unconvincing. First, the public participation Minimum Measure only requires dischargers to design a program minimally consistent with State, Tribal, and local requirements. 40 C.F.R. § 122.34(b)(2). Second, the federal Freedom of Information Act only applies to documents that are actually in EPA's possession, not to documents that are in the possession of state or tribal NPDES authorities, *see*40 C.F.R. § 2 (providing EPA's policy for releasing documents under the federal Freedom of Information Act), and nothing in the Phase II Rule provides that EPA obtain possession of every NOI that is submitted to a NPDES permitting authority. *See*40 C.F.R. § 123.41(a) (making information provided to state NPDES authorities available to EPA only *upon request*). Thus, under the Phase II Rule, NOIs will only "be available to the public" subject to the vagaries of state and local freedom of information acts. We conclude that EPA's interpretation of 33 U.S.C. § 1342(j), as embodied in the provisions of the Phase II Rule providing for the public availability of NOIs, is manifestly contrary to the Clean Water Act, which contemplates greater scope, greater certainty, and greater uniformity of public availability than the Phase II Rule provides. We therefore reject this aspect of the Phase II

FN35

FN35. EPA argues for the first time in its petition for rehearing that NOIs will be publicly available under 40 C.F.R. § 122.34(g)(2). Addressing operators of regulated small MS4s, this section provides: "You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours." While this section does seem to provide for the public availability of a small MS4's records, we are troubled that nothing in EPA's initial briefs indicated that EPA considered NOIs to be subject to this section. We normally defer to an agency's interpretations of its own regulations, but we may decline to defer to the *post hoc* rationalizations of appellate counsel. *See, e.g., Martin v. Occupational Safety and Health Review Commission,* 499 U.S. 144, 150, 156, 111 S.Ct. 1171, 113 L.Ed.2d 117 (1991). If EPA intends this section to provide for the public availability of NOIs-for example because it intends NOIs to be among the records subject to this section-it may clarify on remand.

***858** In sum, we conclude that EPA's failure to require review of NOIs, which are the functional equivalents of permits under the Phase II General Permit option, and EPA's failure to make NOIs available to the public or subject to public hearings contravene the express requirements of the Clean Water Act. We therefore vacate those portions of the Phase II Rule that address these procedural issues relating to the issuance of NOIs under the Small MS4 General Permit option, and remand so that EPA may take appropriate action to comply with the Clean Water Act.

C. Failure to Designate

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We reject the Environmental Petitioners' contention that EPA's failure to designate for Phase II regulation serious sources of stormwater pollution, including certain industrial ("Group A") sources and forest roads, was arbitrary and capricious. *See Marsh v. Oregon Natural Res. Council,* 490 U.S. 360, 378, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989).FN36

> FN36. Agency determinations based on the record are reviewed under the "arbitrary and capricious" standard. 5 U.S.C. § 706(2)(A). The standard is narrow and the reviewing court may not substitute its judgment for that of the agency. *Marsh,* 490 U.S. at 378, 109 S.Ct. 1851. However, the agency must articulate a rational connection between the facts found and the conclusions made. *Washington v. Daley,* 173 F.3d 1158, 1169 (9th Cir.1999). The reviewing court must determine whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *Marsh,* 490 U.S. at 378, 109 S.Ct. 1851. The court may reverse under the "arbitrary and capricious" standard only if the agency:

has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.
Motor Vehicle Mfrs. Ass'n, 463 U.S. at 43, 103 S.Ct. 2856.

1. "Group A" Facilities

In addition to the small MS4s and construction sites ultimately designated for regulation under the Phase II Rule, EPA evaluated a variety of other point-source discharge categories for potential Phase II regulation. One group of dischargers (referred to as the "Group A" facilities) included sources that "are very similar, or identical" to regulated stormwater discharges associated with industrial activity that were not designated for Phase I regulation for administrative reasons unrelated to their environmental impacts.FN37 64 Fed. Reg. at 68,779. EPA estimates that Group A includes approximately 100,000 facilities, including auxiliary facilities and secondary activities ("*e.g.,* maintenance of construction equipment and vehicles, local trucking for an unregulated facility such as a grocery store,"*id.*) and facilities intentionally omitted from Phase I designation ("*e.g.,* publicly owned treatment works with a design flow of less than 1 million gallons per day, landfills that have not received industrial waste,"*id.*).

> FN37. EPA explains that the Group A facilities were not regulated with the other Phase I sources because EPA used Standard Industrial Classification Index (SIC) codes in defining the universe of regulated industrial activities: "By relying on SIC codes, a classification system created to identify industries rather than environmental impacts from these industries [sic] discharges, some types of storm water discharges that might otherwise be considered 'industrial' were not included in the existing NPDES storm water program." 64 Fed. Reg. at 68,779.

***859** The Environmental Petitioners contend that EPA should have designated the Group A facilities for categorical Phase II regulation after finding (1) that stormwater discharges from these facilities are the same as those from the industrial sources regulated under Phase I, and (2) that such discharges may cause "adverse water quality impacts." *Id.* Petitioners argue that these findings, and EPA's failure to provide individualized analysis regarding whether any specific source category within Group A requires regulation, render EPA's decision not to regulate any of these sources under the Rule arbitrary and capricious. They maintain that EPA's "line-drawing," which regulates some pollution sources but leaves nearly identical sources unregu-

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lated without any persuasive rationale, is necessarily arbitrary and capricious. *See Natural Res. Def. Council,* 966 F.2d at 1306 (EPA's decision not to regulate construction sites smaller than five acres was arbitrary when EPA provided no data to justify the five-acre threshold and admitted that unregulated sites could have significant water quality impacts).

Petitioners argue that § 402(p)(6) at least required EPA to make findings with respect to individual Group A categories, and that data collected from Phase I permit applications could be used to evaluate the pollutant potential of the identical Group A sources. They contend that these findings should have sufficed as a basis for designating at least some Group A sources, and that EPA's conclusion that it lacked adequate nationwide data upon which to designate any of these sources is not supported by the record evidence. Comparing EPA's identification of the serious polluting potential of some of these sources with its statutory mandate under § 402(p)(6) "to protect water quality," they argue that EPA fails even the forgiving standard of arbitrary and capricious review in that it has "offered an explanation for its decision that runs counter to the evidence before [it]" and "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *See Motor Vehicle Mfrs.,* 463 U.S. at 43, 103 S.Ct. 2856.

EPA maintains that it considered Group A facilities' similarity to already regulated sources as only one of several criteria that it used in designating sources for regulation under Phase II, 64 Fed. Reg. at 68,780, and that sources that appear "similarly situated" under one criterion are not necessarily similarly situated under all. EPA asserts that nothing in § 402(p)(6) implied a responsibility to make individualized findings regarding each Group A subcategory, and it maintains that it simply lacked sufficient data to support nationwide designation of the Group A facilities. EPA notes that, after failing to receive requested comment providing such data, it proposed instead "to protect water quality" by allowing regional regulation of problem Group A facilities under the residual designation authority. EPA contends that agencies must be afforded deference in determining the data necessary to support regulatory decisionmaking and that it reasonably determined the quantum of data it would need to support the designation of additional sources on a nationwide basis. *See Sierra Club v. EPA,* 167 F.3d 658, 662 (D.C.Cir.1999).

[18] We conclude that sufficient evidence supports EPA's decision not to designate Group A sources on a nationwide basis, and instead to establish local and regional designation authority to account for these sources and protect water quality. Although we are troubled by the purely administrative basis for the distinction between facilities regulated under the Phase I Rule and the Group A facilities ***860** that remain unregulated under Phase II,[FN38] EPA's choice of the Phase I standard for designation is not the issue before us. Before us is whether EPA acted arbitrarily in declining to designate the Group A sources on a nationwide basis under the Phase II Rule, and we cannot say that it did.

> FN38. As discussed in footnote 37, Group A facilities were not regulated with other Phase I industrial sources based on a government coding system used to distinguish different types of industry (without reference to their similar environmental impacts). *See*64 Fed. Reg. at 68,779.

EPA has articulated a rational connection between record facts indicating insufficient data to categorically regulate Group A facilities and its corresponding conclusion not to do so, and we defer to that decision. *See Washington v. Daley,* 173 F.3d 1158, 1169 (9th Cir.1999). In the text of the Rule, EPA explains that the process behind its decision not to nationally designate Group A sources for Phase II regulation focused not only on the likelihood of contamination from a source category, but also on the sufficiency of national data about each category and whether pollution concerns were adequately addressed by existing environmental regu-

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lations.[FN39] We cannot say that EPA relied on factors Congress had not intended it to consider, that it failed to consider an important aspect of the problem, or that its rationale is implausible. *See Motor Vehicle Mfrs.*, 463 U.S. at 43, 103 S.Ct. 2856. Nor did EPA's decision run counter to the evidence before it. *Id.* The Environmental Petitioners allege that its decision not to regulate Group A facilities runs counter to evidence that similar sources are highly polluting, but as EPA considered evidence beyond those similarities that persuaded it not to regulate, we cannot say that EPA's decision is unsupported by the record. Nothing in § 402(p)(6) unambiguously requires EPA to evaluate the Group A source categories individually, and we defer to EPA's interpretation of the statute it is charged with administering. *See Royal Foods Co. v. RJR Holdings*, 252 F.3d 1102, 1106 (9th Cir.2001).

> FN39. "In identifying potential categories of sources for designation in today's notice, EPA considered designation of discharges from Group A and Group B facilities. EPA applied three criteria to each potential category in both groups to determine the need for designation: (1) The likelihood for exposure of pollutant sources included in that category, (2) whether such sources were adequately addressed by other environmental programs, and (3) whether sufficient data were available at this time on which to make a determination of potential adverse water quality impacts for the category of sources. As discussed previously, EPA searched for applicable nationwide data on the water quality impacts of such categories of facilities...."
> "EPA's application of the first criterion showed that a number of Group A and B sources have a high likelihood of exposure of pollutants.... Application of the second criterion showed that some categories were likely to be adequately addressed by other programs."
> "After application of the third criterion, availability of nationwide data on the various storm water discharge categories, EPA concluded that available data would not support any such nationwide designations. While such data could exist on a regional or local basis, EPA believes that permitting authorities should have flexibility to regulate only those categories of sources contributing to localized water quality impairments.... If sufficient regional or nationwide data become available in the future, the permitting authority could at that time designate a category of sources or individual sources on a case-by-case basis." 64 Fed. Reg. at 68,780.

2. Forest Roads

The Environmental Petitioners also contend that EPA arbitrarily failed to regulate forest roads under the Rule despite clear evidence in the record documenting the need for stormwater pollution control ***861** of drainage from these roads. Petitioners again contend that this agency action is arbitrary, because EPA has offered an explanation for its decision that runs counter to the evidence before it.

Petitioners point to EPA's own conclusion that forest roads "are considered to be the major source of erosion from forested lands, contributing up to 90 percent of the total sediment production from forestry operations."[FN40] They note that both unimproved forest roads and construction sites create large expanses of non-vegetated soil subject to stormwater erosion, and argue that construction site data thus also support regulation of forest roads. Petitioners observe that EPA has cited no contrary evidence indicating that forest roads are not sources of stormwater pollutant discharges to U.S. waters, and they argue that Phase II regulation is necessary "to protect water quality," because proper planning and road design can minimize erosion and prevent stream sedimentation. Petitioners note that this court has previously held that, in the absence of such "supportable facts," EPA is not entitled to the usual assumption that it has "rationally exercised the duties delegated to it by Congress." *Natural Res. Def. Council*, 966 F.2d at 1305.

> FN40. *Guidance Specifying Management*

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Measures For Sources of Nonpoint Pollution in Coastal Waters, EPA guidance paper 840-B-93-001c (Jan. 1993), *available at* http://www.epa.gov/owow/nps/mmgi/index.html (last visited Sept. 18, 2002) ("Coastal Waters").

[19] EPA's response is that we have no jurisdiction to hear this challenge, chiefly because, it believes, the challenge is time-barred by Clean Water Act § 509(b)(1), 33 U.S.C. § 1369(b)(1) (providing that "application for review shall be made within 120 days from the date of [agency action]"). EPA promulgated silviculture regulations in 1976 that exclude from NPDES permit requirements certain silvicultural activities that EPA determined constitute non-point source activities, including "surface drainage, or road construction and maintenance from which there is natural runoff." 40 C.F.R. § 122.27(b)(1).[FN41] EPA asserts that the exclusion applies to forest roads in general, not only to "construction" and "maintenance"-an assertion disputed by Petitioners-and that any challenge to the decision not to regulate forest roads should have been brought within 120 days of the promulgation of that rule. *See*33 U.S.C. § 1369(b)(1).

FN41. The provision provides in full as follows:

Silvicultural point source means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and part 233).
40 C.F.R. § 122.27(b)(1).

EPA's argument might be more persuasive if Petitioners' contention could be understood essentially as a direct challenge to the 1976 silviculture regulations, but this is not the case. Even were we to assume that EPA exempted forest roads from NPDES permit requirements in 1976 under 40 C.F.R. § 122.27(b)(1), that would not resolve the question whether EPA should have addressed forest roads in its "comprehensive program ... to protect ***862** water quality" under § 402(p)(6), because § 402(p)(6) was not enacted until 1987. Petitioners challenge EPA's decision not to regulate under the new portion of the statute, not the decision not to regulate under other provisions that were in effect earlier.

EPA argues in the alternative that Petitioners should have sought judicial review when EPA considered amending § 122.27(b)(1)-to delete the language that it asserts renders forest roads non-point sources-but then determined not to make the amendment. However, we are aware of no statute or legal doctrine providing that a party's failure to challenge an agency's decision *not* to amend its rules in one proceeding deprives the party of the right to challenge, in a contemporaneous proceeding, the promulgation of an entire new rule which could have, but did not, provide the full relief the party seeks. Assuming that EPA is correct that § 122.27(b)(1) defines forest roads as non-point sources, both the Phase II Rule proceedings and the proceedings in which the proposed amendment to § 122.27(b)(1) was considered and rejected were proper proceedings in which to raise the issue whether discharges from forest roads should be regulated. Petitioners chose to raise the issue in their comments to the proposed Phase II Rule, because they believed that Clean Water Act § 402(p)(6) mandates the regulation of forest roads. They did not lose their right to challenge the final Phase II Rule's failure to regulate forest roads simply because they did not also raise a challenge to EPA's

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failure to adopt an amendment to § 122.27(b)(1) that the agency initially proposed. (We note, incidentally, that it appears that even a successful challenge to § 122.27(b)(1) would likely not have achieved the objective the Environmental Petitioners sought: it would only have allowed case-by-case coverage for forest roads, and not for overall coverage.)

[20] Finally, EPA suggests that Petitioners' comments during the Phase II rulemaking process were too short to create jurisdiction in this court to hear this challenge. However, EPA exaggerates the slightness of those comments, which comprised two paragraphs, with footnotes, stating objections and providing support. We also agree with Petitioners that EPA was aware of the forest road sedimentation problem at the time of the rulemaking.[FN42] Indeed, EPA responded to the comments without disputing that the problem is serious. 3 EPA, *Response to Public Comments* 8 (Oct. 29, 1999). Rather, the agency relied on 40 C.F.R. § 122.27(b)(1), indicating that it was barred from acting under the Phase II Rule by § 122.27(b)(1).

> FN42. Nonpoint Source Pollution: The Nation's Largest Water Quality Problem, EPA841-F-96-004A ("Pointer # 1") ("The latest *National Water Quality Inventory* indicates that agriculture is the leading contributor to water quality impairments, degrading 60 percent of the impaired river miles and half of the impaired lake acreage surveyed by states, territories, and tribes.").

EPA does not seriously address the merits of Petitioners' objections to the Rule in its brief to this court. Instead, EPA relies almost entirely on its assertion that we lack jurisdiction to decide this question. It does, however, strongly imply that its failure to adopt its own proposed amendment in the proceeding pertaining to § 122.27(b)(1) relieves it of its obligation to consider including forest roads in the Phase II Rule proceedings. We reject any such contention. Petitioners' assertion that § 402(p)(6) requires that the Phase II Rule contain provisions regulating forest roads necessitates a response from EPA on the merits.

***863** Having concluded that the objections of the Environmental Petitioners are not time-barred, and that we have jurisdiction to hear them, but that EPA failed to consider those objections on the merits, we remand this issue to the EPA, so that it may consider in an appropriate proceeding Petitioners' contention that § 402(p)(6) requires EPA to regulate forest roads. EPA may then either accept Petitioners' arguments in whole or in part, or reject them on the basis of valid reasons that are adequately set forth to permit judicial review.

D. AF&PA's Standing

The American Forestry & Paper Association (AF&PA), a national trade association representing the forest, pulp, paperboard, and wood products industry, is one of the two Industry Petitioners asserting the remaining claims.[FN43] Before considering these challenges, however, we consider whether AF&PA has standing to raise them.

> FN43. The Municipal Petitioners join in asserting the "regulatory basis" claim at Part II(F)(1).

EPA argues that AF&PA lacks standing because it cannot show that it represents entities that suffer a cognizable injury under the Phase II Rule as promulgated. EPA argues that the interests of AF&PA entities might have supported standing had EPA decided to regulate forest roads as Phase II stormwater dischargers, but since EPA declined to do so, none of AF&PA's members are currently subject to the Rule. AF&PA contends that its members have a cognizable legal interest in the Rule because they risk becoming subject to regulation at any future time under the continuing designation authority.

[21] We agree that AF&PA lacks standing. A claimant meeting Article III standing requirements must show that "(1) it has suffered an 'injury in

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fact' ...; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth v. Laidlaw Envtl. Servs. (TOC),* 528 U.S. 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Standing requires an injury that is "actual or imminent, not 'conjectural or hypothetical.' " *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). AF&PA's interest in avoiding future regulation of forest roads is not actually or imminently threatened by any potential result in this case. No ripe claim about misuse of the residual authority to regulate forest road discharge, or any other kind of discharge, is before the court. Should members of AF&PA become subject to Phase II regulation through subsequent administrative action, it will have standing to challenge those actions at that time. In the meanwhile, we proceed to the merits of the remaining claims on behalf of AF&PA's co-petitioner, the National Association of Home Builders, which has established its standing to raise them.

E. Consultation with State and Local Officials

The Industry Petitioners contend that EPA failed to consult with the States on the Phase II Rule as required by § 402(p)(5), which instructs EPA to conduct studies "in consultation with the States," and § 402(p)(6), which instructs the Administrator to issue regulations based on these studies "in consultation with State and local officials." 33 U.S.C. §§ 1342(p)(5)-(6). We conclude that EPA satisfied its statutory duty of consultation. *See Marsh,* 490 U.S. at 378, 109 S.Ct. 1851.

***864** Petitioners concede several instances in which EPA circulated drafts of the Phase II Rule to state and local authorities, but argue that these consultations were meaningless because (1) the reports were circulated too far in advance of the actual rulemaking, (2) the rulemaking wrongfully proceeded based on other sources of input, (3) standard APA notice and comment procedures could not suffice because Congress must have intended something more when it added the consultation requirements to the language of § 402, and (4) consultation at the final stage of rulemaking was inadequate because comment was sought on the final report only after it had been submitted to Congress and the Phase II Rule had been promulgated. Petitioners provide examples of state feedback that allegedly went unheeded by EPA in its promulgation of the final Rule.

EPA maintains that it consulted extensively with States and localities in developing the Phase II Rule, discharging its obligations under §§ 402(p)(5) & (6). EPA contends that the comments Petitioners cite as unheeded by EPA demonstrate that EPA *did* consult with States concerning the Rule, even if some States did not concur in EPA's ultimate conclusion, and that the final rule adopted a good measure of the flexibility sought by state representatives. EPA argues that Industry Petitioners cannot complain that consultation was inadequate simply because it did not result in the adoption of Petitioners' preferred views.

EPA also disputes Petitioners' allegation that while EPA did comply with the terms of the 1999 Appropriations Act (requiring EPA to defend the proposed Phase II Rule before Congress and then publish the final report for public comment), it demonstrated its failure to adequately consult by publishing the report for public comment *after* the Phase II Rule had been formally promulgated, rendering any subsequent public comment meaningless. EPA counters that these actions do not indicate that it failed to satisfy Congress's directive that it consult with state and local officials, because EPA had engaged in extensive consultation before Congress requested the Appropriations Act report, and Congress did not require further consultation when it conditioned promulgation of the Rule only on the submission of this final report. EPA claims that while Congress required it to publish the report after its submission, public comment on the report was not required before promulgation, and that the

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statutory deadline structure rendered any other interpretation impossible.

[22] We conclude that the overall record indicates EPA met its statutory duty of consultation. A draft of the first report was circulated to States, EPA regional offices, the Association of State and Interstate Water Pollution Control Administrators ("ASIWPCA"), and other stakeholders in November, 1993, and was revised based on comments received. EPA established the Urban Wet Weather Flows Federal Advisory Committee ("FACA Committee"), balancing membership between EPA's various outside stakeholder interests, including representatives from States, municipalities, Tribes, commercial and industrial sectors, agriculture, and environmental and public interest groups. 64 Fed. Reg. 68,724. The 32 members of the Phase II FACA Subcommittee, reflecting the same balance of interests, met fourteen times over three years and state and municipal representatives provided substantial input regarding the draft reports, the ultimate Phase II Rule, and the supporting data.[FN44] *Id.* EPA ***865** instituted the Phase II Subcommittee meetings in addition to the standard APA notice and comment procedures, which EPA also followed.

> FN44. NRDC argues that this claim is not only meritless for the reasons stated by EPA, but also frivolous, since industry petitioner National Association of Home Builders, as a member of the FACA Phase II Subcommittee, participated in and affirmed that such consultation took place.

The fact that the Rule did not conform to Petitioners' hopes and expectations does not bear on whether EPA adequately consulted state and local officials. Although required to consult with States and localities, EPA was free to chart the substantive course it saw fit. EPA was not required to consult with States on the Appropriations Act report. Even if EPA should have sought further comment at that late stage, failure to do so does not outweigh the evidence demonstrating extensive consultation and cooperation with local authorities on development of the Rule.

F. Designation of Certain Small MS4s and Construction Sites

The Industry Petitioners contend that, in designating certain small MS4s and construction sites for regulation under the Phase II Rule, EPA failed to adhere to the statutorily required regulatory basis and misinterpreted record evidence. We disagree.

1. Regulatory Basis

The Industry Petitioners and the Municipal Petitioners contend that EPA violated the statutory command to base the Phase II regulations on § 402(p)(5) studies. We review EPA's interpretation of its statutory authority under the *Chevron* standard, 467 U.S. at 842-44, 104 S.Ct. 2778, and affirm.

Petitioners argue that the studies mandated by § 402(p)(5) were intended to provide the sole substantive basis for the "comprehensive program" envisioned in § 402(p)(6), but that EPA also (and thus improperly) based its designation of small MS4s and construction sites on (1) public comment received in the aftermath of judicial invalidation of the scope of construction sites regulated by the Phase I Rule,[FN45] and (2) additional research discussed in the Preamble to the Phase II Rule.[FN46]

> FN45. *See Natural Res. Def. Council,* 966 F.2d at 1306 (remanding EPA's decision to regulate only construction sites disturbing more than five acres, after EPA had initially proposed to regulate all sites disturbing more than one acre).
>
> FN46. The Industry Petitioners contend that EPA lacked authority to issue the Phase II regulation of construction sites based on a process EPA itself characterized as "separate and distinct" from the development of the Report to Congress. 64

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> Fed. Reg. at 68,732. They add that the Phase II Rule was not "based on" the 1999 Report ultimately requested by Congress in the Appropriations Act, since EPA's report in response was released on the very day that the final Phase II Rule was published.

EPA contends that the statute did not require it to base its designations exclusively on the § 402(p)(5) studies, and that it was in fact required to take account of information from other sources in promulgating the regulations. It argues that it based the Phase II Rule on conclusions reported in the § 402(p)(5) studies, but then appropriately supported these results with data described in the additional study requested by Congress in the Appropriations Act, comments submitted during the statutorily required notice-and-comment process, and other available information. To read the authorizing statute as limiting reliance to the § 402(p)(5) studies, EPA claims, would preclude it from relying on recommendations received through the separate, post-study requirement to "consult with State and local officials" under ***866** § 402(p)(6), and through the notice and comment process mandated by the APA, 5 U.S.C. § 553(b).

Respondent-intervenor NRDC adds that the Phase II Rule is consistent with the § 402(p)(5) studies reported in 1995, and moreover, that the Industry Petitioners lack standing to raise the "regulatory basis" claim because they cannot show the requisite injury. *See Friends of the Earth,* 528 U.S. at 180-81, 120 S.Ct. 693.

a. Standing. Industry Petitioners[FN47] contend that they have suffered injury in fact, because their members are now either automatically regulated by the permitting requirements or subject to future regulation (under the residual authority, discussed below) that otherwise would not have been authorized, and that this is a direct result of EPA's failure to adhere to the framework of the 1995 Report, which allegedly would have precluded these aspects of the Rule. NRDC contends that the Industry Petitioners lack standing because they cannot show that being subject to NPDES permitting is the causal result of the procedural injury they urge, and because they cannot base standing on hypothetical injury that may arise in the future.

> FN47. Since we have already determined that AF & PA lacks standing to raise any of its claims, *see* Section D above, this discussion pertains to the remaining Industry Petitioner, National Association of Home Builders.

NRDC argues that the injuries Petitioners allege are not consistent with the guidelines laid out in *Friends of the Earth,* 528 U.S. at 180-81, 120 S.Ct. 693. It insists that Petitioners' only possible claims of injury from the alleged "regulatory basis" violation are purported harm to members caused by the final Phase II Rule itself or harm to members caused by EPA's alleged failure to provide adequate notice of future regulatory requirements in the 1995 Report. However, NRDC contends that Petitioners have not suffered the requisite injury, because they had actual notice that EPA might regulate small construction sites, 63 Fed. Reg. at 1583, and they can show no chain of causation linking their alleged injury from the Rule itself to the actions challenged here.

NRDC's causation argument is complex. Although the Petitioners purport to challenge EPA's failure to follow all of the 1995 Report's recommendations in the final Phase II Rule, NRDC contends, they are really challenging the subsequent proceedings through which EPA developed the final Rule. Even if there were some unlawful variance between the 1995 report and final rule, NRDC continues, the cause of that variance would have been some failure to abide by rulemaking standards during administrative proceedings that produced the text of the final Rule-not EPA's attention to sources of input other than the 1995 Report. NRDC maintains that these intervening acts of rulemaking (e.g., Phase II Subcommittee activities and the notice-and-comment process) break the requisite chain of causation between EPA's alleged failure to adhere

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to recommendations in the 1995 report and the flaws Petitioners allege in the Phase II Rule, which NRDC claims would have been due to "purportedly unlawful EPA decisions on the merits during the subsequent administrative proceedings." *See Northside Sanitary Landfill v. Thomas,* 804 F.2d 371, 381-84 (7th Cir.1986) (finding no standing to challenge EPA statements concerning the fate of a hazardous waste facility when subsequent state administrative acts, not EPA comments, would determine the facility's actual fate).

[23] We note that NRDC's standing arguments apply equally to the Municipal Petitioners, who can also assert only the ***867** harms resulting to members from the Rule itself or from a lack of notice, and that we are thus not only considering the standing of the Industry Petitioners but also that of the Municipal Petitioners to raise the "regulatory basis" claim.[FN48] That established, we find standing for both.

> FN48. Although the issue of Municipal Petitioners' standing has not been raised by the parties, we are obliged to consider it to determine whether the case-or-controversy requirement of Article III is satisfied. *See, e.g., Boeing Co. v. Van Gemert,* 444 U.S. 472, 488 n. 4, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980); *Juidice v. Vail,* 430 U.S. 327, 331, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977).

NRDC essentially argues that petitioners lack standing because (1) they cannot show that being subject to NPDES permitting is the causal result of the procedural injury they urge, (2) they cannot claim any actual notice injury from the alleged procedural wrong because notice was actually given, and (3) they cannot claim standing based on hypothetical injury that may (or may not) arise from future regulation under the residual authority. We can readily agree with the latter two contentions. As discussed above, the "actual injury" requirement of Article III standing precludes judicial consideration of exactly the kind of hypothetical harm the Industry Petitioners allege may follow from use of Phase II authority for future designations of regional sources. *Friends of the Earth,* 528 U.S. at 180-81, 120 S.Ct. 693. If future Phase II designations cause identifiable injury to Petitioners, they will then be free to pursue that ripe claim. And because EPA clearly issued notice to all regulated parties that they may be subject to regulation under the proposed rule, 63 Fed. Reg. at 1568 (MS4s) and 1582 (construction), petitioners cannot show injury from lack of actual notice.

However, NRDC's causation argument is less persuasive. NRDC correctly argues that the petitioners cannot establish a definite chain of causation between the EPA's alleged failure to limit their regulatory basis to the § 402(p)(5) studies and the fact that they now must obtain permits. But this will almost always be true of petitions challenging an agency's failure to abide by statutory procedural requirements. Because all administrative decisionmaking following an alleged procedural irregularity could always be considered an intervening factor breaking the chain of causation, NRDC's interpretation of the requisite chain of causation would dubiously shield administrative decisions from procedural review.

For this reason, we have held that the failure of an administrative agency to comply with procedural requirements in itself establishes sufficient injury to confer standing, even though the administrative result might have been the same had proper procedure been followed. *City of Davis v. Coleman,* 521 F.2d 661, 671 (9th Cir.1975) (agency's failure to comply with National Environmental Policy Act's procedural requirements constituted injury sufficient to support standing of a geographically related plaintiff regardless of potentially similar regulatory outcome). In *City of Davis,* we noted that the standing inquiry represents "a broad test, but because the nature and scope of environmental consequences are often highly uncertain before study we think it an appropriate test." *Id.* A plaintiff who shows that a causal relation is "probable" has standing, even if the chain cannot be definitively established. *John-*

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son v. Stuart, 702 F.2d 193, 195-96 (9th Cir.1983) (school students and their parents had standing to challenge a statute that limited the texts that might be selected for teaching, even ***868** though it could not be shown whether any specific book had been rejected under this statute or for other reasons).

The Supreme Court has also acknowledged that standing may be established by harm resulting indirectly from the challenged acts, *Warth v. Seldin,* 422 U.S. 490, 504-05, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975), and that causation may be established if the plaintiff shows a good probability that, absent the challenged action, the alleged harm would not have occurred, *Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 262-64, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).

Thus, although the petitioners cannot show with certainty that the alleged "regulatory basis" violation caused them to be wrongfully subjected to Phase II permitting requirements, we hold that they have alleged a procedural injury sufficient to support their standing to bring the claim.

b. Merits. Although we resolve the standing issue in favor of the petitioners, we nevertheless affirm the Rule against their claim that EPA violated procedural constraints implied by the authorizing statute, § 402(p)(6).

Congress intended EPA to use all sources of information in developing a comprehensive program to protect water quality to the maximum extent practicable. The statute unambiguously required EPA to base its regulations both on the § 402(p)(5) studies and on consultation with state and local officials. Congress enacted § 402 with full knowledge that EPA would also be required to take account of public comments during the notice and comment phase of administrative rulemaking prescribed by the APA.[FN49]

FN49. Even if the statute *were* ambiguous, we would defer to EPA's reasonable interpretation. *Chevron,* 467 U.S. at 843-44, 104 S.Ct. 2778.

2. MS4s in Urbanized Areas

The Municipal Petitioners contend that the designation of small MS4s for Phase II regulation according to Census Bureau defined areas of population density ("urbanized areas") is arbitrary and capricious. They argue that EPA has not established that the Census Bureau's designation of urbanized areas is correlated with actual levels of pollution runoff in stormwater, and that EPA adopted the designations simply for administrative convenience. We affirm, because the record reflects a reasoned basis for EPA's decision. *See Marsh,* 490 U.S. at 378, 109 S.Ct. 1851.

Conceding that the Preamble cites studies purporting to establish "a high correlation between the degree of development/urbanization and adverse impacts on receiving waters due to stormwater,"64 Fed. Reg. at 68,751, the Municipal Petitioners nevertheless contend that the record contains no "demonstrably correlated, *quantified* basis on which EPA may reasonably have concluded that any particular population, or any population density, *per se* establishes that all urban areas having that same characteristic in gross are necessarily appropriate for inclusion as Phase II sources." Pointing to *Leather Industries of America v. EPA,* 40 F.3d 392, 401 (D.C.Cir.1994) (rejecting as arbitrary EPA's regulation of pollutant levels in the absence of data supporting a relationship between the caps and level of risk), Petitioners argue that EPA simply assumed the relationship Congress contemplated it would establish by the § 402(p)(5) studies.

EPA responds that it extensively documented the relationship between urbanization and harmful water quality impacts from stormwater runoff, pointing to its findings that the degree of surface imperviousness in an area directly corresponds ***869** to the degree of harmful downstream pollution from stormwater runoff, 64 Fed. Reg. at 68,724-27, and that it articulated a rational connection between these record facts and its decision to designate

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small MS4s serving areas of high population density ("urbanized areas") to protect water quality.

[24] We treat EPA's decision with great deference because we are reviewing the agency's technical analysis and judgments, based on an evaluation of complex scientific data within the agency's technical expertise. *See Baltimore Gas & Elec. Co. v. NRDC,* 462 U.S. 87, 103, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983); *see also Chem. Mfrs. Ass'n v. EPA,* 919 F.2d 158, 167 (D.C.Cir.1990) ("It is not the role of courts to 'second-guess the scientific judgments of the EPA....' "). We conclude that the record supports EPA's choice.

The statute simply called upon EPA to "designate stormwater discharges," other than those designated in Phase I, "to be regulated to protect water quality." 33 U.S.C. § 1342(p)(6). EPA did so, based on record evidence showing a compelling and widespread correlation between urban stormwater runoff and deleterious impacts on water quality. Petitioners' assertion that EPA failed to establish a "quantified" basis for its designation is inapposite. The statute did not require EPA to establish with pinpoint precision a numeric population threshold within urbanized areas that would justify regulation under Phase II. In areas implicating technical expertise and judgment, courts do not require "perfect stud[ies]" or data. *Sierra Club,* 167 F.3d at 662. EPA satisfied the *Leather Industries* standard by adopting a threshold consistent with the criterion of "protecting water quality," and did not assume, but instead sufficiently documented, the relationship between urbanization and harmful stormwater discharge.

3. Small Construction Sites

Industry and Municipal Petitioners also argue that EPA's decision to regulate under Phase II all construction sites disturbing between one and five acres of land ("small construction sites") is arbitrary and unsupported by the record. We do not agree. *See Marsh,* 490 U.S. at 378, 109 S.Ct. 1851.

a. Record Evidence. Municipal Petitioners claim that EPA arrived at the one-acre standard based not on factual findings in the record but instead as a reaction to the earlier Ninth Circuit remand of the Phase I five-acre designation. They allege that the one-acre standard is no more based on supporting data than the rejected five-acre standard, and is thus quantitatively arbitrary.

Industry Petitioners argue that EPA's findings do not support regulation of *all* small construction sites, but indicate only that small construction sites, taken cumulatively, may cause effects similar to large sites in a given area. They contend that EPA's conclusion that adverse effects are possible under certain circumstances cannot support categorical designation of all small construction sites nationwide, and that the Rule is arbitrary because (1) it is based on an analysis that fails to take account of the frequency of negative impacts, (2) it fails to take account of acknowledged factors that determine whether small construction activities cumulatively cause harm (such as the degree of development in a watershed at any given time), and (3) EPA has acknowledged that the actual water quality impact of construction sites of all sizes varies widely from area to area depending on climatological, geological, geographical,***870** and hydrological influences.FN50

> FN50. The Industrial Petitioners argue that although the Phase I authorizing statute required EPA to regulate all sources associated with "industrial activity," Congress expressly directed that the Phase II regulatory program be focused on sources that require regulation "to protect water quality." They assert that because EPA's rule ignores the variability of water quality impacts nationwide, the Rule is not appropriately targeted on the protection of water quality.

Industry Petitioners further contend that the record does not support the designation of small sites, because almost all of the technical papers EPA relied

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on focused on larger sites or failed to take account of size,[FN51] and because the lack of an adequate factual basis for nationwide regulation of small sites makes the Phase II Rule arbitrary and capricious. *Am. Petroleum Inst. v. EPA,* 216 F.3d 50, 58 (D.C.Cir.2000) (invalidating a solid waste rule because EPA "failed to provide a rational explanation for its decision" declining to exclude oilbearing waste waters from the statutory definition of solid waste).

> FN51. Petitioners heavily critique two studies relied on by EPA that dealt specifically with the water quality impacts of small construction sites, noting that one concludes it is impossible to generalize about the impacts of small sites, Lee H. MacDonald, *Technical Justification for Regulating Construction Sites 1-5 Acres in Size,* July 22, 1997, and that the other merely concludes that small sites "can have" significant effects if erosion controls are not implemented, David W. Owens, et al., *Soil Erosion from Small Construction Sites.* Petitioners contend that the latter study was managed with no erosion controls, intentionally producing worst-case sediment runoff and unreasonable estimates of actual sediment yields for small sites nationwide. EPA vigorously defends the studies.

EPA maintains that construction sites regulated under the Phase II Rule degrade water quality across the United States and that the administrative record unambiguously documents that harm. EPA disputes Petitioners' assertion that it failed to establish the need to regulate small sites nationwide, but also contends that it is not required to base every administrative decision on a precise quantitative analysis. *See Sierra Club,* 167 F.3d at 662 ("EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem.").

EPA also disputes petitioners' assertions that data from studies involving larger construction sites are irrelevant to the Phase II Rule. EPA explains that discharges of sediment due to erosion are the result of the interaction of several factors including soils, slope, precipitation, and vegetation:

For construction sites that are one acre or more, none of the environmental factors contributing to sediment discharges is dependent on the size of the site disturbed. A one-acre site can have the same combination of soils, slope, degree of disturbance and precipitation as a 100-acre site, and consequently can lose soil at the same rate ... and discharge sediments in the same concentrations ... as a 100-acre site.

EPA contends that it is thus reasonable to extrapolate data about small sites from studies of larger ones-and that such an extrapolation may even be forgiving, since small sites are currently less likely to have effective erosion and sedimentation control plans.[FN52]

> FN52. NRDC adds that notwithstanding the clear interest of the National Association of Home Builders ("NAHB," one of the Industry Petitioners), NAHB's multi-year participation in the FACA Phase II Subcommittee Small Construction and No-Exposure Sites Work Group, and NAHB's own submission of detailed comments on the proposed Rule, NAHB failed to enter into the administrative record any study contradicting the proposition that small construction sites cause water quality problems. NRDC points to the record's showing that NAHB had itself proposed that regulation of construction sites of two acres or greater was appropriate, and contends that this is thus not a dispute over whether small construction sites should be regulated on a nationwide basis, but instead a technical disagreement over whether EPA should establish a one-acre threshold or a different threshold on a similar small scale.

*871 Indeed, EPA argues that although adverse water quality impacts of small construction sites have

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been widely recognized, effective local erosion and sedimentation control programs have not been adopted in many areas.[FN53] Though not all watersheds are currently adversely effected by small construction sites,[FN54] EPA notes that the Phase II Rule acts "to protect water quality" both remedially and preventively, and argues that it need not quantify the cumulative effects of discharges from these sites or identify all watersheds that are currently harmed before acting to limit pollution from small sites.[FN55]

FN53. Whitney Brown and Deborah Caraco, *Controlling Stormwater Runoff Discharges from Small Construction Sites: A National Review,* Task 5 Final Report submitted by the Center for Watershed Protection to the EPA Office of Wastewater Management, March 1997, IP E.R. 633, 643.

FN54. EPA adds that operators of small sites in areas unlikely to suffer adverse impacts may apply for a permit waiver if little or no rainfall is expected during the period of construction (the "rainfall erosivity waiver") or if regulation is unnecessary based on a location-specific evaluation of water quality (the "water quality waiver"). 64 Fed. Reg. at 68,776.

FN55. EPA also implies permission to regulate for potential cumulative impacts of small sites from the past directive of this court. When the Phase I industrial discharge regulations were challenged, we found no record data to support that rule's exemption of construction activities on less than five acres and held that small sites did not categorically qualify for a *de minimis* exemption because "even small construction sites can have a significant impact on local water quality." *Natural Res. Def. Council,* 966 F.2d at 1306.

[25] We reverse under the arbitrary and capricious standard only if the agency has relied on factors Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision contrary to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 43, 103 S.Ct. 2856. Petitioners' contention that EPA relied on factors Congress did not intend it to consider was rejected in our earlier discussion of the regulatory basis challenge. They submit no evidence that EPA failed to consider an important aspect of the problem. We cannot say that EPA's designation of small construction sites is implausible (especially given the support of twenty-some-odd studies of sedimentation from construction sites that EPA reviewed in promulgating the challenged regulations, 64 Fed. Reg. 68,728-31). We could remand this aspect of the Rule only if, as the petitioners urge, EPA's explanation for its decision to regulate small construction sites were contrary to the record evidence, and it is not.

Petitioners' primary contention is that evidence in the record suggests it is not possible to provide an explicit, quantitative link between small construction sites and an adverse effect on water quality. But even if this were so, EPA's decision to regulate preventively small construction sites "to protect water quality" is not inconsistent with the record. Petitioners contend that EPA's reliance on data from studies of large construction sites is insufficient to support EPA's designation of small sites, but EPA has adequately supported its contention that experts can reasonably ***872** extrapolate projected water quality impacts from large to small sites. We apply the substantial evidence standard when reviewing the factual findings of an agency, *Dickinson v. Zurko,* 527 U.S. 150, 156-58, 119 S.Ct. 1816, 144 L.Ed.2d 143 (1999),[FN56] and find it satisfied here.

FN56. The "substantial evidence" standard requires a showing of such relevant evid-

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> ence as a reasonable mind might accept as adequate to support a conclusion. *Edlund v. Massanari,* 253 F.3d 1152, 1156 (9th Cir.2001).

Moreover, EPA is not required to conduct the "perfect study." *Sierra Club,* 167 F.3d at 662. We defer to an agency decision not to invest the resources necessary to conduct the perfect study, and we defer to a decision to use available data unless there is no rational relationship between the means EPA uses to account for any imperfections in its data and the situation to which those means are applied. *Id.; Am. Iron & Steel Inst. v. EPA,* 115 F.3d 979, 1004 (D.C.Cir.1997). The record indicates a reasoned basis for EPA's decision that regulating small construction sites was necessary "to protect water quality" as required by § 402(p)(6).

[26] ***b. Waivers.*** Industry Petitioners further contend that EPA's allowance of regulatory waivers for small construction sites not likely to cause adverse water quality impacts inappropriately supplements the permitting regulations.

Petitioners argue that EPA has the burden of establishing a comprehensive program to control sources as necessary to protect water quality, and that shifting the burden to individual contractors, businesses, and homeowners to prove they do not harm water quality falls short of meeting this statutory obligation. Citing *National Mining Association v. Babbitt,* 172 F.3d 906, 910 (D.C.Cir.1999), they argue that EPA's rebuttable regulatory presumption of water quality impact from small construction activity is unreasonable because the agency has established no scientific likelihood that any given small site will affect water quality. EPA defends the waiver approach as fair and efficient, and argues that the Industrial Petitioners are confusing arguments about the limits of presumptions in evidentiary hearings conducted under the APA.[FN57]

> FN57. EPA further argues that even if the waiver provision were properly characterized as an evidentiary presumption, it should be sustained because the record demonstrates that the presumed fact of the water quality impact of small sites is more likely true than not.

EPA is correct; the Phase II Rule creates no presumption applicable to an evidentiary hearing, and a regulation creating exemptions by waiver is reviewed under the familiar arbitrary and capricious standard. The use of waivers to allow permit exemptions for small sites unlikely to cause adverse impacts is reasonable under that standard.

[27] ***c. Consistency.*** Industry Petitioners also argue that EPA's decision to regulate all small construction sites under the Phase II Rule is arbitrary and capricious because EPA applied a different standard in regulating small construction projects than it applied to other potential sources of stormwater runoff subject to Phase II regulation.

Petitioners contend that EPA decided not to designate other potential sources identified in the § 402(p)(5) studies because it determined that there are not "sufficient data ... available at this time on which to make a determination of potential adverse water quality impacts for the category of sources." 64 Fed. Reg. at 68,780. Petitioners contend this standard should have been applied to small construction sites as well, but EPA opted to ***873** regulate these sources despite an alleged lack of coherent data on small site impacts as a general category.

EPA counters, once again, that it did have adequate data to regulate small construction sites. It contends that construction sites of all sizes have greater erosion rates than almost any other land use, and thus are not similarly situated to the potential polluters that EPA chose not to regulate at this time.FN58 These sources include secondary industrial activities (for example, maintenance of construction equipment or local trucking for an unregulated facility such as a grocery store) and other unregulated commercial activities (for example, car and truck rental facilities).64 Fed. Reg. at 68,779. EPA reports that it decided not to categorically reg-

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ulate these potential sources based both on available data about water quality impacts and on the extent to which potentially adverse water quality impacts are mitigated by existing regulations to which these sources are already subject. *Id.* at 68,780.

> FN58. EPA notes that the Phase II Rule empowers regional permitting authorities to regulate local sources of these types known to be responsible for harmful water quality impacts via the continuing "residual designation" authority (an aspect of the Rule that Petitioners also challenge).

We find no error. *See Marsh,* 490 U.S. at 378, 109 S.Ct. 1851. EPA acted reasonably in designating all small construction sites for Phase II regulation, and Industry Petitioners point to no record evidence that the nature of pollutant contributions from small construction site discharge is sufficiently similar to pollutants from the non-regulated sources to support the analogy they seek to draw. *New Orleans Channel 20 v. FCC,* 830 F.2d 361, 366 (D.C.Cir.1987) (an agency does not act irrationally when it treats parties differently, unless the parties are similarly situated). Sufficient evidence supports EPA's conclusion that small construction sites are not similar enough to these "other sources" to support petitioner's challenge.

G. Continuing ("Residual") Designation Authority

The Industry Petitioners argue that EPA acted improperly in retaining authority to designate future sources of stormwater pollution for Phase II regulation as needed to protect federal waters. We disagree.

The Phase II Rule preserves authority for EPA and authorized States to designate currently unregulated stormwater dischargers as requiring permits under the Rule if future circumstances indicate that they warrant regulation "to protect water quality" under the terms of § 402(p)(6). 40 C.F.R. § 122.26(a)(9). In the Phase II Preamble, EPA explains this aspect of the Rule:

Under today's rule, EPA and authorized States continue to exercise the authority to designate remaining unregulated discharges composed entirely of stormwater for regulation on a case-by-case basis.... Individual sources are subject to regulation if EPA or the State, as the case may be, determines that the stormwater discharge from the source contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This standard is based on the text of section CWA 402(p). In today's rule, EPA believes, as Congress did in drafting section CWA 402(p)(2)(E), that individual instances of stormwater discharge might warrant special regulatory attention, but do not fall neatly into a discrete, predetermined category. Today's rule preserves the regulatory authority***874** to subsequently address a source (or category of sources) of stormwater discharges of concern on a localized or regional basis.

64 Fed. Reg. 68,781. The text of the Rule requires a discharger to obtain a permit if the NPDES permit authority determines that "stormwater controls are needed for the discharge based on wasteload allocations that are part of 'total maximum daily loads' (TMDLs[FN59]) that address the pollutant(s) of concern" or that "the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."40 C.F.R. §§ 122.26(a)(9)(i)(C)-(D).

> FN59. TMDLs are pollutant loading limits established by NPDES permitting authorities under the Clean Water Act for waters that do not meet a water quality standard due to the presence of a pollutant. *See*33 U.S.C. § 1313(d).

1. Statutory Authority

The Industry Petitioners contend that this "residual" designation authority, which would allow a NPDES permitting authority to require at any future time a

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permit from any stormwater discharge not already regulated, is *ultra vires*. Although they concede that Congress authorized case-by-case designation in § 402(p)(2)(E),[FN60] they argue that this authority attached only during the permitting moratorium that ended in 1994, prior to the Phase II rulemaking. They object that EPA has impermissibly designated a category of "not yet identified" sources and preserved authority to regulate them on a case-by-case basis indefinitely into the future.[FN61]

FN60. This section enables a NPDES permitting authority to designate for regulation: "[a] discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." 33 U.S.C. § 1342(p)(2)(E).

FN61. Notably, Industry Petitioner NAHB itself took the position during Phase II Subcommittee proceedings that the power to designate additional sources survived the promulgation of the Phase II Rule. In a 1996 comment letter to EPA, NAHB asserted its understanding that "[t]he permitting authority still reserves the right to designate additional sources if they are shown to be a contributor of water quality impairment." NRDC Supplemental Excerpts of Record at 58.

[28] Petitioners contend that § 402(p)(6)[FN62] cannot rescue the residual authority because it does not authorize case-by-case identification of discharges to be regulated, and that Congress, had it intended otherwise, would have included language in § 402(p)(6) similar to the case-by-case authority explicitly granted in § 402(p)(2)(E).[FN63] They also contend that ***875** continuing authority to designate sources based on waste load allocations that are part of TMDLs exceeds the scope of authority in § 402(p)(2), which nowhere mentions TMDLs. Finally, they argue that the categorical designation authorized by § 402(p)(6) is only permissible when based on the § 402(p)(5) studies and carried out in consultation with state and local authorities, but that the Rule allows future designations based on agency discretion unaccompanied by adequate demonstration that the source itself is a significant threat to water quality.

FN62. The full text of § 402(p)(6), which specifically authorizes the Phase II program, reads: "Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate." 33 U.S.C. § 1342(p)(6).

FN63. Petitioners further argue that even if EPA could preserve the case-by-case authority conferred in § 402(p)(2)(E), that section confers authority only to regulate "a discharge" determined to threaten water quality, not a category of discharges. However, we agree with respondent-intervenor NRDC's argument that § 402(p)(2)(E) does not preclude EPA from designating entire categories of sources. Petitioners' argument follows from its reliance on the fact that § 402(p)(2)(E) refers to "discharge" in the singular rather than the plural to conclude that EPA may only designate sources meeting the §

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> 402(p)(2)(E) description on a case-by-case basis. But all five of the § 402(p)(2)(5) categories refer to "discharge" in the singular, even in reference to discharges clearly intended for categorical regulation, like "a discharge from a municipal separate storm sewer system serving a population of 250,000 or more." 33 U.S.C. § 1342(p)(2)(C). The error in petitioners' interpretation is exposed by 1 U.S.C. § 1, which provides that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise-words importing the singular include and apply to several persons, parties, or things."

EPA counters that § 402(p)(6) authorized the designation, made on the basis of statutorily required sources of input and in consultation with the States, of a third class of discharges to be identified on location-specific bases by the NPDES permitting authority. EPA contends that Petitioners mistake the source of its authority for continuing designations as arising only from § 402(p)(2), discounting the full scope of its authority under § 402(p)(6). EPA argues that it permissibly interpreted § 402(p)(6) as allowing the residual designation authority because its language does not expressly preclude it, and because such authority is consistent with (and arguably required by) that section's mandate to establish a "comprehensive program" to protect water quality from adverse stormwater discharges. EPA maintains that the structure of § 402(p) reflects "Congress' intent to assure regulation of all problematic stormwater discharges as expeditiously as reasonably possible-not to limit EPA to a one-time-only opportunity to designate discharges for regulation."

[29] We review EPA's interpretation of the statute it administers with deference, *Royal Foods Co.*, 252 F.3d at 1106, and affirm this aspect of the Phase II Rule as a legitimate exercise of regulatory authority conferred by § 402(p). The residual designation authority is grounded both on § 402(p)(6), which broadly authorizes a comprehensive program to protect water quality, and on § 402(p)(2)(5), which authorizes case-by-case designation of certain polluters and categories of polluters.

While not a blank check, § 402(p)(6) authorizes a comprehensive program that allows regional designation of polluting discharges that compromise water quality locally, even if they have not been established as compromising water quality nationally at the time Phase II was promulgated. In allowing continuing designation authority, EPA permissibly designated a third category of dischargers subject to Phase II regulation-those established locally as polluting U.S. waters-following all required studies and consultation with state and local officials. EPA reasonably determined that discharges other than those from small MS4s and construction sites were likely to require regulation "to protect water quality" in satisfaction of the § 402(p)(6) mandate. EPA reasonably determined that, although it lacked sufficient data to support nationwide, categorical***876** designation of these sources, particularized data might support their designations on a more localized basis. EPA reasonably interpreted § 402(p)(6) as authorizing regional designation of sources and regional source categories, based on water quality standards including TMDLs.

Petitioners' § 402(p)(2)(5) argument (that EPA could not draw support for the residual designation authority from § 402(p)(2)(5) because such authority expired in 1994) is contradicted by the plain language of the statute. Respondent-intervenor NRDC correctly notes that § 402(p)(1) sets forth a permitting moratorium for stormwater discharges prior to 1994, and that § 402(p)(2) exempts certain categories of sources from that permitting moratorium, including those to be regulated on a case-by-case basis under § 402(p)(2)(5). Specifically, the statute provides that the 1994 date "shall not apply" to the five categories of discharges listed in § 402(p)(2). The termination of a moratorium that "shall not apply" to the continuing designation authority under § 402(p)(2)(5) cannot rescind EPA's authority to reg-

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ulate sources in that category. Nothing in § 402(p) suggests that authority to designate these sources ends at any time, and EPA remains free to designate § 402(p)(2)(E) dischargers.

Finally, although Petitioners may be legitimately concerned that a permitting authority may designate a source without adequately establishing its eligibility, this issue must be addressed in the context of an actual case or controversy. Whether a NPDES authority may impose permitting requirements on a discharger without an adequate finding of polluting activity is not yet ripe for judicial review. *Thomas v. Anchorage Equal Rights Comm'n,* 220 F.3d 1134, 1141 (9th Cir.2000) ("A concrete factual situation is necessary to delineate the boundaries of what conduct the government may or may not regulate.").

2. Nondelegation Doctrine

[30] Industry Petitioners contend that EPA's interpretation of § 402(p) to allow the residual designation authority must be rejected because it would render the statute unconstitutional under the nondelegation doctrine. We deny petitioners' claim, both because it is not properly raised and because it rests on an interpretation explicitly overturned by the United States Supreme Court.

Petitioners base their contention on *American Trucking Ass'ns, v. EPA,* 175 F.3d 1027, 1034 (D.C.Cir.1999),[FN64] in which the D.C. Circuit remanded a regulation under the nondelegation doctrine because, although EPA had applied reasonable factors in establishing the air quality standards in question, the agency had articulated no "intelligible principle" to channel its application of these factors. *Id.* Petitioners argue that if § 402(p) authorizes a NPDES permitting authority to require Phase II permitting of any stormwater source deemed to be a "significant contributor" of pollutants to U.S. waters, then that grant of authority likewise constitutes an unconstitutional delegation of legislative authority because-as did the *American Trucking* delegation-it "leaves [EPA] free to pick any point" at which a regulatory burden will attach. *Id.* at 1037.

> FN64. This case was reversed in relevant part by the Supreme Court in *Whitman v. Am. Trucking Ass'ns,* 531 U.S. 457, 476, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001).

However, in reversing *American Trucking,* the Supreme Court rejected the notion that an agency has the power to interpret a statute so as to either save it from being, or transform it into, an unconstitutional delegation. ***877***Whitman v. Am. Trucking Ass'ns,* 531 U.S. 457, 473, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). Whether a statute delegates legislative power "is a question for the courts, and an agency's [interpretation] has no bearing upon the answer." *Id.* Petitioner's argument to the contrary rests on the very reasoning in *American Trucking* that was overturned in *Whitman.* The relevant question is not whether EPA's interpretation is unconstitutional, but whether the statute itself is unconstitutional-a challenge Industry Petitioners do not raise.

But even if the challenge were properly raised, § 402(p) would, like the Clean Air Act standard-setting provision at issue in *Whitman,* survive constitutional review. The Supreme Court has upheld against nondelegation attacks many similar statutes establishing nonquantitative standards. *Am. Power & Light Co. v. SEC,* 329 U.S. 90, 104, 67 S.Ct. 133, 91 L.Ed. 103 (1946) (upholding statute giving SEC authority to modify corporate structures so that they are not "unduly or unnecessarily complicate[d]" and do not "unfairly or inequitably distribute voting power among security holders"); *Yakus v. United States,* 321 U.S. 414, 419-20, 423-27, 64 S.Ct. 660, 88 L.Ed. 834 (1944) (upholding statute giving agency power to set prices that "will be generally fair and equitable"). In *Yakus,* the Court held that a statutory command to "effectuate the purposes" of the overall statutory scheme withstood scrutiny. *Id.* Section 402(p)(6)'s directive "to protect water quality" summarizes the central purpose of the Clean Water Act, "to restore and maintain the chemical,

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physical, and biological integrity of the Nation's waters,"33 U.S.C. § 1251(a). It establishes a determinate criterion of the kind the Supreme Court upheld in *Yakus* and *American Power & Light.*

3. Notice and Comment

[31] Industry Petitioners also contend that, to the extent it allows the designation of entire categories of sources, rather than individual sources, the residual designation authority violates the APA, 5 U.S.C. § 553(b)(3), because EPA did not provide public notice that it was considering such a rule. *Ober v. EPA,* 84 F.3d 304, 315 (9th Cir.1996) (invalidating EPA rule where it deviated from proposal); *Shell Oil Co. v. EPA,* 950 F.2d 741, 746-47 (D.C.Cir.1991). Petitioners contend that while the proposed rule would have allowed case-by-case designation where an authority "determines that the discharge contributes to a violation,"63 Fed. Reg. at 1635 (proposing 40 C.F.R. § 122.26(a)(9)(i)(D)), the final rule authorizes case-by-case designation where "the discharge, or category of discharges within a geographic area, contributes to a violation,"40 C.F.R. § 122.26(a)(9)(i)(D).

EPA notes that it had proposed to promulgate continuing designation authority in some form, and points to elements in the proposed rule that explicitly envision the categorical designation of sources at the local/watershed level.[FN65]

> FN65. "[T]oday's proposal would encourage [voluntary] control of stormwater discharges ... unless the discharge (or category of discharges) is individually or locally designated as described in the following section. The necessary data to support designation could be available on a local, regional, or watershed basis and would allow the NPDES permitting authority to designate a category of sources or individual sources on a case-by-case basis. If sufficient nationwide data [becomes] available in the future, EPA could at that time designate additional categories of industrial or commercial sources on a national basis. EPA requests comment on the three-pronged analysis used to assess the need to designate additional industrial or commercial sources and invites suggestions regarding watershed-based designation." 63 Fed. Reg. at 1588.

*878 According to the "logical outgrowth" standard, a final regulation must be "in character with the original proposal and a logical outgrowth of the notice and comments." *Hodge,* 107 F.3d at 712. EPA emphasized that it was considering continuing designations based on watershed data rather than designating these sources on a national basis, and invited comment regarding this proposal. 63 Fed. Reg. at 1536. This supports the necessary relationship between the proposed and final rule.

H. Regulatory Flexibility Act

The Industry Petitioners contend that the Phase II Rule will impose substantial compliance costs on their members and other small entities, but that EPA failed to conduct the analysis required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. §§ 601-11. They argue that EPA seeks to excuse its noncompliance by falsely certifying that the Rule does not have a significant impact on a substantial number of small entities. 64 Fed. Reg. at 68,800. We are not persuaded.

[32] The RFA requires a federal agency to prepare a regulatory flexibility analysis and an assessment of the economic impact of a proposed rule on small business entities, 5 U.S.C. § 604, unless the agency certifies that the proposed rule will not have a "significant economic impact on a substantial number of small entities" and provides a factual basis for that certification, *id.* at § 605; *N.W. Mining Ass'n v. Babbitt,* 5 F.Supp.2d 9, 15-16 (D.D.C.1998).

EPA did certify that the Phase II Rule would not

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yield "significant impacts," 64 Fed. Reg. at 68,800, but Petitioners contend this certification is erroneous because (1) EPA treats as "not significant" costs that are in fact significant, and (2) EPA failed to account for the entire universe of small entities affected (including small home construction contractors) and all significant costs to those entities. They urge that the failure to consider a significant segment of the affected small entity community requires invalidation of the Rule, citing *North Carolina Fisheries Ass'n v. Daley,* 27 F.Supp.2d 650, 659 (E.D.Va.1998) (certification failed to comply with RFA where agency ignored several categories of affected small entities), and *Northwest Mining,* 5 F.Supp.2d at 15 (RFA was violated where improper definition of small entity excluded analysis of affected entities).

EPA maintains that its certification was appropriate, and, moreover, that it has already voluntarily followed the additional RFA procedures that the Industry Petitioners now request. EPA argues that Petitioners have incorrectly specified the costs that the small entities they represent will bear, referring erroneously to EPA's total annual compliance costs estimates for all entities, rather than to costs estimated for small entities as defined under the RFA. EPA maintains that it did consider economic impacts on small home construction contractors who might be denied discharge permits, and that it evaluated the annual costs of Phase II compliance associated with any land disturbance between one and five acres. 64 Fed. Reg. at 68,800-01.

Respondent-intervenor NRDC contends that Petitioners' reliance on measures of the aggregate impact of the Rule on small entities to determine compliance with the threshold test under the RFA fails as a matter of law because aggregate measures are not consistent with the statutory language setting out that test. NRDC notes that the plain language of § 605(b) sets out a three-component test indicating that EPA need not perform a regulatory flexibility analysis if it finds that the proposed ***879** rule will not have: (1) "a significant economic impact" on (2) "a substantial number" of (3) "small entities." 5 U.S.C. § 605(b). NRDC contends that EPA satisfied the statutory test, and that Petitioners' interpretation, which rewrites the test to omit the "substantial number" component, is erroneous.

[33] We believe NRDC correctly interprets the statute, *Marsh,* 490 U.S. at 378, 109 S.Ct. 1851, and that EPA reasonably certified that the Phase II Rule would not have a significant economic impact in compliance with the Regulatory Flexibility Act. We also conclude that, even if EPA had failed to properly comply with the procedural requirements of the RFA, its actual assessment of the Rule's economic impacts renders any defective compliance harmless error. In granting relief under RFA § 611, a court may order an agency "to take corrective action consistent with" the RFA and APA, including remand to the agency, 5 U.S.C. § 611(a)(4)(A), but EPA has already conducted the economic analyses Petitioners seek when it convened the "Small Business Advocacy Review Panel" before publishing notice of the proposed rule. 64 Fed. Reg. at 68,801. That Panel evaluated the Rule and considered the comments of small entities on a number of issues, consistent with the procedures described in RFA § 603. *Id.* Appendix 5 of EPA's preamble to the proposed rule explained provisions that had been designed to minimize impacts on small entities, based on advice and recommendations from the Panel. 63 Fed. Reg. 1615, 64 Fed. Reg. 68,811. Modifications for small entities included alternative compliance and reporting mechanisms responsive to the resources of small entities, simplified procedures, performance rather than design standards, and waivers.

Any hypothetical noncompliance would thus have been harmless, since the available remedy would simply require performance of the economic assessments that EPA actually made. Like the Notice and Comment process required in administrative rulemaking by the APA, the analyses required by RFA are essentially procedural hurdles; after considering the relevant impacts and alternatives, an administrative agency remains free to regulate as it sees fit.

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We affirm the Rule against this challenge.[FN66]

FN66. Our consideration of the issue at all may be gratuitous, since petitioners failed to submit timely comment disputing the adequacy of EPA's consideration of economic impacts on small businesses proposed at 63 Fed. Reg. at 1605-07. *United States v. L.A. Tucker Truck Lines*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952) ("[C]ourts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice.").

III.

CONCLUSION

We conclude that the EPA's failure to require review of NOIs, which are the functional equivalents of permits under the Phase II General Permit option, and its failure to make NOIs available to the public or subject to public hearings contravene the express requirements of the Clean Water Act. We therefore remand these aspects of the Small MS4 General Permit option so that EPA may take appropriate action to comply with the Clean Water Act. We also remand so that EPA may consider in an appropriate proceeding the Environmental Petitioners' contention that § 402(p)(6) requires EPA to regulate forest roads. We affirm all other aspects of the Phase II Rule against the statutory, administrative, and constitutional challenges raised in this action.

***880** Petitions for Review GRANTED IN PART and DENIED IN PART.

TALLMAN, Circuit Judge, concurring in part and dissenting in part:

I concur in most of the majority's opinion, but I dissent from Section II.B, which remands the Phase II Rule because its system of general permits is "arbitrary and capricious." I believe EPA's design of a system of general permits supported by notices of intent was a reasonable exercise of EPA's administrative discretion. We must give deference to EPA's interpretation of the laws it is charged with enforcing, so long as EPA's reading of those laws is permissible. Because EPA acted reasonably in designing a National Pollutant Discharge Elimination System ("NPDES") based on general permits and supported by NOIs, I respectfully dissent from the court's decision to remand this portion of the Phase II Rule.

I

As the majority concedes, we evaluate EPA's interpretation of the Clean Water Act with deference. Majority Op. 13796. If Congress's intent is unclear as to whether a system of general permits supplemented by NOIs is allowed, we simply ask "whether EPA's interpretation is permissible." *Ober v. Whitman,* 243 F.3d 1190, 1193 (9th Cir.2001).

II

As an initial matter, then, we must ask if Congress was clear in its intent concerning the propriety of a system of general permits augmented by NOIs.

Five legislative commands guide this inquiry. First, 33 U.S.C. § 1342(p)(6) charges EPA with creating a system to regulate stormwater discharges. Plainly, nothing in this section speaks to whether EPA may utilize a general permit approach in regulating stormwater discharge.

Second, 33 U.S.C. § 1311(a) makes it illegal to discharge pollutants "except as in compliance" with several sections of the Clean Water Act. Again, nothing in this section addresses whether EPA may make use of general permits reinforced by NOIs.

Third, 33 U.S.C. § 1342 in general (as opposed to the limited charge in section 1342(p)(6) discussed above) authorizes EPA to issue NPDES permits, provided that the permits satisfy several conditions. But nothing in section 1342 prohibits the use of a

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system of general permits.

Fourth, the Clean Water Act mandates that "a copy of each permit application and each permit issued under" the NPDES permitting program be made available to the public for inspection and photocopying. 33 U.S.C. § 1342(j). The Act does not elaborate on this naked requirement. There is no explanation of the manner in which NPDES permits and applications are to be made publicly available. Nor does the Act define what constitutes a "permit" that would trigger these requirements.

And fifth, the Clean Water Act authorizes the issuance of an NPDES "permit" "after opportunity for public hearing." 33 U.S.C. § 1342(a)(1). The Act does not provide a definition of "permit," nor does it further detail what triggers the requirement of a public hearing.

In short, the Clean Water Act fails to address the propriety of a general permit system, or whether NOIs ought to be considered "permits." Therefore, we should uphold EPA's creation of a system of general permits buttressed by NOIs so long as it is "permissible." *See* ***881** *Chevron, U.S.A., Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 843-44, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Our duty to defer to EPA in such a situation is based on sound policy. Given the overwhelming challenge and complexity of the programs administered by federal agencies today, it is sensible to trust agencies with the design of those programs so long as the programs are reasonable interpretations of congressional mandates.

The central issues regarding EPA's general permit system are whether the Clean Water Act allows such a system and whether NOIs should be considered "permits." The resolution of these issues requires a complicated weighing of policies (e.g., administrative streamlining vs. robust inquiry) that is precisely what agencies are designed to do and courts are without the resources or expertise to do. "[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction." *Chevron,* 467 U.S. at 843, 104 S.Ct. 2778.

III

The Phase II Rule promulgates a system of general permits. EPA contemplated that these general permits will be issued on a watershed basis, with individual stormwater dischargers then filing NOIs to operate under general permits. The federal regulations implementing this system repeatedly emphasize that "[t]he use of general permits, instead of individual permits, reduces the administrative burden of permitting authorities, while also limiting the paperwork burden on regulated parties." 64 Fed. Reg. 68,722, 68,737, 68,762 (Dec. 8, 1999).

The use of a general permit system for the administration of the NPDES system has been considered and approved before. In *NRDC v. Costle,* 568 F.2d 1369 (D.C.Cir.1977), the District of Columbia Circuit considered a challenge to EPA's regulations under the Federal Water Pollution Control Act, which was the precursor to the Clean Water Act. In *Costle,* EPA sought approval of its design for the NPDES system. EPA had issued regulations exempting broad categories of point sources from the requirement that an NPDES permit be obtained before discharging into federal waters. Part of EPA's rationale in creating the exempted categories was that otherwise EPA would be overwhelmed by the administrative burden of issuing NPDES permits. *Id.* at 1377-79. The *Costle* court affirmed the lower court's rejection of these exemptions because the legislation in question plainly required that all point sources obtain some kind of NPDES permit. *Id.* But in rejecting EPA's regulations, the *Costle* court discussed the options available to EPA in promulgating an NPDES system that was considerate of the enormous burden such a system could impose on EPA. *Id.* at 1380-81. In particular, the court recommended "the use of area or general permits. *The Act allows such techniques.* Area-wide regulation is one well-established means of coping with administrat-

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ive exigency." *Id.* at 1381 (emphasis added).

Against this backdrop, EPA's creation of a general permit system was entirely permissible. And if the creation of a general permit system is permissible, then it does not matter whether NOIs are given a public airing.

The majority contends that the general permit system prevents EPA from fulfilling its duty to make sure that municipalities do not discharge pollutants in violation of the Clean Water Act. The majority reasons that by failing to require EPA review of NOIs, the Rule fails to ensure that a regulated MS4's stormwater pollution control program will satisfy the Clean Water Act requirement that the MS4 "reduce*882 discharges to the maximum extent practicable." Majority Op. 855. But the majority's analysis ignores the effects of the general permit. By filing an NOI, a discharger obligates itself to comply with the limitations and controls imposed by the general permit under which it intends to operate. EPA mandates that all permits (including general permits) condition their issuance on satisfaction of pollution limitations imposed by the Clean Water Act. 40 C.F.R. § 122.44. In particular, EPA requires permits to satisfy the restrictions imposed by Clean Water Act section 307(a). *Id.* at § 122.44(b)(1). Therefore, the *general permit* imposes the obligations with which the discharger must comply (including applicable Clean Water Act standards), and EPA's decision not to review every NOI is not a failure to insure compliance with the Clean Water Act.

The majority also objects to EPA's general permit system because it fails to allow for sufficient public participation in the NOIs. Majority Op. 856-858. The majority's position fails to give deference to EPA and imposes the majority's own wishes instead. EPA would have been justified in creating a system entirely reliant on general or area permits. Its imposition of NOIs is an indulgence to certain policy prerogatives, namely public involvement and the collection of additional information. But the power to create a general permit system necessarily implies the power to require subordinate steps for NOIs that do not quite reach the level of inquiry associated with actual permits.

IV

We function as an adjudicator of disputes, not as a policy-making body. Where an agency promulgates rules after a deliberative process, it is incumbent upon us to respect the agency's decisions or else risk trivializing the function of that agency. In this case, EPA made a permissible decision to create a general permit program supported by NOIs. Therefore, I respectfully dissent from Section II.B of the majority's opinion.

C.A.9 (Cal.),2003.
Environmental Defense Center, Inc. v. U.S. E.P.A.
344 F.3d 832, 57 ERC 1039, 33 Envtl. L. Rep. 20,269, 03 Cal. Daily Op. Serv. 8398, 2003 Daily Journal D.A.R. 10,479

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ATTACHMENT NO. 17

Natural Resources Defense Council v. Costle (1977) 568 F.2d 1369

Natural Resources Defense Council, Inc. v. Costle, C.A.D.C.,1977.

United States Court of Appeals,District of Columbia Circuit.
NATURAL RESOURCES DEFENSE COUNCIL, INC.[FN*]

FN* For convenience the court will refer to this case hereafter as NRDC v. Costle (Runoff Point Sources).

v.

Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Forest Products Association, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.

v.

Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Milk Producers Federation, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.

v.

Douglas M. COSTLE, Administrator, and Environmental Protection Agency, et al., Appellants.
NATURAL RESOURCES DEFENSE COUNCIL, INC.

v.

Douglas M. COSTLE, Administrator, Environmental Protection Agency, Colorado River Water Conservation District, Appellant.
Nos. 75-2056, 75-2066, 75-2067 and 75-2235.

Argued Dec. 3, 1976.
Decided Nov. 16, 1977.

The National Resources Defense Council, Inc. challenged authority of the Environmental Protection Agency Administrator to exempt categories of point sources from permit requirements of the Federal Water Pollution Control Act Amendments of 1972. The United States District Court for the District of Columbia, Thomas A. Flannery, J., 396 F.Supp. 1393, granted summary judgment to the NRDC and the Administrator and others appealed. The Court of Appeals, Leventhal, Circuit Judge, held that: (1) legislative history shows that National Pollution Discharge Elimination System permit is the only means by which discharger may escape total prohibition of discharges from point sources found in FWPCA; (2) national effluent limitations need not be uniform as precondition for NPDES program to include pollution from agricultural, silvicultural, and storm runoff point sources, and while technological or administrative infeasibility of such limitations may warrant adjustments in permit program it does not authorize Administrator to exclude relevant point sources; (3) where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate problems of point source pollution as well as require monitoring and reporting of effluent level; and (4) a number of administrative devices, including general or area permits are available to aid EPA in practical administration of NPDES program, and FWPCA, however tight in some respects, leaves some leeway to EPA in interpretation of that statute and affords agency some means to consider matters of feasibility.

Affirmed in accordance with opinion.

MacKinnon, Circuit Judge, filed a concurring opinion.

West Headnotes

[1] Environmental Law 149E ⇐196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants.
Most Cited Cases
(Formerly 270k35, 199k25.7(16) Health and Environment)

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Legislative history clearly shows that Congress intended that the national pollution discharge elimination system permit be the only means by which a discharger of pollutant may escape total prohibition of discharges from point sources found in Federal Water Pollution Control Act Amendments. Federal Water Pollution Control Act, §§ 301, 301(a), 402 as amended 33 U.S.C.A. §§ 1311, 1311(a), 1342.

[2] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(13.1), 199k25.7(13) Health and Environment, 270k35)
Use of word "may" in that section of Federal Water Pollution Control Act Amendment providing that the administrator may issue permit for discharge of any pollutant means only that the administrator has the discretion either to issue permit or to leave pollutant discharger subject to total proscription of statute making discharge of any pollutant by any person unlawful except as provided in Act. Federal Water Pollution Control Act, §§ 301(a), 302, 304 as amended 33 U.S.C.A. §§ 1311(a), 1342, 1344.

[3] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(6.1), 199k25.7(6) Health and Environment)

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35)
Existence of uniform national effluent limitations is not a necessary precondition for incorporating into the national pollutant discharge elimination system program pollution from agricultural, silvicultural, and storm water runoff point sources; technological or administrative infeasibility of such limitations may result in adjustments in permit programs but does not authorize administrator to exclude relevant point sources from program. Federal Water Pollution Control Act, §§ 301, 402, 404, 1362(12, 14), as amended 33 U.S.C.A. §§ 1311, 1342, 1344, 502(12, 14).

[4] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
(Formerly 270k35, 199k25.7(10.1), 199k25.7(10) Health and Environment)
Where numeric effluent limitations are infeasible, point of discharge permits may proscribe industry practices which aggravate problems of point source pollution as well as require monitoring and reporting of effluent levels contrary to claim that any limitations must be issued in terms of a numerical effluent standard. Federal Water Pollution Control Act, §§ 302(a), 402, 402(a) as amended 33 U.S.C.A. §§ 1312(a), 1342, 1342(a).

[5] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35, 199k25.7(13.1), 199k25.7(13) Health and Environment)
Federal Water Pollution Control Act Amendments merely require that point of discharge permits be in compliance with limitations section of Act and as a

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result the use of area or general permits is allowed. Federal Water Pollution Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[6] Environmental Law 149E ⚿641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
(Formerly 199k25.15(3.2), 199k25.15(1) Health and Environment, 270k35)
Power to define point and nonpoint sources of pollution is vested in Environmental Protection Agency under the Federal Water Pollution Control Act Amendments, and exercise of that power should be reviewed by court only after opportunity for full agency review and examination. Federal Water Pollution Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[7] Environmental Law 149E ⚿216

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek216 k. In General. Most Cited Cases
(Formerly 270k35, 199k25.7(11) Health and Environment)
Federal Water Pollution Control Act Amendments, however tight in some respects, leave some leeway to Environmental Protection Agency in interpretation and affords agency some means to consider matter of feasibility. Federal Water Pollution Control Act, §§ 1-26, 101-517 as amended 33 U.S.C.A. §§ 1151-1175, 1251-1376.

[8] Administrative Law and Procedure 15A ⚿305

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak303 Powers in General
15Ak305 k. Statutory Basis and Limitation. Most Cited Cases
It is not what court thinks that is generally appropriate to regulatory process, but what Congress intended.

**1370 **148 Syllabus by the Court*

The National Resources Defense Council, Inc. (NRDC) challenged the authority of the EPA Administrator to exempt categories of point sources from the permit requirements of s 402 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. s 1342 (Supp. V 1975). On appeal from a grant of summary judgment to NRDC, held:

1. The legislative history makes clear that Congress intended the National Pollution Discharge Elimination System (NPDES) permit to be the only means by which a discharger may escape the total prohibition of discharges from point sources found in FWPCA s 301(a), 33 U.S.C. s 1311(a) (Supp. V 1975).

2. It is not necessary that national effluent limitations be uniform as a precondition for the NPDES program to include pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility ***1371 **149** of such limitations may warrant adjustments in the permit program, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

3. Where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate the problems of point source pollution as well as require monitoring and reporting of effluent levels.

4. A number of administrative devices, including general or area permits, are available to aid EPA in the practical administration of the NPDES program.

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The FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute and, in that regard, affords the agency some means to consider matters of feasibility.

Appeals from the United States District Court for the District of Columbia (D.C. Civil 1629-73).

Irvin B. Nathan, Washington, D. C., with whom Burton J. Mallinger, Washington, D. C., was on the brief, for appellant in No. 75-2056.

Charles W. Bills, Washington, D. C., with whom James R. Murphy, Washington, D. C., was on the brief for appellant in No. 75-2066.

G. William Frick, Atty., Dept. of Justice, Kansas City, Mo., of the bar of the Supreme Court of Missouri, pro hac vice by special leave of court for appellants in No. 75-2067. Peter R. Taft, Asst. Atty. Gen., Robert V. Zener, Gen. Counsel, Environmental Protection Agency, Edmund B. Clark, Lloyd S. Guerci, Larry A. Boggs, Attys., Dept. of Justice and Pamela P. Quinn, Atty., Environmental Protection Agency, Washington, D. C., were on the brief for appellants in No. 75-2067.

Christopher D. Williams, Washington D. C., with whom Kenneth Balcomb and Robert L. McCarty, Washington, D. C., were on the brief for appellant in No. 75-2235.

J. G. Speth, Washington, D. C., for appellee.

Theodore O. Torve, Asst. Atty. Gen., State of Washington, Olympia, Wash., filed a brief on behalf of the State of Washington as amicus curiae urging reversal in No. 75-2056.

Richard E. Schwartz, Jefferson City, Mo., filed a brief on behalf of Iron and Steel Institute, as amicus curiae urging reversal in No. 75-2067.

John L. Hill, Atty. Gen., State of Texas, and David M. Kendall, Jr., First Asst. Atty. Gen., State of Texas, Austin, Tex., filed a brief on behalf of State of Texas as amicus curiae urging reversal in No. 75-2067.

Before BAZELON, Chief Judge, and LEVENTHAL and MacKINNON, Circuit Judges.

Opinion for the Court filed by LEVENTHAL, Circuit Judge.

Concurring Opinion filed by MacKINNON, Circuit Judge.LEVENTHAL, Circuit Judge:

In 1972 Congress passed the Federal Water Pollution Control Act Amendments (hereafter referred to as the "FWPCA" or the "Act" [FN1]). It was a dramatic response to accelerating environmental degradation of rivers, lakes and streams in this country. The Act's stated goal is to eliminate the discharge of pollutants into the Nation's waters by 1985. This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act.

> FN1.33 U.S.C. ss 1251-1376 (Supp. V 1975). Although characterized in the official title as "amendments", the 1972 FWPCA actually substitutes its provisions for those of the pre-1972 Federal Water Pollution Control Act as amended, id. ss 1151-1175 (1970).

The FWPCA sets up a permit program, the National Pollutant Discharge Elimination System (NPDES), as the primary means of enforcing the Act's effluent limitations.[FN2] At issue in this case is the authority***1372 **150** of the Administrator of the Environmental Protection Agency to make exemptions from this permit component of the FWPCA.

> FN2. This case deals with s 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), which sets out the permitting authority of the EPA Administrator as well as that of the states under EPA-approved state permit programs. The Secretary of the Army also has a permitting authority in certain circumstances. Under s 404 of the FWPCA, 33 U.S.C. s 1344 (Supp. V 1975), he may issue permits for the discharge of dredged or fill material into navigable waters.

Section 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), provides that under certain circumstances the EPA Administrator "may . . . issue a permit for the discharge of any pollutant" notwith-

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standing the general proscription of pollutant discharges found in s 301 of the Act.33 U.S.C. s 1311 (Supp. V 1975). The discharge of a pollutant is defined in the FWPCA as "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or floating craft."33 U.S.C. s 1362(12) (Supp. V 1975). In 1973 the EPA Administrator issued regulations that exempted certain categories of "point sources" of pollution from the permit requirements of s 402.[FN3] The Administrator's purported authority to make such exemptions turns on the proper interpretation of s 402.

FN3.40 C.F.R. s 125.4 (1975). See 38 Fed.Reg. 18000-04 (1973).

A "point source" is defined in s 502(14) as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."[FN4]

FN4.33 U.S.C. s 1362(14) (Supp. V 1975).

The 1973 regulations exempted discharges from a number of classes of point sources from the permit requirements of s 402, including all silvicultural point sources; all confined animal feeding operations below a certain size; all irrigation return flows from areas of less than 3,000 contiguous acres or 3,000 noncontiguous acres that use the same drainage system; all nonfeedlot, nonirrigation agricultural point sources; and separate storm sewers containing only storm runoff uncontaminated by any industrial or commercial activity.[FN5] The EPA's ***1373 **151** rationale for these exemptions is that in order to conserve the Agency's enforcement resources for more significant point sources of pollution, it is necessary to exclude these smaller sources of pollutant discharges from the permit program.

FN5.40 C.F.R. s 125.4 (1975):

The following do not require an NPDES permit:

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement

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facilities, if such facility or facilities contain, or any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e. g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

The National Resources Defense Council, Inc. (NRDC) sought a declaratory judgment that the regulations are unlawful under the FWPCA. Specifically, NRDC contended that the Administrator does not have authority to exempt any class of point source from the permit requirements of s 402. It argued that Congress in enacting ss 301, 402 of the FWPCA intended to prohibit the discharge of pollutants from all point sources unless a permit had been issued to the discharger under s 402 or unless the point source was explicitly exempted from the permit requirements by statute. The District Court granted NRDC's motion for summary judgment. It held that the FWPCA does not authorize the Administrator to exclude any class of point sources from the permit program.NRDC v. Train, 396 F.Supp. 1393 (D.D.C.1975). The EPA has appealed to this court. It is joined on appeal by a number of defendant-intervenors, National Forest Products Association (NFPA), National Milk Producers Federation (NMPF), and the Colorado River Conservation District.[FN6]

FN6. Briefs as amicus curiae were filed by the American Iron and Steel Institute, the State of Texas, and the State of Washington, Department of Natural Resources.

This case thus presents principally a question of statutory interpretation. EPA also argues that even if Congress intended to include the pertinent categories in the permit program, the regulations exempting them should be upheld on a doctrine of administrative infeasibility, i. e., the regulations should be upheld as a deviation from the literal terms of the FWPCA that is necessary to permit the Agency to realize the principal objectives of the Act.

I. LEGISLATIVE HISTORY

The principal purpose of the FWPCA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[FN7]The Act's ultimate objective, to eliminate the discharge of pollutants into navigable waters by 1985, is to be achieved by means of two intermediate steps. As of July 1, 1977, all point sources other than publicly owned treatment works were to have achieved effluent limitations that require application of the "best practicable control technology." [FN8]These same point sources must reduce their effluent discharges by July 1, 1983, to meet limitations determined by application of the "best available technology economically achievable" for each category of point source.[FN9]

FN7.33 U.S.C. s 1251(a) (Supp. V 1975).

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FN8.33 U.S.C. s 1311(b)(1)(A) (Supp. V 1975).

FN9.Id.s 1311(b)(2)(A).

The technique for enforcing these effluent limitations is straightforward. Section 301(a) of the FWPCA provides:
Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.[FN10]

FN10.Id.s 1311(a).

Appellants concede that if the regulations are valid, it must be because they are authorized***1374 **152** by s 402; none of the other sections listed in s 301(a) afford grounds for relieving the exempted point sources from the prohibition of s 301. [FN11]

FN11. Section 302, 33 U.S.C. s 1312 (Supp. V 1975), permits the Administrator to set water quality related effluent limitations or control strategies where technology-based limitations are inadequate. Section 306, 33 U.S.C. s 1316 (Supp. V 1975), instructs the EPA Administrator to promulgate standards of performance for new sources of pollution constructed after those standards are proposed. Section 307, 33 U.S.C. s 1317 (Supp. V 1975), gives the EPA Administrator the authority to issue generally applicable effluent standards with respect to toxic substances and to require pretreatment of some pollutants before their introduction into treatment works. By virtue of s 318, 33 U.S.C. s 1328 (Supp. V 1975), the Administrator may "permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision."Section 404, 33 U.S.C. s 1344 (Supp. V 1975), gives the Secretary of the Army authority to issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 402 provides in relevant part that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of the necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

The NPDES permit program established by s 402 is central to the enforcement of the FWPCA. It translates general effluent limitations into the specific obligations of a discharger. As this court noted in NRDC v. Train, 166 U.S.App.D.C. 312, 315, 510 F.2d 692, 695 (1975), the Act "relies primarily on a permit program for the achievement of effluent limitations . . . to attain its goals."The comments in floor debates of Senator Muskie, the leading Congressional sponsor of the Act, makes this clear.[FN12]

FN12."The Administrator of the Environmental Protection Agency is authorized to regulate discharge of pollutants through the use of an expanded permit program."117 Cong.Rec. 38800 (1971) (Senator Muskie) (emphasis added), reprinted in 2 Environmental Policy Div., Congressional Reference Serv., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 1259 (Senate Public Works Comm. Print 1973) (hereinafter cited as Legislative History).

The appellants argue that s 402 not only gives the Administrator the discretion to grant or refuse a permit, but also gives him the authority to exempt classes of point sources from the permit require-

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ments entirely. They argue that this interpretation is supported by the legislative history of s 402 and the fact that unavailability of this exemption power would place unmanageable administrative burdens on the EPA.

[1] Putting aside for the moment the appellants' administrative infeasibility argument, we agree with the District Court that the legislative history makes clear that Congress intended the NPDES permit to be the only means by which a discharger from a point source may escape the total prohibition of s 301(a). This intention is evident in both Committee Reports. In discussing s 301 the House Report stressed:

Any discharge of a pollutant without a permit issued by the Administrator under section 318, or by the Administrator or the State under section 402 or by the Secretary of the Army under section 404 is unlawful. Any discharge of a pollutant not in compliance with the conditions or limitations of such a permit is also unlawful.[FN13]

> FN13. H.Rep.No.92-911, 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787.

The Senate Report echoed this interpretation:

(Section 301) clearly establishes that the discharge of pollutants is unlawful. Unlike its predecessor program which permitted the discharge of certain amounts of pollutants under the conditions described above, this legislation would clearly establish that no one has the right *1375 **153 to pollute that pollution continues because of technological limits, not because of any inherent rights to use the nation's waterways for the purpose of disposing of wastes.

The program proposed by this Section will be implemented through permits issued in Section 402. The Administrator will have the capability and the mandate to press technology and economics to achieve those levels of effluent reduction which he believes to be practicable in the first instance and attainable in the second.[FN14]

> FN14. S.Rep.No.92-414, 92d Cong., 1st Sess. 42 (1971), reprinted in Legislative History at 1460; U.S.Code Cong. & Admin.News 1972, pp. 3668, 3709.

[2] The EPA argues that since s 402 provides that "the Administrator may . . . issue a permit for the discharge of any pollutant" (emphasis added), he is given the discretion to exempt point sources from the permit requirements altogether. This argument, as to what Congress meant by the word "may" in s 402, is insufficient to rebut the plain language of the statute and the committee reports. We say this with due awareness of the deference normally due "the construction of a new statute by its implementing agency."NRDC v. Train, 166 U.S.App.D.C. at 326, 510 F.2d at 706; see Zuber v. Allen, 396 U.S. 168, 192, 90 S.Ct. 314, 24 L.Ed.2d 345 (1969); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965). The use of the word "may" in s 402 means only that the Administrator has discretion either to issue a permit or to leave the discharger subject to the total proscription of s 301. This is the natural reading, and the one that retains the fundamental logic of the statute.

Under the EPA's interpretation the Administrator would have broad discretion to exempt large classes of point sources from any or all requirements of the FWPCA. This is a result that the legislators did not intend. Rather they stressed that the FWPCA was a tough law that relied on explicit mandates to a degree uncommon in legislation of this type. A statement of Senator Jennings Randolph of West Virginia, Chairman of the Senate Committee responsible for the Act, is illustrative.

I stress very strongly that Congress has become very specific on the steps it wants taken with regard to environmental protection. We have written into law precise standards and definite guidelines on how the environment should be protected. We have done more than just provide broad directives for administrators to follow. . . .

In the past, too many of our environmental laws have contained vague generalities. What we are at-

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tempting to do now is provide laws that can be administered with certainty and precision. I think that is what the American people expect that we do.[FN15]

> FN15.117 Cong.Rec. 38805 (1971), reprinted in Legislative History at 1272. See also the comments of Senator Montoya on the original Senate bill.
> Your committee has placed before you a tough bill. This body and this Nation would not have it be otherwise. Our legislation contains an important principle of psychology: Men seldom draw the best from themselves unless pressed by circumstances and deadlines. This bill contains deadlines and it imposes rather tough standards on industry, municipalities, and all other sources of pollution. Only under such conditions are we likely to press the technological threshold of invention into new and imaginative developments that will allow us to meet the objectives stated in our bill.
> 117 Cong.Rec. 38808 (1971), reprinted in Legislative History at 1278.

There are innumerable references in the legislative history to the effect that the Act is founded on the "basic premise that a discharge of pollutants without a permit is unlawful and that discharges not in compliance with the limitations and conditions for a permit are unlawful."[FN16]Even when infeasibility arguments were squarely raised, ***1376 ****154** the legislature declined to abandon the permit requirement.[FN17] We stand by our previous interpretation of the Act's scheme for the enforcement of effluent limitations:

> FN16.118 Cong.Rec. 10215 (1972) (Rep. Clausen), reprinted in Legislative History at 378. See, e. g., H.R.Rep.No.92-911 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787; S.Rep.No.92-414; 92d Cong., 1st Sess. 42-43 (1971), reprinted in Legislative History at 1460-61; 118 Cong.Rec. 10661 (1972) (Rep. Podell), reprinted in Legislative History at 574.
>
> FN17. The House rejected an amendment designed to avoid the problems of including irrigation return flows in the permit program. Congressman Teno Roncalio of Wyoming offered an amendment on the floor of the House that would have explicitly exempted irrigated agriculture from the NPDES permit program.
> Mr. RONCALIO. . . .
> I offer my amendment so that a serious omission to H.R. 11896 can be corrected before we end up with a law that would be virtually impossible to enforce. My amendment would specifically exempt irrigated agriculture from sections 301(a), 302 and 304 of the Federal Water Pollution Control Act.
> I think my colleagues will agree that the type of salinity problems created by irrigation runoff are simply not as alarming as the more common pollutants discharged by industrial and municipal facilities. Substantial salinity concentrations have little effect on recreational use of water or its suitability for the propagation of fish.
> My amendment is necessary, Mr. Chairman, because at the present time we could not enforce pollution control on irrigation systems. It is virtually impossible to trace pollutants to specific irrigation lands, making these pollutants a nonpoint source in most cases. Second, we do not have the technology to deal with irrigation runoff (as contrasted to industrial pollution) and if we begin making laws to control something that cannot be handled with our given technological knowledge, we will be doing many thousand farmers and ranchers a great disservice. In fact, we will be doing the Federal Government a great disservice

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> if we actually pass a Federal water pollution control bill that cannot be fully enforced.
> 118 Cong.Rec. 10764-65 (1972), reprinted in Legislative History at 651. The amendment was rejected.

After dates set forth in (s 301(b)), a person must obtain a permit and comply with its terms in order to discharge any pollutant. The conditions of the permit must assure that any discharge complies with the applicable requirements of numerous sections including the effluent limitations of section 301(b).
NRDC v. Train, 166 U.S.App.D.C. at 316, 510 F.2d at 696 (emphasis added; footnotes omitted).

We also note that all the Supreme Court decisions referring to s 402 view the permit as the only means by which a point source polluter can avoid the ban on discharges found in s 301. Strictly speaking these expressions may be dicta, for they do not touch directly on the interpretation of s 402. But they are at least a considered reading of what the Act appears to mean.

In Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976), Justice Marshall characterized the enforcement scheme of the FWPCA as follows:
(E)ffluent limitations are enforced through a permit program. The discharge of "pollutants" into water is unlawful without a permit issued by the Administrator of the EPA or, if a State has developed a program that complies with the FWPCA, by the State. . . .

Id. at 7, 96 S.Ct. at 1941 (footnote omitted).

In EPA v. State Water Resources Control Board, 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976), the issue was whether federal installations were subject to state NPDES programs. Justice White's majority opinion describes NPDES at 205, 96 S.Ct. at 2025 (footnote omitted):
Under NPDES, it is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. An NPDES permit serves to transform generally applicable effluent limitations and other standards including those based on water quality into the obligations (including a timetable for compliance) of the individual discharger, and the Amendments provide for direct administrative and judicial enforcement of permits.

In E. I. du Pont de Nemours v. Train, 430 U.S. 112, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977), the Court held that under FWPCA the EPA can set uniform effluent limitations through industry-wide regulations rather than develop them on an individual basis during the permit issuance process. But the Court, per Justice Stevens, clearly indicated***1377 **155** that those limitations were translated into obligations of the discharger through their inclusion in an NPDES permit.Id. at 119-20, 97 S.Ct. 965.

The wording of the statute, legislative history, and precedents are clear: the EPA Administrator does not have authority to exempt categories of point sources from the permit requirements of s 402. Courts may not manufacture for an agency a revisory power inconsistent with the clear intent of the relevant statute. In holding that the FPC does not have authority to exempt the rates of small producers from regulation under the Natural Gas Act, the Supreme Court observed:
It is not the Court's role . . . to overturn congressional assumptions embedded into the framework of regulation established by the Act. This is a proper task for the Legislature where the public interest may be considered from the multifaceted points of view of the representational process.

FPC v. Texaco, Inc., 417 U.S. 380, 400, 94 S.Ct. 2315, 2327, 41 L.Ed.2d 141 (1974).

II. ADMINISTRATIVE INFEASIBILITY

The appellants have stressed in briefs and at oral argument the extraordinary burden on the EPA that will be imposed by the above interpretation of the

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scope of the NPDES program. The spectre of millions of applications for permits is evoked both as part of appellants' legislative history argument that Congress could not have intended to impose such burdens on the EPA and as an invitation to this court to uphold the regulations as deviations from the literal terms of the FWPCA necessary to permit the agency to realize the general objectives of that act. During oral argument we asked for supplemental briefs so that the appellants could expand on their infeasibility arguments. We consider EPA's infeasibility contentions in turn.

A. Uniform National Effluent Limitations

EPA argues that the regulatory scheme intended under Titles III and IV of the FWPCA requires, first, that the Administrator establish national effluent limitations [FN18] and, second, that these limitations be incorporated in the individual permits of dischargers. EPA argues that the establishment of such limitations is simply not possible with the type of point sources involved in the 1973 regulations, which essentially involve the discharge of runoff i. e., wastewaters generated by rainfall that drain over terrain into navigable waters, picking up pollutants along the way.

> FN18. See FWPCA s 502(11), 33 U.S.C. s 1362(11) (Supp. V 1975):
> The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

There is an initial question, to what extent point sources are involved in agricultural, silvicultural, and storm sewer runoff. The definition of point source in s 502(14), including the concept of a "discrete conveyance", suggests that there is room here for some exclusion by interpretation. We discuss this issue subsequently. Meanwhile, we assume that even taking into account what are clearly point sources, there is a problem of infeasibility which the EPA properly opens for discussion.

EPA contends that certain characteristics of runoff pollution make it difficult to promulgate effluent limitations for most of the point sources exempted by the 1973 regulations:
The major characteristic of the pollution problem which is generated by runoff . . . is that the owner of the discharge point . . . has no control over the quantity of the flow or the nature and amounts of the pollutants picked up by the runoff. The amount of flow obviously is unpredictable because it results from the duration and intensity of the rainfall event, the topography, the type of ground cover and the saturation point of the land due to any previous ***1378 **156** rainfall. Similar factors affect the types of pollutants which will be picked up by that runoff, including the type of farming practices employed, the rate and type of pesticide and fertilizer application, and the conservation practices employed . . .
An effluent limitation must be a precise number in order for it to be an effective regulatory tool; both the discharger and the regulatory agency need to have an identifiable standard upon which to determine whether the facility is in compliance. That was the principal of the passage of the 1972 Amendments.

Federal Appellants' Memorandum on "Impossibility" at 7-8 (footnote omitted). Implicit in EPA's contentions is the premise that there must be a uniform effluent limitation prior to issuing a permit. That is not our understanding of the law.

In NRDC v. Train, we described the interrelationship of the effluent limitations and the NPDES permit program, 166 U.S.App.D.C. at 327, 510 F.2d at 707 (footnotes omitted):
The Act relies on effluent limitations on individual point sources as the "basis of pollution prevention and elimination." . . . Section 301(b) contains a

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broad description of phase one and phase two effluent limitations, to be achieved by July 1, 1977 and July 1, 1983, respectively. The limitations established under section 301(b) are to be imposed upon individual point sources through permits issued under the National Pollutant Discharge Elimination System (NPDES) established by section 402. Those permits are to contain schedules which will assure phased compliance with the effluent limitations no later than the final dates set forth in section 301(b). Section 304(b) calls for the publication of regulations containing guidelines for effluent limitations for classes and categories of point sources. These guidelines are intended to assist in the establishment of section 301(b) limitations that will provide uniformity in the permit conditions imposed on similar sources within the same category by diverse state and federal permit authorities.

As noted in NRDC v. Train, the primary purpose of the effluent limitations and guidelines was to provide uniformity among the federal and state jurisdictions enforcing the NPDES program and prevent the "Tragedy of the Commons" [FN19] that might result if jurisdictions can compete for industry and development by providing more liberal limitations than their neighboring states.166 U.S.App.D.C. at 329, 510 F.2d at 709. The effluent limitations were intended to create floors that had to be respected by state permit programs.

> FN19. As one commentator has recently written:
>
> The Tragedy of the Commons arises in noncentralized decisionmaking under conditions in which the rational but independent pursuit by each decisionmaker of its own self-interest leads to results that leave all decisionmakers worse off than they would have been had they been able to agree collectively on a different set of policies.
>
> Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 Yale L.J. 1196, 1211 (1977). The classic account of the Tragedy of the Commons can be found in Hardin, The Tragedy of the Commons, 162 Science 1243 (1968). Hardin makes the point in the context of sheep-grazing. Put simply, even over-simply, Hardin shows that if no one is authorized to set limits to preserve open pasture land as a whole, allowing sheep to graze on that land may lead to serious overgrazing, as each herdsman thinks only of his own advantage. The solution lies in some mandate, from above or by agreement, with sanctions to compel conformance.

But in NRDC v. Train it was also recognized that permits could be issued before national effluent limitations were promulgated and that permits issued subsequent to promulgation of uniform effluent limitations could be modified to take account of special characteristics of subcategories of point sources.

Prior to the promulgation of effluent limitations under section 301, the director of a state program is instructed merely to impose such terms and conditions in each permit as he determines are necessary to carry out the provisions of the Act. Once ***1379 **157** an effluent limitation is established, however, the state director and the regional EPA Administrator are required to apply the specified, uniform effluent limitations, modified only as necessary to take account of fundamentally different factors pertaining to particular point sources within a given class or category. Any variation in the uniform limitations adopted for specific dischargers must be approved by the Administrator.

166 U.S.App.D.C. at 330, 510 F.2d at 710 (footnotes omitted).

Another passage in NRDC v. Train touches on the infeasibility problem. We noted that "(t)he statutory framework is not so tightly drawn as to require guidelines for each and every class and category of point source regardless of the need for uniform

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guidelines or to mandate that all guidelines be published prior to December 31 (1974) regardless of their quality or the burden that task would place upon the agency."Id. at 320-21, 510 F.2d at 710-11. In that case this court fully appreciated that technological and administrative constraints might prevent the Administrator from developing guidelines and corresponding uniform numeric effluent limitations for certain point sources anytime in the near future. The Administrator was deemed to have the burden of demonstrating that the failure to develop the guidelines on schedule was due to administrative or technological infeasibility.166 U.S.App.D.C. at 333, 510 F.2d at 713.Yet the underlying teaching was that technological or administrative infeasibility was a reason for adjusting court mandates to the minimum extent necessary to realize the general objectives of the Act.[FN20] It is a number of steps again to suggest that these problems afford the Administrator the authority to exempt categories of point sources from the NPDES program entirely.

> FN20. In NRDC v. Train, this court stated:
> A federal equity court may exercise its discretion to give or withhold its mandate in furtherance of the public interest, including specifically the interest in effectuating the congressional objective incorporated in regulatory legislation. We think the court may forebear the issuance of an order in those cases where it is convinced by the official involved that he has in good faith employed the utmost diligence in discharging his statutory responsibilities. The sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him "to do an impossibility."
> 166 U.S.App.D.C. at 333, 510 F.2d at 713 (footnotes omitted). For reasons stated in this opinion, we conclude that to require the EPA Administrator to include silvicultural, agricultural, and storm sewer point sources in the NPDES program is not to require him "to do an impossibility."

With time, experience, and technological development, more point sources in the categories that EPA has now classed as exempt may be amenable to national effluent limitations achieved through end-of-pipe technology or other means of pollution control. EPA has noted its own success with runoff from mining operations:

EPA has found that in the area of runoff from mining operations, there is sufficient predictability because of a longer history of regulation and the relatively confined nature of the operations that numerical limitations can be established. Thus, consistent with EPA's position stated earlier that it will expand the permit program where its capability of establishing effluent limitations allows, appropriate limitations have been created and the permit program expanded.

Federal Appellants' Memorandum on "Impossibility" at 8.

[3] In sum, we conclude that the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility of such limitations may result in adjustments in the permit programs, as will be seen, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

B. Alternative Permit Conditions under s 402(a)

EPA contends that even if it is possible to issue permits without national effluent limitations,***1380 **158** the special characteristics of point sources of runoff pollution make it infeasible to develop restrictions on a case-by-case basis. EPA's implicit premise is that whether limitations are promulgated on a class or individual source basis, it is still necessary to articulate any limitation in terms of a numerical effluent standard. That is not our under-

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standing.

[4] Section 402 provides that a permit may be issued upon condition "that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act."33 U.S.C. s 1342(a) (Supp. V 1975) (emphasis added). This provision gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges. The permit may proscribe industry practices that aggravate the problem of point source pollution.[FN21]

> FN21. That Congress did not regard numeric effluent limitations as the only permissible limitation on a discharger is supported by s 302(a) of the Act, 33 U.S.C. s 1312(a) (Supp. V 1975):
> Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under (s 301(b) of the Act), would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.
> The emphasis has been added.

EPA's counsel caricatures the matter by stating that recognition of any such authority would give EPA the power "to instruct each individual farmer on his farming practices."Federal Appellants Memorandum on "Impossibility" at 12. Any limitation on a polluter forces him to modify his conduct and operations. For example, an air polluter may have a choice of installing scrubbers, burning different fuels or reducing output. Indeed, the authority to prescribe limits consistent with the best practicable technology may be tantamount to prescribing that technology. Of course, when alternative techniques are available, Congress intended to give the discharger as much flexibility as possible in choosing his mode of compliance. See, e. g., H.Rep.No.92-911, 92d Cong., 2d Sess. 107, reprinted in Legislative History at 794. We only indicate here that when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.

It may be appropriate in certain circumstances for the EPA to require a permittee simply to monitor and report effluent levels; EPA manifestly has this authority.[FN22] Such permit conditions might be desirable where the full extent of the pollution problem is not known.

> FN22. FWPCA s 402(a)(3), (b)(2)(B), 33 U.S.C. s 1342(a)(3), (b)(2)(B) (Supp. V 1975). EPA concedes that it has this authority. Federal Appellants' Memorandum on "Impossibility" at 14.

C. General Permits

Finally, EPA argues that the number of permits involved in the absence of an exemption authority will simply overwhelm the Agency. Affidavits filed with the District Court indicate, for example, that the number of silviculture point sources may be over 300,000 and that there are approximately 100,000 separate storm sewer point sources.[FN23]

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We are and must be sensitive to ***1381 **159** EPA's concerns of an intolerable permit load. But the District Court and the various parties have suggested devices to mitigate the burden to accommodate within a practical regulatory scheme Congress's clear mandate that all point sources have permits. All that is required is that EPA makes full use of its interpretational authority. The existence of a variety of options belies EPA's infeasibility arguments.

> FN23. Affidavit of William H. McCredie, Director, Industrial Forestry, of the NFPA; Affidavit of Walter G. Gilbert, Chief of the Municipal Operations Branch, Municipal Waste Water Systems Div., EPA Office of Air and Water Programs.

[5] Section 402 does not explicitly describe the necessary scope of a NPDES permit. The most significant requirement is that the permit be in compliance with limitation sections of the Act described above. As a result NRDC and the District Court have suggested the use of area or general permits. The Act allows such techniques. Area-wide regulation is one well-established means of coping with administrative exigency. An instance is area pricing for natural gas producers, which the Supreme Court upheld in Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968).[FN24] A more dramatic example is the administrative search warrant, which may be issued on an area basis despite the normal Fourth Amendment requirement of probable cause for searching specific premises. Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

> FN24. In Permian Basin the Supreme Court observed:
> The Commission has asserted, and the history of producer regulation has confirmed, that the ultimate achievement of the Commission's regulatory purposes may easily depend upon the contrivance of more expeditious administrative methods. The Commission believes that the elements of such methods may be found in area proceedings."(C)onsiderations of feasibility and practicality are certainly germane" to the issues before us. . . . We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted.
> 390 U.S. at 777, 88 S.Ct. at 1365.

In response to the District Court's order, EPA promulgated regulations that make use of the general permit device.42 Fed.Reg. 6846-53 (Feb. 4, 1977). The general permit is addressed to a class of point source dischargers, subject to notice and opportunity for public hearing in the geographical area covered by the permit. Although we do not pass on the validity of the February, 1977, regulations, they serve to dilute an objection of wholesale infeasibility.[FN25]

> FN25. It is also of some, albeit limited, significance that the House Committee on Government Operations found EPA's administrative problems with applying the permit program to animal feedlots "grossly exaggerated." It was of the opinion that the Administrator did not have authority to exempt point sources from the NPDES program. H.Rep.No.93-1012, 93d Cong., 2d Sess. 15-30 (1974).

Our approach is not fairly subject to the criticism that it elevates form over substance that the end result will look very much like EPA's categorical exemption. It is the function of the courts to require agencies to comply with legislative intent when that intent is clear, and to leave it to the legislature to make adjustments when the result is counterproductive.[FN26] At the same time, where intent on an issue is unclear,***1382 **160** we are instructed to afford the administering agency the flexibility necessary to achieve the general objectives of the Act.Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645, 653,93 S.Ct. 2448,37 L.Ed.2d 235 (1973); United States v. Southwestern Cable Co., 392 U.S. 157, 177-78, 88 S.Ct. 1994, 20 L.Ed.2d

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1001 (1968); Permian Basin Area Rate Cases, 390 U.S. 747, 780, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968). These lines of authority conjoin in our approach. We insist, as the Act insists, that a permit is necessary; the Administrator has no authority to exempt point sources from the NPDES program. But we concede necessary flexibility in the shaping of the permits that is not inconsistent with the clear terms of the Act.

> FN26. The Supreme Court recently reiterated this instruction in Union Electric Co. v. EPA, 427 U.S. 246, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). There the Court held that the EPA Administrator could not consider claims of technological or economic infeasibility when approving state implementation plans under the Clean Air Act Amendments of 1970, 42 U.S.C. ss 1857a-1857l (1970). Such claims were held only to be cognizable by the states in the plan design stage or by the Administrator when drawing up compliance orders. Justice Marshall, writing for the Court, emphasized that federal courts are not to ignore clear expressions of Congressional intent in order to accommodate claims of technological or economic infeasibility.
> Allowing such claims to be raised by appealing the Administrator's approval of an implementation plan . . . would frustrate congressional intent. It would permit a proposed plan to be struck down as infeasible before it is given a chance to work, even though Congress clearly contemplated that some plans would be infeasible when proposed. And it would permit the Administrator or a federal court to reject a State's legislative choices in regulating air pollution, even though Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent. Technology forcing is a concept somewhat new to our national experience and it necessarily entails certain risks. But Congress considered those risks in passing the 1970 Amendments and decided that the dangers posed by uncontrolled air pollution made them worth taking. Petitioner's theory would render that considered legislative judgment a nullity, and that is a result we refuse to reach.
> 427 U.S. at 268-69, 96 S.Ct. at 2531 (footnote omitted). See also Wilderness Society v. Morton, 156 U.S.App.D.C. 121, 171, 479 F.2d 842, 892 (1973), cert. denied, 411 U.S. 917, 93 S.Ct. 1550, 36 L.Ed.2d 309 (quoting United States v. City and County of San Francisco, 310 U.S. 16, 31-32, 60 S.Ct. 749, 84 L.Ed. 1050 (1940): " 'We cannot accept the contention that administrative rulings such as those relied on can thwart the plain purpose of a valid law.' ")

There is also a very practical difference between a general permit and an exemption. An exemption tends to become indefinite: the problem drops out of sight, into a pool of inertia, unlikely to be recalled in the absence of crisis or a strong political protagonist. In contrast, the general or area permit approach forces the Agency to focus on the problems of specific regions and requires that the problems of the region be reconsidered at least every five years, the maximum duration of a permit.[FN27]

> FN27.33 U.S.C. s 1342(a)(3), (b)(1)(B) (Supp. V 1975).

D. Other Interpretational Powers

[6] Many of the intervenor-appellants appear to argue that the District Court should be reversed because the categories exempted by EPA are nonpoint sources and are not, in fact, point sources.[FN28]We agree with the District Court "that the power to define point and nonpoint sources is vested in EPA and should be reviewed by

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the court only after opportunity for full agency review and examination."396 F.Supp. at 1396. The only issue precisely confronted by all the parties and properly framed for our consideration is whether the Administrator has authority to exempt point sources from the NPDES program. We also think that we should, for similar reasons, not consider at this time the appropriate definition of "discharge of any pollutant" as used in s 402. The American Iron and Steel Institute as amicus curiae has pressed upon us the argument that the term "discharge" as used in s 402 was intended to encompass only "volitional flows" that add pollutants to navigable waters. Most forms of runoff, it is argued, do not involve volitional flows.

> FN28. This appears to be the position of the Colorado River Water Conservation District and the NFPA with respect to silvicultural activities, and NMPF, less obviously, with respect to small dairy farms. We would put in the same category EPA's contention that the exempt categories are best handled under the areawide waste treatment management planning process of s 208 of the FWPCA, 33 U.S.C. s 1288 (Supp. V 1975). By its terms that section is concerned with areawide waste treatment plans that identify and control "agriculturally and silviculturally related non-point sources of pollution."Id.s 1288(b)(2)(F).

[7] We assume that FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute, and in that regard affords the Agency some means to consider matters of feasibility. However, for reasons already noted, we do not consider these particular contentions as to interpretation on the merits.

III. CONCLUSION

[8] As the Supreme Court recently stated in a FWPCA case, "(t)he question . . .is**161 *1383 not what a court thinks is generally appropriate to the regulatory process, it is what Congress intended . . ."E. I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138, 97 S.Ct. 965, 980, 51 L.Ed.2d 204 (1977). We find a plain Congressional intent to require permits in any situation of pollution from point sources. We also discern an intent to give EPA flexibility in the structure of the permits, in the form of general or area permits. We are aware that Congress hoped that more of the NPDES permit program would be administered by the states at this point.[FN29] But it also made provision for continuing EPA administration. Imagination conjoined with determination will likely give EPA a capability for practicable administration. If not, the remedy lies with Congress.

> FN29. See, e. g., 118 Cong.Rec. 10235 (1972) (Rep. Ichord) reprinted in Legislative History at 428.

So ordered.

MacKINNON, Circuit Judge, concurring:

I concur in the very sound and practical construction set forth in the foregoing opinion. Any person concerned with the actual application and enforcement of laws would necessarily be concerned by the application of the relevant legislation to all point sources in agriculture and particularly to irrigated agriculture. Concern would also lie in the congressional admission that present technology is inadequate to enable our citizens to meet the standards and deadlines the Act imposes; in passing the law, Congress was relying on the future "invention (of) new and imaginative developments that will allow us to meet the objectives of our bill."[FN1]In gambling parlance, Congress in enacting the law was "betting on the come." It is relying on our citizens in the near future to develop the complex technology to meet all the law's standards and objectives on time. The difficulty with that approach is that the hopes of Congress in this respect, like that of any gambler, might not be realized. The agency in this case, however, has shown that it takes a realistic view of both the situation and the

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task of meeting the difficult requirements and objectives of the Act. I sincerely hope that the ability of the agency to issue section 402 permits including general area permits [FN2] will permit it to meet the present and future compliance problems posed by the Act in a practical way.

FN1. Comments of Senator Montoya, 117 Cong.Rec. 38808 (1971), quoted in court's opinion at 12, reprinted in Legislative History at 1278.

FN2. As an example, an area permit with appropriate conditions and modifications could issue for the agricultural point sources within the Grand River Irrigation District, or the watershed of the Roaring Fork River and tributaries, etc.

C.A.D.C.,1977.
Natural Resources Defense Council, Inc. v. Costle
568 F.2d 1369, 10 ERC 2025, 186 U.S.App.D.C. 147, 8 Envtl. L. Rep. 20,028

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ATTACHMENT NO. 18

NRDC v. USEPA (9th Cir. 1992) 966 F.2d 1292

Natural Resources Defense Council, Inc. v. U.S. E.P.A. C.A.9,1992.

United States Court of Appeals,Ninth Circuit.
NATURAL RESOURCES DEFENSE COUNCIL, INC., Petitioner,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent,
Battery Council International, et al., Respondents-Intervenors.
Nos. 90-70671, 91-70200.

Argued and Submitted Oct. 9, 1991.
Decided June 4, 1992.

Environmental group sought review of Environmental Protection Agency's (EPA's) Clean Water Act storm water discharge rule. The Court of Appeals, Ferguson, Senior Circuit Judge, held that: (1) the EPA's failure to include deadlines for permit approval or denial and compliance consistent with Clean Water Act was arbitrary and capricious, although injunctive relief was not warranted; (2) EPA's definition of municipal separate storm sewer serving a population was not arbitrary and capricious; and (3) EPA rule excluding various types of light industry and construction sites of less than five acres from application of rule was arbitrary and capricious.

Petition for review granted in part and denied in part.

O'Scannlain, Circuit Judge, filed an opinion concurring in part and dissenting in part.

West Headnotes

[1] Declaratory Judgment 118A ⚿203

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak203 k. Federal Officers and Boards. Most Cited Cases

Question of whether Environmental Protection Agency (EPA) is bound by statutory scheme set by Congress is legal one, and, thus, request for declaratory relief from EPA's failure to issue storm water permitting regulations by particular date was ripe for consideration by court. Federal Water Pollution Control Act Amendments of 1972, §§ 101-606, 101(a), 402(*l*, p), 502(14), as amended, 33 U.S.C.A. §§ 1251-1387, 1251(a), 1342(*l*, p), 1362(14).

[2] Declaratory Judgment 118A ⚿7

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(A) In General
118Ak7 k. Necessity, Utility and Propriety. Most Cited Cases

Declaratory Judgment 118A ⚿8

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(A) In General
118Ak8 k. Termination or Settlement of Controversy. Most Cited Cases

For purposes of granting declaratory relief, court considers whether judgment will clarify and settle legal relations at issue and whether it will afford relief from uncertainty and controversy giving rise to proceedings.

[3] Environmental Law 149E ⚿16

149E Environmental Law
149EI In General
149Ek14 Administrative Agencies and Proceedings in General
149Ek16 k. Regulations and Rulemaking in General. Most Cited Cases
(Formerly 199k25.5(1) Health and Environment)

Environmental Protection Agency (EPA) lacks authority to ignore unambiguous deadlines set by Congress for issuing regulations.

[4] Injunction 212 ⚿1

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212 Injunction
212I Nature and Grounds in General
212I(A) Nature and Form of Remedy
212k1 k. Nature and Purpose in General. Most Cited Cases
Injunctive relief may be inappropriate if it requires constant supervision by the court.

[5] Environmental Law 149E ⚿700

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek699 Injunction
149Ek700 k. In General. Most Cited Cases
(Formerly 199k25.15(2.1), 199k25.15(2) Health and Environment)
Court of Appeals would not enjoin Environmental Protection Agency (EPA) from further extensions of deadline for permit applications for municipal and industrial discharges as to do so would require extensive supervision of EPA by Court; Court would operate on assumption that EPA would follow dictates of Congress and Court.

[6] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(14) Health and Environment)
Environmental Protection Agency's (EPA's) failure to include final approval and compliance deadlines for permit applications for storm water discharges associated with industrial activities in large municipalities was arbitrary and capricious exercise of its responsibility to issue regulations pursuant to Clean Water Act. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(4)(A, B), as amended, 33 U.S.C.A. § 1342(p)(4)(A, B).

[7] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(14) Health and Environment)
Even if Environmental Protection Agency (EPA) was failing to proceed so that regulations for approval and compliance with permit applications for storm water discharges would be in place for small systems by deadline in Clean Water Act, small systems could not be put on same schedule as medium ones, as Clean Water Act did not require regulation of small systems prior to expiration of moratorium. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(1), (p)(4)(A, B), (p)(6), as amended, 33 U.S.C.A. § 1342(p)(1), (p)(4)(A, B), (p)(6).

[8] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(14) Health and Environment)
Despite Environmental Protection Agency's (EPA's) unlawful delay in establishing comprehensive program for permit approval and compliance with Clean Water Act storm water discharge rule, EPA's schedule calling for immediate municipal system applications due six months after applications for large municipal systems was within statutory scheme in its relation to schedule for large systems and was not unreasonable. Federal Water Pollution Control Act Amendments of 1972, § 402(p), (p)(2)(C, D), (p)(4)(B), as amended, 33 U.S.C.A. § 1342(p), (p)(2)(C, D), (p)(4)(B).

[9] Environmental Law 149E ⚿176

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek176 k. Sewage and Sewers. Most Cited Cases
(Formerly 199k25.7(5) Health and Environment)
Environmental Protection Agency's (EPA's) definition

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of phrase "municipal separate store sewer system serving a population" in regulations for implementing the Clean Water Act storm water discharge rule, while complex and possibly convoluted, was not arbitrary and capricious; EPA defined phrase by considering factors such as its own workload, the incorporation status of municipalities, and urban density. Federal Water Pollution Control Act Amendments of 1972, §§ 402(p)(2), 502, 502(4), as amended, 33 U.S.C.A. §§ 1342(p)(2), 1362, 1362(4).

[10] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(5) Health and Environment)
Environmental Protection Agency's (EPA's) rules excluding various types of light industry and construction sites of less than five acres from application of Clean Water Act storm water discharge rule were arbitrary and capricious absent support in record for assumption that industrial activity or light industry would take place indoors and generate minimal amounts of particles and emissions. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(2)(B), as amended, 33 U.S.C.A. § 1342(p)(2)(B).

[11] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(5) Health and Environment)
Environmental Protection Agency's (EPA's) exemption from Clean Water Act storm water discharge rule for construction sites of less than five acres, as increased from original proposal of exemption for sites of less than one acre, was arbitrary and capricious absent support in record for EPA's perception that construction activities on less than five acres were nonindustrial in nature. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(2)(B), as amended, 33 U.S.C.A. § 1342(p)(2)(B).

[12] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(5) Health and Environment)
For purposes of setting rules for application of storm water discharge regulations in Clean Water Act, EPA lacked agency power to make categorical exemptions where result was de minimis. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(2)(B), as amended, 33 U.S.C.A. § 1342(p)(2)(B).

[13] Environmental Law 149E ⚿176

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek176 k. Sewage and Sewers. Most Cited Cases
(Formerly 199k25.7(13.1), 199k25.7(13) Health and Environment)
Environmental Protection Agency's (EPA's) exemption from permit requirements under Clean Water Act storm water discharge rule for uncontaminated runoff from mining, oil, and gas facilities was not arbitrary and capricious; conference report gave administrator discretion to determine when contamination had occurred with respect to overburden, raw materials, waste products, and other items. Federal Water Pollution Control Act Amendments of 1972, § 402(*l*)(2), as amended, 33 U.S.C.A. § 1342(*l*)(2).

[14] Environmental Law 149E ⚿175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases

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(Formerly 199k25.7(6.1), 199k25.7(6) Health and Environment)
Environmental Protection Agency (EPA) established substantive controls for municipal storm water discharges required by amendments to Clean Water Act as result of administrator's discretion to determine which controls were necessary. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3)(A, B), as amended, 33 U.S.C.A. § 1342(p)(3)(A, B).

[15] Administrative Law and Procedure 15A ⇐ 394

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak392 Proceedings for Adoption
15Ak394 k. Notice and Comment, Necessity. Most Cited Cases

Environmental Law 149E ⇐196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(14) Health and Environment)
Environmental Protection Agency's (EPA's) group permit application process for industrial dischargers under Clean Water Act storm sewage discharge rules was not invalid despite its failure to provide for notice and comment, as approval of part 1 application was essentially factual determination. 5 U.S.C.A. §§ 551(4), 553.

*1294 Robert W. Adler, Natural Resources Defense Council, Washington, D.C., for petitioner.
Daniel S. Goodman, U.S. Dept. of Justice, Washington, D.C., for respondent.

*1295 Petition for Review of a Rule Promulgated by the Environmental Protection Agency.

Before PREGERSON, FERGUSON, and O'SCANNLAIN, Circuit Judges.

FERGUSON, Senior Circuit Judge:
The Natural Resources Defense Council ("NRDC") challenges aspects of the Environmental Protection Agency's ("EPA") recent Clean Water Act storm water discharge rule.[FN1] NRDC argues that the deadlines contained in the rule and the scope of its coverage are unlawful under section 402(*l*), (p) of the Clean Water Act, 33 U.S.C. § 1342(*l*), (p). We grant partial relief.

FN1. National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, 55 Fed.Reg. 47,990 (1990) (to be codified at 40 C.F.R. § 122.26); National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Application Deadline for Group Applications, 56 Fed.Reg. 12,098 (1991) (to be codified at 40 C.F.R. § 122.26(e)).

I. BACKGROUND

In 1972 Congress enacted significant amendments to the Clean Water Act ("CWA"),[FN2] 33 U.S.C. §§ 1251-1387 (1988), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). One major focus of the CWA is the control of "point source" pollution. A "point source" is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel ... from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). The CWA also established the National Pollutant Discharge Elimination System ("NPDES"), requiring permits for any discharge of pollutants from a point source pursuant to section 402 of the CWA, 33 U.S.C. § 1342. The CWA empowers EPA or an authorized state to conduct an NPDES permitting program. 33 U.S.C. § 1342(a)-(b). Under the program, as long as the permit issued contains conditions that implement the requirements of the CWA, the EPA may issue a permit for discharge of any pollutant. 33 U.S.C. § 1342(a)(1).

FN2. The Act is popularly known as the Clean Water Act or the Federal Water Pollution Control Act. 33 U.S.C. § 1251. For more back-

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ground on the CWA, see *EPA v. State Water Resources Control Bd.*, 426 U.S. 200, 202-09, 96 S.Ct. 2022, 2023-26, 48 L.Ed.2d 578 (1976); *Sierra Club v. Union Oil of California*, 813 F.2d 1480, 1483 (9th Cir.1987), *vacated on other grounds*, 485 U.S. 931, 108 S.Ct. 1102, 99 L.Ed.2d 264 (1988); and *Natural Resources Defense Council v. Train*, 510 F.2d 692, 695-97 (D.C. Cir.1975).

This case involves runoff from diffuse sources that eventually passes through storm sewer systems and is thus subject to the NPDES permit program. *See* National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Application Deadlines, 56 Fed.Reg. 56,548 (1991). One recent study concluded that pollution from such sources, including runoff from urban areas, construction sites, and agricultural land, is now a leading cause of water quality impairment. 55 Fed.Reg. at 47,991.[FN3]

FN3. The Nationwide Urban Runoff Program (NURP) conducted from 1978 through 1983 found that urban runoff from residential, commercial and industrial areas produces a quantity of suspended solids and chemical oxygen demand that is equal to or greater than that from secondary treatment sewage plants. 55 Fed.Reg. at 47,991. A significant number of samples tested exceeded water quality criteria for one or more pollutants. *Id.* at 47,992. Urban runoff is adversely affecting 39% to 59% of the harvest-limited shellfish beds in the waters off the East Coast, West Coast and in the Gulf of Mexico. 56 Fed.Reg. at 56,548.

A. Efforts to Regulate Storm Water Discharge.

Following the enactment of the CWA amendments in 1972, EPA promulgated NPDES permit regulations exempting a number of classes of point sources, including uncontaminated storm water discharge, on the basis of "administrative infeasibility," i.e., the extraordinary administrative burden imposed on EPA should it have to issue permits for possibly millions of point sources of runoff. *Natural Resources Defense Council v. Costle*, 568 F.2d 1369, 1372 & n. 5, 1377 (D.C.Cir.1977). NRDC ***1296** challenged the exemptions. Relying on the language of the statute, its legislative history and precedent, the D.C. Circuit held that the EPA Administrator did not have the authority to create categorical exemptions from regulation. *Id.* at 1379. However, the court acknowledged the agency's discretion to shape permits in ways "not inconsistent with the clear terms of the Act." *Id.* at 1382.

Following this litigation, EPA promulgated regulations covering storm water discharges in 1979, 1980 and 1984. 56 Fed.Reg. 56,548. NRDC challenged various aspects of these rules both at the administrative level as well as in the courts.

Recognizing both the environmental threat posed by storm water runoff[FN4] and EPA's problems in implementing regulations,[FN5] Congress passed the Water Quality Act of 1987[FN6] containing amendments to the CWA ("the 1987 amendments"), portions of which set up a new scheme for regulation of storm water runoff. Section 402(p), as amended, established deadlines by which certain storm water dischargers must apply for permits, the EPA or states must act on permits and dischargers must implement their permits. *See* Appendix A. The Act also set up a moratorium on permitting requirements for most storm water discharges, which ends on October 1, 1992. There are five exceptions that are required to obtain permits before that date:

FN4. *See* 132 Cong. Rec. 32,381 (1986).

FN5. Senator Stafford, speaking in favor of the conference report for the Water Quality Act, noted that "EPA should have developed this program long ago. Unfortunately, it did not. The conference substitute provides a short grace period during which EPA and the States generally may not require permits for municipal separate storm sewers." 132 Cong. Rec. 32,381 (1986). Senator Chafee stated "[t]he Agency has been unable to move forward with a [storm water discharge control] program, because the current law did not give enough guidance to the Agency. This provision provides

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such guidance, and I expect EPA to move rapidly to implement this control program." 133 Cong. Rec. 1,264 (1987).

FN6. Pub.L. No. 100-4, 101 Stat. 7 (1987) (codified as amended in scattered sections of 33 U.S.C.).

(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
(B) A discharge associated with industrial activity.
(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
(E) A discharge for which the Administrator or the State, ... determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

CWA § 402(p)(2); 33 U.S.C. § 1342(p)(2).

Section 402(p) also outlines an incremental or "phase-in" approach to issuance of storm water discharge permits. The purpose of this approach was to allow EPA and the states to focus their attention on the most serious problems first. 133 Cong.Rec. 991 (1987). Section 402(p) requires EPA to promulgate rules regulating permit application procedures in a staggered fashion.

Responding to the 1987 amendments requiring the EPA to issue permit application requirements for storm water discharges associated with industrial activities and large municipalities, the EPA issued final rules on November 16, 1990, almost two years after its deadline ("the November 1990 rule"). 55 Fed.Reg. at 47,990. EPA issued amended rules on March 21, 1991 ("the March 1991 rule"). 56 Fed.Reg. at 12,098. It is to portions of these rules that NRDC objects.

B. Jurisdiction.

We have jurisdiction pursuant to CWA § 509(b)(1), 33 U.S.C. § 1369(b)(1). Section 509(b)(1) describes six types of actions by the EPA administrator that are subject to review in the court of appeals. Although the parties do not specify the section upon which they rely, § 509(b)(1)(F), 33 U.S.C. § 1369(b)(1)(F) allows the court to review ***1297** the issuance or denial of a permit under CWA § 402, 33 U.S.C. § 1342. The court also has the power to review rules that regulate the underlying permit procedures. *NRDC v. EPA,* 656 F.2d 768, 775 (D.C.Cir.1981); *cf. E.I. DuPont de Nemours & Co. v. Train,* 430 U.S. 112, 136, 97 S.Ct. 965, 979, 51 L.Ed.2d 204 (1977). NRDC filed timely petitions for review of the final rules at issue here pursuant to CWA § 509(b)(1), 33 U.S.C. 1369(b)(1).

C. Standing.

Any "interested person" may seek review of designated actions of the EPA Administrator. 33 U.S.C. § 1369(b)(1). This court has held that the injury-in-fact rule for standing of *Sierra Club v. Morton,* 405 U.S. 727, 733, 92 S.Ct. 1361, 1365, 31 L.Ed.2d 636 (1972) covers the "interested person" language. *Trustees for Alaska v. EPA,* 749 F.2d 549, 554 (9th Cir.1984) (adopting the analysis in *Montgomery Environmental Coalition v. Costle,* 646 F.2d 568, 578 (D.C.Cir.1980)). A petitioner under *Sierra Club* must suffer adverse affects to her economic interests or "[a]esthetic and environmental well-being." *Sierra Club,* 405 U.S. at 734, 92 S.Ct. at 1366. Intervenors are various industry and trade groups subject to regulation under the rules at issue. NRDC claims, inter alia, that EPA has delayed unlawfully promulgation of storm water regulations and that its regulations, as published, inadequately control storm water contaminants. NRDC's allegations and the potential economic impact of the rules on the intervenors satisfy the broad standing requirement applicable here.

II. DISCUSSION

A. Standard of Review.

5 U.S.C. § 706(2)(A) (1988) authorizes the court to "set aside agency action ... found to be ... arbitrary, capri-

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cious, an abuse of discretion, or otherwise not in accordance with law." Under this standard a court must find a "rational connection between the facts found and the choice made." *Sierra Pacific Indus.*, 866 F.2d 1099, 1105 (9th Cir.1989) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983)). The court must decide whether the agency considered the relevant factors and whether there has been a clear error of judgment. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 91 S.Ct. 814, 823, 28 L.Ed.2d 136 (1971).

On questions of statutory construction, courts must carry out the unambiguously expressed intent of Congress. If a statute is "silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984). Congress may leave an explicit gap, thus delegating legislative authority to an agency subject to the arbitrary and capricious standard. *Id.* at 843-44, 104 S.Ct. at 2781-82. If legislative delegation is implicit, courts must defer to an agency's statutory interpretation as long as it is reasonable. *Id.* at 844, 104 S.Ct. at 2782. This is because an agency has technical expertise as well as the authority to reconcile conflicting policies. *See id.* Nevertheless, questions of congressional intent that can be answered with "traditional tools of statutory construction" are still firmly within the province of the courts. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 447-48, 107 S.Ct. 1207, 1221, 94 L.Ed.2d 434 (1987).

B. EPA's Extension of Statutory Deadlines.

1. *Background.*

NRDC challenges EPA's extension of certain statutory deadlines in the November 1990 and March 1991 rules. The statutory scheme calls for EPA to consider permit applications from the most serious sources of pollutants first: industrial dischargers and large municipal separate storm sewer systems ("large systems").[FN7] The statute required EPA to establish regulations***1298** for permit application requirements for these two groups by February 4, 1989; to receive applications for permits one year later, February 4, 1990; and to approve or deny the permits by February 4, 1991. Permittees may be given up to three years to comply with their permits. CWA § 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A). Medium sized municipal separate storm sewer systems ("medium systems") (those serving a population of 100,000 or more but less than 250,000) are on a similar schedule, except that the deadlines are two years later. CWA § 402(p)(4)(B), 33 U.S.C. § 1342(p)(4)(B). The temporary statutory exemption for all storm water sources expires on October 1, 1992. CWA § 402(p)(1), 33 U.S.C. § 1342(p)(1). EPA states that discharges from municipal separate storm sewer systems serving a population of under 100,000 are to be regulated after that date.

FN7. Large municipal systems are those serving a population of 250,000 or more. § 402(p)(2)(C).

The EPA rules at issue changed the statutory deadlines as follows:

Deadlines pursuant to CWA § 402(p)[8]			**EPA Deadlines**[9]
Discharge type	Deadline to issue rules	Deadline for application and approval of permits	Application deadlines

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Industrial	2/4/89	2/4/90-applications due	See below
		2/4/91-approval due	
Large municipal systems	2/4/89	2/4/90-applications due	Part 1-
		2/4/91-approval	11/18/91
			Part 2-
			11/16/92
Medium municipal systems	2/4/91	2/4/92-applications due	Part 1-
		2/4/93-approval due	5/18/92
			Part 2-
			5/17/93

EPA Application Deadlines for "Industrial Activity" Dischargers

Individual	*Group*
due 11/18/91	Part 1-9/30/91; Part 2-10/1/92

FN8. Since NRDC filed this action, Congress has passed certain legislation affecting some of the deadlines at issue. Congress ratified the date of September 30, 1991 for part 1 of group applications for industrial dischargers. *See* Dire Emergency Supplemental Appropriations Act of 1991, Pub.L. No. 102-27, § 307, 105 Stat. 130, 152 (1991).

Section 1068 of the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA") clarifies the deadlines for storm water discharges associated with industrial activity from facilities owned or operated by a municipality. Pub.L. No. 102-240, § 1068, 105 Stat.1914, 2007 (1991). ISTEA deadlines are being reviewed in a separate case. Nothing in this opinion should be viewed as requiring EPA to comply with deadlines that have been altered or superseded by the ISTEA.

FN9. *See*55 Fed.Reg. at 48,071-722 (to be codified at 40 C.F.R. § 122.26(e)); 67 Fed.Reg. at 12,100 (to be codified at 40 C.F.R. § 122.26(e)(2)(iii)). EPA changed certain of these deadlines after this case was submitted. These changes are the subject of a separate case.

The EPA rules at issue set no date for final approval or denial of applications from municipal or industrial dischargers, nor for compliance by these regulated entities. *See*55 Fed.Reg. at 48,072.

As the chart illustrates, EPA made other elaborations on the statutory scheme in addition to extending the deadlines. Medium and large municipal systems and industrial dischargers are now subject to a two-part application process. 55 Fed.Reg. at 48,072. The November 1990 rules allow industrial dischargers to apply for either individual or group permits. *Id.* at 48,066-***1299** 67. The March 1991 rules further extended the deadline for part 1 of the group industrial discharger permits to September 30, 1991.[FN10] 56 Fed.Reg. at 12,098. A final rule published on April 2, 1992 extended the deadline for the part 2 group application for industrial dischargers from May 18, 1992 to October 1, 1992. 57 Fed.Reg. at 11,394. The EPA rules at issue contain neither deadlines for final EPA or state approval of permits nor deadlines for compliance with the permit terms.

FN10. NRDC initially claimed that this extension was unlawful because it was granted without proper notice and comment. However, Congress approved this extended deadline in a supplemental appropriations bill. Dire Emer-

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> gency Supplemental Appropriations Act of 1991, Pub.L. No. 102-27 § 307, 105 Stat. 130, 152 (1991). This Act moots the procedural and substantive challenge to this extended deadline.

Seeking to compel the EPA to conform to the statutory scheme, NRDC asks this court:

a) to declare unlawful EPA's failure to issue certain of the storm water permitting regulations by February 4, 1989 and EPA's extension of certain statutory deadlines;

b) to enjoin EPA from granting future extensions of the deadlines;

c) to compel EPA to include deadlines for permit approval or denial and permit compliance consistent with the statute; and

d) to compel EPA to require that medium and small municipal systems meet the same deadlines as large systems.

2. *Discussion.*

a. Request for Declaratory Relief.

NRDC asks the court to (1) declare unlawful EPA's failure to issue storm water permitting regulations by February 4, 1989; and (2) declare unlawful EPA's extension of deadlines for submission of permit applications by large and medium systems and individual industrial dischargers.

[1] A request for declaratory relief in a challenge to an agency action is ripe for review if the action at issue is final and the questions involved are legal ones. *Public Util. Dist. No. 1 v. Bonneville Power Admin.*, 947 F.2d 386, 390 n. 1 (9th Cir.1991) (citations omitted), *cert. denied*,503 U.S. 1004, 112 S.Ct. 1759, 118 L.Ed.2d 422 (1992). Here, the agency regulations are final. *See*55 Fed.Reg. at 47,990,56 Fed.Reg. at 12,096. The question of whether the EPA is bound by the statutory scheme set by Congress is a legal one. The request for declaratory relief is therefore ripe for consideration by this court.

[2] The granting of declaratory relief "rests in the sound discretion of the [ ] court exercised in the public interest." 10A Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice & Civil Procedure* § 2759, at 645 (1983). The guiding principles are whether a judgment will clarify and settle the legal relations at issue and whether it will afford relief from the uncertainty and controversy giving rise to the proceedings. *McGraw-Edison Co. v. Preformed Line Products Co.*, 362 F.2d 339, 342 (9th Cir.) (citing Borchard, *Declaratory Judgments* 299 (2d ed. 1941)), *cert. denied*,385 U.S. 919, 87 S.Ct. 229, 17 L.Ed.2d 143 (1966). A court declaration delineates important rights and responsibilities and can be "a message not only to the parties but also to the public and has significant educational and lasting importance." *Bilbrey by Bilbrey v. Brown*, 738 F.2d 1462, 1471 (9th Cir.1984). Because of the importance of the interests and the principles at stake, we grant declaratory relief.

[3] EPA does not have the authority to ignore unambiguous deadlines set by Congress. *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir.), *cert. denied*,498 U.S. 998, 111 S.Ct. 556, 112 L.Ed.2d 563 (1990). In arguing against injunctive relief, EPA points to cases recognizing factors indicating that equitable relief may be inappropriate. *See, e.g., In re Barr Laboratories, Inc.*, 930 F.2d 72, 74 (D.C.Cir.) (agency's choice of priorities is an important factor in considering whether to grant equitable relief), *cert. denied*,502 U.S. 906, 112 S.Ct. 297, 116 L.Ed.2d 241 (1991); *Natural Resources Defense Council v. Train*, 510 F.2d 692, 712 (D.C.Cir.1975) (court may need to give ***1300** agency some leeway due to budgetary commitments or technological problems); *Environmental Defense Fund v. Thomas*, 627 F.Supp. 566, 569-70 (D.D.C.1986) (EPA's good faith is a factor). None of these factors militates against an award of declaratory relief. They do not grant an executive agency the authority to bypass explicit congressional deadlines. The deadlines are not aspirational-Congress set them and expected compliance. *See*132 Cong.Rec. 32,381-82 (remarks of Senator Stafford, commenting on EPA delay and the establishment of statutory deadlines as "outside dates.") This court must uphold adherence to the law, and cannot condone the failure of an execut-

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ive agency to conform to express statutory requirements. For these reasons, we grant NRDC's request for declaratory relief. EPA's failure to abide by the statutory deadlines is unlawful.

b. Request for Injunction.

NRDC asks the Court to enjoin the EPA from further extensions for permit applications from municipal and industrial dischargers. Injunctions are an extraordinary remedy issued at a court's discretion when there is a compelling need. 11 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2942, at 365, 368-69 (1973). We decline to enjoin the EPA on discretionary grounds.

[4] Injunctive relief could involve extraordinary supervision by this court. Injunctive relief may be inappropriate where it requires constant supervision. *Id.* at 376. At issue are deadlines for the three major categories of dischargers, each of which has a two-part application. The permitting process will go on for several years. While recognizing the importance of the interests involved, we nevertheless decline to engage in the active management of such a remedy.

[5] In this situation, we must operate on the assumption that an agency will follow the dictates of Congress and the court. As noted above, the EPA does not have the authority to predicate future rules or deadlines in disagreement with this opinion. *See Allegheny General Hosp. v. NLRB,* 608 F.2d 965, 970 (3rd Cir.1979). We presume that the EPA will duly perform its statutory duties. *See Upholstered Furniture Action Council v. California Bureau of Home Furnishing,* 442 F.Supp. 565, 568 (E.D.Cal.1977) (three judge court). Because we decline to take on potentially extensive supervision of the EPA, Congress may need to find other ways to ensure compliance if the agency is recalcitrant.

c. Deadlines for Permit Approval and Compliance.

NRDC requests that the court compel EPA to revise the rules to include deadlines for permit approval or denial and permit compliance consistent with the statute. Section 402(p)(4)(A) calls for the EPA to issue or deny permits for industrial and large municipalities by February 4, 1991, which is one year after the applications are submitted, and states that "[a]ny such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of the issuance of such permit." CWA § 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A). The statute sets out a similar schedule for medium municipalities, except that the deadlines are two years later. CWA § 402(p)(4)(B), 33 U.S.C. § 1342(p)(4)(B).

[6] The regulations promulgated by the EPA contain neither final approval deadlines nor compliance deadlines for industrial dischargers or medium and large municipalities. 55 Fed.Reg. at 48,072. By failing to regulate final approval and compliance, EPA has omitted a key component of the statutory scheme. To ensure adherence to the statutory time frame, especially in the face of deadlines already missed, the regulated community must be informed of these deadlines. EPA's failure to include these important deadlines is an arbitrary and capricious exercise of its responsibility to issue regulations pursuant to the statute.

We see no need for additional delay while supplemental regulations are issued. Given the extraordinary delays already encountered, EPA must avoid further delay. ***1301** The regulations should inform the regulated community of the statute's outside dates for compliance.FN11 *See* CWA § 402(p)(4)(A)-(B), 33 U.S.C. § 1342(p)(4)(A)-(B).

> FN11. In addition, pursuant to the statute, compliance deadlines applicable to each facility shall be contained in its permit.

d. Timeline for Small and Medium Systems.

[7] The parties disagree on when small systems (those serving a population of less than 100,000) should be regulated. As noted above, the temporary statutory exemption for all storm water sources expires on October 1, 1992. The statute requires EPA to establish a comprehensive program to regulate point sources subject to the moratorium, such as small municipalities, by that date.

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CWA § 401(p)(1), (6), 33 U.S.C. § 1342(p)(1), (6).

Pointing to a perceived statutory gap, NRDC argues that small systems should be subject to the same permitting schedule applicable to medium systems, to assure that they are regulated when the permitting moratorium ends on October 1, 1992. However, the plain language of the statute prohibits this. Section 402(p)(1) forbids requiring a permit for entities not listed as exceptions (such as small municipalities) before October 1, 1992. Yet the deadline for part 1 of the application for medium systems is currently May 18, 1992. 55 Fed.Reg. at 48,072.

Even if NRDC is correct that EPA is not proceeding so that regulations will be in place on October 1, 1992, we cannot ignore the plain language of the statute by adopting NRDC's solution. The CWA does not require regulation of such systems prior to expiration of the moratorium. We therefore reject NRDC's proposal that small systems be put on the same schedule as medium ones.

[8] NRDC asks the court to put the medium systems on the same schedule as the large systems, in order to achieve closer compliance with the timeline set out in § 402(p)(4)(B). However, EPA's current schedule for medium systems, although delayed, is still within the statutory scheme in its relation to the schedule for large systems. That is, Congress placed the medium systems on a staggered permitting schedule to start two years after the large systems and industrial users. The EPA schedule now has medium municipal system applications due six months after the applications for the large municipal systems. 55 Fed.Reg. at 48,072. For this reason, the current deadline for medium municipalities does not appear to be unreasonable despite the unlawful delay.

C. Exclusion of Certain Sources from Regulation.

1. *Definition of "Municipal Separate Storm Sewer System."*

Section 402(p) refers to "municipal separate storm sewer system[s] serving a population" of a specified size. CWA § 402(p)(2)(C), (D), 33 U.S.C. § 1342(p)(2)(C), (D). NRDC contends that EPA's definition of this term violates the plain language of the statute, fails to take into account the statutory definition of the word "municipality" and is arbitrary and capricious because the agency considered improper factors when it defined the term. All of this, according to NRDC, results in an impermissible narrowing of the municipalities covered by the first two rounds of permitting.

The 1987 amendments to the CWA did not contain definitions of "municipal" or "separate storm sewer system," but the CWA amendments enacted in 1972 defined "municipality" as follows:
[e]xcept as otherwise specifically provided, when used in this chapter: .... (4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved***1302** management agency under section 1288 of this title [33 U.S.C. § 1288].

33 U.S.C. § 1362.

In the November 1990 regulations, the EPA defined "municipal separate storm sewer" as: "a conveyance or system of conveyances ... [o]wned or operated by a State, city, town, borough, county, parish, district, association or other public body...."55 Fed.Reg. at 48,065 (to be codified at 40 C.F.R. § 122.26(b)(8)). This definition echoes the language of 33 U.S.C. § 1362(4). However, when defining large and medium municipal separate storm sewer *systems serving a population* of a specified size, EPA brought in other factors. 55 Fed.Reg. at 48,064 (to be codified at 40 C.F.R. § 122.26(b)(4), (7)). EPA defines medium and large separate storm sewer systems using two main categories:

1) separate storm sewer systems located in an incorporated place with the requisite population, and

2) separate storm sewer systems located in unincorporated, urbanized portions of counties containing the requisite population (as listed in Appendices H and I to the rule), excluding those municipal separate sewers

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located in incorporated places, townships or towns within such counties.[FN12] 55 Fed.Reg. at 48,064. NRDC opposes this definition for municipal separate storm sewer systems for the reasons explained below.

> FN12. The rule also permits the Administrator to include certain other systems as part of a medium or large system due to the physical interconnections between the systems, their locations, or certain other factors. *See*40 C.F.R. § 122.26(b)(4)(iii), (iv) and (b)(7)(iii), (iv).

First, NRDC argues that according to the definitional section cited above and principles of statutory construction, general definitions apply wherever the defined term appears elsewhere in the law. *See*33 U.S.C. § 1362 ("[e]xcept as otherwise specifically provided" the definitions apply throughout the act); *Sierra Club v. Clark,* 755 F.2d 608, 613 (8th Cir.1985). NRDC argues that the scope of the statutory definition of "municipality" in 33 U.S.C. § 1362(4) and the scope of the phrase "municipal separate storm sewer system serving a population" are the same. NRDC thus proposes that the correct definition is a system of conveyances owned or operated by the full range of entities described at 33 U.S.C. § 1362(4), (cities, towns, etc.) with populations within the ranges designated at § 402(p)(2), i.e., 250,000 or more for large systems and between 100,000 and 250,000 for medium systems.

However, we do not believe that the entire phrase used in the act, "municipal separate storm sewer system serving a population of [a specified size]" can be equated with the term "municipality" in the manner that NRDC proposes. The act contains no definition of either "system" or "serving a population." The word "system" is particularly ambiguous in the context of storm sewers.[FN13] We therefore agree with EPA that there is no single, plain meaning for the disputed words.

> FN13. Storm sewers located within the boundaries of a city might be part of a state highway system, a flood control district, or a system operated by the state or county. *See*55 Fed.Reg. at 48,041.

Because the term is ambiguous, we must look first to whether Congress addressed the issue in another way. *See Abourezk v. Reagan,* 785 F.2d 1043, 1053 (D.C.Cir.1986) (" [i]f the court finds that Congress had a specific intent ..., the court stops there and enforces that intent regardless of the agency's interpretation") (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.,* 467 U.S. 837, 842-43 & n. 9, 104 S.Ct. 2778, 2781 & n. 9, 81 L.Ed.2d 694 (1984)), *aff'd by an equally divided court,*484 U.S. 1, 108 S.Ct. 252, 98 L.Ed.2d 1 (1987). The legislative history is not illuminating. Although it explains that a purpose of the permitting scheme was to attack the most serious sources of discharge first,[FN14] this general goal is not helpful in discerning the specific meaning of "municipal separate storm sewer system serving a population." Without clear guidance from Congress, we turn to the agency's justifications***1303** for its choices in the face of NRDC's objections.

> FN14. *See, e.g.,*133 Cong. Rec. 991 (1987) (statement of Rep. Stangeland).

NRDC claims that EPA's definition is arbitrary and capricious because EPA considered improper factors, including its own work load, the incorporation status of municipalities, and urban density. "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983).

EPA's final definition took into account many issues and concerns of the regulated community. *See*55 Fed.Reg. at 48,039. EPA considered eight different options for defining large and medium municipal separate storm sewer systems. 55 Fed.Reg. at 48,038-43. EPA considered focusing on ownership or operation of a system by an incorporated place, but found that this approach did not take into account systems operated by

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flood control districts, state transportation systems, or concerns relating to watershed management. It instead fashioned a multi-faceted approach. This choice of approach is not unreasonable.

NRDC challenges EPA's consideration of incorporation as a factor. It claims that limiting regulation to incorporated places of the appropriate size excludes portions of 378 counties that contain over 100,000 people. NRDC essentially contends that because counties are a type of municipality, storm water conveyances in all counties with populations over 100,000 should come within the definition of either medium or large municipal separate storm sewer systems. We have already rejected NRDC's claim that the definition of regulated "systems" must include conveyances in all "municipalities."

EPA's use of incorporation as a factor is not arbitrary and capricious or inconsistent with the statute. The agency proceeded on the reasonable assumption that cities possess the police powers needed effectively to control land use within their borders. *See*55 Fed.Reg. at 48,039, 48,043. The first major category within the definition of regulated "systems," municipal separate storm sewers located within incorporated places having the requisite population, is reasonable.

NRDC questions EPA's second major category, which covers storm sewers located in unincorporated urbanized areas of counties with the designated population, but excludes conveyances located in incorporated places with populations under 100,000 within those counties. The exclusion, however, has a legitimate statutory basis. The statute prohibits EPA from requiring permits for systems serving under 100,000 persons prior to October 1, 1992. CWA § 402(p)(1), 33 U.S.C. § 1342(p)(1). EPA reasonably concluded that conveyances within small incorporated places should be considered parts of small systems limited to those incorporated places, rather than parts of larger systems serving whole counties. EPA's definition attempts to capture population centers of over 100,000 (by including urbanized, unincorporated areas) without violating the congressional stricture against regulation of areas with populations under 100,000 (thus excluding incorporated areas of less than 100,000 within a county).

In arriving at its definition of "municipal separate storm sewer systems serving" a designated population, EPA investigated numerous options and considered comments from a range of viewpoints. We find "a rational connection between the facts found and the choices made." *Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 43, 103 S.Ct. at 2866.

NRDC objects to EPA's use of 1980 census data and EPA's definition of urban density. While it appears that NRDC has solid arguments as to why it would be preferable to use 1990 census figures and adopt its method of determining urban density, our role is not to determine whether EPA has chosen the best among all possible***1304** methods. We can only determine if its choices are rational. EPA chose the 1980 census data because it was the most widely available decennial census data at the time of rule formulation and promulgation. Neither this choice nor its use of the Census Bureau's definition of urbanized area is arbitrary and capricious.

EPA took agency work load into account in arriving at its definition. 55 Fed.Reg. at 48,039. NRDC objects on the basis that Congress considered the issue of work load when it developed the "phase-in" approach and allowed permit applications on a system- or jurisdiction-wide basis. However, this broad congressional scheme does not prohibit further consideration of EPA's work load as one among many factors in its attempt to fashion a workable program.

[9] In summary, NRDC's argument that the phrase "municipal separate storm sewer system serving a population" has the plain meaning NRDC proposes is not persuasive. Although EPA's definition in the face of the statute's ambiguity is complex, if not convoluted, it is not arbitrary and capricious, and we therefore reject NRDC's request that the definition be declared invalid.

2. *EPA Exemption for Light Industry.*

[10] NRDC challenges the portion of the EPA rule excluding various types of "light industry" from the definition of "discharge associated with industrial activity."

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Under CWA § 402(p)(2)(B), a "discharge associated with industrial activity" is an exception to the permit moratorium. In the November rule, EPA modified the statutory scheme by drawing distinctions among light and heavy industry and considering actual exposure to industrial materials. Although the statute does not define "associated with industrial activity," the EPA definition excludes industries it considers more comparable to retail, commercial or service industries. The excluded categories are manufacturers of pharmaceuticals, paints, varnishes, lacquers, enamels, machinery, computers, electrical equipment, transportation equipment, glass products, fabrics, furniture, paper board, food processors, printers, jewelry, toys and tobacco products. 55 Fed.Reg. at 48,008. These types of facilities need apply for permits only if certain work areas or actual materials are exposed to storm water. *Id.* EPA justifies these exemptions on the assumption that most of the activity at these types of manufacturers takes place indoors, and that emissions from stacks, use of unhoused manufacturing equipment, outside material storage or disposal, and generation of large amounts of dust and particles will all be minimal. 55 Fed.Reg. at 48,008.

Thus, EPA considers actual exposure to certain materials or stormwater for the light industry categories, but does not consider actual exposure for the other industrial categories. After careful review of the statutory language and the record, we conclude that this distinction is impermissible.

We note that the language "discharges associated with industrial activity" is very broad. The operative word is "associated." It is not necessary that storm water be contaminated or come into direct contact with pollutants; only association with any type of industrial activity is necessary.

There is a brief discussion of the issue in the legislative history: "[a] discharge is associated with industrial activity if it is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Discharges which do not meet this definition include those discharges associated with parking lots and administrative and employee buildings." 133 Cong.Rec. 985 (1987); *see also*132 Cong.Rec. 31,968 (1986) (same). EPA argues that the words "directly related" indicate Congress's intent to require permits for only those materials that come in contact with industrial materials. *See*55 Fed.Reg. at 48,007. However, the examples given-parking lots and administrative buildings-indicate that the intent was to exclude only those facilities or parts of a facility that are completely non-industrial.

EPA's definition follows the language quoted above: "Storm water discharge associated with industrial activity means the ***1305** discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." 40 C.F.R. § 122.26(b)(14). EPA applies this definition differently depending on type of industry. EPA bases its regulation of industrial activity on Standard Industrial Classification ("SIC") categories. For most of the industrial SIC categories (identified at 40 C.F.R. § 122.26(b)(i-x)), the EPA definition includes all stormwater discharges from plant yards, access roads and rail lines, material handling sites, storage and disposal sites, shipping and receiving areas, and manufacturing buildings. 40 C.F.R. § 122.26(b)(14). However, for the "light industry" categories identified in 40 C.F.R. § 122.26(b)(14)(xi), stormwater must be actually exposed to raw materials, by-products, waste, etc., before permitting is required.

EPA justifies this difference on the ground that for "light industry," industrial activity will take place indoors, and that generation of large amounts of particles and emissions will be minimal. There is nothing in the record submitted to the Court however, which supports this assumption. *See, e.g.,*55 Fed.Reg. at 48,008. Without supportable facts, we are unable to rely on our usual assumption that the EPA has rationally exercised the duties delegated to it by Congress. To exempt these industries from the normal permitting process based on an unsubstantiated assumption about the this group of facilities is arbitrary and capricious.

In addition, by designating these light industries as a group that need only apply for permits if actual exposure occurs, EPA impermissibly alters the statutory

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scheme. The statute did set up a similar approach for oil, gas, and mining industries. However, no other classes of industrial activities are subject to the more lenient "actual exposure" test. To require actual exposure entirely shifts the burden in the permitting scheme. Most industrial facilities will have to apply for permits and show the EPA or state that they are in compliance. Light industries will be relieved from applying for permits unless actual exposure occurs. The permitting scheme then will work only if these facilities self-report, or the EPA searches out the sources and shows that exposure is occurring. We do not know the likelihood of either self-reporting or EPA inspection and monitoring of light industries, and the regulations appear to contemplate neither for these industries. For this reason, the proposed regulation is also arbitrary and capricious.

In conclusion, we hold that the rule for light industries is arbitrary and capricious, vacate the rule, and remand for further proceedings.

3. *Exclusion of Construction Sites of Less than Five Acres.*

[11] NRDC challenges the exemption for construction sites of less than five acres. EPA concedes that the construction industry should be subject to storm water permitting because at a high level of intensity, construction is equivalent to other regulated industrial activities. 55 Fed.Reg. at 48,033. Construction sites can pollute with soil sediments, phosphorus, nitrogen, nutrients from fertilizers, pesticides, petroleum products, construction chemicals and solid wastes. *Id.* EPA states that such substances can be toxic to aquatic organisms, and affect water used for drinking and recreation. *Id.*

Following its characterization of construction sites as suitable for regulation, EPA defined its task as determining "an acreage limit [ ] appropriate for identifying sites that amount are (sic) to industrial activity." 55 Fed.Reg. at 48,036. EPA originally proposed regulations that exempted operations that disturb less than one acre of land and are not part of a common plan of development or sale. 55 Fed.Reg. at 48,035-36. In response to comments by the regulated community about the administrative burden presented by the regulation, EPA increased the exemption to five acres. 55 Fed.Reg. at 48,036. EPA also noted that larger sites will involve heavier equipment for removing vegetation and bedrock than smaller sites. *Id.* at 48,036.

***1306** We find that EPA's rationale for increasing the limit from one to five acres inadequate and therefore arbitrary and capricious. EPA cites no information to support its perception that construction activities on less than five acres are non-industrial in nature.

[12] EPA also claims agency power, inherent in statutory schemes, to make categorical exemptions when the result is *de minimis*. *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C.Cir.1979). However, if construction activity is industrial in nature, and EPA concedes that it is, EPA is not free to create exemptions from permitting requirements for such activity. *See Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1377 (D.C.Cir.1977) (once Congress has delineated an area that requires permits, EPA is not free to create exemptions).

Further, we find the *de minimis* principle inapplicable here. The *de minimis* exemption is only available where a regulation would "yield a gain of trivial or no value." *Alabama Power Co., supra*, at 361. Because of the lack of data, we cannot know whether exempting sites of less than five acres will indeed have only a *de minimis* effect.

The *de minimis* concept is based on the principle that the law does not concern itself with trifling matters. *Id.* at 360. We question its applicability in a situation such as this where the gains from application of the statute are being weighed against administrative burdens to the regulated community. *See id.* at 360-361 (implied authority to make cost-benefit decisions must derive from statute, and not general *de minimis* doctrine).

Further, EPA's claim that the five-acre exemption is *de minimis* is contradicted by the admission that even small construction sites can have a significant impact on local water quality. The EPA acknowledges that "[o]ver a

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short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades." 55 Fed.Reg. at 48,033. Without data supporting the expanded exemption, we owe no deference to EPA's line-drawing. We thus hold that EPA's choice of a five-acre limit is arbitrary and capricious, invalidate that portion of the rule exempting construction sites of five acres or less from permitting requirements, and remand for further proceedings.

4. *Exemption for oil and gas activities.*

The 1987 amendments created an exemption from the permit requirement for uncontaminated runoff from mining, oil and gas facilities. *See* Appendix, CWA § 402(*l*)(2), 33 U.S.C. §§ 1342(*l*)(2). Section 402(*l*)(2) states that a permit is not required for discharges of storm water runoff from mining, oil or gas operations composed entirely of flows from conveyance systems used for collecting precipitation runoff and "which are not contaminated by contact with, or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products". NRDC claims that the November 1990 rule sets up an impermissible standard for determining contamination at oil and gas facilities. The relevant portion of the rule states that at these facilities, an operator is not required to submit a permit application unless the facility has had a discharge of a reportable quantity FN15 since November 1987, or contributes to a violation of a water quality standard. 55 Fed.Reg. 48,067 (to be codified at 40 C.F.R. § 122.26(c)(1)(iii)). A facility which has had a release of oil or a hazardous substance in excess of RQs since ***1307** 1987 must submit a permit application. *Id.*; 55 Fed.Reg. at 48,029-30.

> FN15. "Reportable Quantities" (RQs) are not effluent guidelines setting up permissible limits for pollutants. Rather, they are quantities the discharge of which "may be harmful to the public health or welfare of the United States." CWA § 311(b)(4), 33 U.S.C. § 1321(b)(4). EPA has established RQs for a large number of substances, pursuant to both CWA section 311, 33 U.S.C. § 1321, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 102, 42 U.S.C. § 9602. *See*40 C.F.R. Parts 110, 117, 302. The operator of any vessel or facility which releases the RQ of any substance must immediately notify the National Response Center. *See, e.g.*,40 C.F.R. § 110.10.

NRDC claims that oil and gas operations should be subject to the stricter standards which apply to mining operations.[FN16] It also objects to EPA's use of RQs as the only test for contamination of runoff from oil and gas storm water dischargers, claiming it is inconsistent with the legislative history. We conclude that the legislative history does not support NRDC's position.

> FN16. Operators of mines must submit permit applications whenever storm water discharges come into contact with overburden, waste products, etc. 40 C.F.R. § 122.26(c)(1)(iv).

The conference report states:

[P]ermits are not required where stormwater runoff is diverted around mining operations or oil and gas operations and does not come in contact with overburden, raw material, product, or process wastes. In addition, where stormwater runoff is not contaminated by contact with such materials, *as determined by the administrator,* permits are also not required. With respect to oil or grease or hazardous substances, the determination of whether stormwater is "contaminated by contact with" such materials, *as established by the Administrator,* shall take into consideration whether these materials are present in such stormwater runoff in excess of reportable quantities under section 311 of the Clean Water Act ..., or in the case of mining operations, above natural background levels.

H.R.Rep. No. 1004, 99th Cong., 2d Sess., at 151 (emphasis added).

[13] Thus, the EPA Administrator has discretion to determine whether or not storm water runoff at an oil, gas or mining operation is contaminated with two types of materials: (1) overburden, raw material, product, or process wastes and (2) oil, grease or hazardous substances.

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The report sets out factors for the Administrator to consider in determining contamination for the latter group of pollutants.

NRDC first claims that because section 402(*l*)(2) treats oil, gas and mining together, the EPA rule must do the same. NRDC's second objection is based on its interpretation of the language in the conference report. Because the conference report lists RQs as only one factor to be taken into consideration, NRDC insists EPA cannot make it the only factor to measure contamination for oil and gas facilities.

Both of these arguments must fail in light of the conference report, which gives the Administrator discretion to determine when contamination has occurred with respect to the substances listed in the statute, i.e., overburden, raw materials, waste products, etc. *See* CWA § 402(*l*)(2). The conference report states that the Administrator shall take certain factors into account, but the report is clear that the determination of whether storm water is contaminated is within the Administrator's discretion.

NRDC argues that the remarks of certain congressmen during congressional debate show that the mining, oil, and gas exemptions were to apply only if the discharges were entirely free of contaminants. We find these examples less persuasive than the clear language of the conference report. Moreover, in light of the discretion granted the Administrator in the conference report, we cannot say that the rule as promulgated is an arbitrary and capricious exercise of that discretion.

NRDC also contends that Congress intended that EPA consider reportable quantities only in determining if a discharge is contaminated with oil, grease, or hazardous substances. Other pollutants, according to NRDC, must be found to contaminate the discharge if they exceed background levels.

EPA did not, in fact, limit itself to reportable quantities in determining which oil or gas facilities must apply for a permit. The rule requires a permit for any facility which "[c]ontributes to a violation of a water quality standard." 40 C.F.R. § 122.26(c)(1)(iii)(C). This requirement addresses contamination with substances other than oil and hazardous substances. We find no support in the statute or the legislative history for NRDC's claim that, with respect***1308** to these substances, levels above background must be considered "contamination." The conference report quoted above requires consideration of background levels of any pollutant only with respect to mining operations.

D. Lack of Controls for Municipal Storm Water Discharge.

[14] NRDC contends that EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments. Because Congress gave the administrator discretion to determine what controls are necessary, NRDC's argument fails.

Prior to 1987, municipal storm water dischargers were subject to the same substantive control requirements as industrial and other types of storm water. In the 1987 amendments, Congress retained the existing, stricter controls for industrial storm water dischargers but prescribed new controls for municipal storm water discharge. CWA § 402(p)(3)(A), (B), 33 U.S.C. § 1342(p)(3)(A)-(B). The Act states that permits for discharges from municipal storm sewers:

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.*

Section 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B) (emphasis added).

NRDC charges that the EPA regulations accomplish neither of the goals above, i.e., they do not effectively

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prohibit non-storm water discharges nor do they require the controls described in ¶ (iii), above. NRDC argues that Congress granted the moratorium precisely to give EPA the opportunity to develop new, substantive standards for storm water control of municipal sources and instead EPA wrote vague regulations containing no minimum criteria or performance standards.FN17 However, the language in ¶ (iii), above, requires the Administrator or a state to design controls. Congress did not mandate a minimum standards approach or specify that EPA develop minimal performance requirements. NRDC also claims that the testing requirements are inadequate because there is only limited sampling at a limited number of sites. However, we must defer to EPA on matters such as this, where EPA has supplied a reasoned explanation of its choices. *See*55 Fed.Reg. at 48,049.

> FN17. The requirements for permit applications are set forth at 40 C.F.R. § 122.26(d). Individual NPDES permit writers (EPA or state officials) will decide whether application proposals are adequate. Applicants must submit information on source control methods and estimate the annual pollutant load reduction to be achieved from their proposed management programs, but they are not required to achieve any specified level of reduction of any pollutants. *See*55 Fed.Reg. at 48,070-71.

NRDC's argument that the EPA rule is inadequate cannot prevail in the face of the clear statutory language and our standard of review. Congress could have written a statute requiring stricter standards, and it did not. We therefore reject NRDC's argument that EPA's storm water control regulations fail to comply with the statute.FN18

> FN18. We base our holding on NRDC's challenge to the regulations at issue. Whether a specific permit complies with the requirements of section 402(p)(3)(B) would, of course, be another matter not controlled by this decision.

E. Lack of Notice and Comment on the Approval of Part 1 of Industrial Group Storm Water Applications.

NRDC objects to the lack of opportunity for notice and comment before EPA approval of part 1 of group applications for industrial dischargers. Each member of a proposed group must submit part 1 of the application.FN19 If EPA approves part 1, only ***1309** a small subset of the member facilities need submit part 2 of the application. 55 Fed.Reg. at 48,072 (to be codified at 40 C.F.R. 122.26(e)(2)). NRDC claims that because approval of part 1 waives the requirement of filing part 2 for most members of a group, EPA's decision on part 1 is equivalent to a "rule" requiring notice and comment from the public. The issue thus presented is whether EPA's decision on a part 1 group permit application is a "rule" as defined in 5 U.S.C. § 551(4) (1988) FN20 requiring public notice and opportunity to comment under 5 U.S.C. § 553 (1988), or is otherwise subject to the notice and comment requirement.

> FN19. Part I must include the identity of the group's participants, a description of the participants' industrial activities, a list of significant materials exposed to precipitation and the identity of the subset of the group's members who will submit quantitative data in part 2 of the application. 55 Fed.Reg. at 48,067.

> FN20. A rule means "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency...." 5 U.S.C. § 551(4).

[15] NRDC argues that approval or disapproval of a part 1 application requires public comment because it has "general applicability" pursuant to 5 U.S.C. § 551(4) and because it will have a "palpable effect" in that it will relieve the majority of entities in the group from submitting data in part 2 of the application. NRDC cites *NRDC v. EPA,* 683 F.2d 752 (3rd Cir.1982) and *Council of Southern Mountains, Inc. v. Donovan,* 653 F.2d 573 (D.C.Cir.1981) in support of its argument. Both cases involved the postponement of regulations. *See NRDC,* 683 F.2d at 753-54, 764 (indefinite postponement of effective date of final amendments to regu-

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lations dealing with the discharge of toxic pollutants requires notice and comment because it has a substantial impact on the public and the industry); *Council of Southern Mountains, Inc.*, 653 F.2d at 575, 580 n. 28 (deferral of implementation of regulations requiring coal operators to supply life-saving equipment ordinarily would require notice and comment because it has a "palpable effect" upon the industry and the public).

We find these cases to be distinguishable. Both involve the postponement of rules of general applicability to an entire industry, or to a large class of pollutants. In contrast, although the part 1 application process will relieve some entities from the need to furnish further data, the decision is specific to a particular permit application and approval of a preliminary application will not implement, interpret or prescribe any general law or policy pursuant to 5 U.S.C. § 551(4). Rulemaking ordinarily involves "broad judgments, legislative in nature rather than the resolution of a particular dispute of facts." *Washington Utilities & Transportation Com'n v. Federal Communication Commission*, 513 F.2d 1142, 1160 (9th Cir.1975), *cert. denied*,423 U.S. 836, 96 S.Ct. 62, 46 L.Ed.2d 54 (1975). The decision to approve a part 1 permit application, although it may affect a large number of applicants, is nevertheless focused on a specific factual question: whether the application adequately designates a representative smaller group subject to the more extensive data gathering requirements in part 2 of the application. *See*55 Fed.Reg. at 48,028. Because the decision involves a discrete, factual issue, the better view is that it is neither a rule nor otherwise subject to the notice and comment requirement.

Because approval of a part 1 application is essentially a factual determination, we hold that EPA's group permit application process for industrial dischargers is not invalid by its failure to provide for notice and comment.

III. CONCLUSION

In summary, we grant and deny relief as follows:

1. *"Deadlines" issue.* We grant the request for declaratory relief and deny the request for injunctive relief. We deny the request to place small, medium and large municipalities on the same permitting schedule. We hold that EPA's failure to include deadlines for permit approval or denial and compliance consistent with CWA § 402(p) is arbitrary and capricious.

2. *Exclusion of Sources from Regulation.* We uphold the definition of "municipal***1310** separate storm sewers serving a population." We hold that the exemption for construction sites of less than five acres is arbitrary and capricious and remand for further proceedings. Based on the record before us, we vacate that portion of the rule regulating "light industry" and remand for further proceedings.

3. *Other issues.* We uphold the rule as to oil and gas operations and storm water control. We further hold that EPA approval of part 1 of a group application for an industrial discharger is not a rule requiring notice and comment from the public.

Petition for Review GRANTED IN PART and DENIED IN PART.

APPENDIX A

CWA § 402, 33 USCA § 1342

(*l*) Limitation on permit requirement

....

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not con-

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taminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

....

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1992, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:
(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
(B) A discharge associated with industrial activity.
(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000 .
(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers-

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or ***1311** the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

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The Administrator, in consultation with the States, shall conduct a study for the purposes of-

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1992, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

O'SCANNLAIN, Circuit Judge, concurring in part and dissenting in part:

I concur in Parts I, II.A, II.C.1, II.C.4, II.E, and much of Part II.B of the majority opinion. I dissent from Part II.B.2.c, directing EPA to issue supplemental regulations. I dissent also from Parts II.C.2 and II.C.3, in which the court invalidates EPA's exclusion of storm water discharges from certain light industrial and small construction sites from the definition of "discharges associated with industrial activity." Finally, I concur in the result, but not the reasoning, of Part II.D, holding that EPA has not acted unlawfully by failing to include specific control requirements in the permit application regulations.

***1312** I

The majority holds that EPA has violated statutory requirements by failing to set dates for approval of, and compliance with, permits as part of its permit application program. *Ante* at 1300. Despite the holding in Part II.B.2.b that injunctive relief is inappropriate (with which I agree), the majority in Part II.B.2.c orders EPA to issue supplemental regulations setting such deadlines immediately.

I am not convinced that the statute requires EPA to set these deadlines as part of the permit application process. The provision at issue reads, in relevant part:

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expedi-

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tiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

CWA § 402(p)(4); 33 U.S.C. § 1342(p)(4) (1988).

While the statute establishes a time line EPA must follow, it does not, in my view, require that EPA include the deadline for permit approval in the permit application regulations. I agree that, given EPA's past delays and the fact that the statutory dates for issuance or denial of permits are now long past, it is appropriate for this court to declare that the statute requires EPA to issue or deny permits within one year of the application deadline. I do not, however, see that any purpose is served by requiring EPA to issue supplemental regulations setting out these deadlines, and I doubt our authority to do so.

With respect to compliance deadlines, the statute contemplates that such deadlines will be set in individual permits as they are issued. *See* CWA § 402(p)(4)(A), (B) ("Any such permit shall provide for compliance...."). Each permit must contain a compliance deadline, which may not exceed three years from the date of issuance. Nothing in the statute requires EPA to establish compliance deadlines now, before any permits have been issued. Accordingly, in my view, NRDC's challenge to the lack of compliance deadlines in EPA's current regulations is premature. I therefore dissent from Part II.B.2.c of the majority opinion.

II

I dissent also from Parts II.C.2 and II.C.3. In my view, EPA's definition of "discharge associated with industrial activity" is a reasonable construction of an ambiguous statute, entitled to deference. While my colleagues acknowledge that we may not overturn an agency rule that represents a "permissible construction" of a statute, *ante* at 1297 (quoting *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2781, 81 L.Ed.2d 694 (1984)), they fail to apply that axiom.

A

EPA's rule excludes from the permitting requirement certain light industry facilities at which "areas where material handling equipment or activities, raw materials, intermediate*1313 products, final products, waste materials, byproducts, or industrial machinery" are not exposed to storm water. *See*40 C.F.R. § 122.26(b)(14). EPA determined that discharges from such facilities do not fall within the definition of "discharges associated with industrial activity." In my view, this determination was reasonable.

The majority concedes that the statute does not define "discharge associated with industrial activity." *Ante* at 1304. The operative phrase, as my colleagues note, is "associated with." *See id.* For purposes of evaluating the light industry exemption, I concede that manufacturing falls within the generally accepted meaning of "industrial activity," and that many of the facilities exempted by the EPA rule are manufacturers. Nonetheless, that concession does not compel the conclusion that discharges from such facilities are "associated with industrial activity."

The majority concludes, without explanation, that the phrase "discharges associated with industrial activity" is "very broad." *Ante* at 1304. Neither the plain meaning of the term "associated" nor the legislative history of the statute support this conclusion. "Associated with" means closely related to or connected with. *See Webster's Ninth New Collegiate Dictionary* 110 (1986). To the extent it casts any light on the subject, the legislative history supports a narrow reading of the phrase "associated with." Four members of the House, in the course of floor debates on the measure both before and after President Reagan's veto, explained that:

[a] discharge is associated with industrial activity if it is *directly related to manufacturing, processing or raw materials storage areas* at an industrial plant. Discharges which do not meet this definition include those discharges associated with parking lots and administrative and employee buildings.

133 Cong.Rec. 985 (1987) (statement of Rep. Hammerschmidt) (emphasis added).[FN1] The underscored language suggests that Congress intended to regulate only discharges directly related to certain activities at indus-

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trial facilities. EPA's interpretation, that discharges are "directly related" to these activities only if storm water may reasonably be expected to come into contact with them before its discharge, is eminently logical.

> FN1. This statement was repeated verbatim by Reps. Stangeland and Snyder. 133 Cong. Rec. at 991-92; 132 Cong. Rec. at 31,959, 31,964 (1986). Rep. Rowland offered a slight variation on the theme:

One of the discharge categories is "a discharge associated with an industrial activity." A discharge is not considered to be associated with industrial activity unless it is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Such discharges include [sic] those from parking lots and administrative areas and employee buildings.

132 Cong. Rec. at 31,968. Rep. Rowland apparently misspoke; he probably meant, like the other legislators who addressed the topic, to say "[s]uch discharges *do not* include" those from parking lots.

The majority opinion interprets the exclusion of parking lots as an expression of congressional intent "to exclude only those facilities or parts of a facility that are completely nonindustrial." *Ante* at 1304. My colleagues' reliance on the second sentence of the statement quoted above to establish this intent, however, is misplaced. The sentence relied on cannot assist us in our search for the meaning of "associated with" because it employs that very term. Moreover, it does not pretend to establish an exhaustive list of areas excluded from regulation. Legislators listed discharges from parking lots and administrative and employee buildings as *among those* not directly related to industrial activity; no one suggested that *only* discharges associated with those structures were to be excluded.

EPA's definition is consistent with the plain words of the statute and, to the extent any intent is discernible, the congressional intent. EPA has defined the term "storm water discharge associated with industrial activity" to cover only those discharges reasonably expected to come into contact with industrial activities. A large number of facilities automatically fall within EPA's definition and are required to *1314 apply for permits. Because facilities falling within certain specified classifications under the Standard Industrial Classification manual generally conduct their operations entirely indoors, minimizing the likelihood of contact with storm water, EPA has not automatically included them within the regulations. However, these facilities *are* required to apply for permits if "areas where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery at these facilities are exposed to storm water." 40 C.F.R. § 122.26(b)(14). If a storm water discharge is in fact directly related to or associated with the industrial activity carried on at a facility falling within the light industry category, the facility must obtain a permit.[FN2]

> FN2. Thus, nothing turns on the assumption, attacked by my colleagues as unsupported by the record, *ante* at 1304, that industrial activities at this category of facilities will take place largely indoors. Where the assumption does not hold true, the permit requirement applies with full force. I also note that NRDC has pointed us to no evidence undermining EPA's assumption.

Unlike my colleagues, I decline to assume that EPA will not carry out its responsibility to identify and to require permits of facilities where industrial activities are in fact exposed to storm water, or that such facilities will ignore their statutory duty to apply for permits. Should that occur, a lawsuit challenging EPA's failure to enforce its regulations might well be in order. An unsubstantiated suspicion that EPA may not vigorously enforce its regulations, however, does not make those regulations arbitrary or capricious.

In my view, the statute's treatment of oil and gas facilities supports EPA's reading of the term "associated with industrial activity." Congress specifically exempted from the permit requirement discharges from oil and gas facilities and mining operations which have not come in contact with raw materials, finished products, or waste products. CWA § 402(*l*)(2). This section indicates a congressional intent to exempt uncontaminated discharges which have not come into contact with "industrial activities" from regulation. For oil, gas, and

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mining operations, Congress in this section supplied a specific, and quite limited, definition of "industrial activities." For other facilities, that definition was left to the discretion of EPA, which has adopted a much broader definition, encompassing contact with such things as industrial machinery and materials handling equipment. *See*40 C.F.R. § 122.26(b)(14).

I do not mean to suggest that the majority's construction of the statute is untenable. It may even be preferable to the reading chosen by the agency. Nonetheless, in my view the statute is ambiguous and the legislative history does not demonstrate any clear congressional intent. The question before this court, therefore, is not whether "the agency construction was the only one it permissibly could have adopted" or even whether it is the "reading the court would have reached if the question initially had arisen in a judicial proceeding." *Chevron, U.S.A. v. NRDC,* 467 U.S. 837, 843 n. 11, 104 S.Ct. 2778, 2782 n. 11, 81 L.Ed.2d 694 (1984). We need only inquire if the agency's construction is a permissible one. *Id.* at 843, 104 S.Ct. at 2781. EPA's definition falls well within permissible bounds, and should be upheld.

B

Although the issue is closer, I also am not persuaded that EPA's exemption for construction sites under five acres should be struck down. EPA has not conceded that "construction activity is industrial in nature." *Ante* at 1306. In the preamble to its final rule, EPA noted that "Construction activity *at a high level of intensity is comparable to other activity that is traditionally viewed as industrial,* such as natural resource extraction." [FN3] 55 Fed.Reg. 48,033 (1990) (emphasis added). EPA explained that it was "attempting to focus [regulation] only on those construction activities***1315** that *resemble* industrial activity." 55 Fed.Reg. at 48,035 (emphasis added).

> FN3. EPA did admit that "[e]ven small construction sites may have a significant negative impact on water quality in localized areas,"55 Fed.Reg. at 48,033. In the absence of any indication of what EPA meant by "small," however, that statement does not undermine EPA's exemption of sites under five acres.

Neither NRDC nor the majority point to anything in the statute or the legislative history that would require the agency to define "industrial activity" as including all construction operations. Accordingly, I believe deference is due EPA's definition, provided it is not arbitrary, capricious, or manifestly contrary to the statute. *Chevron, U.S.A.,* 467 U.S. at 844, 104 S.Ct. at 2782.

In trying to determine when construction should be treated as industrial activity, EPA considered a number of possible approaches. *See*55 Fed.Reg. at 48,035. Exempting construction that would be completed within a certain designated time frame was deemed inappropriate, because the work could be both intensive and expansive but nonetheless take place over a short period of time. Basing the limit on quantity of soil removed was also rejected as not relating to the amount of land surface disturbed. EPA finally settled on the surface area disturbed by the construction project as a feasible and appropriate mechanism for "identifying sites that are [sic] amount to industrial activity." 55 Fed.Reg. at 48,036.

Having determined that not all construction amounts to industrial activity, and that the appropriate basis for differentiation is land area disturbed, EPA then had to determine where to draw the line. Initially, EPA proposed to exempt all construction operations disturbing less than one acre of land; as well as single family residential projects disturbing less than five acres. 53 Fed.Reg. 49,431 (1988). In the final rule, however, EPA adopted a five-acre minimum for all construction projects. 55 Fed.Reg. 48,066 (1990); 40 C.F.R. § 122.26(b)(14)(x).

Admittedly, the final rule contains little in the way of justification for treating two-acre sites differently than five-acre ones, but that does not necessarily make it arbitrary and capricious. Line-drawing is often difficult. NRDC was apparently willing to accept EPA's proposed one-acre/five-acre rule. Although NRDC now challenges the blanket five-acre rule, it offers no evidence that sites excluded from the permitting requirement constitute "industrial activity." In such absence of any evid-

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ence in the record undermining EPA's conclusion on an issue squarely within its expertise, I believe the rule must be upheld.[FN4]

FN4. Because I conclude that the rule falls within the permissible bounds of the statutory definition of "discharges associated with industrial activity," I need not consider the applicability of the *de minimis* exception.

III

Finally, while I concur in the result reached by the majority in Part II.D, rejecting NRDC's claim that EPA has unlawfully failed to require substantive controls on municipal discharges, I disagree with the majority's reasoning. In my view, NRDC's claim is premature, and we should decline to address its merits.

NRDC contends that the 1987 amendments require EPA to establish substantive controls for municipal storm water discharges. In support of this argument, NRDC relies on CWA § 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), which provides:
Permits for discharges from municipal storm sewers-

* * * * * *
(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable....

This section refers only to *permits,* and says nothing about permit applications. Because EPA has yet to issue any permits, NRDC's claim on this point is premature. In the absence of any indication to the contrary, we must assume that any permit issued will comply with all applicable statutory requirements. The statute does not require that EPA detail the substantive controls to be imposed when establishing permit application requirements. Accordingly, I would reject NRDC's claim without *1316 reaching the issue of the Administrator's discretion in selecting those controls.

IV

In sum, I join much of my colleagues' opinion. However, I would not require EPA to issue supplemental regulations detailing the time line for issuance of and compliance with permits, and I would uphold EPA's definition of "discharge associated with industrial activity." Finally, I would reject NRDC's claim that EPA is required to detail control measures in the permit application regulations on the grounds that the statute requires control measures only in the permits themselves.

C.A.9,1992.
Natural Resources Defense Council, Inc. v. U.S. E.P.A.
966 F.2d 1292, 34 ERC 2017, 61 USLW 2015, 22 Envtl. L. Rep. 20,950

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STATE COURT DECISIONS

ATTACHMENT NO. 19

City of Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613

H

City of Burbank v. State Water Resources Control Bd.
Cal.,2005.

Supreme Court of California
CITY OF BURBANK, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.
City of Los Angeles, Plaintiff and Respondent,
v.
State Water Resources Control Board et al., Defendants and Appellants.
Nos. S119248, B151175, B152562.

April 4, 2005.
Rehearing Denied June 29, 2005.[FN*]

FN* Brown, J., did not participate therein.

Background: Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960,Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and
(2) when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

West Headnotes

[1] Environmental Law 149E ⚿165

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek165 k. Purpose. Most Cited Cases
Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

States 360 ⚿18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. U.S.C.A. Const. Art. 6, cl.

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; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 301(a), (b)(1)(B, C), 402(a)(1, 3), as amended, 33 U.S.C.A. §§ 1251 et seq., 1311(a), (b)(1)(B, C), 1342(a)(1, 3); West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69; 8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 23:54; Cal. Jur. 3d, Pollution and Conservation Laws, § 126.

[3] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases

Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases

When construing any statute, the court's task is to determine the Legislature's intent when it enacted the statute so as to adopt the construction that best effectuates the purpose of the law.

[4] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or Conforming Laws or Regulations. Most Cited Cases

Under the federal Constitution's supremacy clause, a state law that conflicts with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(b), 510, as amended, 33 U.S.C.A. §§ 1251 et seq., 1251(b), 1370; West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

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KENNARD, J.
*618 **864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic **865** factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

*619 I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

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A. California Law

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) FN1 Its goal is "to attain the highest water ***307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."(§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality."(§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board). FN2

FN1. Further undesignated statutory references are to the Water Code.

FN2. The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."(§ 13200, subd. (d).)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be consistent with "state policy for water quality control."(§ 13240.)

B. Federal Law

[1] In 1972, Congress enacted amendments (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean *620 Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' "(*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter-Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act."(§ 13372.)

**866 Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The

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Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Toward ***308** this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.[FN3] See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See § 1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

> FN3. A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

***621** "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia*, that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma, supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles-Glendale Water Reclamation Plant (Los Angeles-Glendale Plant), which processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles-Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Burbank,***309** serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

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*622 All three plants, which together process hundreds of millions of gallons of sewage **867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.[FN4] The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: "All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.[FN5]

FN4. This opinion uses the terms "narrative criteria" or descriptions, and "numeric criteria" or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, "no toxic pollutants in toxic amounts" would be a narrative description. This contrasts with numeric criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.

FN5. For example, the permits for the Tillman and Los Angeles-Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be too costly when considered in light of the potential benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter-Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional *623 board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed $50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over $9 million annually, a nearly 100 percent increase above its $9.7 million annual budget for wastewater treatment.

***310 The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter-Cologne Act required a re-

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gional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings **868 to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases.[FN6]

FN6. Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

*624 III. DISCUSSION

A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter-Cologne Act. (See 26 Cal.Rptr.3d pp. 306-307, 108 P.3d p. 865,*ante.*) Section 13263 provides in relevant part: "*The regional board,* after any necessary hearing, *shall prescribe requirements as to the nature of any proposed discharge* [of wastewater]. *The requirements* shall implement any relevant water quality control plans that have been adopted, and *shall take into consideration* the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and *the provisions of Section 13241.*"(§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

***311 "(a) Past, present, and probable future beneficial uses of water.

"(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

"(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

"(d) *Economic considerations.*

"(e) The need for developing housing within the region.

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"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

[2] ***625** Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge ****869** permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

B. Statutory Construction

[3] When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra,* at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter-Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter-Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. *****312**(*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. But unlike the former two statutes, section 13377 was ***626** not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive water quality policy for the nation.

[4] Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly op-

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erated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.[FN7] Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's ****870** declaration in section 13377 that all discharged wastewater must satisfy federal standards.FN8 This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is " 'without effect.' " (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this ***627** state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations *****313** that would exceed the mandates of federal law.

FN7. The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions *that meet the clean water standards in more cost-effective and economically efficient ways.*" (Conc. Opn. of Brown, J., *post,* 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's *clean water standards, regardless of cost* (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)

FN8. As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." We do not here decide how this provision would affect the cost-consideration requirements of sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account "economic considerations," such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

C. Other Contentions

The Cities argue that requiring a regional board at

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the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is consistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal "*wherever attainable,*" an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters' "*use and value* for navigation" when revising or adopting a "water quality standard." (Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

[5] At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit ***628** a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a "navigable water" of the ****871** United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 ["The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."].) It is unclear when the Cities first raised this issue. The Court of Appeal did not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See *****314**Cal. Rules of Court, rule 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles-Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that

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exceeded the federal requirements. This is an issue of fact to be resolved by the trial court.

DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this ***629** matter to the trial court to decide whether any numeric limitations, as described in the permits, are "more stringent" than required under federal law and thus should have been subject to "economic considerations" by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because "the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require." (Maj. opn., *ante,* 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law-which purports to be an example of cooperative federalism-would decree such a result. I do not think the majority's reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

***315 **872 I. Federal Law

"In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA 'prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]' ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California's. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA's NPDES permit program, the states are required to develop *water quality standards.* [Citations.] A water quality standard 'establish[es] the desired condition of a waterway.' [Citation.] A water quality standard for any ***630** given waterway, or 'water body,' has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water quality criteria can be either *narrative* or *numeric.* [Citation.]" (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, "a polluter must comply with *effluent limitations.* The CWA defines an effluent limitation as 'any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous

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zone, or the ocean, including schedules of compliance.' [Citation.] 'Effluent limitations are a means of *achieving* water quality standards.' [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA's NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations,* which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL's) where applicable. In the CWA, Congress 'supplemented the "technology-based" effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd., supra,* 109 Cal.App.4th at pp. 1093-1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Commrs. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.)"Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork."***316** (*American Paper Institute, Inc. v. U.S. Envtl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349(*American Paper*).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if *631 necessary, revise those initial standards at least once every three years." (*American Paper,* at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper,* at p. 350.) Accordingly, it appears that in most instances, **873 state water quality standards are identical to the federal requirements for NPDES permits.

II. State Law

In California, pursuant to the Porter-Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter-Cologne Act), the regional water quality control boards establish water quality standards-and therefore federal requirements for NPDES permits-through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors-including economic factors-set forth in Water Code section 13241.

In addition, as one court observed: "The Porter-Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter-Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)[¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter-Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these

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amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides that '[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act].' [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

***632** Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)-the body responsible to enforce the statutory framework-failed to comply with its statutory mandate.

*****317** For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, "[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years-a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they 'protect the public health or welfare, enhance the quality of water and serve the purposes' of the Act. [Citation.] Additionally, the CWA ****874** directs states to consider a variety of competing policy concerns during these reviews, including a waterway's 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.'"(*American Paper, supra,* 996 F.2d at p. 349.)

According to the Cities, "[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994." The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion-including economic considerations-at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

***633** Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA require-

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ments. (Maj. opn., *ante,* 26 Cal.Rptr.3d at pp. 311-312, 108 P.3d at pp. 869-870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits***318 designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[FN1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.[FN2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

FN1. (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95-4, Sept. 21, 1995) 1995 WL 576920.)

FN2. Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

*634 Accordingly, I cannot conclude that the majority's decision is wrong. The analysis **875 may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands,"[FN3] I write separately to set forth my concerns and concur in the judgment-*dubitante*.[FN4]

FN3. Marvin Gaye (1971) "Inner City Blues."

FN4. I am indebted to Judge Berzon for this useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

Cal.,2005.
City of Burbank v. State Water Resources Control Bd.
35 Cal.4th 613, 108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Envtl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

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ATTACHMENT NO. 20

City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region (2006) 135 Cal.App.4th 1377

135 Cal.App.4th 1377, 38 Cal.Rptr.3d 450, 36 Envtl. L. Rep. 20,026, 06 Cal. Daily Op. Serv. 845, 06 Cal. Daily Op. Serv. 1699, 2006 Daily Journal D.A.R. 1126
(Cite as: 135 Cal.App.4th 1377)

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City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region
Cal.App. 4 Dist.,2006.

Court of Appeal, Fourth District, Division 2, California.
CITY OF RANCHO CUCAMONGA, Plaintiff and Appellant,
v.
REGIONAL WATER QUALITY CONTROL BOARD-SANTA ANA REGION et al., Defendants and Respondents;
County of San Bernardino et al., Real Parties in Interest and Respondents.
No. E037079.

Jan. 26, 2006.
As Modified Feb. 27, 2006.

Background: Cities filed petitions for writs of mandate to challenge the procedure by which municipal storm sewer permit was issued by regional water quality control board, the conditions imposed by permit, and the expense of permit requirements. The Superior Court, San Bernardino County, No. RCV 071613, Shahla Sabet, J., sustained without leave to amend the demurrer of State Water Resources Control Board to entire action, sustained demurrer as to four causes of action and granted motion to strike of the regional board, and denied petition for writ of mandate. City appealed.

Holdings: The Court of Appeal, Gaut, J., held that:
(1) State Water Resources Control Board was not a proper party in lawsuit;
(2) regional water quality control board could move to strike less than all causes of action;
(3) substantial evidence supported regional water quality control board's findings in issuing permit; and
(4) permit requirements were not overly prescriptive.

Affirmed.

West Headnotes

[1] Environmental Law 149E ⚿657

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases
State Water Resources Control Board (State Board) was not a proper party in lawsuit filed by two cities against State Board and Regional Water Quality Control Board, challenging the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements; permit was issued by regional board rather than state board, allegations failed to articulate any improper State Board conduct, and, challenge was barred by statute of limitations. West's Ann.Cal.Gov.Code § 11350; West's Ann.Cal.Water Code § 13330.

[2] Mandamus 250 ⚿168(2)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k168 Evidence
250k168(2) k. Presumptions and Burden of Proof. Most Cited Cases
In exercising its independent judgment in deciding a petition for writ of mandate, a trial court must afford a strong presumption of correctness concerning administrative findings; since the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings.

[3] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in

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General. Most Cited Cases
On appeal from the trial court's decision on a petition for writ of mandate, the reviewing court determines whether substantial evidence supports the trial court's factual determinations.

[4] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases
On appeal from the trial court's decision on a petition for writ of mandate, the trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations.

[5] Environmental Law 149E ⚿666

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek666 k. Preservation of Error in Administrative Proceeding. Most Cited Cases
In city's challenge to procedure by which municipal storm sewer permit was adopted, to conditions imposed by permit, and to expense of permit requirements, city waived its objections to the administrative record, and to specific pieces of evidence, by not making such objections before or at the time of the administrative hearing; city was given notice that the hearing on the permit would proceed as an informal administrative adjudication, and it could not claim that it was relieved of the obligation to object to the administrative record at the time of the hearing. West's Ann.Cal.Gov.Code § 11445.10 et seq.

[6] Administrative Law and Procedure 15A ⚿108

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak103 Status and Character
15Ak108 k. Quasi-Judicial. Most Cited Cases
The exercise of discretion to grant or deny a license, permit, or other type of application is a quasi-judicial function.

[7] Environmental Law 149E ⚿673

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek673 k. Pleading, Petition, or Application. Most Cited Cases
Defendant regional water quality control board could move to strike less than all causes of action filed in suit cities to challenge the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements, inasmuch as trial court had authority to strike only part of pleading. West's Ann.Cal.C.C.P. §§ 431.10, 436.

[8] Environmental Law 149E ⚿230

149E Environmental Law
149EV Water Pollution
149Ek227 Evidence
149Ek230 k. Weight and Sufficiency. Most Cited Cases
Substantial evidence supported regional water quality control board's findings in issuing municipal storm sewer permit; board adopted recommendations of its staff, which were based on previous permits and other reports, and which established that board did not simply copy similar permit for other counties.

[9] Administrative Law and Procedure 15A ⚿489.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak489 Decision
15Ak489.1 k. In General. Most Cited

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Cases

Administrative Law and Procedure 15A ⚿791

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 k. Substantial Evidence.
Most Cited Cases
An agency may rely upon the opinion of its staff in reaching decisions, and the opinion of staff may constitute substantial evidence.

[10] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations.
Most Cited Cases
Municipal storm sewer permit issued by regional water quality control board did not violate Clean Water Act by failing to include "safe harbor" provisions providing that, if permittee was in full compliance with permit conditions, it could not be found in violation of Clean Water Act; there was no statutory right to a "safe harbor" provision to be included as a term of the permit, and, in any event, such protection was already included in the Act. Clean Water Act, § 402(k), 33 U.S.C.A. § 1342(k).

[11] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations.
Most Cited Cases
Requirements contained in municipal storm sewer permit issued by regional water quality control board were not overly prescriptive and did not illegally dictate the manner of compliance; the federal Clean Water Act authorized imposition of permit conditions, and the permitting agency had discretion to decide what practices, techniques, methods, and other provisions were appropriate and necessary to control the discharge of pollutants. Clean Water Act, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 892-896; Cal. Jur. 3d, Pollution and Conservation Laws, § 124 et seq.

****452** James L. Markman, Brea; Richards, Watson & Gershon, John J. Harris, Los Angeles, and Evan J. McGinley, for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Richard Magasin, Supervising Deputy Attorney General, and Jennifer F. Novak, Deputy Attorney General, for Defendants and Respondents.

***1379** OPINION

GAUT, J.

1. *Introduction*

This case involves environmental regulation of municipal storm sewers that carry excess water runoff to the Santa Ana River as it passes through San Bernardino County on its way to the Pacific Ocean. Federal and state laws impose regulatory controls on storm sewer discharges. Municipalities are required to obtain and comply with a federal regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems.

In this instance, the Regional Water Quality Control Board for the Santa Ana Region (the Regional Board) conducted public hearings and then issued a comprehensive 66-page municipal storm sewer permit governing 18 local ***1380** public entities. Two permittees, the City of Rancho Cucamonga and the City of Upland, among others, filed an administrative appeal with the State Water Resources Control Board (the State Board.) The State Board summarily dismissed the appeal. The Cities of Rancho Cucamonga and Upland [FN1] then filed a petition for writ of mandate and complaint against the State

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Board and the Regional Board.

FN1. Upland is not a party to this appeal.

The trial court sustained without leave to amend the demurrer of the State Board to the entire action. It sustained the demurrer as to four causes of action and granted the motion to strike of the Regional Board. After a hearing, the trial court denied the petition for writ of mandate.

Both procedurally and substantively, the City of Rancho Cucamonga challenges the conditions imposed by the NPDES [FN2] Permit and Waste Discharge Requirements (the 2002 permit). It contends the procedure by which the 2002 permit was adopted was not legal, that the 2002 permit's conditions are not appropriate for the area, and that the permit's requirements are too expensive. Because we conclude the permit was properly adopted and its conditions and requirements are appropriate, we reject these contentions.

FN2. The National Pollutant Discharge Elimination System.

2. *The National Pollutant Discharge Elimination System*

California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862(*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128(*Building Industry*); *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76(*Communities*); **453*WaterKeepers Northern California v. State Water Resources Control Board* (2002) 102 Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389(*WaterKeepers*)).

For purposes of this case, the important point is described by the California Supreme Court in *Burbank:* "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. *1381(*Arkansas v. Oklahoma* [(1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.]) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)" (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)

As discussed more fully in part 6 below, the state-issued NPDES permits are subject to the informal hearing procedures set forth for administrative adjudications. (Gov.Code, § 11445.10 et seq.; Cal.Code Regs., tit. 23, § 647 et seq.) The issuance of permits is specifically excluded from the procedures for administrative regulations and rulemaking. (Gov.Code, §§ 11340 et seq., 11352.)

3. *Factual and Procedural Background*

The Regional Board issued the first NPDES permit for San Bernardino County in 1990. The principal permittee was the San Bernardino Flood Control District (the District). The 1990 permit required the permittees to develop and implement pollution con-

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trol measures, using "best management practices" and monitoring programs, to eliminate illegal discharges and connections, and to obtain any necessary legal authority to do so. The management programs could be existing or new.

In 1993, the District developed the NPDES Drain Area Management Program (DAMP).

The second NPDES permit was issued in 1996 and was based on the Report of Waste Discharge (ROWD) prepared by the principal permittee and co-permittees, including Rancho Cucamonga. The 1996 permit proposed extending the existing program, which included inspections of industrial and commercial sources; policies for development and redevelopment; better public education; and implementation of a monitoring program. It offered a commitment to reduce pollutants to the "maximum extent practicable."

In 2000, the permittees submitted another ROWD to renew their NPDES permit. The 2000 ROWD proposed continuing to implement and develop water quality management and monitoring programs.

***1382** Based on the 2000 ROWD, the Regional Board staff created five successive drafts of the 2002 permit, incorporating written comments by Rancho Cucamonga and others and comments made during two public workshops. Some of the comments addressed the economic considerations of anticipated prohibitive compliance costs.

The notice of the public hearing to consider adoption of the 2002 permit hearing ****454** announced: "relevant Regional Board files are incorporated into the record;" the governing procedures were those for an informal hearing procedure as set forth in "Title 23, California Code of Regulations, Section 647 et seq.;" and "Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq.," the alternative formal hearing procedure for administrative adjudication. The notice was mailed to all permittees. The accompanying "fact sheet," which was publicly circulated, offered further information about the conduct and nature of the hearing and the legal and factual grounds for the Regional Board's recommendation to adopt the 2002 permit.

The informal public hearing was conducted on April 26, 2002. Neither Rancho Cucamonga nor any of the permittees objected to the form or substance of the hearing. Ultimately, after a staff presentation and testimony, including a statement from Rancho Cucamonga's counsel, the Regional Board adopted the 2002 permit. After the State Board dismissed their administrative appeal, Rancho Cucamonga and Upland filed the instant action.

The operative pleading is the second amended petition for writ of mandate and complaint. The petition alleges that the State Board and the Regional Board acted illegally and in excess of their jurisdiction in developing, adopting and implementing the 2002 permit. Based on 26 pages of general allegations, the petition asserts eight causes of action, alleging the State Board and the Regional Board violated sections 13241, 13263, and 13360 of the Water Code (the Porter-Cologne Act); the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.); the California Administrative Procedure Act (Gov.Code, §§ 11340-11529); the California Constitution; and the Federal Clean Water Act; and seeking declaratory and injunctive relief.

The State Board successfully opposed the action on demurrer. The Regional Board eliminated four causes of action, the fourth, fifth, seventh, and eighth by demurrer and motion to strike. On the remaining four causes of action, the trial court found in favor of the Regional Board.

***1383** 4. *State Board's Demurrer*

[1] Rancho Cucamonga maintains the trial court should not have sustained the demurrer of the State Board without leave to amend because the State Board is the ultimate authority on state-issued NPDES permits, and, therefore, was properly joined as

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a party: "Because the State Board has for all intents and purposes adopted the rules and policies of general application upon which the Permit is based, it is clearly a proper party to this action."

The difficulty with Rancho Cucamonga's theory of liability against the State Board is, to quote Gertrude Stein about the City of Oakland, "There is no there there." (Gertrude Stein, *Everybody's Autobiography.*) In other words, Rancho Cucamonga's allegations against the State Board lack any substance. Instead, Rancho Cucamonga launches an unspecific attack on the State Board without identifying any particular problems. The petition makes the unexceptional allegation that the State Board formulates general water control policy which it implements and enforces through regional boards. It also alleges the State Board has not complied with the Administrative Procedure Act but it does not identify any objectionable policies or how there is no compliance. Instead the petition complains about a State Board letter directing that all NPDES permits follow consistent principles regarding Standard Urban Storm Water Mitigation ****455** Plans. Additionally, the petition maintains the 2002 permit included new reporting requirements and increased costs of compliance.

But the foregoing allegations did not articulate any improper State Board conduct. The 2002 permit, issued by the Regional Board and not by the State Board, is not subject to formal rule-making procedures. (Gov.Code, § 11352, subd. (b).) The State Board's letter, explaining a precedential decision concerning mitigation plans, is not an example of formal rule-making. (Gov.Code, § 11425.60, subd. (b).) By dismissing Rancho Cucamonga's administrative appeal concerning the 2002 permit, the State Board declined to become involved and the Regional Board's decision to issue the permit became final and subject to judicial review. (*People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.) But the State Board was not made a proper party by reason of its dismissal of the administrative appeal.

Furthermore, even if Rancho Cucamonga had identified any cognizable claim against the State Board, it would have been barred by the 30-day statute of limitations for challenging an improperly adopted State Board regulation or order. (Wat.Code, § 13330; Gov.Code, § 11350.)

***1384** We hold the trial court properly sustained without leave to amend the State Board's demurrer to the second amended petition for writ of mandate and complaint.

5. Standard of Review for Petition for Writ of Mandate

[2] In deciding a petition for writ of mandate, the trial court exercises its independent judgment. (Code Civ. Proc., § 1094.5, subd. (c); Wat.Code, § 13330, subd. (d); *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) But, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, ... Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817-818, 85 Cal.Rptr.2d 696, 977 P.2d 693(*Fukuda*).)

[3][4] On appeal, the reviewing court determines whether substantial evidence supports the trial court's factual determinations. (*Fukuda, supra,* 20 Cal.4th at p. 824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) The trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations. (*Building Industry, supra,* at p. 879, 22 Cal.Rptr.3d 128; *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482, 22 Cal.Rptr.3d 772.)

6. Rancho Cucamonga's Objections to the Administrative Record and Lack of Notice

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[5] The notice of the administrative hearing for adoption of the 2002 permit included the statement that the Regional Board's files would be incorporated as part of the record. Before trial on the writ petition, Rancho Cucamonga attempted to raise an omnibus objection to the entire administrative record and a specific objection to four documents, three studies about marine pollution and one economic study. The trial court ruled the objections had been waived by not making them before or at the time of the hearing. Applying the presumption of administrative regularity, we affirm the trial court's evidentiary ruling. **456(*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1131, 108 Cal.Rptr.2d 102.)

The reasons given by Rancho Cucamonga as to why the trial court should have sustained its objections to all or part of the administrative record are that it did not waive its objections to the record because Rancho Cucamonga did not know the hearing was adjudicative; the Regional Board did not provide *1385 notice of an informal hearing (Gov.Code, § 11445.30); and Rancho Cucamonga never had an opportunity to object to the administrative record.

[6] As noted previously, Government Code section 11352, subdivision (b), makes the issuance of an NPDES permit exempt from the rulemaking procedures of the Administrative Procedure Act. Permit issuance is a quasi-judicial, not a quasi-legislative, rule-making proceeding: "The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function." (*Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320, 67 Cal.Rptr.2d 51; *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 718, 279 Cal.Rptr. 22.)

Instead, the Regional Board correctly followed the administrative adjudication procedures (Gov.Code, § 11445.10 et seq.) and the companion regulations at California Code of Regulations, Title 23, sections 647-648.8 for informal adjudicative public hearings. These procedures were announced in the notice of hearing which also stated that Government Code section 11500 et seq., governing formal administrative adjudication hearings, would not apply, thus satisfying Government Code section 11445.30 requiring notice of an informal hearing procedure. At the time of the hearing, Rancho Cucamonga did not object to the informal procedure. Rancho Cucamonga's effort to argue that federal notice requirements (40 C.F.R. § 124.8, subd. (b)(6)(ii) (2005)) should also have been followed fails because this involved a state-issued NPDES permit adopted according to California procedures.

Because Rancho Cucamonga was given notice that the hearing on the permit would proceed as an informal administrative adjudication, it cannot successfully argue it was relieved of the obligation to object to the administrative record at the time of the hearing. An informal administrative adjudication contemplates liberality in the introduction of evidence. (Cal. Code Regs., tit. 23, §§ 648, subd. (d) and 648.5.1.) If Rancho Cucamonga wished to object to the informal hearing procedures, including the liberal introduction of evidence, it should have raised its objections as provided by statute and regulation before or at the time of the hearing (Gov.Code, §§ 11445.30, 11445.40, and 11445.50; Cal. Code Regs., tit. 23, § 648.7); not a year later in the subsequent civil proceeding.

7. *Economic Considerations for Issuance of NPDES Permit*

Rancho Cucamonga's next assignment of error is that the Regional Board failed to consider the economic impact of the requirements of the 2002 permit by not conducting a cost-benefit analysis. Rancho Cucamonga relies on the California Supreme Court's *Burbank* opinion, in which the court held: "When ... a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law *1386 requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance."

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Burbank, supra, 35 Cal.4th at p. 618, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Rancho Cucamonga contends that the 2002 permit exceeds federal requirements and that, therefore, this case should be remanded for a consideration of **457 economic factors. (See *ibid.;* Wat.Code, § 13241, subd. (d).)

The two problems with this argument are the trial court found there was no evidence that the 2002 permit exceeded federal requirements and Rancho Cucamonga does not explain now how it does so. There was also evidence that the 2002 permit was based on a fiscal analysis and a cost-benefit analysis. In the absence of the foundational predicate and in view of evidence that cost was considered, Rancho Cucamonga's contention on this point fails.

[7] We also reject Rancho Cucamonga's related procedural argument that the Regional Board's motion to strike was impermissible as piecemeal adjudication. (*Regan Roofing v. Superior Court* (1994) 24 Cal.App.4th 425, 432-436, 29 Cal.Rptr.2d 413,*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1851-1855, 16 Cal.Rptr.2d 458.) It is well recognized a court may strike all or part of a pleading as it did in this instance. (Code Civ. Proc., §§ 431.10 and 436; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

8. *Substantial Evidence*

[8] Rancho Cucamonga also challenges the trial court's independent factual determination that sufficient evidence supports the findings of the Regional Board. Rancho Cucamonga's main contention is that the 2002 permit was not distinctively crafted for San Bernardino County but, instead, copied a similar permit for other counties without identifying any particular water quality impairment in San Bernardino County caused by the permittees. In other words, no evidence in the record supports issuance of the 2002 permit and the trial court did not identify any such evidence in its statement of decision.

One problem with Rancho Cucamonga's foregoing argument is that the Clean Water Act requires an NPDES permit to be issued for *any* storm sewer discharge, whether there is any actual impairment in a particular region. (33 U.S.C. § 1342; *Communities, supra,* 109 Cal.App.4th at pp. 1092-1093, 1 Cal.Rptr.3d 76.) Therefore, Rancho Cucamonga's contention that the permit fails to identify impaired water bodies in the region is beside the point.

In its statement of decision, the trial court discussed the inadequacy of the arguments and evidence cited by Rancho Cucamonga and concluded: "The San Bernardino Permit is based in part on the Basin Plan for this region. It is *1387 also based on the permittees' own reports and monitoring within this region.... It incorporates the permittees' management program, which is unique to these cities and county." The trial court included a citation to the 1993 DAMP report's "Geographic Description of the Drainage Area," which discusses the specific conditions present in San Bernardino County.

On appeal, Rancho Cucamonga faults the trial court for not presenting a more detailed description of the evidence supporting the issuance of the permit. We do not think the trial court, or this court, must bear that burden.

[9] First, "[a]n agency may ... rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence. (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 535-536, 127 Cal.Rptr. 775.)" (*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866, 226 Cal.Rptr. 575.) Here the Regional Board adopted the recommendation of its staff in issuing the permit. And, as the record shows, the staff's recommendation was based on the previous 1990 and 1996 permits, the 1993 DAMP **458 report and the 2000 ROWD, the permittees' application for renewal of the 1996 permit, as well as more general water quality factors. The evidence

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contradicts Rancho Cucamonga's assertion, that "the Regional Board simply copied verbatim the NPDES Permit for North Orange County, a coastal region with markedly different water quality conditions and problems."

As part of the trial court's consideration of the petition for writ of mandate, Rancho Cucamonga and the Regional Board directed the court to review specific items of evidence contained in the administrative record. In its opposing brief, the Regional Board offered a detailed account of the evidence supporting the issuance of the permit. The trial court indicated it had reviewed the parties' submissions before ruling. It discussed the evidence at the hearing on the petition and referred to it in its statement of decision. (*Lala v. Maiorana* (1959) 166 Cal.App.2d 724, 731, 333 P.2d 862.) Rancho Cucamonga had the burden of showing the Board abused its discretion or its findings were not supported by the facts. (*Building Industry, supra,* 124 Cal.App.4th at pp. 887-888, 22 Cal.Rptr.3d 128.) To the extent it attempted to do so at the trial court level, it was not successful.

This court has independently reviewed the record with particular attention to the evidence as emphasized by the parties. We do not, however, find it incumbent upon us or the trial court to review the many thousands of pages submitted on appeal and identify the particular evidence that constitutes substantial evidence. Instead, we deem the trial court's findings sufficient and not affording any grounds for reversal. (*Building Industry, supra,* 124 Cal.App.4th at p. 888, 22 Cal.Rptr.3d 128; see ***1388***Weisz Trucking Co., Inc. v. Emil R. Wohl Construction* (1970) 13 Cal.App.3d 256, 264, 91 Cal.Rptr. 489, citing *Perry v. Jacobsen* (1960) 184 Cal.App.2d 43, 50, 7 Cal.Rptr. 177.)

9. *Safe Harbor Provision*

[10] As it did repeatedly below, Rancho Cucamonga maintains the 2002 permit violates section 402(k) of the Clean Water Act (33 U.S.C. § 1342, subd. (k)), because the permit does not include "safe harbor" language, providing that, if a permittee is in full compliance with the terms and conditions of its permit, it cannot be found in violation of the Clean Water Act. (*United States Public Interest Research Group v. Atlantic Salmon of Maine, LLC* (1st Cir.2003) 339 F.3d 23, 26; *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 205, 96 S.Ct. 2022, 48 L.Ed.2d 578.) The trial court found there was no statutory right to a "safe harbor" provision to be included as the term of the permit. We agree.

This seems like much ado about nothing because 33 U.S.C. § 1342, subdivision (k), already affords Rancho Cucamonga the protection it seeks: "Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health." Rancho Cucamonga does not cite any persuasive authority as to why this statutory protection had to be duplicated as a provision in the 2002 permit.

Furthermore, the 2002 permit complied with the State Board's Water Quality Order No. 99-05, a precedential decision requiring NPDES permits to omit "safe harbor" language used in earlier permits. A permit without "safe harbor" language was upheld in ****459***Building Industry, supra,* 124 Cal.App.4th at p. 877, 22 Cal.Rptr.3d 128. The trial court did not err.

10. *Maximum Extent Practicable*

Rancho Cucamonga protests that the 2002 permit's discharge limitations/prohibitions exceed the federal requirement that storm water dischargers should "reduce the discharge of pollutants to the maximum extent practicable." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The trial court, however, found there was no evidence presented that the 2002 permit ex-

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ceeded federal requirements. Because there is no evidence, the issue presented is hypothetical and, therefore, premature. (*Building Industry, supra,* 124 Cal.App.4th at p. 890, 22 Cal.Rptr.3d 128.)

Additionally, as Rancho Cucamonga recognizes, *Building Industry* rejected the contention that a "regulatory permit violates federal law because it allows the Water Boards to impose municipal storm sewer control measures more ***1389** stringent than a federal standard known as 'maximum extent practicable.' [Citation.] [Fn. omitted.] [W]e ... conclude the Water Boards had the authority to include a permit provision requiring compliance with state water quality standards." (*Building Industry, supra,* 124 Cal.App.4th at p. 871, 22 Cal.Rptr.3d 128.) The *Burbank* case, allowing for consideration of economic factors when federal standards are exceeded, does not alter the analysis in this case where there was no showing that federal standards were exceeded and where there was evidence that economic factors were considered. Furthermore, like the permit in *Building Industry*, the 2002 permit contemplates controlling discharge of pollutants to the maximum extent practicable through a "cooperative iterative process where the Regional Water Board and Municipality work together to identify violations of water quality standards." (*Building, supra,* at p. 889, 22 Cal.Rptr.3d 128.) The 2002 permit does not exceed the maximum extent practicable standard.

11. *The Requirements of the 2002 Permit*

[11] Rancho Cucamonga lastly complains the requirements of the 2002 permit are "overly prescriptive," illegally dictating the manner of compliance and improperly delegating to the permittees the inspection duties of the State Board and the Regional Board. Rancho Cucamonga's arguments contradict the meaning and spirit of the Clean Water Act.

In creating a permit system for dischargers from municipal storm sewers, Congress intended to implement actual programs. (*Natural Resources Defense Council, Inc. v. Costle* (D.C.Cir.1977) 568 F.2d 1369, 1375.) The Clean Water Act authorizes the imposition of permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator of the State determines appropriate for the control of such pollutants." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The Act authorizes states to issue permits with conditions necessary to carry out its provisions. (33 U.S.C. § 1342, subd. (a)(1).) The permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants. (*NRDC v. EPA* (9th Cir.1992) 966 F.2d 1292, 1308.) That is what the Regional Board has created in the 2002 permit.

Rancho Cucamonga's reliance on Water Code section 13360 is misplaced because that code section involves enforcement and implementation of state water quality law, (Wat.Code, § 13300 et seq.) not compliance with the Clean Water Act (Wat.Code, § 13370 et seq.) The federal law ****460** preempts the state law. (*Burbank, supra,* 35 Cal.4th at p. 626, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits.

***1390** Furthermore, the 2002 permit does afford the permittees discretion in the manner of compliance. It is the permittees who design programs for compliance, implementing best management practices selected by the permittees in the DAMP report and approved by the Regional Board. Throughout the permit, the permittees are granted considerable autonomy and responsibility in maintaining and enforcing the appropriate legal authority; inspecting and maintaining their storm drain systems according to criteria they develop; establishing the priorities for their own inspection requirements; and establishing programs for new development. The development and implementation of programs to control the discharge of pollutants is left largely to the

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permittees.

More particularly, we agree with the Regional Board that the permit properly allocated some inspection duties to the permittees. As part of their ROWD application for a permit, the permittees proposed to "Conduct Inspection, Surveillance, and Monitoring. Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal storm drain system." The ROWD also discussed continuing existing inspection programs.

Water Code section 13383 provides that as part of compliance with the Clean Water Act, the Regional Board may establish inspection requirements for any pollutant discharger. Federal law, either expressly or by implication, requires NPDES permittees to perform inspections for illicit discharge prevention and detection; landfills and other waste facilities; industrial facilities; construction sites; certifications of no discharge; non-stormwater discharges; permit compliance; and local ordinance compliance. (40 C.F.R. 122.26, subds. (d), (g); 33 U.S.C. § 1342, subd. (p)(3)(B)(ii).) Permittees must report annually on their inspection activities. (40 C.F.R. § 122.42, subd. (c)(6) (2005).)

Rancho Cucamonga claims it is being required to conduct inspections for facilities covered by other state-issued general permits. Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

*1391 12. *Disposition*

Rancho Cucamonga is the only of the original 18 permittees still objecting to the 2002 NPDES permit. It has not successfully demonstrated that substantial evidence does not support the trial court's factual determinations or the trial court erred in its interpretation and application of state and federal law.

We affirm the judgment and order the prevailing parties to recover their costs on appeal.

HOLLENHORST, Acting P.J., and RICHLI, J., concur.

Cal.App. 4 Dist.,2006.
City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region
135 Cal.App.4th 1377, 38 Cal.Rptr.3d 450, 36 Envtl. L. Rep. 20,026, 06 Cal. Daily Op. Serv. 845, 06 Cal. Daily Op. Serv. 1699, 2006 Daily Journal D.A.R. 1126

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ATTACHMENT NO. 21

City of Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190

City of Richmond v. Commission on State Mandates
Cal.App.1.Dist.
CITY OF RICHMOND, Plaintiff and Appellant,
v.
COMMISSION ON STATE MANDATES, Defendant and Respondent; DEPARTMENT OF FINANCE, Real Party in Interest and Respondent.
No. C026835.

Court of Appeal, Third District, California.
May 28, 1998.

SUMMARY

A city filed an administrative mandamus action against the Commission on State Mandates, seeking a determination that an amendment to Lab. Code, § 4707, making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, was a state mandate to which the city was entitled to reimbursement under Cal. Const., art. XIII B, § 6, which applies when a state law establishes a new program or higher level of service payable by local governments. The amendment eliminated local safety members of PERS from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby survivors of a local safety member of PERS who are killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. The trial court denied the petition, finding that the amendment created an increased cost but not an increased level of service by local governments. (Superior Court of Sacramento County, No. 96CS03417, James Timothy Ford, Judge.)

The Court of Appeal affirmed. The court held that although the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did the amendment impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. Local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. The court also held that assembly bill analyses stating that the amendment was a reimbursable state mandate (Cal. Const., art. XIII B, § 6), were irrelevant to the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review, and has provided that the initial determination by Legislative Counsel is not binding on the commission. (Opinion by Morrison, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 138--Judicial Review and Relief--Appellate Court-- Standard--Decision of Commission on State Mandates.
Under Gov. Code, § 17559, a proceeding to set aside a decision of the Commission on State Mandates on a claim may be commenced on the ground that the commission's decision was not supported by substantial evidence. Where the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, review on appeal is generally the same. However, the appellate court independently reviews the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. The

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question of whether a law is a state-mandated program or a higher level of service under Cal. Const., art. XIII B, § 6, is a question of law that is reviewed de novo.

(2a, 2b, 2c) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Workers' Compensation Death Benefits Payable to Local Safety Members.
An amendment to Lab. Code, § 4707, to eliminate local safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS, whereby the survivors of a local safety member of PERS who is killed in the line of duty receive both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter, did not mandate a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under Cal. Const., art. XIII B, § 6. Although the amendment increased the cost of providing services, that could not be equated with requiring an increased level of service, and did not constitute a new program. Neither did it impose a unique requirement on local governments that was not applicable to all residents and entities within the state. The amendment merely made the workers' compensation death benefit requirements as applicable to local governments as they are to private employers.

(3a, 3b) State of California § 11--Fiscal Matters--Reimbursement for State Mandates--Purpose.
Cal. Const., art. XIII B, § 6, which requires a subvention of funds to reimburse local governments when a state law mandates a new program or higher level of service on local governments, was intended to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123A.]
(4) Statutes § 43--Construction--Aids--Legislative Analysis--Reimbursement for State Mandates--Legislative Intent.
Assembly bill analyses of an amendment to Lab. Code, § 4707, making local safety members of the Public Employees' Retirement System (PERS) eligible for both PERS and workers' compensation death benefits, stating that it was a reimbursable state mandate (Cal. Const., art. XIII B, § 6), were irrelevant to the issue. The Legislature has entrusted the determination of what constitutes a state mandate to the Commission on State Mandates, subject to judicial review (Gov. Code, §§ 17500, 17559) and has provided that the initial determination by legislative counsel is not binding on the commission (Gov. Code, § 17575).

COUNSEL
Nossaman, Guthner, Knox & Elliott, Robert J. Sullivan, Stephen P. Wilman, John T. Kennedy and Scott N. Yamaguchi for Plaintiff and Appellant.
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Gary D. Hori and Shawn D. Silva for Defendant and Respondent.
Daniel E. Lungren, Attorney General, Linda A. Cabatic, Assistant Attorney General, Marsha Bedwell and Shelleyanne W. L. Chang, Deputy Attorneys General, for Real Party in Interest and Respondent.
***1193**
MORRISON, J.
Chapter 478 of the Statutes of 1989 (chapter 478) amended Labor Code section 4707 to eliminate loc-

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al safety members of the Public Employees' Retirement System (PERS) from the coordination provisions for death benefits payable under workers' compensation and under PERS. As a result, the survivors of a local safety member of PERS who is killed in the line of duty receives both a death benefit under workers' compensation and a special death benefit under PERS, instead of only the latter. This proceeding presents the question whether chapter 478 mandates a new program or higher level of service on local governments, requiring a subvention of funds to reimburse the local government under article XIII B section 6 of the California Constitution. We conclude that chapter 478 is not a state mandate requiring reimbursement and affirm the judgment.

Factual and Procedural Background

The workers' compensation system provides for death benefits payable to the deceased employee's survivors. (Lab. Code, § 4700 et seq.) There are also preretirement death benefits under PERS. (Gov. Code, § 21530 et seq.) There is a special death benefit under PERS if the death was industrial and the deceased was a patrol, state peace officer/firefighter, state safety officer, state industrial, or local safety member. (Gov. Code, § 21537.)Labor Code section 4707 provides a coordination or offset for workers' compensation death benefits when the special death benefit under PERS is payable. In such cases, no workers' compensation death benefit, other than burial expenses, is payable, except that if the PERS special death benefit is less than the workers' compensation death benefit, the difference is paid as a workers' compensation death benefit. The total death benefit is equal to the greater of the PERS special death benefit or the workers' compensation benefit, not the combination of the two death benefits.

Prior to 1989, Labor Code section 4707 provided in part: "No benefits, except reasonable expenses of burial ... shall be awarded under this division on account of the death of an employee who is a member of the Public Employees' Retirement System unless it shall be determined that a special death benefit ... will not be paid by the Public Employees' Retirement System to the widow or children under 18 years of age, of the deceased, on account of said death, but if the total death allowance paid to said widow and children shall be less than the benefit otherwise payable under this division such widow and children shall be entitled, under this division, to the difference." (Stats. 1977, ch. 468, § 4, pp. 1528-1529.) ***1194**

Chapter 478 amended Labor Code section 4707 to make technical changes, to provide the death benefit is payable to the surviving spouse rather than to the widow, and to add subdivision (b). Subdivision (b) of Labor Code section 4707 reads: "The limitation prescribed by subdivision (a) shall not apply to local safety members of the Public Employees' Retirement System." (Stats. 1989, ch. 478, § 1, p. 1689.)

In 1992, David Haynes, a police officer for the City of Richmond (Richmond), was killed in the line of duty. Officer Haynes was a local safety member of PERS. His wife and children received the PERS special death benefit; they also received a death benefit under workers' compensation.

Richmond filed a test claim with the Commission on State Mandates (the Commission), contending chapter 478 created a state-mandated local cost. FN1 Richmond sought reimbursement of the cost of the workers' compensation death benefit, estimated to be $295,432. As part of its test claim, Richmond included legislative history of chapter 478, purporting to show a legislative intent to create a reimbursable state mandate.

> FN1 " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov. Code, § 17521.)

The Commission denied the test claim. It found that

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chapter 478 dealt with workers' compensation benefits and case law held that workers' compensation laws are laws of general application and not subject to section 6 of article XIII B of the California Constitution. It noted the legislative history containing analyses that chapter 478 was a state mandate had been prepared before the issuance of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522].

Richmond filed a petition for a writ of administrative mandate under Code of Civil Procedure section 1094.5, seeking to compel the Commission to approve its claim. Both the Commission and the Department of Finance, as real parties in interest, responded. The court denied the petition, finding chapter 478 created an increased cost but not an increased level of service by local governments.

Discussion

I

(1) Under Government Code section 17559, a proceeding to set aside the Commission's decision on a claim may be commenced on the ground that the Commission's decision is not supported by substantial evidence. Where ***1195** the scope of review in the trial court is whether the administrative decision is supported by substantial evidence, our review on appeal is generally the same. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304].) However, we independently review the superior court's legal conclusions as to the meaning and effect of constitutional and statutory provisions. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].) The question of whether chapter 478 is a state-mandated program or higher level of service under article XIII B, section 6 of the California Constitution is a question of law we review de novo. (45 Cal.App.4th at p. 1810.)

With certain exceptions not relevant here, "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service ...." (Cal. Const. art. XIII B, § 6, (hereafter referred to as section 6).)

In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202], the Supreme Court considered whether laws increasing the amount employers, including local governments, had to pay in certain workers' compensation benefits were a reimbursable "higher level of service" under section 6. The court looked to the intent of the voters in adopting the constitutional provision by initiative. (43 Cal.3d at p. 56.)Noting that the phrase "higher level of service" is meaningless alone, the court found it must be read in conjunction with the phrase "new program." The court concluded, "that the drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*)

(2a) Richmond contends chapter 478 meets both tests to qualify as a program under section 6. Richmond contends increased death benefits are provided to generate a higher quality of local safety officers and thus provide the public with a higher level of service. Richmond argues that providing increased death benefits to local safety workers is analogous to providing protective clothing and equipment for fire fighters. In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], executive orders requiring updated protective clothing and equipment for firefighters were found to be reimbursable state mandates under section 6. The executive orders applied only to fire protection, a pecu-

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liarly governmental function. The court noted that police and fire *1196 protection are two of the most essential and basic functions of local government. (190 Cal.App.3d at p. 537.)Richmond urges that since chapter 478 applies only to local safety members, it is also a state mandate directed to a peculiarly local governmental function.

In *Carmel Valley Fire Protection Dist. v. State of California, supra*,190 Cal.App.3d 521, the executive order required updated equipment for the fighting of fires. The use of this equipment would result in more effective fire protection and thus would provide a higher level of service to the public. Here chapter 478 addresses death benefits, not the equipment used by local safety members. Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public. (*City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484 [235 Cal.Rptr. 101] [temporary increase in PERS benefit to retired employees which resulted in higher contribution rate by local government was not a program or service under section 6].) In *County of Los Angeles v. State of California, supra*,43 Cal.3d 46, the increase in certain workers' compensation benefits resulted in an increase in the cost to local governments of providing services. Nonetheless, the Supreme Court found no "higher level of service" under section 6. Similarly, a new requirement for mandatory unemployment insurance for local government employees, an increase in the cost of providing services, was not a "new program" or "higher level of service" in *City of Sacramento v. State of California, supra*,50 Cal.3d 51, 66-70.Chapter 478 fails to meet the first test of a "program" under section 6.

Richmond urges chapter 478 meets the second test of a program under section 6 because it imposed a unique requirement on local governments that was not applicable to all residents and entities within the state. (*County of Los Angeles v. State of California, supra*,43 Cal.3d 46, 56.)Richmond argues that only local governments have "local safety members" and chapter 478 required double death benefits, both PERS and workers' compensation, for this specific group of employees. By requiring double death benefits for local safety members, chapter 478 imposed a unique requirement on local government.

The Commission takes a different view of chapter 478. First, it argues that chapter 478 addresses an aspect of workers' compensation law, which, under *County of Los Angeles v. State of California, supra*,43 Cal.3d 46, is a law of general application to which section 6 does not apply. The Commission argues chapter 478 imposes no unique requirement; it merely *1197 eliminates the previous exemption from providing workers' compensation death benefits to local safety members. As such, chapter 478 simply puts local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit. That chapter 478 affects only local government does not compel the conclusion that it imposes a unique requirement on local government. The Commission contends Richmond's view of chapter 478 is too narrow; the law must be considered in its broader context.

While Richmond's argument has surface appeal, we conclude the Commission's view is the correct one. Section 6 was designed to prevent the state from forcing programs on local government. (3a) "[T]he intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to 'force' programs on localities." (*County of Los Angeles v. State of California, supra*,43 Cal.3d at pp. 56-57.) "The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxa-

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tion and government spending. [Citation.] Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services. " (*Id.* at p. 61.)

Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate. In *City of Sacramento v. State of California, supra*,50 Cal.3d 51, the Legislature enacted a statute requiring local governments to participate in the state's unemployment insurance system on behalf of their employees. Local entities made a claim for reimbursement. First, the Supreme Court found that like an increase in workers' compensation benefits, a requirement to provide unemployment insurance did not compel new or increased "service to the public" at the local level. (*Id.* at pp. 66-67.)The court next addressed whether the new law imposed a unique requirement on local governments.

"Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are ***1198** imposed on local governments 'unique[ly],' and not merely as an incident of compliance with general laws. State and local governments, and nonprofit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique.' [¶] The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by imposing new obligations on the public and private sectors *at the same time.* However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local governments, it would have to pay. This was not the intent of our recent decision." (*City of Sacramento v. State of California, supra*,50 Cal.3d 51, 68-69, italics in original.)

Richmond argues that Labor Code section 4707, prior to chapter 478, was not an exemption from workers' compensation, relying on *Jones v. Kaiser Industries Corp.* (1987) 43 Cal.3d 552 [237 Cal.Rptr. 568, 737 P.2d 771]. In *Jones,* the plaintiff, a city police officer, was killed in a traffic accident while on duty. His survivors brought suit against the city, contending it has created and maintained a dangerous condition at the intersection where the accident occurred. Plaintiffs argued their suit was not barred by the exclusivity provisions of workers' compensation because they did not receive a workers' compensation death benefit under Labor Code section 4707. The court rejected this argument. First, plaintiffs did receive a benefit under workers' compensation in the form of burial expenses. Further, Labor Code section 4707 was designed not to exclude plaintiffs from receiving workers' compensation benefits, but to assure they received the maximum benefit under either PERS or workers' compensation. (43 Cal.3d at p. 558.)

Under *Jones* v. *Kaiser Industries Corp., supra*,43 Cal.3d 552, one receiving a special death benefit under PERS rather than the workers' compensation death benefit is not considered exempt from workers' compensation for purposes of its exclusivity provisions, precluding a suit against the employer for negligence. This conclusion does not affect the analysis that chapter 478, by removing the offset provisions for employers of local safety members, merely makes local governments "indistinguishable

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in this respect from private employers." (*County of Los Angeles v. State of California*, *supra*,43 Cal.3d at p. 58.)

(2b) Richmond's error is in viewing chapter 478 from the perspective of what the final result is, rather than from the perspective of what the law mandates. (3b) "We recognize that, as is made indisputably clear from ***1199** the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 [244 Cal.Rptr. 677, 750 P.2d 318].) (2c) While the result of chapter 478 is that local safety members of PERS now are eligible for two death benefits and local governments will have to fund the workers' compensation benefit, chapter 478 does not mandate double death benefits. Instead, it merely eliminates the offset provisions of Labor Code section 4707. In this regard, the law makes the workers' compensation death benefit requirements as applicable to local governments as they are to private employers. It imposes no "unique requirement" on local governments.

Further, the view that the Legislature was proceeding by stages in enacting chapter 478 finds support in the history of the nearly identical predecessor to chapter 478, Assembly Bill No. 1097 (1987-1988 Reg. Sess.). Assembly Bill No. 1097 was passed in 1988, but was vetoed by the Governor. While the final version of Assembly Bill No. 1097 was virtually identical to chapter 478 in adding subdivision (b) to Labor Code section 4707 (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended Mar. 22, 1988), the bill was very different when it began. The initial version of Assembly Bill No. 1097 repealed Labor Code section 4707 in its entirety. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) introduced Mar. 2, 1987.) The next version made Labor Code section 4707 applicable only to state members of PERS. (Assem. Bill No. 1097 (1987-1988 Reg. Sess.) as amended June 15, 1987.) The final version left Labor Code section 4707 applicable to all but local safety members of PERS.

II

(4) As part of its test claim, Richmond included portions of the legislative history of chapter 478 to show the Legislature intended to create a state mandate. This history includes numerous bill analyses by legislative committees that state the bill creates a state-mandated local program.

Government Code section 17575 requires the Legislative Counsel to determine if a bill mandates a new program or higher level of service under section 6. If the Legislative Counsel determines the bill will mandate a new program or higher level of service under section 6, the bill must contain a section specifying that reimbursement shall be made from the state mandate fund, that there is no mandate, or that the mandate is being disclaimed. (Gov. Code, § 17579.)The Legislative Counsel found that chapter 478 imposed ***1200** a state-mandated local program. The enacted statute provided: "Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund." (Stats. 1989, ch. 478, § 2, p. 1689.)

One analysis concluded this language was technically deficient because it does not contain a specific acknowledgment that the bill is a state mandate. Reimbursement could not be made until the Commission held a hearing on a test claim. The analysis concluded it "should not be a serious problem because the information provided in this analysis

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could also be provided to the Commission on State Mandates if any local agency submits a claim for reimbursement to that Commission."

Another analysis suggested including an appropriation to avoid the necessity of the Commission having to determine that the bill was a mandate.

Richmond argues this legislative history shows the Legislature intended chapter 478 to be a state mandate and that it should be considered in making that determination. Amici curiae submitted a brief urging that case law holding that legislative history is irrelevant to the issue of whether there is a state-mandated new program or higher level of service under section 6 is wrongly decided. FN2 Amici curiae argue that the intent of the Legislature should control. They further note that the legislative history of chapter 478 shows that the initial opposition of the League of California Cities was dropped after the bill was amended to ensure reimbursement, and that the Governor signed the bill after he had vetoed a similar one that was not considered a state mandate. Amici curiae argue that to ignore the widespread understanding that the bill created a state mandate would undermine the legislative process.

> FN2 The California State Association of Counties, and the Cities of Carlsbad, Cudahy, Montebello, Monterey, Redlands, San Luis Obispo and San Pablo filed an amici curiae brief in support of Richmond.

In *County of Los Angeles v. Commission on State Mandates, supra,*32 Cal.App.4th 805, plaintiff sought reimbursement for costs incurred under Penal Code section 987.9 for providing certain services to indigent criminal defendants. Plaintiff argued the Legislature's initial appropriation of funds to cover the costs incurred under Penal Code section 987.9 was a final and ***1201** unchallengeable determination that section 987.9 constituted a state mandate. The court rejected this argument. "The findings of the Legislature as to whether section 987.9 constitutes a state mandate are irrelevant." (32 Cal.App.4th at p. 818.)

The court, relying on *Kinlaw v. State of California* (1991) 54 Cal.3d 326 [285 Cal.Rptr. 66, 814 P.2d 1308], found the Legislature had created a comprehensive and exclusive procedure for implementing and enforcing section 6. (*County of Los Angeles v. Commission on State Mandates, supra,*32 Cal.App.4th at pp. 818-819.)This procedure is set forth in Government Code section 17500 et seq. "[T]he statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists, and the Commission properly determined that no state mandate existed." (32 Cal.App.4th at p. 819.)

In *City of San Jose v. State of California, supra,*45 Cal.App.4th 1802, 1817-1818, the court relied upon *County of Los Angeles v. Commission on State Mandates, supra,*32 Cal.App.4th 805, in rejecting the argument that the determination by Legislative Counsel that a bill imposed a state mandate was entitled to deference.

Amici curiae contend these cases are wrong because they ignore the cardinal rules of statutory construction that courts must construe statutes to conform to the purpose and intent of lawmakers and that the intent of the Legislature should be ascertained to effectuate the purpose of the law.

Amici curiae are correct that " 'the objective of statutory interpretation is to ascertain and effectuate legislative intent.' [Citation.]" (*Trope v. Katz* (1995) 11 Cal.4th 274, 280 [45 Cal.Rptr.2d 241, 902 P.2d 259].) Where such intent is not clear from the language of the statute, we may resort to extrinsic aids, including legislative history. (*People v. Coronado* (1995) 12 Cal.4th 145, 151 [48 Cal.Rptr.2d 77, 906 P.2d 1232].) Here, however, the issue is not the interpretation of Labor Code section 4707. The parties agree it requires that the survivors of local safety members killed due to an industrial injury re-

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ceive both the special death benefit under PERS and the workers' compensation death benefit. Rather, the issue is whether section 6 requires reimbursement for the costs incurred by local governments under chapter 478. The Legislature has entrusted that determination to the Commission, subject to judicial review. (Gov. Code, §§ 17500, 17559.)It has provided that the initial determination by Legislative Counsel is not binding on the Commission. (*Id.*,§ 17575.) Indeed, the language of chapter 478 recognizes that the determination of whether the bill is a state mandate lies with ***1202** the Commission. It reads, "*if* the Commission on State Mandates determines that this act contains costs mandated by the state, ..." (Stats. 1989, ch. 478, § 2, p. 1689, italics added.) While the legislative history of chapter 478 may evince the understanding or belief of the Legislature that chapter 478 created a state mandate, such understanding or belief is irrelevant to the issue of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates, supra*,32 Cal.App.4th 805, 819.)

Disposition

The judgment is affirmed.

Puglia, P. J., and Nicholson, J., concurred.
Appellant's petition for review by the Supreme Court was denied August 19, 1998. ***1203**

Cal.App.1.Dist.
City of Richmond v. Commission on State Mandates
64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754, 63 Cal. Comp. Cases 733, 98 Cal. Daily Op. Serv. 4644, 98 Daily Journal D.A.R. 6559

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ATTACHMENT NO. 22

City of Sacramento v. State of California (1990) 50 Cal.3d 51

City of Sacramento v. State
Cal.
CITY OF SACRAMENTO et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents
No. S006188.

Supreme Court of California
Jan 29, 1990.

SUMMARY

A city and a county filed claims with the State Board of Control seeking subvention of the costs imposed on them by Stats. 1978, ch. 2, which extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. The board denied the claims, ruling that Stats. 1978, ch. 2, did not enact a state-mandated program for which reimbursement was required under Cal. Const., art. XIII B. On mandamus the trial court overruled the board and found the cost reimbursable, and the Court of Appeal affirmed. On remand, the board determined the amounts due on the claims originally submitted; however, the Legislature failed to appropriate the necessary funds for disbursement. The city then commenced a class action against the state on behalf of all local governments in the state. The complaint sought injunctive and declaratory relief barring enforcement of Stats. 1978, ch. 2, in the absence of state subvention; a writ of mandate directing that past, current, and/or future subvention funds be appropriated and disbursed, and/or that the Employment Development Department pay local agencies' past, current, and future unemployment insurance contributions from its own budget; and damages for past failures to reimburse. The trial court granted summary judgment for the state. (Superior Court of Sacramento County, No. 331607, Darrel W. Lewis, Judge.) The Court of Appeal, Third Dist., No. C002265, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing unemployment insurance coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. However, the court held, Stats. 1978, ch. 2, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restraining local taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. (Opinion by Eagleson, J., with Lucas, C. J., Mosk, Broussard, Panelli and Kennard, JJ., concurring. Separate concurring and dissenting opinion by Kaufman, J., concurring in the judgment.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Property Taxes § 7.5--Constitutional Provisions; Statutes and Ordinances--Real Property Tax Limitation--Exemptions for Federally Mandated Costs.
To the extent that a "federally mandated" cost is exempt from prior statutory limits on local taxation, Cal. Const., art. XIII A, restricting the assessment and taxing powers of state and local governments, eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.

(2) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Exhaustion of

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Remedies.
A class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, was not barred by any failure of plaintiffs to exhaust their remedies. The city and a county had filed timely claims for reimbursement of expenses incurred, to comply with Stats. 1978, ch. 2. When the State Board of Control initially denied the claims, the city and the county pursued judicial remedies, culminating in a Court of Appeal opinion concluding that reimbursement was required. The board then upheld the claims. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement, the city and the county were authorized to bring an enforcement action.

(3a, 3b) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Remedies Available.
Cal. Const., art. XIII, § 32, precluding any suit to enjoin or impede collection of a tax, did not bar a class action brought by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B. The state contended that the only remedy open to the city was to pay its unemployment "taxes" and then seek a "refund" under the "exclusive" procedures set forth in the Unemployment Insurance Code. However, the city was not challenging, directly or indirectly, the validity or application of the unemployment insurance law as such, or the propriety of any "tax" assessed thereunder; rather, it claimed that all its costs of affording unemployment compensation to its employees were subject to a statutory and constitutional subvention that the state refused to make. For the same reasons, the city's claim for reimbursement for past expenses was not barred.

(4) Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power.
Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds.
[See **Am.Jur.2d,** Constitutional Law, § 316.]
(5a, 5b, 5c) Judgments § 81--Res Judicata--Collateral Estoppel-- Public-interest Exception--Reimbursement to Local Governments for Unemployment Insurance Costs.
In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the state was not collaterally estopped from litigating the reimbursement issue. The city and a county had previously brought an action against the state, culminating in a Court of Appeal opinion concluding that reimbursement was required. The Legislature then declined to appropriate the necessary funds for disbursement. Even if the formal prerequisites for collateral estoppel were present, the public-interest exception to that doctrine governed, since strict application of the doctrine would foreclose any reexamination of the earlier holding, and the consequences of any error transcended those that would apply to mere private parties.

(6) Judgments § 81--Res Judicata--Collateral Estoppel--Questions of Law.
Generally, collateral estoppel bars a party to a prior

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action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. However, when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed.

(7) State of California § 7--Actions--Reimbursement to Local Governments for Unemployment Insurance Costs--Summary Judgment--Effect of Failure of Moving Party to Challenge Prior Summary Adjudication of Issues.
In a class action by a city, on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, the trial court did not lack the power to grant summary judgment for the state on the authority of a newly decided California Supreme Court case. The trial court had previously granted the city's motion for summary adjudication of issues, and the state had failed to seek timely mandamus review of that prior, contrary order. However, failure to challenge a summary adjudication order by the discretionary avenue of writ review cannot foreclose a party from asserting subsequent changes in law that render such a pretrial order incorrect.

(8) Judgments § 68--Res Judicata--Identity of Parties--Class Action--Where Prior Action Involved Individual Claims.
In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state of local compliance costs was required under Cal. Const., art. XIII B, res judicata did not preclude examination of an earlier Court of Appeal opinion, in an action by the city and a county, concluding that reimbursement was required. The issues presented in the current action were not limited to the validity of any finally adjudicated individual claims; rather, they encompassed the question of the state's subvention obligations in general under Stats. 1978, ch. 2.

(9a, 9b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Programs--Unemployment Insurance Costs.
In a class action by a city on behalf of all local governments in the state, against the state, in which it was alleged that Stats. 1978, ch. 2 (extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations), mandated a new program or higher level of service on local agencies for which reimbursement by the state was required under Cal. Const., art. XIII B, the trial court did not err in granting summary judgment for the state on the ground that the local costs of providing such coverage were not subject to subvention under Cal. Const., art. XIII B, or parallel statutes (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a)). The state had not compelled provision of new or increased "service to the public" at the local level, nor had it imposed a state policy "uniquely" on local governments. The phrase, "To force programs on local governments," in the voters' pamphlet relating to Cal. Const., art. XIII B, § 6, confirmed that the intent underlying that section was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.
[See **Cal.Jur.3d,** State of California, § 78.]
(10) State of California § 11--Fiscal Matters--Reimbursement to Local Governments-

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-State-mandated Programs.
The concepts of reimbursable state-mandated costs in Cal. Const., art. XIII B, requiring that the state reimburse local governments for the costs of state-mandated new programs or higher levels of service, and Rev. & Tax. Code, former §§ 2207, 2231, are identical.

(11a, 11b, 11c) State of California § 11--Fiscal Matters-- Reimbursement to Local Governments--Federally Mandated Programs--Unemployment Insurance Costs.
Stats. 1978, ch. 2, extending mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations, implemented a federal "mandate" within the meaning of Cal. Const., art. XIII B, and prior statutes restricting local taxation; thus, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by Stats. 1978, ch. 2, may tax and spend as necessary to meet the expenses required to comply with that legislation. In enacting Stats. 1978, ch. 2, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses; the alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. (Disapproving, insofar as it is inconsistent with this analysis, the decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258].)

(12) Constitutional Law § 11--Construction of Constitutions--Liberality and Flexibility.
Constitutional enactments must receive a liberal, practical commonsense construction that will meet changed conditions and the growing needs of the people. While a constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words, the literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

(13) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Programs.
In determining whether a program is federally mandated, to exempt its cost from a local government's statutory taxation limit (Rev. & Tax. Code, § 2271), and to exclude any appropriation required to comply with the mandate from the constitutional spending limit of the affected entity (Cal. Const., art. XIII B, § 9, subd. (b)), the result will depend on the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. The courts and the Commission on State Mandates must respect the governing principle of Cal. Const., art. XIII B, § 9, subd. (b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

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EAGLESON, J.
In response to changes in federal law, chapter 2 of the Statutes of 1978 (hereafter chapter 2/78) extended mandatory coverage under the state's unemployment insurance law to include state and local governments and nonprofit corporations. Here we consider whether, in chapter 2/78, the state "mandate[d] a new program or higher level of service" on the local agencies, and must therefore reimburse local compliance costs under article XIII B

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of the California Constitution and related statutes.

We conclude that the state is *not* required to reimburse the chapter 2/78 expenses of local governments. The obligations imposed by chapter 2/78 fail to meet the "program" and "service" standards for mandatory subvention we recently set forth in *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (hereafter *County of Los Angeles*). Chapter 2/78 imposes no "unique" obligation on local governments, nor does it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, must therefore be reversed.

However, our holding does not leave local agencies powerless to counter the fiscal pressures created by chapter 2/78. Though provisions of the Revenue and Taxation Code limit local property tax levies, and article XIII B itself places spending limits on both state and local governments, "costs mandated by the federal government" are expressly excluded from these ceilings. Chapter 2/78 imposes such "federally mandated" costs, because it was adopted by the state under federal coercion tantamount to compulsion. Hence, subject to overriding limitations on taxation rates (see, e.g., Cal. Const., art. XIII A), both state and local governments may levy and spend for their chapter 2/78 coverage obligations without reduction of the fiscal limits applicable to other needs and services.

I. Facts.

In 1972, and again in 1973, the Legislature enacted comprehensive schemes for local property tax relief. Though frequently amended thereafter, these statutes retained three principal features. First, they placed a limit on the local property tax rate. Second, they required the *state* to reimburse local governments for their costs resulting from state laws "which mandate ... new program[s] or ... increased level[s] of service" at the local level. Finally, they allowed local governments to exceed their property taxation limits to fund certain other nondiscretionary expenses, including "costs mandated by the federal government." (Stats. 1972, ch. 1406, § 14.7, pp.***58** 2961-2967; Stats. 1973, ch. 358, § 3, pp. 783-790; Rev. & Tax. Code, §§ 2206, 2260 et seq., 2271; former §§ 2164.3, 2165, 2167, 2169, 2207, 2231; Gov. Code, § 17500 et seq.)

Since adoption of the Social Security Act in 1935, federal law has provided powerful incentives to enactment of unemployment insurance protection by the individual states. In current form, the Federal Unemployment Tax Act (hereafter FUTA) (26 U.S.C. § 3301 et seq.) assesses an annual tax upon the gross wages paid by covered private employers nationwide. The tax rate, which has varied over the years, stands at 6.2 percent for calendar year 1990. (26 U.S.C. §§ 3301(1), 3306.)However, employers in a state with a federally "certified" unemployment insurance program may credit their contributions to the state system against up to 90 percent of the federal tax (currently computed at 6 percent for this purpose). (*Id.*, §§ 3302-3304.) A "certified" state program also qualifies for federal administrative funds. (42 U.S.C. §§ 501-503.)

California enacted its unemployment insurance system "on the eve of the adoption of the Social Security Act" in 1935 (*Steward Machine Co.* v. *Davis* (1937) 301 U.S. 548, 587-588 [81 L.Ed. 1279, 1291-1292, 57 S.Ct. 883, 109 A.L.R. 1293]; see Stats. 1935, ch. 352, § 1 et seq., p. 1226 et seq.) and has sought to maintain federal compliance ever since. Every other state has also adopted an unemployment insurance plan in response to the federal stimulus.

In 1976, Congress enacted Public Law number 94-566 (hereafter Public Law 94-566). Insofar as pertinent here, Public Law 94-566 amended FUTA to require for the first time that a "certified" state plan include coverage of the employees of public agencies. (Pub.L. No. 94-566 (Oct. 20, 1976) § 115(a), 90 Stat. 2670; 26 U.S.C. §§ 3304(a)(6)(A), 3309(a); see 26 U.S.C. § 3306(c)(7).) States which did not alter their unemployment compensation

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laws accordingly faced loss of the federal tax credit and administrative subsidy.

The Legislature thereafter adopted chapter 2/78 to conform California's system to Public Law 94-566. Among other things, chapter 2/78 effectively requires the state and all local governments, beginning January 1, 1978, to participate in the state unemployment insurance system on behalf of their employees. (Stats. 1978, ch. 2, §§ 12, 24, 31, 36.5, 58-61, pp. 12-14, 16, 18, 24-27; Unemp. Ins. Code, §§ 135, subd. (a), 605, 634.5, 802-804.)

In November 1979, the voters adopted Proposition 4, adding article XIII B to the state Constitution. (1) **(See fn. 1.)**Article XIII B - the so-called "Gann limit" - restricts the amounts state and local governments may ***59** appropriate and spend each year from the "proceeds of taxes." (§§ 1, 3, 8, subds. (a)-(c).) FN1 In language similar to that of earlier statutes, article XIII B also requires state reimbursement of resulting local costs whenever, after January 1, 1975, "the Legislature or any state agency mandates a new program or higher level of service on any local government, ..." (§ 6.) Such mandatory state subventions are excluded from the local agency's spending limit, but included within the state's. (§ 8, subds. (a), (b).) Finally, article XIII B excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the courts *or the federal government* which, *without discretion*, require an expenditure for additional services or which *unavoidably* make the providing of existing services more costly." (§ 9, subd. (b) [hereafter section 9(b)], italics added.)

> FN1 Article XIII B is to be distinguished from article XIII A, which was adopted as Proposition 13 at the June 1978 election. Article XIII A imposes a direct constitutional limit on state and local power to *adopt and levy taxes*. Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Moreover, to the extent "federally mandated" costs are exempt from prior *statutory* limits on local *taxation* (see *ante*, at pp. 57-58), article XIII A eliminates the exemption insofar as it would allow levies in excess of the constitutional ceiling.
> All further section references are to article XIII B of the California Constitution, unless otherwise indicated.

The City of Sacramento (City) and the County of Los Angeles (County) filed claims with the State Board of Control (Board) (see Rev. & Tax. Code, former § 2250 et seq.; see now Gov. Code, § 17550 et seq.) seeking state subvention of the costs imposed on them by chapter 2/78 during 1978 and portions of 1979. The Board denied the claims, ruling that chapter 2/78 was an enactment required by federal law and thus was not a reimbursable state mandate. On mandamus (Code Civ. Proc., § 1094.5; Rev. & Tax. Code, former § 2253.5; see now Gov. Code, § 17559), the Sacramento Superior Court overruled the Board and found the costs reimbursable. The court ordered the Board to determine the amounts of the City's and the County's individual claims, and also to adopt "parameters and guidelines" to be applied in determining "these ... and other claims" arising under chapter 2/78. (Rev. & Tax. Code, former § 2253.2; see now Gov. Code, §§ 17555, 17557.) FN2

> FN2 The claims for reimbursement were originally premised entirely on Revenue and Taxation Code section 2201 et seq. While the City's and the County's mandamus petitions were pending in superior court, article XIII B was adopted. The City and the County amended their petitions to include article XIII B as an additional basis for relief, and the case proceeded accordingly.

In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258] (hereafter *Sacramento I*), the Court of Appeal affirmed. Among other things, the court concluded (pp.

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194-199) that chapter 2/78 ***60** imposed *state*-mandated costs reimbursable under section 6 of article XIII B, since the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "[*mandate*] ... of the *federal* government" under section 9(b). (Italics added.) We denied hearing.

On remand, the Board determined the amounts due on the claims originally submitted by the City and the County. As required by the judgment, the Board also adopted "parameters and guidelines" for reimbursement of chapter 2/78 costs to all affected local agencies. However, during the 1984 session of the Legislature, no bills were introduced for reimbursement of pre-1984 costs, and bills to fund costs in and after 1984 failed passage.

From and after the decision in *Sacramento I*, the City paid "under protest" its quarterly billings from the Employment Development Department (EDD) for unemployment compensation. Each payment included a claim for refund of unemployment taxes pursuant to Unemployment Insurance Code section 1176 et seq. EDD responded to the refund claims by referring the City to its statutory subvention remedies.

Accordingly, in July 1985, the City began returning its quarterly billings unpaid. It thereupon commenced the instant class action in Sacramento Superior Court on behalf of all local governments in the state. Named as defendants were the State of California, the Governor, EDD, the state Controller and Treasurer, and the Legislature. The complaint sought (1) injunctive and declaratory relief barring enforcement of chapter 2/78 in the absence of state subvention; (2) a writ of mandate directing that past, current, and future subvention funds be appropriated and disbursed, and/or that EDD pay local agencies' past, current, and future unemployment-insurance contributions from its own budget; and (3) damages for past failures to reimburse.

Shortly after this suit was filed, the Legislature appropriated some chapter 2/78 funds for fiscal year 1984-1985 (Stats. 1985, ch. 1217, §§ 12, 17, subd. (b), pp. 4148, 4150), and it subsequently authorized limited funds in the 1986 Budget Act (Stats. 1986, ch. 186, § 2.00, p. 1006). On defendants' demurrer, the trial court later dismissed plaintiffs' claims for reimbursement for these post-1984 periods. [FN3] Thereafter, the trial court certified the suit as a class action and granted plaintiffs' motion for summary adjudication of issues based on *Sacramento I*.***61**

> FN3 The trial court also sustained the Legislature's demurrer without leave to amend and dismissed the Legislature as a party defendant. The Court of Appeal affirmed the dismissal in a separate proceeding. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393 [231 Cal.Rptr. 686].)

While the case remained pending at the trial level, we decided *County of Los Angeles*.There we held that article XIII B, and earlier subvention statutes, requires state reimbursement *only* when the state compels local governments to provide new or upgraded "programs that carry out the governmental function of providing *services to the public*, or ..., to implement a state policy, [the state] impose[s] *unique* requirements on local governments [that] do not apply generally to all residents and entities in the state." (43 Cal.3d at p. 56, italics added.)

Defendants in this case thereupon moved for summary judgment, urging that extension of unemployment insurance coverage to public employees satisfied neither reimbursement standard set forth in *County of Los Angeles*.The trial court agreed and awarded summary judgment.

The Court of Appeal reversed on two independent grounds. First, the court ruled that defendants were collaterally estopped by *Sacramento I* to relitigate the reimbursability of chapter 2/78 costs. Second, the court found that chapter 2/78 imposed "unique requirements" on local governments, within the meaning of *County of Los Angeles*, since the legis-

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lation was aimed solely at local agencies and subjected them to obligations from which they were previously exempt.

II. Jurisdiction; Plaintiffs' Exhaustion of Remedies.

(2) After we granted review, we asked the parties and amici curiae [FN4] to brief whether the current suit is jurisdictionally barred by any failure of plaintiffs to exhaust their remedies (see *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291-295 [109 P.2d 942, 132 A.L.R. 715]), or for any other reason. If so, the summary judgment for defendants against all plaintiffs was proper notwithstanding the merits of the subvention claim. In that event, the judgment of the Court of Appeal must be reversed without consideration of the substantive issues raised by the appeal.

> FN4 Amicus curiae briefs were filed on behalf of plaintiffs by (1) the League of California Cities, the Association of California Water Agencies, and the Fire District Association of California, and (2) the County of Los Angeles and the County Supervisors Association of California.

However, we find no failure to exhaust which would bar us from reaching the merits. Defendants concede plaintiffs exhausted all administrative remedies provided by the statutes governing subvention of state-mandated costs. The concession appears correct, at least as to the City and the County. These two agencies filed timely claims for reimbursement of expenses incurred to comply with chapter 2/78. When the Board initially denied the claims, the City and the County pursued judicial remedies culminating in ***62** *Sacramento I*. By direction of the judgment in *Sacramento I*, the Board ultimately upheld the City's and County's 1979 claims, determined their amount, and adopted "parameters and guidelines" for statewide reimbursement that were later included in the Board's government-claims report to the Legislature. (Rev. & Tax. Code, former §§ 2253.2, 2255, subd. (a).) These procedures exhausted the City's and the County's administrative and judicial avenues, short of this suit, to obtain redress on the claims adjudicated in *Sacramento I*. Insofar as the Legislature thereafter declined to appropriate the necessary funds for disbursement by the Controller, the City and the County were authorized to bring an enforcement action. (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b); *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 72 [222 Cal.Rptr. 750]; see *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 548-549 [234 Cal.Rptr. 795].) [FN5]

> FN5 In 1986, the Legislature repealed sections 2250-2255 of the Revenue and Taxation Code. (Stats. 1986, ch. 879, §§ 37-48, p. 3047.) The Board's functions have been transferred to the Commission on State Mandates (Commission), but the procedures for administrative and judicial determination of subvention disputes remain functionally similar. (Gov. Code, §§ 17500 et seq., 17600 et seq.)

(3a) Defendants urge, however, that plaintiffs essentially are seeking resolution of a "tax" question - the validity *vel non* of their unemployment tax contributions - but have failed to satisfy the special procedures applicable to such cases. Defendants insist that because article XIII, section 32, of the California Constitution broadly precludes any suit to enjoin or impede collection of a tax (e.g., *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 838-841 [258 Cal.Rptr. 161, 771 P.2d 1247]; *Western Oil & Gas Assn. v. State Bd. of Equalization* (1987) 44 Cal.3d 208, 213 [242 Cal.Rptr. 334, 745 P.2d 1360]; *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 279-284 [165 Cal.Rptr. 122, 611 P.2d 463]), plaintiffs' claims for declaratory and injunctive relief are barred.

The only remedy constitutionally open to plaintiffs, defendants assert, is to pay their unemployment "taxes" and then seek a "refund" under the

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"exclusive" procedures set forth in the Unemployment Insurance Code. (Unemp. Ins. Code, §§ 1176 et seq., 1241, subd. (a).) Insofar as plaintiffs' complaint *does* seek reimbursement for past contributions, defendants suggest, plaintiffs have not correctly pursued the Unemployment Insurance Code procedures.

We question, but do not decide, whether a *public entity's* contributions to the state unemployment insurance system can ever constitute a "tax" subject ***63** to article XIII, section 32. Even if so, defendants' claim lacks merit under the circumstances presented here.

"The policy behind [article XIII,] section 32 is to allow revenue collection to continue during [tax] litigation so that essential public services dependent on the funds are not unnecessarily disrupted. [Citation.] ...." (*Pacific Gas & Electric Co., supra*, 27 Cal.3d at p. 283.) The administrative "refund" procedures established by the unemployment insurance law are designed to ensure initial examination of unemployment tax disputes by the agency with specific expertise in that area.

However, plaintiffs attempt no challenge, direct or indirect, to the validity or application of the unemployment insurance law as such, or to the propriety of any "tax" assessed thereunder. Nor have plaintiffs bypassed the agency or procedures established to decide such disputes.

Rather, plaintiffs claim that *all* their costs of affording unemployment compensation to their employees are subject to a statutory and constitutional *subvention* which the state refuses to make. It is incidental that these costs happen to include what might be characterized as a "tax." As the subvention statutes require, plaintiffs City and County have pursued all available remedies before the agency (formerly the Board, now the Commission) created to decide *subvention* issues; that agency has upheld their submitted claims in full, but the necessary appropriations have been withheld.

Under these circumstances, the Legislature has concluded that a local entity should be forced to continue incurring the unfunded costs subject to "refund." Rather, the entity is expressly authorized to bring suit to declare such an unfunded mandate *unenforceable*. (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b).) FN6

> FN6 Indeed, when the City filed protective claims for "refund" with EDD in the wake of *Sacramento I*, that agency consistently disclaimed authority to decide the subvention issue presented and "suggest[ed]" that the City pursue its remedies before the Commission.

The importance of such a remedy stems from the fundamental legislative prerogative to control appropriations. (4) Under the separation of powers doctrine, the Legislature cannot be compelled to appropriate or authorize the disbursement of specific funds. (*Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].) Since the Legislature will have demonstrated its refusal to fund a particular mandate by the time a mandamus action is filed, the literal "tax refund" process urged by defendants may often be meaningless.

(3b) Insofar as plaintiffs also seek reimbursement for past expenses, similar considerations dictate that the governing statutes are those created ***64** to resolve subvention problems rather than garden-variety disputes over the unemployment insurance tax. FN7 We find nothing in the language, history, or purpose of article XIII, section 32, or of the unemployment insurance law, which bars the instant complaint. We therefore have jurisdiction to decide whether chapter 2/78 constitutes a reimbursable mandate.

> FN7 As we note above, courts are powerless to compel appropriations *per se*. However, that fact does not render a prayer for reimbursement of *past* costs wholly meaningless. California courts have previously recognized judicial power to fashion

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other appropriate reimbursement remedies. (See, e.g., *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at pp. 550-552; also cf. *Mandel, supra*, 29 Cal.3d at pp. 535-537, 539-552.) Such power is especially important where subvention is constitutionally compelled.

III. Collateral Estoppel; Res Judicata.

(5a) However, *plaintiffs* claim that because *Sacramento I* "finally" decided whether chapter 2/78 constitutes a reimbursable state mandate, the *state* and its agents are collaterally estopped from relitigating the issue here. The Court of Appeal agreed that the doctrine of collateral estoppel applies. Under the circumstances, we are not persuaded.

(6) Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 874 [151 Cal.Rptr. 285, 587 P.2d 1098].) "... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.] ...." (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 902 [160 Cal.Rptr. 124, 603 P.2d 41].)

(5b) Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies. On the other hand, if the state fails to appropriate the funds to meet this *65 obligation, and chapter 2/78 therefore cannot be enforced (Rev. & Tax. Code, former § 2255, subd. (c); Gov. Code, § 17612, subd. (b)), the resulting failure to comply with federal law could cost California employers millions. FN8(7) **(See fn. 9.)**, (5c) Under these circumstances, neither stare decisis nor collateral estoppel can permanently foreclose our ability to examine the reimbursability of chapter 2/78 costs. FN9

FN8 For these reasons, this case is distinguishable from *Slater v. Blackwood* (1975) 15 Cal.3d 791 [126 Cal.Rptr. 225, 543 P.2d 593], cited by the Court of Appeal. *Slater*, a suit between private parties, held only that the "injustice" exception to the rule of collateral estoppel cannot be based *solely* on an intervening change in the law. (P. 796.) Here, as we note, overriding public-interest issues are involved.

FN9 By the same token, the state has not ignored available remedies or otherwise "waived" its right to argue the issues presented by this appeal. The state immediately raised the applicability of *County of Los Angeles* to this suit once our decision therein became final.
Plaintiffs claim the instant trial court had no power to grant summary judgment for defendants on authority of *County of Los Angeles*.Plaintiffs assert that because defendants failed to seek timely mandamus review of the prior, contrary order granting summary adjudication of issues in *plaintiffs'* favor, the issues decided by the earlier order must be "deemed established." (See Code Civ. Proc., § 437c, subd. (f).) We disagree. Failure to challenge a summary adjudication order by the

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> *discretionary* avenue of writ review cannot foreclose a party from asserting *subsequent* changes in law which render such a pretrial order incorrect.

(8) As below, plaintiffs also argue that reconsideration of *Sacramento I* is precluded by res judicata. They suggest that the prior litigation resolved not only the *legal issues* presented by this appeal, but all *claims* among the current parties as well.

Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. (Code Civ. Proc., § 1908 et seq.; *Slater, supra*, 15 Cal.3d at p. 796;*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810 [122 P.2d 892].) However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78. We therefore conclude that defendants may contend in this lawsuit that chapter 2/78 is not a reimbursable state mandate. FN10 We turn to the merits of that issue. ***66**

> FN10 Plaintiffs imply that because the original claims by the City and the County were filed decided as statutory "test claims" (Rev. & Tax. Code, former §§ 2218, 2253.2; see now Gov. Code, §§ 17555, 17557), the "cause of action" adjudicated therein encompasses *all* claims by *all* local agencies for *all* years. However, the obvious purpose of the statutory "test claim" procedure is to resolve the *legal issue whether particular state legislation creates a reimbursable mandate*, not to adjudicate every individual claim for reimbursement which may thereafter accrue. The "test claim" result has *precedential* effect for all subsequent claims, but res judicata effect only for the individual claims which were actually adjudicated.

IV. "New Program" or "Increased Service"?

(9a) As before, defendants urge that by extending unemployment insurance coverage to local government employees, the Legislature did not mandate a "new program" or an "increased" or "higher level of service" on local governments. Thus, they assert, the local costs of providing such coverage are not subject to subvention under article XIII B, section 6, or parallel statutes. (Rev. & Tax. Code, former §§ 2207, 2231, subd. (a); Gov. Code, §§ 17514, 17561, subd. (a).) The trial court granted summary judgment for defendants on this basis. Contrary to the conclusions reached by the Court of Appeal, the trial court's ruling was correct.

Our analysis is controlled by our decision in *County of Los Angeles*.There we determined that a general increase in workers' compensation benefits did not, when applied to local governments, constitute a reimbursable state mandate under article XIII B.

In so holding, we focused on the particular language of article XIII B, section 6, which requires state subvention of a local government's costs of any "new program" or "increased level of service" imposed upon it by the state. We dismissed the notion that, by employing the quoted phrases, the voters intended *all* local costs resulting from compliance with state law to be subject to mandatory reimbursement. Rather, we explained, "[t]he concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. ..." (43 Cal.3d at p. 56.)

Under these circumstances, we reasoned, the electorate must have intended the undefined terms "new program" and "increased level of service" to carry their "commonly understood meanings ... - programs that carry out the governmental function of providing *services to the public*, or laws which, to

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implement a state policy, impose *unique requirements* on local governments and do not apply generally to all residents and entities in the state." (43 Cal.3d at p. 56, italics added.)

Local governments' costs of complying with a general statewide increase in the level of workers' compensation benefits do not qualify under these standards, we concluded. As we noted, "... [w]orkers' compensation is not a program administered by local agencies to provide service to the public. (10) **(See fn. 11.)**Although local agencies must provide benefits to ***67** their employees ..., they are indistinguishable in this respect from private employers. ..." (43 Cal.3d at p. 58.) FN11

> FN11 While our discussion centered on the meaning of section 6 of article XIII B, it relied heavily on the legislative history of parallel provisions of the 1972 and 1973 property tax relief statutes. When article XIII B was adopted in November 1979, the Revenue and Taxation Code already required state subvention of local "[c]osts mandated by the state," defined as "any increased costs which a local agency is required to incur as a result of ... [¶] [a]ny law enacted after January 1, 1973, which mandates a *new program* or an *increased level of service* of an existing program." (Rev. & Tax. Code, former §§ 2207 [italics added], 2231, subd. (a).) However, a further statutory definition of "increased level of service" to include any state mandate "which makes necessary expanded or additional costs to a county, city and county, city, or special district" had been repealed in 1975. (*County of Los Angeles*, 43 Cal.3d at p. 55; see Rev. & Tax. Code, former § 2231, subd. (e), repealed by Stats. 1975, ch. 486, § 6, p. 999.) We found the repealer significant to the limited meaning of the statutory term "increased level of service" as later incorporated in article XIII B. (43 Cal.3d at pp. 55-56.) Our implicit conclusion, which we now make explicit, was that the statutory and constitutional concepts of reimbursable state-mandated costs are identical.

(9b) Similar considerations apply here. By requiring local governments to provide unemployment compensation protection to their own employees, the state has not compelled provision of new or increased "service to the public" at the local level. Nor has it imposed a state policy "unique[ly]" on local governments. Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies "indistinguishable in this respect from private employers."

Plaintiffs nonetheless suggest there are several bases for reaching a different result here than in *County of Los Angeles*.None of the asserted distinctions has merit.

Plaintiffs first note the proponents' declaration in the voters' pamphlet that the purpose of article XIII B, section 6, was to prevent the state from "forcing" unfunded programs on local agencies. Plaintiffs invoke this pamphlet language for the proposition that any new cost "forced" on local governments by state law is subject to subvention.

The claim is directly contrary to our holding in *County of Los Angeles*.As we explained, "[i]n ... context, the [pamphlet] phrase 'to force *programs* on local governments' confirms that the intent underlying section 6 [of article XIII B] was to require reimbursement to local agencies for the costs involved in carrying out *functions peculiar to government*, not for expenses incurred by local agencies as an *incidental impact* of laws that apply generally to all state residents and entities. ... [¶] The language of section 6 is far too vague to support an inference that ... each time the Legislature ***68** passes a law of general application it must discern the likely ef-

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fect on local governments and provide an appropriation to pay for any incidental increase in local costs. ..." (43 Cal.3d at pp. 56-57, italics added.) FN12

> FN12 Indeed, our reasoning here was expressly foreshadowed in *County of Los Angeles*.There we observed: "The Court of Appeal reached a different conclusion in [*Sacramento I*], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as ... whether the expense was a 'state mandated cost,' rather than as whether the provision of an employee benefit was a 'program or service' within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved." (43 Cal.3d at p. 58, fn. 10.)

Plaintiffs next urge the Court of Appeal's premise - that chapter 2/78 did impose a "unique" requirement on local agencies within the meaning of *County of Los Angeles*, since it applied only to them, and compelled costs to which they were not previously subject. Plaintiffs cite our recent decision in *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318]. There we held, inter alia, that by requiring each local school district to contribute part of the expense of educating its handicapped students in state-run schools - a cost previously absorbed entirely by the state - the Legislature created a "*new* program" subject to subvention under article XIII B, section 6. As we observed, "although the schools for the handicapped have been operated by the state for many years, the program was *new insofar as [the local districts] are concerned* ...." (P. 835, italics added.)

Lucia Mar is inapposite here. The education of handicapped students was clearly a traditional governmental "service to the public," and it qualified as a "program" on that basis. This function had long been performed by the state, and the only issue was whether the belated shifting of the program's costs to local governments made it "new" for subvention purposes. A negative answer to that question would have undermined a central purpose of article XIII B, section 6 - to prevent the state's transfer of the *cost of government* from *itself* to the local level.

Here, the issue is whether costs *unrelated* to the provision of public services are *nonetheless* reimbursable costs of government, because they are imposed on local governments "unique[ly]," and not merely as an incident of compliance with general laws. State and local governments, and non-profit corporations, had previously enjoyed a special *exemption* from requirements imposed on most other employers in the state and nation. Chapter 2/78 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement "new" to local agencies, but that requirement was not "unique." ***69**

The distinction proposed by plaintiffs would have an anomalous result. The state could avoid subvention under *County of Los Angeles* standards by imposing new obligations on the public and private sectors *at the same time*. However, if it chose to proceed by stages, extending such obligations first to private entities, and only later to local governments, it would have to pay. This was not the intent of our recent decision.

Next, plaintiffs complain that the new costs imposed on local governments by chapter 2/78 are too great to be deemed "incidental" within the meaning of *County of Los Angeles*.However, our decision did not use the word "incidental" to mean merely "insignificant in amount." Rather, we declared that the state need not reimburse local governments for expenses *incidentally imposed* upon them by laws of general application. In *County of Los Angeles*, we assumed that the expenses imposed *in common* on the private and public sectors by such a general law - as by the across-the-board increase in work-

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ers' compensation benefits there at issue - might be substantial. Notwithstanding this possibility, we found the voters did not intend to require a state subsidy of the public sector in such cases. (43 Cal.3d at pp. 56-58.)

Finally, plaintiffs and their amici curiae urge us to overrule *County of Los Angeles*.They insist that our "program" and "unique requirement" limitations conflict with the language and purpose of article XIII B. First, they note that *nonreimbursable* state-mandated costs are expressly listed in subdivisions (a) through (c) of article XIII B, section 6. FN13 Under the maxim *inclusio unius est exclusio alterius*, they reason, further exceptions may not be implied. Second, they assert, our limiting construction allows the state to "force" many costly but unfunded requirements on local governments, which the latter must absorb without relief from their own article XIII B spending limits. This, they aver, cannot have been the voters' intent.

> FN13 Article XIII B, section 6, provides that the state shall provide a subvention of funds to reimburse a local agency for costs incurred by the agency "[w]henever the [state] mandates [on the agency] a new program or higher level of service ..., except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

These arguments misapprehend both the language of article XIII B, section 6, and our *County of Los Angeles* holding. Our reasoning in that case is not inconsistent with subdivisions (a) through (c) of section 6. Those paragraphs simply exclude certain state-imposed costs *even if they would otherwise be reimbursable under the "new program" or "increased service" *70 standards*. Subdivisions (a) through (c) do not purport to define what constitutes a "new program" or "increased level of service."

Moreover, the "program" and "service" standards developed in *County of Los Angeles* create no undue risk that the state will impose expensive unfunded obligations against local agencies' article XIII B spending limits. On the contrary, our standards require reimbursement whenever the state freely chooses to impose on local agencies *any* peculiarly "governmental" cost which they were not previously required to absorb.

On the other hand, as we explained in *County of Los Angeles*, extension of the subvention requirements to costs "incidentally" imposed on local governments would require the Legislature to assess the fiscal effect on local agencies of each law of general application. Moreover, it would subject much general legislation to the supermajority vote required to pass a companion local-government revenue bill. Each such necessary appropriation would, in turn, cut into the *state's* article XIII B spending limit. (§ 8, subd. (a).) We concluded that nothing in the language, history, or apparent purpose of article XIII B suggested such far-reaching limitations on legitimate state power. (43 Cal.3d at pp. 56-58.)

We remain persuaded by this reasoning. FN14 We decline to overrule *County of Los Angeles*.Under the teaching of that case, we hold that chapter 2/78 imposes no local costs which must be reimbursed pursuant to article XIII B, section 6, and parallel statutes.

> FN14 Nor do we agree that subvention depends on whether the "benefit" of a state-imposed local requirement falls principally at the state or local level. Attempts to apply such a "benefit" test to the myriad of individual cases could easily produce debates bordering on the metaphysical. Nothing in the language or history of article

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XIII B, or prior subvention statutes, suggests an intent to force such debates upon the Legislature each time it considers legislation affecting local governments.

V. "Federal" Mandate?

(11a) This case proceeded through the Court of Appeal solely on the issue whether chapter 2/78 constitutes a reimbursable "state mandate," as defined in *County of Los Angeles*.After we granted review, and in the public interest, we also decided to reexamine a related holding contained in *Sacramento I* - that chapter 2/78 does not qualify as a "federal" mandate.

Proper application of the "federal mandate" concept has important implications beyond subvention. A "cost mandated by the federal government" is exempt from a local government's statutory taxation limit. (Rev. & Tax. Code, § 2271.)Moreover, an appropriation required to comply with a *71 federal mandate is excluded from the constitutional spending limit of any affected entity, state or local (Cal. Const., art. XIII B, § 9 (b)). Accordingly, we requested supplemental briefs on this question. FN15

FN15 For the reasons expressed in part III, *ante*, our consideration of this issue is not foreclosed by principles of collateral estoppel.

After due consideration, we reject *Sacramento I's* premise. We conclude that chapter 2/78 does impose "costs mandated by the federal government," as described in article XIII B and parallel statutes. FN16

FN16 In *Sacramento I*, both the parties and the Court of Appeal assumed that if a cost was "federally mandated," it was therefore *not* a "state mandated" cost subject to subvention. In other words, it was assumed, an expense could not be both "state mandated" and "federally mandated," even if imposed by the state under federal compulsion. It was in this context that *Sacramento I* addressed the "federal mandate" issue. (See also *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at p. 543.) We here express no view on the question whether "federal" and "state" mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. We decide only that, insofar as an expense is "federally mandated," as described in the state Constitution and statutes, it is exempt from the pertinent taxation and spending limits.

Article XIII B, section 9(b), defines federally mandated appropriations as those "required for purposes of complying with mandates of ... the federal government which, *without discretion*, require an expenditure for additional services or which *unavoidably make the providing of existing services more costly*." (Italics added.)

As in *Sacramento I*, plaintiffs argue that the words "without discretion" and "unavoidably" require clear *legal* compulsion not present in Public Law 94-566. Defendants respond, as before, that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse. FN17 In *Sacramento I*, the Court of Appeal adopted plaintiffs' narrow view. On reflection, we disagree.

FN17 Ironically, the local agencies here argue *against* a "federal mandate," with the state in opposition to that view. An anti-"federal mandate" position seems directly contrary to the local agencies' interests, since its acceptance would mean the agencies are not eligible for exemptions from their pertinent taxing and spending limits. However, all parties appear still bound by the premise of *Sacramento I* that if a cost is "federally mandated," it is ineligible for state subvention. As noted above (see fn. 16, *ante*), we do not decide that issue here.

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Though section 9(b) seems plain on its face, we find a latent ambiguity in context. At the time article XIII B was adopted, United States Supreme Court decisions construing the Tenth Amendment *severely limited* federal power to dictate policy or programs to the sovereign states or their subdivisions. FN18 Indeed, by its early ruling that federal unemployment insurance *72 laws did not violate state sovereignty insofar as they merely employed a "carrot and stick" to induce state compliance (*Steward Machine Co.* v. *Davis, supra*, 301 U.S. 548, 585-593 [81 L.Ed. 1279, 1290-1294]), the high court helped set the stage for two generations of pervasive federal regulation by this indirect means. FN19

FN18 The Tenth Amendment to the United States Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

FN19 The traditional categorical-aid provisions of the Social Security Act (e.g., 42 U.S.C. §§ 301 et seq. [old-age assistance], 601 et seq. [aid to needy families with dependent children], 1201 et seq. [aid to the blind], 1351 et seq. [aid to the permanently and totally disabled]), and statutes concerned with occupational safety and health (e.g., 29 U.S.C. § 651 et seq.), highways and mass transit (e.g., 23 U.S.C. § 101 et seq.), education (e.g., 20 U.S.C. § 241a et seq.), and air and water pollution (e.g., 33 U.S.C. §§ 1251 et seq., 1311 et seq.; 42 U.S.C. § 7401 et seq.) are but a few examples of federal laws imposing greater or lesser degrees of inducement to state and local compliance with federal policies and programs.

Just three years before article XIII B was adopted, the court struck down, on Tenth Amendment grounds, Congress's effort to extend the minimum-wage and maximum-hour requirements of the Fair Labor Standards Act directly to local government employees. (*National League of Cities v. Usery* (1976) 426 U.S. 833 [49 L.Ed.2d 245, 96 S.Ct. 2465].) Overruling earlier authority (see *Maryland* v. *Wirtz* (1968) 392 U.S. 183 [20 L.Ed.2d 1020, 88 S.Ct. 2017]), the court held in *Usery, supra*, that constitutional principles of federalism prohibit Congress from using its otherwise "plenary" commerce power against the "States as States," so as to interfere with the essential "attributes of [state government] sovereignty." (426 U.S. at pp. 840-855 [49 L.Ed.2d at pp. 250-260].) Accordingly, said the court, Congress could not "force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. ..." (*Id.*, at p. 855 [49 L.Ed.2d at p. 259].)

Usery dealt with federal efforts to regulate sovereign units of government as employers. However, the court's rationale obviously applied with equal or greater force to direct federal regulation of state and local governments *as governments*. Under *Usery's* reasoning, it seems manifest that Congress's direct power to require or prohibit substantive governmental policies or programs by state or local agencies was greatly curtailed. Such power would interfere impermissibly with "integral governmental functions" and essential "attributes of [state] sovereignty. FN20 *73

FN20 *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264 [69 L.Ed.2d 1, 101 S.Ct. 2352] later implicitly confirmed this premise. There, Virginia mine operators challenged a federal surface-mining regulatory scheme on grounds it displaced state authority and sovereignty. The federal law imposed minimum federal standards, to be enforced by federal or state officials at the state's choice, and allowed states to take over regulation by imposing equal or higher standards of their own. (30 U.S.C. §§ 1201 et seq., 1251-1254.)The court upheld the program,

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> noting it regulated private persons, not the "States as States. " Moreover, said the court, since states were not ordered to adopt their own surface-mining standards, "there can be no suggestion that the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program. [Citations.] .... " (452 U.S. at pp. 286-288 [69 L.Ed.2d at pp. 22-24].)

After article XIII B's adoption, both the result and the reasoning of *Usery* were overruled in *Garcia v. San Antonio Metro. Transit Auth.* (1985) 469 U.S. 528 [83 L.Ed.2d 1016, 105 S.Ct. 1005]. In *Garcia*, a five-justice majority concluded that the political structure of the federal system, rather than rigid categories of inviolable state "sovereignty," constitutes state and local governments' primary protection against Congress's overreaching efforts to regulate them. (Pp. 547-555 [83 L.Ed.2d at pp. 1031-1037].)

However, this later development does not alter two crucial facts extant when article XIII B was enacted. First, the power of the federal government to impose its direct regulatory will on state and local agencies was *then* sharply in doubt. Second, in conformity with this principle, the vast bulk of cost-producing federal influence on government at the state and local levels was by inducement or incentive rather than direct compulsion. [FN21] That remains so to this day.

> FN21 The United States Constitution includes specific limitations on the subject-matter jurisdiction of state and local governments (art. I, § 10), imposes certain direct obligations and restrictions on the "States as States" (e.g., art. I, § 2, cls. 1, 4; art. I, § 3, cls. 1, 2; art II, § 1, cl. 2; art. IV, §§ 1, 2, cls. 1, 2; Amends. XIV, XV), and grants Congress power to prevent denial of certain constitutional rights by the states (Amends. XIII, XIV, XV). Obviously, however, these provisions account for only a minute portion of the costs incurred by state and local governments as a result of federal programs and regulations.

Thus, if article XIII B's reference to "federal mandates" were limited to strict legal compulsion by the federal government, it would have been largely superfluous. [FN22] (12) It is well settled that "constitutional ... enactments must receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people. [Citations.] ...." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281].) While "[a] constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words[,] [citation] [, t]he literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. [Citations.]" (*Ibid.*)

> FN22 For this reason, federal cases cited by plaintiffs and their amici curiae for the proposition that Public Law 94-566 is not "coercive " (e.g., *County of Los Angeles, Cal. v. Marshall* (D.C. Cir. 1980) 631 F.2d 767 [203 App.D.C. 185];*State, etc. v. Marshall* (1st. Cir. 1980) 616 F.2d 240) are inapposite. Those decisions applied *Tenth Amendment* principles to determine whether Public Law 94-566 was constitutionally valid. Had Public Law 94-566 been struck down on this ground, it would *not* have resulted in local costs to which the "federal mandate" provisions of article XIII B might extend. Thus, applying the Tenth Amendment cases to determine whether a cost is "federally mandated " for purposes of article XIII B presents a problem in circular reasoning.

(11b) As the drafters and adopters of article XIII B must have understood, certain regulatory standards imposed by the federal government *74 under "cooperative federalism" schemes are coercive on the states and localities in every practical sense.

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The instant facts amply illustrate the point. Joint federal-state operation of a system of unemployment compensation has been a fundamental aspect of our political fabric since the Great Depression. California had afforded federally "certified" unemployment insurance protection to its workers for over 40 years by the time Public Law 94-566, chapter 2/78, and article XIII B were adopted. Every other state also operated such a system. If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments. Besides constituting an intolerable expense against the state's economy on its face, this double taxation would place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance.

Plaintiffs and their amici curiae suggest California could have chosen to terminate its own unemployment insurance system, thus leaving the state's employers faced only with the federal tax. However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends.

Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. We therefore conclude that the state acted in response to a federal "mandate" for purposes of article XIII B. FN23 *75

FN23 The dissent cites two older cases for the premise that in antidebt and antispending measures, the exception recognized for "mandatory" costs and expenditures has traditionally been limited to obligations imposed by law. Neither cited decision is dispositive or persuasive here.
County of Los Angeles v. Byram (1951) 36 Cal.2d 694 [227 P.2d 4], and the cases therein cited, concern the constitutional provision (Cal. Const., former art. XI, § 18, see now art. XVI, § 18 (hereafter section 18)) which prohibits local governments, absent voter approval, from incurring debts or liabilities which exceed in any year the income or revenue provided for such year. Section 18 is *absolute on its face* and, unlike article XIII B, it contains *no express exception* for mandatory expenses. Though sometimes founded on contorted linguistic analyses (see, e.g., *City of Long Beach* v. *Lisenby* (1919) 180 Cal. 52, 56 [179 P. 198]), the *implied* exceptions to section 18, as recognized in *Byram* and other cases, arise from a rule of necessity and despite the absolute constitutional language. Such implied exceptions must, of course, be narrowly confined.
On the other hand, *County of Los Angeles v. Payne* (1937) 8 Cal.2d 563 [66 P.2d 658], also cited by the dissent, construed former Political Code section 3714, which limited a local government's annual expenditures to its previously adopted budget. Section 3714 *did* contain an express exception for "mandatory expenses *required by law*." (Italics added.) *Payne's* adherence to the explicit terms of the statutory exception is hardly remarkable.
In contrast with the measure considered in *Byram*,article XIII B and the Revenue and Taxation Code *do* expressly exempt "federally mandated " expenses from the pertinent taxation and appropriations limits. Unlike the measure construed in *Payne*, neither article XIII B nor the Revenue and Taxation Code expressly limit their exemptions to obligations " required by law." Article XIII B uses the broader terms "unavoidably " and "without discretion," suggesting recognition by the drafters and voters that forces beyond strict legal compulsion may produce expenses that are realistically involuntary. The Revenue and

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> Taxation Code explicitly includes coercive federal "carrot and stick" requirements within the federally "mandated" costs exempt from statutory property tax limits. (Rev. & Tax. Code, § 2206.)

Unlike the *Sacramento I* court, we deem significant the Legislature's persistent agreement with our construction. In 1980, after the adoption of article XIII B, it amended the statutory definition of "costs mandated by the federal government" to provide that these include "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties* or *loss of funds* to *public or private persons* in the state. ..." (Rev. & Tax. Code, § 2206, italics added; Stats. 1980, ch. 1256, § 3, p. 4247.)

In *Sacramento I*, the Court of Appeal declined to apply this statutory amendment "retroactively" to article XIII B. (156 Cal.App.3d at pp. 197-198.) The Legislature immediately responded. In 1984 statutes enacted for the express purpose of "implement[ing]" article XIII B (see Gov. Code, § 17500), the Legislature reiterated its 1980 definition. (*Id.*, § 17513; Stats. 1984, ch. 1459, § 1, p. 5114.) FN24

> FN24 Plaintiffs suggest that by reenacting this language in the wake of *Sacramento I*, the Legislature "acquiesced" in the Court of Appeal's narrow definition of "costs mandated by the federal government." We are not persuaded. *Sacramento I* did not *construe* the statutory language; it simply found a postdated statute *irrelevant* to the proper interpretation of article XIII B. By later readopting its expanded definition in statutes designed to "implement" article XIII B, the Legislature expressed its disagreement with *Sacramento I*, not its acquiescence. Contrary to the implications of *Sacramento I*, legislative efforts to resolve ambiguities in constitutional language are entitled to serious judicial consideration. (See authorities cited *ante*.)

Plaintiffs contend that these statutory pronouncements deserve little interpretive weight since, among other things, they are "internally inconsistent." Plaintiffs stress the proviso in Revenue and Taxation Code, section 2206, and in Government Code, section 17513, that the phrase "' [c]osts mandated by the federal government' does *not* include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the *option* of the state, local agency, or school district." (Italics added.)

We see no fatal inconsistencies. The first clause of the proviso merely confirms, as article XIII B itself specifies, that program funds voluntarily provided by another unit of government may not be excluded from the ***76** spending limits of recipient local agencies. (Compare art. XIII B, §§ 8, subd. (b), 9(b).) The second clause isolates a concern which we share - that state or local governments might otherwise claim "federally mandated costs " even where participation in a federal program, or compliance with federal " standards," is a matter of true choice. (Cf., e.g., *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at pp. 542-544.) FN25

> FN25 In the *Carmel Valley* case, the state claimed, among other things, that local costs of purchasing protective clothing and equipment for firefighters, as required by regulations under the California Occupational Safety and Health Act, constituted a nonreimbursable "federal mandate " because the California standards merely "implemented" federal law. However, the evidence was contrary; a letter from the federal Occupational Safety and Health Administration disclaimed federal jurisdiction over California's political subdivisions and stated that state and federal standards were independent. (190 Cal.App.3d at pp. 543-544.) Examination of the pertinent

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> statutory scheme reinforces the view that compliance with federal standards in this area is "optional" with the state. Other than loss of limited federal administrative funds (29 U.S.C. § 672(g)), the only sanction for California's decision not to maintain a federally approved occupational safety and health system is that federal standards, administered by federal personnel, will then prevail within the state. (*Id.*, § 667(b)-(h).)

Given the variety of cooperative federal-state-local programs, we here attempt no final test for "mandatory" versus "optional" compliance with federal law. (13) A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary.

(11c) For reasons expressed above, we are satisfied under these standards that chapter 2/78 did implement a federal "mandate" within the meaning of article XIII B and prior statutes restricting local taxation. Hence, subject to superseding constitutional ceilings on taxation by state and local governments, an agency governed by chapter 2/78 may tax and spend as necessary to meet the expenses required to comply with that legislation. To the extent *Sacramento I* is inconsistent with our analysis, that decision is disapproved.

VI. Conclusion.

We have concluded that chapter 2/78 is a "federal mandate" which exempts affected state and local agencies from pertinent limits on their power to tax, appropriate, and spend. However, local governments' expenses *77 of complying with chapter 2/78 are not subject to compulsory state subvention, because chapter 2/78 imposed no new or increased "program or service," and no "unique" requirement, on local agencies. The contrary judgment of the Court of Appeal is reversed.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., and Kennard, J., concurred.

KAUFMAN, J.,
Concurring and Dissenting.

I concur in the judgment. Given this court's decision in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202], I am compelled to agree that the obligation imposed on local governments by the 1978 state unemployment insurance legislation is not a "new program or higher level of service" within the meaning of article XIII B, section 6, of the California Constitution, and that for this reason the state is not constitutionally obligated to provide a subvention of funds to reimburse the unemployment insurance costs of local governments. I respectfully dissent, however, from the additional conclusion, stated in part V of the majority opinion, that these unemployment insurance costs are "mandates of ... the federal government" and therefore exempt from the state and local government appropriation limits of article XIII B and from property taxation limits imposed by statute. In reaching this additional conclusion the majority decides an issue not raised by the parties and completely outside the scope of this action. As so often happens when a court reaches beyond the confines of the case before it to render a gratuitous advisory opinion, the majority decides the issue incorrectly.

All too frequently in recent years (see, e.g., *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 345, fn. 1 [256 Cal.Rptr. 543, 769 P.2d 399]) this court, in its misguided zeal to provide enlightenment, has reached out to decide an issue not tendered by the parties. The majority's failure to exercise proper judicial re-

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straint in the instant case is another example of this trend and one I find particularly disturbing since it violates a fundamental and venerable tenet of judicial practice - i.e., "A court will not decide a constitutional question unless such construction is absolutely necessary." (*Estate of Johnson* (1903) 139 Cal. 532, 534 [73 P. 424]; accord, *People* v. *Williams* (1976) 16 Cal.3d 663, 667 [128 Cal.Rptr. 888, 547 P.2d 1000]; *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65 [195 P.2d 1].) The federal mandate issue which the majority here decides, because it turns on the proper construction of article XIII B, section 9, of our state Constitution, is a constitutional issue. Using this case to resolve that issue is, to my mind, indefensible.

To see just how far the majority has wandered from the issues essential to the proper resolution of this case, one need only point out that this action ***78** was not brought to settle a dispute about taxation or appropriation limits, nor has this court been informed that any such dispute exists. Rather, this action was brought to enforce the holding in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258](*Sacramento I*), that the state is constitutionally obligated to reimburse the unemployment insurance costs of local governments. The governmental entities litigating this proceeding have not sought a judicial determination of the 1978 unemployment insurance legislation's effect on their statutory or constitutional taxing or spending limits, nor have they raised any issue regarding whether unemployment insurance costs are federally mandated for any purpose. The federal mandate issue was first injected into the case by this court when we requested additional briefing on the questions whether the unemployment insurance costs of local governments are federally mandated under article XIII B, section 9, of the state Constitution and, if so, whether this conclusion necessarily exempts the state from any obligation it might otherwise have to reimburse local governments for these costs.

The majority's federal mandate discussion does not even provide an alternative ground for the holding denying reimbursement of local governments' unemployment insurance costs, for the majority purports to decide whether unemployment insurance costs are federally mandated without deciding whether resolution of this issue has any bearing on entitlement to reimbursement (see maj. opn., *ante*, p. 71, fn. 16). The majority's only justification for deciding whether unemployment insurance costs are federally mandated is that the issue has " important implications" inasmuch as federally mandated costs are "exempt from a local government's statutory taxation limit (Rev. & Tax. Code, § 2271) " and "from the constitutional spending limit of any affected entity, state or local (Cal. Const., art. XIII B, § 9(b))." (Maj. opn., *ante*, pp. 70-71.) But the present case is an inappropriate vehicle for deciding these weighty issues since neither the state nor the local entities have any reason to contest the other's exemptions from spending or taxation limits. In other words, the parties now before us are not adverse on these issues and so have not defined and argued opposing points of view with the vigor and thoroughness essential to proper judicial resolution of complex legal questions, particularly those of constitutional magnitude. Those who might have argued in favor of including unemployment insurance costs in the taxing and spending limits - for example, the proponents of the initiative measure by which article XIII B was enacted - are not represented in this proceeding.

Were the issue properly presented in this case, I would conclude that the unemployment insurance costs are not federally mandated. The text of a constitution "should be construed in accordance with the natural and ordinary meaning of its words." (***79***Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281].) The language at issue here excludes from the definition of " appropriations subject to limitation" those appropriations " required for purposes of complying with *mandates* of the courts or the federal government which, *without discretion, require* an expenditure

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for additional services or which *unavoidably* make the providing of existing services more costly. " (Cal. Const., art. XIII B, § 9, subd. (b), italics added.)

The meaning of this language is clear; to look beyond the text for some other meaning is both unnecessary and improper under accepted rules of constitutional interpretation. (See *State Board of Education* v. *Levit* (1959) 52 Cal.2d 441, 462 [343 P.2d 8]; *People v. Knowles* (1950) 35 Cal.2d 175, 182-183 [217 P.2d 1].) A "mandate" is "an order, command [or] charge." (*Xth Olympiad Com. v. American Olym. Assn.* (1935) 2 Cal.2d 600, 604 [42 P.2d 1023]; see also, *Morris* v. *County of Marin* (1977) 18 Cal.3d 901, 908 [136 Cal.Rptr. 251, 559 P.2d 606] ["mandatory duty" is "an obligatory duty which a governmental entity is required to perform"]; *Bridgman v. American Book Co.* (1958) 12 Misc.2d 63, 66 [173 N.Y.S.2d 502, 506] ["mandate" is "a command, order or direction ... which a person is bound to obey"].) The mandates to which the constitutional provision at issue refers are those "of the courts or the federal government." The coercive force of court mandates is, of course, the force of law. That "mandates of ... the federal government" are similarly limited to those obligations imposed by force of federal law is shown not only by the term "mandate" itself but also by the terms "without discretion " and " unavoidably," which plainly exclude any form of inducement using political or economic pressure rather than legal compulsion.

Laws limiting governmental appropriations and indebtedness have traditionally exempted two categories of expenditures: those required to meet emergencies and those required to satisfy duties or mandates imposed by law. (See, e.g., *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694, 698-700 [227 P.2d 4];*County of Los Angeles* v. *Payne* (1937) 8 Cal.2d 563, 569-575 [66 P.2d 658];*State* v. *City Council of City of Helena* (1939) 108 Mont. 347 [90 P.2d 514, 516]; *Raynor v. King County* (1940) 2 Wn.2d 199 [97 P.2d 696, 707].) The latter category has been interpreted as including only those obligations compelled by force of law, as opposed to economic or political necessity or expedience. (See *County of Los Angeles v. Byram, supra,* at pp. 698-700; *County of Los Angeles* v. *Payne, supra,* at pp. 573-574.) Article XIII B of the California Constitution follows the pattern of other similar laws; it provides exemptions for emergency appropriations in section 3, subdivision (c), and for legal duties or "mandates" in section 9, subdivision (b). I see no basis for concluding that the term "mandate," which in the context of government debt and appropriation limitations has traditionally *80 meant a duty imposed by force of law, has suddenly acquired a novel and more expansive meaning in section 9. On the contrary, the drafters of section 9 appear to have taken pains to avoid any such interpretation.

As stated in *Sacramento I,* "The concept of federal mandates ... is defined in section 9 of article XIII B. Subdivision (b) of that section excludes from a governmental entity's appropriation limit '[a]ppropriations required for purposes of complying with mandates of ... the federal government which, *without discretion, require* an expenditure' by the governmental entity. (Italics added.) As contemplated by article XIII B, section 9, a federal mandate is one pursuant to which the federal government imposes a cost upon a governmental entity, and the entity has *no discretion* to refuse the cost. Chapter 2 [the 1978 unemployment insurance legislation] was not a federal mandate within this constitutional definition, as the State had the discretion to participate or not in the federal unemployment insurance system. " (*Sacramento I, supra,* 156 Cal.App.3d 182, 197, italics in original.) Giving the constitutional language its usual and ordinary meaning, I agree with the Court of Appeal that federal law "mandates" an expenditure only if the expenditure is legally compelled, and not if the federal law merely provides economic or political inducements, no matter how powerful or coercive. Since it is undisputed that the state was under no legal compulsion to enact the 1978 unemployment

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insurance legislation, the burdens of that legislation are not " mandates of ... the federal government."

In support of its contrary conclusion, the majority reasons as follows: (1) when article XIII B of the California Constitution was drafted and enacted, the Tenth Amendment to the United States Constitution had been construed to prohibit Congress from imposing costs on state and local governments; (2) as a result, virtually all federal laws imposing costs on state and local governments did so through "carrot and stick" incentive programs rather than by direct legal compulsion; and (3) the exemption for "mandates of ... the federal government" must be construed to encompass at least some of these incentive programs because otherwise it would be almost entirely superfluous. I find each of these points highly questionable, if not demonstratively unsound.

First, the Tenth Amendment has never been interpreted as entirely prohibiting the federal government from imposing costs on state and local government. Rather, *National League of Cities v. Usery* (1976) 426 U.S. 833 [49 L.Ed.2d 245, 96 S.Ct. 2465] defined an exception to the broad sweep of Congress's commerce clause authority. Under this exception, "traditional governmental functions" of state and local governments were protected from direct and intrusive federal regulation. (426 U.S. at p. 852 [49 L.Ed.2d at pp. 257-258].) As explained in ***81***Garcia v. San Antonio Metro. Transit Auth.* (1985) 469 U.S. 528, 538-547 [83 L.Ed.2d 1016, 1025-1032, 105 S.Ct. 1005], the result was an inconsistent patchwork of decisions upholding or striking laws depending on whether the regulated activities were perceived by the court as being traditionally associated with state or local government or constituting " attributes of state sovereignty." Thus, a significant number of laws imposing costs on state and local governments survived Tenth Amendment scrutiny even before the decision in *Garcia v. San Antonio Metro. Transit Auth., supra.* (See, e.g., *EEOC v. Wyoming* (1983) 460 U.S. 226 [75 L.Ed.2d 18, 103 S.Ct. 1054] [holding state and local government employee retirement policies subject to federal age discrimination regulations]; see generally, Skover, *"Phoenix Rising" and Federalism Analysis* (1986) 13 Hastings Const.L.Q. 271, 286-288.)More importantly, however, I see no reason to assume that the drafters of article XIII B intended that the federal mandate exemption would have broad application, encompassing a large number of federal programs. Rather, construing the exemption narrowly seems entirely consistent with the probable intent of those who drafted the provision.

The test proposed by the majority for identifying those incentive programs which qualify as "mandates of ... the federal government" will require an extensive factual inquiry into the practical consequences of noncompliance with the federal law. It will be burdensome to apply and its outcome will be difficult to predict. Besides being wholly unnecessary to resolution of this case, and violating the probable intent of the voters who enacted article XIII B of the California Constitution, [FN1] the majority's discussion of the federal mandate issue is certain to generate more difficulties than it resolves. ***82**

FN1 Those voters no doubt will be upset to learn that their tax dollars will be dissipated in litigation to determine such metaphysical questions as whether a decision to participate in a federal program was "truly voluntary."

Cal.
City of Sacramento v. State of California
50 Cal.3d 51, 785 P.2d 522, 266 Cal.Rptr. 139

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ATTACHMENT NO. 23

County of Los Angeles v. Commission on State Mandates (2003) 110 Cal.App.4th 1176

C

County of Los Angeles v. Commission on State Mandates
Cal.App. 2 Dist.,2003.

Court of Appeal, Second District, Division 7, California.
COUNTY OF LOS ANGELES, Plaintiff and Respondent,
v.
COMMISSION ON STATE MANDATES, Defendant and Appellant;
Department of Finance, Real Party in Interest and Appellant.
No. B156870.

July 28, 2003.

Background: County petitioned for writ of mandate, seeking to vacate decision of the Commission on State Mandates which denied county's test claim for costs associated with statute requiring local law enforcement officers to participate in two hours of domestic violence training. The Superior Court, Los Angeles County, No. BS06497,Dzintra I. Janavs, J., granted the petition. Commission appealed.

Holding: The Court of Appeal, Muñoz (Aurelio), J., sitting by assignment, held that statute did not mandate any increased costs and thus Commission was not required to reimburse county for its costs.

Reversed with directions.

West Headnotes

[1] Mandamus 250 ⚿73(1)

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k73 Specific Acts
250k73(1) k. In General. Most Cited Cases
Administrative mandamus is the exclusive means to challenge a decision of the Commission on State Mandates on a subvention claim. West's Ann.Cal.Gov.Code § 17559.

[2] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Trial court reviews the decision of the Commission on State Mandates under the substantial evidence standard. West's Ann.Cal.Gov.Code § 17559.

[3] Administrative Law and Procedure 15A ⚿683

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak681 Further Review
15Ak683 k. Scope. Most Cited Cases
When the substantial evidence test is applied by the trial court to review an administrative decision, the Court of Appeal is generally confined to inquiring whether substantial evidence supports the court's findings and judgment; however, it independently reviews the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions.

[4] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Reimbursement to a county for costs incurred under a state mandate is not required unless there is a showing of actual increased costs mandated by the state. West's Ann.Cal. Const. Art. 13B, § 6.

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[5] Municipal Corporations 268 ⚿863

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(A) Power to Incur Indebtedness and Expenditures
268k862 Limitation of Amount
268k863 k. In General. Most Cited Cases

Municipal Corporations 268 ⚿956(1)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k956 Power and Duty to Tax in General
268k956(1) k. In General. Most Cited Cases

States 360 ⚿115

360 States
360IV Fiscal Management, Public Debt, and Securities
360k115 k. Limitation of Amount of Indebtedness or Expenditure. Most Cited Cases

Taxation 371 ⚿2104

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)3 Constitutional Requirements and Restrictions
371k2104 k. Levy and Apportionment. Most Cited Cases
(Formerly 371k37.5)
Goal of propositions which imposed limit on the power of state and local governments to adopt and levy taxes and complementary limit on governmental spending is to protect citizens from excessive taxation and government spending. West's Ann.Cal. Const. Art. 13A, § 1 et seq.; Art. 14, § 1 et seq.

[6] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
The state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. West's Ann.Cal. Const. Art. 13B, § 6.

[7] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
A "program" falling within constitution section requiring state to pay for increased costs associated with state mandates is defined as a program which carries out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. West's Ann.Cal. Const. Art. 13B, § 6.

[8] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
A program falling under constitution section requiring state to pay for increased costs associated with state mandates is a "new program" if the local governmental entity had not previously been required to institute it. West's Ann.Cal. Const. Art. 13B, § 6.

[9] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
"State mandates" are requirements imposed on loc-

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al governments by legislation or executive orders. West's Ann.Cal. Const. Art. 13B, § 6.

[10] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Purpose of constitution section requiring state to pay for increased costs associated with state mandates is to avoid governmental programs from being forced on localities by the state. West's Ann.Cal. Const. Art. 13B, § 6.

[11] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Programs which are not unique to the government do not qualify as programs for which the state is required to pay increased costs pursuant to constitutional provision governing funding of state mandates; the programs must involve the provision of governmental services. West's Ann.Cal. Const. Art. 13B, § 6.

[12] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
In order for a state mandate to be found under constitution section requiring state to pay for increased costs associated with state mandates, the local governmental entity must be required to expend the proceeds of its tax revenues. West's Ann.Cal. Const. Art. 13B, § 6.

[13] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
In order for a state mandate to be found under constitution section requiring state to pay for increased costs associated with state mandates, there must be compulsion to expend revenue. West's Ann.Cal. Const. Art. 13B, § 6.

[14] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Statute requiring local law enforcement officers to participate in two hours of domestic violence training did not mandate any increased costs and thus Commission on State Mandates was not required to reimburse county for its costs associated with the mandate even though county had added two hours to its Peace Officer Standards and Training (POST); statute directed local law enforcement agencies to reallocate training resources rather than to add training, and state did not shift cost of a program previously administered and funded by the state. West's Ann.Cal. Const. Art. 13B, § 6.
See 9 Witkin, Summary of Cal. Law (9th ed. 1988) Taxation, § 123A; 3 Witkin, Cal. Procedure (4th ed. 1997) Actions, § 614.

[15] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement under constitutional section requiring state to pay for increased costs associated with state mandate. West's Ann.Cal. Const. Art. 13B, § 6.

[16] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases

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Under constitution section requiring state to pay for increased costs associated with state mandates, "costs" does not necessarily equal every increase in a locality's budget resulting from compliance with a new state directive; rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding. West's Ann.Cal. Const. Art. 13B, § 6.

[17] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Legislative disclaimers, findings, and budget control language are not determinative to a finding of a state mandated reimbursable program. West's Ann.Cal. Const. Art. 13B, § 6.

[18] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Not every increase in cost that results from a new state directive automatically results in a valid subvention claim, especially if the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. West's Ann.Cal. Const. Art. 13B, § 6.

****422*1178** Paul M. Starkey,Camille Shelton, Sacramento, and Katherine Tokarski, for Defendant and Appellant Commission on State Mandates.
Bill Lockyer, Attorney General, Andrea Lynn Hoch, Senior Assistant Attorney General, Louis R. Mauro and Catherine M. Van Aken, Supervising Deputy Attorneys General and Geoffrey L. Graybill, Deputy Attorney General, for Real Party in Interest and Appellant Department of Finance.
Lloyd W. Pellman, County Counsel and Stephen R. Morris, Principal Deputy County Counsel, for Plaintiff and Respondent County of Los Angeles.
MUÑOZ (AURELIO), J.[FN*]

FN* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A 1995 amendment to Penal Code section 13519 FN1 requires local law enforcement officers to participate in two hours of domestic violence training. The issue on appeal is whether this amendment resulted in a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the time spent by local law enforcement officers in such domestic violence training, although such officers were already required to spend 24 hours in continuing education training and the domestic violence training could be included within this total.

FN1. Hereafter section 13519.

This administrative mandamus proceeding was commenced by the County of Los Angeles (County) on a "test claim" filed with and denied by the ***1179** Commission on State Mandates (Commission) for the County's costs incurred pursuant to section 13519. The trial court found that California Constitution article XIII B, section 6 required the state to reimburse the County for domestic violence training because the County's needs and priorities might be detrimentally affected when the state took away two hours of training by mandating that two specific hours of training occur. The trial court remanded the proceedings to the Commission to determine the amount of costs actually incurred by the County. We reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state

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shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service...." (Cal. Const., art. XIII B, § 6.) The Commission is charged with hearing and deciding local agency claims of entitlement to reimbursement under article XIII B, section 6. (Gov.Code, § 17551, subd. (a).) Pursuit of such a claim is the exclusive remedy for this purpose (Gov.Code, § 17552), but the Commission's decisions are subject to review by administrative mandamus, under Code of Civil Procedure section 1094.5. (Gov.Code, § 17559, subd. (b).) A "test claim" is "the first claim, **423 including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov.Code, § 17521; see also *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 328-329, 331-333, 285 Cal.Rptr. 66, 814 P.2d 1308.)

In 1995, section 13519, subdivision (e) was amended to provide: "(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government." [FN2]

FN2. The currently enacted version of this provision is found at section 13519, subdivision (g), and reads, "Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities." (Stats.1998, ch. 701, § 1, designated the paragraph following subd. (a) as subd. (b) and redesignated the remaining subdivisions accordingly; in redesignated subd. (c), inserted par. (5), listing the signs of domestic violence as an instruction topic, and redesignated pars. (5) to (16) as pars. (6) to (17).)

*1180 Penal Code section 13510, [FN3] et seq. requires the State Commission on Peace Officer Standards and Training (POST) to promulgate regulations establishing minimum state standards relating to physical, mental, and moral fitness, and minimum training standards for law enforcement officers. Compliance with POST's requirements is voluntary. (Pen.Code, § 13510 et seq.) POST has a certification program for peace officers specified in sections 13510 and 13522 and for the California Highway Patrol. (Pen.Code, §§ 13510.1, subds.(a)-(c), 13510.3.)

FN3. Penal Code section 13510, subdivision (a), provides in relevant part: "For the purpose of raising the level of competence of local law enforcement officers, [POST] shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office...."

On or about December 26, 1996, the County filed a "test claim" [FN4] pursuant to Government Code

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section 17522 with the Commission.[FN5] The test claim alleged that **424 neither local police officers nor their agencies were given any choice with respect to compliance with section 13519. However, in order to implement the training, the County was required to redirect its officers from their normal work in order to attend the two-hour domestic violence training. The County alleged this substitution of the work agenda of the state for that of the local government violated California Constitution article XIII B, section 6. Furthermore, the County pointed to language in *1181Penal Code section 13519, subdivision (e), providing that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities."

FN4. The test claim also challenged the incident-reporting requirements of Penal Code section 13730, which imposed a new program upon local law enforcement agencies to include in the domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence responses to the same address. The County did not contest the Commission's outcome relating to this portion of the test claim, and therefore this issue is not before us on appeal.

FN5. In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of California Constitution article XII B, section 6. (See Gov.Code, § 17500 et seq.) The local agency files a test claim with the Commission, which holds a public hearing and determines whether the statute mandates a new program or increased level of service. (Gov.Code, §§ 17521, 17551, 17555.) If the Commission finds that a claim is reimbursable, it then determines the amount of reimbursement. (Gov.Code, § 17557.) The local agency then follows statutory procedures to obtain reimbursement. (See Gov.Code, § 17558 et seq.) Where the Commission finds no reimbursable mandate, the local agency can challenge this finding by administrative mandate proceedings under Code of Civil Procedure section 1094.5. (See Gov.Code, § 17552 [these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6"].)

The test claim alleged that although POST bore the cost of producing two-hour telecourses on domestic violence, POST did not provide for any local law enforcement salary reimbursement for attendance at any type of POST-certified training, including the state-mandated costs for domestic violence training. Adherence to POST standards is voluntary by local law enforcement agencies, but POST requires a minimum of 24 hours of training every two years, to be chosen from a menu of available courses. POST does not dictate the courses that must be taken. POST courses include training in, among other things: interviewing techniques for detectives, defensive weapons, CPR, conflict resolution, bicycle patrol, ritual crime and hate group offenders, vehicle pullover and approach, confessions, courtroom demeanor, electronic vehicle recovery systems, vehicle theft investigation, and cultural awareness.

The POST program gives local law enforcement agencies flexibility in choosing training programs to meet their differing needs. In addition to domestic violence training, certain other programs are legislatively mandated: dealing with the developmentally disabled/mentally ill training (implemented July 1992); high speed vehicle pursuits (implemented November 1994); first aid/CPR (a 21-hour initial course, with a 12-hour refresher

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course every three years); missing persons (implemented January 1989); racial and cultural diversity (implemented August 1983); sexual harassment (implemented November 1994); and sudden infant death syndrome (implemented July 1990). The time requirements for these other required courses vary. Some elective courses require 40 hours to complete.

However, the County alleged because there were no existing resources available for the domestic violence training, the annual training costs of the County were increased as a result of section 13519. The County Sheriff's Department incurred costs of $170,351.45 for domestic violence training for the fiscal year 1996-1997.

In support of its test claim, the County submitted legislative materials relating to section 13519. These included: A July 5, 1995 memorandum in which the Assembly Committee on Appropriations stated that Senate Bill No. 132, proposing the changes **425 to 13519, understood the "training requirement could have significant costs to local law enforcement in terms of expense and public safety, as most departments will be forced to backfill for offices while the officers are being trained or will have to forego the *1182 backfilling and have fewer offices on patrol. Any monetary costs incurred by local law enforcement for the officer backfilling would be state-reimbursable." The Committee noted that, "Although this bill states that the costs of the additional domestic violence training be absorbed by POST within existing resources, the reality is that this bill would create additional non-absorbable costs to POST since POST will be unable to exclude one type of training in favor of the domestic violence training, and instead will have to add this training to their current curriculum. The current curriculum of POST training is just as important to the maintaining of public safety as is the additional domestic violence training."

In addition, the Department of Finance recognized the fiscal impact of section 13519 on local law enforcement agencies, and opposed the adoption of Senate Bill No. 132. Diane M. Cummins, Deputy Director of the State Department of Finance, wrote to Senator Diane Watson on April 20, 1995, that, "This bill also specifies that training required pursuant to this measure 'shall be funded from existing resources', as specified. In so specifying, this bill would also require law enforcement agencies to modify existing training programs by increasing training requirements. Finance believes this bill contains a local mandate without providing necessary funding, thereby being in conflict with the California Constitution, which requires the state to fund local mandate costs. Although there is no specific information available regarding the level of additional costs which would be imposed on law enforcement agencies, the Department of Finance is opposed to legislation which would result in additional General Fund expenditures, given the State's ongoing fiscal constraints." The Department of Finance recognized that, "Adding mandatory domestic violence training requirement would result in an additional unknown cost for specified state and local law enforcement agencies...."

Furthermore, Gretchen Fretter, Chair of the California Academy Directors' Association (an organization of training center directors and police academy managers throughout the state) wrote Senator Watson on March 9, 1995, to express the association's concerns with Senate Bill No. 132. Fretter's analysis indicated that the mandate would incur a $300,000 price tag for each training cycle. The California State Sheriffs' Association also wrote to express concerns about Senate Bill No. 132, including that POST estimated the domestic violence training would add costs to local agencies of at least $750,000 per year. Glen Fine, the Deputy Executive Director of POST, on July 11, 1997, wrote to the Department of Finance to inform it that POST understood that the author of Senate Bill No. 132 was aware of POST's training requirements of 24 hours every two years, and it was "the author's intent ... that domestic violence update training become a statutorily required priority for inclusion

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within this 24 hours of training every two years."

*1183 POST issued a bulletin in February 1996 advising local law enforcement agencies of the new domestic violence training requirement.

The Department of Finance contended that the Legislature intended the domestic violence continuing education and training to be funded from existing resources. The department also contended that POST, which was charged with developing training**426 standards for local law enforcement agencies, provided over $21 million in existing state funds for domestic violence training. POST pointed out that the drafter of the statute recognized the 24 hours of continuing education every two years, and intended the domestic violence training to be a priority to be included within this 24-hour requirement.

At the hearing before the Commission on the test claim, representatives of the County testified that POST refused to pay for the programs, putting the burdens on local governments, and POST itself had estimated the annual cost of the program at $750,000. A representative of the Sheriff's Department (Captain Dennis Wilson) testified that of the 24 hours required, any combination of courses could be used to meet the requirement. However, inclusion of the domestic violence training would take away two of those hours of training, resulting in only 22 hours. The Sheriff's Department would conduct domestic violence training even in the absence of the mandate; indeed; the Sheriff's Department actually conducted about 72 hours of training per officer per year. There was no funding for any of this training. The Sheriff's Department has 8,200 sworn officers, and two hours of training per officer adds up to 16,400 hours, which translates to 10 full-time officers for a year. Without funding for the domestic violence training, the Sheriff's Department therefore would lose the time equivalent of 10 officers for a year. Taking officers off the street impacts upon crime.

Martha Zavala testified on behalf of the County that the domestic violence training could not merely be subsumed within the 24 hours already required. With the training mandates already required by POST which exceed the 24-hour minimum, adding the domestic violence training only further exceeds the minimum 24 hours. There is no room to carve it out. Meeting POST requirements is not really an option. Thus, both the Sheriff's Department and the County agree they are seeking reimbursement of the costs of the training and the cost of replacing the officers on the street while in training.

A representative of POST testified that what POST provides in reimbursement to local law enforcement agencies is a small percentage of the real costs incurred. Where the training involved is through a telecourse, POST provides no reimbursement. There has been no increase in POST's budget since the amendment to section 13519. About 30 of the courses provided by POST are mandated training.

*1184 A representative of the Department of Finance testified that the Department believed section 13519 did not create state-mandated reimbursable program because the legislation indicated it was the Legislature's intent not increase the training costs of local government, and the training could be fit within the existing 24-hour requirements.

The Commission's staff prepared an analysis in advance of the hearing which found against the County. The "Staff Analysis" pointed out that section 13519 was originally added by chapter 1609, Statutes of 1984.[FN6] Originally, the statute required**427 that POST develop and implement a basic course of instruction for the training of law enforcement officers in the handling of domestic violence complaints, with local law enforcement agencies encouraged, but not required, to provide updates. These provisions of the 1984 version were the subject of a test claim filed by the City of Pasadena in 1990. That claim was denied because the original statute did not require local agencies to implement or pay for a domestic violence training program, did not increase the minimum basic training course hours or advanced officer training hours,

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and did not require local agencies to provide domestic violence training pursuant to the POST skills and knowledge standards.

> FN6. The history of section 13519 is as follows: Added by Statutes 1984, chapter 1609, section 2, pages 5711-5713. Amended by Statutes 1985, chapter 281, section 1, pages 1305-1306, effective July 26, 1985; Statutes 1989, chapter 850, section 3; Statutes 1991, chapter 912 (Sen. Bill No. 421), section 1, pages 4086-4088; Statutes 1993, chapter 1098 (Assem. Bill No. 1268), section 8, pages 6162-6163; Statutes 1995, chapter 965 (Sen. Bill No. 132), section 1, pages 7377-7380; Statutes 1998, chapter 606 (Sen. Bill No.1880), section 13; Statutes 1998, chapter 701 (Assem. Bill No. 2172), section 1; Statutes 1999, chapter 659 (Sen. Bill No. 355), section 4. The 1995 amendment, at issue here, rewrote subdivision (e), which prior to amendment read: "(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund [POST] in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts." (Stats.1993, ch. 1098, § 8, p. 6188.)

Legally, the Staff Analysis pointed out that in order for a statute to impose a reimbursable state-mandated program, the statutory language must (1) direct or obligate an activity or task upon local government entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. (See, e.g., *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.) The Staff Analysis concluded that section 13519 did impose a new activity or program upon local law enforcement agencies. However, because the language of the statute requiring that the instruction be funded from existing resources, it was an open question whether the program imposed *mandated* costs. Because POST's minimum requirements remained at 24 hours before and after enactment of section 13519, there were no increased training hours and costs associated with the domestic violence training course. Instead, the course should be accommodated or absorbed by ***1185** local law enforcement agencies within their existing resources available for training. Thus, the Staff Analysis recommended denial of the test claim.

After the public hearings were held, the Commission adopted the findings of the Staff Analysis. The Commission issued its own statement of decision which substantially adopted the findings of the Staff Analysis.

Subsequently, the County filed a petition for writ of mandate with the trial court, seeking vacation of the Commission's decision. The County argued that the domestic violence training constituted a state-mandated reimbursable program because it (1) was mandatory, while the POST certification training was optional; and (2) the only way local agencies could avoid the costs of the new program would be to redirect their efforts from the training they were already providing as part of POST training, thereby losing flexibility to design programs to suit their own needs.

The Commission argued that the County's focus on "redirected" manpower costs was misplaced. Instead, the focus should be on whether the local law enforcement agencies actually experience increased expenditure of their tax revenues. (See, e.g., *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283, 101 Cal.Rptr.2d 784.) In *County of Sonoma,* the court stated that California Constitution article XIII B, section 6 was designed to prevent the state from forcing programs on local governments, and such a forced program is one which results in "increased actual expenditures****428** of limited tax proceeds that are counted against the local government's spending limit. Section 6, located within a measure aimed at

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limiting expenditures, is expressly concerned with 'costs' incurred by local governments as a result of state-mandated programs, particularly when the costs of compliance with a new program restrict local spending in other areas." (*County of Sonoma,* at p. 1284, 101 Cal.Rptr.2d 784.) Because section 13519 did not require the County to incur "actual increased costs" because the domestic violence training could be subsumed within the 24-hour POST training requirement, no state reimbursement was required.

The Commission also argued the state had not required the County to incur increased training costs for salaries of officers to receive the two-hour training. POST's requirements did not change as a result of section 13519, and indeed, shortly after the enactment of section 13519, POST forwarded a bulletin to local law enforcement agencies suggesting they include domestic violence training within the 24-hour continuing training requirement.

***1186** The trial court heard argument, after which the trial court adopted its tentative statement of decision in which it noted that, "Although it may be reasonable in some or even most cases for a deputy to eliminate an unrequired two-hour elective in favor of the required domestic violence instruction, what about cases where the County's needs and priorities would be affected detrimentally, if two hours of electives were taken away? At what point would additional mandated courses result in increased costs? [¶] The record also shows that, for some deputies, other state-required training already amounts to 24 hours or more per two-year period. For these deputies, the two hours of mandated domestic violence training cannot be accommodated by giving up other training but must be added on, for added cost. It appears that, if domestic violence instruction is to be funded from existing resources on a deputy-by-deputy basis, the County clearly does incur increased costs." The trial court granted the petition, and remanded the matter for consideration of the exact amount of increased costs.

DISCUSSION

I. STANDARD OF REVIEW.

[1][2][3] The determination whether the statute here at issue established a mandate under California Constitution article XIII B, section 6, is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Under Government Code section 17559,FN7 administrative mandamus is the exclusive means to challenge a decision of the Commission on a subvention claim. (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980, 64 Cal.Rptr.2d 270.) "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal ****429** conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)

> FN7. Government Code section 17559, subd. (b), provides: "A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence. The court may order the commission to hold another hearing regarding the claim and may direct the commission on what basis the claim is to receive a rehearing."

***1187** II. SECTION 13519'S IMPOSITION OF A DOMESTIC VIOLENCE TRAINING COURT IS NOT A STATE-MANDATED PRO-

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GRAM WITHIN THE MEANING OF CONSTITUTION ARTICLE XIII B, SECTION 6 BECAUSE IT DOES NOT CONSTITUTE AN "INCREASED LEVEL OF SERVICE."

[4] The Commission essentially makes two arguments. First, it contends that the County did not incur "increased costs." Reimbursement to the County under Constitution article XIII B, section 6 is not required unless there is a showing of actual increased costs mandated by the state. (See, e.g., *County of Los Angeles v. State of California, supra,* 43 Cal.3d at pp. 54-55, 233 Cal.Rptr. 38, 729 P.2d 202; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66-67, 266 Cal.Rptr. 139, 785 P.2d 522.) In *City of Sacramento,* the court explained that the statutory concept of "costs mandated by the state" and the constitutional concept of article XIII B, section 6, are identical. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 67, fn. 11, 266 Cal.Rptr. 139, 785 P.2d 522.) Because of this limited, rather than broad definition, of "costs mandated by the state," article XIII B, section 6 does not provide reimbursement for every single increased cost. Thus, the trial court's finding that reimbursement was required where a statute results in a "redirection of local effort" or a "detrimental change in a local agency's needs and priorities" is not supported by the law. Rather, it constitutes an inappropriate injection of an equitable standard into the analysis.

Secondly, the Commission argues that no "mandate" exists. To the contrary, substantial evidence supports its finding that section 13519 does not result in *increased* costs because nothing in the statute requires the County, or any other local law enforcement agency, to incur actual increased costs. The total number of hours required (the 24 minimum hours of POST training) did not increase because of the domestic violence training; rather, POST still requires 24 hours and in fact after the passage of section 13519, POST forwarded a bulletin to law enforcement agencies recommending that they include domestic violence training within the 24-hour continuing professional training requirement. Because the POST standards are voluntary, if a local law enforcement agencies adds two hours of domestic violence training to either the POST requirement or its own requirements, it is doing so at its own discretion.

In response, the County points out that the Commission's conclusion is based upon the erroneous premise that local law enforcement agencies could escape increased costs simply by dropping two hours of their existing POST training and substituting the new domestic violence training. However, the evidence in the legislative history indicates that this was not the intent of the Legislature when it was considering section 13519, nor was it the position of ***1188** the Department of Finance. The County also contends that local law enforcement agencies incur costs when they sacrifice their existing training programs for the new domestic violence training. Although POST does not dictate those courses for which a local law enforcement agency must offer training and POST does pay for much of the training material, most of the cost of POST training is borne by the local law enforcement agencies in the form of personnel costs while deputies spend 24 hours of work time receiving ****430** training. Furthermore, if a mere legislative directive to fund a new program with existing resources would let the state off the hook for reimbursement, then the constitutional rule of mandate reimbursement would be a nullity: any new state mandate can be funded by canceling other services. Because California Constitution article XIII B, section 6 was designed to prevent the elimination of the fiscal freedom of local governmental agencies to expend their limited available resources without being straightjacketed by state-mandated programs, the Commission's "within existing resources" rule would circumvent the purposes of article XIII B, section 6.

A. The Purposes of California Constitution Article XIII B, Section 6 Guide Our Analysis.

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[5] In 1978, the voters approved Proposition 13, which added article XIII A to the California Constitution. Article XIII A"imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486, 280 Cal.Rptr. 92, 808 P.2d 235.) In 1979, Proposition 4 added article XIII B to the Constitution, which imposed a complementary limit on governmental spending. (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) These two constitutional provisions "work in tandem, together restricting California government's power both to levy and to spend for public purposes." (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.)Their goal is to protect citizens from excessive taxation and government spending. (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61, 233 Cal.Rptr. 38, 729 P.2d 202.)

[6] California Constitution article XIII B, section 6, provides in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service." Article XIII B, section 6, prevents the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations of articles XIII A and XIII B. (*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) Section 6 thus requires the state "to pay for any new ***1189** governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577, 15 Cal.Rptr.2d 547.)

[7][8][9][10][11][12][13] State mandate jurisprudence has established that in general, local agencies are not entitled to reimbursement of all increased costs mandated by state law, but only those resulting from a "new" program or an "increased level of service" imposed upon them by the state. (*Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) A "program" is defined as a program which carries out the "governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) A program is "new" if the local governmental entity had not previously been required to ****431** institute it. (*City of San Jose v. State of California, supra,* 45 Cal.App.4th at p. 1812, 53 Cal.Rptr.2d 521.) State mandates are requirements imposed on local governments by legislation or executive orders. (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 50, 233 Cal.Rptr. 38, 729 P.2d 202.) Since the purpose of California Constitution article XIII B, section 6 is to avoid governmental programs from being forced on localities by the state, programs which are not unique to the government do not qualify; the programs must involve the provision of governmental services. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) Further, in order for a state mandate to be found, the local governmental entity must be required to expend the proceeds of its tax revenues. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Lastly, there must be compulsion to expend revenue. (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 780, 783, 200 Cal.Rptr. 642 [revisions to Code of Civil Procedure required entities exercising the power of eminent domain to compensate businesses for lost goodwill did not create state mandate, because the power of eminent domain was discretionary, and need not be exercised at all]; *Department of Finance v. Com-*

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mission on State Mandates (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) In *Lucia Mar*, the court explained article XIII B, section 6. "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not 'new.' " (*Lucia Mar Unified School District v. Honig, supra,* 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

However, in spite of all of the above, "increased level of service" is not defined in California Constitution article XIII B, section 6 or in the ballot materials. ***1190**(*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449.) Furthermore, "Although a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate." (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1197, 75 Cal.Rptr.2d 754.)

In *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 53 Cal.Rptr.2d 521,Government Code section 29550 authorized counties to charge cities and other local entities for costs of booking into county jails persons who had been arrested by employees of the cities and other entities. (45 Cal.App.4th at p. 1806, 53 Cal.Rptr.2d 521.) The State argued the measure merely reallocated booking costs, no shifting from state to local entities, therefore not within article XIII B, section 6. (45 Cal.App.4th at p. 1806, 53 Cal.Rptr.2d 521.) The city contended counties function as agents of the state, charged with enforcement of state's criminal laws; detaining and booking integral part of this process. (*Id.* at p. 1808, 53 Cal.Rptr.2d 521.) The Commission found maintenance of jails and detention of prisoners, had always been a local matter, and cities and counties were both forms of local government; therefore, there was no shift in costs between *state* and local entities.

Furthermore, the terms of Government Code section 29550 were discretionary, not mandatory. (*City of San Jose v. State of California, supra,* 45 Cal.App.4th at pp. 1808-1809, 53 Cal.Rptr.2d 521.) *City of San Jose* found no cost had been improperly transferred to the local government ****432** entities because the cost of capture, detention and housing of persons charged with crimes had traditionally been borne by the counties. (*Id.* at p. 1813, 53 Cal.Rptr.2d 521.) *City of San Jose* rejected the cities' argument that the county was acting as agent of the state because it was "not supported by recent case authority, nor does it square with definitions particular to subvention analysis." (*Id.* at p. 1814, 53 Cal.Rptr.2d 521.) California Constitution article XIII B treated cities and counties alike; Government Code section 17514 defines "costs mandated by the state" to mean any increased costs that a "local agency" is required to incur. Because both cities and counties were to be treated alike for purposes of subvention analysis, nothing in article XIII B, section 6 prohibits the shifting of costs between local government entities. (*City of San Jose,* at p. 1815, 53 Cal.Rptr.2d 521.)

In *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202,Labor Code sections 4453, 4453.1 and 4460, increased the maximum weekly wage upon which temporary and permanent disability indemnity was computed from $231 to $262.50 per week. In addition, Labor Code section 4702 increased certain death benefits from $55,000 to $75,000. The trial court held that because the changes did not exceed costs of living changes, they did not create an "increased level of service." (43 Cal.3d at p. 52, 233 Cal.Rptr. 38, 729 P.2d 202.) The County argued the terms of California Constitution article XIII B, section 6, do not contain an exception for increased costs which do not exceed the inflation rate. (43 Cal.3d at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) The County relied on certain repealed Revenue and ***1191** Taxation Code definitions which had equated any program which imposed "additional costs" as being within the constitutional provision

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of "increased level of service." (*Id.* at p. 53, 233 Cal.Rptr. 38, 729 P.2d 202.) *County of Los Angeles* rejected this interpretation. "If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,' which, in turn, would be defined as 'additional costs.' " (*Id.* at p. 55, 233 Cal.Rptr. 38, 729 P.2d 202.) An examination of the language of California Constitution article XIII B, section 6 shows that "by itself, the term 'higher level of service' is meaningless." *Id.* at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202. Rather, it must be read in conjunction with the phrase " 'new program.' " *Ibid.* "Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' " (*Ibid.*) By " 'program,' " the voters meant "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, imposed unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*) 233 Cal.Rptr. 38, 729 P.2d 202.) The ballot materials provided that article XIII B, section 6 would "not allow the state government to *force programs* on local governments without the state paying for them." (43 Cal.3d at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.) "Laws of general application are not passed by the Legislature to 'force' programs on localities." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) In light of this, "[t]he language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay **433 for any incidental increase in local costs.... If the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word 'program' was being used in such a unique fashion." (*Id.* at p. 57, 233 Cal.Rptr. 38, 729 P.2d 202.) Therefore, there was no need to pay for increase in worker's compensation, because it is not a program administered by local agencies to provide service to the general public. Local government entities are indistinguishable in this respect from private employers. (*Id.* at pp. 57-58, 233 Cal.Rptr. 38, 729 P.2d 202.)

In *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, chapter 2 of Statutes of 1978 extended mandatory coverage under the state's unemployment insurance laws to include state and local governments and nonprofit organizations. *City of Sacramento* held there was no obligation on the part of the state to provide funds because there was no "unique" obligation imposed upon local governments, nor was there any requirement of new or increased governmental services. (50 Cal.3d at p. 57, 266 Cal.Rptr. 139, 785 P.2d 522.) As the court stated, the measure was adopted to conform California's system to federal laws. (*Id.* at p. 58, 266 Cal.Rptr. 139, 785 P.2d 522.) Because the measure required local governments to provide unemployment benefits to their own employees, the state had not compelled provision of a new or increased level of service to the public at the local level. Rather, it had merely required local government to provide the same benefits as private **1192** employers. (*Id.* at p. 67, 266 Cal.Rptr. 139, 785 P.2d 522.) The purpose of California Constitution article XIII B, section 6 was to avoid governmental programs from being forced on localities by the state: Therefore, programs which are not unique to the government do not qualify. (50 Cal.3d at p. 67, 266 Cal.Rptr. 139, 785 P.2d 522.)The benefits at issue here have nothing to do with the provision of governmental services, and are therefore not within the scope of section 6. (50 Cal.3d at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.)

In *Lucia Mar Unified School District v. Honig, supra,* 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318,Education Code section 59300 required school districts to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped. *Lucia Mar* held section

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59300 constituted a "new" program of higher level of service because cost of program had been shifted from the state to a local entity. "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of [California Constitution] article XIIIB because the programs are not 'new.' " (44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.)

On the other hand, in *County of San Diego v. State of California, supra,* 15 Cal.4th 68, 61 Cal.Rptr.2d 134, 931 P.2d 312, pursuant to 1982 legislation, the state withdrew from counties Medi-Cal funding for medically indigent persons (MIP's). (*Id.* at pp. 79-80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) To offset this change in coverage, the state set up an account as a mechanism to transfer state funds to counties to pay for Medi-Cal expenses, and sufficient funds had been available in this account to enable the state to fully fund San Diego County's Medi-Cal costs. (*Id.* at p. 80, 61 Cal.Rptr.2d 134, 931 P.2d 312.) However, in fiscal year 1990-1991, insufficient funds were available. (*Ibid.*) The state argued that no mandate for reimbursement existed because the counties had always borne the responsibility of paying for indigent medical care pursuant to Welfare & Institutions Code section 17000. (*County of San Diego,* at pp. 91-92, 61 Cal.Rptr.2d 134, 931 P.2d 312.) In finding ****434** reimbursement was mandated, the Supreme Court found that at the time California Constitution article XIII B, section 6 was enacted, the state was fully funding Medi-Cal for MIP's and the County bore no responsibility for those costs. (*County of San Diego,* at p. 93, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Thus, in enacting Medi-Cal, the Legislature had shifted the cost of indigent medical care from the counties to the state. (*Id.* at pp. 96-97, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Given this background, the Legislature excluded MIP's from Medi-Cal, knowing full well that it would trigger the counties' obligation to pay for medical care as providers of last resort. (*Id.* at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.) Therefore, the 1982 legislation "mandated a ' "new program" ' on counties by 'compelling them to accept financial responsibility in whole or in part for a program,' i.e., medical care for adult MIP's, 'which was funded entirely by the state before the advent of article XIII B.' " (*County of San Diego v. State of California, supra,* 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312, citing *Lucia Mar Unified School District v. Honig, supra,* 44 Cal.3d at p. 836, 244 Cal.Rptr. 677, 750 P.2d 318.) Otherwise, " 'County taxpayers would be forced to accept new taxes or see the county ***1193** forced to cut existing programs further....' " (*County of San Diego v. State of California, supra,* 15 Cal.4th 68 at p. 98, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

The Commission relies heavily on *County of Sonoma v. Commission on State Mandates, supra,* 84 Cal.App.4th 1264, 101 Cal.Rptr.2d 784. In *County of Sonoma,* the challenged legislation added section 97.03 to the Revenue and Taxation Code, and reduced the amount of property tax revenue to be allocated to local government pursuant to a formula, allocating an equal portion to a "Educational Revenue Augmentation Fund (ERAF)" for distribution to school districts. (84 Cal.App.4th at pp. 1269-1270, 1275, 101 Cal.Rptr.2d 784.) The net effect of the legislation was to decrease counties' tax revenues, although school revenues remained stable, and satisfied the constitutional necessity of maintaining a minimum level of funding for schools pursuant to California Constitution article XIV, section 8. (84 Cal.App.4th at p. 1276, 101 Cal.Rptr.2d 784.) In *County of Sonoma,* the County argued that the reallocation of tax revenues constituted a state-mandated cost of a new program. (*Id.* at p. 1276, 101 Cal.Rptr.2d 784.) The court held that section 6 subvention was limited to "increases in actual costs." Because none of the County's tax revenues were expended, the legislation did not come within section 6. "Proposition 4 [the initiative enacting article XIII B] was aimed at controlling and capping government spending, not curbing changes in revenue allocations. Section 6 is an ob-

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vious [complement] to the goal of Proposition 4 in that it prevents the state from forcing extra programs on local governments in a manner that negates their careful budgeting of expenditures. A forced program that would negate such planning is one that results in increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit. Section 6, located within a measure aimed at limiting expenditures, is expressly concerned when 'costs' incurred by local government as a result of state-mandated programs, particularly with the costs of compliance with a new program *restrict local spending in other areas.*" (84 Cal.App.4th at pp. 1283-1284, 101 Cal.Rptr.2d 784 (emphasis added).)

County of Sonoma discerned a further requirement of California Constitution article XIII B, section 6: that the costs incurred must involve programs previously funded exclusively by the state. In imposing this limitation, *County of Sonoma* relied on language in ****435***County of San Diego v. State of California, supra,* 15 Cal.4th 68, 61 Cal.Rptr.2d 134, 931 P.2d 312 that "section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6."(*County of San Diego v. State of California, supra,* 15 Cal.4th 68 at p. 99, fn. 20, 61 Cal.Rptr.2d 134, 931 P.2d 312.) *County of Sonoma* determined that because the statute at issue only involved a reallocation of funds between entities already jointly responsible for providing a service (education), no state-mandated reimbursable program existed. (*County of Sonoma v. Commission on State Mandates, supra,* 84 Cal.App.4th at p. 1289, 101 Cal.Rptr.2d 784.)

[14][15][16] ***1194** Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for purposes of California Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

We agree that POST certification is, for all practical purposes, not a "voluntary" program and therefore the County must, in order to comply with section 13519, add domestic violence training to its curriculum. POST training and certification is ongoing and extensive, and local law enforcement agencies may chose from a menu of course offerings to fulfill the 24-hour requirement. Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. Officer downtime will be incurred. However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Furthermore, the state has not shifted from itself the cost of a program previously administered and funded by the state. Instead, the state is requiring certain courses to be placed within an already existing framework of training. This loss of "flexibility" does not, in and of itself, require the County to expend funds that previously had been expended on the POST program by the state. Instead, "[t]he purpose for which state subvention of funds was created, to protected local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play" by a directive that POST-certified studies include domestic violence training. (*Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra,* 55 Cal.App.4th at p. 986, 64 Cal.Rptr.2d 270.) Any increased costs are merely "incidental" to the cost of administering the POST

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certification.

[17][18] While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state-mandated reimbursable program (*Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 541, 234 Cal.Rptr. 795), our interpretation is supported by the hortatory statutory language that, "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase ****436** the annual training costs of local ***1195** government entities." (§ 13519.) Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state-mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by section 13519.

DISPOSITION

The judgment of the trial court is reversed. The trial court is directed to enter a new and different judgment denying the County's petition for writ of mandate and reinstating the findings of the Commission.

We concur: PERLUSS, P.J., and WOODS, J.

Cal.App. 2 Dist.,2003.

County of Los Angeles v. Commission on State Mandates

110 Cal.App.4th 1176, 2 Cal.Rptr.3d 419, 03 Cal. Daily Op. Serv. 6658, 2003 Daily Journal D.A.R. 8347

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ATTACHMENT NO. 24

County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898

C

County of Los Angeles v. Commission on State Mandates
Cal.App. 2 Dist.,2007.

Court of Appeal, Second District, Division 3, California.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
COMMISSION ON STATE MANDATES, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
City of Artesia, etc., et al., Plaintiffs and Appellants,
v.
Commission on State Mandates, Defendant and Appellant;
Regional Water Quality Control Board, Los Angeles Region, Real Party in Interest and Respondent.
No. B183981.

May 10, 2007.

Background: County and cites presented test claims to California Commission on State Mandates, seeking reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board. Commission would not adjudicate claims on the ground that subvention was precluded by statute. County and cities sued Commission, seeking an order requiring State to reimburse them for carrying out new obligations, along with other relief. Commission and county and cities filed cross-motions for judgment on the pleadings. The Superior Court, Los Angeles County, Nos. BS089769 and BS089785,Victoria G. Chaney, J., entered partial grant of cross-motions. Trial court also granted in part the petitions by county and cities for a writ of mandate directing Commission to consider the test claims and determine whether county and cities were entitled to reimbursement. Commission appealed and county and cities cross-appealed.

Holdings: The Court of Appeal, Aldrich, J., held that
(1) Commission forfeited its statute of limitations defense based on failure to raise it in trial court, and
(2) question of whether obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by Commission.

Affirmed.

West Headnotes

[1] States 360 ⇐111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
"Subvention" under constitutional provision concerning reimbursement to local government for state-mandated programs generally means grant of financial aid or assistance, or subsidy. West's Ann.Cal. Const. Art. 13B, § 6.

[2] States 360 ⇐111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Constitutional rule of state subvention that requires state to pay for new governmental programs imposed on local governments does not require state to reimburse local agencies for any incidental cost that may result from enactment of state law; rather, subvention requirement is restricted to governmental services which local agency is required by state

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law to provide to its residents. West's Ann.Cal. Const. Art. 13B, § 6.

[3] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Constitutional rule of state subvention which requires state to reimburse local government for implementing required governmental programs is intended to prevent state from transferring costs of government from itself to local agencies. West's Ann.Cal. Const. Art. 13B, § 6.

[4] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
Under constitutional rule of state subvention which requires state to reimburse local government for governmentally imposed programs, reimbursement is required when state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb. West's Ann.Cal. Const. Art. 13B, § 6.

[5] Pleading 302 ⚿343

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k343 k. In General. Most Cited Cases

Pleading 302 ⚿350(2)

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k350 Application and Proceedings Thereon
302k350(2) k. Time for Proceedings. Most Cited Cases
A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired; the rules governing demurrers apply.

[6] Pleading 302 ⚿350(8)

302 Pleading
302XVI Motions
302k342 Judgment on Pleadings
302k350 Application and Proceedings Thereon
302k350(3) Hearing, Determination, and Relief
302k350(8) k. Matters Considered. Most Cited Cases
The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice.

[7] Appeal and Error 30 ⚿863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In General. Most Cited Cases
On review of a judgment on the pleadings, the appellate court must determine if the complaint states a cause of action as a matter of law.

[8] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
On review of a judgment on the pleadings, the appellate court reviews the complaint de novo to de-

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termine whether it alleges facts sufficient to state a cause of action under any legal theory.

[9] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases
In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence; however, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

[10] Mandamus 250 ⚿187.4

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.4 k. Presentation and Reservation in Lower Court of Grounds of Review. Most Cited Cases
On appeal from trial court's issuance of a writ of mandate directing the California Commission on State Mandates to set aside its decisions rejecting test claims of city and counties, which claims sought reimbursement pursuant to constitutional requirement for subvention for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit, Commission forfeited any right it may have had to assert 90-day statute of limitations defense, where Commission failed to raise the defense in its pleadings in the trial court. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.C.C.P. § 341.5.

[11] Limitation of Actions 241 ⚿180(2)

241 Limitation of Actions
241V Pleading, Evidence, Trial, and Review
241k180 Demurrer, Exception, or Motion Raising Defense
241k180(2) k. Matters Appearing on Face of Pleadings. Most Cited Cases
The time-bar of a statute of limitations may be raised by demurrer where the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, for the reason that it fails to state facts sufficient to state a cause of action.

[12] Limitation of Actions 241 ⚿182(5)

241 Limitation of Actions
241V Pleading, Evidence, Trial, and Review
241k181 Pleading Statute as Defense
241k182 Necessity
241k182(5) k. Waiver or Estoppel by Failure to Plead. Most Cited Cases
Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer.

[13] States 360 ⚿111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State Expenses and Charges and Statutory Liabilities. Most Cited Cases
In proceedings initiated by county and cities against California Commission on State Mandates for reimbursement, pursuant to constitutional requirement for subvention arising from a state mandate, for carrying out obligations under National Pollutant Discharge Elimination System (NPDES) Permit issued by Regional Water Quality Control Board, the question of whether the obligations constituted federal or state mandates presented factual issues that had to be addressed in the first instance by the Commission; although provision of Government Code would have excluded from subvention any order that included a permit issued by Regional Water Boards, that section was unconstitutional under article imposing subvention requirement whenever the Legislature "or any state agency" mandated a new program or higher level of service, making it neces-

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sary to determine whether state mandates existed. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17516(c).

See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, §§ 119-122; Cal. Jur. 3d, State of California, § 101 et seq.

West Codenotes

Held UnconstitutionalWest's Ann.Cal.Gov.Code § 17516(c).

****764** Raymond G. Fortner, Jr., County Counsel, Judith A. Fries, Principal Deputy County Counsel for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

Burhenn & Gest, Howard Gest, Los Angeles, and David Burhenn for Plaintiffs and Appellants County of Los Angeles, Los Angeles County Flood Control District, and Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village.

Thomas F. Casey III, County Counsel, and Miruni Soosaipillai, Deputy (San Mateo) for City/County Association of Governments of San Mateo County, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Morrison & Foerster and Robert L. Falk, San Francisco, for Bay Area Stormwater Management Agencies Association, as Amicus Curiae on behalf of Plaintiffs and Appellants.

Camille Shelton, Sacramento, and Eric D. Feller for Defendant and Appellant Commission on State Mandates.

Bill Lockyer, Attorney General, Tom Green and Mary E. Hackenbracht, Assistant Attorneys General, Helen G. Arens and Jennifer F. Novak, Deputy Attorneys General for Regional Water Quality Control Board, Los Angeles Region as Amicus Curiae on behalf of Defendant and Appellant.ALDRICH, J.

*903 INTRODUCTION

The California Commission on State Mandates (the Commission) appeals from the judgment entered following the partial grant of cross-motions for judgment on the pleadings. The County of Los Angeles, the Los Angeles County Flood Control District, and the Cities of Commerce, Carson, Downey, Hawaiian Gardens, Montebello, Santa Fe Springs, Signal Hill, Artesia, Beverly Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino and Westlake Village (collectively, County/Cities) filed a cross-appeal from the judgment.

In 2001, the Regional Water Quality Control Board (Regional Water Board), Los Angeles Region, issued a National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater and urban runoff discharges which obligated County/Cities to inspect industrial, commercial ***904** and construction water treatment facilities (which obligation County/Cities claim the State previously performed) and to install and maintain trash receptacles at transit stops.

County/Cities presented "test claims" [FN1] to the Executive Director of the Commission****765** seeking reimbursement for carrying out these obligations pursuant to the constitutional requirement for subvention arising from a state mandate (Cal. Const., art. XIII B, § 6). The Executive Director returned the claims unadjudicated, because they did not involve an executive order under section 17516 of the Government Code (Section 17516c). In denying the appeals of County/Cities, the Commission noted it was without authority to declare a statute unconstitutional and concluded that Section 17516c excludes from the subvention requirement any order, which includes a permit, issued by the Regional Water Boards of the State Water Resources Control Board (State Water Board).

> FN1. " 'Test claim' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." (Gov.Code, § 17521.)

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Section 6 of article XIII B of the California Constitution (article XIII B, section 6) provides in pertinent part: "Whenever the Legislature or *any state agency* mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...." (Italics added.)

As we shall discuss, Section 17516c is unconstitutional to the extent it exempts Regional Water Boards from the constitutional state mandate subvention requirement. Its creation of an exception for Regional Water Boards, which are state agencies, contravenes the plain, unequivocal, and all-inclusive reference to "any state agency" in article XIII B, section 6. Moreover, a contrary conclusion is not compelled by virtue of the fact that Section 17516c essentially mirrors the language of section 2209, subdivision (c) (§ 2209(c)) of the Revenue and Taxation Code. A statute cannot trump the constitution.

We decline to consider the Commission's new claim that the constitutional challenge to Section 17516c by County/Cities is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure. This statute of limitations defense, which should have been raised before the trial court, is not cognizable on this appeal.

***905** The Commission urges that should this court conclude Section 17516c is unconstitutional, the appropriate remedy is to afford the Commission the opportunity to pass on the merits of the subject test claims on the issues of whether: (1) the subject permit qualifies as a state mandated program under article XIII B, section 6; (2) the permit amounts to a new program or higher level of service; and (3) the permit imposes costs on local entities (Gov.Code, §§ 17514, 17556). We find its position persuasive.

The cross-appeal filed by County/Cities is premised on the theory that if subvention of funds from the Commission is foreclosed by Section 17516c, County/Cities are entitled to pursue an independent action against the Regional Water Board, Los Angeles Region (LA Regional Water Board). This cross-appeal, which is simply protective in nature, is moot.

In sum, we uphold the trial court's issuance of a writ of mandate directing the Commission to set aside its decisions affirming its Executive Director's rejections of the subject test claims and to consider fully these test claims and determine whether County/Cities are entitled to reimbursement without consideration of Section 17516c, and we affirm the judgment in its entirety.

BACKGROUND

1. *Article XIII B, section 6, Subvention of Funds for State Mandates*

"The electorate approved Proposition 4 in 1979, thus adding article XIII B to the ****766** state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called 'Spirit of 13,' imposed a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574, 7 Cal.Rptr.2d 245, 828 P.2d 147.) This measure also "provided [for] reimbursement to local governments for the costs of complying with certain requirements mandated by the state." (*Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, 275 Cal.Rptr. 449.)

"[V]oters were told that section 6 of Proposition 4 was intended to prevent state government attempts 'to force programs on local governments without the state paying for them.' (Ballot Pamp., Special Statewide Elec. [(Nov. 6, 1979)] p. 18.)" (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784; see also, *County of Los Angeles v. State of*

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California (1987) 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202 [intent was not all local costs arising from compliance with state law to be reimbursable; rather, intent was to prevent "the perceived ***906** attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public"].)

"Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [Citation.] The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the 'state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,' read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, italics original; see also, *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318 [a reimbursement requirement was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources"].)

Article XIII B, section 6 provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide such a subvention of funds for the following mandates. [¶] (1) Legislative mandates requested by the local agency affected. [¶] (2) Legislation defining a new crime or changing an existing definition of a crime. [¶] (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[1] " 'Subvention' generally means a grant of financial aid or assistance, or a ****767** subsidy. [Citation.] As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

[2][3][4] "Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.] This does not mean that the state is required to ***907** reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by state law to provide to its residents. [Citation.] The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. [Citation.] Reimbursement is required when the state 'freely chooses to impose on local agencies *any* peculiarly "governmental" cost which they were not previously required to absorb.' [Citation, italics in original.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, at 1577-1578, 15 Cal.Rptr.2d 547.)

The subvention requirement of article XIII B, section 6 is triggered if "the Legislature or any state agency" mandates a new program or higher level of service. (Art. XIII B, § 6.) Such requirement is inapplicable where the additional costs on local governments are imposed by a federal mandate, i.e., the federal government. Article XIII B, section 9, sub-

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division (b), defines federally mandated appropriations as those "required to comply with mandates of the courts or the federal government which, *without discretion,* require an expenditure for additional services or which *unavoidably make the provision of existing services more costly.*" FN2 (Italics added.)

> FN2. "In 1980, after the adoption of article XIII B, [the Legislature] amended the statutory definition of 'costs mandated by the federal government' to provide that these include 'costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in *substantial monetary penalties* or *loss of funds* to *public or private persons* in the state....' (Rev. & Tax.Code, § 2206, italics added; Stats.1980, ch. 1256, § 3, p. 4247.)" (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 75, 266 Cal.Rptr. 139, 785 P.2d 522.)

There is no precise formula or rule for determining whether the "costs" are the product of a federal mandate. Our Supreme Court explained: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal. Always, the courts and the Commission must respect the governing principle of article XIII B, section 9(b): neither state nor local agencies may escape their spending limits when their participation in federal programs is truly voluntary." (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76, 266 Cal.Rptr. 139, 785 P.2d 522.)

2. *Existence of State Mandate Matter for the Commission*

Whether a particular cost incurred by a local government arises from carrying out a state mandate for which subvention is required under article XIII B, section 6, is a matter for the Commission to determine in the first instance.

908** A local government initiates the process for subvention under article XIII B, section 6 by filing a claim with the Commission.*768** (gov.code, § 17521; cf. *county of san diego v. state of california* (1997) 15 Cal.4th 68, 89, 61 Cal.Rptr.2d 134, 931 P.2d 312 [futility exception to exhaustion of administrative remedies doctrine applicable to failure to file claim before Commission].) The initial claim is referred to as a "test claim." (Gov.Code, § 17521.)

"The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov.Code, § 17500.)" (*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.) The provisions of Government Code sections 17500 et seq."provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by"article XIII B, section 6. (Gov.Code, § 17552.)

"It created a 'quasi-judicial body' (*ibid.*) called the Commission on State Mandates ... ([Gov.Code], § 17525) to 'hear and decide upon [any] claim' by a local government that the local government 'is entitled to be reimbursed by the state for costs' as required by article XIII B, section 6. (Gov.Code, § 17551, subd. (a).) It defined 'costs' as 'costs mandated by the state'-'any increased costs' that the local government 'is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program' within the meaning of article XIII B, section 6. (Gov.Code, § 17514.) Finally, in section 17556(d)

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it declared that 'The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that' the local government 'has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.' "(*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 484, 280 Cal.Rptr. 92, 808 P.2d 235.)

3. *Regional Water Board Order Not "Executive Order"*

Section 17516c defines, in pertinent part, an " '[e]xecutive order' [as] any order, plan, requirement, rule, or regulation issued by ... [a]ny agency ... of state government[,]' " except an " '[e]xecutive order' does not include any order, plan, requirement, rule, or regulation issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code." [FN3](Added by Stats.1984, ch. 1459, § 1.)

> FN3. Section 17516c further provides: "It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

LA Regional Water Board argues the trial court's ruling sustaining its demurrer to the fourth cause of action for a writ of mandate directing it to delete the subject two obligations under the Permit as violative of section 17516 should be upheld, because section 17516"applies to construction of major waste treatment facilities, not trash receptacles or inspections." This analysis, however, is inconsistent with the plain language of section 17516 in its entirety.

*909 In light of the above definition, the subject permit issued by an order of the LA Regional Water Board cannot constitute an "executive order implementing any statute[,] ... which mandates a new program or higher level of service of an existing program within the meaning of" the **769 article XIII B, section 6 requirement of subvention of funds to local governments for carrying out a state mandate. (Gov.Code, § 17514.)

4. *Procedural Posture*

LA Regional Water Board issued Order No. 01-182, which adopted NPDES Permit No. CAS004001 (Permit). This Permit imposed two obligations on County/Cities for the purpose of regulating municipal stormwater and urban runoff discharges in Los Angeles County. The first required County/Cities to inspect industrial, commercial and construction sites to ensure compliance with the law, and the other required County/Cities to install and maintain trash receptacles at transit stops.

County/Cities filed four test claims, i.e., Test Claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, seeking reimbursement of costs for carrying out these obligations. The Executive Director rejected these test claims as excluded from subvention pursuant to Section 17516c.

In the administrative appeals, the Commission found it was bound by Section 17516c, upheld its executive director's decision, and denied the appeals.

In their amended and consolidated petitions and complaints, County/Cities sought, among other things: (1) an order requiring the State to reimburse them for the new programs or higher level of service under the permit or, alternatively, to allow them to offset payment of permit and other fees or moneys owed or to be transferred to the State

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against their costs; (2) an order enjoining State from refusing to reimburse them in the future; or, alternatively, (3) a preemptory writ of mandate directing the Commission to accept their test claims and find they are entitled to reimbursement; (4) a declaration that section 17516 is unconstitutional; (5) a preemptory writ of mandate directing LA Regional Water Board either to delete or not ***910** enforce the subject obligations under the permit; and (6) a stay of the challenged portions of the permit.

The Commission and County/Cities filed cross-motions for judgment on the pleadings. The trial court granted the Commission's motion as to the second cause of action for declaratory relief. The court explained: "The only actual controversy between [County/Cities] and [Commission] is whether [County/Cities]' claims should be deemed reimbursable. The sole and exclusive procedure by which to adjudicate this controversy is a mandate action under Code of Civil Procedure section 1094.5. ([Government Code s]ections 17552, 17559.) The only pertinent relief under ...section 1094.5 is a finding that [the Commission] 'has not proceeded in the manner required by law.' Declaratory relief is not available."

After construing the motion addressed to the third cause of action as a motion to strike improper requested relief, the court granted the motion and struck that part of the third cause of action requesting an order directing the Commission to find their claims to be reimbursable on the ground "[t]he court has no power at this time to do so. [Citations.]"

Turning to County/Cities' motion for judgment on the pleadings, the trial court granted the motion as to the third cause of action for extraordinary writ relief, except as to the stricken request for improper relief.[FN4]

> FN4. In the third cause of action, County/Cities sought a writ of mandate (Code Civ. Proc., § 1094.5) compelling a court finding that section 17516 was unconstitutional on its face or as applied in this action and directing the Commission to accept their test claims for filing and approving them for reimbursement.

The court found that to the extent Section 17516c excepted the orders of Regional****770** Water Boards from the definition of "executive orders," Section 17516c was unconstitutional in that it expressly contravened article XIII B, section 6. The court ordered the Commission to set aside its order affirming its executive director's rejections of the four test claims and to consider these claims on the merits.

In granting in part County/Cities' petitions for a writ of mandate, the trial court found the Commission, "though it proceeded as required by statutory law, as it was constrained to do, has not proceeded as required by superior constitutional law. (Code Civ. Proc., [§]1094.5, subd. (a).) The question whether [County/Cities] state valid claims for reimbursement must be remanded to [C]ommission, which is ordered to consider [these] claims on their merits. [Citations.]"

***911** A peremptory writ of mandate was issued on May 24, 2005. Judgment was entered the same date. This appeal and cross-appeal followed.

STANDARD OF REVIEW

[5][6][7][8] "The standard for reviewing a judgment on the pleadings is settled: 'A motion for judgment on the pleadings is the equivalent of a general demurrer but is made after the time for demurrer has expired. The rules governing demurrers apply. [Citation.] The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice. [Citations.] On review we must determine if the complaint states a cause of action as a matter of law.' [Citation.] 'We review the complaint de novo to determine whether [it] alleges facts sufficient to state

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a cause of action under any legal theory. [Citation.]' [Citation.]" (*McCormick v. Travelers Ins. Co.* (2001) 86 Cal.App.4th 404, 408, 103 Cal.Rptr.2d 258.)

[9] "In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407, 216 Cal.Rptr. 782, 703 P.2d 122.) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)"(*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 394, 69 Cal.Rptr.2d 231.)

DISCUSSION

1. *Defense of Statute of Limitations Forfeited*

[10] On appeal for the first time, the Commission asserts the challenge of County/Cities to the constitutionality of Section 17156c is barred by the 90-day limitation period of section 341.5 of the Code of Civil Procedure, which governs the timeliness of actions challenging the constitutionality of state funding for municipalities, school districts, special districts, and local agencies.

Code of Civil Procedure section 341.5 provides: "Notwithstanding any other provision of law, any action or proceeding in which a county, city, city and county, school district, special district, or any other local agency is a plaintiff or petitioner, that is brought against the State of California challenging the constitutionality of any statute relating to state funding for counties, cities, cities and counties, school districts, special districts, or other local agencies, shall be commenced within 90 days of the effective date of the ***912** statute at issue in the action. For purposes of this section, 'State of California' means the State of California itself, or any of its agencies, departments, commissions, boards, or public officials." (Added by ****771** Stats.1994, ch. 155 (Assem. Bill No. 860), § 1, eff. July 11, 1994; amended by Stats.1994, ch. 156 (Sen. Bill No. 2127), § 1, eff. July 11, 1994.)

The Commission argues the constitutional challenge to Section 17516c is time-barred, because: "Government Code section 17500 et seq., including section 17516, relates to state funding for counties and cities relative to state-mandated local programs.... [S]ection 17516 was enacted in 1984 and became effective January 1, 1985. The petition in this case challenging section 17516 as unconstitutional was filed April 28, 2004[,]" which was more than 90 days after the effective date of section 17516.

[11][12] The time-bar of a statute of limitations may be raised by demurrer "[w]here the complaint discloses on its face that the statute of limitations has run on the causes of action stated in the complaint, [for the reason that] it fails to state facts sufficient to state a cause of action. [Citation.]" (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, 30 Cal.Rptr.3d 588.) Forfeiture of a time-bar defense transpires by the failure to raise the applicable statute of limitations in the answer. (See e.g., *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581, 15 Cal.Rptr. 641, 364 P.2d 473; *Davies v. Krasna* (1975) 14 Cal.3d 502, 508, 121 Cal.Rptr. 705, 535 P.2d 1161; *Mitchell v. County Sanitation District No. 1 of Los Angeles County* (1957) 150 Cal.App.2d 366, 371, 309 P.2d 930; see also, Code Civ. Proc., § 458.)

As the Commission concedes, it did not raise "[Code of Civil Procedure] section 341.5 as an affirmative defense in its pleadings in the trial court." This omission signifies that the Commission therefore has forfeited any right it may have had to assert section 341.5 to bar, as untimely, the claims of County/Cities to the constitutionality of Section 17516c.

For a contrary conclusion, the Commission argues "the statute of limitations to challenge an adminis-

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trative action is jurisdictional and should not be considered waived. (*United Farm Workers of America v. Agricultural Labor Relations Board* (1977) 74 Cal.App.3d 347, 350, 141 Cal.Rptr. 437; *Tielsch v. City of Anaheim* (1984) 160 Cal.App.3d 576, 578, 206 Cal.Rptr. 740; *Donnellan v. City of Novato* (2001) 86 Cal.App.4th 1097, 1103, 103 Cal.Rptr.2d 882.) If a time limit in a mandamus proceeding is held to be jurisdictional, estoppel or waiver cannot extend the time. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 666, 674, 125 Cal.Rptr. 757, 542 P.2d 1349.)"

***913** The Commission's fall-back position is that this court should exercise its discretion to determine the applicability of the time-bar, because this " issue is a question of law rather than of fact" and "[t]his matter affects the public interest since [County/Cities] are seeking reimbursement from the state for costs incurred to comply with a permit" issued by the LA Regional Water Board. In other words, "taxpayers statewide could unjustly suffer the consequences of funding a local program if Code of Civil Procedure section 341.5 is not considered and ...section 17516 is held to be unconstitutional." As authority, the Commission relies primarily on *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65, 266 Cal.Rptr. 139, 785 P.2d 522 [where issue of law rather than fact raised, public-interest exception governs over collateral estoppel bar] and *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 387-388, 396-397, 69 Cal.Rptr.2d 231 [public-interest exception applicable to allow review of question of law as to whether recycled waste water regulation constituted reimbursable state mandate].)

Neither of the Commission's positions is successful. In the first instance, the time-****772** bar of section 341.5 of the Code of Civil Procedure applies to a challenge to the constitutionality of any statute relating to state funding for counties and other local governmental entities, *not* to a challenge to an action by an administrative agency. As for the second, neither *City of Sacramento* nor *Connell* stand for the proposition that the bar of the applicable statute of limitations may be raised for the first time on appeal.

Additionally, the Commission's characterization of the public interest to be served is a non sequitur. If section 17516 were in fact unconstitutional, it does not follow that "taxpayers statewide could *unjustly* suffer the consequences of funding a local program[.]" (Italics added.) How could such funding result in injustice when any requirement of reimbursement to local governments would be under the constitutional compulsion of article XIII B, section 6?

2. *Existence of Federal or State Mandate Issue for the Commission*

[13] It is undisputed that a federal mandate is not subject to the subvention requirement of article XIII B, section 6 for a state mandate. Accordingly, if the Permit, including the subject two obligations thereunder, constitutes a federal mandate, the constitutionality of Section 17516c is not implicated, and thus, no issue as to its constitutionality is before this court to address on the merits. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912, 83 Cal.Rptr. 670, 464 P.2d 126 ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court."].)

***914** In its amicus curiae brief, LA Regional Water Board takes the position that, as a matter of law, Section 17516c is consistent with article XIII B, section 6 (and thus not unconstitutional) "to the extent Division 7, Chapter 5.5 (commencing with Water Code section 13370)" simply implements federal mandates under the Clean Water Act (33 U.S.C. § 1342(b)). The Water Boards, i.e., State Water Board and its Regional Water Boards, implement the federal permit program under Chapter 5.5, which the California Legislature enacted to by-pass administration of such program directly by the federal Environmental Protection Agency.

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LA Regional Water Board takes the further position that the federal mandate nature of its NPDES permits remains constant although it exercises discretion to control the discharge of pollutants through municipal stormwater programs not appearing in federal regulations. Specifically, LA Regional Water Board argues: "When a state [Regional Water Board] issues an NPDES permit requiring municipalities to inspect facilities as a means of controlling their discharge of pollutants, this is not shifting state responsibilities onto local agencies [, because f]ederal law imposes inspection requirements upon municipal permittees."

As for the trash receptacle obligation, LA Regional Water Board points out the Clean Water Act allows the use of programs to control discharge of pollutants in connection with a municipal stormwater permit and argues one such program under the Permit is the ability of "municipalities to employ 'Best Management Practices' (BMPs) to ... attain water quality standards." It identifies "[t]he Permit's trash receptacle requirement as one such [BMP]."

It further argues that the trash receptacle obligation cannot be deemed a state-mandated program, because it is not "an absolute requirement. Any permittee may petition the Regional Water Board to substitute another equally effective BMP for one included within the Permit.[ ] [For instance, i]f a permittee demonstrates that **773 a pre-existing program or level of service will be equally effective in controlling pollution, it may seek to substitute that program."

We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances. As explained ante, the existence of a federal, as contrasted with a state, mandate is not easily ascertainable.

By letter, we invited the parties and LA Regional Water Board to address whether an obligation under an NPDES permit by a Regional Water Board can qualify as a state mandate within the meaning of article XIII B, section 6, assuming an NPDES permit itself qualified as a federal mandate, and if so, *915 why each of the subject two obligations does or does not constitute a state mandate. We have received their responses.

a. *"NPDES" Permits Issued by Regional Water Boards*

"California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862(*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76; *WaterKeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389.)

For purposes of this case, the important point is described by the California Supreme Court in *Burbank:* "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* [(1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239].) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional [water] boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)" (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

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"California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional [water] boards, overseen by the State [Water] Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional [Water] Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)" [FN5] **774 *916(*City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In a related case, Division Five of this District upheld the authority of LA Regional Water Board to issue the Permit here. (*County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 999-1000, 50 Cal.Rptr.3d 619 [holding the nine Regional Water Boards authorized under state law to issue NPDES permits] review den.)

FN5. In pertinent part, article XIII B, section 6, provides: "[T]he Legislature may, but need not, provide a subvention of funds for the following mandates: ... [¶] ... [¶] Legislative mandates enacted prior to January 1, 1995, or executive orders ... initially implementing legislation enacted prior to January 1, 1975." (Art. XIII B, § 6, par. (a)(3).) LA Regional Water Board argues that subvention under article XIII B, section 6, is not required as to the Permit, because it is an executive order implementing the Porter-Cologne Act, which is legislation enacted in 1969. This argument fails for the reason that the executive order resulting in the 2001 Permit was not one "*initially* " implementing such pre-1975 legislation. Equally unsuccessful is LA Regional Water Board's apparent argument that Section 17516c should be deemed constitutional for the reason that "most of" the Porter-Cologne Act (Division 7) was enacted prior to 1975. The fatal fallacy of this position is that the exclusion of Section 17516c applies to all orders issued pursuant to Division 7 *regardless* of the date the statute in question was enacted.

b. *Potential Federal and State Components of NPDES Permit*

As expected, LA Regional Water Board contends that as in the case of NPDES "permits as a whole, the individual conditions of an NPDES permit are federally required to meet the mandates of the Clean Water Act."It argues: "The Permit is federally required. The conditions within it are federally required to implement the Clean Water Act's mandates. The two cannot be separated into a 'federal' permit with 'state' conditions.[Citation.]"

County/Cities respond, contrariwise, that "[a]n NPDES permit can contain both federal and non[-]federal requirements." As case authority, they rely primarily on *Burbank, supra,* 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862.Our Supreme Court concluded that under the supremacy clause of the federal Constitution, a Regional Water Board must comply with the federal Clean Water Act in issuing an NPDES permit. (*Id.* at pp. 626-627, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Nonetheless, "[u]nder the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not 'less stringent' than those set out in the Clean Water Act [citation]." (*Id.* at p. 620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Court thus acknowledged in *Burbank* that an NPDES permit may contain terms federally mandated and terms exceeding federal law. (See also, *Burbank, supra,* at pp. 618, 628, 26 Cal.Rptr.3d 304, 108 P.3d 862.) County/Cities also point out that the potential for non-federally mandated components of an NPDES permit is acknowledged under both federal law [FN6] and state law. [FN7]

FN6. In this regard, they rely on this federal statute: "Except as expressly provided in this Act [33 USCS §§ 1251 et seq.], nothing in this Act [33 USCS §§ 1251 et seq.] shall (1) preclude or deny the right of any

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> State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation ... is in effect under this Act [33 USCS §§ 1251 et seq.], such State [, etc.] ... may not adopt or enforce any effluent limitation or other limitation ... which is less stringent than the effluent limitation, or other limitation...." (33 U.S.C. § 1370.)
>
> FN7. On this point, they rely on this statutory provision: "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Wat.Code, § 13377.)

****775 *917** Additionally, County/Cities argue "that an obligation imposed on a municipality arises as a result of a federal law or program does not, in and of itself, render that obligation a federal mandate." Rather, they assert that to qualify as a federal mandate, "federal law itself must impose the obligation upon the municipality." They point out Government Code section 17556 provides that costs flowing from a federal mandate may be subject to subvention if such costs exceed such mandate.[FN8] They also cite two cases in support of their position.

> FN8. Government Code section 17556, subdivision (c), provides: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds ... [¶] ... [¶][t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, our Supreme Court concluded the costs incurred by school districts in holding mandatory expulsion hearings under Education Code section 48915 were state mandates subject to subvention under article XIII B, section 6. The court explained that expulsion was mandated under the Education Code, rather than federal law, and thus, the fact the costs were incurred to comport with federal due process, a federal mandate, was not controlling. (*San Diego Unified School Dist. v. Commission on State Mandates, supra,* at pp. 880-882, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

In the other case, *Hayes v. Commission on State Mandates, supra,* 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, the appellate court concluded that the finding a mandate was federal turned on whether "the state freely chose to impose the costs upon the local agency as a means of implementing a federal program" and that under these circumstances, "the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Id.* at p. 1594, 15 Cal.Rptr.2d 547.)

c. *Existence of State Mandates Matter for the Commission*

A review of the pleadings and the matters that may be judicially noticed (Evid.Code, §§ 451, 452, 459) leads to the inescapable conclusion that whether the two obligations in question constitute federal or state mandates presents factual issues which must

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be addressed in the first instance by the *918 Commission if Section 17516c were found to be unconstitutional. Resolution of the federal or state nature of these obligations therefore is premature and, thus, not properly before this court.

In its response, the Commission argues that if this court determines Section 17516c is unconstitutional, the subject test claims "should be remanded to ... Commission to 'decide in the first instance whether a local agency is entitled to reimbursement under [article XIII B,] section 6 [.]'(*Lucia Mar Unified School District v. Honig [, supra,]* 44 Cal.3d 830, 837 [244 Cal.Rptr. 677, 750 P.2d 318]; Gov.Code, § 17552.)"

The Commission stated that on such remand, it would apply the following cases in determining whether state mandates exist: *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, which sets forth various factors and criteria for determining whether the federal program imposes a mandate on the state; **776*Hayes v. Commission on State Mandates, supra,* 11 Cal.App.4th 1564, 15 Cal.Rptr.2d 547, which it contends "provides guidance on whether the state, in turn, has mandated a federal program on the local governments"; *Long Beach Unified Sch. Dist. v. State of California, supra,* 225 Cal.App.3d 155, 275 Cal.Rptr. 449, which analyzes whether the state-mandated activities exceed federal requirements; and *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 16 Cal.Rptr.3d 466, 94 P.3d 589, which also provides guidance on this same issue.

3. *"Executive Order" under Revenue and Taxation Code Not Probative*

The Commission contends the exclusion of orders of the Regional Water Boards from the definition of "executive order" in Section 17516c does not contravene article XIII B, section 6, because section 17516 derives from the definition of "executive order" in Revenue and Taxation Code section 2209, FN9 of which the voters were presumed to have known to exist *919 when they adopted Proposition 4 (i.e., art. XIII B, § 6) in 1979, and thus, Proposition 4 intended to endorse and continue such exclusion from the definition of "executive order" which was later carried over to Section 17516c. We disagree.

> FN9. Section 2209(c) provides: " 'Executive order' means any order, plan, requirement, rule or regulation issued ... [¶] ... [¶][b]y any agency ... of state government; provided that the term 'executive order' shall not include any order ... issued by the State Water ... Board or by any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code.
>
> "It is the intent of the Legislature that the State Water ... Board and regional water ... boards will not adopt enforcement orders against publicly owned discharges which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available.
>
> " 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."(§ 2209(c); added by Stats.1974, ch. 457, p. 1079, § 2 and amended by Stats.1975, ch. 486, p. 998, § 2, eff. Sept. 2, 1975.)

We further disagree with the Commission's reliance on a presumption that when the voters adopted Proposition 1A in November 2004, they knew of, and thus, necessarily approved of Section 17516c's exclusion of orders of Regional Water Boards from the definition of "executive order."

Our focus, instead, must be on the import of article XIII B, section 6, not on the pre-constitutional scheme for subvention of funds to local agencies of which section 2209 of the Revenue and Taxation

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Code was part. As our Supreme Court instructs: "In construing the meaning of the constitutional provision (i.e., art. XIII B, § 6), our inquiry is not focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. [Citation.]" (*County of Los Angeles v. California, supra,* 43 Cal.3d 46, at p. 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

The subvention requirement of article XIII B, section 6 applies "[w]henever the Legislature or any state agency mandates a new program or higher level of service...." The all-encompassing "any state agency" language defeats any perceived presumption that the electorate intended to incorporate into article XIII B, section 6 the exclusion of a particular state agency, e.g., the Regional Water Board, from its subvention requirement.

**777 4. *Section 17516c Unconstitutional as to Regional Water Boards*

LA Regional Water Board argues in its amicus brief that Section 17516c is constitutional for the additional reason that its exemption from the subvention requirement of article XIII B, section 6, is "appropriate because the Water Boards regulate water pollution with an even hand. Whether the pollution originates from a local public agency or a private industrial source, the Water Boards must assure their permits protect water quality consistent with state and federal law."

This argument is not persuasive. Whether the permit in question issued by Regional Water Boards governs both public and private pollution dischargers to the same extent presents factual issues not yet resolved. In any event, the applicability of permits to public and private discharges does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6. (See ***920***Carmel Valley Fire Protection Dist. v. California* (1987) 190 Cal.App.3d 521, 530-531, 534, 537, 541, 234 Cal.Rptr. 795 [executive orders for protective fire clothing and equipment state mandated even if record, which was incomplete, revealed private sector firefighters also subject to the executive orders].)

In contrast, the constitutional infirmity of Section 17516c is readily apparent from its plain language that the definition of " '[e]xecutive order' does not include *any* order, plan, requirement, rule, or regulation *issued by the State Water ... Board or by any regional water ... board* pursuant to Division 7 (commencing with Section 13000) of the Water Code."(§ 17516c, italics added.) This exclusion of any order issued by any Regional Water Board contravenes the clear, unequivocal intent of article XIII B, section 6 that subvention of funds is required "[w]henever ...*any state agency* mandates a new program or higher level of service on any local government ...." [FN10] (§ 17516c, italics added.) We therefore conclude that Section 17516c is unconstitutional to the extent it excludes "any order ... issued by ... any regional water ... board pursuant to Division 7 (commencing with Section 13000) of the Water Code" from the definition of " 'executive order.' ".

> FN10. At oral argument, when asked to identify the public policy or other reason that would be served by exempting Regional Water Boards from the constitutional subvention requirement, counsel for LA Regional Water Board responded exemption is warranted, because water is an important concern. No one can quarrel with the fact water plays an important role in California. Nonetheless, this reason does not compel the conclusion that an exemption should be carved out for Regional Water Boards as contrasted with those state agencies which regulate other important state interests.

This conclusion leads to the further conclusion that

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whether one or both of the subject two obligations constitutes a state mandate necessitating subvention of funds under article XIII B, section 6 is an issue that must in the first instance be resolved by the Commission. Accordingly, we uphold the trial court's issuance of a writ of mandate directing the Commission to vacate its decisions affirming its executive director's rejection of the four test claims and to consider these claims on the merits.

5. *Cross-Appeal Moot*

County/Cities filed a protective cross-appeal from the judgment to the extent the trial court dismissed the portions of their writ of mandate petitions against LA Regional Water Board.[FN11] The threshold **778 issue raised is whether County/Cities are entitled to proceed directly in superior court against LA *921 Regional Water Board for reimbursement relief if they are statutorily precluded from obtaining a hearing before the Commission.

> FN11. The trial court sustained the demurrer to the fourth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the inspection and trash receptacle obligations. The court granted its own motion for judgment on the pleadings without leave to amend as to LA Regional Water Board on the first cause of action for a writ of mandate directing reimbursement; the second cause of action for declaratory relief; and the fifth cause of action for a writ of mandate directing LA Regional Water Board to delete or not enforce the subject obligations.

County/Cities' position is they are entitled to a hearing on the merits of their claims before either the Commission or LA Regional Water Board. If this court determines the Commission's jurisdiction is exclusive, the Commission must afford them a hearing and determine the merits of their subvention claim under article XIII B, section 6. If not exclusive, County/Cities must be allowed to seek relief directly against Regional Water Board before the superior court.

LA Regional Water Board argues County/Cities have no right to seek subvention relief from a Regional Water Board, because reimbursement of costs mandated by state must be pursued through the statutory subvention scheme, which is "the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B...." (Gov.Code, § 17552.) Their claims thus must be addressed exclusively to the Commission in first instance.

The cross-appeal against LA Regional Water Board is moot in light of our above conclusion that the Commission is to hear and determine the merits of the County/Cities' test claims. We therefore do not reach the merits of the issues raised in the cross-appeal.

CONCLUSION

Section 17516c is unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of "executive orders" for which subvention of funds to local governments for carrying out state mandates is required pursuant to article XIII B, section 6. The trial court therefore properly issued a writ of mandate directing the Commission to resolve the four test claims on the merits without reference to Section 17516c. In light of this conclusion, we need not, and therefore do not, address the issues raised on the now moot cross-appeal.

*922 DISPOSITION

The judgment is affirmed. Each party shall bear its own costs on appeal and cross-appeal.

We concur: KLEIN, P.J., and CROSKEY, J.
Cal.App. 2 Dist.,2007.
County of Los Angeles v. Commission on State

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Mandates
150 Cal.App.4th 898, 58 Cal.Rptr.3d 762, 07 Cal. Daily Op. Serv. 5216, 2007 Daily Journal D.A.R. 6622

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ATTACHMENT NO. 25

County of Los Angeles v. State of California (1987) 43 Cal.3d 46

Los Angeles County v. State
Cal.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.
CITY OF SONOMA et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents
L.A. No. 32106.

Supreme Court of California
Jan 2, 1987.

SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that Cal. Const., art. XIII B, § 6, requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted art. XIII B, § 6, their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by art. XIII B, § 6. Finally, the court held that no pro tanto repeal of Cal. Const., art. XIV, § 4 (workers' compensation), was intended or made necessary by the adoption of art. XIII B, § 6. (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.
When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2) Statutes § 18--Repeal--Effect--"Increased Level

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of Service."
The statutory definition of the phrase "increased level of service," within the meaning of Rev. & Tax. Code, § 2207, subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature, by deleting an express provision of a statute, intended a substantial change in the law.
[See **Am.Jur.2d,** Statutes, § 384.]
(3) Constitutional Law § 13--Construction of Constitutions--Language of Enactment.
In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4) Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."
The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

(5) State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.
The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state- mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)
[See **Cal.Jur.3d,** State of California, § 78.]
(6) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.
Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7) Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.
The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation.

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GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or *50 increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No

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definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. FN1

> FN1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...
> The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which ***51** employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from $231 per week to $262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from $55,000 to $75,000. No appropriation for increased state-mandated costs was made in this legislation. FN2

> FN2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.
> Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of $510 on which to base benefits, an unspecified appropriation was included.

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207. FN3 They also sought a declaration that because the State of Cali-

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fornia and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

> FN3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly ***52** excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service " in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922. p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from $73.50 to $168, and the maximum from $262.50 to $336. For permanent partial disability the weekly wage was raised from a minimum of $45 to $105, and from a maximum of $105 to $210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.)A $10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from $75,000 to $85,000 for deaths in 1983, and to $95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIIIB of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.) FN4

> FN4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or ***53** section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to

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sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service" FN5 described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

> FN5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the *54 definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].) FN6 On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

> FN6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. *California Employment Stabilization Co.* v. *Payne* (1947) 31 Cal.2d 210, 213-214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.
>
> The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

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The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma " case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. FN7

FN7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service " phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.)As noted, however, the definition of that term which had been *55 included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975. ch. 486, §§ 6 & 7, p. 999.) FN8 Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " "Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

FN8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (*County of Orange v. Flournoy* (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this ar-

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gument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (*Lake Forest Community Assn. v. County of Orange* (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also *Eu* v. *Chacon, supra*, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been ***56** aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

(4) Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term - programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not ***57** for expenses incurred by local agencies as an incidental impact of laws that

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apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote. [FN9] Certainly no such intent is reflected in the language or history of article XIII B or section 6.

FN9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

(5) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation ***58** benefits that employees of private individuals or organizations receive. FN10Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

FN10 The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision

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of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

IV

(6) Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency* v. *California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (*Legislature* v. *Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article XIV, section 4, FN11 gives the Legislature "plenary power, unlimited by any provision of ***59** this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

FN11 Section 4: "The Legislature is hereby *expressly vested with plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expedi-

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> tiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.
> "The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.
> "The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.
> "Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural *60 limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B *would* restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article

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XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute.Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that ***61** amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co.* v. *Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento* v. *Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power - the disciplining of attorneys - that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd., supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (*Huntington Park Redevelopment Agency* v. *Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].)Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in ***62** benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees

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generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal - whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living ***63** adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. ***64**

Cal.
County of Los Angeles v. State of California
43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38

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ATTACHMENT NO. 26

County of Los Angeles v. State Water Resources Control Board (2006) 143 Cal.App.4th 985

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143 Cal.App.4th 985, 50 Cal.Rptr.3d 619

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Briefs and Other Related Documents

Court of Appeal, Second District, Division 5, California.
COUNTY OF **LOS ANGELES** et al., Plaintiffs and Appellants,
v.
CALIFORNIA STATE **WATER** RESOURCES CONTROL **BOARD** et al., Defendants and Respondents.
No. B184034.
Oct. 5, 2006.
Certified for Partial Publication.FN*

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part IV(G)-(L).

As Modified Nov. 6, 2006.

Background: Multiple cities, county, county flood control district, and other interested parties challenged order of the California Regional Water Quality Control Board adopting National Pollutant Discharge Elimination System permit. The Superior Court, Los Angeles County, No. BS080792, Victoria G. Chaney, J., entered judgment for regional board. Plaintiffs appealed.

Holdings: The Court of Appeal, Turner, P.J., held that:
(1) regional board had jurisdiction to issue permit;
(2) declaratory relief was not available to plaintiffs;
(3) regional board did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review; and
(4) CEQA review was not required.

Affirmed.

West Headnotes

[1] KeyCite Notes

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases

On a challenge to a permit issued by the California Regional Water Quality Control Board, it is presumed the regional board considered the documents before it. West's Ann.Cal.Water Code § 13330.

[2] KeyCite Notes

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases

On a challenge to a permit issued by the California Regional Water Quality Control Board, all

reasonable doubts are resolved in favor of upholding the regional board's decision. West's Ann.Cal.Water Code § 13330.

[3] KeyCite Notes

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases

149E Environmental Law KeyCite Notes
149EXIII Judicial Review or Intervention
149Ek704 Further Review of Administrative Decision
149Ek708 k. Scope of Review. Most Cited Cases

On a challenge to a permit issued by the California Regional Water Quality Control Board, the appellate and trial courts examine the regional board's interpretation of legal matters utilizing a de novo standard of review, but the courts defer to the regional board's expertise in construing language which is not clearly defined in statutes. West's Ann.Cal.Water Code § 13330.

[4] KeyCite Notes

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

California Regional Water Quality Control Board had statewide jurisdiction within meaning of federal regulation, notwithstanding its organization into nine regional boards, and thus had jurisdiction to issue National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174, 13100, 13200, 13225; 40 C.F.R. § 123.1(f).

[5] KeyCite Notes

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

Under the de facto officer doctrine, governmental and private parties objecting to National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board could not challenge permit by attacking regional board's authority. West's Ann.Cal.Water Code § 174 et seq.

[6] KeyCite Notes

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications

149Ek196 k. Discharge of Pollutants. Most Cited Cases

Even though California Regional Water Quality Control Board was not an elected body, it was authorized to make the financial decisions of the scope entailed by a National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174 et seq., 13201.

[7] KeyCite Notes

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases

In absence of specific allegations, by parties challenging the California Regional Water Quality Control Board issuance of National Pollutant Discharge Elimination System permit, to hold the State Water Resources Control Board liable as engaging in independent activity, the State Water Resources Control Board was not properly joined as a party to challenging parties' action.

[8] KeyCite Notes

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases

In light of statute providing that order of the California Regional Water Quality Control Board may be reviewed by administrative mandate petition, declaratory relief was not available to governmental and private parties challenging regional board's issuance of National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code § 13330(b).

[9] KeyCite Notes

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases

When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable.

[10] KeyCite Notes

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

149E Environmental Law KeyCite Notes
149EV Water Pollution
149Ek194 Permits and Certifications

149Ek196 k. Discharge of Pollutants. Most Cited Cases

360 States KeyCite Notes
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases

California Regional Water Quality Control Board, by issuing National Pollutant Discharge Elimination System permit, did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review, since regional board was part of joint state and federal process to enforce the Clean Water Act, which superseded conflicting state and local pollution laws. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Pub.Res.Code § 21000 et seq.; West's Ann.Cal.Water Code § 13001; 40 C.F.R. § 122.26(d)(2)(iv)(A)(2).

[11] KeyCite Notes

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

149E Environmental Law KeyCite Notes
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

360 States KeyCite Notes
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases

California Regional Water Quality Control Board's issuance of National Pollutant Discharge Elimination System permit was not subject to review under California Environmental Quality Act (CEQA); although statute governing compliance with federal Clean Water Act exempted issuance process only from specified portion of CEQA, amendments to CEQA did not indicate Legislature's intent to impose duty on regional boards to prepare environmental impact reports, require regional boards to engage in any other form of environmental review specified in CEQA, or to otherwise modify statute governing compliance with Clean Water Act. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Water Code § 13389; West's Ann.Cal.Pub.Res.Code §§ 21080, 21100.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 831 et seq.; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.

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TURNER, P.J.

I. INTRODUCTION

Plaintiffs, 32 cities,[FN1] the County of Los Angeles (the county), the Los Angeles County Flood Control District (the flood control district), the Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality, appeal from a March 24, 2005 judgment in ***622** favor of defendants, California Regional Water Quality Control Board, Los Angeles Region (the regional board) and the State Water Resources Control Board (the state board) and intervenors, Natural Resources Defense Council, Inc., Santa Monica Baykeeper, and Heal the Bay. Plaintiffs challenge the legality of the regional board's issuance of Order No. 01-182 adopting the National Pollutant Discharge Elimination System Permit No. CAS004001 (the permit) which is entitled, "Municipal Storm Water And Urban Runoff Discharges Within The County Of Los Angeles, And The Incorporated Cities Therein, Except The City Of Long Beach." The December 13, 2001 permit was issued to the county, the flood control district, and 84 incorporated cities in Los Angeles County.

> FN1. The following cities have appealed Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier.

We affirm the judgment in its entirety.

II. THE PERMIT

A. Overview

The permit was issued pursuant to the obligations imposed by the Clean Water Act which will be discussed in greater detail later in this opinion. The Clean Water Act was originally entitled the Federal Water Pollution Control Act. (62 Stat. 1115; 1948 U.S.Code Cong. & Admin. News at pp. 2215-2220.) For purposes of clarity and consistency, the federal applicable water pollution statutes will collectively be referred to as the Clean Water Act. The 72-page permit is divided into 6 parts. There is an overview and findings followed by: a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees. The findings and permit are as follows.

B. Findings

The permit found that the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems). These discharges were the subject of permits issued by the regional board in 1990 and 1996. The 1996 order served as the National Pollutant Discharge Elimination System permit for the discharge of

municipal storm water.

The regional board found that storm drain systems in the county discharged cyanide, indicator bacteria, total dissolved solids, total suspended solids, turbidity, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons, diazinon, and chlorpyrifos. According to the regional board, there were certain pollutants present in urban runoff which resulted from sources over which the permittees had no control. Among the runoff sources over which the permittees have no control are polycyclic aromatic hydrocarbons which are the products of internal combustion engines or copper from brake pad wear. Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region.

The regional board concluded that urbanization: increased the velocity, volume, and duration of water runoff; increased erosion; and adversely affected natural drainages. The regional board found: "The [county] has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive*623 repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; [and] (vii) primary metal products." Also, the regional board concluded "auto repair facilities" contribute "significant concentrations of heavy metals" to storm waters. Moreover, paved surfaces such as those outside fast food establishments or parking lots "are potential sources of pollutants" in storm water runoff. Further, storm water runoff from retail gas establishments "have concentrations" of heavy metals and hydrocarbons.

The regional board further made findings concerning the background of the permit and its coverage area. The essential components of a Storm Water Management Program are: adequate legal authority; fiscal resources; the actual Storm Water Quality Management Program itself; and a monitoring program. A Storm Water Quality Management Program consists of: a Public Information and Participation Program; an Industrial/Commercial Facilities Program: a Development Planning Program; a Development Construction Program; a Public Agency Activities Program; and an Illicit Connection and Illicit Discharges Elimination Program. The permittees filed a Report of Waste Discharge dated January 31, 2001, which contained a proposed Storm Water Quality Management Program.

C. Prohibited And Allowable Discharges

In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-storm water discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-storm water emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; "uncontaminated ground water infiltrations" as defined by 40 Code of Federal Regulations, part 35.2005(b)(20) (1990); and waters from emergency fire fighting flows. Another category of permissible discharges were flows incidental to urban activities consisting of: reclaimed and potable landscape irrigation runoff; potable drinking water discharges which comply with the American Water Works Association guidelines for dechlorination and "suspended solids reduction practices"; drains for foundations, footings, and crawl spaces; air conditioning condensate; "dechlorinated/debrominated" swimming pool discharges; dewatering of lakes and decorative fountains; non-commercial car washing by residents or non-profit organizations; and sidewalk rinsing.

The regional board's executive officer was granted authority to add or remove categories of non-storm water discharges. If one of the foregoing categories was determined to be "a source of pollutants" by the regional board's executive officer, the discharge was to be no longer exempt. The executive officer retained the authority to impose conditions on the city or county to ensure that the discharge was "not a source of pollutants." Also, the executive director was given the authority to impose additional "prohibitions on non-storm water discharges" after considering either of two factors. The first factor the regional board's executive officer could consider is anti-degradation

policies. The second factor the regional board's executive officer could consider is the total maximum load an impaired water body can receive and still meet applicable water quality standards and protect beneficial uses. (33 U.S.C. § 1313(d)(1).)

*624 D. Receiving Water Limitations

Receiving waters are defined thusly, " 'Receiving waters' means all surface water bodies...." Discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans were prohibited. Storm or non-storm water discharges from storm sewer systems which constitute a nuisance were also prohibited. The term nuisance is defined, " 'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." In order to comply with the receiving water limitations, the permittees were required to implement control measures in accordance with the permit. If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee was required to: immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that described the best management practices that were currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes the foregoing changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board.

E. Storm Water Quality Management Program

The permittees were to implement the Storm Water Quality Management Program which meet the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduce the pollutants in storm waters to the maximum extent possible with the use of best management practices. Further, the permittees were required to revise the Storm Water Quality Management Program to comply with specified total daily maximum load allocations. If a permittee modified the countywide Storm Water Quality Management Program, it was required to implement a local management program. Each permittee was required by November 1, 2002, to adopt a storm water and urban runoff ordinance. By December 2, 2002, each permittee was required to certify that it had the requisite legal authority to comply with the permit through adoption of ordinances or municipal code modifications.

The county was designated as the "Principal Permittee" and was given coordination responsibilities of the Storm Water Quality Management Program. Among other things, the county was to convene Watershed Management Committees which were to meet at least four times per year. Each permittee was entitled to have a voting representative on the committees. The committees were to coordinate and monitor implementation of the Storm Water Quality Management Program. Each permittee was required to designate a technically knowledgeable representative to the appropriate Watershed Management Committees. Each permittee was required to prepare a budget summary of moneys spent on the Storm Water Quality Management Program.

*625 The permit granted each permittee the "necessary legal authority" to prohibit non-storm water discharges into the storm drain system. That authority extended to prohibiting discharges from: illicit connections of all kinds; wash waters from gas stations and automotive service facilities; runoff from mobile cleaning businesses; areas where oil, fluid, or antifreeze was dripping from machinery; storage areas containing hazardous substances; swimming pool waters; washing of toxic materials; and washing impervious surfaces in industrial and commercial areas. The authority also extended to the discharge of concrete and cement laden wash waters and prohibition of dumping of materials into storm drain systems. The legal authority extended to: requiring persons to comply with permittees'

ordinances; holding dischargers to storm drain systems accountable; controlling pollutants and their potential contributors; inspecting, watching, and monitoring procedures to insure compliance with the permit including prohibition of illicit discharges into storm drain systems; and requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible.

F. Special Provisions

The regional board's executive officer had the power to alter a best management practice under specified circumstances. The county, as the principal permittee, was required to implement a public information and participation program. The program included: marking all storm drains with " 'no dumping' " signs; instituting a county-wide hotline to report illicit discharges and other environmental hazards; public education; every year, requiring 50 percent of all school children to be educated on storm water pollution; assessments of education; and other outreach programs.

Each permittee was required to maintain a database of entities that are "critical sources" of storm water pollution. Each permittee was required to inspect under specified circumstances critical facilities including: restaurants; automotive service businesses; retail gasoline outlets; and automotive dealerships. Further, each permittee was to evaluate best management practices and increase their severity if appropriate. Violations of the Storm Water Quality Management Program were to be investigated within specified time periods. By August 1, 2002, the permittees were to amend their ordinances or municipal codes to implement the standard urban storm water mitigation plans contained in the permit. Special requirements were imposed when discharges occur in environmentally sensitive areas.

Each permittee was required to consider storm water quality impacts as part of their California Environmental Quality Act assessments. Each permittee was required to update its general plan to include "considerations and policies" of watershed and storm water quality and quantity management. The permittees were required to educate employees involved in development planning regarding the permit's requirements.

G. Development Construction Program

The permittees were required to implement programs to "control" runoff from construction sites. Runoff from construction sites was prohibited. Non-storm water runoff from equipment washing on construction sites was to be contained on-site. Special requirements were imposed on construction sites of one acre or greater in area. Additional requirements were imposed on developments which were five acres or larger including securing a General Construction Activity Storm Water Permit. *626 The permit imposed "Numerical Design Criteria" which required that post construction best management practices incorporate "either a volumetric or flow based treatment control design standard, or both" under specified circumstances. If there is a violation of a General Construction Activity Storm Water Permit, the permittee may refer the violator to the state board.

H. Public Agency Activities Program

The permittees were required to minimize storm water pollution impacts. The requirements extended to: sewer systems; public construction; vehicle related facilities; landscape and recreational facilities; storm drain management; and street maintenance. The permittees were also required to participate in a study concerning possible dry weather discharges and the use of alternative treatment control best management practices.

I. Illicit Discharges And Connections

The permit states, "Permittees shall eliminate all illicit connections and ... discharges to the storm

drain system, and shall document, track, report all such cases...." The elimination and reporting of such discharges required: development of an implementation program; by February 3, 2003, the municipalities provide the county with a list of all approved connections in the storm drain system; the county to conduct an annual evaluation of illicit discharges; and training of personnel in the identification and investigation of such discharges. The permittees were to complete the screening of illicit connections as follows: open channels, no later than February 3, 2003; underground pipes by February 1, 2005; and underground pipes with a diameter of 36 inches or greater by December 12, 2006. By December 12, 2006, the permittees were to complete a review of all "permitted connections" to the storm drain system to insure eliminating illicit discharges. Upon receipt of a report an illicit connection, an investigation was to be initiated within 21 days to determine the source and the responsible party. Within 180 days, the permittees were required to "ensure termination of the connection" using appropriate enforcement authority. As to illicit discharges, a permittee was required within one business day to respond to a report and clean up a discharge. Illicit discharges were to be investigated as soon as possible and appropriate enforcement action was to be pursued.

III. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, PROCEDURAL HISTORY, AND STANDARDS OF REVIEW

The present appeal arises from the issuance of the permit. The legal genesis of the National Pollutant Discharge Elimination System permits for the discharge of municipal storm water has previously been described in some detail in other decisions. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In *City of Rancho Cucamonga,* our colleagues in the Division Two of the Fourth Appellate District summarized the complex federal and state relationship: " 'Part of the Federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.) The NPDES sets out the conditions under ***627** which the federal [Environmental Protection Agency] or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)' (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)[¶] California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)" (*City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.)

After the board issued the aforementioned December 13, 2001 permit, on January 17, 2003, a series of legal challenges, consisting of the filing administrative mandate and mandate petitions and complaints, were instituted by plaintiffs. Judgments in favor of the regional and state boards were entered on March 24, 2005. After the judgments were entered, notices of appeal were filed on June 21 and 22, 2005. The parties stipulated to the maximum extensions of time to brief the matter as allowed by California Rules of Court, rule 15(b)(1). This court had no authority to deny the stipulated to extensions of time to file briefs. (Cal. Rules of Court, rule 15(b) ["The reviewing court may not shorten a stipulated extension"].) No extension of time request was ever granted by any member of this court. The final reply brief was filed on August 1, 2006. Oral argument was held on September 6, 2006.

[1] [2] [3] There are varying standards of review. Many of the challenges to the content of the permit involve review of the denial of Code of Civil Procedure section 1094.5 administrative mandate petitions filed pursuant to Water Code section 13330, subdivision (b). We review the trial court's factual findings for substantial evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805,

824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 86, 87 P.2d 848.) Further, it is presumed the regional board considered the documents before it. (*City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 393-394, 142 Cal.Rptr. 873.) All reasonable doubts are resolved in favor of upholding the regional board's decision. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674, 125 Cal.Rptr.2d 745.) We (and trial courts) examine the regional board's interpretation of legal matters utilizing a de novo standard of review. But we defer to the regional board's expertise in construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450.) Finally, the trial court's denials of plaintiffs' new trial and to enter a new judgment motions and declaratory relief requests are reviewed for an abuse of discretion. ***628** (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, 616, 278 Cal.Rptr. 900 [new trial motion]; *Bess v. Park* (1955) 132 Cal.App.2d 49, 52, 281 P.2d 556 [declaratory relief].)

IV. DISCUSSION

A. The Jurisdiction of the Regional Board To Issue The Permit

[4] Plaintiffs contend the regional board did not have jurisdiction to issue the permit. Plaintiffs rely on language appearing in the Code of Federal Regulations. For example, the permittees cite to 40 Code of Federal Regulations part 123.1(g)(1) (1998) which states, "NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges." [FN2] Further the permittees refer to the following language in 40 Code of Federal Regulations part 123.22(b) (1998), "If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities." [FN3] Moreover, 40 Code of Federal Regulations part 123.1(f) (1998) states, "Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part."

> FN2. 40 Code of Federal Regulations part 123.1(g)(1) (1998) states in its entirety: "(g) (1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of [Clean Water Act]. [National Pollutant Discharge Elimination System] authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before [the Environmental Protection Agency] will begin formal review. [¶] (2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the [Clean Water Act]."
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> FN3. 40 Code of Federal Regulations part 123.22(b) (1998) states in its entirety: "A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a 'lead agency' to facilitate communications between [the Environmental Protection Agency] and the State agencies having program

> responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program. [¶] (1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program. [¶] (2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. [¶] (3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding."

Plaintiffs reason that under state law, the regional board does not have statewide jurisdiction. Water Code section 13100 states that the state and regional boards are part of the California Environmental Protection Agency. Water Code section 13200 identifies the scope of jurisdiction of ***629** the nine regional boards. The regional board's limited jurisdiction is defined in Water Code section 13200, subdivision (d).[FN4] The powers of the regional boards are set forth in Water Code section 13225 with the caveat that the powers exist "with respect to its region."[FN5] Because the regional board is not a statewide agency, plaintiffs argue the permit is void.

> FN4. Water Code section 13200, subdivision (d) states: "The state is divided, for the purpose of this division, into nine regions: [¶] Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."

> FN5. Water Code section 13225 states in its entirety: "Each regional board, with respect to its region, shall: [¶] (a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance. [¶] (b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged. [¶] (c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. [¶] (d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws. [¶] (e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board. [¶] (f) Report to the state board and appropriate local health officer any case of suspected contamination in its region. [¶] (g) File with the state board, at its request, copies of the record of any official action. [¶] (h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state. [¶] (i) Encourage regional planning and action for water quality control."

This argument has no merit. Effective September 22, 1989, the authority to issue National Pollutant Discharge Elimination System permits was vested by the federal Environmental Protection Agency in the state board. (54 Fed.Reg. 40664, 40665 (Oct. 3, 1989); see *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

The state board is organized into nine regional boards which are part of the California Environmental Protection Agency. (Wat.Code, §§ 174 et seq. 13100; see *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1405, 38 Cal.Rptr.3d 373.) The nine regional boards are authorized under this state's laws to issue National Pollutant Discharge Elimination System permits. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd., supra,* 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128; Wat.Code, § 13374.) The federal Environmental Protection Agency memorandum of agreement with the state board complies with the statewide jurisdiction requirements imposed by the federal regulations. The fact the state board is organized into nine regional boards is legally irrelevant. The state board has statewide jurisdiction.

[5] Further, we agree with the Attorney General that plaintiffs may not challenge the regional board's authority to issue a National Pollutant Elimination System permit in this proceeding. Such **630* an indirect challenge to the board's authority is barred by the de facto officer doctrine. The Supreme Court has described the de facto officer doctrine, which bars a challenge to an agency's action based on a purported lack of legal authority to act, thusly: "[W]e conclude that under the 'de facto officer' doctrine prior actions of the Commission cannot be set aside on the ground that the appointment of the commissioners who participated in the decision may be vulnerable to constitutional challenge. As this court explained in *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 41-42 [37 Cal.Rptr. 74, 389 P.2d 538]: 'The de facto doctrine in sustaining official acts is well established. [Given the existence of] a de jure office, "[p]ersons claiming to be public officers while in possession of an office, ostensibly exercising their function lawfully and with the acquiescence of the public, are *de facto* officers.... The lawful acts of an officer *de facto,* so far as the rights of third persons are concerned, are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it." [Citations.]' (See also *Pickens v. Johnson* (1954) 42 Cal.2d 399, 410 [267 P.2d 801] ['There is no question but that ... the status of a judge de facto attached to his action. The office to which he was assigned was a de jure office. By acting under regular assignment under a statute authorizing it he was acting under color of authority as provided by law. His conduct in trying the cases and rendering judgment therein cannot here be questioned.'].)" (*Marine Forests Soc. v. California Coastal Com.* (2005) 36 Cal.4th 1, 54, 30 Cal.Rptr.3d 30, 113 P.3d 1062; original italics.) Here, plaintiffs are challenging the permit by attacking the regional board's authority. Under these circumstances, this they may not do in what amounts to a licensing proceeding. (*Ibid.; In re Redevelopment Plan for Bunker Hill, supra,* 61 Cal.2d at pp. 41-42, 37 Cal.Rptr. 74, 389 P.2d 538.)

[6] Finally there is no merit to the contention that because the regional board is not an elected body, it cannot make the financial decisions of the scope entailed by the permit. The board's powers exist because of: the Clean Water Act which was adopted and amended by elected members of Congress and signed into law by elected presidents; provisions of the Water Code which were enacted by elected legislators and approved by elected governors; and the members, who must have special competence, are appointed by an elected governor and confirmed by the elected State Senate. (Wat.Code, § 13201, subds.(a)-(b).) The democratic processes of government control every aspect of the creation of the board, its legal authority, and the selection of its members. Further, the decisions of regulatory institutions such as the regional board, are entitled by law to a presumption of competence and propriety. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104, 1 Cal.Rptr.3d 76.)

B. The Motions To Strike

Plaintiffs argue that the trial court erroneously granted the regional board's motions to strike portions of the petition. Plaintiffs contend: the motions to strike were in fact disguised summary adjudication motions; the orders granting the motions to strike did not resolve entire causes of action; and hence, the orders violated **631* Code of Civil Procedure section 437c, subdivision (f)(1). This contention has no merit. Code of Civil Procedure section 436 allows a court to strike portions of a cause of action.

(*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1386, 38 Cal.Rptr.3d 450; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

C. The State Board's Demurrer

[7] Plaintiffs argue that the trial court erroneously sustained the state board's demurrer to the petitions. The state board contended it was not properly joined as a party to the litigation. A group of plaintiffs alleged the state board required the regional boards to adopt terms and conditions on National Pollutant Discharge Elimination System permits without complying with Government Code sections 11340.5, subdivision (a) [FN6] and 11352, subdivision (b) which are part of the Administrative Procedure Act. Plaintiffs had a duty to specifically allege every fact that would give rise to liability by the state board. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790, 11 Cal.Rptr.3d 222, 86 P.3d 290; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795, 221 Cal.Rptr. 840, 710 P.2d 907.) The state board refused to assume jurisdiction over this case. There were thus no specific allegations as to the state board to hold it liable as it engaged in no independent activity. Hence, this contention has no merit and the demurrer was properly sustained. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1383, 38 Cal.Rptr.3d 450; *People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.)

> FN6: Government Code sections 11340.5, subdivision (a) states, "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

D. The Declaratory Relief Claims

[8] The trial court sustained the regional board's demurrers to the declaratory relief claims. Plaintiffs argue they were entitled to declaratory relief as to whether: the permittees were required to "go beyond the [maximum extent practicable]" standard to comply with part 2 of the permit which relates to receiving water limitations; part 2 contained a "safe harbor" if the permittees were acting in good faith in implementing best management practices to control excessive discharge of pollutants and nuisance conditions; the requirement in part 4 of the permit that each permittee's general plan and California Environmental Quality Act review take into account storm water runoff is lawful; the regional board was required to consider the economic impact of the proposed permit and its effect on housing; and the regional board was required to perform a "cost/benefit analysis" of the monitoring and reporting program.

[9] When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249, 115 Cal.Rptr. 497, 524 P.2d 1281; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 546, 99 Cal.Rptr. 745, 492 P.2d 1137.) Water Code section 13330, subdivision (b) provides that a regional board order may be reviewed by a Code of Civil Procedure section 1094.5 administrative mandate petition*632 filed within 30 days after the state board denies review. Therefore, the demurrer was correctly sustained to the declaratory relief claims. (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 287, 98 Cal.Rptr. 785, 491 P.2d 369; *Hostetter v. Alderson* (1952) 38 Cal.2d 499, 500, 241 P.2d 230.)

E. The Regional Board Has Not Unlawfully Interfered In Local General Plans And California Environmental Quality Act Review

[10] The permit requires the permittees to update their general plans to include watershed and storm water runoff as considerations in the land use, housing, conservation, and open space planning. Further, the permittees were required to amend their California Environmental Quality Act process to insure review of the effect of commercial and residential development on storm water runoff. Plaintiffs argue these aspects of the permit violate the separation of powers doctrine. This contention has no merit. As noted, the regional boards are part of a joint state and federal process to enforce the Clean Water Act. (*City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at pp. 619-620, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.) The general plan powers and duties of cities and counties are limited by statewide law. (Cal. Const., art. XI, § 7; Gov.Code, § 65030.1; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 907-908, 4 Cal.Rptr.3d 325; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1118, 67 Cal.Rptr.2d 420.) Further, the Clean Water Act supersedes all conflicting state and local pollution laws. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239; *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The state and regional boards are vested with the primary responsibility of controlling water quality. (Wat.Code, § 13001; see *Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046; *Hampson v. Superior Court* (1977) 67 Cal.App.3d 472, 484, 136 Cal.Rptr. 722.) Regional boards are explicitly granted the authority to issue orders for purposes of enforcing the federal Clean Water Act. (Wat.Code, § 13377.) Federal law requires that permits include controls to reduce pollutant discharge in areas of new development and significant redevelopment-the very area where regional board review occurs. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2) (2006).) So long as the regional boards' decisions carry out federal and state water quality mandates resulting from express legislative action as the challenged orders in this case in fact do, no separation of powers issue is present. (*Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-377, 71 Cal.Rptr. 687, 445 P.2d 303; *Salmon Trollers Marketing Assn. v. Fullerton* (1981) 124 Cal.App.3d 291, 300, 177 Cal.Rptr. 362.) Given the foregoing, we need not address the waiver, laches, and estoppel contentions of the regional and state boards and the intervenors.

F. Failure To Comply With the California Environmental Quality Act

[11] Plaintiffs argue that the permit issuance process violates provisions of the California Environmental Quality Act. Plaintiffs rely on Water Code section 13389 which provides that chapter 3 of the California Environmental Quality Act does not apply to National Pollutant Discharge Elimination Systems permit proceedings: "Neither the state board nor the regional boards shall be required to comply with ***633** the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto." California Code of Regulations, title 23, section 3733 also states, "Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7 of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply to the policy provisions of Chapter 1 of CEQA." Plaintiffs argue that the California Environmental Quality Act applies to: the receiving water limitations; the revision of the Storm Water Quality Management Program; and the Development Planning Program. (See *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pp. 1420-1426, 38 Cal.Rptr.3d 373; *Committee for Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 862, 237 Cal.Rptr. 723.)

Chapter 3 of the California Environmental Quality Act was originally adopted in 1970. (Stats.1970, ch. 1433, § 1, pp. 2781-2782.) The original chapter 3 of the California Environmental Quality Act required

all state agencies, boards, and commissions, that proposed a project which would have a significant effect on the environment to prepare a "detailed statement" setting forth the environmental effect of the contemplated undertaking.[FN7] (See *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158, 166, 118 Cal.Rptr. 490; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 246, 112 Cal.Rptr. 379.) Water Code section 13389 was adopted as urgency legislation to comply with certain provisions of the Clean Water Act provisions establishing the National Pollution Discharge Elimination System. (Stats.1972, ch. 1256, § 3, p. 2490.) Expressly for that purpose, the California Legislature enacted chapter 5.5, the "Water Quality" division, which includes Water Code section 13389. (Wat.Code, § 13370 [FN8]; ***634** *City of Brentwood v. Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 723, 20 Cal.Rptr.3d 322; *Sierra Club v. Union Oil Co. of California* (9th Cir.1987) 813 F.2d 1480, 1483.) When Water Code section 13389 became effective on December 19, 1972, chapter 2.6 of the California Environmental Quality Act had just been enacted, also as urgency legislation, and it consisted of Public Resources Code sections 21080 through 21090. The new chapter 2.6 of the California Environmental Quality Act became effective on December 5, 1972. (Stats.1972, ch. 1154, § 19, p. 2280.) Chapter 3 of the California Environmental Quality Act was also amended effective December 5, 1972, and it which applied to all environmental assessments by state agencies, boards, and commissions. Former Public Resource Code section 21100, the core provision of the 1972 version of the California Environmental Quality Act as it related to state agencies, boards, and commissions, stated: "All state agencies, boards, and commissions shall prepare, or cause to be prepared ... and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment." (Stats.1972, ch. 1154, § 2.5, p. 2274; see *Desert Environment Conservation Assn. v. Public Utilities Com.* (1973) 8 Cal.3d 739, 742, 106 Cal.Rptr. 31, 505 P.2d 223; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594, fn. 8, 122 Cal.Rptr. 100.) Beyond question, the Legislature intended that chapter 3 of the California Environmental Quality Act not apply to National Pollution Discharge Elimination System permits-in that respect Water Code section 13389 is entirely clear.

> FN7. Public Resources Code section 21100 as enacted in 1970 stated: "All state agencies, boards, and commissions shall include in any report on any project they propose to carry out which could have a significant effect on the environment of the state, a detailed statement by the responsible state official setting forth the following: [¶] (a) The environmental impact of the proposed action.[¶] (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented. [¶] (c) Mitigation measures proposed to minimize the impact. [¶] (d) Alternatives to the proposed action. [¶] (e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. [¶] (f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented." (Stats.1970, ch. 1433, § 1, pp. 2781-2782.)

> FN8. Water Code section 13370 states: "The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge. [¶] (b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act. [¶] (c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program."

But on December 19, 1972, when Water Code section 13389 was enacted, chapter 2.6 of the California Environmental Quality Act, which contains generalized requirements for the preparation of environmental impact reports for discretionary projects, had just been adopted effective December 5,

1972. Chapter 2.6 of the California Environmental Quality Act applies to discretionary projects proposed by public agencies. (Former Pub. Resources Code, § 21080.) Pursuant to new chapter 2.6 of the California Environmental Quality Act, all public agencies were required to adopt by ordinance, resolution, or the like procedures for preparation of environmental impact reports. (Former Pub. Resources Code, § 21082.) The Office of Planning and Research was directed to adopt proposed guidelines for the preparation of environmental impact reports including a listing of projects determined not to have a significant impact on the environment. (Former Pub. Resources Code, §§ 21083-21088.) Finally, chapter 2.6, as adopted in 1972, allowed a public agency to charge fees for the preparation an environmental impact report and defined public and private developments pursuant to a redevelopment plan as a single project. (Former Pub. Resources Code, §§ 21089-21090.)

It can be argued that even though chapter 3 with its environmental impact preparation requirement for state agencies, boards, and commissions was not to apply to National Pollution Discharge Elimination System permits, the discretionary projects requirements in chapter 2.6 of the California Environmental Quality Act mandated environmental review. Hence, the argument would be that the Legislature in enacting Water Code section 13389 did not intend to obviate the duty pursuant to ***635*** chapter 2.6 of the California Environmental Quality Act to prepare an environmental impact report. We are unpersuaded by this analysis. Former Public Resources Code section 20180, subdivision (a), the core provision relating to discretionary projects, stated: "(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166)." (Stats.1972, ch. 1154, § 2.3, p. 2272; see *People v. County of Kern* (1974) 39 Cal.App.3d 830, 839, 115 Cal.Rptr. 67; *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 510, 113 Cal.Rptr. 539.) As can be noted, Public Resources Code section 21080, subdivision (a) established that a discretionary project was subject to the environmental impact requirement. But the requirement that a state agency, board, and commission prepare an environmental report was found in Public Resources Code section 21110 which was, and is now, located in chapter 3 of the California Environmental Quality Act. The obligation imposed on a state agency, board, and commission to prepare an environmental impact report existed in chapter 3 before the adoption of Water Code section 13389 and it remained there after the 1972 amendments to the California Environmental Quality Act. No doubt, since 1972 when the Legislature adopted Water Code section 13389 and the then new chapter 2.6, the California Environmental Quality Act has been repeatedly amended. But defendants cite no evidence the Legislature ever intended to: impose a duty on regional boards to prepare environmental impact reports; require regional boards to engage in any other form of environmental review specified in the California Environmental Quality Act; or to otherwise modify Water Code section 13389.

Defendants rely on the analysis of our colleague Presiding Justice Judith D. McConnell of Division One of the Fourth Appellate District in *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pages 1420-1430, 38 Cal.Rptr.3d 373 that regional board basin plans are subject to limited California Environmental Quality Act review. The *City of Arcadia* decision does not involve the issuance of a National Pollution Discharge Elimination System permit. Rather, it involves the development of a basin plan. (*Ibid.*) We agree with the Attorney General that a basin plan is subject to limited environmental review pursuant to Public Resources Code section 21080.5. Public Resources Code section 21080.5, subdivision (a) vests the Secretary of the Resources Agency with the authority to require limited environmental review: "(a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section." The secretary's authority extends to requiring limited environmental review when an agency adopts "standards, rules, regulations, or plans for use" in a regulatory program. (Pub. Resources Code, § 21080.5, subd. (b)(2).) The secretary has certified the regional boards' basin plan program as requiring limited environmental review. (***636*** *City of Arcadia v. State Water Resources Control Bd., supra,* 135

Cal.App.4th at p. 1422, 38 Cal.Rptr.3d 373; Cal.Code Regs. tit.14, § 15251, subd. (g). [FN9]) The resources secretary has never identified the National Pollution Discharge Elimination System permit system as a Public Resources Code section 21080.5 certified program. Thus, *City of Arcadia* does not require California Environmental Quality Act review prior to the issuance of a National Pollution Discharge Elimination System permit.

FN9. California Code of Regulations, title 14, section 15251, subdivision (g) states: "The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:[¶] ... (g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards."

G.-L.[FN**]

FN** See footnote *, *ante*.

******UNPUBLISHED TEXT FOLLOWS******

[The following material is not certified for publication under California Rules of Court, rules 976(b) and 976.1.]

G. Sufficiency Of The Evidence Contentions

1. Overview

Many of plaintiffs' contentions are overtly stated or deftly disguised sufficiency of the evidence arguments. We agree with the intervenors that plaintiffs in making these assertions have failed in every respect to set forth all of the relevant evidence. As such, all evidence sufficiency contentions have been waived. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749, 39 Cal.Rptr.3d 189; see *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881, 92 Cal.Rptr. 162, 479 P.2d 362.)

2. The reasonableness of the permit requirements

Plaintiffs argue that the permit violates the statutory requirement it be reasonable. Plaintiffs contend that four parts of the permit exceed federal requirements which only require that a permit restrict pollutant discharges to the maximum extent possible. Plaintiffs identify three parts of the permit which exceed the federal maximum extent possible limit and reason as follows. Part 2.1 of the permit, which involves receiving water restrictions, prohibits all water discharges which violate water quality standards or objectives regardless of whether the best management practices are reasonable. Part 2.4, also part of the receiving water restrictions, permits the regional board to adopt best management practices without any reasonableness restriction. Part 3.C requires the permittees to revise their storm water quality management programs in order to implement the total maximum daily loads for impaired water bodies. As a result, according to plaintiffs, parts 3.G and 4 authorize the regional board to require strict requirements with numeric limits on pollutants which are incorporated into the total maximum daily load restrictions. Because these four parts of the permit exceed federal requirements, plaintiffs argue the permit violates a state law requirement derived from Water Code sections 13000, 13241, and 13263, subdivision (a) [FN10] that restrictions on storm water system discharges be reasonable.

FN10. Water Code section 13000 states: "The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall

> be protected for use and enjoyment by the people of the state. [¶] The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. [¶] The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy." The portions of Water Code section 13241 upon which plaintiff rely state: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: [¶] ... (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. [¶] (d) Economic considerations. [¶] (e) The need for developing housing within the region. [¶] (f) The need to develop and use recycled water." Water Code section 13263, subdivision (a) states: "The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241."

These contentions have no merit. To begin with, insofar as these contentions involve sufficiency of the evidence contentions, they are waived because of a failure to set forth all of the applicable evidence. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881, 92 Cal.Rptr. 162, 479 P.2d 362; *State Water Resources Control Bd. Cases, supra,* 136 Cal.App.4th at p. 749, 39 Cal.Rptr.3d 189.) In any event, regardless of whether the permit imposed requirements beyond what plaintiffs contend is the maximum extent feasible, the regional board has the authority to impose additional restrictions. As the intervenors explain, title 33 United States Code section 1342(p)(3)(B) states in part: "Permits for discharges from municipal storm sewers-[¶] ... (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and [¶] (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the ... State determines appropriate for the control of such pollutants."

In fact, the regional board had the duty to place limits on the release of pollutants into certain waters. Our colleagues in Division One of the Fourth Appellate District have explained: the Clean Water Act requires that states identify a level of permissible pollution, the "total maximum daily load"; the total maximum daily load must be established at a level to achieve certain water standards; and the National Pollutant Elimination System permits must be consistent with the amount of pollutants described in the state specified total maximum daily load. (*City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at p. 1404, 38 Cal.Rptr.3d 373; 33 U.S.C. § 1313(d).) The federal Clean Water Act requires the following, "Except as in compliance with this section and sections ... [1312, 1316, 1317, 1328, 1342, and 1344] of this Act, the discharge of any pollutant by any person shall be unlawful." (33 U.S.C. § 1311(a).) In terms of the regional board's statutory duty

in setting a total maximum daily load, the Clean Water Act requires: "Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section [1314(a)(2)] as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards...." (33 U.S.C. § 1313(d)(1)(C).) As can be noted, the regional board may not to take into account the maximum extent practicable limitation in setting the total maximum daily load. (*City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at p. 1428, 38 Cal.Rptr.3d 373.) The regional board's total maximum daily load specification in this case was entirely consistent with federal water quality law. Nothing in the Water Code can circumvent the foregoing federally imposed requirements as to the calculation of the total maximum daily load. (See *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at pp. 618, 626-627, 26 Cal.Rptr.3d 304, 108 P.3d 862.) And the regional board's authority in setting the total maximum daily load extended to imposing requirements beyond the maximum extent practicable. (*City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at p. 1428, 38 Cal.Rptr.3d 373; *Building Industry Assn. of San Diego County v. State Water Resources Control Bd., supra,* 124 Cal.App.4th at pp. 885-886, 22 Cal.Rptr.3d 128.)

There is substantial evidence the permit imposes reasonable pollutant discharge requirements. The regional board had before it the study entitled "Fundamentals of Urban Runoff Management" which detailed the feasibility of the restrictions at issue. In footnote 6 of the trial court's March 24, 2005 statement of decision are 16 separate studies or analyses that evaluate the reasonableness of the restrictions at issue. Further, as described below, there was a vast array of reports and official papers that addressed the reasonableness issue in varying contexts ranging from economics to housing. Substantial evidence supports the trial court's finding that the permit's restrictions on pollutant discharge are reasonable. It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com., supra,* 76 Cal.App.3d at pp. 393-394, 142 Cal.Rptr. 873; see *Laurel Heights Improvement Assn. v. Regents of the University of California, supra,* 47 Cal.3d at p. 393, 253 Cal.Rptr. 426, 764 P.2d 278.)

There is likewise no merit to the factually unsupported theory of the county and the flood control district that they cannot comply with the permit. The county and the flood control district assert, without citation to any evidence in the record, they cannot comply with the permit thereby rendering it, as matter of law, unreasonable. We agree with the intervenors that there is insufficient facts to permit an evidentiary challenge of the type asserted by the county and the flood control district. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd., supra,* 124 Cal.App.4th at p. 888, 22 Cal.Rptr.3d 128; Cal. Rules of Court, rule 14(a)(1)(C).)

3. Failure to consider the economic effects of the permit and engage in a proper cost benefit analysis

Plaintiffs argue that the regional board failed to consider the economic impact of issuance of the permits. A regional board is authorized to issue a permit which imposes more protective restrictions on waste water discharge than required by the Clean Water Act. (Wat.Code, § 13377.[FN11]) As noted, Water Code section 13241, subdivision (d) requires that the regional board consider the economic effect including the cost of compliance of the issuance of the permit. (See fn. 6, *supra.*) Plaintiffs argue the permit imposes conditions more stringent than required by the federal Clean Water Act. Therefore, they reason that the regional board was required to consider the economic effect of the permit. (*City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at p. 618, 26 Cal.Rptr.3d 304, 108 P.3d 862 ["When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance" (orig.italics)]; *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pp. 1415-1418, 38 Cal.Rptr.3d 373 [finding sufficient consideration of economic effect of total daily maximum loads for trash restriction imposed in 2001 permit].) Further, plaintiffs argue that the regional board failed to conduct a cost benefit analysis as required by Water Code sections 13165 [FN12], 13225, subdivision (c) [FN13], 13267, subdivision (b) [FN14] before imposing monitoring and reporting obligations as part of the permit.

FN11. Water Code section 13377 states, "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."

FN12. Water Code section 13165 states, "The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom."

FN13. Water Code section 13225, subdivision (c) states: "Each regional board, with respect to its region, shall: [¶] (c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom."

FN14. Water Code section 13267, subdivision (b)(1) states: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

These contentions have no merit. To begin with, insofar as plaintiffs argue that the there was no substantial evidence these issues were considered, they have waived their opportunity to do so because they failed to set forth all of the documents considered by the regional board. Plaintiffs have failed to detail an extensive array of reports and analysis appearing in the administrative record. (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 881, 92 Cal.Rptr. 162, 479 P.2d 362; *State Water Resources Control Bd. Cases, supra,* 136 Cal.App.4th at p. 749, 39 Cal.Rptr.3d 189.)

Nonetheless this contention is without merit. The permit explicitly states it is intended to provide a cost-effective storm water pollution program to the maximum extent possible. The permit applies the same cost-effective analysis to efforts to reduce the flow of pollutants into receiving waters. Moreover, the regional board in its findings referred to a report specifying how the "maximum extent practicable" requirement includes considerations of costs and benefit. The regional board had before it: a study of costs prepared by the Maryland Department of Environment; a 58-page study prepared for Parsons Engineering Service on the costs and benefits of storm water best management practices; the extensive federal Environmental Protection Agency data summary of best management practices and their costs which include programs incorporated into the permit; a federal Environmental Protection Agency fact sheet showing the cost effectiveness of reductions in storm water run-off; a federal Environmental Protection Agency document detailing the economic benefits of run off controls; a 44-page federal Environmental Protection Agency document detailing cost analyses of various best management practices; a 99-page report entitled "Cost Analysis" on storm water programs in the state of Washington; a similar analysis prepared for the Commonwealth of Virginia; a federal Environmental Protection Agency analysis of the economic effects of clean water; a lengthy analysis

prepared by the federal Environmental Protection Agency on the effects of restrictions of runoff on housing values; and an 11-page study entitled, "The Economics of Watershed Protection." It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at pp. 393-394, 142 Cal.Rptr. 873; see *Laurel Heights Improvement Assn. v. Regents of the University of California, supra*, 47 Cal.3d at p. 393, 253 Cal.Rptr. 426, 764 P.2d 278.) This constitutes substantial evidence the regional board considered the costs and benefits of implementation of the permit. Finally, for the foregoing reasons, the trial court did to abuse its discretion when it denied the posttrial motions which asserted the regional board did not consider the economic consequences of the permit.

4. Failure to consider the effect of the permit on housing

Plaintiffs argue that the regional board neglected to consider the effect of the permit on the need to develop housing as required by Water Code section 13241, subdivision (e). (See fn. 6, *supra.*) Plaintiffs argue that the Legislature has determined that all state agencies such as the regional board must "facilitate the improvement and development" of affordable housing. (Gov.Code, § 65580, subds.(c)-(d).) Plaintiffs argue: the permit is designed to impose new storm runoff limitations on future residential projects; the Standard Urban Water Mitigation Plan portion of the permit applies to both development and redevelopment projects; the permit requires that runoff mitigation occur on single family residences occupying one acre or more and 10-unit or more housing developments; among the mitigation requirements are retention of runoff and erosion from construction sites; transfers of property were subject to maintenance agreements; and the permit will require a significant amount of land to comply with treatment control best management practices.

Plaintiffs have failed to detail an extensive array of reports and analyses appearing in the administrative record. Thus, the issue of whether there is substantial evidence the regional board considered the effect of the permit on housing has been waived. (*Foreman & Clark Corp. v. Fallon*, *supra*, 3 Cal.3d at p. 881, 92 Cal.Rptr. 162, 479 P.2d 362; *State Water Resources Control Bd. Cases*, *supra*, 136 Cal.App.4th at p. 749, 39 Cal.Rptr.3d 189.) Nonetheless, there is substantial evidence the regional board considered housing issues prior to issuing the permit. The regional board had before it: the May 16, 2001 expression of concerns by the Building Industry Association; demographic analyses; a scholarly discussion of the effects of environmental regulation and housing availability; the federal Environmental Protection Agency analysis of the potential effects of restrictions of runoff on housing values; a technical analysis of runoff controls on housing design and planning; a National Association of Homebuilders guide for residential storm water runoff; an analysis of site design and watershed management in the context of residential subdivisions; the document entitled, "Storm Water Management in Washington" which discusses the technical requirements for small and large parcel developments; the regional board staff analysis; an analysis of the experiences in Virginia; and an article on additional housing costs resulting from storm water regulation. It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at pp. 393-394, 142 Cal.Rptr. 873; see *Laurel Heights Improvement Assn. v. Regents of the University of California, supra*, 47 Cal.3d at p. 393, 253 Cal.Rptr. 426, 764 P.2d 278.) Thus, there is substantial evidence the regional board considered housing related issues before it issued the permit.

H. Improper Specifications Of Design Characteristics.

Plaintiffs argue that the regional board improperly specified the " 'design or the particular manner' " as to how there was to be compliance with waste discharge requirements. Plaintiffs rely on Water Code section 13360, subdivision (a) which states: "No waste discharge requirement or other order of a regional board ... issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner." Plaintiffs contend two provisions of the permit violate Water Code section 13360, subdivision (a). First, plaintiffs argue that the permit improperly imposes a series of specific design criteria for " 'Volumetric Treatment Control' " and " 'Flow based Treatment Control' " best management practices. Second,

plaintiffs challenge the requirement that some of them place and maintain trash receptacles at transit stops.

These contentions have no merit. As held in *City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at page 1389, 38 Cal.Rptr.3d 450, the federal Clean Water Act authorizes National Pollutant Discharge Elimination Systems permits to set forth specific practices which will restrict polluted storm water runoff. (33 U.S.C. § 1342(a)(1), (p)(3)(B)(iii).) In *City of Rancho Cucamonga*, Associate Justice Barton C. Gaut explained: "Rancho Cucamonga's reliance on Water Code section 13360 is misplaced because that code section involves enforcement and implementation of state water quality law, (Wat.Code, § 13300 et seq.) not compliance with the Clean Water Act (Wat.Code, § 13370 et seq.) The federal law preempts the state law. (*Burbank, supra,* 35 Cal.4th at p. 618, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits." (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1389, 38 Cal.Rptr.3d 450.) Thus, nothing in state law in general or Water Code section 13360 in particular is violated by the specific pollution control requirements imposed on the permittees. We need no address the parties' remaining contentions concerning trash receptacles.

I. Hearing Related And Due Process Arguments

1. Overview of arguments

Plaintiffs contend that the December 13, 2001 hearing failed to comply with due process requirements in the following particulars: the notice did not comply with the requirements for an adjudicative hearing specified in Government Code section 11425.10, subdivision (a)(2); no sworn testimony was presented nor any documentary evidence admitted into evidence; the permittees were not given the opportunity to present evidence, cross-examine witnesses, or present a rebuttal in accordance with Government Code section 11425.10, subdivision (a) and California Code of Regulations, title 23, sections 648.4 and 648.5; the permit was not based on evidence offered at the hearing in violation of Government Code section 11425.50, subdivision (c) and California Code of Regulations, title 23, sections 648.2 and 648.3; technical and scientific matter was relied upon without complying with California Code of Regulations, title 23, section 648.2; and substantive changes were made to the permit after the hearing was concluded without giving the permittees an opportunity to comment on the amendments; most of the administrative record was never set forth at the hearing and was not identified until four months after the December 13, 2001 hearing.

2. Adequacy of the hearing notice

Plaintiffs contend that they did not receive an adequate notice that an adjudicative hearing would be conducted. As to state law requirements, plaintiffs argue the notice never states an adjudicative hearing was going to be held. Plaintiffs argue: Government Code section 11440.20, subdivision (a) [FN15] requires that written notice be given of an adjudicatory hearing; the "Notice Of Public Hearing" did not comply with Government Code section 11425.10, subdivision (a)(2); [FN16] the written notice does not state that what evidence would be relied upon; the notice does not state that there would a waiver of the formal regulatory hearing and evidentiary requirements as permitted by California Code of Regulations, title 23, section 648, subdivision (d) [FN17]; and the written notice did not indicate an informal hearing would be held as permitted by Government Code section 11445.20 et seq. and California Code of Regulations, title 23, section 648.7.[FN18]

> FN15. Government Code section 11440.20, subdivision (a) states: "Service of a writing on, or giving of a notice to, a person in a procedure provided in this chapter is subject to the following provisions: [¶] (a) The writing or notice shall be delivered personally or sent by mail or other means to the person at the person's last known address or, if the person is a party with an attorney or other authorized representative of record in the proceeding,

to the party's attorney or other authorized representative. If a party is required by statute or regulation to maintain an address with an agency, the party's last known address is the address maintained with the agency."

FN16. Government Code section 11425.10, subdivision (a)(2) states: "(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: [¶] ... (2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding."

FN17. California Code of Regulations title 23, section 648, subdivision (d) states: "(d) Waiver of Nonstatutory Requirements. The presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but not limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses, and the presentation of argument, so long as those requirements are not mandated by state or federal statute or by the state or federal constitutions."

FN18. California Code of Regulations, title 23, section 648.7 states: "Unless the hearing notice specifies otherwise, the presiding officer shall have the discretion to determine whether a matter will be heard pursuant to the informal hearing procedures set forth in article 10, commencing with section 11445.20, of chapter 4.5 of the Administrative Procedure Act. [¶] Among the factors that should be considered in making this determination are: [¶] The number of parties, [¶] The number and nature of the written comments received, [¶] The number of interested persons wishing to present oral comments at the hearing, [¶] The complexity and significance of the issues involved, and [¶] The need to create a record in the matter. [¶] An objection by a party, either in writing or at the time of the hearing, to the decision to hold an informal hearing shall be resolved by the presiding officer before going ahead under the informal procedure. Failure to make a timely objection to the use of informal hearing procedures before those procedures are used will constitute consent to an informal hearing. A matter shall not be heard pursuant to an informal hearing procedure over timely objection by the person to whom agency action is directed unless an informal hearing is authorized under subdivision (a), (b), or (d) of section 11445.20 of the Government Code."

We agree with the regional board that the December 13, 2001 hearing was an adjudicative, quasi-judicial, proceeding. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1385, 38 Cal.Rptr.3d 450; see *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320, 67 Cal.Rptr.2d 51.) As an adjudicative proceeding, a National Pollutant Discharge Elimination Systems permit hearing is exempt from the rulemaking procedures of the Administrative Procedures Act. (Gov.Code, § 11352, subd. (b) [FN19]; *City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1385, 38 Cal.Rptr.3d 450.) Thus, Government Code sections 11400 through 11475.70 and 11513 apply to regional board permit issuance proceedings. (Cal.Code Regs., tit. 23, § 648, subd. (b) [FN20]; *City of Rancho Cucamonga v. Regional Water Quality Bd., supra,* 135 Cal.App.4th at p. 1385, 38 Cal.Rptr.3d 450.)

FN19. Government Code section 11352, subdivision (b) states: "The following actions are not subject to this chapter: [¶] (b) The issuance ... of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code...."

FN20. California Code of Regulations, title 23, section 648, subdivision (b) states: "(b) Incorporation of Applicable Statutes. Except as otherwise provided, all adjudicative proceedings before the State Board, the Regional Boards, or hearing officers or panels appointed by any of those Boards shall be governed by these regulations, chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government

Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code."

The permittees received a document entitled "Notice of Public Hearing" sent by the regional board on September 27, 2001. The notice stated: "The hearing will start at 9:00 a.m. Regional Board's staff will present an overview of the proposed permit. Interested persons are invited to attend and to testify in front of the Regional Board. For the accuracy of the record, comments should also be submitted in writing. The Regional Board may ask questions of staff and persons who testify prior to making a decision on the adoption of the proposed." On October 11, 2001, the regional board sent a "Announcement of a Public Hearing and Transmittal of the Tentative Draft-County of Los Angeles Municipal Storm Water NPDES Permit" scheduling the hearing on the permit for November 29, 2001. The October 11, 2001 announcement stated: "Following the consideration of written comments and oral testimony, the Board may take action to adopt tentative Order No. 01-XXX during a public meeting on November 29, 2001. At its discretion, however, the Board may direct further investigation." The October 11, 2001 announcement: indicated a agenda would be posted on the regional board's website by November 19, 2001; stated the permittees were operating under a permit which expired on July 30, 2001; contained a summary of the principal changes to be made to the permit that expired on July 30, 2001; referred to an attached staff report; and requested comments to the tentative draft of the proposed permit. Attached to the announcement was the notice of hearing which: identified when and where the hearing would be held; explained where documents pertinent to the hearing could be located; and indicated interested persons could testify and submit comments in writing.

The November 29, 2001 regional board meeting was continued to December 13, 2001 after an unsuccessful effort at achieving settlement through mediation. On November 30, 2001, the regional board gave notice on its website of the December 13, 2001 hearing. The regional board's meeting agenda posted on its website on December 13, 2001, listed as item No. 10 under the heading "STORM WATER-NPDES PERMIT RENEWAL" (original bold and underscore): "Consideration of a proposed renewal of the municipal storm water permit for the County of Los Angeles and incorporated cities therein, except the City of Long Beach. (After a public hearing, the Board will consider renewal of the existing municipal permit for the County and 83 cities.) [¶] [Xavier Swamikannu, 576-6654] ... Board [¶] Action" (Original italics.) Above the listing of the agenda items, the following appears, "All Board files pertaining to the items on this agenda are hereby made a part of the record submitted to the [regional board] by staff for its consideration prior to action on the related items." The regional board adopted the permit at the December 13, 2001 hearing. Plaintiffs through their counsel appeared at the December 13, 2001 hearing.

There is no merit to the state law inadequate notice contention. There was no requirement that the notice state an adjudicative hearing would be held. As a matter of law, an adjudicative hearing would be held in connection with any renewal or issuance of a National Pollutant Discharge Elimination Systems permit. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1385, 38 Cal.Rptr.3d 450.) Further, the notices complied with the requirements imposed by California Code of Regulations, title 23, section 647.2, subdivisions (a) through (c) and (e). FN21

FN21. California Code of Regulations, title 23, section 647.2, subdivisions (a) through (c) and (e) states: "(a) Purpose. Government Code Section 11125 requires state agencies to provide notice at least one week in advance of any meeting to any person who requests such notice in writing except that emergency meetings may be held with less than one week's notice when such meetings are necessary to discuss unforeseen emergency conditions as defined by published rule of the agency. The purpose of this section is to establish procedures for compliance with Government Code Section 11125 by the State Board and the Regional Boards. [¶] (b) Contents of Meeting Notice. The notice for all meetings of the State Board and Regional Boards shall specify the date, time and location of the meeting and include an agenda listing all items to be considered. The agenda shall include a description of each item, including any proposed action to be taken. [¶] (c) Time of Notice. Notice shall be given at least one week in advance of the meeting. When

> the notice is mailed, it shall be placed in the mail at least eight days in advance of the meeting. [¶] (e) Distribution. Notice shall be given to all persons directly affected by proceedings on the agenda and to all persons who request in writing such notice. Notice shall be given to any person known to be interested in proceedings on the agenda."

Plaintiffs contend that the foregoing notice was deficient because it violates federal and state laws. Plaintiffs argue that the notice fails to comply with federal law. Plaintiffs rely on the following provisions of 40 Code of Federal Regulations part 124.8 (2001) which states: "(a) A fact sheet shall be prepared for every draft permit.... The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person. [¶] (b) The fact sheet shall include, when applicable: [¶] ... (6) A description of the procedures for reaching a final decision on the draft permit including: [¶] ... (ii) Procedures for requesting a hearing and the nature of that hearing...." We agree with the Attorney General that these provisions doe not apply to a regional board National Pollutant Discharge Elimination Systems permit renewal and issuance proceedings.

Finally, in terms of the notice issues, plaintiffs argue the permittees' due process rights were violated. The state and federal due process provisions require that "some form of notice" be given. (*Sommerfield v. Helmick, supra,* 57 Cal.App.4th at p. 320, 67 Cal.Rptr.2d 51; *B.C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 954, 39 Cal.Rptr.2d 484.) The notices that were provided complied with all due process requirements applicable to an adjudicative hearing..

3. Adequacy of the hearing

Plaintiffs contend the proceedings before the regional board were not conducted as a proper adjudicative hearing. Plaintiffs argue they were denied the opportunity to present or rebut evidence. Government Code section 11425.10, subdivision (a)(1) states in part: "(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: [¶] (1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence." The mode of presentation of evidence at adjudicatory hearing is spelled out in California Code of Regulations, title 23, sections 648.4, subdivision (a) and 648.5.[FN22] Because there was no evidence produced at the hearing, the permittees argue the findings were inadequate. (*English v. City of Long Beach* (1950) 35 Cal.2d 155, 158, 217 P.2d 22; *Southern Cal. Edison Co. v. State Water Resources Control Bd.* (1981) 116 Cal.App.3d 751, 760, 172 Cal.Rptr. 306.)

> FN22. California Code of Regulations, title 23, section 648.4, subdivision (a) provides: "(a) It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits. [¶] (b) The hearing notice may require that all parties intending to present evidence at a hearing shall submit the following information to the Board prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness' proposed testimony, the estimated time required by the witness to present direct testimony, and the qualifications of each expert witness. The required information shall be submitted in accordance with the procedure specified in the hearing notice. [¶] (c) The hearing notice may require that direct testimony be submitted in writing prior to the hearing. Copies of written testimony and exhibits shall be submitted to the Board and to other parties designated by the Board in accordance with provisions of the hearing notice or other written instructions provided by the Board. The hearing notice may require multiple copies of written testimony and other exhibits for use by the Board and Board staff. Copies of general vicinity maps or large, nontechnical photographs generally will not be required to be submitted prior to the hearing. [¶] (d) Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record unless allowed by the presiding officer. [¶] (e) Where any of the provisions of this section have not been complied with, the presiding officer may refuse to

admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Board. This rule may be modified where a party demonstrates that compliance would create severe hardship. [¶] (f) Rebuttal testimony generally will not be required to be submitted in writing, nor will rebuttal testimony and exhibits be required to be submitted prior to the start of the hearing." California Code of Regulations, title 23, section 648.5 provides: "(a) Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board. Adjudicative proceedings generally will be conducted in the following order except that the chairperson or presiding officer may modify the order for good cause: [¶] (1) An opening statement by the chairperson, presiding member, or hearing officer, summarizing the subject matter and purpose of the hearing; [¶] (2) Identification of all persons wishing to participate in the hearing; [¶] (3) Administration of oath to persons who intend to testify; [¶] (4) Presentation of any exhibits by staff of the State or Regional Board who are assisting the Board or presiding officer; [¶] (5) Presentation of evidence by the parties; [¶] (6) Cross-examination of parties' witnesses by other parties and by Board staff assisting the Board or presiding officer with the hearing; [¶] (7) Any permitted redirect and recross-examination; [¶] (b) Questions from Board members or Board counsel to any party or witness, and procedural motions by any party shall be in order at any time. Redirect and recross-examination may be permitted. [¶] (c) If the Board or the presiding officer has determined that policy statements may be presented during a particular adjudicative proceeding, the presiding officer shall determine an appropriate time for presentation of policy statements. [¶] (d) After conclusion of the presentation of evidence, all parties appearing at the hearing may be allowed to present a closing statement."

We have read the transcript of the hearing. Those who wished to address the regional board were placed under oath. Presentations were made by the county, the City of Los Angeles, the Coalition for Practical Regulation, and a council representing the interests of various cities. Other individuals were permitted to present their views. The permittees' counsel made no request to call witnesses or objected to the manner in which the hearing proceeded as is argued on appeal. The permittees' counsel were given an opportunity to be heard. Further, extensive written comments were made by the permittees and their counsel. In light of the extensive notice given to them, if the permittees' counsel had any objections akin to those raised on appeal, they should have asserted them. No due process, statutory, or regulatory violation occurred. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 285-287, 58 Cal.Rptr.2d 721; Cal.Code Regs., tit. 23, § 648, subd. (d).)

4. Belated findings

Plaintiffs contend that untimely findings were made by the regional board. The changes made without an opportunity and comment were: an amendment to the total daily maximum loads for trash; the insertion of a requirement that complaints referred by the regional board be investigated within one business day; and significant changes to the inspection program. We agree with the Attorney General that the modifications in the permit were not of such gravity that a due process or other violation occurred. The final permit was a logical outgrowth of the draft permit. Hence, there was no violation of any right to notice or a hearing. (See *Natural Resources Defense Council v. U.S. E.P.A.* (9th Cir.2002) 279 F.3d 1180, 1186 [applying federal notice and hearing provisions inn the administrative context]; *Center for Biological Diversity v. Bureau of Land Management* (N.D.Cal.2006) 422 F.Supp.2d 1115, 1155-1156 [same].)

J. Inspection Requirements

Plaintiffs argue the inspection requirements imposed in the permit are unlawful. The permit requires the permittees to inspect to insure there are no illicit discharges into the storm sewer system and critical sources of pollutants in runoff. We agree with the intervenors-no statute or regulation

prohibited the regional board from imposing the inspection requirements. Further, there is federal regulatory authority that required the regional board consider imposing the inspection requirements. (40 C.F.R. 122.26(d), (g) (2000).) This contention has no merit.

K. Propriety Of The Regional Board Considering The Administrative Record In The Long Beach Case

Plaintiffs contend that the regional board should not have considered the administrative record in proceedings involving the 1996 issuance of a National Pollutant Discharge Elimination System permit to the City of Long Beach. According to plaintiffs, the administrative record was prepared in connection with the challenge by the City of Long Beach to the National Pollutant Discharge Elimination System Permit issued in 1996. Plaintiffs assert most of the administrative record in the Long Beach case is unrelated to the present case. Plaintiffs argue that consideration of the Long Beach records: are surprise evidence received in violation of title 23, California Code of Regulations, section 648.4, subdivision (a); violated the requirement that the regional board's presentation of exhibits be followed by the parties' presentation of evidence as required by title 23, California Code of Regulations, section 648.5, subdivisions (a)(4) and (5); and the process for admitting public records by reference pursuant to California Code of Regulations, section 648.3 was violated.

We disagree. The regional board certified the administrative record as including documents relevant to a National Pollutant Discharge Elimination System permit issued for the City of Long Beach. It is presumed the regional board considered the documents pertinent to the Long Beach National Pollutant Discharge Elimination System permit. (*Mason v. Office of Admin. Hearings* (2001) 89 Cal.App.4th 1119, 1131, 108 Cal.Rptr.2d 102; see *Bar MK Ranches v. Yuetter* (10th Cir.1993) 994 F.2d 735, 740.) Admissibility of evidence is controlled by Government Code sections 11400 and 11513, subdivision (c). Government Code section 11513, subdivision (c) states: "The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." What is unclear is the standard of judicial review of the regional board's decision to consider the Long Beach National Pollutant Discharge Elimination System permit. It would appear the standard of judicial review is that set forth in Code of Civil Procedure section 1094.5, subdivision (b) whether: the regional board's evidentiary ruling was in excess of jurisdiction; there was a fair trial; or there was any prejudicial abuse of discretion. Insofar as we are examining the trial court's ruling allowing the Long Beach evidence to be part of the record, as with any relevancy issue, we apply an abuse of discretion standard of review. (*People v. Panah* (2005) 35 Cal.4th 395, 474, 25 Cal.Rptr.3d 672, 107 P.3d 790; *People v. Kipp* (2001) 26 Cal.4th 1100, 1123, 113 Cal.Rptr.2d 27, 33 P.3d 450.) Under any standard of review, the Long Beach evidence is relevant. The actions taken in imposing runoff conditions on the second largest city in the county are pertinent to what conditions to impose on the remainder of the county. Finally, there is insufficient evidence to support plaintiffs' surprise contention. There is no evidence that any of the permittees' attorneys were prohibited from examining the entire administrative record prior to the December 13, 2001 hearing.

L. The Trial Court Did Not Abuse Its Discretion In Refusing To Augment The Record

Plaintiffs contend the trial court improperly refused to augment the record to include petitions they had filed with state board. This issue is in essence an issue of relevance which is reviewed for an abuse of discretion. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, fn. 3, 38 Cal.Rptr.2d 139, 888 P.2d 1268; *People v. Panah, supra*, 35 Cal.4th at p. 474, 25 Cal.Rptr.3d 672, 107 P.3d 790; *People v. Kipp, supra*, 26 Cal.4th at p. 1123, 113 Cal.Rptr.2d 27, 33 P.3d 450.) The documents at issue were all prepared after the regional board issued the permit. Without abusing its discretion, the trial court could conclude that the post permit issuance papers were irrelevant. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 250, fn. 7, 19 Cal.Rptr.2d 698, 851 P.2d 1307; *People v. Rowland* (1992) 4 Cal.4th 238, 268, 14 Cal.Rptr.2d 377, 841 P.2d 897.)

[The preceding material is not certified for publication under California Rules of Court, rules 976(b)

and 976.1.]

******END OF UNPUBLISHED TEXT******

V. DISPOSITION

The judgment is affirmed. Defendants, California Regional Water Quality Control Board, Los Angeles Region and the State Water Resources Board, are to recover their costs incurred on appeal jointly and severally from plaintiffs, the Cities of Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier, and the County of Los Angeles, Los Angeles County Flood Control District, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality.

We concur: ARMSTRONG and KRIEGLER, JJ.

143 Cal.App.4th 985, 50 Cal.Rptr.3d 619

Briefs and Other Related Documents (Back to top)

- 2006 WL 4045135 (Appellate Petition, Motion and Filing) Petition for Rehearing on Order Modifying Opinion of Appellants' Cities of Arcadia, et al. (Nov. 21, 2006)
- 2006 WL 3618532 (Appellate Petition, Motion and Filing) Respondent Water Boards' Petition for Rehearing and Modification (Oct. 20, 2006)
- 2006 WL 3618533 (Appellate Petition, Motion and Filing) Respondents-Intervenors-Defendants' Petition for Rehearing (Oct. 17, 2006)

END OF DOCUMENT

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ATTACHMENT NO. 27

Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564

Hayes v. Commission on State Mandates
Cal.App.3.Dist.

THOMAS WILLIAM HAYES, as Director, etc., Plaintiff and Respondent,
v.
COMMISSION ON STATE MANDATES, Defendant, Cross-defendant, and Respondent; DALE S. HOLMES, as Superintendent, etc., Real Party in Interest, Cross- complainant and Appellant; WILLIAM CIRONE, as Superintendent, etc., Real Party in Interest and Respondent; STATE OF CALIFORNIA et al., Cross- defendants and Respondents.

No. C009519.

Court of Appeal, Third District, California.
Dec 30, 1992.

SUMMARY

Two school districts filed claims with the State Board of Control for state reimbursement of alleged state-mandated costs incurred in connection with special education programs. The board determined that the costs were state mandated and subject to reimbursement by the state. In a mandamus proceeding, the trial court entered a judgment by which it issued a writ of administrative mandate directing the Commission on State Mandates (the successor to the board) to set aside the board's administrative decision and to reconsider the matter in light of an intervening decision by the California Supreme Court, and by which it denied the petition of one of the school districts for a writ of mandate that would have directed the State Controller to issue a warrant in payment of the district's claim. (Superior Court of Sacramento County, No. 352795, Eugene T. Gualco, Judge.)

The Court of Appeal affirmed. It held that the 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. The court held that to the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state-mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand to the commission, the court held, the commission was required to focus on the costs incurred by local school districts and on whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program. (Opinion by Sparks, Acting P. J., with Davis and Scotland, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs:Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy. The constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services that the local agency is required by state law to provide to its residents. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. Reimbursement is required when the state freely chooses to impose on local agencies any peculiarly governmental cost which they were not previously required to absorb.

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[See **Cal.Jur.3d,** State of California, § 78; 9 **Witkin,** Summary of Cal. Law (9th ed. 1989) Taxation, §§ 123, 124.]

(2) Schools § 4--School Districts--Relationship to State.

A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. Local school districts are agencies of the state and have been described as quasi-municipal corporations. They are not distinct and independent bodies politic. The Legislature's power over the public school system is exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. The state is the beneficial owner of all school properties, and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion, and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

(3) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Federally Mandated Costs.

Pursuant to Rev. & Tax. Code, § 2271 (local agency may levy rate in addition to maximum property tax rate to pay costs mandated by federal government that are not funded by federal or state government), costs mandated by the federal government are exempt from an agency's taxing and spending limits.

(4) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Costs Incurred Before Effective Date of Constitutional Provision.

Since Cal. Const., art. XIII B, requiring subvention for state mandates enacted after Jan. 1, 1975, had an effective date of July 1, 1980, a local agency may seek subvention for costs imposed by legislation after Jan. 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law.

(5) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Federal Rehabilitation Act--Obligations Imposed on Districts.

Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 794) does not only obligate local school districts to prevent handicapped children from being excluded from school. States typically purport to guarantee all of their children the opportunity for a basic education. In California, basic education is regarded as a fundamental right. All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to evaluate and accommodate the educational needs of the children in their districts. Section 504 does not permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. The statute imposes an obligation upon local school districts to take affirmative steps to accommodate the needs of handicapped children.

(6) Schools § 53--Parents and Students--Right or Duty to Attend-- Handicapped Children--Education of the Handicapped Act.

The federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.), which since its 1975 amendment has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education, is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. Congress intended the act to

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establish a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children. It is also apparent that Congress intended to achieve nationwide application.

(7) Civil Rights § 6--Education--Handicapped--Scope of Federal Statute.
Congress intended the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) to serve as a means by which state and local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Accordingly, where it is applicable, the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention.

(8a, 8b) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education:Schools § 4--School Districts; Financing; Funds--Special Education Costs--Reimbursement by State.
The 1975 amendments to the federal Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) constituted a federal mandate with respect to the state. However, even though the state had no real choice in deciding whether to comply with the act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention under Cal. Const., art. XIII B, § 6. Thus, on remand of a proceeding by school districts to the Commission on State Mandates for consideration of whether special education programs constituted new programs or higher levels of service mandated by the state entitling the districts to reimbursement, the commission was required to focus on the costs incurred by local school districts and whether those costs were imposed by federal mandate or by the state's voluntary choice in its implementation of the federal program.

(9) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs.
The constitutional subvention provision (Cal. Const., art. XIII B, § 6) and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. When the federal government imposes costs on local agencies, those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate, so long as the state had no "true choice" in the manner of implementation of the federal mandate.

(10) Statutes § 28--Construction--Language--Consistency of Meaning Throughout Statute.
As a general rule and unless the context clearly requires otherwise, it must be assumed that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a

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part.

(11) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--Federally Mandated Costs--Subvention.
Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state, then the state must provide a subvention to reimburse the local agency. Nothing in the scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Thus, the criteria set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits are applicable when subvention is the issue.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments--State-mandated Costs--Special Education--Applicable Criteria in Determining Whether Subvention Required.
In a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court did not err in determining that the board failed to consider the issues under the appropriate criteria as set forth in a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits. The board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act (20 U.S.C. § 1401 et seq.) without any consideration of whether the act left the state any actual choice in the matter. It also relied on litigation involving another state. However, under the criteria set forth in the Supreme Court's case, the litigation in the other state did not support the board's decision but in fact strongly supported a contrary result.

(13) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--Opinion Elucidating Existing Law.
In a California Supreme Court case concerning whether costs mandated by the federal government are exempt from an agency's taxing and spending limits, the court elucidated and enforced existing law. Under such circumstances, the rule of retrospective operation controls. Thus, in a proceeding for a writ of mandate to direct the Commission on State Mandates to set aside an administrative decision by the State Board of Control (the commission's predecessor), in which the board found that all local special education costs were state mandated and thus subject to state reimbursement, the trial court correctly applied the Supreme Court decision to the litigation pending before it.

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Richard J. Chivaro and Patricia A. Cruz for Cross-defendants and Respondents.

SPARKS, Acting P. J.

This appeal involves a decade-long battle over claims for subvention by two county superintendents of schools for reimbursement for mandated special education programs. Section 6 of article XIII B of the California Constitution directs, with exceptions not relevant here, that "[w]henever the Legislature or any State agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, ..." The issue on appeal is whether the special education programs in question constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due.

The Santa Barbara County Superintendent of Schools and the Riverside County Superintendent of Schools each filed claims with the Board of Control for state reimbursement for alleged state-mandated costs incurred in connection with special education programs. After a lengthy administrative process, the Board of Control rendered a decision finding that all local special education costs were state mandated and subject to state reimbursement. That decision was then successfully challenged in the Sacramento County Superior Court. The superior court entered a judgment by which it: (1) issued a writ of administrative mandate (Code Civ. Proc., § 1094.5), directing the Commission on State Mandates (the successor to the Board of ***1571** Control) to set aside the administrative decision and to reconsider the matter in light of the California Supreme Court's intervening decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [266 Cal.Rptr. 139, 785 P.2d 522]; and (2) denied the Riverside County Superintendent of School's petition for a writ of mandate (Code Civ. Proc., § 1085), which would have directed the State Controller to issue a warrant in payment of the claim. The Riverside County Superintendent of Public Schools appeals. We shall clarify the criteria to be applied by the Commission on State Mandates on remand and affirm the judgment.

I. *The Parties*

This action was commenced in July 1987 by Jesse R. Huff, then the Director of the California Department of Finance. Huff petitioned for a writ of administrative mandate to set aside the administrative decision which found all the special education costs to be state mandated. On appeal Huff appears as a respondent urging that we affirm the judgment.

The Commission on State Mandates (the Commission) is the administrative agency which now has jurisdiction over local agency claims for reimbursement for state-mandated costs. (Gov. Code, § 17525.)In this respect the Commission is the successor to the Board of Control. The Board of Control rendered the administrative decision which is at issue here. Since an appropriation for payment of these claims was not included in a local government claims bill before January 1, 1985, administrative jurisdiction over the claims has been transferred from the Board of Control to the Commission. (Gov. Code, § 17630.)The Commission is the named defendant in the petition for a writ of administrative mandate. In the trial court and on appeal the Commission has appeared as the agency having administrative jurisdiction over the claims, but has not expressed a position on the merits of the litigation.

The Santa Barbara County Superintendent of Schools (hereafter Santa Barbara) is a claimant for state reimbursement of special education costs incurred in the 1979-1980 fiscal year. Santa Barbara is a real party in interest in the proceeding for administrative mandate. Santa Barbara has not appealed from the judgment of the superior court and,

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although a nominal respondent on appeal, has not filed a brief in this court.

The Riverside County Superintendent of Schools (hereafter Riverside) represents a consortium of school districts which joined together to provide special education programs to handicapped students. Riverside seeks reimbursement for special education costs incurred in the 1980-1981 fiscal year. ***1572** Riverside is a real party in interest in the proceeding for writ of administrative mandate. It filed a cross-petition for a writ of mandate directing the Controller to pay its claim. Riverside is the appellant in this appeal.

The State of California and the State Treasurer are named cross- defendants in Riverside's cross-petition for a writ of mandate. They joined with Huff in this litigation. The State Controller is the officer charged with drawing warrants for the payment of moneys from the State Treasury upon a lawful appropriation. (Cal. Const., art. XVI, § 7.) The State Controller is a named defendant in Riverside's petition for a writ of mandate. In the trial court and on appeal the State Controller expresses no opinion on the merits of Riverside's reimbursement claim, but asserts that the courts lack authority to compel him to issue a warrant for payment of the claim in the absence of an appropriation for payment of the claim.

In addition to the briefing by the parties on appeal, we have permitted a joint amici curiae brief to be filed in support of Riverside by the Monterey County Office of Education, the Monterey County Office of Education Special Education Local Planning Area, and 21 local school districts.

II. *Factual and Procedural Background*

The Legislature has provided an administrative remedy for the resolution of local agency claims for reimbursement for state mandates. In *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750], at pages 71 and 72, we described these procedures as follows (with footnotes deleted): "Section 2250 [Revenue & Taxation Code] and those following it provide a hearing procedure for the determination of claims by local governments. The State Board of Control is required to hear and determine such claims. (§ 2250.)For purposes of such hearings the board consists of the members of the Board of Control provided for in part 4 (commencing with § 13900) of division 3 of title 2 of the Government Code, together with two local government officials appointed by the Governor. (§ 2251.) The board was required to adopt procedures for receiving and hearing such claims. (§ 2252.) The first claim filed with respect to a statute or regulation is considered a 'test claim' or a 'claim of first impression.' (§ 2218, subd. (a).) The procedure requires an evidentiary hearing where the claimant, the Department of Finance, and any affected department or agency can present evidence. (§ 2252.) If the board determines that costs are mandated, then it must adopt parameters and guidelines for the reimbursement of such claims. (§ 2253.2.) The claimant or the state is entitled to commence an action in administrative mandate pursuant to Code of Civil Procedure section 1094.5 to set aside a decision of the board on the grounds that the board's decision is not supported by substantial evidence. (§ 2253.5.) ***1573**

"At least twice each calendar year the board is required to report to the Legislature on the number of mandates it has found and the estimated statewide costs of these mandates. (§ 2255, subd. (a).) In addition to the estimate of the statewide costs for each mandate, the report must also contain the reasons for recommending reimbursement. (§ 2255, subd. (a).) Immediately upon receipt of the report a local government claims bill shall be introduced in the Legislature which, when introduced, must contain an appropriation sufficient to pay for the estimated costs of the mandates. (§ 2255, subd. (a).) In the event the Legislature deletes funding for a mandate from the local government claims bill, then it may take one of the following courses of action: (1) include a finding that the legislation or regulation

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does not contain a mandate; (2) include a finding that the mandate is not reimbursable; (3) find that a regulation contains a mandate and direct that the Office of Administrative Law repeal the regulation; (4) include a finding that the legislation or regulation contains a reimbursable mandate and direct that the legislation or regulation not be enforced against local entities until funds become available; (5) include a finding that the Legislature cannot determine whether there is a mandate and direct that the legislation or regulation shall remain in effect and be enforceable unless a court determines that the legislation or regulation contains a reimbursable mandate in which case the effectiveness of the legislation or regulation shall be suspended and it shall not be enforced against a local entity until funding becomes available; or (6) include a finding that the Legislature cannot determine whether there is a reimbursable mandate and that the legislation or regulation shall be suspended and shall not be enforced against a local entity until a court determines whether there is a reimbursable mandate. (§ 2255, subd. (b).) If the Legislature deletes funding for a mandate from a local government claims bill but does not follow one of the above courses of action or if a local entity believes that the action is not consistent with article XIII B of the Constitution, then the local entity may commence a declaratory relief action in the Superior Court of the County of Sacramento to declare the mandate void and enjoin its enforcement. (§ 2255, subd. (c).)

"Effective January 1, 1985, the Legislature has established a new commission to consider and determine claims based upon state mandates. This is known as the Commission on State Mandates and it consists of the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member with experience in public finance, appointed by the Governor and approved by the Senate. (Gov. Code, § 17525.) 'Costs mandated by the state' are defined as 'any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which *1574 mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.' (Gov. Code, § 17514.)The procedures before the Commission are similar to those which were followed before the Board of Control. (Gov. Code, § 17500 et seq.) Any claims which had not been included in a local government claims bill prior to January 1, 1985, were to be transferred to and considered by the commission. (Gov. Code, § 17630; [Rev. & Tax. Code,] § 2239.)"

On October 31, 1980, Santa Barbara filed a test claim with the Board of Control seeking reimbursement for costs incurred in the 1979-1980 fiscal year in connection with the provision of special education services as required by Statutes 1977, chapter 1247, and Statutes 1980, chapter 797. Santa Barbara asserted that these acts should be considered an ongoing requirement of increased levels of service.

Santa Barbara's initial claim was based upon the "mandate contained in the two bills specified above [which require] school districts and county offices to provide full and formal due process procedures and hearings to pupils and parents regarding the special education assessment, placement and the appropriate education of the child." Santa Barbara asserted that state requirements exceeded those of federal law as reflected in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). [FN1] Santa Barbara's initial claim was for $10,500 in state-mandated costs for the 1979-1980 fiscal year.

> FN1 Section 794 of title 29 of the United States Code will of necessity play an important part in our discussion of the issues presented in this case. That provision was enacted as section 504 of the Rehabilitation Act of 1973. (Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) It has been amended several times. (Pub.L. No. 95-602, tit. I, §§ 119, 122(d)(2) (Nov.

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6, 1978) 92 Stat. 2982, 2987 [Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978]; Pub.L. No. 99- 506, tit. I, § 103(d)(2)(B), tit. X, § 1002(e)(4) (Oct. 21, 1986) 100 Stat. 1810, 1844; Pub.L. No. 100-259, § 4 (Mar. 22, 1988) 102 Stat. 29; Pub.L. No. 100-630, tit. II, § 206(d) (Nov. 7, 1988) 102 Stat. 3312.) The decisional authorities universally refer to the statute as "section 504." We will adhere to this nomenclature and subsequent references to section 504 will refer to title 29, United States Code, section 794.

During the administrative proceedings Santa Barbara amended its claim to reflect the following state-mandated activities alleged to be in excess of federal requirements: (1) the extension of eligibility to children younger and older than required by federal law; (2) the establishment of procedures to search for and identify children with special needs; (3) assessment and evaluation; (4) the preparation of "Individual Education Plans" (IEP's); (5) due process hearings in placement determinations; (6) substitute teachers; and (7) staff development programs. Santa Barbara was claiming reimbursement in excess of $520,000 for the cost of these services during the 1979- 1980 fiscal year. ***1575**

Also, during the administrative proceedings the focus of federally mandated requirements shifted from section 504 of the Rehabilitation Act to federal Public Law No. 94-142, which amended the Education of the Handicapped Act. (20 U.S.C. § 1401 et seq.) FN2

FN2 The Education of the Handicapped Act was enacted in 1970. (Pub.L. No. 91-230, tit. VI (Apr. 13, 1970) 84 Stat. 175.) It has been amended many times. The amendment of primary interest here was enacted as the Education for All Handicapped Children Act of 1975. (Pub.L. No. 94-142 (Nov. 29, 1975) 89 Stat. 774.) The 1975 legislation significantly amended the Education of the Handicapped Act, but did not change its short title. The Education of the Handicapped Act has now been renamed the Individuals with Disabilities Education Act. (Pub.L. No. 101-476, tit. IX, § 901(b)(21) (Oct. 30, 1990) 104 Stat. 1143; Pub.L. No. 101-476, tit. IX, § 901b; Pub.L. No. 102-119, § 25(b) (Oct. 7, 1991) 105 Stat. 607.) Since at all times relevant here the federal act was known as the Education of the Handicapped Act, we will adhere to that nomenclature.

The Board of Control adopted a decision denying Santa Barbara's claim. The board concluded that the Education of the Handicapped Act resulted in costs mandated by the federal government, that state special education requirements exceed those of federal law, but that "the resulting mandate is not reimbursable because the Legislature already provides funding for all Special Education Services through an appropriation in the annual Budget Act."

Santa Barbara sought judicial review by petition for a writ of administrative mandate. The superior court found the administrative record and the Board of Control's findings to be inadequate. Judgment was rendered requiring the Board of Control to set aside its decision and to rehear the matter to establish a proper record, including findings. That judgment was not appealed.

On October 30, 1981, Riverside filed a test claim for reimbursement of $474,477 in special education costs incurred in the 1980-1981 fiscal year. Riverside alleged that the costs were state mandated by chapter 797 of Statutes 1980. The basis of Riverside's claim was Education Code section 56760, a part of the state special education funding formula which, according to Riverside, "mandates a 10% cap on ratio of students served by special education and within that 10% mandates the ratio of students to be served by certain services." Riverside explained that chapter 797 of Statutes 1980 was enacted as urgency legislation effective July 28, 1980, and that at that time it was already "locked into"

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providing special education services to more than 13 percent of its students in accordance with prior state law and funding formulae. FN3

FN3 The 1980 legislation required that a local agency adopt an annual budget plan for special education services. (Ed. Code, § 56200.)Education Code section 56760 provided that in the local budget plan the ratio of students to be served should not exceed 10 percent of total enrollment. However, those proportions could be waived for undue hardship by the Superintendent of Public Instruction. (Ed. Code, §§ 56760, 56761.)In addition, the 1980 legislation included provisions for a gradual transition to the new requirements. (Ed. Code, § 56195 et seq.) The transitional provisions included a guarantee of state funding for 1980-1981 at prior student levels with an inflationary adjustment of 9 percent. (Ed. Code, § 56195.8.)The record indicates that Riverside applied for a waiver of the requirements of Education Code section 56760, but that the waiver request was denied due to a shortage of state funding. It also appears that Riverside did not receive all of the 109 percent funding guarantee under Education Code section 56195.8. In light of the current posture of this appeal we need not and do not consider whether the failure of the state to appropriate sufficient funds to satisfy its obligations under the 1980 legislation can be addressed in a proceeding for the reimbursement of state-mandated costs or must be addressed in some other manner.

The Riverside claim, like Santa Barbara's, evolved over time with increases in the amount of reimbursement sought. Eventually the Board of ***1576** Control denied Riverside's claim for the same reasons the Santa Barbara claim was denied. Riverside sought review by petition for a writ of administrative mandate. In its decision the superior court accepted the board's conclusions that the Education of the Handicapped Act constitutes a federal mandate and that state requirements exceed those of the federal mandate. However, the court disagreed with the board that any appropriation in the state act necessarily satisfies the state's subvention obligation. The court concluded that the Board of Control had failed to consider whether the state had fully reimbursed local districts for the state-mandated costs which were in excess of the federal mandate, and the matter was remanded for consideration of that question. That judgment was not appealed.

On return to the Board of Control, the Santa Barbara claim and the Riverside claim were consolidated. The Board of Control adopted a decision holding that all special education costs under Statutes 1977, chapter 1247, and Statutes 1980, chapter 797, are state-mandated costs subject to subvention. The board reasoned that the federal Education of the Handicapped Act is a discretionary program and that section 504 of the Rehabilitation Act does not require school districts to implement any programs in response to federal law, and therefore special education programs are optional in the absence of a state mandate.

The claimants were directed to draft, and the Board of Control adopted, parameters and guidelines for reimbursement of special education costs. The board submitted a report to the Legislature estimating that the total statewide cost of reimbursement for the 1980-1981 through 1985-1986 fiscal years would be in excess of $2 billion. Riverside's claim for reimbursement for the 1980-1981 fiscal year was now in excess of $7 million. Proposed legislation which would have appropriated funds for reimbursement of special education costs during the 1980-1981 through 1985- 1986 fiscal years failed to pass in the Legislature. (Sen. Bill No. 1082 (1985-1986 Reg. Sess.).) A separate bill which would have appropriated funds to reimburse Riverside ***1577** for its 1980-1981 claim also failed to pass. (Sen. Bill No. 238 (1987-1988 Reg. Sess.).)

At this point Huff, as Director of the Department of

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Finance, brought an action in administrative mandate seeking to set aside the decision of the Board of Control. Riverside cross-petitioned for a writ of mandate directing the state, the Controller and the Treasurer to issue a warrant in payment of its claim for the 1980-1981 fiscal year.

The superior court concluded that the Board of Control did not apply the appropriate standard in determining whether any portion of local special education costs are incurred pursuant to a federal mandate. The court found that the definition of a federal mandate set forth by the *Supreme Court in City of Sacramento v. State of California, supra,* 50 Cal.3d 51, "marked a departure from the narrower 'no discretion' test" of this court's earlier decision in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258]. It further found that the standard set forth in the high court's decision in *City of Sacramento* "is to be applied retroactively." Accordingly, the superior court issued a peremptory writ of mandate directing the Commission on State Mandates to set aside the decision of the Board of Control, to reconsider the claims in light of the decision in *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, and "to ascertain whether certain costs arising from Chapter 797/80 and Chapter 1247/77 are federally mandated, and if so, the extent, if any, to which the state-mandated costs exceed the federal mandate." Riverside's cross-petition for a writ of mandate was denied. This appeal followed.

III. *Principles of Subvention*

(1) "Subvention" generally means a grant of financial aid or assistance, or a subsidy. (See Webster's Third New Internat. Dict. (1971) p. 2281.) As used in connection with state-mandated costs, the basic legal requirements of subvention can be easily stated; it is in the application of the rule that difficulties arise.

Essentially, the constitutional rule of state subvention provides that the state is required to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) This does not mean that the state is required to reimburse local agencies for any incidental cost that may result from the enactment of a state law; rather, the subvention requirement is restricted to governmental services which the local agency is required by ***1578** state law to provide to its residents. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 70.) The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (*Id.* at p. 68.)Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." (*Id.* at p. 70, italics in original.)

The requirement of subvention for state-mandated costs had its genesis in the "Property Tax Relief Act of 1972" which is also known as "SB 90" (Senate Bill No. 90). (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 188.) That act established limitations upon the power of local governments to levy taxes and concomitantly prevented the state from imposing the cost of new programs or higher levels of service upon local governments.(*Ibid.*) The Legislature declared: "It is the intent in establishing the tax rate limits in this chapter to establish limits that will be flexible enough to allow local governments to continue to provide existing programs, that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting and that will afford the voters in each local government jurisdiction a more active role in the fiscal affairs of such jurisdictions." (Rev. & Tax. Code, former § 2162, Stats. 1972, ch. 1406, § 14.7, p. 2961.) [FN4] The act provided that the state would pay each county, city and county, city, and special district the sums which were sufficient to cover the total cost of new state-mandated costs. (See Rev. & Tax. Code,

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former § 2164.3, Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963.) New state-mandated costs would arise from legislative action or executive regulation after January 1, 1973, which mandated a new program or higher level of service under an existing mandated program. (*Ibid.*)

> FN4 In addition to requiring subventions for new state programs and higher levels of service, Senate Bill No. 90 required the state to reimburse local governments for revenues lost by the repeal or reduction of property taxes on certain classes of property. In this connection the Legislature said: "It is the purpose of this part to provide property tax relief to the citizens of this state, as undue reliance on the property tax to finance various functions of government has resulted in serious detriment to one segment of the taxpaying public. The subventions from the State General Fund required under this part will serve to partially equalize tax burdens among all citizens, and the state as a whole will benefit." (Gov. Code, § 16101, Stats. 1972, ch. 1406, § 5, p. 2953.)

(2)**(See fn. 5.)** Senate Bill No. 90 did not specifically include school districts in the group of agencies entitled to reimbursement for state-mandated costs. FN5(Rev. & Tax. Code, former § 2164.3, Stats. 1972, ch. 1406. § 14.7, pp. 2962-2963.) In fact, at that time methods of financing education in this state were ***1579** undergoing fundamental reformation as the result of the litigation in *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]. At the time of the *Serrano* decision local property taxes were the primary source of school revenue. (*Id.* at p. 592.)In *Serrano,* the California Supreme Court held that education is a fundamental interest, that wealth is a suspect classification, and that an educational system which produces disparities of opportunity based upon district wealth would violate principles of equal protection. (*Id.* at pp. 614-615, 619.)A major portion of Senate Bill No. 90 constituted new formulae for state and local contributions to education in a legislative response to the decision in *Serrano.*(Stats. 1972, ch. 1406, §§ 1.5-2.74, pp. 2931-2953. See *Serrano v. Priest* (1976) 18 Cal.3d 728, 736- 737 [135 Cal.Rptr. 345, 557 P.2d 929].) FN6

> FN5 A school district's relationship to the state is different from that of local governmental entities such as cities, counties, and special districts. Education and the operation of the public school system are matters of statewide rather than local or municipal concern. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Local school districts are agencies of the state and have been described as quasi-municipal corporations. (*Ibid.*) They are not distinct and independent bodies politic. (*Ibid.*) The Legislature's power over the public school system has been described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints.(*Ibid.*) The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Id.* at p. 1525.)The state is the beneficial owner of all school properties and local districts hold title as trustee for the state. (*Ibid.*) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds. (*Ibid.*) While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature. (*Id.* at pp. 1523-1524.)

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FN6 After the first *Serrano* decision, the United States Supreme Court held that equal protection does not require dollar-for-dollar equality between school districts. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 33-34 48-56, 61-62 [36 L.Ed.2d 16, 42-43, 51-56, 59-60, 93 S.Ct. 1278].) In the second *Serrano* decision, the California Supreme Court adhered to the first *Serrano* decision on independent state grounds. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 761-766.) The court concluded that Senate Bill No. 90 and Assembly Bill No. 1267, enacted the following year (Stats. 1973, ch. 208, p. 529 et seq.), did not satisfy equal protection principles. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 776-777.) Additional complications in educational financing arose as the result of the enactment of article XIII A of the California Constitution at the June 1978 Primary Election (Proposition 13), which limited the taxes which can be imposed on real property and forced the state to assume greater responsibility for financing education (see Ed. Code, § 41060), and the enactment of Propositions 98 and 111 in 1988 and 1990, respectively, which provide formulae for minimum state funding for education. (See generally *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513.)

The provisions of Senate Bill No. 90 were amended and refined in legislation enacted the following year. (Stats. 1973, ch. 358.) Revenue and Taxation Code section 2231, subdivision (a), was enacted to require the state to reimburse local agencies, including school districts, for the full costs of new programs or increased levels of service mandated by the Legislature after January 1, 1973. Local agencies except school districts were also entitled to reimbursement for costs mandated by executive regulation after January 1, 1973. (Rev. & Tax. Code, § 2231, subd. (d), added by Stats. 1973, ch. 358, § 3, p. 783 ***1580** and repealed by Stats. 1986, ch. 879, § 23, p. 3045.) In subsequent years legislation was enacted to entitle school districts to subvention for state-mandated costs imposed by legislative acts after January 1, 1973, or by executive regulation after January 1, 1978. (Rev. & Tax. Code, former § 2207.5, added by Stats. 1977, ch. 1135, § 5, p. 3646 and amended by Stats. 1980, ch. 1256, § 5, pp. 4248-4249.)

In the 1973 legislation, Revenue and Taxation Code section 2271 was enacted to provide, among other things: "A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts or costs mandated by initiative enactment, which are not funded by federal or state government." (3) In this respect costs mandated by the federal government are exempt from an agency's taxing and spending limits. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 71, fn. 17.)

At the November 6, 1979, General Election, the voters added article XIII B to the state Constitution by enacting Proposition 4. That article imposes spending limits on the state and all local governments. For purposes of article XIII B the term "local government" includes school districts. (Cal. Const., art. XIII B, § 8, subd. (d).) The measure accomplishes its purpose by limiting a governmental entity's annual appropriations to the prior year's appropriations limit adjusted for changes in the cost of living and population growth, except as otherwise provided in the article. (Cal. Const., art. XIII B, § 1.) FN7 The appropriations subject to limitation do not include, among other things: "Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." (Cal. Const., art. XIII B, § 9, subd. (b).)

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FN7 As it was originally enacted, article XIII B required that all governmental entities return revenues in excess of their appropriations limits to the taxpayers through tax rate or fee schedule revisions. In Proposition 98, adopted at the November 1988 General Election, article XIII B was amended to provide that half of state excess revenues would be transferred to the state school fund for the support of school districts and community college districts. (See Cal. Const., art. XVI, § 8.5; *California Teachers Assn. v. Huff, supra,* 5 Cal.App.4th 1513.)

Like its statutory predecessor, the constitutional initiative measure includes a provision designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836 [244 Cal.Rptr. 677, 750 P.2d 318].)Section 6 of article XIII B of the state Constitution provides: "Whenever the Legislature or any State agency mandates a new program or higher level of service on any local government, the ***1581** State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Although article XIII B of the state Constitution requires subvention for state mandates enacted after January 1, 1975, the article had an effective date of July 1, 1980. (Cal. Const., art. XIII B, § 10.)(4) Accordingly, under the constitutional provision, a local agency may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at pp. 190-193.) Reimbursement for costs incurred before July 1, 1980, must be obtained, if at all, under controlling statutory law. (See 68 Ops.Cal.Atty.Gen. 244 (1985).)

The constitutional subvention provision, like the statutory scheme before it, requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. (Cal. Const., art. XIII B, § 6.) Accordingly, it has been held that state subvention is not required when the federal government imposes new costs on local governments. (*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 188; see also *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 543 [234 Cal.Rptr. 795].) In our *City of Sacramento* decision this court held that a federal program in which the state participates is not a federal mandate, regardless of the incentives for participation, unless the program leaves state or local government with no discretion as to alternatives. (156 Cal.App.3d at p. 198.)

In its *City of Sacramento* opinion, FN8 the California Supreme Court rejected this court's earlier formulation. In doing so the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. (50 Cal.3d at p. 73.) However, "certain regulatory standards imposed by the federal government ***1582** under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." (*Id.* at pp. 73-74.)The test for determining whether there is a federal mandate is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." (*Id.* at p. 76.)The court went on to say: "Given the variety of cooperative federal-state-local programs, we here attempt no final test

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for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Ibid.*)

> FN8 The Supreme Court's decision in *City of Sacramento* was not a result of direct review of this court's decision. The Supreme Court denied a petition for review of this court's *City of Sacramento* decision. After the Board of Control had adopted parameters and guidelines for reimbursement under this court's decision, the Legislature failed to appropriate the funds necessary for such reimbursement. The litigation which resulted in the Supreme Court's *City of Sacramento* decision was commenced as an action to enforce the result on remand from this court's *City of Sacramento* decision. (See 50 Cal.3d at p. 60.)

IV. *Special Education*

The issues in this case cannot be resolved by consideration of a particular federal act in isolation. Rather, reference must be made to the historical and legal setting of which the particular act is a part. Our consideration begins in the early 1970's.

In considering the 1975 amendments to the Education of the Handicapped Act, Congress referred to a series of "landmark court cases" emanating from 36 jurisdictions which had established the right to an equal educational opportunity for handicapped children. (See *Smith v. Robinson* (1984) 468 U.S. 992, 1010 [82 L.Ed.2d 746, 763, 104 S.Ct. 3457].) Two federal district court cases, *Pennsylvania Ass'n, Ret'd Child. v. Commonwealth of Pa.* (E.D.Pa. 1972) 343 F.Supp. 279 (see also *Pennsylvania Ass'n, Retard. Child. v. Commonwealth of Pa.* (E.D.Pa. 1971) 334 F.Supp. 1257), and *Mills v. Board of Education of District of Columbia* (D.D.C. 1972) 348 F.Supp. 866, were the most prominent of these judicial decisions. (See *Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 180, fn. 2 [73 L.Ed.2d 690, 695, 102 S.Ct. 3034].)

In the Pennsylvania case, an association and the parents of certain retarded children brought a class action against the commonwealth and local school districts in the commonwealth, challenging the exclusion of retarded children from programs of education and training in the public schools. (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa., supra,* 343 F.Supp. at p. 282.)The matter was assigned to a three- judge panel which heard evidence on the plaintiffs' due process and equal protection claims. (*Id.* at p. 285.)The parties then agreed to resolve the litigation by means of a consent ***1583** judgment. (*Ibid.*) The consent agreement required the defendants to locate and evaluate all children in need of special education services, to reevaluate placement decisions periodically, and to accord due process hearings to parents who are dissatisfied with placement decisions. (*Id.* at pp. 303-306.)It required the defendants to provide "a free public program of education and training appropriate to the child's capacity." (*Id.* at p. 285, italics deleted.)

In view of the consent agreement the district court was not required to resolve the plaintiffs' equal protection and due process contentions. Rather, it was sufficient for the court to find that the suit was not collusive and that the plaintiffs' claims were colorable. The court found: "Far from an indication of collusion, however, the Commonwealth's willingness to settle this dispute reflects an intelligent response to overwhelming evidence against [its] position." (*Pennsylvania Ass'n, Ret'd. Child. v. Commonwealth of Pa., supra,* 343 F.Supp. at p. 291.)The court said that it was convinced the due process and equal protection claims were colorable. (*Id.* at pp. 295-296.)

In the *Mills* case, an action was brought on behalf of a number of school-age children with exception-

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al needs who were excluded from the Washington, D.C., public school system. (*Mills v. Board of Education of District of Columbia, supra,* 348 F.Supp. at p. 868.)The district court concluded that equal protection entitled the children to a public-supported education appropriate to their needs and that due process required a hearing with respect to classification decisions. (*Id.* at pp. 874-875.)The court said: "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." (*Id.* at p. 876.)

In the usual course of events, the development of principles of equal protection and due process as applied to special education, which had just commenced in the early 1970's with the authorities represented by the *Pennsylvania* and *Mills* cases, would have been fully expounded through appellate processes. However, the necessity of judicial development was truncated by congressional action. In the Rehabilitation Act of 1973, section 504, Congress provided: "No otherwise qualified handicapped individual in the United States, as defined in section 706(7) [now 706(8)] of this title, *1584 shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...." (29 U.S.C. § 794, Pub.L. No. 93-112, tit. V, § 504 (Sept. 26, 1973) 87 Stat. 394.) FN9 Since federal assistance to education is pervasive (see, e.g., Ed. Code, §§ 12000-12405, 49540 et seq., 92140 et seq.), section 504 was applicable to virtually all public educational programs in this and other states.

FN9 In section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, the application of section 504 was extended to federal executive agencies and the United States Postal Service. (Pub.L. No. 95-602, tit. I, § 119 (Nov. 6, 1978) 92 Stat. 2982.) The section is now subdivided and includes subdivision (b), which provides that the section applies to all of the operations of a state or local governmental agency, including local educational agencies, if the agency is extended federal funding for any part of its operations. (29 U.S.C. § 794.)This latter amendment was in response to judicial decisions which had limited the application of section 504 to the particular activity for which federal funding is received. (See *Consolidated Rail Corporation v. Darrone* (1984) 465 U.S. 624,635-636 [79 L.Ed.2d 568, 577-578, 104 S.Ct. 1248].)

The Department of Health, Education and Welfare (HEW) promulgated regulations to ensure compliance with section 504 by educational agencies. FN10The regulations required local educational agencies to locate and evaluate handicapped children in order to provide appropriate educational opportunities and to provide administrative hearing procedures in order to resolve disputes. The federal courts concluded that section 504 was essentially a codification of the equal protection rights of citizens with disabilities. (See *Halderman v. Pennhurst State School & Hospital* (E.D.Pa. 1978) 446 F.Supp. 1295, 1323.)Courts also held that section 504 embraced a private cause of action to enforce its requirements. (*Sherry v. New York State Ed. Dept.* (W.D.N.Y. 1979) 479 F.Supp. 1328, 1334; *Doe v. Marshall* (S.D.Tex. 1978) 459 F.Supp. 1190, 1192.)It was further held that section 504 imposed upon school districts and other public educational agencies "the duty of analyzing individually the needs of each handicapped student and devising a program which will enable each individual handi-

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capped student to receive an appropriate, free public education. The failure to perform this analysis and structure a program suited to the needs of each handicapped child, constitutes discrimination against that child and a failure to provide an appropriate, free ***1585** public education for the handicapped child." (*Doe v. Marshall, supra,* 459 F.Supp. at p. 1191.See also *David H. v. Spring Branch Independent School Dist.* (S.D.Tex. 1983) 569 F.Supp. 1324, 1334; *Halderman v. Pennhurst State School & Hospital, supra,* 446 F.Supp. at p. 1323.)

> FN10 HEW was later dissolved and its responsibilities are now shared by the federal Department of Education and the Department of Health and Human Services. The promulgation of regulations to enforce section 504 had a somewhat checkered history. Initially HEW determined that Congress did not intend to require it to promulgate regulations. The Senate Public Welfare Committee then declared that regulations were intended. By executive order and by judicial decree in *Cherry v. Mathews* (D.D.C. 1976) 419 F.Supp. 922, HEW was required to promulgate regulations. The ensuing regulations were embodied in title 45 Code of Federal Regulations part 84, and are now located in title 34 Code of Federal Regulations part 104. (See *Southeastern Community College v. Davis* (1979) 442 U.S. 397, 404, fn. 4 [60 L.Ed.2d 980, 987, 99 S.Ct. 2361]; *N. M. Ass'n for Retarded Citizens v. State of N. M.* (10th Cir. 1982) 678 F.2d 847, 852.)

(5) Throughout these proceedings Riverside, relying upon the decision in *Southeastern Community College v. Davis, supra,* 442 U.S. 397 [60 L.Ed.2d 980], has contended that section 504 cannot be considered a federal mandate because it does not obligate local school districts to take any action to accommodate the needs of handicapped children so long as they are not excluded from school. That assertion is not correct.

In the *Southeastern Community College* case a prospective student with a serious hearing disability sought to be admitted to a postsecondary educational program to be trained as a registered nurse. As a result of her disability the student could not have completed the academic requirements of the program and could not have attended patients without full-time personal supervision. She sought to require the school to waive the academic requirements, including an essential clinical program, which she could not complete and to otherwise provide full-time personal supervision. That demand, the Supreme Court held, was beyond the scope of section 504, which did not require the school to modify its program affirmatively and substantially. (442 U.S. at pp. 409-410 [60 L.Ed.2d at pp. 990- 991].)

The *Southeastern Community College* decision is inapposite. States typically do not guarantee their citizens that they will be admitted to, and allowed to complete, specialized postsecondary educational programs. State educational institutions often impose stringent admittance and completion requirements for such programs in higher education. In the *Southeastern Community College* case the Supreme Court simply held that an institution of higher education need not lower or effect substantial modifications of its standards in order to accommodate a handicapped person. (442 U.S. at p. 413 [60 L.Ed.2d at pp. 992-993].) The court did not hold that a primary or secondary educational agency need do nothing to accommodate the needs of handicapped children. (See *Alexander v. Choate* (1985) 469 U.S. 287, 301 [83 L.Ed.2d 661, 672,105 S.Ct. 712].)

States typically do purport to guarantee all of their children the opportunity for a basic education. In fact, in this state basic education is regarded as a fundamental right. (*Serrano v. Priest, supra,* 18 Cal.3d at pp. 765-766.) All basic educational programs are essentially affirmative action activities in the sense that educational agencies are required to

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evaluate and accommodate *1586 the educational needs of the children in their districts. Section 504 would not appear to permit local agencies to accommodate the educational needs of some children while ignoring the needs of others due to their handicapped condition. (Compare *Lau v. Nichols* (1974) 414 U.S. 563 [39 L.Ed.2d 1, 94 S.Ct. 786], which required the San Francisco Unified School District to take affirmative steps to accommodate the needs of non-English speaking students under section 601 of the Civil Rights Act of 1964.)

Riverside's view of section 504 is inconsistent with congressional intent in enacting it. The congressional record makes it clear that section 504 was perceived to be necessary not to combat affirmative animus but to cure society's benign neglect of the handicapped. The record is replete with references to discrimination in the form of the denial of special educational assistance to handicapped children. In *Alexander v. Choate, supra,* 469 U.S. at pages 295 to 297 [83 L.Ed.2d at pages 668- 669], the Supreme Court took note of these comments in concluding that a violation of section 504 need not be proven by evidence of purposeful or intentional discrimination. With respect to the *Southeastern Community College v. Davis, supra,* 442 U.S. 397 case, the high court said: "The balance struck in *Davis* requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made. ..." (*Alexander v. Choate, supra,* 469 U.S. at p. 301 [83 L.Ed.2d at p. 672], fn. omitted.)

Federal appellate courts have rejected the argument that the *Southeastern Community College* case means that pursuant to section 504 local educational agencies need do nothing affirmative to accommodate the needs of handicapped children. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra,* 678 F.2d at pp. 852-853; *Tatro v. State of Texas* (5th Cir. 1980) 625 F.2d 557, 564 [63 A.L.R. Fed. 844].) [FN11] We are satisfied that section 504 does impose an obligation upon local school districts to accommodate the needs of handicapped children. However, as was the case with constitutional principles, full judicial development of section 504 as it relates to special education in elementary and secondary school districts was truncated by congressional action. *1587

FN11 Following a remand and another decision by the Court of Appeals, the *Tatro* litigation, *supra,* eventually wound up in the Supreme Court. (*Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883 [82 L.Ed.2d 664, 104 S.Ct. 3371].) However, by that time the Education of the Handicapped Act had replaced section 504 as the means for vindicating the education rights of handicapped children and the litigation was resolved, favorably for the child, under that act.

In 1974 Congress became dissatisfied with the progress under earlier efforts to stimulate the states to accommodate the educational needs of handicapped children. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 180 [73 L.Ed.2d at p. 695].) These earlier efforts had included a 1966 amendment to the Elementary and Secondary Education Act of 1965, and the 1970 version of the Education of the Handicapped Act. (*Ibid.*) The prior acts had been grant programs that did not contain specific guidelines for a state's use of grant funds. (*Ibid.*) In 1974 Congress greatly increased federal funding for education of the handicapped and simultaneously required recipient states to adopt a goal of providing full educational opportunities to all handicapped children. (*Ibid.* [73 L.Ed.2d at pp. 695-696].) The following year Congress amended the Education of the Handicapped Act by enacting the Education for All Handicapped Children Act of 1975. (*Ibid.* [73 L.Ed.2d at p. 696].)

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Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412(1).) (6) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states. (*Smith v. Robinson, supra,* 468 U.S. at p. 1010 [82 L.Ed.2d at p. 764].) To accomplish this purpose the act incorporates the major substantive and procedural requirements of the "right to education" cases which were so prominent in the congressional consideration of the measure. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 194 [73 L.Ed.2d at p. 704].) The substantive requirements of the act have been interpreted in a manner which is "strikingly similar" to the requirements of section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1016-1017 [82 L.Ed.2d at p. 768].) The Supreme Court has noted that Congress intended the act to establish " 'a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.' " (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at p. 200 [73 L.Ed.2d at p. 708] citing the House of Representatives Report.) FN12

> FN12 Consistent with its "basic floor of opportunity" purpose, the act does not require local agencies to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Rather, the act requires that handicapped children be accorded meaningful access to a free public education, which means access that is sufficient to confer some educational benefit. (*Ibid.*)

It is demonstrably manifest that in the view of Congress the substantive requirements of the 1975 amendment to the Education of the Handicapped Act were commensurate with the constitutional obligations of state and local ***1588** educational agencies. Congress found that "State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children;" and "it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law." (20 U.S.C. former § 1400(b)(8) & (9).) FN13

> FN13 That Congress intended to enforce the Fourteenth Amendment to the United States Constitution in enacting the Education of the Handicapped Act has since been made clear. In *Dellmuth v. Muth* (1989) 491 U.S. 223 at pages 231 and 232 [105 L.Ed.2d 181, 189-191, 109 S.Ct. 2397], the court noted that Congress has the power under section 5 of the Fourteenth Amendment to abrogate a state's Eleventh Amendment immunity from suit in federal court, but concluded that the Education of the Handicapped Act did not clearly evince such a congressional intent. In 1990 Congress responded by expressly abrogating state sovereign immunity under the act. (20 U.S.C. § 1403.)

It is also apparent that Congress intended the act to achieve nationwide application: "It is the purpose of this chapter to assure that all handicapped children have available to them, within the time periods specified in section 1412(2)(B) of this title, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children." (20 U.S.C. former § 1400(c).)

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In order to gain state and local acceptance of its substantive provisions, the Education of the Handicapped Act employs a "cooperative federalism" scheme, which has also been referred to as the "carrot and stick" approach. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at pp. 73-74;*City of Sacramento v. State of California, supra,* 156 Cal.App.3d at p. 195.) As an incentive Congress made substantial federal financial assistance available to states and local educational agencies that would agree to adhere to the substantive and procedural terms of the act. (20 U.S.C. §§ 1411, 1412.)For example, the administrative record indicates that for fiscal year 1979-1980, the base year for Santa Barbara's claim, California received $71.2 million in federal assistance, and during fiscal year 1980-1981, the base year for Riverside's claim, California received $79.7 million. We cannot say that such assistance on an ongoing basis is trivial or insubstantial.

Contrary to Riverside's argument, federal financial assistance was not the only incentive for a state to comply with the Education of the Handicapped Act. (7) Congress intended the act to serve as a means by which state and ***1589** local educational agencies could fulfill their obligations under the equal protection and due process provisions of the Constitution and under section 504 of the Rehabilitation Act of 1973. Accordingly, where it is applicable the act supersedes claims under the Civil Rights Act (42 U.S.C. § 1983) and section 504 of the Rehabilitation Act of 1973, and the administrative remedies provided by the act constitute the exclusive remedy of handicapped children and their parents or other representatives. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1009, 1013, 1019 [82 L.Ed.2d at pp. 763, 766, 769].) FN14

FN14 In *Smith v. Robinson, supra,* the court concluded that since the Education of the Handicapped Act did not include a provision for attorney fees, a successful complainant was not entitled to an award of such fees even though such fees would have been available in litigation under section 504 of the Rehabilitation Act of 1973 or section 1983 of the Civil Rights Act. Congress reacted by adding a provision for attorney fees to the Education of the Handicapped Act. (20 U.S.C. § 1415(e)(4)(B).)

As a result of the exclusive nature of the Education of the Handicapped Act, dissatisfied parties in recipient states must exhaust their administrative remedies under the act before resorting to judicial intervention. (*Smith v. Robinson, supra,* 468 U.S. at p. 1011 [82 L.Ed.2d at p. 764].) This gives local agencies the first opportunity and the primary authority to determine appropriate placement and to resolve disputes. (*Ibid.*) If a party is dissatisfied with the final result of the administrative process then he or she is entitled to seek judicial review in a state or federal court. (20 U.S.C. § 1415(e)(2).) In such a proceeding the court independently reviews the evidence but its role is restricted to that of review of the local decision and the court is not free to substitute its view of sound educational policy for that of the local authority. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* 458 U.S. at pp. 206-207 [73 L.Ed.2d at p. 712].) And since the act provides the exclusive remedy for addressing a handicapped child's right to an appropriate education, where the act applies a party cannot pursue a cause of action for constitutional violations, either directly or under the Civil Rights Act (42 U.S.C. § 1983), nor can a party proceed under section 504 of the Rehabilitation Act of 1973. (*Smith v. Robinson, supra,* 468 U.S. at pp. 1013, 1020 [82 L.Ed.2d at pp. 766, 770].)

Congress's intention to give the Education of the Handicapped Act nationwide application was successful. By the time of the decision in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley, supra,* all states except New Mexico had become recipients under the act. (458 U.S. at pp. 183-184 [73 L.Ed.2d at p. 698].) It is important at this point in our discussion to consider the experience of New Mexico, both because the Board of Control relied upon that state's

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failure to adopt the Education of the Handicapped Act as proof that the act is not federally mandated, and because it illustrates the consequences of a failure to adopt the act. ***1590**

In *N. M. Ass'n for Retarded Citizens v. State of N. M.* (D.N.M. 1980) 495 F.Supp. 391, a class action was brought against New Mexico and its local school districts based upon the alleged failure to provide a free appropriate public education to handicapped children. The plaintiffs' causes of action asserting constitutional violations were severed and stayed pending resolution of the federal statutory causes of action. (*Id.* at p. 393.)The district court concluded that the plaintiffs could not proceed with claims under the Education of the Handicapped Act because the state had not adopted that act and, without more, that was a governmental decision within the state's power. (*Id.* at p. 394.) FN15 The court then considered the cause of action under section 504 and found that both the state and its local school districts were in violation of that section by failing to provide a free appropriate education to handicapped children within their territories. (495 F.Supp. at pp. 398-399.)

> FN15 The plaintiffs alleged that the failure of the state to apply for federal funds under the Education of the Handicapped Act was itself an act of discrimination. The district court did not express a view on that question, leaving it for resolution in connection with the constitutional causes of action. (*Ibid.*)

After the district court entered an injunctive order designed to compel compliance with section 504, the matter was appealed. (*N. M. Ass'n for Retarded Citizens v. State of N. M., supra,* 678 F.2d 847.)The court of appeals rejected the defendants' arguments that the plaintiffs were required to exhaust state administrative remedies before bringing their action and that the district court should have applied the doctrine of primary jurisdiction to defer ruling until the Office of Civil Rights could complete its investigation into the charges. (*Id.* at pp. 850-851.)The court also rejected the defendants' arguments that section 504 does not require them to take action to accommodate the needs of handicapped children and that proof of disparate treatment is essential to a violation of section 504. (678 F.2d at p. 854.)The court found sufficient evidence in the record to establish discrimination against handicapped children within the meaning of section 504. (678 F.2d at p. 854.)However, the reviewing court concluded that the district court had applied an erroneous standard in reaching its decision, and the matter was remanded for further proceedings. (*Id.* at p. 855.)

On July 19, 1984, during the proceedings before the Board of Control, a representative of the Department of Education testified that New Mexico has since implemented a program of special education under the Education of the Handicapped Act. We have no doubt that after the litigation we have just recounted New Mexico saw the handwriting on the wall and realized that it could either establish a program of special education with federal financial assistance under the Education of the Handicapped Act, or be compelled through litigation to accommodate the educational needs of handicapped ***1591** children without federal assistance and at the risk of losing other forms of federal financial aid. In any event, with the capitulation of New Mexico the Education of the Handicapped Act achieved the nationwide application intended by Congress. (20 U.S.C. § 1400(c).)

California's experience with special education in the time period leading up to the adoption of the Education of the Handicapped Act is examined as a case study in Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals* (1974) 62 Cal.L.Rev. 40, at pages 96 through 115.As this study reflects, during this period the state and local school districts were struggling to create a program to accommodate adequately the educational needs of the handicapped. (*Id.* at pp. 97-110.)Individuals and organized groups, such as the California Association for the Retarded and the California Association for Neuro-

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logically Handicapped Children, were exerting pressure through political and other means at every level of the educational system.(*Ibid.*) Litigation was becoming so prevalent that the authors noted: "Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California." (*Id.* at p. 106, fn. 295.) FN16

> FN16 Lawsuits primarily fell into three types: (1) Challenges to the adequacy or even lack of available programs and services to accommodate handicapped children. (*Id.* at p. 97, fns. 255, 257.) (2) Challenges to classification practices in general, such as an overtendency to classify minority or disadvantaged children as "retarded." (*Id.* at p. 98, fns. 259, 260.) (3) Challenges to individual classification decisions. (*Id.* at p. 106.)In the absence of administrative procedures for resolving classification disputes, dissatisfied parents were relegated to self-help remedies, such as pestering school authorities, or litigation. (*Ibid.*)

In the early 1970's the state Department of Education began working with local school officials and university experts to design a "California Master Plan for Special Education." (Kirp et al., *Legal Reform of Special Education: Empirical Studies and Procedural Proposals, supra,*62 Cal.L.Rev. at p. 111.)In 1974 the Legislature enacted legislation to give the Superintendent of Public Instruction the authority to implement and administer a pilot program pursuant to a master plan adopted by State Board of Education in order to determine whether services under such a plan would better meet the needs of children with exceptional needs. (Stats. 1974, ch. 1532, § 1, p. 3441, enacting Ed. Code, § 7001.) In 1977 the Legislature acted to further implement the master plan. (Stats. 1977, ch. 1247, especially § 10, pp. 4236-4237, enacting Ed. Code, § 56301.) In 1980 the Legislature enacted urgency legislation revising our special education laws with the express intent of complying with the 1975 amendments to the Education of the Handicapped Act. (Stats. 1980, ch. 797, especially § 9, pp. 2411-2412, enacting Ed. Code, § 56000.)

As this history demonstrates, in determining whether to adopt the requirements of the Education of the Handicapped Act as amended in 1975, our *1592 Legislature was faced with the following circumstances: (1) In the *Serrano* litigation, our Supreme Court had declared basic education to be a fundamental right and, without even considering special education in the equation, had found our educational system to be violative of equal protection principles. (2) Judicial decisions from other jurisdictions had established that handicapped children have an equal protection right to a free public education appropriate to their needs and due process rights with regard to placement decisions. (3) Congress had enacted section 504 of the Rehabilitation Act of 1973 to codify the equal protection rights of handicapped children in any school system that receives federal financial assistance and to threaten the state and local districts with the loss of all federal funds for failure to accommodate the needs of such children. (4) Parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure an appropriate education for handicapped children. (5) In enacting the 1975 amendments to the Education of the Handicapped Act, Congress did not intend to require state and local educational agencies to do anything more than the Constitution already required of them. The act was intended to provide a means by which educational agencies could fulfill their constitutional responsibilities and to provide substantial federal financial assistance for states that would agree to do so.

(8a) Under these circumstances we have no doubt that enactment of the 1975 amendments to the Education of the Handicapped Act constituted a federal mandate under the criteria set forth in *City of Sacramento v. State of California, supra,* 50 Cal.3d at page 76. The remaining question is whether the

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state's participation in the federal program was a matter of "true choice" or was "truly voluntary." The alternatives were to participate in the federal program and obtain federal financial assistance and the procedural protections accorded by the act, or to decline to participate and face a barrage of litigation with no real defense and ultimately be compelled to accommodate the educational needs of handicapped children in any event. We conclude that so far as the state is concerned the Education of the Handicapped Act constitutes a federal mandate.

V. *Subvention for Special Education*

Our conclusion that the Education of the Handicapped Act is a federal mandate with respect to the state marks the starting point rather than the end of the consideration which will be required to resolve the Santa Barbara and Riverside test claims. In *City of Sacramento v. State of California, supra,* 50 Cal.3d at pages 66 through 70, the California Supreme Court concluded that the costs at issue in that case (unemployment insurance premiums) were not subject to state subvention because they were incidental to a law of general ***1593** application rather than a new governmental program or increased level of service under an existing program. The court addressed the federal mandate issue solely with respect to the question whether the costs were exempt from the local government's taxing and spending limitations. (*Id.* at pp. 70-71.)It observed that prior authorities had assumed that if a cost was federally mandated it could not be a state mandated cost subject to subvention, and said: "We here express no view on the question whether 'federal' and 'state' mandates are mutually exclusive for purposes of state subvention, but leave that issue for another day. ..." (*Id.* at p. 71, fn. 16.)The test claims of Santa Barbara and Riverside present that question which we address here for the guidance of the Commission on remand.

(9) The constitutional subvention provision and the statutory provisions which preceded it do not expressly say that the state is not required to provide a subvention for costs imposed by a federal mandate. Rather, that conclusion follows from the plain language of the subvention provisions themselves. The constitutional provision requires state subvention when "the Legislature or any State agency mandates a new program or higher level of service" on local agencies. (Cal. Const., art. XIII B, § 6.) Likewise, the earlier statutory provisions required subvention for new programs or higher levels of service mandated by legislative act or executive regulation. (See Rev. & Tax. Code, former §§ 2164.3 [Stats. 1972, ch. 1406, § 14.7, pp. 2962-2963], 2231 [Stats. 1973, ch. 358, § 3, pp. 783-784], 2207 [Stat. 1975, ch. 486, § 1.8, pp. 997-998], 2207.5 [Stats. 1977, ch. 1135, § 5, pp. 3646-3647].) When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate. (See *City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 76.)

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which ***1594** is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local

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agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

The Education of the Handicapped Act is a comprehensive measure designed to provide all handicapped children with basic educational opportunities. While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. (20 U.S.C. §§ 1412, 1413.)(8b) In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.

We can illustrate this point with a hypothetical situation. Subvention principles are intended to prevent the state from shifting the cost of state governmental services to local agencies and thus subvention is required where the state imposes the cost of such services upon local agencies even if the state continues to perform the services. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835-836.) The Education of the Handicapped Act requires the state to provide an impartial, state-level review of the administrative decisions of local or intermediate educational agencies. (20 U.S.C. § 1415(c), (d).) Obviously, the state could not shift the actual performance of these new administrative reviews to local districts, but it could attempt to shift the costs to local districts by requiring local districts to pay the expenses of reviews in which they are involved. An attempt to do so would trigger subvention requirements. In such a hypothetical case, the state could not avoid its subvention responsibility by pleading "federal mandate" because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, as far as the local agency is concerned, the burden is imposed by a state rather than a federal mandate.

In the administrative proceedings the Board of Control did not address the "federal mandate" question under the appropriate standard and with proper focus on local school districts. In its initial determination the board concluded that the Education of the Handicapped Act constituted a federal mandate and that the state-imposed costs on local school districts in excess of the federally imposed costs. However, the board did not consider the ***1595** extent of the state-mandated costs because it concluded that any appropriation by the state satisfied its obligation. On Riverside's petition for a writ of administrative mandate the superior court remanded to the Board of Control to consider whether the state appropriation was sufficient to reimburse local school districts fully for the state-mandated costs. On remand the board clearly applied the now-discredited criteria set forth in this court's decision in *City of Sacramento v. State of California, supra,* 156 Cal.App.3d 182, and concluded that the Education of the Handicapped Act is not a federal mandate at any level of government. Under these circumstances we agree with the trial court that the matter must be remanded to the Commission for consideration in light of the criteria set forth in the Supreme Court's *City of Sacramento* decision. We add that on remand the Commission must focus upon the costs incurred by local school districts and whether those costs were imposed *on local districts* by federal mandate or by the state's voluntary choice in its implementation of the federal program.

VI. *Riverside's Objections*

In light of this discussion we may now consider Riverside's objections to the trial court's decision to remand the matter to the Commission for reconsideration.

Riverside asserts that the California Supreme Court

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opinion in *City of Sacramento* is not on point because the court did not address the federal mandate question with respect to state subvention principles. Riverside implies that the definition of a federal mandate may be different with respect to state subvention than with respect to taxing and spending limitations. (10) As a general rule and unless the context clearly requires otherwise, we must assume that the meaning of a term or phrase is consistent throughout the entire act or constitutional article of which it is a part. (*Lungren v. Davis* (1991) 234 Cal.App.3d 806, 823 [285 Cal.Rptr. 777].) (11) Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency. Nothing in this scheme suggests that the concept of a federal mandate should have different meanings depending upon whether one is considering subvention or taxing and spending limitations. Accordingly, we reject the claim that the criteria set forth in ***1596** the Supreme Court's *City of Sacramento* decision do not apply when subvention is the issue.

(12) Riverside asserts that the trial court erred in concluding that the Board of Control did not consider the issues under the appropriate criteria and that the board did in fact consider the factors set forth in the Supreme Court's *City of Sacramento* decision. From our discussion above it is clear that we must reject these assertions. In its decision the board relied upon the "cooperative federalism" nature of the Education of the Handicapped Act without any consideration whether the act left the state any actual choice in the matter. In support of its conclusion the board relied upon the New Mexico litigation which we have also discussed. However, as we have pointed out, under the criteria set forth in the Supreme Court's *City of Sacramento* decision, the New Mexico litigation does not support the board's decision but in fact strongly supports a contrary result. We are satisfied that the trial court correctly concluded that the board did not apply the appropriate criteria in reaching its decision.

Riverside asserts that the Supreme Court's *City of Sacramento* decision elucidated and enforced prior law and thus no question of retroactivity arises. (See *Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 37 [196 Cal.Rptr. 704, 672 P.2d 110].) (13) We agree that in *City of Sacramento* the Supreme Court elucidated and enforced existing law. Under such circumstances the rule of retrospective operation controls. (*Ibid.* See also *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 953- 954 [148 Cal.Rptr. 379, 582 P.2d 970]; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672, 680-681 [312 P.2d 680].) Pursuant to that rule the trial court correctly applied the *City of Sacramento* decision to the litigation pending before it. As we have seen, that decision supports the trial court's determination to remand the matter to the Commission for reconsideration.

Riverside asserts that if further consideration under the criteria of the Supreme Court's *City of Sacramento* decision is necessary then the trial court should have, and this court must, engage in such consideration to reach a final conclusion on the question. To a limited extent we agree. In our previous discussion we have concluded that under the criteria set forth in *City of Sacramento*, the Education of the Handicapped Act constitutes a federal mandate as far as the state is concerned. We are satisfied that is the only conclusion which may be drawn and we so hold as a matter of law. However, that conclusion does not resolve the question whether new special education costs were imposed upon local school districts by federal mandate or by

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state choice in the implementation of the federal program. The issues were not addressed by the parties or the Board of Control in this light. The ***1597** Commission on State Mandates is the entity with the responsibility for considering the issues in the first instance and which has the expertise to do so. We agree with the trial court that it is appropriate to remand the matter to the Commission for reconsideration in light of the appropriate criteria which we have set forth in this appeal.

In view of the result we have reached we need not and do not consider whether it would be appropriate otherwise to fashion some judicial remedy to avoid the rule, based upon the separation of powers doctrine, that a court cannot compel the State Controller to make a disbursement in the absence of an appropriation. (See *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at pp. 538- 541.)

Disposition

The judgment is affirmed.

Davis, J., and Scotland, J., concurred.
The petition of plaintiff and respondent for review by the Supreme Court was denied April 1, 1993. Lucas, C.J., Kennard, J., and Arabian, J., were of the opinion that the petition should be granted. ***1598**

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ATTACHMENT NO. 28

Long Beach Unified School District v. State of California (1990) 225 Cal.App.3rd 155

Long Beach Unified School Dist. v. State
Cal.App.2.Dist.

LONG BEACH UNIFIED SCHOOL DISTRICT, Plaintiff and Appellant,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants; MARK H. BLOODGOOD, as Auditor-Controller, etc., et al., Defendants and Respondents.

No. B033742.

Court of Appeal, Second District, Division 5, California.
Nov. 15, 1990.

SUMMARY

A school district filed a claim with the state Board of Control asserting that its expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through an executive order (in the form of regulations issued by the state Department of Education) and were reimbursable pursuant to former Rev. & Tax. Code, § 2234, and Cal. Const., art. XIII B, § 6. The board approved the claim, but the Legislature deleted the requested funding from an appropriations bill and enacted a "finding" that the executive order did not impose a state-mandated local program. The district then filed a petition to compel reimbursement pursuant to Code Civ. Proc., § 1085, and a complaint for declaratory relief. The trial court ruled that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the board's decisions. The court's judgment in favor of the district identified certain funds previously appropriated by the Legislature as "reasonably available" for reimbursement of the claimed expenditures. (Superior Court of Los Angeles County, No. C606020, Robert I. Weil, Judge.)

The Court of Appeal modified the trial court's decision by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts," and by including charging orders against certain funds appropriated through subsequent budget acts. The court affirmed the judgment as so modified and remanded to the trial court to determine whether at the time of its order, there were, in the funds from which reimbursement could properly be paid, unexpended, unencumbered funds sufficient to satisfy the judgment. The court held that since the doctrines of collateral estoppel and waiver were inapplicable to the facts of the case, the trial court should have allowed the state to challenge the board's decisions. However, the court also held that the executive order required local school boards to provide a higher level of service than is required constitutionally or by case law and that the order was a reimbursable state mandate pursuant to Cal. Const., art. XIII B, § 6. The court further held that former Rev. & Tax. Code, § 2234, did not provide reimbursement of the subject claim. (Opinion by Lucas, P. J., with Ashby and Boren, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Judgments § 88--Collateral Estoppel--Finality of Judgment--Administrative Order--Where Appeal Still Possible.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of administrative collateral estoppel was inapplicable and did not prevent the state from litigating whether the state Board of Control properly considered the subject claim and whether the claim was reimbursable. The board had approved the claim but the Legislature had deleted the requested funding from an appropriations bill. The board's decisions were administratively final, for collateral estoppel purposes, since

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no party requested reconsideration within the applicable 10-day period, and no statute or regulation provided for further consideration of the matter by the board. However, a decision will not be given collateral estoppel effect if an appeal has been taken or if the time for such appeal has not lapsed. The applicable statute of limitations for review of the board's decisions was three years, and the school district's action was filed before this period lapsed.

(2) Judgments § 88--Collateral Estoppel--Finality of Judgment.
Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. The traditional elements of collateral estoppel include the requirement that the prior judgment be "final."

(3a, 3b) Administrative Law § 81--Judicial Review and Relief--Finality of Administrative Action--For Collateral Estoppel Purposes.
Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: the decision must be final with respect to action by the administrative agency, and the decision must have conclusive effect. A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses no further power to reconsider or rehear the claim. To have conclusive effect, the decision must be free from direct attack.

(4) Limitation of Actions § 30--Commencement of Period.
A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon.

(5a, 5b, 5c) Estoppel and Waiver § 23--Waiver--State's Right to Contest Board of Control's Findings as to State-mandated Costs.
In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the doctrine of waiver did not preclude the state from contesting the state Board of Control's previous findings that the subject claim was reimbursable (the Legislature subsequently deleted the requested funding from an appropriations bill). The statute of limitations applicable to an appeal by the state from the board's decisions had not run at the time the state raised its affirmative defenses in the district's action, and this assertion of defenses was inconsistent with an intent on the state's part to waive its right to contest the board's decisions.

(6) Estoppel and Waiver § 19--Waiver--Requisites.
A waiver occurs when there is an existing right, actual or constructive knowledge of its existence, and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. Ordinarily the issue of waiver is a question of fact that is binding on the appellate court if the determination is supported by substantial evidence. However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference.

(7) Estoppel and Waiver § 6--Equitable Estoppel--Challenge to State Board of Control's Findings as to State-mandated Costs--Absence of Confidential Relationship.
In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the state was not equitably estopped from challenging the state Board of Control's decisions finding that the subject claim was reimbursable as a state-mandated cost (the Legislature subsequently deleted the requested funding from an appropriations bill). In the absence of a confidential relationship, the doctrine of equitable estoppel is inapplicable where there is a mistake of law. There was no confidential relationship, and since the statute of limitations did not bar the state from litigating the mandate and reimbursability issues, the doctrine was inapplicable.

(8) Appellate Review § 145--Function of Appellate

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Court--Questions of Law.
On appeal by the state in an action by a school district to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the appellate court's conclusion that the trial court erred in failing to consider the merits of the state's challenge to the state Board of Control's decisions that the subject claims were reimbursable as state-mandated costs did not require that the matter be remanded to the trial court for a full hearing, since the question of whether a cost is state-mandated is one of law.

(9a, 9b, 9c) Schools § 4--School Districts; Financing; Funds-- Reimbursement of State-mandated Costs--Desegregation Expenditures.
A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since an executive order (in the form of regulations issued by the state Department of Education) required a higher level of service and constituted a state mandate. The requirements of the order went beyond constitutional and case law requirements in that they required specific actions to alleviate segregation. Although under Cal. Const., art. XIII B, § 6, subd. (c), the state has discretion whether to reimburse pre-1975 mandates that are either statutes or executive orders implementing statutes, it cannot be inferred from this exception that reimbursability is otherwise dependent on the form of the mandate. Further, the district's claim was not defeated by Gov. Code, §§ 17561 and 17514, limiting reimbursement to certain costs incurred after July 1, 1980, the effective date of Cal. Const., art. XIII B, since the limitations contained in those sections are confined to the exception contained in Cal. Const., art. XIII B, § 6, subd. (c).

(10) State of California § 11--Fiscal Matters--Reimbursement to Local Governments for State-mandated Costs.
The subvention requirement of Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), is directed to state-mandated increases in the services provided by local agencies in existing "programs." The drafters and electorate had in mind the commonly understood meaning of the term-programs that carry out the governmental function of providing services to the public, or laws that, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.
[See **Cal.Jur.3d,** State of California, § 78; 9 **Witkin,** Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]
(11) Constitutional Law § 13--Construction of Constitutions--Language of Enactments.
In construing a constitutional provision enacted by the voters, a court must determine the intent of the voters by first looking to the language itself, which should be construed in accordance with the natural and ordinary meaning of its words.

(12) State of California § 11--Fiscal Matters--Reimbursement to Local Governments for State-mandate Costs--Executive Order as Mandate.
In Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), "mandates" means "orders" or "commands," concepts broad enough to include executive orders as well as statutes. The concern that prompted the inclusion of § 6 in art. XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services that the state believed should be extended to the public. It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared.

(13) Administrative Law § 88--Judicial Review and Relief--Exhaustion of Administrative Remedies-

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-Claim by School District for Reimbursement of State-mandated Costs.
A school district did not fail to exhaust its administrative remedies in seeking reimbursement for expenditures related to its efforts to alleviate racial and ethnic segregation, based on its claim that the expenditures were mandated by a state executive order, where the state Board of Control approved the district's reimbursement claim, even though the state Commission on State Mandates subsequently succeeded to the functions of the board and the district never made a claim to the commission. The board's decisions in favor of the district became administratively final before the commission was in place, and there was no evidence that the commission did not consider these decisions by the board to be final. Although the commission was given jurisdiction over all claims that had not been included in a local government claims bill enacted before January 1, 1985, the subject claim was included in such a bill (which was signed into law only after the recommended appropriation was deleted). Under the statutory scheme, the district pursued the only relief that a disappointed claimant at such a juncture could pursue-an action in declaratory relief to declare an executive order void or unenforceable and to enjoin its enforcement. There was no requirement to seek further administrative review.

(14) Courts § 20--Subject Matter Jurisdiction--When Issue May Be Raised.
Lack of subject matter jurisdiction may be raised at any time.

(15a, 15b) Schools § 4--School Districts; Financing; Funds-- Reimbursement of State-mandated Costs--Desegregation Expenditures-- Applicability of Statute Requiring Reimbursement of Subsequently Mandated Costs.
A school district was not entitled to reimbursement on the basis of former Rev. & Tax. Code, § 2234 (reimbursement of school district for costs it is incurring that are subsequently mandated by a state), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, since the executive order (in the form of regulations issued by the state Department of Education) that required the district to take specific actions to alleviate segregation fell outside the purview of § 2234. The "subsequently mandated" provision of § 2234 originally was contained in sections that set forth specific date limitations, and the Legislature likewise intended to limit claims made pursuant to § 2234. The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs. Since the executive order fell outside the January 1, 1978, limits set by Rev. & Tax. Code, § 2207.5, Rev. & Tax. Code, § 2234, did not provide reimbursement to the district.

(16) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
A statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. The legislative history of the statute may be considered in ascertaining legislative design.

(17a, 17b, 17c) Constitutional Law § 40--Distribution of Governmental Powers--Judicial Power--Appropriation of Funds--Reimbursement of State-mandated Costs.
In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court's award of reimbursement to the district, on the ground that the district's expenditures were mandated by an executive order, from appropriated funds and specified budgets and accounts did not constitute an invasion of the province of the Legislature or a judicial usurpation of the republican form of government guaranteed by U.S. Const., art. IV, § 4, except insofar as it designated the Special Fund for Economic Uncertainties as a source for reimbursement. The specified line item accounts for the Department of Education, the Commission on State Mandates, and the Reserve for Contingencies and Emergencies provided funds for a broad range of activities simil-

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ar to those specified in the executive order and thus were reasonably available for reimbursement. However, remand to the trial court was necessary to determine whether these sources contained sufficient unexhausted funds to cover the award.

(18) Constitutional Law § 40--Distribution of Governmental Powers--Judicial Power--Appropriation of Funds.
A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. The test is whether such funds are reasonably available for the expenditures in question. Funds are "reasonably available" for reimbursement of local government expenditures when the purposes for which those funds were appropriated are generally related to the nature of costs incurred. There is no requirement that the appropriation specifically refer to the particular expenditure, nor must past administrative practice sanction coverage from a particular fund.

(19) Appellate Review § 162--Modification--To Add Charge Order.
An appellate court is empowered to add a directive that a trial court order be modified to include charging orders against funds appropriated by subsequent budgets acts.

(20) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--Effect of Legislative Finding That Costs Not State-mandated.
A school district was entitled to reimbursement pursuant to Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated costs or increased levels of service), for expenditures related to its efforts to alleviate racial and ethnic segregation in its schools, notwithstanding that after the state Board of Control approved the district's reimbursement claim, the Legislature enacted a "finding" that the executive order requiring the district to undertake desegregation activities did not impose a state-mandated local program. Unsupported legislative disclaimers are insufficient to defeat reimbursement. The district had a constitutional right to reimbursement, and the Legislature could not limit that right.

(21) Schools § 4--School Districts; Financing; Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--Department of Education Budget as Source.
In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in ordering reimbursement to take place in part from the state Department of Education budget. Logic dictated that department funding be the initial and primary source for reimbursement: given the fact that the executive order was issued by the department, the evidence overwhelmingly supported the trial court's finding of a general relationship between the department budget items and the reimbursable expenditures.

(22) Interest § 8--Rate--Reimbursement of School District's State-mandated Costs.
In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in awarding the district interest at the legal rate (Cal. Const., art. XV, § 1, par. (2)), rather than at the rate of 6 percent per annum pursuant to Gov. Code, § 926.10. Gov. Code, § 926.10, is part of the California Tort Claims Act (Gov. Code, § 900 et seq.), which provides a statutory scheme for the filing of claims against public entities for alleged injuries. It makes no provision for claims for reimbursement for state-mandated expenditures.

(23) Schools § 4--School Districts; Financing;

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Funds--Reimbursement of State-mandated Costs--Desegregation Expenditures--County Fines and Forfeitures Funds as Source.

In an action by a school district against the state to compel the state to reimburse the district for expenditures related to its efforts to alleviate racial and ethnic segregation, the trial court, after finding that the executive order requiring the district to undertake desegregation activities was a reimbursable state mandate, did not err in determining that moneys in the Fines and Forfeiture Funds in the custody and possession of the county auditor-controller for transfer to the state treasury were not reasonably available for reimbursement purposes. There was no evidence in the record showing the use of those funds once they were transmitted to the state, nor was there any evidence indicating that those funds were then reasonably available to satisfy the district's claim. It could not be concluded as a matter of law that a general relationship existed between the funds and the nature of the costs incurred pursuant to the executive order. Further, there was no ground on which the funds could be made available to the district while in the possession of the auditor-controller.

COUNSEL

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Ball, Hunt, Hart, Brown & Baerwitz, Anthony Murray, Allan E. Tebbetts, Agnes H. Mulhearn, Ross & Scott, William D. Ross, Corin L. Kahn and Diana P. Scott for Plaintiff and Appellant.**LUCAS, P. J.**

Introduction

Long Beach Unified School District (LBUSD) filed a claim with the Board of Control of the State of California (Board), asserting that certain expenditures related to its efforts to alleviate racial and ethnic segregation in its schools had been mandated by the state through regulations (Executive Order) issued by the Department of Education (DOE) and were *164 reimbursable pursuant to former Revenue and Taxation Code section 2234 and article XIII B, section 6 of the California Constitution. The Board eventually approved the claim and reported to the Legislature its recommendation that funds be appropriated to cover the statewide estimated costs of compliance with the Executive Order. When the Legislature deleted the requested funding from an appropriations bill, LBUSD filed a petition to compel reimbursement (Code Civ. Proc., § 1085) and complaint for declaratory relief. The trial court held that the doctrines of administrative collateral estoppel and waiver prevented the state from challenging the decisions of the Board, and it gave judgment to LBUSD. It also ruled that certain funds previously appropriated by the Legislature were "reasonably available" for reimbursement of the claimed expenditures, subject to audit by the state Controller.

We conclude that the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case. However, we determine as a question of law that the Executive Order requires local school boards to provide a higher level of service than is required either constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. We also decide that former Revenue and Taxation Code section 2234 does not provide for reimbursement of the claim.

Based on uncontradicted evidence, we modify the decision of the trial court regarding which budget line item account numbers provide "reasonably available" funds to reimburse LBUSD for appropriate expenditures under the claim. We further modify the decision to include charging orders against funds appropriated by subsequent budget acts. Finally, we remand the matter to the trial court to determine whether at the time of its order unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line

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item account numbers. The trial court must resolve this same issue with respect to the charging order.

Background and Procedural History

The California Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 1, p. 2931) limited the power of local governmental entities to levy property taxes. It also mandated that when the state requires such entities to provide a new program or higher level of service, the state must reimburse those costs. Over time, amendments to the California Constitution and numerous legislative changes impacted both the right and procedure for obtaining reimbursement. *165

Sometime prior to September 8, 1977, LBUSD, at its option, voluntarily began to incur substantial costs to alleviate the racial and ethnic segregation of students within its jurisdiction.

On or about the above date, DOE adopted certain regulations which added sections 90 through 101 to title 5 of the California Administrative Code, effective September 16, 1977. We refer to these regulations as the Executive Order.

The Executive Order and related guidelines for implementation required in part that school districts which identified one or more schools as either having or being in danger of having segregation of its minority students "shall, no later than January 1, 1979, and each four years thereafter, develop and adopt a reasonably feasible plan for the alleviation and prevention of racial and ethnic segregation of minority students in the district."

On or about June 4, 1982, LBUSD submitted a "test claim" (Claim) [FN1] to the Board for reimbursement of $9,050,714-the total costs which LBUSD claimed it had incurred during fiscal years 1977-1978 through 1981-1982 for activities required by the Executive Order and guidelines. LBUSD cited former Revenue and Taxation Code section 2234 as authority for the requested reimbursement, asserting that the costs had been "subsequently mandated" by the state. [FN2]

FN1 Former Revenue and Taxation Code section 2218 defines "test claim" as "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Stats. 1980, ch. 1256, § 7, p. 4249.)

FN2 All statutory references are to the Revenue and Taxation Code unless otherwise stated.
Former section 2234 provided: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for such costs incurred after the operative date of such mandate." (Stats. 1980, ch. 1256, § 11, pp. 4251-4252.)

The Board denied the Claim on the grounds that it had no jurisdiction to accept a claim filed under section 2234. LBUSD petitioned superior court for review of the Board decision. (Code Civ. Proc., § 1094.5.)That court concluded the Board had jurisdiction to accept a section 2234 claim and ordered it to hear the matter on its merits. The Board did not appeal this decision.

On February 16, 1984, the Board conducted a hearing to consider the Claim. LBUSD presented written and oral argument that the Claim was reimbursable pursuant to section 2234 and, in addition, under article XIII B, section 6 of the California Constitution. DOE and the State Department *166 of Finance (Finance) participated in the hearing. [FN3] The Board concluded that the Executive Order constituted a state mandate. On April 26, 1984, the Board adopted parameters and guidelines proposed by LBUSD for reimbursement of the expenditures. No state entity either sought reconsideration of the Board decisions, available pursuant to former section 633.6 of the California Administrative Code, FN4 or petitioned for judicial review. [FN5]

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FN3 The DOE recommended that the Claim be denied on the grounds that the requirements of the Executive Order were constitutionally mandated and court ordered and because the Executive Order was effective prior to January 1, 1978 (issues discussed *post*). However, counsel for the DOE expressed dismay that school districts which had voluntarily instituted desegregation programs had been having problems receiving funding from the Legislature, while schools which had been forced to do so had been receiving "substantial amounts of money."
A spokesman from Finance recalled there had been some doubt whether the Board had jurisdiction to hear a 2234 claim. He stated that, assuming the Board did have jurisdiction, the Executive Order contained at least one state mandate, which possibly consisted of administrative kinds of tasks related to the identification of "problem areas and the like."

FN4 Former section 633.6 of the California Administrative Code (now renamed California Code of Regulations) provided in relevant part: "(b) Request for Reconsideration. [¶] (1) A request for reconsideration of a Board determination on a specific test claim ... shall be filed, in writing, with the Board of Control, no later than ten (10) days after any determination regarding the claim by the Board ...." (Title 2, Cal. Admin. Code)

FN5 Former section 2253.5 provided: "A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside a decision of the Board of Control on the grounds that the board's decision is not supported by substantial evidence. The court may order the board to hold another hearing regarding such claim and may direct the board on what basis the claim is to receive a rehearing." (Stats. 1978, ch. 794, § 8, p. 2551.)

In December 1984, pursuant to former section 2255, the Board reported to the Legislature the number of mandates it had found and the estimated statewide costs of each mandate. With respect to the Executive Order mandate, the Board adopted an estimate by Finance that reimbursement of school districts, including LBUSD, for costs expended in compliance with the Executive Order would total $95 million for fiscal years 1977-1978 through 1984-1985. The Board recommended that the Legislature appropriate that amount.

Effective January 1, 1985, the Commission on State Mandates (Commission) succeeded to the functions of the Board. (Gov. Code, §§ 17525, 17630.)

On March 4, 1985, Assembly Bill No. 1301 was introduced. It included an appropriation of $95 million to the state controller "for payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to [the Executive Order] ...." On June 27, the Assembly amended the bill by deleting this $95 million appropriation and adding a ***167** "finding" that the Executive Order did not impose a state-mandated local program. FN6On September 28, 1985, the Governor approved the bill as amended.

FN6 Former Section 2255 provided in part: "(b) If the Legislature deletes from a local government claims bill funding for a mandate imposed either by legislation or by a regulation ..., it may take one of the following courses of action: (1) Include a finding that the legislation or regulation does not contain a mandate ...." (Stats. 1982, ch. 1638, § 7, p. 6662.)

On June 26, 1986, LBUSD petitioned for writ of mandate (Code Civ. Proc., § 1085) and filed a complaint for declaratory relief against defendants State of California; Commission; Finance; DOE; holders

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of the offices of State Controller and State Treasurer and holder of the office of Auditor-Controller of the County of Los Angeles, and their successors in interest. LBUSD requested issuance of a writ of mandate commanding the respondents to comply with section 2234 (fn. 2, *ante*) [FN7] and, in an amended petition, its successor, Government Code section 17565, and with California Constitution, article XIII B, section 6. [FN8] It further requested respondents to reimburse LBUSD $24,164,593 for fiscal years 1977-1978 through 1982-1983, $3,850,276 for fiscal years 1983-1984 and 1984-1985, and accrued interest, for activities mandated by the Executive Order.

FN7 The language of Government Code section 17565 is nearly identical to that of section 2234 (fn. 2, *ante*), and provides: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." (Stats. 1986, ch. 879, § 10, p. 3043.)

FN8 Article XIII B, section 6 provides in pertinent part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service ...."

The trial court let stand the conclusion of the Board that the Executive Order constituted a reimbursable state mandate and ruled in favor of LBUSD. No party requested a statement of decision.

The judgment stated that the Executive Order constituted a reimbursable state mandate which state entities could not challenge because of the doctrines of administrative collateral estoppel and waiver. It provided that certain previously appropriated funds were " 'reasonably available' " to reimburse LBUSD for its claimed expenditures, applicable interest, and court costs. The judgment also stated that funds denominated the "Fines and Forfeitures Funds," under the custody of the Auditor-Controller of the County of Los Angeles, were not reasonably available. The judgment further decreed that the State Controller retained the right to audit the claims and records of LBUSD to verify the amount of the reimbursement award sum. ***168**

State respondents (State) and DOE separately filed timely notices of appeal, and LBUSD cross-appealed. [FN9]

FN9 Although an "Amended Notice to Prepare Clerk's Transcript" filed by DOE on April 11, 1988, requests the clerk of the superior court to incorporate in the record its notice of appeal filed April 1, 1988, this latter document does not appear in the record before us, and the original apparently is lost within the court system. Respondent LBUSD received a copy of the notice on April 4, 1988.

Discussion

State asserts that neither the doctrine of collateral estoppel nor the doctrine of waiver is applicable to this case, the costs incurred by LBUSD are not reimbursable, and the remedy authorized by the trial court is inconsistent with California law and invades the province of the Legislature, a violation of article IV, section 4 of the United States Constitution.

The thrust of the DOE appeal is that its budget is not an appropriate source of funding for the reimbursement.

LBUSD has argued in its cross-appeal that an additional source of funding, the "Fines and Forfeiture Funds," should be made available for reimbursement of its costs and, in supplementary briefing, requests this court to order a modification of the judgment to include as "reasonably available fund-

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ing" specific line item accounts from the 1988-1989 and 1989-1990 state budgets.

I. State Not Barred From Challenging Decisions of the Board

A. Administrative Collateral Estoppel

(1a) State first contends that the doctrine of administrative collateral estoppel is not applicable to the facts of this case and does not prevent State from litigating whether the Board properly considered the subject claim and whether the claim is reimbursable.

(2) Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 604 [25 Cal.Rptr. 559, 375 P.2d 439].) The traditional elements of collateral estoppel include the requirement that the prior judgment be "final." (*Ibid.*)

(3a) Finality for the purposes of administrative collateral estoppel may be understood as a two-step process: (1) the decision must be final with ***169** respect to action by the administrative agency (see Code Civ. Proc., § 1094.5, subd. (a)); and (2) the decision must have conclusive effect (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 936-937 [190 Cal.Rptr. 29]).

A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses "no further power to reconsider or rehear the claim. [Fn. omitted.]" (*Chas. L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 98 [31 Cal.Rptr. 524].) (1b) In the case at bar, former section 633.6 of the Administrative Code provided a 10-day period during which any party could request reconsideration of any Board determination (fn. 4, *ante*). The Board decided on February 16, 1984, that the Executive Order constituted a state mandate, and on April 26, 1984, it adopted parameters and guidelines for the reimbursement of the claimed expenditures. No party requested reconsideration, no statute or regulation provided for further consideration of the matter by the Board (see, e.g., *Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918]), and the decisions became administratively final on February 27, 1984, and May 7, 1984, respectively FN10 (*Ziganto v. Taylor* (1961) 198 Cal.App.2d 603, 607 [18 Cal.Rptr. 229]).

> FN10 We take judicial notice pursuant to Evidence Code section 452, subdivision (h), that February 26, 1984, and May 6, 1984, fall on Sundays.

(3b) Next, the decision must have conclusive effect. (*Sandoval v. Superior Court, supra,* 140 Cal.App.3d 932, 936-937.) In other words, the decision must be free from direct attack. (*People v. Sims* (1982) 32 Cal.3d 468, 486 [186 Cal.Rptr. 77, 651 P.2d 321].) A direct attack on an administrative decision may be made by appeal to the superior court for review by petition for administrative mandamus. (Code Civ. Proc., § 1094.5.)(1c) A decision will not be given collateral estoppel effect if such appeal has been taken or if the time for such appeal has not lapsed. (*Sandoval v. Superior Court, supra,* 140 Cal.App.3d at pp. 936-937;*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 911 [226 Cal.Rptr. 558, 718 P.2d 920].) The applicable statute of limitations for such review in the case at bar is three years. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534 [234 Cal.Rptr. 795]; *Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256].) (4) A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon. (*Dillon v. Board of Pension Comm'rs.*(1941) 18 Cal.2d 427, 430 [116 P.2d 37, 136 A.L.R. 800].)

(1d) In the instant case, State's causes of action accrued when the Board made the two decisions adverse to State on February 16 and April 26, 1984,

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*170 as discussed. State did not request reconsideration, and the decisions became administratively final on February 27 and May 7, 1984. FN11 For purposes of discussion, we will assume the applicable three-year statute of limitations period for the two Board decisions commenced on February 28 and May 8, 1984, and ended on February 28 and May 8, 1987. FN12 LBUSD filed its petition for ordinary mandamus (Code Civ. Proc., § 1085) and complaint for declaratory relief on June 26, 1986. At that point, the limitations periods had not run against State and the Board decisions lacked the necessary finality to satisfy that requirement of the doctrine of administrative collateral estoppel. FN13

FN11 We do not address the contention of LBUSD that State failed to exhaust its administrative remedies (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [109 P.2d 942, 132 A.L.R. 715]; *Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 982 [88 Cal.Rptr. 533]) and therefore State cannot assert its affirmative defenses in response to the petition and complaint of the school district. Traditionally, the doctrine has been raised as a bar only with respect to the party seeking judicial relief, not against the responding party (*ibid.*); we have found no case holding otherwise.

FN12 If State had sought reconsideration and its request been denied, or if its request had been granted but the matter again decided in favor of LBUSD, the Board decision would have been final 10 days after the Board action, and at that point the statute would have commenced to run against State.

FN13 State argues that its statute of limitations did not commence until the legislation was enacted without the appropriation (Sept. 28, 1985), citing *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at page 548. However, *Carmel Valley* held that the *claimant* does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete, which occurred in that case when the legislation was enacted without the subject appropriations. At that point, *Carmel Valley* reasoned, the state had breached its duty to reimburse, and the claimant's right of action in traditional mandamus accrued. (*Ibid.*) However, *Carmel Valley* decided, as do we in the case at bar, that the state's statute of limitations commenced on the date the Board made decisions adverse to its interests.(*Id.* at p. 534.)
In addition, we see no reason to permit State to rely on the fortuitous actions of the Legislature, an independent branch of government, to bail it out of obligations established in the distant past by state agents-especially given the lengthy three-year statute of limitations. (Compare, e.g., Gov. Code, § 11523 [mandatory time limit within which to petition for administrative mandamus can be 30 days after last day on which administrative reconsideration can be ordered]; Lab. Code, § 1160.8, and *Jackson & Perkins Co. v. Agricultural Labor Relations Board* (1978) 77 Cal.App.3d 830, 834 [144 Cal.Rptr. 166] [30 days from issuance of board order even if party has filed a motion to reconsider].)

B. Waiver

(5a) State also asserts that the doctrine of waiver is not applicable.

(6) A waiver occurs when there is "an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce *171 a reasonable belief that it has been waived. [Citations.]" (*Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at p. 534.) Ordinarily, the issue of

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waiver is a question of fact which is binding on the appellate court if the determination is supported by substantial evidence. (*Napa Association of Public Employees v. County of Napa* (1979) 98 Cal.App.3d 263, 268 [159 Cal.Rptr. 522].) However, the question is one of law when the evidence is not in conflict and is susceptible of only one reasonable inference. (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 151-152 [135 Cal.Rptr. 802].)

(5b) In the instant case, the right to contest the findings of the Board is at issue, and there is no dispute that the state was aware of the existence of this right. As discussed, the statute of limitations had not run when State raised its affirmative defenses, and during this time State could have filed a separate petition for administrative mandamus. (7)(5c) State's assertion of its affirmative defenses during this period is inconsistent with an intent to waive its right to contest the Board decisions, and therefore the doctrine of waiver is not applicable. FN14

FN14 LBUSD contends that State should be equitably estopped from challenging the Board decisions. In the absence of a confidential relationship, the doctrine of equitable estoppel is inapplicable where there is a mistake of law. (*Gilbert v. City of Martinez* (1957) 152 Cal.App.2d 374, 378 [313 P.2d 139]; *People v. Stuyvesant Ins. Co.* (1968) 261 Cal.App.2d 773, 784 [68 Cal.Rptr. 389].) There is no confidential relationship herein, and since we conclude as a matter of law and contrary to the trial court that the statute of limitations does not bar State from litigating the mandate and reimbursability issues, the doctrine is inapplicable.

II. Issue of State Mandate

(8) Ordinarily, our conclusion that the trial court erred in failing to consider the merits of the State's challenge to the decisions of the Board would require that the matter be remanded to the trial court for a full hearing. However, because the question of whether a cost is state mandated is one of law in the instant case (cf. *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at p. 536), we now decide that the expenditures are reimbursable pursuant to article XIII B, section 6 of the California Constitution and that no relief is available under section 2234. FN15 ***172**

FN15 We invited State, DOE, and LBUSD to submit additional briefing on the following issues: "1. Can it be determined as a question of law whether sections 90 through 101 of Title 5 of the California Administrative Code [Executive Order] constitute a state mandate within the meaning of article XIII B, section 6 of the California Constitution? 2. Do the above sections constitute such mandate?" State and LBUSD submitted additional argument; DOE declined the invitation.

A. Recovery Under Article XIII B, Section 6

(9a) On November 6, 1979, California voters passed initiative measure Proposition 4, which added article XIII B to the state Constitution. This measure, a corollary to the previously passed Proposition 13 (art. XIII A, which restricts governmental taxing authority), placed limits on the growth of state and local government appropriations. It also provided reimbursement to local governments for the costs of complying with certain requirements mandated by the state. LBUSD argues that section 6 of this provision is an additional ground for reimbursement.

1. The Executive Order Requires a Higher Level of Service

In relevant part article XIII B, section 6 (Section 6) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such

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local government for the costs of such program or increased level of service ...." (10) The subvention requirement of Section 6 "is directed to state mandated increases in the services provided by local agencies in existing 'programs.' " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].) "[T]he drafters and the electorate had in mind the commonly understood meanings of the term-programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Ibid.*)

(9b) In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly governmental function. (Cf. *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at p. 537.) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of Section 6.

State argues that the Executive Order does not mandate a higher level of service-or a new program-because school districts in California have a constitutional duty to make an effort to eliminate racial segregation in the public schools. In support of its argument, State cites *Brown v. Board of Education* (1952) 347 U.S. 483, 495 [98 L.Ed. 873, 881, 74 S.Ct. 686, 38 A.L.R.2d 1180]; *Jackson v. Pasadena City School District* (1963) 59 Cal.2d 876, 881 [31 Cal.Rptr. 606, 382 P.2d 878]; *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28] and cases cited therein; and **173National Assn. for Advancement of Colored People v. San Bernardino City Unified Sch. Dist.* (1976) 17 Cal.3d 311 [130 Cal.Rptr. 744, 551 P.2d 48]. These cases show that school districts do indeed have a constitutional obligation to alleviate racial segregation, and on this ground the Executive Order does not constitute a "new program." However, although school districts are required to "take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause [ ]' " (*Crawford, supra,* at p. 305, italics omitted, citing *Jackson*), the courts have been wary of requiring specific steps in advance of a demonstrated need for intervention (*Crawford*, at pp. 305-306;*Jackson, supra,* at pp. 881-882; *Swann v. Board of Education* (1971) 402 U.S. 1, 18-21 [28 L.Ed.2d 554, 567-570, 91 S.Ct. 1267]). On the other hand, courts have required specific factors be considered in determining whether a school is segregated (*Keyes v. School District No. 1, Denver, Colo.* (1973) 413 U.S. 189, 202-203 [37 L.Ed.2d 548, 559-560, 93 S.Ct. 2686]; *Jackson, supra,* at p. 882).

The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. (*County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 50.) A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. (*Id.*, at pp. 54-56.)However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have *suggested* that certain steps and approaches may be helpful, the Executive Order and guidelines *require* specific actions. For example, school districts are to conduct mandatory biennial racial and ethnic surveys, develop a "reasonably feasible" plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the "reasonably feasible" description of *Jackson* and *Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimburs-

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able: "[O]nly those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."

2. The Executive Order Constitutes a State Mandate

For the sake of clarity we quote Section 6 in full: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to ***174** reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] *(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."*(Italics added.) This amendment became effective July 1, 1980. (Art. XIII B, § 10.)Again, the Executive Order became effective September 16, 1977.

State argues there is no constitutional ground for reimbursement because (a) with reference to the language of exception (c) of Section 6, the Executive Order is neither a statute nor an executive order or regulation implementing a statute; (b) recent legislation limits reimbursement to certain costs incurred after July 1, 1980, the effective date of the constitutional amendment; and (c) LBUSD failed to exhaust administrative procedures for reimbursement of Section 6 claims (Gov. Code, § 17500 et seq.). We conclude that recovery is available under Section 6.

(a) *Form of Mandate*

State argues the Executive Order is not a state mandate because, with reference to exception (c) of Section 6, it is neither a statute nor an executive order implementing a statute.

(11) In construing the meaning of Section 6, we must determine the intent of the voters by first looking to the language itself (*County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56), which " 'should be construed in accordance with the natural and ordinary meaning of its words.' [Citation.]" (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 865 [210 Cal.Rptr. 226, 693 P.2d 811].) The main provision of Section 6 states that whenever the Legislature or any state agency "mandates" a new program or higher level of service, the state must provide reimbursement. (12) We understand the use of "mandates" in the ordinary sense of "orders" or "commands," concepts broad enough to include executive orders as well as statutes. As has been noted, "[t]he concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation *or adopt administrative orders* creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56.) It is clear that the primary concern of the voters was the increased financial ***175** burdens being shifted to local government, not the form in which those burdens appeared.

We derive support for our interpretation by reference to the ballot summary presented to the electorate. (Cf. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) The legislative analyst determined that the amendment would limit the rate of growth of governmental appropriations, require the return of taxes which exceeded amounts appropriated, and "[r]equire the state to reimburse local governments for the costs of complying with 'state mandates.' " The term "state mandates" was defined as "requirements imposed on local governments by legislation *or executive orders.*" (Italics added; Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to

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voters, Special Statewide Elec. (Nov. 6, 1979) p. 16.)

(9c) Although exception (c) of Section 6 gives the state discretion whether to reimburse pre-1975 mandates which are either statutes or executive orders implementing statutes, we do not infer from this exception that reimbursability is otherwise dependent on the form of the mandate. We conclude that since the voters provided for mandatory reimbursement except for the three narrowly drawn exceptions found in (a), (b), and (c), there was no intent to exclude recovery for state mandates in the form of executive orders. Further, as State sets forth in its brief, the adoption of the Executive Order was "arguably prompted" by the decision in *Crawford v. Board of Education, supra,* 17 Cal.3d 280, a case decided after the 1975 cutoff date of exception (c). Since case law and statutory law are of equal force, there appears to be no basis on which to exclude executive orders which implement case law or constitutional law while permitting reimbursement for executive orders implementing statutes. We see no relationship between the proposed distinction and the described purposes of the amendment (*County Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56;*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545 [263 Cal.Rptr. 351]).

(b) *Recent Legislative Limits*

State contends that LBUSD cannot claim reimbursement under Section 6 because Government Code sections 17561 (Stats. 1986, ch. 879, § 6, p. 3041) and 17514 (Stats. 1984, ch. 1459, § 1, p. 5114) limit such recovery to mandates created by statutes or executive orders implementing statutes, and only for costs incurred after July 1, 1980.

As discussed above, the voters did not intend to limit reimbursement of costs only to those incurred pursuant to statutes or executive orders implementing ***176** statutes except as set forth in exception (c) of Section 6. We presume that when the Legislature passed Government Code sections 17561 and 17514 it was aware of Section 6 as a related law and intended to maintain a consistent body of rules. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449].) As discussed above, the limitations suggested by State are confined to exception (c).

Further, the state must reimburse costs incurred pursuant to mandates enacted after January 1, 1975, although actual payments for reimbursement were not required to be made prior to July 1, 1980, the effective date of Section 6. (*Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at pp. 547-548;*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 191-194 [203 Cal.Rptr. 258],disapproved on other grounds in *County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 58, fn. 10.)

(c) *Administrative Procedures*

The Legislature passed Government Code section 17500 et seq. (Stats. 1984, ch. 1459, § 1, p. 5113), effective January 1, 1985 (Stats. 1984, ch. 1459, § 1, p. 5123), to aid the implementation of Section 6 and to consolidate the procedures for reimbursement under statutes found in the Revenue and Taxation Code. This legislation created the Commission, which replaced the Board, and instituted a number of procedural changes. (Gov. Code, §§ 17525, 17527, subd. (g), 17550 et seq.) The Legislature intended the new system to provide "the sole and exclusive procedure by which a local agency or school district" could claim reimbursement. (Gov. Code, § 17552.)(13) State argues that since LBUSD never made its claim before the Commission, it failed to exhaust its administrative remedies and cannot now receive reimbursement under section 6.

As discussed, the Board decisions favorable to LBUSD became administratively final in 1984. The Commission was not in place until January 1, 1985. There is no evidence in the record that the Commission did not consider these decisions to be final.

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State argues the Commission was given jurisdiction over all claims which had not been included in a local government claims bill enacted before January 1, 1985. (Gov. Code, § 17630.)State is correct. However, the subject claim was included in such a bill, but the bill was signed into law after the recommended appropriation had been deleted. Under the statutory scheme, the only relief offered a disappointed claimant at such juncture is an action in declaratory relief to declare a subject executive order void ***177** (former Rev. & Tax Code, § 2255, subd. (c); Stats. 1982, ch. 1638, § 7, pp. 6662-6663) or unenforceable (Gov. Code, § 17612, subd. (b); Stats. 1984, ch. 1459, § 1, p. 5121) and to enjoin its enforcement. LBUSD pursued this remedy and in addition petitioned for writ of mandate (Code Civ. Proc., § 1085) to compel reimbursement. There is no requirement to seek further administrative review. Indeed, to do so after the Legislature has spoken would appear to be an exercise in futility.

We conclude that Section 6 provides reimbursement to LBUSD because the Executive Order required a higher level of service and because the Executive Order constitutes a state mandate.

B. Section 2234

As set forth in the procedural history of this case, the Board originally declined to consider the Claim as a claim made under section 2234 on the ground that it lacked jurisdiction to do so. LBUSD petitioned for judicial relief, and the trial court held that the Board had jurisdiction and must consider the claim on its merits. The Board did not appeal that decision. State raised the jurisdiction issue as an affirmative defense to the second petition for writ of mandate filed by LBUSD and presents it again for our consideration. (14) Of course, lack of subject matter jurisdiction may be raised at any time. (*Stuck v. Board of Medical Examiners* (1949) 94 Cal.App.2d 751, 755 [211 P.2d 389].)

Former section 2250 provided: "The State Board of Control, pursuant to the provisions of this article, shall hear and decide upon a claim by a local agency or school district that such local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*. [¶] Notwithstanding any other provision of law, this article shall provide the sole and exclusive procedure by which the Board of Control shall hear and decide upon a claim that a local agency or school district has not been reimbursed for *all costs mandated by the state as required by Section 2231 or 2234*." (Italics added; Stats. 1978, ch. 794, § 5, p. 2549.) Given the clear, unambiguous language of the statute, there is no need for construction. (*West Covina Hospital v. Superior Court* (1986) 41 Cal.3d 846, 850 [226 Cal.Rptr. 132, 718 P.2d 119, 60 A.L.R.4th 1257].) (15a) We conclude that the Board had jurisdiction to consider a claim filed under former section 2234. However, as discussed below, the 1977 Executive Order falls outside the purview of section 2234.

Former section 2231 provided: "(a) ... The state shall reimburse each school district only for those 'costs mandated by the state', as defined in ***178** Section 2207.5." (Stats. 1982, ch. 1586, § 3, p. 6264.) In part, former section 2207.5 defines "costs mandated by the state" as increased costs which a school district is required to incur as a result of certain new programs or certain increased program levels or services mandated by an executive order issued *after* January 1, 1978. (Stats. 1980, ch. 1256, § 5, pp. 4248-4249.) As previously stated, the Executive Order in the case at bar was issued September 8, 1977.

Former section 2234, pursuant to which LBUSD initially filed its claim, does not itself contain language indicating a time limitation: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for such costs incurred after the operative date of such mandate." (Stats. 1980, ch. 1256, § 11, p. 4251.)

State asserts that the January 1, 1978, limitation of

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sections 2231 and 2207.5 applies to section 2234, preventing reimbursement for costs expended pursuant to the September 8, 1977, Executive Order; LBUSD argues section 2234 is self-contained and without time limitation.

(16) It is a fundamental rule of statutory construction that a statute should be construed with reference to the whole system of law of which it is a part in order to ascertain the intent of the Legislature. (*Moore v. Panish* (1982) 32 Cal.3d 535, 541 [186 Cal.Rptr. 475, 652 P.2d 32]; *Pitman v. City of Oakland* (1988) 197 Cal.App.3d 1037, 1042 [243 Cal.Rptr. 306].) The legislative history of a statute may be considered in ascertaining legislative design. (*Walters v. Weed* (1988) 45 Cal.3d 1, 10 [246 Cal.Rptr. 5, 752 P.2d 443].)

The earliest version of section 2234 is found in former section 2164.3, subdivision (f), which provided reimbursement to a city, county, or special district for "a service or program [provided] at its option which is subsequently mandated by the state ...." Reimbursement was limited to costs mandated by statutes or executive orders enacted or issued after January 1, 1973. (Stats. 1972, ch. 1406, § 3, pp. 2962-2963.)

In 1973, section 2164.3 was amended to provide reimbursement to school districts for costs mandated by statutes enacted after January 1, 1973 (subd. (a)), *but it expressly excluded school districts from reimbursement for costs mandated by executive orders* (subd. (d)). (Stats. 1973, ch. 208, § 51, p. 565.) Later that same year, the Legislature repealed section 2164.3 (Stats. 1973, ch. 358, § 2, p. 779) and added section 2231, which took over the pertinent *179 reimbursement provisions of section 2164.3 virtually unchanged. (Stats. 1973, ch. 358, § 3, pp. 779, 783-784.)

In 1975, the Legislature removed the time limitation language from section 2231 and incorporated it into a new section, 2207. (Stats. 1975, ch. 486, § 1.8, pp. 997-998.) After this change, section 2231 then provided in pertinent part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207. *The state shall reimburse each school district only for those 'costs mandated by the state' specified in subdivision (a) of Section 2207* ...." (Italics added; Stats. 1975, ch. 486, § 7, pp. 999-1000.) Subdivision (a) of section 2207 limited reimbursement solely to costs mandated by statutes enacted after January 1, 1973.

At this same juncture, the Legislature further amended section 2231 by deleting the provision for "subsequently mandated" services or programs and incorporating that provision into a new section, 2234 (Stats. 1975, ch. 486, § 9, p. 1000), the section under which LBUSD would eventually make its claim. The substance of section 2234 (see fn. 2, *ante*) remained unchanged until its repeal in 1986. (Stats. 1977, ch. 1135, § 8.6, p. 3648; Stats. 1980, ch. 1256, § 11, pp. 4251-4252; Stats. 1986, ch. 879, § 25, p. 3045.)

Next, section 2231 was amended to show that with regard to school districts, "costs mandated by the state" were now defined by a new section, 2207.5. (Stats. 1977, ch. 1135, § 7, pp. 3647-3648.) Section 2207.5 limited reimbursement to costs mandated by statutes enacted after January 1, 1973, and *executive orders issued after January 1, 1978*. (Stats. 1977, ch. 1135, § 5, pp. 3646-3647.) (No further pertinent amendments to section 2231 occurred; see Stats. 1978, ch. 794, § 1.1, p. 2546; Stats. 1980, ch. 1256, § 8, pp. 4249-4250; Stats. 1982, ch. 734, § 3, p. 2912.) The distinction between statutes and executive orders was preserved when section 2207.5 was amended in 1980 (Stats. 1980, ch. 1256, § 5, pp. 4248-4249) and was in effect at the time of the Board hearing.

(15b) This survey teaches us that with respect to the reimbursement process, the Legislature has treated school districts differently than it has treated other local government entities. The Legislature initially did not give school districts the right to recover costs mandated by executive orders; and when this option was made available, the effective date

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differed from that applicable to other entities. The Legislature consistently limited reimbursement of costs by reference to the effective dates of statutes and executive orders and nothing indicates the state intended recovery of costs to be open-ended. ***180**

Because the "subsequently mandated" provision of section 2234 originally was contained in sections which set forth specific date limitations (former sections 2164.3 and 2231), we conclude the Legislature likewise intended to limit claims made pursuant to section 2234. The use of the language "subsequently mandated" merely describes an additional circumstance in which the state will reimburse costs, provided the claimant meets other requirements. Since the September 1977 Executive Order falls outside the January 1, 1978, limit set by section 2207.5, section 2234 does not provide for reimbursement to LBUSD.

III. The Award

The full text of the award as provided by the judgment is set forth in an appendix to this opinion. In part, the judgment states that there are appropriated funds in budgets for the DOE, the Commission, the Reserve for Contingencies or Emergencies, and the Special Fund for Economic Uncertainties, "or similarly designated accounts" which are " 'reasonably available' " to reimburse LBUSD for the state mandated costs it has incurred. (Appendix, pars. 3, 2.) The State Controller is commanded to pay the claims plus interest "at the legal rate" from the described appropriations for fiscal years 1984-1985 through 1987-1988 and "subsequently enacted State Budget Acts." (Appendix, par. 7.) The judgment declares that the deletion of funding for reimbursement of costs incurred in compliance with the Executive Order was invalid and unconstitutional. (Appendix, par. 12.) Finally, the Fines and Forfeiture Funds in the custody of the Auditor-Controller of Los Angeles County are held to be not reasonably available for reimbursement. (Appendix, par. 5.)

A. State Position

(17a) State contends the trial court's award is contrary to California law, asserting that it constitutes an invasion of the province of the Legislature and therefore a judicial usurpation of the republican form of government guaranteed by the United States Constitution, Article IV, section 4.

(18) A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated. (Cal. Const., art. III, § 3; art. XVI, § 7; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at p. 538.) However, no violation of the separation of powers doctrine occurs when a court orders appropriate expenditures from already existing funds. (*Mandel*, at p. 540;*Carmel Valley*, at pp. 539-540.)The test is whether such funds are "reasonably available for the ***181** expenditures in question ...." (*Mandel*, at p. 542;*Carmel Valley*, at pp. 540-541.)Funds are "reasonably available" for reimbursement when the purposes for which those funds were appropriated are "generally related to the nature of costs incurred ...." (*Carmel Valley*, at p. 541.)There is no requirement that the appropriation specifically refer to the particular expenditure (*Mandel* at pp. 543-544,*Carmel Valley* at pp. 540;*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 857-858 [183 Cal.Rptr. 475]), nor must past administrative practice sanction coverage from a particular fund (*Carmel Valley*, at p. 540).

(17b) As previously stated, the trial court found the subject funds were "reasonably available." No party requested a statement of decision, and therefore it is implied that the trial court found all facts necessary to support its judgment. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793 [218 Cal.Rptr. 39, 705 P.2d 362]; *Homestead Supplies, Inc. v. Executive Life Ins. Co.* (1978) 81 Cal.App.3d 978, 984 [147 Cal.Rptr. 22].) We now examine the record to ascertain whether substantial evidence supports the decision of the trial court.

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The Board having approved reimbursement under the Executive Order, reported to the Legislature that "[t]he categories of reimbursable costs include, but are not limited to: (1) voluntary pupil assignment or reassignment programs, (2) magnet schools or centers, (3) transportation of pupils to alternative schools or programs, (5) [*sic*, no item (4)] racially isolated minority schools, (6) costs of planning, recruiting, administration and/or evaluation, and (7) overhead costs." The guidelines set out comprehensive steps to be taken by school districts in order to be in compliance with the Executive Order.

The peremptory writ of mandate, issued the same date as the judgment, designated funds in specific account numbers and, in addition, a special fund as available for reimbursement. We take judicial notice of the relevant budget enactments and Government Code sections 16418 and 16419 (Evid. Code, §§ 459, subd. (a), 452) and address these designations seriatim.

The line item account numbers for the DOE for fiscal years 1984-1985 through 1987-1988 set forth in the writ are as follows: 6100-001-001, 6100-001-178, 6100-015-001, 6100-101-001, 6100-114-001, 6100-115-001, 6100-121-001, 6100-156-001, 6100-171-178, 6100-206-001, 6100-226-001.

An examination of the relevant budget acts Statutes 1985, chapter 111; Statutes 1986, chapter 186; Statutes 1987, chapter 135; and final budgetary changes as published by the Department of Finance for each year, shows ***182** that appropriations in the 11 DOE line item account numbers have supported a very broad range of activities including reimbursement of costs for both mandated and voluntary integration programs, assessment programs, child nutrition, meals for needy pupils, participation in educational commissions, administration costs of various programs, proposal review, teacher recruitment, analysis of cost data, school bus driver instructor training, shipping costs for instructional materials, local assistance for school district transportation aid, summer school programs, local assistance to districts with high concentrations of limited- and non-English-speaking children, adult education, driver training, Urban Impact Aid, and cost of living increases for specific programs. Further evidence regarding the uses of these funds is found in the deposition testimony of William C. Pieper, Deputy Superintendent for Administration with the State Department of Education, who stated that local school districts were being reimbursed for the costs of desegregation programs from line item account numbers 6100-114-001 and 6100-115-001 in the 1986 State Budget Act.

Comparing the requirements of the Executive Order and guidelines with the broad range of activities supported by the DOE budget, we conclude that the subject funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of the costs incurred.

With regard to the Commission, the writ sets out three line item account numbers: 8885-001-001; 8885-101-001; and 8885-101-214. A review of the relevant budget acts shows that the first line item provides funding for support of the Commission, and line item number 8885-101-001 provides funding specifically for local assistance "in accordance with the provisions of Section 6 of Article XIII B of the California Constitution ...." (Stats. 1986, ch. 186.) Line item number 8885-101-214 also provides funds for "local assistance." Since the Commission was created specifically to effect reimbursements for qualifying claims, we conclude there is a general relationship between the purpose of the appropriations and the requirements of the Executive Order.

Line item 9840-001-001 of the Reserve for Contingencies or Emergencies defines "contingencies" as "proposed expenditures arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which, in the judgment of the Director of Finance, constitute cases of actual necessity." (All relevant budget acts.) In the instant case, previous to the issuance of the Executive Order, LBUSD could

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not have anticipated the expenditures necessary to bring it into compliance. Further, the Legislature refused to appropriate the necessary funds *183 to directly reimburse the district for these expenditures. The necessity exists by virtue of the writ and judgment issued by the trial court. Therefore, this line item, and three others which also support the reserve (9840-001-494, 9840-001-988, 9840-011-001) are generally related to the costs. FN16

FN16 The costs do not come within past or current definitions of "emergency," which are, respectively, as follows. "[P]roposed expenditures arising from unexpected conditions or losses for which no appropriation, or insufficient appropriation, has been made by law and which in the judgment of the Director of Finance require immediate action to avert undesirable consequences or to preserve the public peace, health or safety." (Fiscal years 1984-1985, 1985-1986.) "[E]xpenditure incurred in response to conditions of disaster or extreme peril which threaten the health or safety of persons or property within the state." (Fiscal years 1986-1987 forward.)

Finally the writ lists as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts ...." An examination of Government Code sections 16418 and 16419 relating to the special fund shows only one use of this reserve: establishment of the Disaster Relief Fund "for purposes of funding disbursements made for response to and recovery from the earthquake, aftershocks, and any other related casualty." No evidence in the record indicates a general relationship between this purpose and the costs incurred by LBUSD. We conclude, therefore, that this source of funding cannot be used for reimbursement. This source is stricken from the judgment.

The description of further sources of funding as "similarly designated accounts" fails to sufficiently identify these sources and we therefore strike this part of the judgment.

In a supplemental brief, LBUSD requests this court to take judicial notice of the Budget Acts of 1988-1989 (Stats. 1988, ch. 313) and 1989-1990 (Stats. 1989, ch. 93) pursuant to the Evidence Code (Evid. Code, §§ 451, subd. (a), 452, subd. (a), 452, subd. (c), 459) and to order that the amounts set forth in the judgment and writ be satisfied from specific line item accounts in these later budgets and from the Special Fund for Economic Uncertainties. FN17

FN17 LBUSD identifies the line items accounts as follows: DOE-6110-001-001, 6110-001-178, 6110-015-001, 6110-101-001, 6110-114-001, 6110-115-001, 6110-121-001, 6110-156-001, 6110-171-178, 6110-226-001, 6110-230-001; Commission-8885-001-001, 8885-101-001, 8885-101-214; Reserve for Contingencies or Emergencies-9840-001-001, 9840-001-494, 9840-001-988, 9840-011-001.

(19) "An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. [Citation.]" (*Carmel Valley, supra,* 190 Cal.App.3d at p. 557.) (17c) We have reviewed the designated budget acts and conclude that the specified line item accounts for DOE, the Commission, *184 and the Reserve for Contingencies and Emergencies provide funds for a broad range of activities similar to those set out above and therefore are generally related to the nature of the costs incurred. However, for the reasons previously discussed, we decline to designate the Special Fund for Economic Uncertainties as a source for reimbursement.

While we have concluded that certain line item accounts are generally related to the nature of the costs incurred, there must also be evidence that at the time of the order the enumerated budget items

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contained sufficient funds to cover the award. (Gov. Code, § 12440; *Mandel v. Myers, supra,* 29 Cal.3d at p. 543;*Carmel Valley, supra,* 190 Cal.App.3d at p. 541; cf. *Baggett v. Dunn* (1886) 69 Cal. 75, 78 [10 P. 125]; *Marshall v. Dunn* (1886) 69 Cal. 223, 225 [10 P. 399].) The record before us contains evidence regarding balances at various points in time for some of the line item accounts, but that evidence is primarily in the form of uninterpreted statistical data. We have not found a clear statement which would satisfy this requirement. Furthermore, not every line item was in existence every fiscal year. In addition, those which entered the budgetary process did not always survive it unscathed. Therefore, we remand the matter to the trial court to determine with regard to the line item account numbers approved above whether funds sufficient to satisfy the award were available at the time of the order. (Cf. *County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 454-455 [206 Cal.Rptr. 626].) If the trial court determines that the unexhausted funds remaining in the specified appropriations are insufficient, the trial court order can be further amended to reach subsequent appropriated funds. (*County of Sacramento* at p. 457;*Serrano v. Priest* (1982) 131 Cal.App.3d 188, 198 [182 Cal.Rptr. 387].)

(20) Having concluded that certain appropriations are generally available to reimburse LBUSD, we turn to an additional issue raised by State: that the "finding" by the Legislature that the Executive Order does not impose a "state-mandated local program" prevents reimbursement.

Unsupported legislative disclaimers are insufficient to defeat reimbursement. (*Carmel Valley, supra,* 190 Cal.App.3d at pp. 541-544.) As discussed, LBUSD, pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right. (*Hale v. Bohannon* (1952) 38 Cal.2d 458, 471 [241 P.2d 4].)

B. DOE Contentions

DOE is sympathetic to LBUSD's position. On appeal, it takes no stand on the issue whether the Executive Order constitutes a state mandate within ***185** the meaning of Section 6. (21) The thrust of its appeal is that, if there is a mandate, the DOE budget is an inappropriate source of funding in comparison with other budget line item accounts included in the order.

We conclude to the contrary because logic dictates that DOE funding be the initial and primary source for reimbursement. As discussed, the test set forth in *Mandel* and *Carmel Valley* is whether there is a general relationship between budget items and reimbursable expenditures. Since the Executive Order was issued by DOE, it is not surprising that the evidence overwhelmingly supports the finding of the trial court that this general relationship exists with regard to the DOE budget.

While we also have concluded that certain line item accounts for entities other than DOE are also appropriate sources of funding, the record does not provide the statistical data necessary to determine how far the order will reach with regard to these additional sources of support.

DOE also contends that reimbursement for expenditures in fiscal years 1977-1978, 1978-1979, and 1979-1980 cannot be awarded under Section 6 because the amendment was not effective until July 1, 1980. As discussed, this argument has been previously rejected. (*Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at pp. 547-548;*City of Sacramento v. State of California, supra,* 156 Cal.App.3d 182, 191-194,disapproved on other grounds in *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 58, fn. 10.)

(22) Finally, DOE contends that interest should have been awarded at the rate of 6 percent per annum pursuant to Government Code section 926.10 rather than at the legal rate provided under article XV, section 1, paragraph (2) of the California Constitution.

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Government Code section 926.10 is part of the California Tort Claims Act (Gov. Code, § 900 et seq.) which provides a statutory scheme for the filing of claims against public entities for alleged injuries; it makes no provision for claims for reimbursement for state mandated expenditures. In *Carmel Valley* a judgment awarding interest at the legal rate was affirmed. (*Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d at p. 553.) We decline the invitation of DOE to apply another rule.

C. Cross Appeal of LBUSD

(23) LBUSD seeks reversal of that part of the judgment holding that monies in the Fines and Forfeitures Funds in the custody and possession of ***186** cross-respondent Auditor-Controller of the County of Los Angeles (County Controller) for transfer to the state treasury are not reasonably available for reimbursement of its state mandated expenditures. FN18

> FN18 In its first amended petition, LBUSD listed the following code sections as appropriate sources of reimbursement: "Penal Code Sections 1463.02, 1463.03, 1403.5A and 1464; Government Code Sections 13967, 26822.3 and 72056; Health and Safety Code Section 11502; and Vehicle Code Sections 1660.7, 42003, and 41103.5."

As previously stated, funds are "reasonably available" when the purposes for which those funds were appropriated are generally related to the nature of the costs incurred. (*Carmel Valley, supra,* 190 Cal.App.3d at pp. 540-541.) LBUSD does not cite, nor have we found, any evidence in the record showing the use of those funds once they are transmitted to the state and that those funds are then "reasonably available" to satisfy the Claim. We cannot conclude as a matter of law that a general relationship exists between those funds and the nature of the costs incurred pursuant to the Executive Order. LBUSD has failed to carry its burden of proof and the trial court correctly decided these funds were not "reasonably available" for reimbursement.

Nor have we concluded that there is any ground on which the funds could be made available to LBUSD while in the possession of the county Auditor-Controller. The instant case differs from *Carmel Valley* wherein we affirmed an order which authorized a county to satisfy its claims against the state by offsetting fines and forfeitures it held which were due the state. The *Carmel Valley, supra,* 190 Cal.App.3d 521, holding was based on the right of offset as "a long-established principle of equity." (*Id.* at p. 550.)That is a different standard than the standard of "generally related to the nature of costs incurred." In the case at bar there is no set-off relationship between county and LBUSD.

Disposition

We conclude that because the doctrines of collateral estoppel and waiver are inapplicable to the facts of this case, the trial court should have allowed State to challenge the decisions of the Board. However, we also determine, as a question of law, that the Executive Order requires local school boards to provide a higher level of service than is required constitutionally or by case law and that the Executive Order is a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution. Former Revenue and Tax Code section 2234 does not provide reimbursement of the subject claim. ***187**

Based on uncontradicted evidence, we modify the decision of the trial court by striking as sources of reimbursement the Special Fund for Economic Uncertainties "or similarly designated accounts." We also modify the judgment to include charging orders against certain funds appropriated through subsequent budget acts.

We affirm the decision of the trial court that the

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Fines and Forfeitures Funds are not "reasonably available" to satisfy the Claim.

Finally, we remand the matter to the trial court to determine whether at the time of its order, unexpended, unencumbered funds sufficient to satisfy the judgment remained in the approved budget line item account numbers. The trial court is also directed to determine this same issue with respect to the charging order.

The judgment is affirmed as modified. Each party is to bear its own costs on appeal.

Ashby, J., and Boren, J., concurred.
Appellants' petitions for review by the Supreme Court were denied February 28, 1991. Lucas, C. J., did not participate therein. ***188**

Appendix

The superior court judgment provides in pertinent part: "It Is Ordered, Adjudged and Decreed That: "1. The requirements contained in Title 5, California Administrative Code, Sections 90-101 constitute a reimbursable State-mandate which cannot be challenged by State Respondents or Respondent DOE because of the doctrines of administrative collateral estoppel and waiver.

"2. There are appropriated funds from specified line items in the 1984, 1985, 1986 and 1987 budgets which are 'reasonably available' to reimburse Petitioner for State-mandated costs it has occurred [*sic*] as a result of its compliance with the requirements of Title 5, California Administrative Code, Sections 90-101.

"3. The funds appropriated by the Legislature for:

"(a) the support of the Department of Education, including, but not limited, to the Department's General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', 'Special Fund for Economic Uncertainties' or similarly designated accounts, are 'reasonably available' and may properly be and should be encumbered and expended for the reimbursement of State-mandated costs in the amount of $28,014,869.00, plus applicable interest, as incurred by Petitioner and as computed by Petitioner in compliance with Parameters and Guidelines adopted by the State Board of Control.

"4. The law in effect at the time that Petitioner's claim was processed provided for the computation of a specific claim amount for specific fiscal years based on Parameters and Guidelines, or claiming instructions, adopted in April 1984 and a Statewide Cost Estimate adopted on August 23, 1984, both of which are administrative actions of the State Board of Control which have not been challenged by State Respondents. The computations made pursuant to the Parameters and Guidelines and Statewide Cost Estimate are specific and ascertainable and subject to audit by the State Controller under Government Code section 17558.

"5. The Court decrees that State funds entitled the 'Fines and Forfeitures Funds' under the custody and control of Respondent Bloodgood, are not reasonably available for satisfaction of Petitioner's claim for reimbursement of State-mandated costs.

"6. A peremptory writ of mandamus shall issue under the seal of this Court, commanding State Respondents and Respondent Doe to comply with Article XIIIB, Section 6 of the California Constitution and Government Code Section 17565 and reimburse petitioner for:

"(a) State-mandated costs in the amount of $24,164,593.00, incurred as a result of its compliance with the requirements of Title 5, California Administrative Code, Sections 90-101 during fiscal

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years 1977-78 through 1982-1983, plus interest at the legal rate from September 28, 1985; and

"(b) State-mandated costs in the amount of $3,850,276.00, incurred as a result of Petitioner's compliance with the requirements of Title 5, California Administrative Code, Sections 90-101 during fiscal years 1983-84 and 1984-85, plus interest at the legal rate from September 28, 1985.

"7. Said peremptory writ shall command Respondent Gray Davis, State Controller, or his successor-in-interest, to pay the claims of Petitioner, plus interest at the legal rate from ***189** September 28, 1985 from the appropriations in the State Budget Acts for the 1984-85, 1985-86, 1986-87 and 1987-88 fiscal years, and the subsequently enacted State Budget Acts, which include, or will include appropriations for:

"(a) the support of the Department of Education, including, but not limited to the Department's General Fund;

"(b) the Commission on State Mandates, including, but not limited to the State Mandates Claim Fund; and

"(c) the 'Reserve for Contingencies or Emergencies', Special Fund for Economic Uncertainties' or similarly designated accounts, which are 'reasonably available' to be encumbered and expended for the reimbursement of State-mandated costs incurred by Petitioner and further shall compel Elizabeth Whitney, Acting State Treasurer, or her successor-in-interest, to make payments on the warrants drawn by Respondent Gray Davis, State Controller upon their presentation for payment by Petitioner without offset or attempt to offset against other monies due and owing Petitioner until Petitioner is reimbursed for all such costs.

"8. Said Peremptory Writ of Mandate also shall command Respondent Jesse R. Huff, Director of the State Department of Finance, to perform such actions as may be necessary to effect reimbursement required by other portions of this Judgment, including but not limited to, those actions specified in Chapter 135, Statutes of 1987, Section 2.00, pp. 549-553, or with respect to the Special Fund for Economic Uncertainties.

"9. Pending the final disposition of this proceeding, State Respondents and Respondent DOE, and each of them, their successors in office, agents, servants and employees and all persons acting in concert or participation with them, are hereby enjoined or restrained from directly or indirectly expending from the appropriations described in Paragraph No. 7 hereinabove any sums greater than that which would leave in said appropriations at the conclusion of the respective fiscal years an amount less than the reimbursement amounts claimed by Petitioner together with interest at the legal rate through payment of said reimbursement amount. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"10. Pending the final disposition of this proceeding State Respondents and Respondent DOE, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly causing to revert the reimbursement award sum from the appropriations described in Paragraph No. 7 hereinabove to the general funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"11. The State Respondents and Respondent Doe have a continuing obligation to reimburse Petitioner for costs incurred in compliance with the requirements contained in Title 5, California Administrative Code, Section 90-101 in the fiscal years subsequent to it's [*sic*] claims for expenditures in fiscal years 1977-78 through 1984-85 as set forth in the First Amended Petition, as amended, and the accompanying Motion For the Issuance Of A Writ Of Mandate.

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"12. The deletion of funding for reimbursement of State-mandated costs incurred in compliance with Title 5, California Administrative Code, Sections 90-101 from Chapter 1175, Statutes of 1985 was invalid and unconstitutional.

"13. Respondent Gray Davis, State Controller, shall retain the right to audit the claims and records of the Petitioner pursuant to Government Code Section 17561(d) to verify the actual dollar amount of the reimbursement award sum.

"14. The Court reserves and retains jurisdiction to effect any appropriate remedy at law or equity which may be necessary to enforce its judgment or order. ***190**

"15. Petitioner shall recover from State Respondents and Respondent DOE costs in this proceeding in the amount of 1,863.54.

"Dated: 3-2, 1988 "/s/ Weil

"Robert I. Weil

"Judge of The Superior Court" ***191**

Cal.App.2.Dist.
Long Beach Unified Sch. Dist. v. State of California
225 Cal.App.3d 155, 275 Cal.Rptr. 449, 64 Ed. Law Rep. 182

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ATTACHMENT NO. 29

Redevelopment Agency v. Commission on State Mandates (1997) 55 Cal.App.4th 976

Redevelopment Agency of City of San Marcos v. California Com'n on State Mandates
Cal.App.4.Dist.
REDEVELOPMENT AGENCY OF THE CITY OF SAN MARCOS, Plaintiff and Appellant,
v.
CALIFORNIA COMMISSION ON STATE MANDATES, Defendant and Respondent; CALIFORNIA DEPARTMENT OF FINANCE, Intervener and Respondent.
No. D026195.

Court of Appeal, Fourth District, Division 1, California.
May 30, 1997.

SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under Gov. Code, § 17550 et seq. (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its lowand moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under Cal. Const., art. XIII B, § 6. The trial court found that the source of funds used by the agency was exempt, under Health & Saf. Code, § 33678, from the scope of Cal. Const., art. XIII B, § 6. (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6. Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) State of California § 11--Fiscal Matters--Subvention:Words, Phrases, and Maxims--Subvention.
"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2) State of California § 11--Fiscal Matters--Subvention--Judicial Rules.
Under Gov. Code, § 17559, review by administrative mandamus is the exclusive method of challen-

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ging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, is a question of law. On appellate review, the following standards apply: Gov. Code, § 17559, governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions about the meaning and effect of constitutional and statutory provisions.

(3a, 3b) State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.
The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its lowand moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]
(4) Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.
The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

(5) State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.
The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL
Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.
Gary D. Hori for Defendant and Respondent. *979
Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.
HUFFMAN, J.
The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov. Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for moneys trans-

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ferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code [FN1] sections 33334.2 and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1)(**See fn. 2**)The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6; all further references to articles are to the California Constitution). [FN2] (Cal. Const., art. XVI, § 16; § 33670.)

FN1 All further statutory references are to the Health and Safety Code unless otherwise noted.

FN2 " 'Subvention' generally means a grant of financial aid or assistance, or a subsidy. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (Code Civ. Proc., § 1094.5; Gov. Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the scope of section 6, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for lowand moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. ***980**

I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (Gov. Code, § 17500 et seq.) [FN3] The Commission hearing consisted of oral argument on the points and authorities presented.

FN3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

(2) Under Government Code section 17559, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the

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substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: "Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to ***981** adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]" (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80-81.)

Section 6, part of article XIII B and the provision here at issue, requires that whenever the Legislature or any state agency mandates a "new program or higher level of service" on any local government, " 'the state shall provide a subvention of funds to reimburse such local government for *the costs of such program* or increased level of service ....' " (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here. FN4

FN4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov. Code, § 17514, definition of "costs mandated by the state," using the same "new program or higher level of service" language of section 6.)

In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California, supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (***982***Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106 [211 Cal.Rptr.

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133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf. Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)" (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].) FN5

FN5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of lowand moderate-income housing, as well as expanding employment opportunities and improving the social environment.

In *Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute "proceeds of taxes" subject to article XIII B appropriations limits.(*Brown v. Community Redevelopment Agency*,*supra*, at p. 1019). FN6 This ruling was based on section 33678, providing in pertinent part: "This section implements and fulfills the intent ... of Article XIII B and ***983**Section 16 of Article XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B* ... or any statutory provision enacted in implementation of Article XIII B. *The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*" (Italics added.)

FN6 The term of art, "proceeds of taxes," is defined in article XIII B, section 8, as follows: (c) " *'Proceeds of taxes' shall include, but not be restricted to, all tax revenues* and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regu-

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> lation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined "proceeds of taxes" in this way: "Under article XIII B, with the exception of state subventions, the items that make up the scope of ' "proceeds of taxes" ' concern charges levied to raise *general revenues* for the local entity. ' "Proceeds of taxes," ' in addition to 'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....*' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*" (Italics added.) FN7

> FN7 The issues before the court in *County of Placer v. Corin, supra*, 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not.Section 6 is not discussed; the court's analysis of other concepts found in article XIII B is nevertheless instructive.

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and ***984** accordingly we need not discuss the alternate grounds of decision stated by the Commission. FN8

> FN8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.

III. Housing Fund Allocations: Reimbursable Costs?

1. *Arguments*

The Agency takes the position that the language of section 33678 is simply inapplicable to its claim for subvention of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante*.)None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, *for purposes of appropriations limitations*, tax increment financing is not deemed to be the "proceeds of taxes." (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a "plain meaning" rule to section 6 (see, e.g., *Davis v. City of* Berkeley (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the

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source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 "was designed to protect the tax revenues of local governments from state mandates that ***985** would require expenditure of such revenues." (*County of Fresno v. State of California,supra*, at p. 487.) Based on the language and history of the measure, the court stated, "Article XIII B of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*Ibid.*, original italics.) Interpreting section 6, the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. *Interpretation of Section 6*

Here, the Agency contends the authority of *County of Fresno v. State of California, supra,53* Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read section 6 in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California, supra,* 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California, supra,* 15 Cal.4th at p. 81.) A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68.) (3b) The related goals of these enactments require us to read the term "costs" in section 6 in light of the enactment as a whole. The "costs" for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the ***986** assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which section 6 was designed to protect? (*County of Fresno v. State of California, supra,* 53 Cal.3d at p. 487.)

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3. *Relationship of Appropriations Limitations and Subvention*

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: "[A]rticle XIIIB does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.' " FN9

FN9 The term of art, "appropriations subject to limitation," is defined in article XIII B, section 8, as follows: [¶] (b) " 'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes." (Italics added.)

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "*general revenues* for the local entity." (*County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially *987 responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].) FN10

FN10 We disagree with respondents that the legislative history of sections 33334.2 and 33334.3 is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016-1020.) Section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment

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financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable "cost" under section 6. We therefore need not interpret any remaining portions of section 6.

Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.
Appellant's petition for review by the Supreme Court was denied September 3, 1997.

Cal.App.4.Dist.
Redevelopment Agency v. Commission on State Mandates
55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

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ATTACHMENT NO. 30

San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal.4th 859

H

San Diego Unified School Dist. v. Commission On State Mandates
Cal.,2004.

Supreme Court of California
SAN DIEGO UNIFIED SCHOOL DISTRICT,
Plaintiff and Respondent,
v.
COMMISSION ON STATE MANDATES, Defendant and Appellant;
California Department of Finance, Real Party in Interest and Appellant.
No. S109125.

Aug. 2, 2004.

Background: School district petitioned for writ of administrative mandate to require the Commission on State Mandates to approve test claim for costs of mandatory and discretionary expulsion of students. The Superior Court, San Diego County, No. GIC737638,Linda B. Quinn, J., granted the petition. Commission and Department of Finance appealed. The Court of Appeal affirmed. Review was granted, superseding opinion of Court of Appeal.

Holdings: The Supreme Court, George, C.J., held that:
(1) all hearing costs incurred by district as result of mandatory actions related to expulsions for student's possession of firearm, at time relevant to this proceeding, constituted "higher level of service" within meaning of state constitutional provision, and thus were fully reimbursable, and
(2) hearing costs incurred by district as result of actions related to discretionary expulsions did not constitute "new program or higher level of service," and, in any event, did not trigger right to reimbursement, as costs of procedures exceeding federal due process requirements were de minimis.

Affirmed in part and reversed in part.

Opinion, 122 Cal.Rptr.2d 614, superseded.

West Headnotes

[1] Schools 345 ⇐19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds
345k19 Apportionment and Disposition
345k19(1) k. In General. Most Cited Cases
All hearing costs incurred by school district as result of mandatory actions related to expulsions of students for possession of firearm, at time relevant to mandamus proceeding initiated by district, constituted state-mandated "higher level of service" within meaning of state constitutional provision providing for reimbursement of local government for costs of "new program or higher level of service" imposed on local government by statute or state regulation, and thus were fully reimbursable; providing public schooling clearly constituted governmental function, enhancing safety of those who attended such schools constituted service to public, and mandatory expulsion provision did not implement federal law or regulation then extant. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Educ.Code §§ 48915(c, d), 48918; West's Ann.Cal.Educ.Code § 48915(b) (1994).
See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 549.

[2] Schools 345 ⇐19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds
345k19 Apportionment and Disposition

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345k19(1) k. In General. Most Cited Cases
Hearing costs incurred by school district as result of actions related to discretionary expulsions did not constitute "new program or higher level of service," triggering right to reimbursement under state constitutional provision mandating reimbursement of local government for costs of "new program or higher level of service" imposed on local government by statute or state regulation, and, in any event, procedures related to discretionary expulsions were adopted to implement federal due process mandate, and thus were nonreimbursable, and costs exceeding federal requirements were de minimis, and so also nonreimbursable. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Educ.Code §§ 48915(e), 48918; West's Ann.Cal.Educ.Code § 48915(c) (1994); West's Ann.Cal.Gov.Code §§ 17514, 17556(c), 17561(a).

***467 *865 **590** Paul M. Starkey, Camille Shelton, Sacramento, and Katherine A. Tokarski for Defendant and Appellant.
Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, Pamela Smith-Steward, Chief Assistant Attorney General, Andrea Lynn Hoch, Assistant Attorney General, Louis R. Mauro and Susan R. Oie, Deputy Attorneys General, for Real Party in Interest and Appellant.
Jo Anne Sawyerknoll, Sacramento, Tad Seth Parzen, Jose A. Gonzales and Arthur M. Palkowitz, San Diego, for Plaintiff and Respondent.
Lozano Smith, Diana McDonough, San Rafael, Harold M. Freiman, San Ramon, Jan E. Tomsky, San Rafael, and Gregory A. Floyd, Fresno, for California School Boards Association Education Legal Alliance as Amicus Curiae on behalf of Plaintiff and Respondent.
***866** Steven M. Woodside, County Counsel (Sonoma) as Amicus Curiae on behalf of Plaintiff and Respondent.
591 GEORGE, C.J.
Article XIII B, section 6, of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service...." [FN1] (Hereafter article XIII B, section 6.)

> FN1. The provision continues: "except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." (Cal. Const., art. XIII B, § 6.)

Plaintiff San Diego Unified School District (District), like all other public school districts in the state, is, and was at the time relevant in this proceeding, governed by statutes that regulate the expulsion of students. (Ed.Code, § 48900 et seq.) Whenever an expulsion recommendation is made (and before a student may be expelled), the District is required by Education Code section 48918 to afford the student a hearing with various procedural protections-including notice of the hearing and the right to representation by ***468** counsel, preparation of findings of fact, notices related to any expulsion and the right of appeal, and preparation of a hearing record. Providing these procedural protections requires the District to expend funds, for which the District asserts a right to reimbursement from the state pursuant to article XIII B, section 6, and implementing legislation, Government Code section 17500 et seq.

We granted review to consider two questions: (1) Are the hearing costs incurred as a result of the *mandatory* actions related to expulsions that are compelled by Education Code section 48915 fully reimbursable-or are those hearing costs reimbursable only to the extent such costs are attributable to hearing procedures that exceed the procedures re-

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quired by federal law? (2) Are any hearing costs incurred in carrying out expulsions that are *discretionary* under Education Code section 48915 reimbursable? After we granted review and filed our decision in *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203(*Kern High School Dist.*), we added the following preliminary question to be addressed: Do the Education Code ***867** statutes cited above establish a "new program" or "higher level of service" under article XIII B, section 6? Finally, we also asked the parties to brief the effect of the decision in *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, on the present case.

We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a "higher level of service" under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs-even those costs attributable to procedures required by federal law. In this respect, we shall affirm the judgment of the Court of Appeal.

We also conclude that *no* hearing costs incurred in carrying out those expulsions that are *discretionary* under Education Code section 48915-including costs related to hearing procedures claimed to exceed the requirements of federal law-are reimbursable. As we shall explain, to the extent that statute makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section *48918* constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated, for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate. Accordingly, we shall reverse the judgment of the Court of Appeal insofar as it compels reimbursement****592** of any costs incurred pursuant to discretionary expulsions.

I

A. *Education Code sections 48918 and 48915*

We first describe the relevant provisions of two statutes-Education Code sections 48918 and 48915-pertaining to the expulsion of students from public schools.

Education Code section 48918 specifies the right of a student to an expulsion hearing and sets forth procedures that a school district must ***868** follow when conducting*****469** such a hearing. (Stats.1990, ch. 1231, § 2, pp. 5136-5139.) FN2

FN2. For purposes of our present inquiry, section 48918, at the time relevant here (mid-1993 through mid-1994) read essentially as it had for the prior decade, and as it has in the ensuing decade. That provision first was enacted in 1975 (see Stats.1975, ch. 1253, § 4, pp. 3277-3278) as Education Code, former section 10608. (This enactment apparently was a response to the United States Supreme Court's decision in *Goss v. Lopez* (1975) 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725(*Goss*) [recognizing due process requirements applicable to public school students who are suspended for more than 10 days].) The statute was renumbered as Education Code, former section 48914 in 1976 (Stats.1976, ch. 1010, § 2, pp. 3589-3590) and was substantially augmented in 1977 (Stats.1977, ch. 965, § 24, pp. 2924-2926). After relatively minor amend-

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ments in 1978 and 1982, the section in 1983 was substantially restated, further augmented, and renumbered as Education Code section 48918 (Stats.1983, ch. 498, § 91, p. 2118). Amendments adopted in 1984 and 1988 made relatively minor changes, and further similar modifications were made in 1990, reflecting the version of the statute here at issue. Subsequent amendments in 1995, 1996, 1998, and 1999 made further changes that are irrelevant to the issue presented in the case now before us.

In identifying the right to a hearing, subdivision (a) of this statute declares that a student is "entitled" to an expulsion hearing within 30 days after the school principal determines that the student has committed an act warranting expulsion.[FN3] *In practical effect, this means that whenever a school principal makes such a determination and recommends to the school board that a student be expelled, an expulsion hearing is mandated.*[FN4]

FN3. The provision reads: "The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900...." (Ed.Code, § 48918, subd. (a). (Subdivision (b) of § 48900 presently includes-as it did at the time relevant here-the offense of possession of a firearm.)

FN4. Of course, if a student does not invoke his or her entitlement to such a hearing, and instead waives the right to such a hearing, the hearing need not be held.

In specifying the substantive and procedural requirements for such an expulsion hearing, Education Code section 48918 sets forth rules and procedures, some of which, the parties agree, codify requirements of federal due process and some of which may exceed those requirements.[FN5] These rules and procedures govern, among other things, notice of a hearing and the right to representation by counsel, preparation of findings of fact, notices related to the expulsion and the right of appeal, and preparation of a hearing record. (See § 48918, subds. (a) through former subd. (j) (currently subd. (k).)

FN5. See *Goss, supra,* 419 U.S. 565, 581, 95 S.Ct. 729, 42 L.Ed.2d 725; *Gonzales v. McEuen* (C.D.Cal.1977) 435 F.Supp. 460, 466-467 (concluding that former Education Code section 10608 [current § 48918] met federal due process requirements pertaining to expulsions from public schools); 7 Witkin, Summary of California Law (9th ed.1988), Constitutional Law, § 549, p. 754 (noting that Education Code section 48918 and related legislation were enacted in response to the decision in *Goss*).

***869** The second statute at issue in this matter is Education Code section 48915. Discrete subdivisions of this statute address circumstances in which a principal *must* recommend to the school board that a student be expelled, and circumstances in which a principal *may* recommend that a student be expelled.

First, there is what the parties characterize as the "mandatory expulsion provision," Education Code section 48915, former subdivision (b). As it read during the time relevant in this proceeding (mid-1993 *****470** through mid-1994), this subdivision (1) compelled a school principal to *immediately suspend* any ****593** student found to be in possession of a firearm at school or at a school activity off school grounds, and (2) mandated a *recommendation* to the school district governing board that the student be *expelled.* The provision further required the governing board, upon confirmation of the student's knowing possession of a firearm, either to expel the student or "refer" him or her to an alternative education program housed at a separate school site.[FN6] (Compare this former provision

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with *current*Ed.Code, § 48915, subds. (c) and (d).) FN7

> FN6. An earlier and similar, albeit broader, version of the provision-extending not only to possession of firearms but also to possession of explosives and certain knives-existed briefly and was effective for approximately two and one-half months in late 1993. That initial statute, former section 48915, subdivision (b) (as amended Stats.1993, ch. 1255, § 2, pp. 7284-7285), which was effective only from October 11, 1993 through December 31, 1993, provided: "The principal or the superintendent of schools shall immediately suspend pursuant to Section 48911, and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive at school or at a school activity off school grounds. The governing board shall expel that pupil or, as an alternative, refer that pupil to an alternative education program, whenever the principal or the superintendent of schools and the governing board confirm that: [¶] (1) The pupil was in knowing possession of the firearm, knife, or explosive. [¶] (2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the school district. [¶] (3) There was no reasonable cause for the pupil to be in possession of the firearm, knife, or explosive."

As subsequently amended by Statutes 1993, chapter 1256, section 2, pages 7286-7287, effective January 1, 1994, Education Code section 48915, former subdivision (b), read: "The principal or the superintendent of schools shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior, or senior high school or housed at the schoolsite attended by the pupil at the time the expulsion was recommended to the school board, whenever the principal or superintendent of schools and the governing board confirm the following: [¶] (1) The pupil was in knowing possession of the firearm. [¶] (2) An employee of the school district verifies the pupil's possession of the firearm."

> FN7. The current subdivisions of Education Code section 48915 set forth a list of mandatory expulsion conduct broader than that set forth in former subdivision (b), and require a school board both to *expel and refer* to other institutions all students found to have committed such conduct. The present subdivisions read: "(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds: [¶] (1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. [¶] (2) Brandishing a knife at another person. [¶] (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code. [¶] (4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900

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> or committing a sexual battery as defined in subdivision (n) of Section 48900.[¶] (5) Possession of an explosive. [¶] (d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions: [¶] (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems. [¶] (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school. [¶] (3) Is not housed at the schoolsite attended by the pupil at the time of suspension." (Stats.2001, ch. 116, § 1.)

***471 *870** This provision, as it read at the time relevant here, did not mandate expulsion per se FN8-but it *did* require immediate suspension followed by a mandatory expulsion recommendation (and it provided that a student found by the governing board to have possessed**594** a firearm would be removed from the school site by limiting disposition to either expulsion or "referral" to an alternative school). Moreover, as noted above, whenever expulsion is recommended a student has a right to an expulsion hearing. Accordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing.* For convenience, we accept the parties' description of this aspect of Education Code section 48915 as constituting a "mandatory expulsion provision."

> FN8. As the Department of Finance observed in an August 22, 1994, communication to the Commission in this matter, "nothing in [Education Code section 48915]... requires a district governing board or a county board of education to expel a pupil," and even "unauthorized and knowing possession of a firearm, does not result in mandated expulsion. Section 48915 subdivision (b) provides for the choice of the governing board to either expel the pupil in possession of a firearm, or refer the pupil to an alternative program of study...."

The second aspect of Education Code section 48915 relevant here consists of what we shall call the "discretionary expulsion provision." (*Id.*, former subd. (c), subsequently subd. (d), currently subd. (e).) During the period relevant in this proceeding (as well as currently), this subdivision of Education Code section 48915 recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing school property or private property, using or selling illicit drugs, receiving stolen property, possessing tobacco or drug paraphernalia, or engaging in disruptive behavior). The former provision (like the current provision) further specified that the school district governing board "may" order a student expelled upon finding that the ***871** student, while at school or at a school activity off school grounds, engaged in such conduct.[FN9]

> FN9. Education Code, section 48915, former subdivision (c) (as amended Stats.1992, ch. 909, § 3, p. 4226; amended and redesignated as former subd. (d) by Stats.1993, ch. 1255, § 2, pp. 7284-7285; further amended Stats.1993, ch. 1256, § 2, p. 7287, and Stats.1994, ch. 1198, § 7, p. 7271) provided, at the time relevant here: "Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board *may* order a pupil expelled upon finding that the pupil violated subdivision (f), (g), (h), (i), (j), (k), or (*l*) of Section 48900, or Section 48900.2 or 48900.3, and either of the following: [¶] (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct. [¶]

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> (2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others." (Italics added.)

At the time relevant here, subdivisions (f) through (*l*) of section 48900 (as amended Stats.1992, ch. 909, § 1, pp. 4224-4225; Stats.1994, ch. 1198, § 5, pp. 7269-5270) provided: "A pupil shall *not* be suspended from school or recommended for expulsion *unless* the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has: [¶] ... [¶] (f) Caused or attempted to cause damage to school property or private property. [¶] (g) Stolen or attempted to steal school property or private property. [¶] (h) Possessed or used tobacco, or any products containing tobacco or nicotine products.... However, this section does not prohibit use or possession by a pupil of his or her own prescription products. [¶] (i) Committed an obscene act or engaged in habitual profanity or vulgarity. [¶] (j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. [¶] (k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. [¶] (*l*) Knowingly received stolen school property or private property." (Italics added.)

At the time relevant here, section 48900.2 (Stats.1992, ch. 909, § 2, p. 4225) provided: "In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.[¶] For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive."

Section 48900.3 (Stats.1994, ch. 1198, § 6, p. 7270), at the time relevant here, provided: "In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of [former] Section 33032.5 [current section 233]."

In addition, section 48900.4 (Stats.1994, ch. 1017, § 1, p. 6196) provided, at the time relevant here: "In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment."

(All of these current provisions-sections 48915, subdivision (e), 48900, 48900.2, 48900.3, and 48900.4-read today substantially the same as they did at the time relevant in the present case.)

***472 *872 **595 B. *Proceedings under Government Code section 17500 et seq.*

Procedures governing the constitutional requirement of reimbursement under article XIII B, section 6, are set forth in Government Code section 17500 et seq. The Commission on State Mandates (Commission) (Gov.Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local gov-

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ernments or school districts. (Gov.Code, § 17551.) Government Code section 17561, subdivision (a), provides that the "state shall reimburse each ... school district for all 'costs mandated by the state,' as defined in section 17514." Government Code section 17514, in turn, defines "costs mandated by the state" to mean, in relevant part, "any increased costs which a ... school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Finally, Government Code section 17556 sets forth circumstances in which there shall be no reimbursement, including, under subdivision (c), circumstances in which "[t]he statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or ***473** executive order mandates costs which exceed the mandate in that federal law or regulation."

In March 1994, the District filed a "test claim" with the Commission, asserting entitlement to reimbursement for the costs of hearings provided with respect to both categories of cases described above-that is, those hearings triggered by mandatory expulsion recommendations, and those hearings resulting from discretionary expulsion recommendations. (See Gov.Code, § 17521; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-333, 285 Cal.Rptr. 66, 814 P.2d 1308.) [FN10] The District sought reimbursement for costs incurred between July 1, 1993, and June 30, 1994, under statutes effective through the latter date.

> FN10. As observed by amicus curiae California School Boards Association, a "test claim is like a class action-the Commission's decision applies to all school districts in the state. If the district is successful, the Commission goes to the Legislature to fund the statewide costs of the mandate for that year and annually thereafter as long as the statute is in effect."

In August 1998, after holding hearings on the District's claim (as amended in April 1995, to reflect legislation that became effective in 1994), the Commission issued a "Corrected Statement of Decision" in which it determined that Education Code section 48915's requirement of suspension and a ***873** mandatory recommendation of expulsion for firearm possession constituted a "new program or higher level of service," and found that because costs related to some of the resulting hearing provisions set forth in Education Code section 48918 (primarily various notice, right of inspection, and recording provisions) exceeded the requirements of federal due process, those additional hearing costs constituted reimbursable state-mandated costs.[FN11] As to the vast majority of the remaining**596** hearing procedures triggered by Education Code section 48915's requirement of suspension and a mandatory recommendation of expulsion for firearm possession-for example, procedures governing such matters as the hearing itself and the board's decision; a statement of facts and charges; notice of the right to representation by counsel; written findings; recording of the hearing; and the making of a record of the expulsion-the Commission found that those procedures were enacted to comply with federal due process requirements, and hence fell within the exception set forth in Government Code section 17556, subdivision (c), and ***474** did not impose a reimbursable state mandate. The Commission further found that with respect to Education Code section 48915's *discretionary* expulsions, there was no right to reimbursement for costs incurred in holding expulsion hearings, because such expulsions do not constitute a new program or higher level of service, and in any event such expulsions are not *mandated* by the state, but instead represent a choice by the principal and the school board.

> FN11. The Commission concluded that the costs incurred in providing the following state-mandated procedures under Education Code section 48918 exceeded federal due process requirements, and were reimbursable: (i) adoption of rules and regula-

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tions pertaining to pupil expulsions (§ 48918, first par. & *passim*); (ii) inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the District, (b) a notice of the parents' obligation to notify a new school district, upon enrollment, of the pupil's expulsion, and (c) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing (§ 48918, subd. (b)); (iii) allowing, upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing (§ 48918, subd. (b)); (iv) sending of written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, (b) the right to appeal the expulsion to the county board of education, and (c) the obligation of the parent to notify a new school district, upon enrollment, of the pupil's expulsion (§ 48918, former subd. (i), currently subd. (j); (v) maintenance of a record of each expulsion, including the cause thereof (§ 48918, former subd. (j), currently subd. (k); and (vi) the recording of expulsion orders and the causes thereof in the pupil's mandatory interim record (and, upon request, the forwarding of this record to any school in which the pupil subsequently enrolls) (§ 48918, former subd. (j), currently subd. (k)).

In October 1999, the District brought this proceeding for an administrative writ of mandate challenging the Commission's decision. The trial court issued a writ commanding the Commission to render a new decision finding (i) all costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations are reimbursable, and (ii) hearing costs associated with discretionary expulsions are reimbursable to the limited ***874** extent that required hearing procedures exceed federal due process mandates. The Commission (defendant) and the Department of Finance (real party in interest, hereafter Department) appealed, and the Court of Appeal affirmed the judgment rendered by the trial court.

II

A. *Costs associated with hearings triggered by compulsory suspensions and mandatory expulsion recommendations*

1. *"New program or higher level of service"?*

We address first the issue that we asked the parties to brief: Does Education Code section 48915, former subdivision (b) (current subds. (c) & (d)), which mandated suspension and an expulsion recommendation for those students who possess a firearm at school or at a school activity off school grounds, and which also required a school board, if it found the charge proved, either to expel or to "refer" such a student to an alternative educational program housed at a separate school site, constitute a "new program or higher level of service" under article XIII B, section 6 of the state Constitution, and under Government Code section 17514?

We addressed the meaning of the Constitution's phrase "new program or higher level of service" in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202(*County of Los Angeles*). That case concerned whether local governments are entitled to reimbursement for costs incurred in complying with legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide for their employees. We stated:

"Looking at the language of [article XIII B, section 6] then, it seems clear that by itself the term 'higher level of service' is meaningless. It must be read in conjunction with the predecessor phrase 'new pro-

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gram' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in article XIII B. What programs **597 then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term-[(1)] programs that carry out the governmental function of providing services to the public, or [(2)] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents ***475 and entities in the state." (*County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

*875 We continued in *County of Los Angeles:* "The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: 'Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.' (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase 'to force programs on local governments' confirms that *the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.*" (*County of Los Angeles, supra,* 43 Cal.3d 46, 56-57, 233 Cal.Rptr. 38, 729 P.2d 202, italics added.)

It was clear in *County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, that the law at issue did not meet the second test for a "program or higher level of service"-it did not implement a state policy by imposing unique requirements upon local governments, but instead applied workers' compensation contribution rules generally to all employers in the state. Nor, we held, did the law requiring local agencies to shoulder a general increase in workers' compensation benefits amount to a reimbursable "program or higher level of service" under the first test described above. (*Id.,* at pp. 57-58, 233 Cal.Rptr. 38, 729 P.2d 202.) The law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public.

We reaffirmed and applied the test set out in *County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, in *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318(*Lucia Mar*). The state law at issue in *Lucia Mar* required local school districts to pay a portion of the cost of educating pupils in *state* schools for the severely handicapped-costs that the state previously had paid in full.

We determined that the contributions called for under the law were used to fund a "program" within both definitions of that term set forth in *County of Los Angeles.* (*Lucia Mar, supra,* 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) We stated: "[T]he education of handicapped children is clearly a governmental function providing a service to the public, and the [state law] imposes requirements on school districts not imposed on all the states residents. Nor can there be any doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are *876 concerned, since at the time [the state law] became effective they were not required to contribute to the education of students from their districts at such schools. [ ] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a

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local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B....Section 6 was intended to preclude the state from shifting to local ***476** agencies the financial responsibility for providing public services in view of ... restrictions on the taxing and spending power of the local entities." (*Lucia Mar, supra,* 44 Cal.3d 830, 835-836, 244 Cal.Rptr. 677, 750 P.2d 318; see also ****598***County of San Diego v. State of California* (1997) 15 Cal.4th 68, 98, 61 Cal.Rptr.2d 134, 931 P.2d 312 [legislation excluding indigents from Medi-Cal coverage transferred obligation for such costs from state to counties, and constituted a reimbursable "new program or higher level of service"].)

We again applied the alternative tests set forth in *County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522(*City of Sacramento*). In that case we considered whether a state law implementing federal "incentives" that encouraged states to extend unemployment insurance coverage to all public employees constituted a program or higher level of service under article XIII B, section 6. We concluded that it did not because, as in *County of Los Angeles,* (1) providing unemployment compensation protection to a city's own employees was not a service to the public; and (2) the statute did not apply uniquely to local governments-indeed, the same requirements previously had been applied to most employers, and extension of the requirement (by eliminating a prior exemption for local governments) merely placed local government employers on the same footing as most private employers. (*City of Sacramento, supra,* 50 Cal.3d at pp. 67-68, 266 Cal.Rptr. 139, 785 P.2d 522.)

Subsequently, the Court of Appeal in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754(*City of Richmond*), following *County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202, and *City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, concluded that requiring local governments to provide death benefits to local safety officers, under both the Public Employees Retirement System and the workers' compensation system, did not constitute a higher level of service to the public. The Court of Appeal arrived at that determination even though-as might also have been argued in *County of Los Angeles* and *City of Sacramento*-such benefits may "generate a higher quality of local safety officers" and thereby, in a general and indirect sense, provide the public with a "higher level of service" by its employees. (*City of Richmond, supra,* 64 Cal.App.4th 1190, 1195, 75 Cal.Rptr.2d 754.)

Viewed together, these cases (*County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202,*City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and ***877***City of Richmond, supra,* 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754) illustrate the circumstance that simply because a state law or order may *increase the costs* borne by local government *in providing services,* this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514.[FN12]

FN12. Indeed, as the court in *City of Richmond, supra,* 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754, observed: "Increasing the cost of providing services cannot be equated with requiring an increased level of service under [article XIII B,] section 6.... A higher cost to the local government for compensating its employees is not the same as a higher cost of providing [an increased level of] services to the public." (*Id.,* at p. 1196, 75 Cal.Rptr.2d 754; accord, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, 235 Cal.Rptr. 101 [temporary increase in PERS benefit to retired employees, result-

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ing in higher contribution rate by local government, does not constitute a higher level of service to the public].)

***477 By contrast, Courts of Appeal have found a reimbursable "higher level of service" concerning an existing "program" when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided. In *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537-538, 234 Cal.Rptr. 795(*Carmel Valley*), for example, an executive order required that county firefighters be provided with protective clothing and safety equipment. Because this increased safety equipment apparently was designed to result in more effective fire protection, the mandate evidently was intended to produce a higher level of service to the public, thereby satisfying the first alternative test set out in *County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. Similarly, in **599*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173, 275 Cal.Rptr. 449(*Long Beach*), an executive order required school districts to take specific steps to measure and address racial segregation in local public schools. The appellate court held that this constituted a "higher level of service" to the extent the order's requirements exceeded federal constitutional and case law requirements by mandating school districts to undertake defined remedial actions and measures that were merely advisory under prior governing law.

[1] The District and the Commission assert that the "mandatory" aspect of Education Code section 48915, insofar as it compels suspension and mandates an expulsion recommendation for firearm possession (and thereafter restricts the board's options to expulsion or referral to an off-site alternative school), carries out a governmental function of providing services to the public and hence constitutes an increased or higher level of service concerning an existing program under the first alternative test of *County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. They argue, in essence, that the present matter is more analogous to the latter cases *878(*Carmel Valley, supra,* 190 Cal.App.3d 521, 234 Cal.Rptr. 795, and *Long Beach, supra,* 225 Cal.App.3d 155, 275 Cal.Rptr. 449)-both of which involved measures designed to increase the level of governmental service provided to the public-than to the former cases (*County of Los Angeles, supra,* 43 Cal.3d 46, 233 Cal.Rptr. 38, 729 P.2d 202,*City of Sacramento, supra,* 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522, and *City of Richmond, supra,* 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754)-in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased. As we shall explain, we agree with the District and the Commission.

The statutory requirements here at issue-immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral)-reasonably are viewed as providing a "higher level of service" to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment of Statutes of 1993, chapters 1255 (Assem. Bill No. 342 (1993-1994 Reg. Sess.) (Assembly Bill No. 342)) and 1256 (Senate Bill ***478 No. 1198 (1993-1994 Reg. Sess.) (Senate Bill No. 1198)); and (ii) the requirements were intended to provide an enhanced service to the public-*safer schools for the vast majority of students* (that is, those who are not expelled or referred to other school sites). In other words, the legislation was premised upon the idea that by removing potentially violent students from the general school population, the safety of those students who remain thereby is increased. (See, e.g., Stats.1993, ch. 1255, § 4, pp. 7285-7286 ["In order to ensure public safety on school campuses ... it is necessary that this act take effect immediately"]; Sen. Com. on Ed. (Apr. 28, 1993),

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Analysis of Assem. Bill No. 342, p. 2 [noting legislative purpose to enhance public safety]; see also Assem. Com. on Ed. (July 14, 1993), Analysis of Sen. Bill No. 1198, p. 1 [noting legislative purpose to remove those who possess firearms from the general school population by increasing the frequency of expulsion for such conduct].)

In challenging this conclusion, the Department relies upon *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 263 Cal.Rptr. 351(*Department of Industrial Relations*). In that case, the state enacted enhanced statewide safety regulations that governed all public and private elevators, and thereafter the County of Los Angeles sought reimbursement for the costs of complying with the new regulations. The Court of Appeal found that the regulations constituted neither a new program nor a higher level of service concerning an existing program under either of the two alternative tests set out in *County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202. The court concluded that the elevator regulations did not meet the first alternative test, because the regulations did not carry out a governmental function of providing services to the public; the court found instead that ***879** "[p]roviding elevators equipped with fire and earthquake ****600** safety features simply is not a 'government function of providing services to the public.' " (*Department of Industrial Relations, supra,* 214 Cal.App.3d at p. 1546, 263 Cal.Rptr. 351.) Moreover, the court found, the second ("uniqueness") test was not met-the regulation applied to all elevators, not only those owned or operated by local governments.

The Department asserts that *Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, 263 Cal.Rptr. 351, is analogous, and argues that the "service" afforded by mandatory suspensions followed by a required expulsion recommendation, etc., is "not qualitatively different from the safety regulations at issue in [*Department of Industrial Relations*]. School districts carrying out such expulsions are not providing a service to the public...." We disagree. Providing public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public. Moreover, here, unlike the situation in *Department of Industrial Relations,* the law implementing this state policy applies uniquely to local public schools. We conclude that *Department of Industrial Relations* does not conflict with the conclusion that the mandatory suspension and expulsion recommendation requirements, together with restrictions placed upon a district's resolution of such a case, constitute an increased or higher level of service to the public under the constitutional provision and the implementing statutes.

Of course, even if, as we have concluded above, a statute effectuates an increased or higher level of governmental service to the public concerning an existing program, this "does not necessarily lead to the conclusion that the program is a *state* mandate*****479** under California Constitution, article XIII B, section 6."(*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304, italics added (*County of Los Angeles II*).) We turn to the question whether the hearing costs at issue, flowing from compulsory suspensions and mandatory expulsion recommendations, are mandated by the state.

2. *Are the hearing costs state mandated?*

As noted above, a compulsory suspension and a mandatory recommendation of expulsion under Education Code section 48915 in turn trigger a mandatory expulsion hearing. All parties agree that any such resulting expulsion hearing must comply with basic federal due process requirements, such as notice of charges, a right to representation by counsel, an explanation of the evidence supporting the charges, and an opportunity to call and cross-examine witnesses and to present evidence. (See *ante,* fn. 5.) But as also noted above, article XIII B, section 6, and the implementing statutes ***880**

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Gov.Code, § 17500 et seq.), by their terms, provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs. The Commission and the Department assert that this circumstance raises the question: Do all or some of a district's costs in complying with the mandatory expulsion provision of Education Code section 48915 constitute a non-reimbursable *federal* mandate?

In the absence of the operation of Education Code section 48915's mandatory provision (specifically, compulsory immediate suspension and a mandatory expulsion recommendation), a school district would not automatically incur the due process hearing costs that are mandated by federal law pursuant to *Goss, supra,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725, and related cases, and codified in Education Code section 48918. Instead, a district would incur such hearing costs only if a school principal first were to exercise discretion to recommend expulsion. Accordingly, in its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.

The Department and the Commission agree to a point, but argue that a district's costs incurred in complying with this state mandate are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process. In support, they rely upon Government Code **601section 17556, which in setting forth circumstances in which the Commission shall *not* find costs to be mandated by the state provides that "[t]he commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." FN13

FN13. Government Code section 17556 reads in full: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph. [¶] (b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts. [¶] (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. [¶] (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. [¶] (f) The statute or executive order

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> imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election. [¶] (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

***480 *881** We agree with the District and the Court of Appeal below that, as applied to the present case, it cannot be said that Education Code section 48915's mandatory expulsion provision "*implemented a federal law or regulation.*" (Italics added.) Education Code section 48915, at the time relevant here, did not implement any federal law; as explained below, federal law did not *then* mandate an expulsion recommendation-or expulsion-for firearm possession.[FN14] Moreover, although the Department argues that in this context Government Code section 17556, subdivision (c)'s phrase "the statute" should be viewed as referring not to Education Code section 48915's mandatory expulsion recommendation requirement, but instead to the mandatory due process hearing under Education Code section 48918 that is triggered by such an expulsion recommendation, it still cannot be said that section 48918 itself required the District to incur any costs. As noted above, Education Code section 48918 sets out requirements for expulsion hearings that must be held when a district seeks to expel a student-but neither section 48918 nor federal law requires that any such expulsion recommendation be made in the first place, and hence section 48918 does not implement any federal mandate that school districts hold such hearings and incur such costs whenever a student is found in possession of a firearm. Accordingly, we conclude that the so-called exception to reimbursement described in Government Code section 17556, subdivision (c), is inapplicable in this context.

> FN14. Subsequent amendments to federal law may alter this conclusion with regard to future test claims concerning Education Code section 48915's mandatory expulsion provision-see *post,* 16 Cal.Rptr.3d pages 481-482, 94 P.3d pages 602-603.

Because it is state law (Education Code section 48915's mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, contrary to the view of the Commission and the Department, that we cannot characterize *any* of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude **602 that under the statutes existing at the time of the test claim in this case (state legislation in effect through ***481** mid-1994), *all* such hearing costs-those designed to satisfy the minimum requirements of federal due process, and those that may exceed **882** those requirements-are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.[FN15]

> FN15. In Exhibit No. 1 to its claim, the District presented the declaration of a San Diego Unified School District official, estimating that in order to process "350 proposed expulsions" during the period spanning July 1, 1993, to June 30, 1994, the District would incur approximately $94,200 "in staffing and other costs"-yielding an average estimated cost of approximately $270 per hearing during the relevant period. It is unclear from the record how many of these 350 hearings would be triggered by Education Code section 48915's mandatory expulsion provision (and constitute state-mandated costs subject to reimbursement under article XIII B, section 6), and how many of these 350 hearings would be triggered by Education Code section 48915's discretionary provision (and, as explained *post,* in part II.B,

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constitute a nonreimbursable *federal* mandate).

We note that in the proceedings below, the Commission did not confine reimbursement only to those matters as to which the district on its own initiative would not have sought expulsion in the absence of the statutory requirement that it seek expulsion-and the Department has not raised that point in the trial court or on appeal.

Against this conclusion, the Department, in its supplemental briefing, offers a wholly new theory, not advanced in any of the proceedings below, in support of its belated claim that *all* hearing costs triggered by Education Code section 48915's mandatory expulsion provision are in fact nonreimbursable *federal* mandates, and not, as we have concluded above, reimbursable state mandates. As we shall explain, we reject the Department's contention, as applied to the test case here at issue (involving state statutes in effect through mid-1994).

The Department cites 20 United States Code section 7151, part of the federal No Child Left Behind Act of 2001, which provides, as relevant here: "Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing." FN16

FN16. "Firearm," as defined in 18 United States Code section 921, includes guns and explosives.

The Department further asserts that more than $2.8 billion in federal funds under the No Child Left Behind Act are included "for local use" in the 2003-04 state budget. (Cal. State Budget, 2003-04, Budget Highlights, p. 4.) The Department argues that in light of the requirements set forth in 20 United States Code section 7151, and the amount of federal program funds at issue under the No Child Left Behind Act, the financial consequences to the state and to the school districts of failing to comply with 20 United States Code section 7151 are such that as a practical matter, *883Education Code section 48915's mandatory expulsion provision in reality constitutes an implementation of federal law, and hence resulting costs are nonreimbursable except to the extent they exceed the requirements of federal law. (See Govt.Code, § 17556, subd. (c); see also *Kern High School Dist., supra,* 30 Cal.4th 727, 749-751, 134 Cal.Rptr.2d 237, 68 P.3d 1203; *City of Sacramento, supra,* 50 Cal.3d 51, 70-76, 266 Cal.Rptr. 139, 785 P.2d 522.) Moreover, the Department asserts, to the extent school districts are ***482** compelled by federal law, through Education Code section 48915's mandatory expulsion provision, to hold hearings pursuant to section 48918 in cases of firearm possession on school grounds, under 20 United States Code section 7164 (defining prohibited uses of program funds), *all* costs of such hearings properly may be paid out of federal program funds, and hence we should "view the ... provision of program funding as satisfying, in advance, any reimbursement requirement." (*Kern High School Dist., supra,* 30 Cal.4th 727, 747, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

**603 Although the Department asserts that this federal law and program existed at the time relevant in this matter (that is, through mid-1994), our review of the statutes and relevant history suggests otherwise. Title 20 of the United States Code, section 7151, and the remainder of the No Child Left Behind Act, became effective on January 8, 2002. The predecessor legislation cited by the Department-the Gun-Free Schools Act of 1994 (former 20 U.S.C. § 8921(a)), although containing a substantially identical mandatory expulsion provision (*id.*, § 8921(b)(1)) FN17 -was not effective until July 1, 1995 (108 Stat. 3518, § 3). In turn, the predecessor

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legislation to *that* Act cited by the Department, the Elementary and Secondary Education Act of 1965 (former 20 U.S.C. § 6301 et seq.)-as it existed at the time relevant here (July 1, 1993, through June 30, 1994)-contained no such mandatory expulsion provision. Accordingly, it appears that despite the Department's late discovery of 20 United States Code section 7151, at the time relevant here (regarding legislation in effect through mid-1994), neither 20 United States Code section 7151, nor either of its predecessors, compelled states to enact a law such as Education Code section 48915's mandatory expulsion provision. Therefore, we reject the Department's assertion that, during the time period at issue in this case, Education Code section 48915's mandatory expulsion provision constituted an implementation of a federal, rather than a state, mandate.

> FN17. The prior law stated: "Except as provided in paragraph (3), each State receiving Federal funds under this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis." (Pub.L. No. 103-382, § 14601(b)(1) (Oct. 20, 1994) 108 Stat. 3518.)

Although we conclude that all hearing costs triggered by Education Code section 48915's mandatory expulsion provision constitute reimbursable state-mandated expenses under the statutes as they existed during the period ***884** covered by the District's present test claim, we do not foreclose the possibility that 20 United States Code section 7151 or its predecessor, 20 United States Code section 8921, may lead to a different conclusion when applied to versions of Education Code section 48915 effective in years 1995 and thereafter. Indeed, we note that at least one subsequent test claim that has been filed with the Commission may raise the federal statutory issue advanced by the Department.FN18

> FN18. See Pupil Expulsions II (4th Amendment), CSM No. 01-TC-18 (filed June 3, 2002). This claim, filed by the San Juan Unified School District, asserts reimbursable state mandates with respect to, among numerous other statutes, Education Code section 48915, as amended effective in 2002.

B. *Costs associated with hearings triggered by discretionary expulsion recommendations*

[2] We next consider whether reimbursement is required for the costs associated*****483** with hearings triggered under discretionary expulsion provisions. Again, we address first the issue that we asked the parties to brief: Does the discretionary expulsion provision of Education Code section 48915 (former subd. (c), thereafter subd. (d), currently subd. (e)), which, as noted above, recognized that a principal possesses *discretion* to recommend that a student be expelled for specified conduct other than firearm possession (conduct such as damaging or stealing property, using or selling illicit drugs, possessing tobacco or drug paraphernalia, etc.), and further specified that the school district governing board "may" order a student expelled upon finding that the student, while at school or at a school activity off school grounds, engaged in such conduct, constitute a "new program or higher level of service" under article XIII B, section 6 of the state Constitution, and under Government Code section 17514?

We answer this question in the negative. The discretionary expulsion provision of Education Code section 48915 does not constitute a "new" program or higher level of service, because provisions recognizing discretion to suspend or expel were set forth in statutes predating 1975. (See Educ.Code,

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former **604 § 10601, Stats.1959, ch. 2, § 3, p. 860 [providing that a student may be suspended for good cause]; *id.*, former § 10602 (Stats.1970, ch. 102, § 102, p. 159 (defining "good cause"); *id.*, former section 10601.6 (Stats.1972, ch. 164, § 2, p. 384 (further defining "good cause").))) FN19 Accordingly, the discretionary expulsion provision of Education Code section 48915 is not a "new" program under article XIII B, section 6, and the implementing statutes, *885 nor does it reflect a higher level of service related to an existing program. (*County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202.)

> FN19. As the Commission observed in its Corrected Statement of Decision in this matter: "The authorization for governing boards to expel pupils from school for inappropriate behaviors has been in existence since before 1975. The behaviors defined as inappropriate under current law, subdivisions (a) though (*l*) of section 48900, 48900.2, and 48900.3, meet prior laws' definitions of 'good cause' and 'misconduct' as reasons for expulsion." (Italics deleted.)

The District maintains, nevertheless, that once it elects to pursue expulsion, it is obligated to abide by the procedural hearing requirements of Education Code section 48918 and accordingly is mandated by that section to incur costs associated with such compliance. The District asserts that in this respect, *section 48918* constitutes a "new program or higher level of service" related to an existing program under article XIII B, section 6 and under Government Code section 17514. We shall assume for analysis that this is so.FN20

> FN20. The requirements of Education Code section 48918 would appear to be "new" for purposes of the reimbursement provisions, in that they did not exist prior to 1975 and were enacted in that year and subsequently. (See *ante,* fn. 2.) The requirements also would appear to meet both alternative tests set forth in *County of Los Angeles, supra,* 43 Cal.3d 46, 56, 233 Cal.Rptr. 38, 729 P.2d 202-that is, by implementing procedures that direct and guide the process of expulsion from public school, the statute appears to carry out a governmental function of providing services to public school students who face expulsion; or, it would seem, section 48918 constitutes a law that, to implement state policy, imposes unique requirements on local governments.

The District recognizes, of course, that under Government Code, section 17556, subdivision (c), it is not entitled to reimbursement to the extent Education Code section 48918 merely implements federal due process law, but the District argues that it has a right to reimbursement for its costs of complying with section 48918*to* ***484 *the extent* those costs are attributable to hearing procedures that *exceed* federal due process requirements. (See Govt.Code, § 17556, subd. (c).) The District asserts that its costs in complying with various notice, right of inspection, and recording requirements (see *ante,* fn. 11) fall into this category and are reimbursable.

The Department and the Commission argue in response that any right to reimbursement for hearing costs triggered by discretionary expulsions-even costs limited to those procedures that assertedly exceed federal due process hearing requirements-is foreclosed by virtue of the circumstance that when a school pursues a discretionary expulsion, it is not acting under compulsion of any law but instead is exercising a choice. In support, the Department and the Commission rely upon *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, and *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 200 Cal.Rptr. 642(*City of Merced*).

In *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, school districts asserted that costs incurred in complying with statutory notice and agenda requirements for commit-

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tee meetings concerning various state and federally funded educational programs constituted a reimbursable state mandate, because once ***886** school districts *elected* to participate in the underlying state and federal programs, the districts had no option but to hold program-related committee meetings and abide by the challenged notice and agenda requirements. (*Id.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) We rejected the school districts' position, reasoning in part that because the districts' participation in the underlying programs was voluntary, the notice and agenda costs incurred as a result of that voluntary participation were not the product of legal compulsion and did not constitute a reimbursable state mandate on that basis. ****605**(*Id.*, at p. 745, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) FN21

> FN21. We also proceeded to hold that in any event, because the school districts were free to use program funds to pay for the challenged increased costs, the districts had, in practical effect, already been given funds by the Legislature to cover the challenged costs. (*Kern High School Dist., supra,* 30 Cal.4th at pp. 748-754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

In reaching that conclusion in *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we discussed *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642. In that case, the city wished either to purchase or to condemn, pursuant to its eminent domain authority, certain privately owned real property. The city elected to proceed by eminent domain, under which it was required by then recent legislation (Code Civ. Proc., § 1263.510) to compensate the property owner for loss of "business goodwill." The city so compensated the property owner and then sought reimbursement from the state, arguing that the new statutory requirement that it compensate for business goodwill amounted to a reimbursable state mandate. (*City of Merced, supra,* 153 Cal.App.3d at p. 780, 200 Cal.Rptr. 642.) The Court of Appeal concluded that the city's increased costs flowing from its election to condemn the property did not constitute a reimbursable state mandate. (*Id.*, at pp. 781-783, 200 Cal.Rptr. 642.) The court reasoned: "[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is ***485 exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.*" (*Id.*, at p. 783, 200 Cal.Rptr. 642, italics added.)

Summarizing this aspect of *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in *Kern High School Dist., supra,* 30 Cal.4th 727, 134 Cal.Rptr.2d 237, 68 P.3d 1203, we stated: "[T]he core point articulated by the court in *City of Merced* is that *activities undertaken at the option or discretion of a local government entity* (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) *do not trigger a state mandate and hence do not require reimbursement of funds-even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.*" (*Kern High School Dist.*, at p. 742, 134 Cal.Rptr.2d 237, 68 P.3d 1203, italics added.)

The Department and the Commission argue that in the present case the District, like the claimants in *Kern High School Dist.*, errs by focusing upon ***887** the final result-a school district's legal obligation to comply with statutory hearing procedures-rather than focusing upon whether the school district has been *compelled* to put itself in the position in which such a hearing (with resulting costs) is required.

The District and amici curiae on its behalf (consistently with the opinion of the Court of Appeal below) argue that the holding of *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, should not be extended to apply to situations beyond the context presented in that case and in *Kern High School Dist., supra,* 30 Cal.4th 727, 134

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Cal.Rptr.2d 237, 68 P.3d 1203. The District and amici curiae note that although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program.[FN22]

> FN22. Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [hearing] costs [under Education Code section 48918] cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [Education Code section 48915's discretionary provision] for damaging or stealing school or private property, using or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."

Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in Education Code section 48915's discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."

****606** Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement*****486** under ***888**article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced,* public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514[FN23] and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.,* at pp. 537-538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ-and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra,* 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning,

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for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.

> FN23. As we observed in *Kern High School Dist., supra,* 30 Cal.4th 727, 751-752, 134 Cal.Rptr.2d 237, 68 P.3d 1203, "article XIII B, section 6's 'purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities.' "

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced,* because this aspect of the present case can be resolved on an alternative basis. As we shall explain, we conclude, regarding the reimbursement claim that we face presently, that *all* hearing procedures set forth in Education Code section 48918 properly should be considered to have been adopted to implement a federal due process mandate, and hence that all such hearing costs are nonreimbursable under article XIII B, section 6, and Government Code section 17557, subdivision (c).

In this regard, we find the decision in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, to be instructive. That case concerned Penal Code section 987.9, which requires counties to provide indigent criminal defendants with defense funds for ancillary investigation services related to capital trials and certain other trials, and further provides related procedural protections-namely, the confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request. The county in that case asserted that funds expended under the statute constituted reimbursable ****607** state mandates. The Court of Appeal disagreed, finding instead that the Penal Code section merely implements the requirements of federal constitutional law, and that "even in the ***889** absence of [*****487**Penal Code] section 987.9, ... counties would be responsible for providing ancillary services under the constitutional guarantees of due process ... and under the Sixth Amendment...." (32 Cal.App.4th at p. 815, 38 Cal.Rptr.2d 304.) Moreover, the Court of Appeal concluded, the procedural protections that the Legislature had built into the statute-requirements of confidentiality of a request for funds, the right to have the request ruled upon by a judge other than the trial judge, and the right to an in camera hearing on the request-were merely incidental to the federal rights codified by the statute, and their "financial impact" was de minimis. (*Id.,* at p. 817, fn. 7, 38 Cal.Rptr.2d 304.)Accordingly, the Court of Appeal concluded, the Penal Code section, in its entirety-that is, *even those incidental aspects of the statute that articulated specific procedures, not expressly set forth in federal law, for the filing and resolution of requests for funds*-constituted an implementation of federal law, and hence those costs were nonreimbursable under article XIII B, section 6.

We conclude that the same reasoning applies in the present setting, concerning the District's request for reimbursement for procedural hearing costs triggered by its discretionary decision to seek expulsion. As in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304, the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not

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expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code, section 17556, subdivision (c). We reach the same conclusion here.

Indeed, to proceed otherwise in the context of a reimbursement claim would produce impractical and detrimental consequences. The present case demonstrates the point. The record reveals that in the extended proceedings before the Commission, the parties spent numerous hours producing voluminous pages of analysis directed toward determining whether various provisions of Education Code section 48918 exceeded federal due process requirements. That task below was complicated by the circumstance that this area of federal due process law is not well developed. The Commission, which is not a judicial body, did as best it could and concluded that in certain ***890** respects the various provisions (as observed *ante,* footnote 11, predominantly concerning notice, right of inspection, and recording requirements) "exceeded" the requirements of federal due process.

Even for an appellate court, it would be difficult and problematic in this setting to categorize the various notice, right of inspection, and recording requirements here at issue as falling either within or without the general federal due process mandate. The difficulty results not only from the circumstance that, as noted, the case law *****488** in the area of due process procedures concerning expulsion matters is relatively undeveloped, but also from the circumstance that when such an issue is raised in an action for reimbursement, as opposed to its being raised in litigation challenging an actual expulsion on the ground of allegedly inadequate hearing procedures, the issue inevitably is presented in the abstract, without any factual context that might help frame the legal issue. In such circumstances, courts are-and should be-****608** wary of venturing pronouncements (especially concerning matters of constitutional law).

In light of these considerations, we agree with the conclusion reached by the Court of Appeal in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304: for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law-and whose costs are, in context, de minimis-should be treated as part and parcel of the underlying federal mandate.

Applying that approach to the case now before us, we conclude there can be no doubt that the assertedly "excessive due process" aspects of Education Code section 48918 for which the District seeks reimbursement in connection with hearings triggered by discretionary expulsions (see *ante,* footnote 11-primarily, as noted, various notice, right of inspection, and recording rules) fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost. Accordingly, for purposes of the District's reimbursement claim, all hearing costs incurred under Education Code section 48918, triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable under Government Code section 17556, subdivision (c).FN24

> FN24. We do not foreclose the possibility that a local government might, under appropriate facts, demonstrate that a state law, though codifying federal requirements in part, also imposes more than "incidental" or "de minimis" expenses in excess of those demanded by federal law, and thus gives rise to a reimbursable state mandate to that extent.

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***891 III**

The judgment of the Court of Appeal is affirmed insofar as it provides for full reimbursement of all costs related to hearings triggered by the mandatory expulsion provision of Education Code section 48915. The judgment of the Court of Appeal is reversed insofar as it provides for reimbursement of any costs related to hearings triggered by the discretionary provision of section 48915. All parties shall bear their own costs on appeal.

WE CONCUR: KENNARD, BAXTER, WERDEGAR, CHIN, BROWN, and MORENO, JJ.
Cal.,2004.
San Diego Unified School Dist. v. Commission On State Mandates
33 Cal.4th 859, 94 P.3d 589, 16 Cal.Rptr.3d 466, 190 Ed. Law Rep. 636, 04 Cal. Daily Op. Serv. 6945, 2004 Daily Journal D.A.R. 9404

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OTHER DOCUMENTS

ATTACHMENT NO. 31

City of Los Angeles Ordinance No. 178132, fn. 68

1954

ORDINANCE NO. 178132

An ordinance amending Chapter IX Article I Section 91.106.4.1 and Chapter VI Article 4.4 Section 64.72 and adding Section 64.72.05 of the Los Angeles Municipal Code to collect fees to recover the Bureau of Sanitation's cost of providing Best Management Practices plan check to comply with the Standard Urban Stormwater Mitigation Plan or Site Specific Mitigation Plan; and amending Chapter IX Article I Section 91.106.4.1 of the Los Angeles Municipal Code by increasing the parcels over which the Department of Building and Safety may withhold grading permits from those with disturbed areas.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Exception 13 of Section 91.106.4.1 of Chapter IX of Article I of the Los Angeles Municipal Code is amended to read:

13. The Department of Building and Safety shall have the authority to withhold grading permits for developments with disturbed areas of one acre or more unless the applicant is able to show that a Notice of Intent to comply with the State Construction Activity Storm Water Permit has been filed with the State Water Resources Control Board and a Storm Water Pollution Prevention Plan has been prepared. For the purpose of this section, "**disturbed area**" shall mean an area altered as a result of cleaning, grading and/or excavation of earth.

Sec 2. Exception 15 B of Section 91.106.4.1 of Chapter IX of Article I of the Los Angeles Municipal Code is amended to read:

B. The City receives a Covenant and Agreement, signed by the owner and recorded with the Los Angeles County Recorder, declaring that the best management practices necessary to control stormwater pollution shall be installed and/or constructed and maintained in proper working condition at all times; and

Sec 3. A new Paragraph C is added to Exception 15 of Section 91.106.4.1 of Chapter IX of Article I of the Los Angeles Municipal Code to read:

C. The applicant pays a Best Management Practices plan check fee to comply with the Standard Urban Stormwater Mitigation Plan or Site Specific Mitigation Plan as authorized by Section 64.72.05 of this Code.

Sec 4. Subsection (B) of Section 64.72 of Chapter VI of Article 4.4 of the Los Angeles Municipal Code is amended to read:

(B) **Scope.** This section provides for the requirements of stormwater pollution control measures in accordance with the "**Development Best**

Management Practices Handbook" adopted by the Board of Public Works. This section applies to development and redevelopment projects and authorizes the Board of Public Works to define and adopt stormwater pollution control measures, collect Best Management Practices compliance plan check fees, grant waivers from the requirements of the Standard Urban Stormwater Mitigation Plan, collect funds from projects that are granted waivers, conduct inspections, cite violators for infractions, and impose fines. Except as otherwise provided here, the Board of Public Works shall administer, implement and enforce the provisions of this section.

Sec. 5. A new Section 64.72.05 of Chapter VI of Article 4.4 of the Los Angeles Municipal Code is added to read:

SEC. 64.72.05. BEST MANAGEMENT PRACTICES PLAN CHECK FEES

A. Before formally accepting a set of plans and specifications for checking, the Bureau of Sanitation shall collect a Best Management Practices plan check fee.

B. The fee schedule for providing Best Management Practices plan check services for Standard Urban Stormwater Mitigation Plan (SUSMP) or Site Specific Mitigation Plan (SSMP) is as follows:

	Development Category	Fees
1	Single-family hillside residential developments less than 1 acre	$ 200 / Project
2	Other Types of developments	$ 600 / Project

C. At the discretion of the Bureau of Sanitation, a large scale project may be categorized as a Special Project and billed on actual cost incurred by the City.

D. Off-hour Plan Check Fee. Upon request by an applicant, the Bureau of Sanitation may, at its discretion, provide plan check at other than normal working hours upon application therefore by an applicant. In addition to the plan check fees listed in (B) of this Section, an additional 50 percent premium will be collected at the time of request.

E. All entities, including City Departments and other public agencies, are required to pay the Best Management Practices plan check fees.

F. All monies collected pursuant to Section 64.72.05 of this Code shall be placed and deposited into the Stormwater Pollution Abatement Fund established by Section 64.51.11 of the Los Angeles Municipal Code.

Sec. 6. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 2 9 2006.

FRANK T. MARTINEZ, City Clerk

By _____
Deputy

Approved DEC 1 4 2006

_____
Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By claudia culling for
KEITH W. PRITSKER
Deputy City Attorney

Date 10/6/06

File No. 05-0600-584

ATTACHMENT NO. 32

Letter dated June 17, 1993, from Robert P. Ghirelli to Thomas A. Tidemanson

STATE OF CALIFORNIA—ENVIRONMENTAL PROTECTION AGENCY PETE WILSON, Governor

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
CENTRE PLAZA DRIVE
MONTEREY PARK, CA 91754-2156
(213) 266-7500
FAX: (213) 266-7600

June 17, 1993

Thomas A. Tidemanson, Director
Department of Public Works
County of Los Angeles
900 S. Fremont Avenue
Alhambra, CA 91803-1331

MUNICIPAL STORM WATER PERMIT FOR LOS ANGELES COUNTY - REVIEW OF SECOND YEAR COMPLIANCE (NPDES No. CA0061654, CI File No. 6948)

The County of Los Angeles, as principal permittee for the above NPDES permit, has submitted information required in the permit for second year compliance. On January 11, 1993, in the interest of timely implementation, we transmitted our letter approving the proposed Storm Water Monitoring Program and Early Action Best Management Practice Plans and our recommendations. A Regional Board workshop was conducted on January 25, 1993, to solicit comments from permittees and the public on these recommendations to the program. Comments were received from the Los Angeles County Department of Public Works and other co-permittees, three environmental groups, and the U.S. Environmental Protection Agency. Staff has reviewed all comments and made revisions to the recommendations. Enclosed as Attachment 1 are comments on the second year compliance submittals. Attachment 2 contains review comments on the Storm Water Monitoring Program.

We request that you respond to comments contained in the Attachments by July 1, 1993. We will present the results of this Review of Second Year Compliance at the July 19 Board meeting, to be held at Glendale City Hall, 613 E. Broadway, Glendale, at 9:30 a.m. Responses to comments from the County of Los Angeles may be presented at this time.

Staff of the Los Angeles County Department of Public Works has improved co-permittee participation and communication between permittees and the Regional Board in the past year by conducting monthly action meetings for the different phases. I encourage the continuation of this communication, and believe that this level of effort at coordination must be sustained to ensure the success of the storm water program.

If you have any questions regarding the second year comments or requirements, please call me at (213) 266-7510, or have your staff call Mark Pumford at (213) 266-7596.

Robert P. Ghirelli

ROBERT P. GHIRELLI, D.Env.
Executive Officer

cc: See mailing list

Enclosures

MAILING LIST

Board Members
Jorge León, Office of Chief Counsel, State Water Resources Control Board
Michael Kahoe, Assistant Secretary, California Environmental Protection Agency
Archie Matthews, Section Chief, Division of Water Quality, State Water Resources Control Board
Bill Pierce, Chief, Permits and Compliance Branch, United States Environmental Protection Agency, Region IX
Jim Noyes, Waste Management Division, County of Los Angeles, Department of Public Works
Rod Kubomoto, Waste Management Division, County of Los Angeles, Department of Public Works.
Phil Richardson, Stormwater Management Division, Bureau of Engineering, City of Los Angeles
Santa Monica Bay Restoration Project, Technical Advisory Committee
Mark Gold, Heal the Bay
Everett Delano, Natural Resources Defense Council
Lisa Weil, American Oceans Campaign
Gordon LaBedz, Scientific Advisory Council, Surfrider Foundation
Jim Danza, Technical Advisory Committee; Friends of the Los Angeles River
Co-permittees

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
JUNE 14, 1993

ATTACHMENT 1
MUNICIPAL STORM WATER PERMIT FOR LOS ANGELES COUNTY
REVIEW OF SECOND YEAR COMPLIANCE
(July 1, 1991 - June 30, 1992)

I. BACKGROUND

On June 18, 1990, this Regional Board adopted Order No. 90-079 (NPDES No. CA0061654) regulating storm water and urban runoff discharges from separate storm water sewers throughout Los Angeles County.

The area-wide municipal storm water permit was issued specifically recognizing that the storm drainage system in Los Angeles County is interconnected across numerous municipal jurisdictions. A workable and cost-effective storm water management program may be achieved only if Best Management Practices (BMPs) are used effectively to address, minimize, and/or prevent the pollution of storm water runoff on an area wide basis. Consequently, adoption and implementation of widely applicable pollution prevention practices as the initial step would be the most practical and efficient approach to ensure program effectiveness.

The Regional Board requires that permittees within their jurisdictions implement storm water management practices that are an integral part of a comprehensive area-wide storm water program. This may be achieved by incorporating a set of the same BMPs in all municipalities and a supplemental series of BMPs specific to the characteristics of a geographic location or hydrologic area. Other factors for consideration in effective BMP program development include:

1. Cross-Jurisdictional Agreements - A program for detecting and eliminating illegal connections, discharges, and disposals is essential for the overall success of the storm water program. The closures of Los Angeles County beaches due to high bacteria counts coming from the storm drainage system exemplify the fact that contaminants, litter, or other materials found in one municipality may originate from another area or municipality leading to cross-jurisdictional impacts. In order to effectively respond to such occurrences, a formal agreement should be developed by permittees similar to one being developed by the Ballona Creek Task Force chaired by the Los Angeles County Department of Public Works.

2. Construction Sites - The control of pollutants in surface runoff from construction sites is essential in preventing the flow of sediments and other waste materials and/or contaminants to the drainage system.

Municipal permittees are encouraged to adopt ordinances like those of the cities of Santa Monica and Malibu and develop enforcement strategies. These may include inspections at construction sites to insure that all practices are done in a proper and legal manner, and that problems are rectified immediately.

The State Water Resources Control Board (State Board) adopted a General Construction Storm Water Permit on August 20, 1992, which requires that a Storm Water Pollution Prevention Plan (SWPPP) be retained on site and will be made available to Regional Board or local authority

representatives when requested. The SWPPP establishes procedures adopted by the site operator to prevent the pollution of storm water leaving the site, and is an important document to verify proper practices.

3. Industrial Sites - Municipal permittees are to develop a storm water enforcement program which at a minimum shall include the inspection of industrial and commercial sites for compliance with municipal storm water pollution prevention programs. Such a program may utilize the Storm Water Pollution Prevention Plan (SWPPP) to verify compliance at facilities subject to the State of California General Industrial Storm Water Permit, and for notification of Regional Board staff for follow-up action.

4. Model Proposals - The City of Los Angeles and the City of Torrance have proposed and implemented noteworthy storm water programs and policies which may be effective in the prevention of runoff pollution. Regional Board staff suggests that all permittees consider such programs for potential implementation.

At the January 27, 1992, and January 25, 1993, Board meetings, staff presented reviews of compliance with first and second year requirements of the municipal storm water permit, respectively. At that time, not all requirements for Year 1 had been completed and some were carried over to Year 2.

During the first year of the Permit (July 1, 1990 - June 30, 1991), the cities and entities within the Santa Monica Bay Drainage Basin were phased into the Storm Water Program - 19 cities, the County of Los Angeles, Caltrans, and unincorporated areas of Ventura County.

The City of Thousand Oaks, which has a portion draining to the Santa Monica Bay Drainage Basin, submitted Part 1 and Part 2 application for a separate Municipal Storm Water Discharge Permit for that portion on March 25, 1992 and March 25, 1993, respectively. The City of Thousand Oaks is cooperating with the County of Los Angeles to ensure that all necessary information, data compilation, BMP compilation, and other relevant information is completed in a timely manner.

On July 1, 1992, 36 entities from the Upper Los Angeles River and the Upper San Gabriel River Drainage Basins became permittees under Phase II of the storm water permit. These cities in the Upper Los Angeles River Basin are: Burbank, Glendale, Hidden Hills, and San Fernando. Cities in the Upper San Gabriel River Drainage Basin are: Alhambra, Arcadia, Azusa, Baldwin Park, Bradbury, Claremont, Covina, Diamond Bar, Duarte, El Monte, Glendora, Industry, Irwindale, La Cañada Flintridge, La Habra Heights, La Puente, La Verne, Monrovia, Montebello, Monterey Park, Pasadena, San Dimas, San Gabriel, San Marino, Sierra Madre, South El Monte, South Pasadena, Temple City, Walnut, and West Covina.

On July 1, 1993, 30 entities from the Lower Los Angeles River and the Lower San Gabriel River Drainage Basins will become permittees under Phase III of the storm water permit. These entities include: Artesia, Bell, Bellflower, Bell Gardens, Carson, Cerritos, Commerce, Compton, Cudahy, Downey, Gardena, Hawaiian Gardens, Hawthorne, Huntington Park, Lakewood, La Mirada, Lawndale, Lomita, Long Beach, Lynwood, Maywood, Norwalk, Paramount, Pico Rivera, Santa Clarita, Santa Fe Springs, Signal Hill, South Gate, Vernon, and Whittier.

For the purposes of this Attachment, tasks that are requirements of the Municipal Permit will be underlined. Required actions necesarry to fullfill the requirements are shown in bold.

II. COMPLIANCE WITH REMAINING FIRST YEAR PERMIT REQUIREMENTS - SANTA MONICA BAY DRAINAGE BASIN

Task 2.1.8 Submit Early Action BMPs (EABMPs) during the first year of the permit for approval by the Executive Officer.

An EABMP is defined as an existing storm water/urban runoff management practice that is optimized to the maximum extent practicable in efficiency for the control or prevention of storm water runoff pollution.

Fifteen plans for this activity were submitted to the Board on January 23, 1992; however, the cities of El Segundo, Malibu, Inglewood, Calabasas, County of Ventura, and the City of Beverly Hills submitted their EABMPs between June 17 and November 18, 1992.

EABMP plans and schedules for implementation submitted represent a wide range of BMPs. All EABMPs proposed by individual cities may help prevent or control storm water pollution in their respective areas but may not be the most effective method of minimizing storm water pollution if not implemented on an area wide basis.

III. SECOND YEAR COMPLIANCE WITH PERMIT REQUIREMENTS

Year 2 requirements were submitted by all Permittees, on July 2, 1992, except Ventura County, which to date has not submitted the required information.

The required tasks, and Regional Board review of the submittals, follows:

Task 3.1 For each Drainage Basin, prepare and submit to the Regional Boards for approval by the Executive Officer, a monitoring program designed to:

a. detect accurately the constituents and parameters of concern in discharges indicated in the workplan, and to identify possible sources

b. identify illegal dischargers and/or locations of illicit disposal practices

Permittees submitted a monitoring program workplan on March 26, 1992, which was deficient in several respects. A detailed staff review of the workplan and required amendments are provided in Attachment 2. Regional Board staff and Los Angeles County Department of Public Works staff have had several discussions on deficiencies in the plans and are near agreement on a final monitoring program.

Task 3.1.2 Submit to the Regional Board for approval a plan with schedule of implementation of Additional BMPs (ABMPs), judged appropriate for each city or drainage basin to control pollutants from residential, commercial, and industrial sites to the maximum extent practicable.

Board staff has determined that the following BMPs shall constitute the minimum required for area-wide implementation. These BMPs will be used to evaluate compliance with BMP requirements of the permit. These BMPs will not entirely satisfy the EABMP nor the ABMP requirements but serve as a minimum. This list is not an additional requirement, but incorporates BMPs already proposed by some permittees.

It establishes an area-wide minimum BMP implementation standard for storm water management in the Santa Monica Bay watershed.

1. Establish or improve an area-wide catch basin stenciling program with a universal stencil to discourage dumping, discarding, and/or discharge of pollutants, carriers, and/or debris into storm drainage systems county wide.

2. Develop programs to promote, publicize and facilitate public reporting of illegal discharges and/or dumping (Permit Task 3.1.3).

3. Adopt a runoff control ordinance requiring the use of BMPs during and after construction and at selected commercial and industrial establishments (Permit Tasks 3.1.2, and 3.1.4.)

4. Augment public education and outreach programs with regard to catch basins and storm drainage systems and their intended purpose.

5. Provide additional catch basin and storm water channel cleaning when and where needed.

6. Increase cleaning frequency of and number of roadside trash receptacles in areas where needed.

7. Increase street sweeping in areas where needed.

8. Create or augment a program to eliminate the improper disposal of litter, lawn/garden clippings, and pet feces into the street or areas where runoff may carry these pollutants to the storm drainage system.

9. Implement facility inspections of auto repair shops, auto body shops, auto parts and accessory shops, gasoline stations, and restaurants (Permit Task 3.1.2).

10. Encourage owners and occupants of homes or businesses to remove dirt, rubbish, and debris from their sidewalks and alleys which may contribute pollutants to urban runoff.

11. Encourage recycling of oil, antifreeze, glass, plastic, and other materials to prevent their improper disposal into the storm drainage system.

12. Encourage the proper disposal of Household Hazardous Wastes to prevent the improper disposal of such materials to the storm drainage system.

13. Encourage the proper use and conservation of water to minimize runoff from landscaped areas, lawns, golf courses, etc.

A detailed plan, with schedule of implementation of above mentioned baseline BMPs, must be submitted to this Regional Board no later than July 1, 1993.

The Additional BMP plans submitted are inadequate for control of pollutants from residential, commercial, and industrial sites. Greater detail must be provided and a revised schedule for implementation must be submitted. ABMPs selected for implementation must supplement EABMPs and must control pollutants to the maximum extent practicable on an area-wide basis.

A plan, with schedule of implementation, for additional BMPs judged appropriate for each city or drainage basin must be developed. These ABMPs, implemented to control pollutants from residential, commercial, and industrial sites to the maximum extent practicable, must be submitted to this Regional Board no later than July 1, 1993.

Task 3.1.3 Submit for approval a plan with schedule of implementation of procedures to detect and eliminate illegal discharges and illicit disposal practice.

The plans submitted to comply with this requirement are inadequate. Some permittees have proposed only the standardization of hazardous material spill containment capabilities and response procedures to improve containment and clean-up. The standardization of containment procedures is not in itself sufficient and as such does not satisfy permit requirements. Other permittees omitted information altogether.

A plan, with schedule of implementation of procedures to detect and eliminate illegal discharges and illicit disposal practices, must be submitted to this Regional Board no later than July 1, 1993.

Task 3.1.4 Submit for approval a plan with schedule of implementation of measures to control pollutants in surface runoff from construction sites.

Board staff's review of plans submitted for this requirement determined that the ABMPs for control of pollutants from construction sites are inadequate. More detail must be provided and a revised schedule for implementation must be submitted. ABMPs selected for implementation must supplement EABMPs.

One permittee responded that because all undeveloped lots in its jurisdiction are less than one tenth of an acre in size, no plan to control pollutants or sediments is necessary other than simply sand bagging. This may be true for sediment or erosion control but does not necessarily control waste materials generated during construction. A plan for the control of pollutants for construction sites is required regardless of size under the municipal compliance program. Construction activity may include any disturbance of soil including excavation, grading, and demolishing.

Another permittee has proposed to make construction contractors aware of permit regulations and the problems associated with contaminated runoff. Such measures may be adequate for certain municipalities but are most effective if practiced across municipal jurisdictions. In addition, other BMPs must be considered.

A plan, with schedule of implementation of measures to control pollutants in surface runoff from construction sites, must be submitted to this Regional Board no later than July 1, 1993.

Task 3.2 Evidence of satisfactory progress of implementation of plan and schedule for early action BMPs

The Cities of Torrance and Los Angeles have implemented EABMPs in advance of the Executive Officer's approval. These cities are the only permittees in compliance with this requirement. Progress

made by these municipalities is very positive. Permittees should consider the implementation of similar programs and/or practices. Staff commends the initiative taken by these cities. Other cities have indicated that they have implemented EABMPs as well, but no documentation has been submitted to the Regional Board.

Evidence of satisfactory progress of implementation of plan and schedule for early action BMPs and additional BMPs must be submitted to this Regional Board no later than July 1, 1993.

Task 3.3 Evidence of all requisite legal authority to regulate illegal discharges and illicit disposal practices to drainage facilities, and to prosecute violators

The Permit Implementation Agreement submitted to the Board to satisfy Task 3.3 is an agreement between permittees which establishes responsibilities with respect to compliance with the Storm Water Permit. The agreement, however, does not demonstrate that the permittees possess adequate legal authority to regulate illegal discharges and illicit disposal practices to storm water drainage facilities, and to prosecute violators. While general nuisance codes and rules may exist, it is important to adopt specific legal regulations specific to storm water and urban runoff, both to educate the public at large and to consolidate the authority to enforce violations.

The City of Santa Monica and the City of Malibu have developed model ordinances which provide legal authority to enforce storm water program requirements. Similar model ordinances should to be considered by all permittees in the drainage basin. These cities' ordinances are a forward step in satisfying the legal authority requirements.

The City of Santa Monica Urban Runoff Pollution Ordinance requires the use of pollutant and runoff control measures; contains pollution control mandates for all construction sites within the city; and requires reduction in urban runoff flows from all new development.

The City of Malibu Ordinance No. 51U establishes storm water management standards, and amends the excavation and grading standards of the municipal code to comply with the Federal Clean Water Act.

A summary of all requisite legal authority to regulate illegal discharges and illicit disposal practices to drainage facilities and to prosecute violators must be submitted to this Regional Board no later than July 1, 1993. The actual sections of municipal ordinances must be submitted to this Board no later than September 17, 1993.

IV. CONCLUSION AND RECOMMENDATIONS

Permittee and co-permittee compliance with storm water permit requirements is improving. The variety of approaches taken by the majority of permittees to meet permit requirements was not conducive of an area-wide program. With an increased level of compliance, a workable comprehensive storm water/urban runoff management program for Los Angeles County may be achieved.

Board staff suggests that permittees share information and discuss submittals to insure an effective area-wide comprehensive program.

Staff believes that specific EABMPs submitted which are regionally applicable should be implemented in all areas. ABMPs selected for implementation should supplement EABMPs.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
JUNE 14, 1993

ATTACHMENT 2
REVIEW OF SECOND YEAR COMPLIANCE
MONITORING WORK PLAN FOR THE SANTA MONICA BAY WATERSHED

I. SUMMARY

Board staff, in evaluating the Santa Monica Bay (SMB) Watershed monitoring work-plan, considered (1) existing storm water monitoring programs in other urban areas of the State, (2) the United States Environmental Protection Agency guidance for municipal storm water permitting, (3) recent reports by the Santa Monica Bay Restoration Project on non-point-source pollution, and (4) comments received by Los Angeles County during public review of the plans.

Although the monitoring plan submitted by the County and co-permittees addresses the specific objectives required by the permit (Board Order No. 90-079, Section 3.1.1), it overlooked the objective of the Storm Water Program which is to achieve a reduction of pollutants discharged through storm water and urban runoff to receiving waters. Additionally, the submittal lacks the essential elements of a comprehensive monitoring program. The proposed plan was insufficient in the following areas:

1. rationale/procedures for the selection of monitoring sites and relationship to specific objectives;
2. quality assurance/quality control procedures for field sampling, data analysis, and data management; and,
3. projected time schedules to meet the various objectives.

The list of monitoring parameters submitted are acceptable, with the addition of the biological indicator Enterococcus. We recommend that bacterial indicator monitoring be coordinated with existing programs of the Los Angeles County Department of Health and the City of Los Angeles for cost effectiveness. The proposed monitoring frequency is satisfactory.

For the purposes of this attachment, recommendations are in *italics*, required actions are in bold.

Board staff proposes the following revisions to the monitoring plan:

1. *Include enterococcus as a monitoring parameter;*

2. Add the following tasks and schedule for completion;

	TASKS	COMPLETION DATE	REPORT OF COMPLIANCE TO REGIONAL BOARD
a.	Develop methodology to make refined estimates of pollutants discharged to Santa Monica Bay	July 1, 1993	July 15, 1993
b.	Make a first estimate of pollutant loads to Santa Monica Bay on the basis of monitoring	July 1, 1994	July 15, 1994
c.	Complete a basic QA/QC plan for the Storm Water Monitoring Program	July 1, 1993	July 15, 1993
d.	Develop and implement a pilot project to establish monitoring of long-term trends in storm water quality	July 1, 1993	Jan 15, 1994
e.	Develop monitoring for identification of sources of pollutants	July 1, 1993	Jan 15, 1994
f.	Develop and implement a monitoring program to evaluate effectiveness of BMPs	Jan 1, 1994	Jan 15, 1994
g.	Develop and implement a monitoring program to identify locations of illegal practices and elimination sources of pollutants	Jan 1, 1994	Jan 15, 1994
h.	Develop and implement a program to evaluate storm water impacts on selected receiving waters	July 1, 1994	July 15, 1994

II. EVALUATION OF THE PROPOSED MONITORING PLAN

1. Objectives of the Monitoring Plan

The objectives of a comprehensive Storm Water/Urban Runoff Monitoring Program must include the following:

(a) develop a methodology to refine annual estimates of pollutant loads to Santa Monica Bay;

(b) determine long-term trends in the quality of storm water/urban runoff;

(c) improve the understanding of sources of storm water pollution;

(d) establish effectiveness of controls (BMPs) for specific land uses, with implication for broader implementation;

(e) identify illegal discharges or locations of illegal disposal practices; and,

(f) monitor effects of storm water/urban runoff on receiving water quality and watet quality objectives.

The proposed monitoring plan submitted by Los Angeles County includes objectives (b) through (e), but does not address (a) and (f). *Staff proposes that (a) and (f) be included.*

2. Annual Estimates of Pollutant Loads

The proposed work-plan does not discuss this objective. The permittees in their monitoring plan proposed a pilot program of nine monitoring stations in the Santa Monica watershed to evaluate storm water quality. The permittees must modify the choice of sampling stations to include the major drainage basins in the watershed and use this pilot project to make the first estimate of pollutant loads to Santa Monica Bay. It must be recognized that the number of monitoring stations need to be increased in coming years to meet the criterion of two stations per land use category.

Annual pollutant loads and event mean concentrations (EMCs) are important parameters to assess the impact of municipal storm water discharges on receiving waters. Sampling stations to estimate pollutant loads and EMCs must include drainage basins with the largest input relative to volume and predominant land-uses. A good evaluation of the relative importance of drainage basins within the Santa Monica Bay watershed is provided in a report produced for the Santa Monica Bay Restoration Project by UCLA[2]. Permittees are expected to select an appropriate mathematical model (e.g. QUALUDAS, SWMM, etc.) to refine and estimate pollutant loads, and for decision-making projections. While detailed dynamic modelling for the entire Basin may be too resource intensive, a simple model for the whole Basin could be augmented with a dynamic model for large sub-basins (such as the Malibu Creek and the Ballona Creek watersheds), and single land-use sub-basins (such as the Palos Verdes Peninsula watershed). A discussion of storm water models may be found in "Modelling of Nonpoint Source Water Quality in Urban and Non-urban Areas, Donigan and Heber"[16].

Development of methodology to refine estimates of pollutant loads must be accomplished and documented no later than July 15, 1993.

3. Long-Term Trends in Storm Water/Urban Runoff Quality

Permittees have proposed nine test sites for the pilot study to select fixed stations but have not justified the usefulness of these sites in terms of either pollutant loads or predominant land uses. Almost half the number of sites are within a single basin (Ballona Creek basin), and none are located within the large Malibu Creek watershed.

The objective of any long-term monitoring is to monitor potential pollutant trends in storm water/urban runoff quality and loads. Fixed stations for such purposes must be representative of the twenty-seven basins in the SMB watershed, in terms of land-use breakdowns, rainfall patterns, and land area. The pilot study may be used to choose fixed stations to evaluate long term trends in water quality and pollutant loads. The choice of permanent stations must be properly justified and approved. Also required is a description of the statistical methodology that will be used to evaluate data, and the accounting of factor variability. It is expected that this program will be expanded eventually to include two stations per significant land use, including road transportation corridors.

The pilot study to develop a monitoring program to establish long term trends in storm water quality must be initiated immediately and the objective must be accomplished no later than January 15, 1994.

4. Sources of Storm Water Pollutants

The permittees have discussed this objective in general but without focus or detail. No pilot or model program to develop this objective has been presented.

Identification of sources of pollutants that generate high concentrations and present the greatest risk is important to the targeting of storm water quality management programs. An effective monitoring program should evaluate sources that include, (a) priority industrial sources, (b) priority commercial/retail sources, (c) land-use categories, and (d) urban transportation corridors. Source identification should consider both water and sediment as media for pollutant transport. This task is not mutually exclusive and could be successfully integrated with other elements of the monitoring program.

This component of the Monitoring Program is part of compliance activity under permit requirement 3.1.3. (page 11) of NPDES Permit No. CA0061654.

A detailed description of a pilot or model program to meet this objective must be submitted by July 15, 1993 and the program implemented no later than January 1, 1994.

5. Effectiveness of BMPs

The permittees discussed this objective only briefly. No specific plan is proposed to evaluate effectiveness of BMPs through monitoring.

Monitoring to evaluate the effectiveness of BMPs, and characterize the efficiency of specific controls is

important in focussing available resources to achieve the most pollutant reduction. Structural controls may be evaluated in specific locations by discrete sampling and then considered for area-wide application. The effectiveness of non-structural BMPs may be evaluated locally before basin-wide implementation. Further, monitoring regional structural-BMPs routinely will forewarn the onset of operation and maintenance problems.

A detailed description of a plan to meet this objective, outlining pilot projects for immediate implementation is due January 15, 1994.

6. Illegal Discharges and Illegal Disposal Practices

The permittees mentioned this objective but did not discuss a plan to monitor illegal discharges or locations of illicit disposal practices.

Monitoring to identify sources and locations of illegal practices is essential in identifying violations that may adversely affect a storm water quality management program. A monitoring program that includes selected screening indicator parameters and flexible locations will facilitate the identification of contaminated sites or pollutant sources for additional evaluations.

A detailed description of a plan to address this objective and the area for immediate implementation must be submitted no later than January 15, 1994.

7. Receiving Water Quality

The permittees did not discuss this objective in the proposed workplan. Receiving water monitoring is an integral requirement of all major NPDES permits.

Investigating impacts of storm water on receiving water quality is essential to protecting beneficial uses and is best approached as an integrated effort. Initial programs should focus on screening for in-stream toxicity of storm water and evaluation of stream sediment toxicity using biological approaches such as the triad method (i.e., bulk sediment chemistry, sediment toxicity information, and benthic community survey) in selected receiving waters (e.g., Ballona Creek at Marina del Rey, Malibu Lagoon, etc.)[10,11]. Such programs may be coordinated with other agencies, including the Santa Monica Bay Restoration Project, for maximum benefit.

A detailed description of a plan to achieve this objective must be submitted no later than July 15, 1994.

8. Quality Assurance/Quality Control

The work-plan does not discuss Program Quality Assurance/Quality Control and Data Management procedures.

A QA/QC Plan should address as appropriate, (a) Standard operating procedures including, field procedures, pre-sampling mobilization, sample collection procedures, chain-of-custody and post sampling procedures, (b) Laboratory QA/QC, including lab compositing, detection limits and holding times and, (c) Data reduction, validation, and data reporting. Also essential are monitoring plan management, plan

schedule, field crew training, and health and safety plan. Data management, including reporting and analyses, should discuss statistical methods for analysis and reporting of data (including censored data).

A basic QA\QC Plan for the storm water monitoring program must be submitted by July 15, 1993. *Specific modifications to the basic QA\QC Plan for single projects may be addressed in supplementary submittals.*

9. General Comments

In addition, we have the following minor comments regarding the monitoring program:

i. Sampling

- *semi-volatiles should be collected as grab-samples*
- *metals should be done as both soluble and total*
- *Cyanide should be done as a grab sample*
- *Grab samples must be collected during the first part of the storm*
- *Flow weighting method is faulty; volume must be set by storm based on predicted runoff coefficients; bottles may have to be changed if storm is larger than expected*
- *Minimum flow volume for dry weather analysis must be reported*
- *Dry weather sampling should be done as a 24-hr composite (except for bacteriological indicators, pH, cyanide, oil and grease, semi-volatile organic compounds).*

ii. Equipment

- *Samplers must be continuously maintained and pre-storm checked*
- *Provide details on sampling and flow equipment, and data storage required.*
- *Number of bottles in sampler and volume available not described.*
- *Equipment housing procedures must be presented.*

10. References

The following section lists references used by Board staff in its review of the monitoring plan and are sources that permittees may find useful in addressing our comments.

MONITORING

1. Guidance Manual for the Preparation of Part 2 of the NPDES Permit Application for Discharges from Municipal Separate Storm Sewer Systems, 1992, EPA 833-B-92-002, USEPA OWEC [Contact EPA Storm Water Hotline at (703)821-4823]

2. Assessment of Storm Drain Sources of Contaminants to Santa Monica Bay , Vols. 1-4, Santa Monica Bay Restoration Project. 1993. [Contact Guang-yu Wang, SMBRP, (213)266-7568], (UCLA and WCC)

3. NPDES Storm Water Sampling Guidance Document, USEPA 1992, EPA 833-B-92-001, [Contact EPA

Stormwater Hotline at (703)821-4823].

4. Amended Monitoring Plan, Santa Clara Valley Non-point Source Pollution Control Program, December 9, 1991. [Contact Marcia Guzetta at (408)265-2600, (WCC)].

5. Guidelines for Monitoring of Urban Runoff Quality, MERL, OH, EPA-600/2-83-124, 1983, prepared for Urban Drainage and Flood Control District, Denver, CO,(Michael B. Sonnen). [Contact NTIS at (703)487-4650].

6. Analyzing Urban Runoff in the Dallas-Fort Worth Area, M.A. Collins et al.(undated) (WCC). [Contact WCC at (800)776-3296]

7. Source Identification and Control Report, 1992. Santa Clara Valley Non-point Source Pollution Control Program. [Contact Marcia Guzetta at (408)265-2600, (WCC)]

RECEIVING WATER

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ATTACHMENT NO. 33

MS4 Program Evaluation Guidance

1978

MS4 Program Evaluation Guidance

U.S. Environmental Protection Agency Office of Wastewater Management

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1. Introduction and Background

1.1 Overview

Purpose of the Guidance

The National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Program Evaluation Guidance (Guidance) is intended to assist State and NPDES permitting authority staff to:

- Assess the compliance and effectiveness of Phase I and Phase II MS4 programs;
- Develop Phase II MS4 stormwater management programs (SWMPs);
- Assess pollutants of concern;
- Provide technical assistance.

TIP:

The questions and issues addressed in this MS4 Evaluation Guidance are intended to be used as a reference during an MS4 program evaluation, not as a script or checklist during the review.

Each evaluation should be customized to the issues and requirements specific to that MS4.

Unlike NPDES industrial wastewater permits which typically contain specific end-of-pipe effluent limits based on water quality standards or available treatment technology, MS4 permits usually include programmatic requirements involving the implementation of **best management practices** (BMPs) in order to reduce pollutants discharged to the "maximum extent practicable" (MEP). In addition, the permittees often are allowed flexibility in the types of BMPs and activities implemented to meet permit requirements. This flexibility, as well as the multifaceted nature of the requirements, makes it difficult to evaluate the effectiveness of MS4 stormwater programs. The purpose of this Guidance is to provide NPDES permitting authority staff the information and questions necessary to conduct a comprehensive MS4 program evaluation and determine if the permittee is implementing the program in order to reduce pollutants discharged to the MEP. This Guidance is not intended to be used as a checklist, rather as a reference to prepare for and conduct an MS4 evaluation. The evaluator must ultimately rely on personal experience and **best professional judgment** (BPJ) to conduct a comprehensive MS4 program evaluation.

An MS4 program evaluation is ultimately based on the requirements in the MS4 permit and commitments made in the stormwater management program (SWMP). These should serve as the primary references for a specific MS4 program evaluation, with this Guidance used as a tool to help assess compliance with the SWMP Plan and the permit. The evaluator may also recommend additional activities that should be conducted by the permittee to improve the SWMP. The term evaluation can refer to an audit, inspection or screening process depending on the level of detail utilized. These terms are defined under "Common Terms" below.

It is important to keep in mind that this Guidance is not an enforcement "how to" document, but can be used to *assist* in the enforcement process by describing a process for consistently and accurately assessing and documenting the compliance status of permittees based on permit or SWMP requirements. Notes, checklists, and reports developed as a result of an evaluation will be helpful when justifying and generating enforcement actions.

TIP:

Permittees may find this Guidance useful in conducting a self-audit to identify and proactively address issues.

Intended Audience

This Guidance is written for State and EPA staff responsible for NPDES MS4 permit issuance, compliance and inspections.

Permittees may also find the information in this Guidance useful in conducting a self-audit to improve the effectiveness of their SWMP.

Resources:

Information regarding permitting authorities or other NPDES information can be found at www.epa.gov/npdes/stormwater

Objective Evaluation

This Guidance is intended to provide information to evaluators to help them objectively evaluate if the permittee is implementing the SWMP to the MEP. This is going to vary from state to state and by permittee. For example, some states have requirements that go beyond the federal regulations, or have state programs or policies that affect the way in which certain requirements are articulated in a permit. In addition, individual NPDES MS4 permits may provide some details on the type of program elements the permittee must implement, but not describe in detail all activities necessary to implement each element. Typically these permits require that the permittee's SMWP Plan include this detail, however, and be submitted for approval. Or permits may specify goals or performance standards that the permittee must meet and then require them to develop the necessary program components to reach those goals or standards and describe them in their SWMP.

Each permittee may have a different approach to complying with a specific permit requirement based on MS4-specific traits or issues. For example, EPA regulations require permittees to develop "procedures for site inspection and enforcement" for addressing construction activities. MS4 permits will likely elaborate on this requirement in more detail, such as by specifying a minimum frequency for inspection. However, few MS4 permits will specify how the permittee should inventory their active construction projects or track enforcement activities. A permittee with only a few construction projects a year may be able to use a paper system to inventory and track construction projects. A permittee with hundreds or thousands of construction projects would likely need a database or similar electronic tracking system to ensure it was implementing the program to the MEP.

Some MS4 permits will not include any specific requirements at all and will only generally dictate that the required MS4 SMWP components are developed and implemented. These MS4 programs are often the hardest to objectively evaluate because there is no prescribed benchmarks to measure against. In these cases, the evaluator will need to subjectively assess the MS4's SWMP program against the intent of the associated regulations to reduce pollutants to the MEP. Evaluation techniques and tools (i.e. checklists) may need to be altered in these cases to best ascertain and assess the effectiveness and compliance status of such a program.

Common Terms

For purposes of this guidance, it is important to note that the term "evaluation" is generally used to define any assessment of an MS4 program. Evaluations are further defined as either "inspections", "audits", or "screenings" depending upon the level of review performed. These and other common terms used throughout this Guidance are defined as follows:

- Audit—comprehensive evaluation of all components of an MS4 program to assess overall implementation and identify problems
- MS4—the municipal separate storm sewer system (full text definition included in Appendix A); can refer to the conveyance system in addition to the jurisdiction(s) which own/operate the system.
- Permittee—the permitted owner/operator(s) of the MS4; the entity being evaluated
- Evaluation—any screening, audit or inspection of an MS4 program
- Evaluator—the NPDES permitting authority staff person who is conducting the evaluation of the MS4 program

- Inspection—focused evaluation of specific components of an MS4 program to verify compliance with permit requirements
- Municipal permittee—a general reference to a municipality that is the owner/operator of an MS4 and is covered by an NPDES MS4 permit
- Permit Area—Geographic area covered by the MS4 permit
- Permitting Authority—the State or EPA Region authorized to issue NPDES permits
- Screening—evaluation method used to get a basic impression of a program or uncover "red flags;" may be used as a precursor to a program evaluation
- Stormwater Management Program, or SWMP—the stormwater management program implemented by the permittee; also referred to as the "program"
- SWMP Plan—the document often used by permittees to document SWMP elements implemented or planned

How to Use this Guidance

The first part of this Guidance includes background information useful for review. Subsequent sections lead the evaluator through a series of steps to conduct an evaluation, which can be categorized into three parts: Advance Preparation, Conducting the Evaluation, and Post-Evaluation Activities.

The section titled "Conducting the Evaluation" is divided into subsections that describe in depth how to evaluate overall program management as well as each of the major SWMP components:

- MS4 public education and participation
- MS4 maintenance activities
- Construction activities
- Post-construction controls
- Industrial/commercial facilities
- Illicit discharge detection and elimination

For each subsection, the following information is provided:

- A description of regulatory requirements
- Resources for more information
- Common activities related to the SWMP component
- Materials to review prior to the evaluation
- Elements to address and questions to ask during the evaluation
- A description of any recommended in-field evaluation activities
- Common issues identified during evaluations

In addition, a glossary as well as multiple worksheets and checklists have been included in appendices as tools for the evaluator to prepare for and conduct an MS4 SWMP evaluation.

Appendix A—Glossary & Acronym List
Appendix B—Evaluation Worksheets

Appendix C—Field Visit Worksheets
Appendix D—Annual Report Review and Evaluation Worksheet

Note that this Guidance is best used as a preparatory tool and except for the worksheets in Appendices B and C does not lend itself well as a reference to be used *during* an evaluation.

1.2 Regulatory Overview

For More Information:
For information on stormwater programs and regulations visit www.epa.gov/npdes/stormwater

Background

A brief summary of EPA's stormwater regulations are presented below. Sections of relevant regulatory text are included in the Chapter 4 of this Guidance, however, MS4 stormwater program evaluators are referred to the NPDES Phase I and Phase II regulations, preamble, and other EPA guidance for detailed information on the stormwater regulations. State programs that wish to adopt this Guidance may want to add state-specific elements.

In 1987, Congress amended the **Clean Water Act** (CWA) to require implementation, in two phases, of a comprehensive national program for addressing stormwater discharges.

Stormwater Phase I

The first phase of the program, commonly referred to as "Phase I," was promulgated on November 16, 1990 (55 *Federal Regulations* (FR) 47990) and addresses MS4, active construction and industrial facilities.

Phase I requires NPDES permits for stormwater discharges from a large number of priority sources including medium and large MS4s generally serving populations of 100,000 or more, and several categories of industrial activity, including construction activity that disturbs five or more acres of land.

The Phase I permits mostly covered larger cities, and required them to develop a SWMP, conduct some monitoring, and submit periodic reports.

According to 40 CFR 122.26(b)(8), **municipal separate storm sewer system** means a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law)...including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a **Publicly Owned Treatment Works** (POTW) as defined at 40 CFR 122.2."

TIP:
MS4 systems can be linear or more complex, open, piped, manmade, natural, or a combination of all of these things. Some carry groundwater or piped streams, are tidally influenced, or have some other constant source of non-stormwater discharge.

What constitutes an MS4 is often misinterpreted and misunderstood. An MS4 is not always just a system of underground pipes—it can include roads with drainage systems, gutters, and ditches. Although most entities with MS4s are local municipal governments (e.g., cities and counties), there are other governmental entities that manage storm drain systems at their facility, including state departments of transportation, universities, local sewer districts, hospitals, military installations, and prisons. As

previously stated in the "Common Terms" section, the term "MS4" can refer to the system itself or the entities which own and operate the system.

The operators of construction activities disturbing greater than 5 acres have been required to obtain NPDES permit coverage since 1992. General permits for large construction activity require construction operators to develop and implement a stormwater pollution prevention plan to control erosion, sediment and other wastes on the site.

The Phase I industrial stormwater program regulates eleven industrial categories, which EPA has further broken out into 30 sectors. Similar to construction activities, these industrial facilities have been required to obtain NPDES permit coverage since 1992. General permits require regulated industries to develop and implement a stormwater pollution prevention plan, including monitoring for some industries.

Stormwater Phase II

The second phase of the stormwater program, promulgated on December 8, 1999 (64 FR 68722) and amends existing Phase I regulations dealing with MS4s, active construction and industrial facilities.

Phase II Stormwater Minimum Measures
- ✓ Public education and outreach
- ✓ Public involvement/ participation
- ✓ Illicit discharge detection and elimination
- ✓ Construction site runoff control
- ✓ Post-construction stormwater management
- ✓ Pollution prevention/ good housekeeping for municipal operations

The Phase II regulations require NPDES permits for stormwater discharges from certain small municipal separate storm sewer systems and construction activity generally disturbing between 1 and 5 acres. The construction requirements essentially extended the Phase I threshold for construction activities from 5 acres down to 1 acre.

Under the Phase II MS4 stormwater program, operators of regulated small MS4s are required to

- Apply for NPDES permit coverage
- Develop a SWMP that addresses six minimum control measures
  - Public Education and Outreach on Stormwater Impacts
  - Public Involvement/Participation
  - Illicit Discharge Detection and Elimination
  - Construction Site Runoff Control
  - Post-Construction Stormwater Management in New Development and Redevelopment
  - Pollution Prevention/Good Housekeeping for Municipal Operations
- Implement the SWMP using appropriate stormwater management controls, or BMPs
- Develop measurable goals for the SWMP
- Evaluate the effectiveness of the SWMP
- Provide reports on program status

The Phase II regulations also required certain regulated industrial facilities, with no industrial activities exposed to stormwater runoff, to submit a certification of "no exposure" if the facility fell into one of the regulated eleven industrial categories but did not have an NPDES permit.

MS4 Permits

Phase I MS4 permittees were subject to the permit application requirements found at 40 *Code of Federal Regulations* (CFR) 122.26(d). The permit application consisted of two parts that provided the NPDES permitting authority comprehensive information to use in developing permit requirements. Information required in the application included a physical description of the MS4, legal authority of the MS4 operator, a characterization of the surrounding sources and the pollutants found in the stormwater discharge, and a description of fiscal resources. The most significant portion of the application was the development of a proposed SWMP that would meet the standard of "reducing pollutants to the MEP." Using the information submitted in the permit application, the NPDES permitting authority would then develop appropriate permit requirements. Phase I MS4 permittees were covered under individual permits issued to either single permittees or groups of co-permittees.

Although there are some exceptions, phase II MS4 permittees are primarily covered by general permits that require implementation of the six minimum control measures.

The specific requirements in MS4 permits vary greatly around the country. Some MS4 permits contain broad requirements that outline the basic SWMP components the permittee is required to implement, giving the permittee the flexibility to develop a program to meet these broad requirements. Other MS4 permits are more prescriptive and specify in detail the minimum activities and BMPs for each program element.

1.3 Types of Permittees

Traditional MS4 Programs

Many MS4 operators permitted under the NPDES program are either city or county governments. To evaluate this type of an MS4 program, an evaluator must have a basic understanding of the structure, operation and function of local governments. The structure and authority of local governments can vary by state (for example, the use of towns, townships, villages or parishes), therefore a general description of a common city/county local government structure is provided below.

TIP:
City and county stormwater management programs can be administered by various programs including: public works, building, and environmental program, or wastewater management staff, usually pretreatment.

Cities provide a variety of functions including fire and police protection, construction and maintenance of streets, stormwater and wastewater services, and providing for health, recreation, and social needs. Counties provide many of these same services in unincorporated areas. Cities are governed by a city council that establishes municipal policy and enacts local ordinances. Many cities are run by the council-manager system, where the elected council appoints a full-time professional manager to direct city departments and implement policy. Some cities are run by the mayor-council system, where a mayor (either elected or appointed by the council) works with the council to direct city departments and implement policy.

City boundaries can change through the annexation process. Unincorporated county land that is adjacent to the city can be annexed through a formal process.

Stormwater management responsibilities vary depending on the city or county. Some permittees assign stormwater program oversight and implementation to the public works department, while others assign stormwater to an environmental services department. Still others combine stormwater program implementation with wastewater treatment agencies, flood control authorities, or other regional entities. Also, some counties perform stormwater activities within incorporated cities (such as inspections). Each

permittee should clearly describe in the SWMP Plan the roles and responsibilities of each department involved in stormwater management.

Nontraditional MS4 Programs

As stated previously, the term MS4 does not solely refer to municipally owned storm sewer systems. Examples include, but are not limited to non-traditional entities such as state departments of transportation (DOTs), airports, universities, local sewer districts, hospitals, military installations, post offices, prisons, or irrigation districts.

For More Information:

The California Department of Transportation is a non-traditional MS4. To review the permit, programs, reporting, etc. visit: http://www.dot.ca.gov/hq/construc/stormwater/stormwater1.htm

Because of the unique structure and features of many non-traditional MS4s, some of the traditional SWMP elements may need to be modified or may not be entirely applicable. For example, a public education program for a state DOT or military base would be very different from a public education program for a traditional city.

TIP:

When evaluating non-traditional MS4 SWMPs, be sure to adjust interview topics and questions, field inspections, and documents evaluated to accommodate any unique characteristics of the MS4.

In other instances, some non-traditional MS4s may lack the legal authority or employ a different type of enforcement mechanism than a city/county government to implement a SWMP component. For example, a state DOT may not have the legal authority to enforce controls on illicit discharges into its system. In these situations the DOT is encouraged to work with the neighboring regulated permittees to develop and implement a shared SWMP in which each permittee is responsible for activities that are within their individual legal authorities and abilities. The DOT could work closely with the permittees that surround the DOT MS4 (i.e. country or city) and use their enforcement authority to eliminate illicit discharges. In other words, a municipal permittee can utilize regulations which prohibit polluted runoff from leaving an individual property and entering the DOT MS4 if the property is covered under an appropriate municipal code (e.g. building, health, etc.) An evaluation of a non-traditional MS4 program must be very specific to the particular circumstances, permittee relationships, and permit requirements applicable.

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2. *Pre-Evaluation Preparation*

2.1 Evaluation Goals and Benefits

Evaluation Goals

A permitting authority can have one or more overall goals when conducting an MS4 program evaluation. Identifying the overall goals of the evaluation will help in developing an appropriate schedule and focus. The primary goals in conducting an MS4 SWMP evaluation can include

TIP:

An MS4 evaluation should not be confrontational. The evaluation process works smoothly if both parties use the evaluation as a mechanism to improve the program and increase coordination.

- **Determination of compliance status.** Assessing the compliance status of a permittee with its MS4 permit and SWMP Plan is often a principal goal of an evaluation.
- **Assistance with permit issuance or renewal process.** An on-site program evaluation might be very helpful after the issuance or during renewal of a permit. The evaluation process can be used to identify and answer questions about implementation of program components within the first year of permit issuance. Towards the end of the permit term, the permitting authority can use the evaluation to assist the permittee with the permit application or SWMP Plan revision and/or the evaluation may provide valuable information to the MS4 permit writer to assist in the permit renewal process (including the drafting of a new Phase II General Permit).
- **Phase II SWMP development.** Because most Phase II permittees are just beginning to implement SWMPs, a full compliance evaluation might not be necessary. Nevertheless, an evaluation can also be a compliance assistance tool that can help to correct deficiencies early in the program. Permitting authorities could conduct evaluations geared toward compliance assistance early in the Phase II program development process.
- **Assessing pollutants of concern.** If a water body is impaired or there is a concern regarding pollutants common in urban stormwater, it may be helpful to assess the implementation effectiveness of MS4 programs in the watershed to reduce those pollutants. If a **total maximum daily load** (TMDL) has been developed for a waterway receiving a discharge from a permittee, a program evaluation may assist the permitting authority in assigning an applicable **wasteload allocation**, and/or assist the permittee in implementing the steps necessary to comply with the wasteload allocation.
- **Technical assistance.** Providing technical assistance is an important goal of an MS4 SWMP evaluation. Often it is the only time that the permitting authority staff and the permittees meet face-to-face and can be a valuable opportunity to share technical expertise, advice, reference materials, and examples of successful SWMPs implemented elsewhere.

Benefits of an Evaluation

There are a number of benefits from conducting an MS4 SWMP evaluation of a permittee, including:

- Determination of compliance and assistance with execution of appropriate enforcement actions
- Stronger coordination and working relationship between the permitting authority and the permittee
- Better understanding by the permittee of the expectations and permit requirements of the permitting authority
- An opportunity to clarify any misunderstandings in the MS4 permit requirements or SWMP Plan

- Improved permitting authority knowledge of the permittee's operations, priorities, constraints and challenges faced when implementing a municipal stormwater program
- A more effective SWMP resulting in better water quality

2.2 Advance Preparation

Evaluation Options

Which permittee(s) should be evaluated?
The first question to be answered is which permittee should be evaluated. If the permitting authority has jurisdiction over numerous MS4 permits, ideally all MS4s would be evaluated on an annual basis. If staff resources are limited and only a select number of evaluations can be conducted in a given year, a permitting authority may want to evaluate those MS4s with suspected compliance issues, those located in watersheds of concern, or those with pending permit renewals most frequently. However, permitting authorities should visit each permittee on a regular basis, even if they are not considered "bad actors" however, as evaluations provide many valuable benefits beyond compliance determination or assistance with permit renewal.

If a selected permit covers more than one co-permittee, the evaluator then must determine which co-permittee or co-permittees should be evaluated during a single evaluation. Some permits may cover 20-30 or more co-permittees and it may be impossible to evaluate them all in a single evaluation or year. Evaluations conducted early in the permit cycle may focus on the larger MS4s or those that coordinate activities for smaller permittees. Subsequent evaluations may focus on the smaller co-permittees that have compliance issues or located in watersheds of concern.

After the evaluator has determined which permittees are to be evaluated, the evaluator must consider several questions when determining the level of detail for the evaluation and how best to facilitate and coordinate the process.

What Level of Detail is Possible or Necessary?
If limited time is available, a screening-level evaluation may be an efficient and effective method for developing a basic impression of the program's compliance status or as a way to determine if a more in-depth evaluation is necessary (see Chapter 3). A screening is a way to uncover "red flags" or obvious instances of noncompliance with the MS4 permit. A screening-level evaluation is comprised of a basic interview with the MS4 coordinator or main contact of the program along with a review of the most recent annual report and the SWMP Plan. Documents can be obtained during the screening and reviewed by the evaluator at a later date. The screening-level evaluation should take a minimal amount of time but should be thorough enough to answer general questions about permit compliance. This type of screening may be the precursor to a detailed evaluation (see Chapter 4) at a later date.

A detailed on-site evaluation involves a more intensive review of files and detailed interviews with all or most applicable office and field staff. This type of review is more time-consuming but will provide a more comprehensive picture of SWMP development, coordination, and implementation.

Type of Evaluation	Typical Allotted Time[1]
Screening-level	2-6 hours per permittee
Detailed on-site evaluation	2-3 days per permittee

[1] Assumes one evaluator

Which Program Component(s) will be Evaluated?

A program component-specific evaluation focuses on a specific stormwater program area, such as construction activities or new and significant redevelopment. This type of evaluation may allow the evaluator to get more details through a more extensive file review or more numerous field inspections. For example, during an evaluation focused strictly on the construction component the evaluator may be able to interview all plan reviewers on staff, do an in-depth review of multiple erosion and sediment control plans, review those site's compliance histories, and perform inspections of each. This type of a review is especially helpful if the permitting authority has specific concerns about implementation of a particular component. Such an in-depth evaluation will typically take 1 to 2 days, depending on the complexity of the program and the amount of information to be covered.

Primary Phase I Stormwater Components

- ✓Program management
- ✓Maintenance activities
- ✓Construction
- ✓Post-construction
- ✓Illicit discharge detection and elimination
- ✓Public education/Participation
- ✓Industrial/Commercial

A detailed on-site evaluation addresses all of the generally accepted primary stormwater program components (i.e., program management, MS4 maintenance activities, construction, post-construction, illicit discharge detection and elimination, public education/participation and industrial/commercial for Phase I MS4 permittees). The intent of a detailed on-site evaluation is to assess the permittee's entire SWMP and possibly identify specific areas or issues that might require a component-specific review in the future.

The level of detail that can be achieved during either type of evaluation is often dictated by the amount of time devoted to each program area. Both the screening-level and detailed on-site evaluation can vary in terms of level of detail.

Will the Evaluation be Conducted in the Office, the Field, or Both?

To get an accurate picture of "on the ground" implementation of the construction and industrial/commercial components of a typical SWMP, the evaluator will need to accompany inspection staff into the field. In addition, many permittees manage municipal facilities such as maintenance yards, material storage facilities, or other municipal facilities that would be helpful to visit during the evaluation to ascertain the permittee's municipal housekeeping practices. If time allows and the evaluator has questions about implementation of these aspects of the SWMP, field time should be built into the evaluation schedule.

As previously stated, this level of detail may not be necessary for a compliance screening or component-specific inspection. In addition, if the program areas being evaluated do not have a field element (i.e., public education), then field activities will not be necessary.

Evaluation Logistics

The MS4 program coordinator or primary contact should be notified well in advance to allow for proper coordination and scheduling amongst parties responsible for program implementation. The contact should be in charge of determining who the appropriate people are to include in the evaluation. Some examples of pertinent staff includes:

TIP:

It is helpful to exchange cell phone numbers to facilitate schedule changes, alternative meeting places, inspection schedules, etc.

- Program managers
- Inspectors

- Administrative staff
- Outreach specialists
- Legal staff

One or more conference calls prior to the evaluation may be necessary to establish the schedule, determine appropriate participants, and answer any questions. Establishing email contact with all of the players well in advance is key to providing necessary information, resources, as well. A final call is helpful the week before the evaluation to answer any last-minute questions, exchange contact information (especially cell phone numbers), confirm the schedule and meeting locations, and make necessary changes. A final evaluation schedule should be developed and distributed to all contacts well in advance to ensure everyone is prepared and expecting the evaluator(s) on the correct dates.

When conducting a component-specific inspection, depending on the complexity of the program, roughly 2 – 4 hours should be assumed for an adequate in-depth office review of each program component. Evaluation of inspection activities in the field can be time consuming due to travel times between sites and facilities, so it is important to allow adequate time in the field as well. Normally, four hours per component (e.g., construction, industrial/commercial) is adequate to evaluate inspection staff. Evaluation of municipal maintenance activities should include adequate field time to inspect the municipal public works yard or similar facility, but normally this should not take more than 1 – 2 hours. All of these time estimates should be confirmed with the permittee when establishing the draft schedule.

Depending upon the size of the area covered under the MS4 permit, the scope of the SWMP, and the type of evaluation to be conducted, a single evaluator could require three days for a comprehensive, in-depth office and in-field program audit.

More than one evaluator can be used to conduct a comprehensive audit as well. This allows one person to interview office staff and another to perform field activities thereby minimizing the number of days to complete the audit.

In addition, multiple evaluators can be used to assess multiple permittees covered under one permit simultaneously. This can be accomplished either by assigning evaluators or "teams" to a particular permittee or to a specific component for all permittees. For example, Team 1 would assess all construction programs for three separate permittees covered under the same permit during a three day period. This approach allows for a consistent review of the all three permittees' construction programs and helps to ensure an equitable assessment between them. Or, Team 1 could review all program components for the City of Pleasantville, while another evaluator reviews the Town of Bliss. This allows the evaluators to become intimately familiar with all facets of their respective MS4 permittees, SMWP, implementation challenges, etc.

It is helpful to try and minimize travel between office locations whenever possible and establish a central meeting place, such as a conference room in a city hall, to save time.

Often it is helpful for the evaluator to coordinate a "kickoff" meeting at the start of the evaluation to review the schedule, answer any last minute questions and finalize logistics. An outbrief session is helpful to coordinate at the conclusion the audit to give a tentative summary of findings from the evaluation. Care must be taken to caveat all

TIP:

Outbrief sessions should be limited to the findings the evaluator feels comfortable revealing prior to a more thorough review of documents, interview responses, and inspection results. In addition, it should be stated that the outbrief findings are subject to change. Rebuttals and questions by the MS4 staff should be limited to clarification of incorrect findings or misunderstandings.

findings as preliminary at that time subject to change based on further review of evaluation materials, the permit, or the SWMP Plan.

Below is an example of a comprehensive, 3-day MS4 program evaluation schedule that addresses the major SWMP components for typical Phase I and Phase II permittees.

Example Schedule for a Phase I Permittee

Monday	
8:30 – 9:00	Evaluation Kickoff
9:00 – 12:00	Illicit Discharge Detection and Elimination & Industrial and Commercial Facilities (office)
1:30 – 5:00	Industrial and Commercial Facilities (field)
Tuesday	
8:30 – 12:00	MS4 Maintenance Activities (office and field)
1:00 – 5:00	New Development/Redevelopment & Construction Activities (office)
Wednesday	
8:30 – 12:00	Construction Inspections (field)
1:30 – 3:00	Outbrief Session

Example Schedule for a Phase II Permittee

Monday	
8:30 – 9:00	Kick-off Meeting
9:00 – 10:30	Program Management, Effectiveness and Assessment
10:30 – 12:00	Public Education and Outreach Public Involvement/Participation
1:00 – 5:00	Post-Construction Stormwater Management Construction Activities (office)
Tuesday	
8:30 – 12:00	Pollution Prevention/Good Housekeeping for Municipal Operations (office and field)
1:00 – 4:00	Construction Site Runoff Control (field)
Wednesday	
8:30 – 10-30	Illicit Discharge Detection and Elimination
10:30 – 12:00	Outbrief Session

2.3 Materials to Review Before the Evaluation

The information provided below should be reviewed before an on-site evaluation. The level of review varies depending on the evaluator's experience with the particular permittee program being evaluated and the type of evaluation being conducted.

- **MS4 NPDES permit.** Because the evaluation is ultimately an assessment of the permittee's compliance with its NPDES permit, the evaluator must be very familiar with the permit and its requirements.
- **SWMP Plan.** The evaluator must review the permittee's latest SWMP planning document(s) and note the commitments and schedules for specific activities.
- **Latest annual report.** The most recent annual report must be reviewed to establish the current status of implementation. Previous annual reports could be reviewed if time permits and if the evaluator wants to assess trends before the on-site evaluation. See Chapter 2.4 below for guidance on Annual Report review.
- **Permitting authority correspondence with the permittee.** Review any relevant correspondence with the permittee regarding its stormwater program. This material might include permitting authority comments on the permittee's SWMP Plan, comments on annual reports, notices of violation (NOVs), or other notices.
- **Permitting authority inspections within the MS4.** Ideally, the evaluator should be aware if an NPDES permitting authority industrial or construction inspector has found violations within the permittee's jurisdiction. If this review is not completed before an evaluation is conducted, it should occur after the on-site evaluation and before the final evaluation report is developed. Any findings should be incorporated into the final report.
- **Permittee Web sites.** Often, permittees have developed stormwater Web sites that can provide copies of reports, guidance documents, and other more current information on the stormwater program.
- **Legal authority.** Review the permittee's legal authority, especially with respect to any exemptions or exclusions from the applicable ordinance.
- **Special water quality concerns.** Be aware of any impaired waters, TMDLs, high quality or protected status, or other water quality-related designations for water bodies to which the MS4 discharges.
- **Other water programs affecting the permittee.** A significant source of frustration to permittees is trying to meet requirements for multiple programs arising from a single agency (i.e. EPA or state environmental protection agency) when program staff within that agency do not understand the trade-offs (sometimes even contradictions) in funding and implementing the requirements of various regulations and programs. For example, an MS4 SWMP evaluator should at least be aware if the municipality being evaluated has a drinking water program, a state revolving fund loan, wastewater permit(s), **combined sewer overflow** (CSO) long-term control plan, or other requirement for which it must also account to the permitting authority. If there is time, it is helpful to find out a little bit about the program requirements applicable to the municipality. There may even be ways to streamline, modify or combine certain requirements to meet multiple program goals.

For More Information:

Chittendon County, Vermont, has developed a Web site to educate the general public about stormwater and the regional management program. Visit http://www.smartwaterways.org.

Resources

✓ TMDLs
http://www.epa.gov/owow/tmdl/

Resources

✓ Combined Sewer Overflows
www.epa.gov/npdes/cso

✓ State Revolving Fund
www.epa.gov/owm/cwfinance/cwsrf/index.htm

2.4 Annual Report Reviews

Applicable federal regulations for the NPDES stormwater Phase I regulations and Phase II Rule require that annual reports be submitted. Many permitting authorities include more specific requirements for reporting in their MS4 permits. These reporting requirements can include specific information required for each program component, or it can specify the format for the annual report. For permits with multiple co-permittees, often a central organization or lead co-permittee will coordinate the annual report and submit one to cover all co-permittees.

In general, an annual report should document implementation of the SWMP during the previous year; evaluate program results and describe planned changes towards continuous improvement. Generally written for the permitting authority, an annual report can also be written for the citizens of the community as a way to report progress in meeting water quality goals. To this end, an annual report should clearly illustrate three key items for each SWMP area:

- **Permit and SWMP Requirements.** These requirements either will be specifically prescribed in the permit itself, or described in the permittee's SWMP. The SWMP normally is considered a binding document and part of the permit once it is submitted and approved by the permitting authority. A description of applicable goals or performance standards for each SWMP component should be stated in this summary as well.

- **Summary of Year's Activities.** The summary should describe and quantify program activities for each SWMP component. Responsible persons, agency, department or copermittee should be included. Each activity should be described in relation to achievement of established goals or performance standards.

- **Planned Activities and Changes.** The annual report should describe activities planned for the next year highlighting any changes made to improve BMP or program effectiveness.

An annual report should describe not only the activities during the previous year, but should highlight the SMWP's effectiveness as well. It should be assumed that the ultimate goal of the SWMP is the protection or improvement of water quality; however, there may be multiple, smaller program goals. Identification of direct measures of success for a stormwater program is very difficult, therefore, what is considered 'effective' and how the permittee chooses to assess this effectiveness will vary. Ideally the permittee and permitting authority will establish performance standards or goals in an attempt to define and quantify what is "effective" when the permit is issued. If the performance standards or goals include definitive milestones or schedules, the annual report should highlight these as well.

In addition to the items described above, the annual report should include appropriate program budget information, and a summary of any required monitoring data.

It is important to remember that annual reporting and program assessment are valuable exercises for the permittee as well as the permitting authority. Reporting should not be seen as merely a 'bean counting' effort. The permittee benefits greatly as an annual program assessment guides program focus, helps to budget and target resources, helps justify program support, and facilitates participation among the affected departments and permittees.

Step 1: Related Document Review and Preparation

Prior to beginning the annual report review, an evaluator should review or obtain the following information:

- **NPDES permit provisions.** The NPDES permit requirements will serve as the primary basis for the annual report review. The permit should describe basic program requirements, discharge prohibitions and reporting requirements.

- **SWMP provisions.** The permittee's SWMP document will describe the overall management structure of the program, planned activities, milestones, schedules and any established performance standards or goals. The SWMP should describe if there is a blanket organization which coordinates the co-permittees and if the organization is coordinated by co-permittee staff or a consultant.

- **Previous annual report review comments.** If the previous year's annual report was received and reviewed by the permitting authority, any comments or response should be reviewed to determine if requested changes to report were made, requested information was provided, etc.

- **Previous annual reports.** It is helpful to have access to previous years' reports as certain documents may have been submitted which may be helpful to have on hand (i.e., an ordinance which established legal authority).

Step 2: Background Information

It is helpful to first document basic information about the permittee and permit. Each permittee has different land use, socioeconomic, and water quality issues which will shape the SWMP. All of this information may not be included in the annual report, but can be obtained through a cursory internet search.

- What is the population served by the permittee?
- What is the primary industry within the permittee's boundary?
- What are the primary land uses within the permittee's boundary?
- What are the priority pollutants within the watersheds of the permittee's boundary?
- Are there impaired waterways impacted by the permittee?
- Have TMDLs been established?
- Are there other sensitive areas of concern within the permittee's boundary?

Step 3: Legal Authority

While most important during the first permit year annual report review, it is helpful to confirm a permittee's legal authority to implement all components of the SWMP on an annual basis. Note any described changes to the SMWP and confirm that existing legal authority will support the implementation of those changes (i.e., requiring existing gas stations to install catch basin insert treatment BMPs). Any changes to applicable ordinances should be included in the annual report as well. If the actual codes or ordinances are not included in the annual report or previous annual reports, they should be obtained during an on-site evaluation.

Step 4: Fiscal Analysis

Phase I regulations require that annual expenditures and budget for the year following be included in each annual report. No such requirement exists for Phase II. If included, this information should be reviewed to determine if budget changes are being made. If funding changes are planned, an explanation should be provided (i.e., an additional inspector is being added or additional expenditures are not expected for the development of new outreach materials as they were developed during year one of the permit).

Step 5: SWMP Component Review

TIP:

When reviewing an annual report with the Worksheet provided, pay special attention to questions in the Worksheet answered "unknown." Program components for which little information was provided may be good candidates for an on-site evaluation.

While each MS4 SWMP will differ based on various factors (i.e., permit requirements, priority pollutants), the Worksheet lists some basic information that should be provided for each program component. In addition, each target established in the permit or SWMP should be documented and verified on the Worksheet as well. It is helpful to document all quantifiable data during the review to highlight what vital information may be missing and what, if any "red flags" need to be addressed with the permittee. For example, if the permittee provides the total number of construction inspections conducted, but does not provide the prioritized list of active construction sites, the reviewer cannot determine the frequency of inspections or whether high-priority sites were adequately monitored and assessed. Further if the permittee had established a goal of inspecting all active sites within 48 hours of every rain event, the reviewer would be unable to ascertain whether this goal had been met.

For each program component, the annual report should describe applicable training of staff which occurred during the previous year. It is helpful if agendas or presentation materials are included.

As described in the Conducting an Evaluation section of this Guidance, information regarding the implementation of the following SWMP components should be provided in a Phase I MS4 annual report (additional components may be required by the MS4 permitting authority):

- Program to detect and eliminate illicit discharges to the system
- Program to prevent, contain, and respond to spills
- Program to educate and allow citizens to report illicit discharges or other potential impacts to water quality
- Educational program to encourage the proper disposal of used oil and other toxic materials
- Program to reduce infiltration of sewage into the storm sewer system
- Program to reduce pollutants from active construction sites
- Programs to reduce pollutants in runoff from industrial, commercial, and residential areas

Phase II permittees are required to develop SWMPs which include similar minimum measures, each of which should be addressed in an annual report:

- Public education and outreach program
- Public involvement/participation program
- Illicit discharge detection and elimination program
- Construction site stormwater runoff control program
- Post-construction SWMP for new development and redevelopment (for development greater than or equal to one acre)
- Pollution prevention/good housekeeping program for municipal operations

For purposes of this Guidance and annual report review Worksheet, the above SWMP requirements have been combined and categorized into the following components for both Phase I and Phase II MS4s:

- Program Management
- Public Education and Public Participation
- Municipal Maintenance/Good Housekeeping
- Construction Activities
- New Development and Significant Redevelopment
- Industrial/Commercial Facilities
- Illicit Discharge Detection and Elimination

Step 6: Follow-Up Activities

The information obtained during the annual report review can be used in various ways.

1. To provide feedback to the permittee regarding program development or implementation. Often, permittees have limited contact with permitting authority staff and the submittal of an annual report is the primary means of communication during the year. It is important that the permitting authority review annual reports in a timely manner and respond with any comments, suggestions or criticisms.

2. To determine the need for an on-site evaluation. If the annual report elicited numerous questions about SWMP implementation, an on-site evaluation may be very helpful in determining compliance or effectiveness of the MS4 program.

3. To prepare for an on-site program evaluation. If a permittee has been selected for an on-site evaluation, the most recent and historic annual reports should be reviewed prior.

4. To determine the compliance status of the permittee and progress towards achieving permit requirements, milestones or measurable goals. The permitting authority may choose to use the annual report to determine compliance and issue necessary enforcement actions.

5. To note exceptional approaches, programs, or BMPs used by the permittee that might be helpful to other permittees. Often it is beneficial for permittees to share information, program ideas, educational tools or implementation approaches and annual reports are a good way to facilitate the distribution of ideas.

3. Conducting a Screening-Level Evaluation

3.1 Screening-Level Procedures

TIP:

Conduct a screening-level evaluation when you have limited time and want a "quick" assessment of the MS4.

The majority of this Guidance (Chapter 4 and the worksheets in Appendix B) describes how to conduct a detailed on-site evaluation of an MS4 program. However, if an evaluator does not have enough time to conduct a detailed on-site evaluation, a more limited screening-level evaluation could be conducted. The intent of the screening-level evaluation is to quickly identify the program areas that are deficient or noncompliance and should be targeted for a more in-depth evaluation. The screening-level evaluation is not intended to be an assessment of compliance with all permit conditions.

TIP:

Benefits of a screening-level evaluation:

- A quick "snapshot" of MS4 compliance
- Identify major strengths and weaknesses of a program
- Can be conducted in a relatively short amount of time

The screening-level evaluation ideally should be conducted on-site at the permittee's offices after a review of the permittee's annual report (see chapter 2.4). The screening-level evaluation could cover all program components or focus on specific program components that are of particular interest due to pollutants of concern, past compliance issues, or other factors. Depending on the level of detail, the complexity of the program and the number of program components to be reviewed, the screening-level evaluation could last from 2 hours to a full day.

To conduct a screening-level evaluation, the evaluator should be familiar with the permittee's NPDES permit and most recent annual report. The screening-level evaluation will need to be customized to the unique permit requirements and issues of each MS4, however, some of the more common questions and information to review during a screening-level evaluation are listed below. An evaluator should use this list as a guide to help them quickly assess whether a more comprehensive evaluation is necessary for a certain program component or to review the entire SWMP.

3.2 Common Screening-Level Questions

Program Management

Key questions to ask:

- ✓ Does your written stormwater management plan include specific milestones and quantities for each program/BMP?
- ✓ Describe how your SWMP is coordinated across departments.
- ✓ Describe the impaired waters, pollutants of concern and TMDLs for the waterbodies you discharge to. Does your SWMP include programs or BMPs specifically addressing these impairments?
- ✓ Describe how you evaluate the success of your stormwater management program.

Potential information to review:

- ✓ Stormwater management plan document
- ✓ Most recent annual report
- ✓ Organizational chart showing departments with stormwater responsibilities

Public Education and Participation

Key questions to ask:

- ✓ Describe your overall approach to educating the public on stormwater issues.
- ✓ What are the primary pollutants or behaviors you target with your public education program?
- ✓ Describe your top three target audiences and the messages you plan to deliver. How do they relate to the primary pollutants or behaviors?
- ✓ How do you evaluate the effectiveness of your outreach activities? Have you conducted any public awareness surveys?

Potential information to review:

- ✓ Public outreach strategy
- ✓ Results of any public awareness surveys
- ✓ Information tracking the distribution of outreach materials

MS4 Maintenance Activities

Key questions to ask:

- ✓ Describe your current MS4 mapping resources (e.g., has the permittee mapped storm drains, outfalls, inlets, municipal facilities, etc.),
- ✓ Describe your procedures for catch basin cleaning, street sweeping and MS4 maintenance.
- ✓ Do your municipal facilities have SWPPPs? If not, why?
- ✓ How are maintenance staff trained with respect to stormwater activities and BMPs?

Potential information to review:

- ✓ Catch basin cleaning records for the month of _____
- ✓ Stormwater plan or SWPPP for main municipal maintenance facility (including any self-inspection records)
- ✓ Standard Operating Procedures (SOPs) for stormwater-related maintenance activities

Construction Activities

Key questions to ask:

- ✓ Describe your legal authority to require erosion and sediment control BMPs and enforce stormwater requirements.
- ✓ Describe your system for tracking construction plans, active construction projects, inspections, and enforcement actions (including the number of projects disturbing greater than one acre last year).
- ✓ How do you coordinate implementation of your local erosion and sediment control requirements with the States (or EPA's) NPDES construction general permit requirements?
- ✓ Describe your process for reviewing plans to ensure stormwater BMPs are addressed. What BMPs does a plan reviewer look for on a plan?

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- ✓ Interview an inspector to assess how stormwater inspections are conducted at construction sites. Ask about the frequency of inspections and the number of inspectors.
- ✓ Describe the most recent training attended by inspectors and plan review staff

Potential information to review:

- ✓ List of active construction projects disturbing greater than one acre for the month of _____
- ✓ Erosion and sediment control plan reviewed and approved by permittee (selected from list)
- ✓ Inspection reports for a selected project (including any enforcement actions for noncompliance)

Post-Construction Controls

Key questions to ask:

- ✓ Describe your post-construction design standards and legal authority.
- ✓ Describe your process for reviewing plans to ensure post-construction BMPs are addressed. Do plan reviewers use checklists to ensure consistent plan review?
- ✓ Describe your post-construction operation and maintenance (O&M) program (including your inventory of post-construction BMPs and your inspection and maintenance schedule).

Potential information to review:

- ✓ Post-construction plan reviewed and approved by MS4
- ✓ Records for post-construction BMP inspection and maintenance; both private and public if applicable
- ✓ An O&M plan for post-construction BMPs from a recently approved project

Industrial/Commercial Facilities

Key questions to ask:

- ✓ Describe your industrial/commercial facility program, including the types and numbers of facilities covered. How were these facilities selected?
- ✓ Describe the types of BMPs or stormwater requirements these facilities must meet.
- ✓ Describe your industrial/commercial inspection program (including the frequency of inspections and the number of inspectors)
- ✓ Interview an inspector to assess how industrial/commercial stormwater inspections are conducted. Ask about the frequency of inspections and the number of inspectors.

Potential information to review:

- ✓ List of industrial/commercial facilities subject to stormwater requirements
- ✓ Inspection report(s) for selected facilities
- ✓ Enforcement records for a facility out of compliance

Illicit Discharge Detection and Elimination

Key questions to ask:

- ✓ Describe your legal authority to prohibit illicit discharges and illegal dumping to the MS4 (including an exemptions).

- ✓ Describe any field screening activities. If an illicit discharge is discovered during screening, what is the process for determining the source and eliminating the discharge.
- ✓ Describe your illicit discharge investigation and spill response programs, including staff and equipment available.
- ✓ How are the locations of illicit discharges tracked and used to steer other SWMP components (i.e. industrial inspections, public education, etc).

Potential information to review:

- ✓ List of illicit discharge events investigated over the past _____
- ✓ Records on investigation, follow-up and enforcement relating to one or more event(s)

3.3 Screening-Level Evaluation Follow-Up

After a screening-level evaluation, an evaluator has several options:

- Submit a report to the permittee summarizing the findings and asking for deficiencies to be corrected
- Conduct a detailed on-site evaluation of those program components found deficient
- Conduct a detailed on-site evaluation of all program components

If an evaluator conducted a screening-level assessment of multiple permittees, common deficiencies can be used to target either more detailed evaluations or additional compliance assistance on those program components. Additional information on post-evaluation activities, including preparing a written report and follow-up activities, are described in Chapter 5.

4. Conducting a Detailed On-Site Evaluation

The following chapter describes the process and content of a detailed on-site evaluation. The following program areas are covered:

- Program Management
- Public Education and Participation
- MS4 Maintenance Activities
- Construction Activities
- Post-Construction Controls
- Industrial/Commercial Facilities
- Illicit Discharge Detection and Elimination

Each program area section includes a list of regulatory requirements that apply to that program area and describes activities that typically are performed by permittees to meet permit requirements. The sections also include a description of documents to be reviewed before the evaluation and a series of questions to be asked during the interviews. Also included is a list of common problems identified during evaluations.

Approach and Demeanor

An evaluator's approach and demeanor can have a significant impact on the success of the interviews by putting the interviewees at ease. Evaluations can be a stressful process for the permittee, which could result in stilted discussions and overly brief answers to questions. It is best to use a friendly approach and start by asking open-ended, broad questions that allow the interviewees to talk freely about their programs. Since MS4 stormwater programs are not "one size fits all," it is sometimes best to have the interviewees describe their approach to each program area up front rather than ask questions from a list that may not be organized in a way that makes sense in the context of their program's activities. To ensure that all topics are covered in sufficient depth, the evaluator should ask for clarification throughout and take a break at the end of the session to review the list of topics and ask follow-up questions if needed. Maintaining a conversational style will allow the interviewees to explain their answers and feel as though they can provide input into the interview process.

Kick-off Meeting

The first day of an evaluation should begin with a kickoff meeting to allow for introductions and an overview of the process and goals of the evaluation. The meeting usually includes all staff who will be interviewed, and it is a good time for higher-level managers and officials to be introduced to the process and understand what will be happening over the next few days.

The following is a sample agenda for the kickoff meeting. The evaluator should tailor the agenda to suit his or her own objectives:

- **Introductions.** The evaluator should introduce him- or herself and can provide a brief overview of his or her background in stormwater program evaluations. Then each person in the room can introduce him- or herself in turn. It is helpful to distribute a sign-in sheet at this time to collect the names, positions, and contact information for the people being interviewed throughout the week in case follow up is needed.

- **Goals and benefits.** Describe the goals and outline some of the benefits of the evaluation process. These are described in depth in Section 2.1 of this guidance.
- **Schedule.** Review the schedule for the week's interviews and discuss which topics will be discussed during each session. It is also helpful to clarify what type or level of staff should participate in each session and what documentation should be available for review.
- **Products and timeline.** The evaluator should describe the general content and organization of the report and provide a timeline for when a final report will be produced.
- **Questions.** Limit questions to the evaluation process, procedures, and report. Questions about a specific program topic can be addressed during that session.

4.1 Program Management

Regulatory Requirements
Applicable federal regulations for the Phase I and Phase II NPDES regulations are listed at right. NPDES MS4 permits must address these requirements and often more specific state requirements as well.

Federal NPDES Regulations
- ✓ Phase I MS4 Regulations
  40 CFR 122.26(d)(2)(iv)
  40 CFR 122.42(c)
- ✓ Phase II MS4 Regulations
  40 CFR 122.34(a)
  40 CFR 122.34(d)
  40 CFR 122.34(g)(1)
  40 CFR 122.34(g)(3)
  40 CFR 122.35(a)

Common Activities

Comprehensive Stormwater Management Planning
Phase I and Phase II permittees are required to develop SWMPs designed to reduce the discharge of pollutants from the MS4 to the MEP. Ideally, a SWMP is developed with input from internal and external stakeholders including, but not limited to, departments, agencies, and co-permittees within the permitted area, the general public, nonprofit organizations, state agencies, and watershed groups. This program should be described in a planning document (SWMP Plan) that details organizational structure and coordination scheme and a detailed description of the proposed controls or program components (i.e., public education and outreach) that includes performance standards or goals, standards, or timelines and a prioritization of existing resources.

Multiple co-permittees or different agencies may be involved in the development and implementation of the MS4 SWMP programs and Plan. To ensure that the program is implemented consistently by all, it is important that the SWMP describe the communication mechanisms between the co-permittees, and between the co-permittees and other agencies. Within a permittee's stormwater management structure there might be different departments that are to develop, implement, and enforce various components of the program. The SWMP should describe how the various departments communicate and coordinate activities.

Performance standards and goals are important tools for permittees to use to gauge the success of their programs in achieving measurable benefits and improving water quality. The development of performance standards or goals may not be required for many Phase I permittees, however, you should discuss the establishment of water quality-or performance-based goals for SWMP components and refer Phase I permittee's to available measurable goals guidance developed in response to the Phase II regulations (see Resources text box).

Assessment and Evaluation
SWMP evaluations not only demonstrate progress, but also allow the permittee to adjust programming, funding, or staffing levels for the upcoming year to best use existing resources to maximize water quality benefit. Evaluations should examine both direct measures, such as water quality indicators, and indirect measures of program

Resources
- ✓ Menu of BMPs
  www.epa.gov/npdes/stormwater/menuofbmps
- ✓ Measurable Goals Guidance for Phase II Small MS4s
  http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm
- ✓ Stormwater Phase II Fact Sheet Series
  http://cfpub.epa.gov/npdes/stormwater/swfinal.cfm
- ✓ National Management Measures to Control Nonpoint Source Pollution from Urban Areas
  www.epa.gov/owow/nps/urbanmm/index.html
- ✓ Stormwater Phase II Compliance Assistance Guide
  www.epa.gov/npdes/pubs/comguide.pdf
- ✓ Institutional Aspects of Urban Runoff Management
  www.stormwater.ucf.edu/publications/urban_runoff.pdf
- ✓ Stormwater Authority
  www.stormwaterauthority.com
- ✓ Stormwater Manager's Resource Center
  www.stormwatercenter.net

effectiveness, such as improved compliance rates of construction operations resulting from inspections.

Resources
- ✓ Measurable Goals Guidance for Phase II Small MS4s. http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm
- ✓ Measurable Parameters http://cfpub.epa.gov/npdes/stormwater/measurablegoals/parameters.cfm
- ✓ California Stormwater Quality Association. An Introduction to Stormwater Program Effectiveness Assessment. http://www.casqa.org/resources/product.php

Measurable Goals

According to the Stormwater Phase II Regulations, small MS4 operators must reduce pollutants in stormwater to the MEP to protect water quality. The regulations specify that compliance with the MEP requirement can be attained by developing a SWMP that addresses the six minimum control measures previously described in this Guidance. One component required in the Phase II MS4 SWMP is the selection of measurable goals to evaluate the effectiveness of the individual control measures and the SWMP as a whole. Phase I MS4 regulations do not specify the creation of measurable goals per se, but require the assessment of water quality improvements or degradation and propose changes to the SWMP necessary to improve effectiveness. Requiring measurable goals of Phase I permittees allow permitting authorities to track the permittee's progress in implementing BMPs and the overall SWMP. The process for developing measurable goals and the benefits of incorporating them into the evaluation of a MS4 program are the same for Phase I or Phase II permittees.

To determine the effectiveness and success of a stormwater management program, managers must first determine the ultimate outcomes they wish to achieve. Then, programmatic, social, physical, and hydrological, or environmental indicators can be used to assess the achievement of the desired goals, or outcomes.

TIP:

Often, permittees do not develop measurable goals that truly quantify and track progress towards desired outcomes in the SWMP. Many times "performance standards" primarily consist of a list of BMPs. Performance standards should include quantifiable activities that can be tracked or criteria against which progress towards desired outcomes can be measured.

The California Stormwater Quality Association[1] (CASQA) asserts that there are six levels of stormwater management program outcomes. Each successive level represents increasingly difficult outcomes to not only achieve, but to assess.

The levels are:

1. Compliance with activity-based permit requirements
2. Changes in attitudes, knowledge and awareness
3. Behavioral change and BMP implementation
4. Pollutant load reductions
5. Changes in urban runoff and discharge quality
6. Changes in receiving water quality

Stormwater program managers may strive to achieve some or all of these outcomes; however, in general the "implementation outcomes" (1, 2, and 3 above) typically are easier to measure than the more complex goals of reducing loading and achieving changes in discharge and receiving water quality. In addition, these outcome levels are not independent of one another; the hope is that movement towards one will result in progress towards achieving another.

[1] CASQA. 2005. *An Introduction to Stormwater Program Effectiveness Assessment.* August 2005. http://www.casqa.org/resources/product.php

It is important that some measure of assessment be determined in conjunction with the establishment of each goal. A goal can be expressed qualitatively or quantitatively, and the associated index should be measurable, relevant, reliable, available, scientifically valid, replicable, and focused on measuring the outcome.

EPA has developed sets of "measurable parameters" for stormwater program managers to use as a guide when developing quantifiable goals. For example, the following implementation parameters could be used to quantify and track the effectiveness of an illicit discharge detection and elimination program component:

- Inventory conducted and sites prioritized for inspection
- Number of field tests conducted in high-risk areas
- Whether or not an ordinance was developed to allow entrance into private buildings for the purpose of conducting tests
- Number of illicit connections reported by business employees
- Number of survey responses indicating a possible illicit connection
- Number of illicit connections found
- Number of illicit connections repaired/replaced
- Whether or not an ordinance was developed for mandatory inspections of new buildings
- Number of new buildings inspected

CASQA asserts that depending on the outcome, various methods of obtaining necessary measurement data are available, including the following:

Method	Definition	Example
Confirmation	Documenting whether a task has been completed.	Development of an construction operator BMP outreach brochure
Tabulation	Tracking an absolute number or value of something	Number of brochures distributed to construction operators
Surveying	Determining knowledge, awareness, etc. of a group of people	Phone survey of 100 construction operators, 50 of whom had received the BMP brochure, to gauge any differences in stormwater awareness
Quantification	Estimating pollutant loading	Modeling to determine sediment load reductions prior to initiating construction operator outreach program – assumption made about BMP use before and after program
Inspections or site visits	Observing activities or BMPs	Inspections of construction projects before and after initiating construction operator outreach program
Reporting	Utilizing reports generated by third parties	Audit of construction component of the SWMP indicated that BMPs observed and the level of understanding demonstrated by operators had improved during the last year

Method	Definition	Example
Monitoring	Sampling or observation in the field to determine environmental or water quality conditions	Water quality monitoring above and below three comparable active construction sites (Site 1 – trained on construction BMPs, Site 2 – no training, Site 3 – random control, unknown level of BMP understanding) to determine any differences in per/acre disturbed loading of sediment

Permittees need to perform sampling and conduct scientific field assessments to assess specific water quality-related SWMP goals (i.e., pollutant load reductions, changes in urban runoff and discharge quality, and changes in receiving water quality). Some MS4 permits require water quality monitoring to establish baseline water quality conditions, determine the quality of discharges from different land uses or subwatersheds, measure the effectiveness of structural BMPs, or to participate in regional watershed monitoring efforts to track water quality trends.

Evaluating Program Management

Effective program management is essential to help guide SWMP development, implementation, administration, and continued assessment. Each program should have a management process that facilitates stormwater activity coordination between departments within each permittee, between co-permittees, and between the permittee and other organizations and agencies interested in stormwater quality. Some permits that regulate multiple co-permittees may allow for a separate "umbrella" management structure to perform certain functions, one of which may be management of certain components (e.g. public education) of the program and coordination among copermittees. These umbrella structures can be managed by the lead permittee or by consultants hired collectively by all co-permittees.

For More Information:

For an example of a program that uses an "umbrella" management structure, the Contra Costa Clean Water Program manages the stormwater program for nineteen co-permittees in Contra Costa County, California. Visit http://www.cccleanwater.org.

Another important aspect of program management is the development of goals or standards to measure effectiveness of the program from a water quality perspective. This is normally required by the permitting authority in addition to being helpful to MS4 SWMP coordinators for use in budgeting, staff allocation, and long-term planning. When evaluating a SWMP, you should question permittee staff regarding the desired outcomes for the program as a whole and for each individual program component. You should determine what, if any, assessment measures have been established for each goal and question the MS4 staff regarding progress.

The findings of the MS4 evaluation should not be based solely on the level of achievement of measurable goals. It is important, however, that the permittee's SWMP includes the use of measures to assess progress towards meeting goals that benefit water quality and not rely on "bean-counting." You should be confident that the SWMP is being regularly assessed and modified as necessary to improve effectiveness.

Typically, each MS4 SWMP would have a coordinator or other principal contact. This person would be the best to interview regarding program management procedures.

TIP:

Normally, it is not within the scope of a typical MS4 program evaluation to review or evaluate water quality monitoring data. Because of the amount of data, monitoring methods, and monitoring plans, this is an exercise best undertaken by NPDES staff that specializes in ambient water quality monitoring protocols and analysis.

Before the Program Evaluation

To prepare for the program management evaluation, an evaluator should review or obtain the following information prior to the evaluation:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report
- ✓ Memorandums of understanding

- **MS4 NPDES permit provisions.** Review the permit requirements for program management to identify any specific requirements (such as annual reporting details). The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP planning document(s) should describe the overall management structure of the program.
- **Latest annual report.** The annual report should be reviewed to help you become familiar with the management structure of the program.
- **Memorandums of Understanding (MOUs)** or other written agreements between or among co-permittees or other agencies stipulating arrangements and responsibilities for meeting permit requirements.

Records Review

The following records might help in evaluating the permittee's program management structure. Ask for copies of relevant information where it will help in writing the report or documenting a permit violation.

Documentation	What to Look For
▪ Stormwater program staff lists ▪ Organizational charts ▪ Contact names and responsibilities	▪ Are specific departments and/or individual positions identified as responsible for each part of the SWMP? ▪ Are lines of authority and responsibility clear?
▪ Performance standards ▪ Program goals/measurable goals ▪ Implementation schedule	▪ Has the permittee documented a schedule and goals for guiding the SWMP in subsequent years? ▪ Are these goals specific enough for the SWMP to be evaluated?
MOUs or other agreements	▪ Does the permittee document partnerships with other agencies, nonprofit organizations, or other cooperating entities? ▪ Are the roles and responsibilities of each entity clearly identified?
▪ Tracking systems ▪ Reporting and assessment procedures	▪ Has the permittee established procedures or deadlines for reporting or program assessment, both within the permittee's structure and between agencies or co-permittees?
Coordination meeting schedules, task force rosters	▪ Do permittee staff responsible for implementing the SWMP meet periodically? ▪ Do municipal agency representatives meet to discuss SWMP implementation? ▪ Does the permittee meet with cooperating entities to discuss SWMP implementation?

Elements to Address During the Program Evaluation

A successful management structure will generally be composed of the following elements:

- Comprehensive stormwater management planning
  - Public participation
  - Intergovernmental, agency, and department coordination
  - Staff inventory and organization
  - Performance standards or goals
  - Prioritization of resources
- Data collection and reporting
- Assessment and evaluation
- Program adjustments based on ongoing assessments

The common program elements are the key issues to consider during the review. For each of the elements listed above, this Guidance presents common program activities and questions to consider during the program evaluation. The questions are suggested for you to address each program component. Of course, a comprehensive SWMP evaluation must be tailored to the specific issues associated with each permittee and should include more specific questions regarding the permittee's permit structure and management challenges.

COMPREHENSIVE STORMWATER MANAGEMENT PLANNING

SWMP Planning Documents

- ✓ Has a SWMP Plan been developed? If so, when? Last revised?
- ✓ If a SWMP plan has not been developed, what guidance does the permittee use to implement components of the SWMP?
- ✓ Is there a schedule for revision of the SWMP plan?
- ✓ If multiple co-permittees are included in the program, does each permittee have their own SWMP planning document?
- ✓ Is there an additional MS4-wide document, plan, or program? Who developed it?
- ✓ How were internal and external stakeholders included in the development or revision of the SWMP plan?

Intergovernmental, Agency, and Department Coordination

- ✓ If the permit covers more than one permittee, does the program contain a description of the roles and responsibilities of each permittee and procedures to ensure effective coordination?
- ✓ Is there an "umbrella" group that facilitates administration and coordination among the co-permittees?
  - What functions does this group perform?
  - Are there task forces or committees who are used to coordinate program-wide components and to address specific issues related to different program topics (e.g., Public Education and Outreach Committee)?

- Who are members of these committees?
- Are there regular meetings to coordinate amongst the co-permittees?

✓ Is there a formal agreement (e.g., an MOU) between the co-permittees?

✓ Discuss with the permittee the institutional arrangements between city departments that have been developed to ensure coordination and collaboration on stormwater management activities.

✓ Is there a stormwater committee (or equivalent) within the municipal permittee to help ensure coordination among city departments?

✓ How often does the committee meet? Who are the members, and are all the relevant city departments involved?

✓ Is the stormwater program coordinated with nonpoint source, **brownfield** redevelopment, transportation planning, underground injection control, coastal zone, household hazardous waste, recycling, and other relevant programs?

✓ Does the stormwater program use nonprofit organizations, watershed groups or other community organizations to administer required elements of their permit or minimum measures?

Staff Inventory and Organization

✓ Does the permittee have a person designated to lead and coordinate the stormwater program and activities?

✓ Does the SWMP planning document include an organization chart listing responsible parties for each SWMP component?

Performance Standards or Goals

✓ Has the permittee established measurable goals or performance standards for program components?

✓ If performance standards have been established, are they measurable or are they essentially BMP recommendations with level of service (i.e., number of miles swept) requirements?

✓ Does the permittee attempt to quantify or assess a program or a BMP's water quality impact or effectiveness as opposed to merely tracking level of service? For example, the percentage of violation recidivism for industrial facilities reinspected during a permit term may provide better information about the effectiveness of the industrial inspection program than the total number of facilities inspected in a year.

Prioritization of Resources

✓ Has the permittee identified specific pollutants of concern for its local water bodies?

✓ Are these pollutants of concern consistent with priorities identified in the **303(d)-listed** impairments for local water bodies?

✓ Are these pollutants of concern consistent with any water quality monitoring data or studies conducted by the permittee or another agency?

✓ Has the permittee developed strategies to specifically address those pollutants?

✓ How does the permittee decide on program priorities? Are these reassessed periodically?

✓ Does the SWMP include a schedule of activities?

✓ Does the MS4 discharge to a water body on the state's list of impaired waters?

- What pollutants are identified on the list?

- Has stormwater been identified as a source?
- Does the SWMP specifically address this pollutant?
- Does the SWMP identify BMPs specifically for sources or discharges to the listed water body?

✓ Has a TMDL been developed for a water body to which the MS4 discharges and for which stormwater has been identified as a pollutant source?

- What pollutants are addressed in the TMDL?
- Does the TMDL specifically address (or include wasteload allocations for) stormwater?
- Has the corrective action plan or other planning to address TMDLs been reviewed for integration with the SWMP?
- Does the permittee's stormwater program address the pollutants of concern identified in the TMDL?

✓ Is the permittee participating in any watershed planning efforts?

✓ Have any goals been developed based on watershed issues, strategies, or challenges?

✓ Has the permittee established a set of indicators or parameters to assess progress toward meeting the goal(s) of the watershed plan?

✓ Is the permittee's stormwater program implemented on a watershed basis?

ASSESSMENT AND EVALUATION

Programs

✓ Does the permittee regularly measure progress against the established performance standards and goals?

✓ Are the goals quantifiable?

✓ Is the permittee analyzing data in the annual report to identify program activities that may need to change to address problem areas?

✓ Has the SWMP been altered based on this evaluation?

BMPs

✓ Is the permittee able to track both structural BMPs and non-structural BMPs and activities?

✓ Has the permittee set measurable goals or performance standards to evaluate individual BMPs and activities or suites of BMPs that address a particular pollutant source?

✓ Is there a process to evaluate or revise individual BMPs and suites of BMPs when receiving water outcomes or endpoints are not being met?

✓ Do assessments evaluate impacts of BMPs on ground water?

✓ Is the permittee analyzing data in the annual report to identify individual BMPs or suites of BMPs that may need to change to address problem areas?

Water Quality

- ✓ Has the permittee documented environmental, water quality, stream corridor, habitat, or other types of improvements?
- ✓ Has the permittee estimated reductions in pollutant loadings from the MS4 or other quantifiable water quality benefits expected as the result of the municipal stormwater program?

MONITORING

Note: It is important to tailor these questions to each permittee's monitoring requirements as specified in their permit.

Wet Weather Outfall Screening and Monitoring

- ✓ Does the permittee conduct wet weather screening at outfalls to characterize stormwater flows from the MS4?
- ✓ Does the permittee have written screening procedures?
- ✓ What is the permittee's schedule for screening the sites?
- ✓ Are parts of the permit area prioritized for screening based on incidents of illicit discharges, land use, dumping reports, etc.?
- ✓ What parameters are being tested?
- ✓ How does the permittee prioritize sites for follow-up (e.g., magnitude and nature of suspected discharge)?
- ✓ Who conducts the sampling? What kind of training have sampling personnel received?
- ✓ What type of records are kept?
    - o Analytical results
    - o Date and duration (in hours) of the storm events sampled (rainfall data)
    - o Rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff (rainfall data)
    - o Duration (in hours) of the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (rainfall data)
    - o Estimate of the total flow of the discharge sampled (stage and velocity)
- ✓ What analytical methods are used (i.e., 40 CFR Part 136)?
- ✓ What are the results of the initial sampling and analysis?
- ✓ Has the permittee made any changes to the monitoring program based on past results and experience?
- ✓ How have monitoring results been used to assess program components?
- ✓ Are monitoring data used to estimate pollutant loads for a TMDL?

Dry Weather Outfall Screening and Monitoring

- ✓ Does the permittee conduct dry weather screening at outfalls to identify non-stormwater discharges?
- ✓ Does the permittee have written screening procedures?
- ✓ What is the permittee's schedule for screening the sites?
- ✓ Are parts of the permit area prioritized for screening based on incidents of illicit discharges, land use, dumping reports, etc.?
- ✓ What parameters are being tested?
- ✓ How does the permittee prioritize sites for follow-up (e.g., magnitude and nature of suspected discharge)?
- ✓ Who conducts the sampling? What kind of training have sampling personnel received?
- ✓ What type of records are kept?
    - o Analytical results
    - o Date and duration (in hours) of the storm events sampled (rainfall data)
    - o Rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff (rainfall data)
    - o Duration (in hours) of the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (rainfall data)
    - o Estimate of the total flow of the discharge sampled (stage and velocity)
- ✓ What analytical methods are used (i.e., 40 CFR Part 136)?
- ✓ What are the results of the initial sampling and analysis?
- ✓ Has the permittee made any changes to the monitoring program based on past results and experience?
- ✓ How have monitoring results been used to assess program components?
- ✓ Are monitoring data used to estimate pollutant loads for a TMDL?

Biological Monitoring

- ✓ Does the permittee perform biological sampling?
- ✓ Has a plan been developed to conduct biological sampling? If so, does the plan include the following:
    - o Identification of sampling stations and rationale for selection
    - o Location of known major MS4 outfalls discharging to water bodies in which sampling stations were chosen
    - o Land use activities near sampling stations
    - o Frequency of monitoring
- ✓ Who conducts biological sampling and what training have they received?

- ✓ Has the permittee made any changes to the monitoring program based on past results and experience?
- ✓ How have monitoring results been used to assess program components?

Ambient Monitoring

- ✓ Does the permittee conduct ambient monitoring to characterize water quality conditions in receiving waters?
- ✓ How were the sampling sites selected?
- ✓ Is sampling conducted both during dry weather and wet weather?
- ✓ What is the frequency of sampling?
- ✓ What parameters are analyzed? What sampling and analytical methods have been used?
- ✓ Does the permittee have a written protocol or procedures for this sampling program?
- ✓ Who conducts the sampling and what training have they received?
- ✓ Has the permittee made any changes to the monitoring program based on past results and experience?
- ✓ How have monitoring results been used to assess program components?
- ✓ Are monitoring data used to estimate pollutant loads for a TMDL?

DATA COLLECTION AND REPORTING

- ✓ What reporting requirements are included in the MS4 NPDES permit?
- ✓ If multiple permittees are covered, are there different requirements for the co-permittees and the "umbrella" group?
- ✓ For co-permittees or Phase II permittees that rely on other entities to implement required elements of the program, how are data provided or reported?
- ✓ How are the required data collected, tracked, and reported?
    - o Is there a database?
    - o Are there reporting forms?
- ✓ Are there internal reporting deadlines within the municipal program structure?
- ✓ Are the appropriate data being collected by the permittee to be able to measure effectiveness and determine if performance standards are being met?
- ✓ How are data disseminated to those who use them, if at all?

<u>In-Field Program Evaluation Activities</u>
In-field activities are not necessary to evaluate program management.

Common Issues Identified During Program Evaluations

- ✓ The permittee lacks necessary intradepartmental coordination on stormwater issues.
- ✓ The permittee does not describe a formal, coordinated program framework.
- ✓ The SWMP does not identify pollutants of concern or program priorities.

- ✓ The program does not have measurable goals to track and quantify progress towards desired outcomes.
- ✓ The "umbrella" group for multiple co-permittees has a program or plan, but nothing has been developed for each specific co-permittee to detail actual implementation or goals specific to each co-permittee's program.
- ✓ No SWMP planning document(s) exist to guide the implementation of SWMP components.
- ✓ The SWMP has not been revised and updated based on evaluations of effectiveness.

4.2 Public Education and Participation

Regulatory Requirements
EPA's federal NPDES regulations for the stormwater Phase I and Phase II are listed at right. NPDES MS4 permits must address these requirements and often include more specific provisions.

Public education is not addressed as a separate program area in the Phase I regulations. Two general public education requirements are contained in the illicit discharge detection and elimination program requirements, as well requirements for education of pesticide, herbicide, and fertilizer applicators and construction site operators. The latter two programs are discussed in greater detail in the MS4 Maintenance and Construction Activities sections of Conducting an Evaluation.

The NPDES Phase II regulation's minimum control measures include requirements for Public Education and Public Participation.

Common Activities
Public education efforts aim to project information to the audience, while the goal of a public participation and involvement program is to encourage volunteerism, public comment and input on policy, and activism in the community. Many activities can and often do achieve both goals, therefore many permittees combine the two into one public outreach program component and develop joint materials. For example, a brochure about stormwater impacts could also invite residents to participate in a stream cleanup. In addition, it is common for several co-permittees to combine funds and produce one set of public outreach materials to distribute regionally or simply use another permittee's materials.

Goals and Objectives
Although not specified in NPDES regulations, ideally a stormwater outreach program should have a strategy to address public education and participation. The outreach strategy should be outlined in a document that may only be a few pages but should establish who is responsible for specific tasks, how much is budgeted, and the dates of implementation (especially if the permittee has to apply for funding support) and completion.

A permittee's outreach program should include goals based on specific stormwater quality issues in the community or pollutants of concern as well as specific target audiences. The goals can be quantitative (i.e., numbers of classroom presentations per year) or qualitative (i.e., increased stormwater awareness among Spanish-speaking residents regarding illegal dumping demonstrated by awareness surveys). Goals can be short-term or long-term but should be designed to be reassessed on a regular basis. Goals should also be progressive; for example, a goal for the first two years may be based on increasing public awareness of certain issues, whereas a goal for

Federal NPDES Regulations
NPDES MS4 permits must address these requirements and often include more specific state requirements:

✓Phase I MS4 Regulations
Public Education
40 CFR 122.26(d)(2)(iv)(B)
40 CFR 122.26(d)(2)(iv)(D)(4)
40 CFR 122.26(d)(2)(iv)(A)(6)

Public Participation
40 CFR 122.26(d)(2)(iv)(D)

✓Phase II MS4 Regulations
Public Education
40 CFR 122.34(b)(1)

Public Participation
40 CFR 122.34(b)(2)

Resources
✓EPA Menu of BMPs
http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm
✓Getting In Step
http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf
✓EPA Stormwater Month Outreach Materials and Reference Documents
www.epa.gov/npdes/stormwatermonth
✓Think Blue San Diego, an overview of San Diego's stormwater pollution prevention program
http://www.thinkbluesd.org/why.htm
✓CTIC Know Your Watershed
http://www.ctic.purdue.edu/KYW/

subsequent years would be based on measurable changes in behavior as a result of increased awareness.

Though each permittee may select its own unique set of goals, the ultimate outcome of all programs should be to elicit specific changes in behavior that benefit water quality. Brochures and presentations are means to this end, but they do not necessarily indicate a meaningful and successful public education program.

Message Development

The permittee's stormwater outreach messages should be clear, specific, and tied directly to elements that each specific audience values, in addition to goals established in the SWMP. Multiple messages may be necessary to address various audiences or behaviors.

Target Audiences

An outreach strategy should identify target audiences a permittee wants to reach with appropriate messages. Target audiences can be segmented by geographic location, demographics, occupation, or behavior patterns. Selection of a target audience can be based on stormwater quality issues and behaviors to be altered. The permittee should determine what information the target audience needs, gather information on the profile of the target audience, and collect information on the barriers to reaching this target audience. As stormwater awareness is evaluated and the program evolves, the target audience may change as well.

Message Packaging

Permittees use various packages to deliver messages to different target audiences. The packages should be appropriate to the audience (i.e., demographic, employment, geographic location, etc.). Packages for messages can include brochures, TV and radio spots, videos, presentations, events, and other formats.

Distribution Mechanisms

There are many ways to distribute outreach messages and materials. Distribution methods should be specific to the message and audience. Often, co-permittees or other partners (i.e., nonprofit organizations, watershed groups, other government agencies) share the distribution costs to best use available resources. Often goals or permit requirements are tied to distribution; therefore, permittees should track distribution of materials, program-related presentations, and other delivery methods.

Evaluation Methods

Permittees can evaluate the effectiveness of an outreach strategy in a number of ways, but any method should be linked to established measurable goals. Some use public surveys to gauge changes in awareness or behavior of the target audiences. The surveys can be conducted in person at events, on the phone, or using Web-based survey tools. Others track quantifiable data such as brochures distributed, people trained, participation in events, volunteer hours, etc. Ultimately, permittees should track metrics showing the adoption of desirable behavior changes.

Public Participation Activities

Ideally, permittees give the public the opportunity to participate in the development, implementation, evaluation, and improvement of the stormwater program. At the very least, permittees need to notify the public about the availability of the SWMP and notice of intent and solicit comments. Some permittees have stakeholder workgroups that are involved in developing policy and programs. Many permittees encourage and facilitate involvement by coordinating or promoting community events and promoting volunteerism in the community through activities such as storm drain stenciling, stream cleanups, riparian tree plantings, and other programs.

Evaluating Public Education and Participation Programs

The public education and participation component of a SWMP may be implemented by one person or department (e.g., a communications office) or be a combination of efforts by many people, departments, or agencies. An evaluator should question the SWMP coordinator about key staff to talk with prior to the evaluation. It may be possible for the coordinator to relay all necessary information without having to track down numerous staff. It is also a good idea for you to request that copies of pertinent outreach materials be compiled to review during the evaluation or taken to review after.

Some permittees will want to present all stormwater public education activities as an independent program area, while other permittees describe education activities in each relevant SWMP component (for example, education of construction operators is addressed in the construction component or public education on illicit discharges is addressed in the illicit discharge component). An evaluator should take note of how the permittee organizes its education activities and adjust the evaluation process accordingly.

Before the Program Evaluation

An evaluator should review or obtain the following information prior to the evaluation:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report

- **MS4 NPDES permit provisions.** Review the permit requirements for public education and public participation to identify any specific requirements (such as the type of activities the program must include or the pollutants the program must address). The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP should describe the overall outreach structure of the program and any measurable goals.
- **Latest annual report.** The annual report should be reviewed to help you become familiar with the activities that have been conducted in the past and the progress made towards achieving measurable goals of the program component.

Records Review

The following records might help in evaluating the compliance and performance of the permittee's public education and participation program. Ask for copies of relevant information where it will help in writing a report or documenting a permit violation.

Documentation	What to Look For
Public outreach or communication strategy	Target audiences, specific stormwater messages, tracking methods, measurable goals, a plan to review and modify the strategy over time.
Stormwater Web site	Pamphlets, calendars of events, hotlines, contact information, access to stormwater permit requirements and SWMP documentation, general stormwater information, volunteer opportunities
Public awareness survey	Public awareness surveys may be available to assess either baseline awareness or movement towards measurable goals.

Elements to Address During the Program Evaluation

This Guidance presents common program activities and questions to consider during the program evaluation. Of course, a comprehensive program evaluation must be tailored to the specific issues associated with each permittee and should include more specific questions regarding the permittee's permit structure and management challenges.

GOALS AND OBJECTIVES

- ✓ Does the permittee have a strategy document for education and participation?
- ✓ Does the document include specific goals?
- ✓ On what are the goals based?
- ✓ Are the goals measurable? How?

MESSAGE DEVELOPMENT

- ✓ Have specific messages been developed for stormwater outreach?
- ✓ On what are the messages based? Pollutants of concern? General awareness? Problem target audience? All of the above?
- ✓ Are different messages used for different target audiences (i.e., children, homeowners, industry, etc.) or is one central message used for all?
- ✓ Do the messages encourage participation in stormwater-related activities?
- ✓ Do the messages educate about behavior changes that the audience can make to contribute to a solution?
- ✓ Have messages been developed specific to reducing illicit discharges with information about how to report them to the appropriate authorities?
- ✓ Have messages been developed to educate pesticide, fertilizer, and herbicide applicators (including homeowners) about ways to reduce stormwater pollution?

TARGET AUDIENCES

- ✓ Has the permittee identified target audiences for outreach efforts? How are these target audiences selected? What are the target audiences?
- ✓ What land use groups (i.e. industry, commercial businesses) has the permittee targeted?
- ✓ Have certain ethnic groups or nationalities been identified as audiences to be targeted based on an evaluation of local demographics?
- ✓ Have the target groups been reevaluated based on evaluation of the strategy and progress that has been made?
- ✓ Has the Phase I permittee targeted pesticide, herbicide, and fertilizer applicators (including homeowners) and construction site operators for outreach?
- ✓ Has the Phase II permittee targeted industries or commercial businesses of concern for outreach?

MESSAGE PACKAGING

- ✓ Does the permittee have a variety of written educational materials?
- ✓ Does the permittee have a variety of other packages (i.e., Web site, presentations, displays) for educational materials?
- ✓ Did the permittee produce the education and outreach materials in the different languages that are spoken in the community?
- ✓ Do the permittee's materials explain stormwater issues in easy-to-understand terms?

DISTRIBUTION MECHANISMS

- ✓ Does the permittee track distribution of materials to measure effectiveness?
- ✓ Is the permittee focused solely on distribution or is an effort made to evaluate the impact of the messages?
- ✓ Does the permittee use a variety of distribution mechanisms to target various audiences?

EVALUATION METHODS

- ✓ How does the permittee evaluate the effectiveness of the outreach strategy?
- ✓ Has the permittee conducted a public awareness survey?
- ✓ Which outreach materials have been the most effective in soliciting public involvement and participation? Changing audience behaviors? Increasing general stormwater awareness?
- ✓ Have any changes been made to the outreach strategy or materials based on an evaluation of effectiveness?

PUBLIC PARTICIPATION ACTIVITIES

- ✓ What opportunities does the permittee give to the public to review and comment on any changes to the SWMP, such as public comment via a Web site, a public meeting, or a stormwater advisory group?
- ✓ What volunteer opportunities (i.e., stream cleanups, storm drain stenciling) does the permittee coordinate or publicize to encourage the public to participate in stormwater-related activities?
- ✓ Does the permittee sponsor or promote any of the following activities?
    - o Beach/stream/lake cleanups
    - o Volunteer stream monitoring
    - o Stream clean-ups or equivalent activities
    - o Stormwater citizen panel

In-Field Program Evaluation Activities

The evaluation for this program area will be primarily conducted with the permittee in the office or by reviewing materials before or after the evaluation. However, evaluators can take note during other field activities to observe the stormwater educational materials available and distributed. For example, when visiting the permittee's permit counter, assess the types of stormwater outreach materials available to applicants for new construction projects. When driving around the permit area, observe if posters,

billboards, or other signs display stormwater messages. These types of field observations about the permittee's public education activities can help assess the effectiveness of the program.

Common Issues Identified During Program Evaluations

The following should be closely considered during evaluations of permittees:

- ✓ Permittees set inappropriate or immeasurable goals for activities.
- ✓ Permittees are not including key target audiences.
- ✓ Permittees are not customizing the materials for the target audience.
- ✓ Permittees are not developing materials for commonly spoken languages.
- ✓ Permittees are not distributing the materials adequately using appropriate methods for the target audience.
- ✓ Permittees are not facilitating involvement in program development, implementation, and improvement during the course of the permit term.
- ✓ Permittees are not coordinating or promoting events or activities that would improve water quality or change behaviors of concern.

4.3 MS4 Maintenance Activities

Regulatory Requirements
Applicable Phase I and Phase II federal NPDES regulations are listed at right.

General Permits
Although MS4 maintenance activities are addressed in MS4 NPDES permits, it is important to note that some permittees will also have coverage under industrial stormwater general permits or have individual permits for maintenance facilities that fall under one of the covered industrial categories, such as landfills, waste transfer stations, or transportation facilities.

Federal NPDES Regulations
NPDES MS4 permits must address these requirements and often include more specific state requirements:

- ✓ Phase I MS4 Regulations 40 CFR 122.26(d)(2)(iv)(A)
- ✓ Phase II MS4 Regulations 40 CFR 122.34(b)(6)(i)

Common Activities

Infrastructure Mapping and Characterization
Debris, **floatables**, sediment, metals, and other pollutants are caught in the MS4 and a regular program to inspect, clean, and repair components of this infrastructure will reduce the pollutants leaving the system and entering surface waters. A map of the MS4 is important for the permittee to plan for and track proper maintenance of inlets, catch basins, outlets, conduits, and management structures such as detention basins.

Public Streets Operation and Maintenance
The SWMP should address and include various practices for operating and maintaining public streets, roads, and highways that reduce the impact on receiving waters of discharges from municipal storm sewer systems. These practices should include regular street sweeping and proper use of BMPs during street maintenance activities. In addition, where applicable, permittees should consider deicing agent application methods that minimize the discharge of pollutants into the MS4, as well as salt and sand storage, fleet maintenance, fueling, and washing.

Flood Management
Permittees should assure that the impacts on the water quality of receiving water bodies are assessed in municipal or regional flood management projects and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible.

Public Facilities Operation and Maintenance
The SWMP should include a mechanism to inventory and assess the impact of stormwater runoff from municipal facilities. The inventory should include all facilities that treat, store, or transport municipal waste as well as industrial/commercial facilities (facilities covered by a general permit as well as those defined by the Industrial/Commercial Facilities program component). Facilities

Resources

- ✓ Menu of BMPs www.epa.gov/npdes/menuofbmps
- ✓ California Stormwater Quality Association's Municipal BMP Handbook www.cabmphandbooks.com/Municipal.asp
- ✓ National Management Measures to Control Nonpoint Source Pollution from Urban Areas http://www.epa.gov/owow/nps/urbanmm/index.html
- ✓ North Texas Council of Governments - Stormwater Pollution Prevention Training Module Series http://www.nctcog.org/envir/SEEclean/stormwater/program-areas/pollution_prevention/CD/Version_1/P2_Training_Materials.asp

MS4 Facilities

- ✓ Municipal maintenance yard
- ✓ Fleet maintenance facility
- ✓ Chemical storage facility
- ✓ Household hazardous waste facility
- ✓ Solid waste transfer station
- ✓ Animal control facility
- ✓ Salt storage facility

with activities characterized as a potential threat should be inspected and BMPs should be implemented to reduce water quality impact.

Pesticide, Herbicide and Fertilizer Application and Management
The SWMP should include a component to reduce pollutants associated with the application of pesticides, herbicides, and fertilizer. This program should include, as appropriate, educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at permittee owned or operated facilities, such as playing fields and other recreational facilities.

Training and Education
To ensure that maintenance staff is knowledgeable and proficient in the newest and most effective approaches to minimizing stormwater pollution from facilities and activities, many permittees require annual BMP training for field staff. This training may be presented in-house or staff may attend trainings provided by the permitting authority or industry. It is important to cross-train or educate any contracted staff used for field work as well. Many permittees also provide general stormwater awareness training to all employees.

TIP:

MS4 permittees are not required to enforce the NPDES (state or federal) industrial stormwater general permit, but they are required to comply with this permit at their own facilities. This includes the submittal of a notice of intent, development of a stormwater pollution prevention plan (SWPPP) or equivalent, inspections, and other requirements specified in the applicable industrial stormwater general permit.

Evaluating MS4 Maintenance Programs

MS4 maintenance encompasses a large variety of facilities and activities necessary to operate and maintain a permittee's infrastructure, which include streets, facilities, and the storm drain system. MS4 maintenance activities typically are designed to maintain a certain level of service to maintain the aesthetics of public areas, provide public safety, maintain public infrastructure, and provide flood management, rather than for stormwater quality protection. When reviewing MS4 maintenance programs, however, an evaluator should focus on activities that might impact stormwater quality. The following should be evaluated:

1. How the permittee has inventoried all its infrastructure and facility maintenance activities
2. How the permittee has reviewed maintenance activities to assess potential impacts on stormwater quality
3. Whether the permittee has revised activities or implemented new measures to protect stormwater quality

MS4 maintenance staff should be trained on stormwater BMPs and principles, and have clear guidance on appropriate stormwater BMPs to use during typical maintenance operations and facilities management.

Various departments may be involved in the MS4 maintenance component of a SWMP. Within a municipality, the majority of functions normally are performed by public works staff. However, be sure to discuss the areas to be evaluated with the SWMP coordinator to ensure that the appropriate staff are available to interview during the evaluation. Departments or agencies that might need to be interviewed include streets and highways, facilities management, water authority, fire department, wastewater treatment plant, flood control district, solid waste, and parks and recreation. As previously stated, it is important to interview managers as well as field staff whenever possible.

Before the Program Evaluation

To prepare for the MS4 maintenance program evaluation, an evaluator should review or obtain the following information prior to the evaluation:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report
- ✓ NPDES-permitted municipal facilities
- ✓ Municipal facility inspection reports

- **MS4 NPDES permit provisions.** Review the permit requirements for the MS4 maintenance program to identify any specific requirements (such as a minimum street sweeping frequency). The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP planning document(s) should describe the activities and BMPs that the permittee has committed to implement and may include measurable goals that provide deadlines for program implementation.
- **Latest annual report.** The annual report should be reviewed to identify past activities and help you become familiar with the permittee's SWMP.
- **List of permittee-owned or -operated facilities with NPDES permits.** Try to obtain a list of industrial facilities owned or operated by the permittee that are covered by an NPDES industrial stormwater permit issued by the permitting authority (i.e., household hazardous waste collection facility). This list can be used during the program evaluation to determine whether the permittee is including the facilities that are covered by an industrial stormwater general permit in the inspection program and to understand the types of facilities present in the permit area. The list can also help identify potential sites for the field inspections.
- **MS4 maintenance facility inspection reports.** Review reports from inspections performed by the permitting authority within the permit area and talk to state inspectors to determine if there have been past stormwater violations at facilities owned or operated by the permittee.

Records Review

The following records might help in evaluating the compliance and performance of the permittee's MS4 maintenance activities. Ask for copies of relevant information where it will help in writing the report or documenting a permit violation.

Documentation	What to Look For

Tracking systems
✓ Catch basin cleaning
✓ Street sweeping
✓ Pump station maintenance
✓ Structural BMP maintenance
	▪ What type of water quality-related information is tracked (i.e., tons of material swept)
	▪ Does the permittee set priorities and goals for MS4 maintenance activities each year?
	▪ How are these priorities and goals established?
	  ▪ Pollutants of concern
	  ▪ Watersheds of concern
	▪ Review how these activities are summarized for the annual report

In-field inspection sheets	▪ What guidance is provided to inspectors or maintenance crews to ensure they're properly inspecting and maintaining stormwater infrastructure?

Documentation	What to Look For
Maintenance SOPs	▪ Review standard operating procedures or any employee manuals or fact sheets used by permittee staff to conduct their day-to-day activities to determine if stormwater BMPs are described
List of municipal facilities	▪ Have the facilities been prioritized based on potential water quality impacts? ▪ Are the facilities inspected? How often? Who inspects?
MS4 maintenance facility SWPPPs	▪ Are SWPPPs (or equivalent) for permittee-owned or -operated maintenance yards, wastewater treatment plants, public transit facilities that perform maintenance, or other facilities adequately addressing stormwater? ▪ When were the SWPPPs last updated?
Training schedule	▪ Review training records to determine how often training is provided, who is required to attend
Pesticides, herbicides, and fertilizers ✓Application records and protocols ✓Applicator certifications and training	▪ Has the permittee tracked the types and amounts of chemicals applied in the permit area? ▪ Does the permittee have state-certified pesticide applicators? ▪ Are the applicators' certifications up to date?
Flood management program	▪ Review the permittee's capital improvement project list for flood drainage or flood management projects. ▪ Review the permittee's watershed master plans or flood drainage master plans for flood management projects. ▪ What types of evaluation criteria have been used to prioritize the projects on the (CIP) list or in the watershed master plan (e.g., water quality impacts)? ▪ Determine whether permittee has a documented evaluation showing why it is not feasible to retrofit existing flood management projects.

Elements to Address During the Program Evaluation

Although the specific nature of a successful municipal program is not specified in NPDES regulations, it will generally be composed of the following components:

- Stormwater infrastructure management and maintenance
- Public streets operation and maintenance
- Flood management
- Public facilities operations and maintenance
- Pesticide, herbicide and fertilizer application and management, as well as erosion control, landscaping, and turf grass care

- Standards, BMPs, and outreach for municipal staff
- Training and education

For each of the elements listed above, this Guidance presents questions to consider during the program evaluation. Of course, a comprehensive program evaluation must be tailored to the specific issues associated with each permittee and should include more specific questions regarding the permittee's permit structure and management challenges.

STORMWATER INFRASTRUCTURE OPERATION AND MAINTENANCE

Infrastructure Mapping and Characterization

- ✓ Does the permittee have a map showing all inlets, outfalls, storm drain conduits, stormwater management facilities, and receiving water bodies?
  - o Does this map include catch basins and structural stormwater controls?
  - o Is the map readily available and used by maintenance field staff when performing maintenance activities?
  - o Is the map in hard copy format only or is it also in a geographic information system (GIS)?
- ✓ Are infrastructure assets or components named or numbered to better track necessary maintenance and repairs?

TIP:

A map is also required for the illegal connection and illicit discharge detection and elimination programs described in this Guidance. The maps developed for MS4 maintenance and illegal connection and illicit discharge programs can be the same to best use resources.

- ✓ Is information regarding stormwater infrastructure maintained in a database or mapping system? What types of data are maintained?
  - o Type of structure or asset
  - o Location (address, latitude/longitude)
  - o Photo
  - o Date built
  - o Date last inspected
  - o Date last cleaned/maintained

Catch Basin Cleaning

- ✓ Does the permittee have a schedule for routine maintenance or cleaning of catch basins?
  - o How many are cleaned and how often?
  - o Has the permittee targeted certain areas for more frequent maintenance? Does this targeting help minimize stormwater pollution?
  - o Does the permittee set goals for how many basins are inspected and cleaned each year?
  - o How does the permittee track and record cleaning and maintenance needs?
  - o What information is documented? Does the permittee track which catch basins are cleaned, how much material is removed, and so forth?
  - o How does the permittee use the data collected to further its program or evaluate program effectiveness? Are the data used to help prioritize cleaning frequency? Are they used to identify areas for targeted outreach?
- ✓ What are the permittee's procedures for disposing of waste removed from catch basins or storm drains?
  - o Does the permittee flush material that could potentially discharge to surface water?

- If the material is removed using a wet vacuum, how is the material dewatered? How is the decanted water disposed?

✓ Does the permittee have a schedule for routine maintenance or inspection of storm drain pipes?

✓ What are the permittee's maintenance procedures for cleaning clogged storm drain pipes?

Stormwater Management Structures

✓ Are catch basins and other inlet structures marked so that the public knows they drain to surface waters?

✓ Has the permittee inventoried the type and location of public stormwater management structures in its jurisdiction? How are the data collected and stored?

- Pump stations
- Drainage structures (debris basins, detention basins, regional ponds, etc.)
- Structural treatment controls
- Open channels

✓ How is vegetation maintained in grassed swales, rain gardens, pond perimeters, and other vegetated stormwater controls?

✓ Has the permittee mapped private stormwater management structures?

✓ How often are these facilities inspected?

✓ Are the stormwater management structures regularly maintained by the permittee?

- Are records kept of material and debris removed during maintenance?
- How is maintenance conducted? Are chemicals used to maintain vegetation and pests?

✓ How does the permittee use the data collected to further its program or evaluate program effectiveness? Are the data used to help prioritize cleaning frequency? Are they used to identify areas for targeted outreach based on type and volume of materials removed?

TIP:

Governmental Accounting Standards Board (GASB) Statement No. 34, Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments (Statement 34) establishes new requirements for the annual financial reports of state and local governments. The Statement was developed to make annual reports easier to understand and more useful to the people who use governmental financial information to make decisions. Statement 34 requires governments to document and report existing infrastructure and depreciate their capital assets.

Permittees can utilize the information obtained through this required reporting to inventory assets such as maintenance facilities, stormwater management structures and MS4 infrastructure (i.e. outfalls, storm sewer pipes, catch basin).

http://www.gasb.org/

PUBLIC STREETS OPERATION AND MAINTENANCE

Street Sweeping

✓ Does the permittee regularly sweep streets? Public parking lots?

✓ What is the schedule for street sweeping?

✓ Are areas scheduled for sweeping based on aesthetics only or is consideration given for reducing impacts on the stormwater management infrastructure and surface water?

✓ What types of sweepers are used? Wet or dry?

TIP:

It is a good idea to question both managers and field staff regarding BMPs used. It is helpful to ascertain the level of understanding at the field level as well what types of BMPs are deemed appropriate and feasible for the specific MS4.

- ✓ How is street-sweeping debris disposed? If the debris is dewatered, how is this done? How is the decanted water disposed?
- ✓ Are records kept of the amount of debris collected?
- ✓ How does the permittee use the data collected to further its program or evaluate program effectiveness? Are the data used to help prioritize cleaning frequency?

Yard Debris Reduction and Disposal

- ✓ Does the permittee offer guidance or services to encourage mulching and/or composting of grass clippings and other yard debris?
- ✓ Does the permittee offer seasonal recycling or disposal services to collect leaf litter, Christmas trees, yard debris, or other seasonal organic materials?

Public Streets, Roads, and Highways Maintenance

- ✓ What types of public streets, roads, and highways operation and maintenance practices and procedures are performed by the permittee?
- ✓ Are BMPs used by field crews to minimize stormwater impacts during road maintenance or repair activities?
- ✓ What types of BMPs are used? Discuss BMPs used for such activities as:
  - o Ditch cleaning
  - o Sidewalk repair
  - o Asphalt patching
  - o Curb and gutter repair
  - o Street striping
  - o Sign painting
  - o Maintaining dirt and gravel roads (preventing erosion, dust control)

Deicing Activities

- ✓ What types of deicing agents does the permittee use? If salt is used, has the permittee investigated alternatives?
- ✓ How are deicing agents, sand, or other materials stored? Is the material covered and/or bermed to prevent runoff?
- ✓ Does the permittee track the locations and volumes of deicing agents, sand, or other materials applied?
- ✓ Is the material picked up after the snow/ice event is concluded? Is there a schedule for picking it up after an event?

FLOOD MANAGEMENT

- ✓ Does the permittee have an inventory of structural flood management structures?
- ✓ Have these structures been assessed to determine whether retrofitting could provide additional water quality benefits?
- ✓ How often are flood management projects inspected and/or maintained?
- ✓ Are new flood management projects being designed or planned to include water quality considerations?

PUBLIC FACILITIES OPERATION AND MAINTENANCE

Facility Inventory

- ✓ Does the permittee have an inventory of public facilities? At a minimum, this list should include the following:
  - o Public works yards
  - o Public transit facilities
  - o Wastewater and domestic water treatment plants
  - o Sanitary sewer system overflow locations
  - o Public parks/open areas
  - o Public parking lots
  - o Public buildings
  - o Landfills and hazardous waste disposal sites, transfer locations, or storage facilities
- ✓ Have the facilities been inspected and assessed for water quality impacts?
- ✓ Are any facilities required to apply for coverage under a general industrial permit? Do these facilities have SWPPPs?

Maintenance Yard Management

- ✓ If the permittee is a municipality, does the municipal public works yard have a SWPPP?
- ✓ Who is responsible for implementing and maintaining the SWPPP?
- ✓ Who is responsible for periodically inspecting the yard for stormwater compliance?

Parks Operation and Maintenance

- ✓ Are there adequate trash enclosures available at park facilities? Are they emptied regularly?
- ✓ Does the permittee provide any stormwater education or signage at parks and other areas?
- ✓ How are public restrooms cleaned and maintained? What chemicals are used? How is cleanup water disposed of?
- ✓ How are public pools maintained? How is the chlorinated water disposed of?
- ✓ Does the permittee include pet waste disposal stations with signage and baggies in public parks?
- ✓ What BMPs are used to address:
  - o Stormwater impacts from turf grass maintenance?
  - o The transport of pesticides, herbicides, and fertilizers by stormwater?
  - o Erosion?
- ✓ What types of vegetated BMPs are implemented at parks (e.g., alternative landscaping to minimize high-maintenance turf grass, streamside buffers, reduced mowing frequency, etc.)
- ✓ Does the permittee implement water conservation measures at its park facilities?

Building Operation and Maintenance

- ✓ Are the permittee's parking lots regularly swept?
- ✓ How are enclosed parking structures and other public buildings cleaned? If power washing is used, are BMPs implemented to protect storm drain inlets?

Sanitary Sewer System Maintenance, Overflow, and Spill Prevention

- ✓ Does the permittee have a program to mitigate or prevent **sanitary sewer overflows (SSO)** from entering the MS4?
- ✓ Have flow pathways from SSO locations to catch basins or other points of entry to the MS4 been identified?
- ✓ Have spill prevention and cleanup plans been prepared?
- ✓ Does the permittee have a written procedure to ensure that the MS4 is protected from a sewage overflow or spill? Do the procedures include protection of the storm drain system during and after the cleanup of a spill or overflow?
- ✓ Does the permittee implement a reporting protocol to ensure that all spills and overflows are reported to the appropriate authorities or the department designated to collect and report the permittee's annual report?
- ✓ If the jurisdiction includes residential homes with septic tanks, how does the permittee educate homeowners about proper maintenance of the systems?

Water Supply Operation and Maintenance

- ✓ Have procedures been developed to ensure that field staff integrate stormwater management BMPs into their operation and maintenance activities?
- ✓ Are BMPs implemented to address the testing and flushing of new or existing water lines?
- ✓ Are BMPs implemented to address hydrant testing?
- ✓ Are BMPs implemented to address maintenance activities required to maintain underground water lines (e.g., trenching, excavation)?
- ✓ Does the permittee coordinate source water protection efforts with the stormwater program?

Chemical and Hazardous Material Use and Disposal

- ✓ What types of chemicals or hazardous materials are used by the permittee?
- ✓ Where are these materials stored?
- ✓ Has the permittee implemented an alternative materials program to reduce the use of hazardous materials?
- ✓ Has the permittee implemented an inventory reduction program to reduce the quantity of chemicals and hazardous materials stored and used?
- ✓ Does the permittee have a household hazardous waste collection center for the public?
    - o Are records of the quantity of materials collected maintained by type of material?
    - o How does the permittee notify the public of these sites?
    - o Does the permittee have special household hazardous waste collection days?
- ✓ How does the permittee use the data collected to further its program or evaluate program effectiveness? Are the data used to help prioritize maintenance frequency? Are they used to identify areas of targeted outreach?

PESTICIDE, HERBICIDE AND FERTILIZER APPLICATION AND MANAGEMENT

- ✓ What kind of program has been established to address pollutants associated with the application of pesticides, herbicides, and fertilizer at public facilities?
- ✓ Are the permittee's fertilizer/pesticide applicators certified? Are permits or other certifications required?
- ✓ Where are the chemicals stored? Are appropriate procedures and secondary containment followed?
- ✓ Is there a pesticide/fertilizer application plan?
- ✓ Does the permittee practice integrated pest management (IPM) or use alternatives to pesticides?
- ✓ How does the permittee implement alternative landscaping to minimize the use of fertilizers and pesticides?
- ✓ What types of educational activities does the permittee conduct for applicators?
- ✓ What types of BMPs are used during application of pesticides in public rights-of-way?
- ✓ What types of BMPs are used during application of pesticides at municipal facilities such as parks?

STANDARDS, BMPS, AND OUTREACH

Municipal Staff

- ✓ Have standard operating procedures or their equivalent been developed to ensure that municipal field staff integrate stormwater quality BMPs into their daily activities?
- ✓ Have BMPs or standards been officially adopted by the permittee for use by municipal field staff?
- ✓ What reference materials or guidance documents are provided to field staff regarding BMP specifications and details?
- ✓ How does the permittee ensure that staff are fulfilling their responsibilities as outlined in standard operating procedures? Do managers provide oversight on a regular basis?

Contracted Services Staff

- ✓ Does the permittee require contractors to incorporate stormwater quality BMPs into their activities?
- ✓ How are BMPs required? Are the requirements outlined in requests for proposals? Are they included in contracts?
- ✓ Have BMPs or standards been officially adopted by the permittee for use by contractual staff?
- ✓ What reference materials or guidance documents are provided to contractual staff regarding BMP specifications and details?
- ✓ How does the permittee ensure that contractors are fulfilling their responsibilities as outlined in their contracts? Are inspections performed? Are periodic reports submitted?

TIP:

Educational programs for pesticide, herbicide, and fertilizer applicators used by the permittee may be addressed during the public education and participation portion of the evaluation.

General Public

- ✓ Does the permittee provide any information to the public regarding:

- Cleaning up after pets
- Household hazardous waste disposal
- Oil recycling
- Litter reduction

TRAINING AND EDUCATION

- ✓ What type of general stormwater training is provided to staff that are not involved in field activities? How often?
- ✓ How are new employees trained?
- ✓ What types of activity-specific training is provided to field staff? Is information on specific BMPs provided?
- ✓ Is any training provided to contract staff?

In-Field Program Evaluation Activities

The primary in-field evaluation activity is an inspection of the permittee's public works yard(s) or other type of permittee owned or operated facility (i.e. fleet maintenance). The intent of this inspection is to verify that activities are performed as described in the SWMP. The facility should be inspected as if it were a typical industrial facility. During the inspection, look for the following:

TIP:

Other MS4 facilities, such as parks, marinas, and household hazardous waste collection facilities, should be visited if there is adequate time.

- ✓ Are chemicals, bulk materials, or other potential pollutants stored outside? Is there secondary containment? Are the materials covered?
- ✓ Where are the permittee's vehicles washed? Are wash racks and dewatering areas plumbed to sanitary sewers, if allowed? If not allowed, are wastewaters from wash racks and dewatering areas prohibited from entering the MS4?
- ✓ Where are the permittee's vehicles maintained? If outside, what BMPs are used to prevent polluted runoff?
- ✓ Does the facility have structural stormwater BMPs (e.g., stormwater detention ponds, stormwater filter devices) installed?
  - If so, how are they maintained?
  - What is the frequency of maintenance?
- ✓ Are inoperable vehicles stored and maintained in a way to prevent polluted runoff and leaching of contaminants to groundwater?
- ✓ Are storm drain inlets at the yard free of debris and regularly cleaned?
- ✓ Is the yard swept regularly? Are there oil stains and spills at the yard?

An additional in-field evaluation activity could include visiting maintenance staff as they conduct maintenance. For example, you could visit staff as they clean catch basins, perform street repairs, or conduct other similar activities to ascertain whether stormwater BMPs are being implemented and identify whether staff are knowledgeable about BMPs.

Document all findings in the field in as much detail as possible. An MS4 Facilities Inspection Worksheet has been included as Appendix C to assist in this documentation.

Common Issues Identified During Program Evaluations

The following are some typical problem areas associated with MS4 maintenance programs. These areas should be closely considered during evaluations:

- ✓ The permittee's MS4 maintenance staff lack training on and awareness of stormwater management BMPs.
- ✓ Permittee staff lack adequate guidance (e.g., MS4 maintenance BMP manual, SOPs, fact sheets) on proper stormwater management BMPs.
- ✓ Stormwater BMPs and procedures are not incorporated during routine MS4 maintenance activities.
- ✓ Maintenance yards lack SWPPPs and adequate controls to prevent stormwater contamination.
- ✓ Contractual staff performing operation and maintenance activities for the permittee are not required to consider stormwater quality and implement appropriate BMPs.

4.4 Construction Activities

Regulatory Requirements

EPA's federal regulations for the stormwater NPDES Phase I and Phase II regulations are listed at right. NPDES MS4 permits must address these requirements and often include more specific state requirements.

General Permits

As described above, stormwater Phase I and Phase II MS4 permittees must implement a SWMP that includes erosion and sediment controls on construction sites disturbing at least one acre. In addition to the regulation of construction site stormwater at the local level, EPA regulations also require construction sites disturbing greater than one acre to obtain an NPDES permit. This permit can be issued by the state permitting authority or EPA, depending on whether the state has been delegated the NPDES authority. This dual regulation of construction sites at both the local and state or federal level can be confusing to permittees and construction operators.

Although there are many similarities between the NPDES construction general permit and the MS4 construction program requirements, Municipalities are not required to ensure that local construction projects comply with NPDES construction general permits. Federal NPDES MS4 regulations describe broad requirements for a stormwater program to control construction site runoff to the MS4 and give the permittees flexibility in designing a local program to meet their needs. However, to avoid duplication and confusion between the two programs, some permittees choose to require the same BMPs and plan submittals (i.e., SWPPPs) as required by NPDES regulations.

Federal NPDES Regulations

NPDES MS4 permits must address these requirements and often include more specific state requirements:

- ✓ Phase I MS4 Regulations 40 CFR 122.26(d)(2)(iv)(D)
- ✓ Phase II MS4 Regulations 40 CFR 122.34(b)(4)

TIP:

MS4 permittees are not required to enforce the NPDES (state or federal) construction general permit, but they are required to comply with this permit for their own public construction projects (e.g., capital improvement projects, road construction). This includes the submittal of a notice of intent, development of a SWPPP or equivalent, inspections, and other requirements specified in the state's construction general permit.

Common Activities

Ordinance/Legal Authority

Many municipal permittees address legal authority for construction site stormwater runoff control in a grading or stormwater ordinance. The ordinance(s) should specify which sites are required to implement controls (i.e., MS4 regulations require all sites greater than one acre, but many permittees use a smaller area or volume threshold, such as 50 cubic feet of earth moved or proximity to water bodies). The ordinance should require erosion and sediment control BMPs to be implemented and maintained, a performance standard, and penalties for noncompliance.

Construction Site Inventory

The permittee should have an inventory of active and completed construction projects that includes information about the site and inspections that the permittee has conducted, including inspection findings and follow-up (letters, enforcement actions, additional inspections). Permittees should consider prioritizing the inventory to

Resources

- ✓ Menu of BMPs http://www.epa.gov/npdes/menuofbmps
- ✓ Construction Industry Compliance Assistance Center http://www.cicacenter.org/
- ✓ International Erosion Control Association http://www.ieca.org/
- ✓ Kentucky Erosion Prevention and Sediment Control Field Guide http://www.tetratech-ffx.com/wstraining/pdf/esc_guide.pdf

better target inspections based on project size, location, threat to water quality, or other factors. The permittee should also develop procedures for the receipt and consideration of complaints submitted by the public. Ideally, this information would be managed in a database and linked to a GIS for optimum tracking.

Resources (continued)

- ✓ California Stormwater Quality Association's Stormwater Best Management Practice Handbooks http://www.cabmphandbooks.com/Construction.asp
- ✓ MPCA Inspection guide and compliance assistance toolkit http://www.pca.state.mn.us/water/stormwater/index.html

Construction Requirements and BMPs

While the legal authority described above should require BMPs at construction sites, a permittee should also have additional specifications or guidance on what types of BMPs are expected at sites. These requirements and standards and specifications for BMPs should be readily available to project applicants.

Plan Review Procedures

The review of erosion and sediment control plans (or SWPPPs if required under an NPDES construction permit) should be based on formal review specifications, a checklist, or similar criteria. Plan review staff should document the BMPs considered, whether they were addressed on the plans, and any identified deficiencies.

TIP:

You should have a clear understanding of the plan review and approval process and how stormwater and erosion and sediment control requirements are included in this process.

Some municipal permittees require that projects submit a copy of the **notice of intent (NOI)** that has been submitted to the State or EPA before approving a project. In some states, the state requires that the permittee receive local erosion and sediment control approval prior to submitting a NOI. At a minimum, permittees should make sure that project applicants are aware of the requirement to apply for NPDES permit coverage for projects disturbing greater than one acre.

Some municipal permittees use contract staff to review some or all plans. Be sure to review plans completed by contractual as well as municipal employees.

Construction Site Inspections

A key element of the construction component is the frequency at which sites are inspected. Some permittees identify a minimum frequency of inspections (such as weekly and/or following a rain event) for all projects. Other permittees will rely on building inspectors to conduct erosion and sediment control inspections at the same time as other types of required inspections (e.g., electrical). This approach, however, can result in sites not being inspected for long periods of time if the building inspector is not called out for an inspection. Also, building inspectors are not necessarily trained to recognize erosion and sediment control problems or have other priorities besides stormwater.

TIP:

Some municipal permittees have different inspectors for their public and private projects, be sure to evaluate each in the field.

Inspections are often targeted to specific types of sites or during specific periods (especially immediately following a rain event). For permittees with numerous active construction projects, it is recommended that a prioritization process be developed to ensure that the sites with the greatest threat to water quality are considered high priority and inspected more frequently. Inspection results should be documented using paper forms or electronic databases.

Program Support and Resources

Permittees should have an established source of funding for their construction program, including adequate resources for frequent inspections and plan review. Funds often come from fees paid by the construction operators. If general funds are used to support the program, permittees should ensure that construction inspections are a line-item appropriation not subject to reduction or elimination based on board politics or budget constraints.

Enforcement

Permittees should have an established, escalating enforcement policy that clearly describes the action to be taken for common violations. Enforcement authority typically includes verbal and written warnings, fines, and "stop work" orders. Verbal warnings should be documented in addition to all written violation notices. The enforcement policy should also address how repeat or serious violations will be addressed, including referral of the case to the NPDES permitting authority in the most egregious cases.

TIP:

Review enforcement cases to assess whether the permittee is adequately ensuring compliance. Lack of fines, "stop work" orders, or other enforcement actions do not necessarily indicate that the permittee's enforcement program is inadequate. A lack of enforcement cases could be the result of an effective inspection program, or it could indicate problems with the inspection records, inspector training, inspection procedures, or even the lack of commitment from the permittee to escalate enforcement.

Training and Education

A SWMP should include training to plan review and inspection staff. This training should include classroom presentations, in-field training, and follow-up evaluations to determine whether the training was effective. Although some permittees also provide training to construction operators, most simply provide educational materials such as fact sheets or brochures that describe local requirements and recommended BMPs.

Public Construction Projects

Public construction projects must comply with both the local program and the applicable NPDES construction general permit (state or federal). This requires the permittee to take on dual roles as both local regulator and permittee. Permittees must apply the same local requirements to public construction projects as are required of private projects. Some permittees develop and design public construction projects in-house without direct involvement from the department that reviews most private construction projects; therefore, it is important that the public project designers are trained and proficient in stormwater BMPs as well. If a permittee hires outside designers for public projects, it is important that stormwater guidelines be provided to them to ensure compliance with local and NPDES permit requirements.

After the project is designed, many permittees will hire contractors to build the project. Interested applicants submit proposals to bid on the project. To ensure that successful applicants will abide by all stormwater requirements, it is recommended that the request for proposals (RFP) include specific language regarding installation and maintenance of all BMPs. Many permittees also include additional language in subsequent contracts (if there is a document separate from the proposal) obligating contractors to appropriate stormwater measures and outlining potential enforcement penalties (i.e. delayed or reduced payment). An evaluation of public construction projects should include a review of RFP or contract language relating to stormwater controls.

Evaluating Construction Programs

The evaluation of a permittee's construction program should focus on the regulatory mechanism to require and enforce the program, plan review procedures, and erosion and sediment control inspection procedures. The evaluation should begin with a thorough review of the permittee's ordinances, standards,

approved plans, and other relevant written materials. Ask staff to walk through the planning and approval process from initial plan receipt to final approval.

You should determine how erosion and sediment control BMPs are required in construction site plans and how they are implemented and enforced in the field. Inspectors from multiple departments might also inspect different portions of a development project. For example, building department inspectors may be charged with site inspections during the construction of the buildings, whereas public works inspectors may be responsible for the inspection of construction activities within the right-of-way, such as streets, sewer, and water. Various departments may inspect a site during different stages of the project. You must be sure to interview all applicable staff and departments, which could include building, planning, engineering, or public works. Questioning planners and engineers in addition to questioning inspectors is helpful in determining how well various staff work together to achieve "on the ground" BMP implementation.

Some municipal permittees manage public construction projects (including capital improvement projects or CIPs) differently than private construction projects, for example, in some communities private projects are reviewed and approved by the planning or building department, whereas public projects may be entirely planned, reviewed, approved, and developed by the public works department. Make sure you distinguish between these two types of projects during the evaluation, and if necessary, repeat the same questions for both private and public projects.

Before the Program Evaluation

To prepare for the construction program evaluation, an evaluator should review or obtain the following information:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report
- ✓ State or EPA Construction General Permit
- ✓ List of NPDES construction projects
- ✓ NPDES Construction inspection reports

- **MS4 NPDES permit provisions.** Review the permit requirements for the construction program to identify any specific requirements (such as a minimum inspection frequency). The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP planning document(s) will describe the activities and BMPs it is committed to implement and include measurable goals that provide deadlines for program implementation.
- **Latest annual report.** The most recent annual report should be reviewed to identify past activities and help the inspector become familiar with the permittee's program.
- **State or EPA NPDES Construction General Permit.** You should be very familiar with the requirements of the state or EPA's construction general permit, whichever applies, to ensure that conflicts between the SWMP and the state or EPA permit can be identified and violations of the state or EPA permit can be found.
- **List of NPDES construction projects.** Obtain a recent list of construction projects within the permit area that have been issued coverage under an NPDES general permit by the permitting authority (one acre or greater disturbed area). This list can be used during the program evaluation to determine whether the permittee has any public construction projects. The list can also help identify potential construction sites for field inspections. The list can also be crosschecked with a similar list requested and obtained from the permittee. Obtain information such as the operator name, name of the construction site, address, size, and other relevant information.
- **NPDES construction inspection reports.** Review inspection reports from construction inspections in the permittee's jurisdiction conducted by the permitting authority and/or EPA. Talk

to state or federal construction inspectors to determine if there have been past stormwater violations at construction sites in the permitted area and any role the permittee played in resolving the violations.

Records Review

The following records might help in evaluating the compliance and performance of the permittee's construction program. Ask for copies of relevant information where it will help in writing a report or documenting a permit violation.

Documentation	What to Look For
Local ordinances	One or more of the following ordinances may be used by a municipal permittee to regulate erosion and sediment control. ▪ Grading ordinance ▪ Erosion control ordinance ▪ Stormwater ordinance ▪ Landscaping ordinance ▪ Health and safety codes
Design standards, BMP manuals, and fact sheets.	These can be state or local standards or be taken from a non-regulatory source
Construction plans reviewed and approved by the permittee	Where possible, try to review the plans for projects that you will also visit during the field portion of the evaluation
Construction project inventory or database	▪ Does one exist? ▪ How often is it updated? ▪ What is the source for the inventory?
Enforcement escalation response plan or procedure	▪ Is the enforcement process documented and codified? ▪ Are roles of individuals or departments clearly defined?

Elements to Address During the Program Evaluation

Although not specified in detail in NPDES regulations, a successful construction program will generally be composed of the following elements:

- Ordinance/legal authority
- Construction project inventory
- Construction requirements and BMPs
- Plan review procedures
- Construction site inspections

- Program support and resources
- Enforcement/referrals
- Training and education

The common program elements are the key issues to consider during the review.

ORDINANCE/LEGAL AUTHORITY

- ✓ What legal authority does the permittee have to require erosion and sediment control BMPs on construction sites and to ensure compliance?
- ✓ Does the permittee's legal authority address stormwater quality for all projects disturbing at least one acre?
- ✓ What exemptions does the ordinance or other legal authority allow?
- ✓ Does the legal authority authorize the permittee to require erosion and sediment control plans?

CONSTRUCTION SITE INVENTORY

- ✓ How does the permittee track construction projects?
- ✓ What information is collected?
  - o The number and status (active/inactive/completed) of construction sites
  - o The number, frequency, results, and follow-up actions resulting from inspections
  - o The actions taken to resolve the issues and dates when compliance was achieved.
  - o The number and type of enforcement actions taken at sites in violation
  - o Complaints submitted by the public
- ✓ Does the inventory include construction sites disturbing less than 1 acre?
- ✓ What is the threshold for tracking projects?
- ✓ Does the inventory track which sites have submitted an NOI for coverage under a state/EPA construction general permit?
- ✓ How is the inventory updated? How often?
- ✓ Does the permittee prioritize projects for more frequent or targeted inspections?
  - o If yes, based on what criteria?

CONSTRUCTION REQUIREMENTS AND BMPS

- ✓ What technical guidance (e.g., BMP manual or fact sheets) does the permittee use as the standard for design and selection of nonstructural and structural construction BMPs?
  - o Are project applicants required to follow these technical manuals?
  - o Does the guidance set minimum operation and maintenance requirements for BMPs?

TIP:

You should ask the permittee for a copy of the information packet that they provide to new project applicants. What type of stormwater information is included? Does it describe the types of BMPs and stormwater requirements that could apply to their project?

- Does the guidance include installation requirements for the BMPs?
- Does the guidance provide proper siting and use criteria for BMPs to ensure that adequate BMPs are being selected and implemented?

✓ Does the permittee provide guidance as to recommended BMPs to be used?

✓ Does the permittee have different requirements or standards for different times of the year (i.e., during the rainy season vs. the dry season)?

PLAN REVIEW PROCEDURES

✓ Does the permittee hold pre-application meetings on any construction projects? Are stormwater and erosion and sediment control requirements addressed at these meetings?

✓ Is there any plan review coordination with other city departments such as smart growth, redevelopment, traffic engineering, etc.?

✓ What is the permittee's threshold for plan review? (For example, does the permittee review plans for all projects disturbing greater than 1 acre, or do they use another threshold?)

✓ Does the permittee apply standard conditions that incorporate erosion and sediment control requirements into its plan review process?

- Get a copy of the standard conditions to determine if they specifically address erosion and sediment control

TIP:

You should select at least 2 to 3 approved projects with erosion and sediment control plans to review with the permittee. Try to choose different project types (residential, commercial) and sizes. Also review at least one public project plan to see if the permittee is applying adequate standards to municipal construction.

✓ Do the plan reviewers verify whether the project applicant has submitted an NOI to the state or EPA? Is evidence of NOI submission required before a plan can be approved or a local permit issued?

✓ Do plan reviewers use specific criteria or a checklist when reviewing plans?

✓ Does the permittee consider during the review process whether the construction project discharges to a TMDL/impaired water?

✓ When reviewing plans approved by the permittee, you should:

- Look for whether adequate BMPs are included on plans, details, and drawings for the installation of certain BMPs when applicable, what types of standard conditions or notes are included, and whether maintenance requirements are specified.
- Are inadequate or incomplete plans automatically returned to the applicant? Are these returns accompanied by an explanation of what is needed for approval?
- Are BMPs addressing other construction activities, such as materials storage and waste disposal, incorporated into the construction plans?
- Do the plans include notes addressing the prohibition of non-stormwater discharges?
- Were comments provided by the permittee to the project proponent reasonable and appropriate?

CONSTRUCTION SITE INSPECTIONS

- ✓ Does the permittee adequately inspect all phases of construction?
  - o Clearing and grubbing and site preparation
  - o Mass grading and public infrastructure/utility construction
  - o Building construction and final grading
  - o Final stabilization
- ✓ What departments are charged with erosion and sediment control inspections? Is the department responsible based on the location of the site (i.e. right-of-way vs. building site) or phase of development (i.e., grading vs. building)?
- ✓ Do the inspectors use a checklist or inspection form during each inspection?
- ✓ How many inspectors does the permittee use to verify erosion and sediment control compliance at construction sites?
- ✓ Does this number appear adequate to assess active construction occurring in the permitted area? Compare this to the total number of construction sites that need to be inspected at any one time (number of inspections per construction site per year). Consider project durations and phasing, local conditions (e.g., dry vs. wet seasons), and additional duties assigned to inspectors.
- ✓ Does the permittee have an established prioritization process for establishing inspection frequency? If so, on what factors is the prioritization based (i.e., size, proximity to water body, sensitive areas)?
- ✓ How often are sites inspected?
- ✓ Does the permittee target inspections during and immediately after wet weather events? If so:
  - o What size rain event triggers an inspection?
  - o How soon after a rain event?
- ✓ Is there an established rainy season for the area? Are sites inspected prior to the start of the rainy season to determine preparedness?

TIP:

Review inspection records to determine how the permittee corrects identified problems. If an inspection report identifies missing BMPs or a non-stormwater discharge, verify that there is an inspection record showing that the site was reinspected within a reasonable timeframe. Was the problem corrected?

PROGRAM SUPPORT AND RESOURCES

- ✓ Does the program have a dedicated source of funding to support plan review staff and inspectors?

ENFORCEMENT

- ✓ What types of enforcement actions are provided for in applicable ordinances (e.g., notices of violation, "stop work" orders, fines)?
- ✓ Is use of these actions outlined in an established, escalating enforcement policy?
- ✓ Review with the permittee statistics on enforcement of construction site erosion and sediment controls.
  - o How many enforcement actions are taken per year?
  - o Are follow-up inspections conducted to verify compliance?

- ✓ Are there limitations on the permittee's enforcement authority (e.g., limits on the dollar amount of fines, inability to issue civil penalties)?
- ✓ Do staff feel that their enforcement authority is adequate to achieve compliance on construction projects?
- ✓ What is the relationship with the City Attorney or other relevant prosecuting authority?

TRAINING AND EDUCATION

Staff training

- ✓ What type of training do construction inspectors receive? Are plan reviewers trained on erosion and sediment control BMPs and requirements?
- ✓ How often is training conducted? How many staff have been trained?
- ✓ What type of follow-up is conducted by the permittee to verify that the training is effective?

TIP:

Permittees must train their primary inspectors, but they should also provide at least basic stormwater training to other field inspectors not directly involved in the stormwater program, such as building inspectors and code compliance staff. At a minimum, this will encourage these staff to refer stormwater problems to the permittee's designated stormwater inspector.

Construction operator education

- ✓ What types of educational materials have been developed and distributed to construction operators?
- ✓ How are they distributed? At the permit desk? During inspections?
- ✓ What type of training does the permittee provide or advertise to local construction operators?
- ✓ How often is this training conducted? How many construction site operators have been trained?
- ✓ Are contractors and developers required to attend?
- ✓ Does the training cover any of the following?
  - o Local and state erosion and sediment control requirements and permits
  - o Proper erosion and sediment control BMP design and installation
  - o Maintenance requirements for BMPs
  - o General construction stormwater permit requirements (state or federal)
- ✓ Are training sessions held in cooperation with other local permittees or regional authorities?

PUBLIC CONSTRUCTION PROJECTS

- ✓ Do RFPs or contracts include language specifying stormwater requirements?
- ✓ Are inspection and maintenance requirements specified in the contract?
- ✓ What oversight does the permittee implement to ensure the contractor is implementing all requirements appropriately and adequately?
- ✓ What penalties are in place to require compliance from the permittee's contractors?

In-Field Program Evaluation Activities

In-field activities to evaluate the construction inspection program typically consist of accompanying one or more construction inspectors in the field as they conduct inspections. The construction inspector is to conduct the inspection; you are to strictly observe. Discourage construction inspectors from merely describing the inspection process. It is best to accompany more than one construction inspector, if possible, to see whether the permittee is providing adequate training to all inspectors.

TIP:

Let the inspector lead the inspection—just observe. Don't let the inspector "explain" how they would conduct the inspection—tell them to show you.

The main purpose of the field evaluation is to assess the permittee's construction inspection program—how knowledgeable the inspectors are about stormwater requirements and BMPs, how thorough of an inspection they conduct, and how they handle problems identified at construction sites. This assessment can sometimes be made after only one or two construction site inspections, while for other permittees it may take multiple inspections and visits with several inspectors to assess their inspection program. Try to limit the number of people that join each inspection—too many staff can overwhelm a construction site, making it harder for the construction inspector to conduct an actual inspection.

Schedule at least a half-day for construction inspections. Travel time between sites may be significant, so plan accordingly. For a large permit area with a lot of active construction, schedule a full day if possible to visit both private and public projects. Stress the need to visit as many construction projects as possible while still following the inspector's standard procedures. Try to observe a large variety of sites, such as small residential projects, larger housing developments, commercial projects, and public construction projects, projects in mass grading, projects close to completion, and projects adjacent to waterways.

As the inspector conducts the construction inspection, observe the following:

- ✓ Is the inspector knowledgeable about stormwater BMPs, requirements, and ordinances?
- ✓ Is the inspector familiar with the applicable construction stormwater general permit?
- ✓ Does the inspector check the approved plans at the construction site? (Note that some inspectors visit sites frequently and this is not always practical. Also, plans at small construction sites might not be kept on-site.)
    - o Ask the inspector if he or she has visited this particular site before. If the answer is no, the inspector should ask to see the plans, have reviewed them ahead of time, or brought a copy so he or she knows what BMPs have been approved for that site.
- ✓ Does the inspector use a checklist or otherwise document inspection findings in the field?
- ✓ What kind of written feedback is provided to the operator and within what timeframe do violations need to be addressed?
- ✓ What kind of report is generated as a result of the inspection? Does it detail all problems found at the site or does it document only that the inspection occurred?
- ✓ Are findings from inspections tracked in a central location or database?

TIP:

Be aware that permittees will often match you up with their "best" inspectors and want to take you to the most compliant sites. Visiting sites that are "bad actors" or typically non-compliant can also be very helpful in characterizing the inspector's knowledge and abilities. "Dirty" projects do not necessarily indicate inadequate inspections or inept inspection staff. It is sometimes helpful to the inspectors to have another set of eyes at a problem site to assess the issues and provide insight for solutions.

- ✓ How does the inspector track required follow-up inspections or enforcement actions?
- ✓ Is the inspector thorough? Does the inspector walk the entire site and identify all potential problems?
- ✓ Does the inspector note flow pathways and check for discharges from the site at outfalls or to storm drain inlets?
- ✓ What type of stormwater training has the inspector received?

The in-field activity is a good opportunity for you to ask the inspectors some of the same questions asked during the office portion of the program evaluation to see if the answers differ. Often, inspectors are more open to discussing "problems" with the program than are the program managers. Try to spend some time with the construction inspector talking informally about the program. (The drive between inspections is a good time for this talk.)

Document all findings in the field in as much detail as possible. A Construction Inspection Worksheet has been included in Appendix C to assist in this documentation.

Common Issues Identified During Program Evaluations

The following are some common problems with construction programs. These areas should be closely considered during evaluations:

- ✓ When erosion and sediment control inspections are included as part of building inspections, erosion and sediment control is seen as a less important aspect of the inspection compared to other aspects, such as electrical or plumbing.
- ✓ The inspectors may lack the training and time necessary to conduct thorough erosion and sediment control inspections.
- ✓ Construction inspectors sometimes lack the authority to enforce the local ordinance.
- ✓ The inspectors may not follow a formal, written, escalating enforcement policy, or such a policy does not exist.
- ✓ Construction inspectors do not document inspection results using a checklist or other document.
- ✓ Inspectors do not conduct thorough inspections (i.e., drive-by inspections are common).
- ✓ Construction inspectors do not verify that BMPs approved on plans are actually installed at the project.
- ✓ Construction inspectors do not inspect to determine if BMPs are adequately maintained.
- ✓ The permittee is not adequately tracking inspections and inspection results.
- ✓ The permittee is not verifying general permit coverage before approving plans for construction disturbing one acre or more.
- ✓ Plan review staff lack adequate guidance and criteria for reviewing erosion and sediment control plans.
- ✓ Inspectors of public projects (in-house or contractual staff) are not knowledgeable about the applicable construction general permit (this is a significant liability because the inspector is usually responsible for ensuring compliance with this permit).

4.5 Post-Construction Controls

Regulatory Requirements
EPA's federal regulations for the stormwater Phase I and Phase II NPDES MS4 regulations are listed at right. NPDES MS4 permits must address these requirements and often include more specific requirements.

Federal NPDES Regulations
NPDES MS4 permits must address these requirements and often include more specific state requirements:

- ✓ Phase I MS4 Regulations
  40 CFR 122.26(d)(2)(iv)(D)
- ✓ Phase II MS4 Regulations
  40 CFR 122.23(b)(5)
  40 CFR 122.23(b)(5)

General Permits
As described above, stormwater Phase I and Phase II permittees must implement a SWMP that includes a post-construction component that addresses stormwater runoff at the completion of construction of new or redevelopment sites that disturb at least one acre.

Common Activities

Ordinance/Legal Authority
The ordinance should have language requiring that all new development and significant redevelopment projects incorporate stormwater management BMPs and submit a plan that complies with design standards, zoning codes and comprehensive or master plans. Some permittees review required construction general permit SWPPPs, while others require the development and submittal of a separate post-construction plan to address local stormwater requirements. In addition, some permittees require that projects smaller than one acre implement post-construction stormwater controls. These requirements should be detailed in an ordinance to establish legal authority. Ideally, the ordinance will outline the contents of an approvable plan and responsibilities for operation and maintenance of approved BMPs. The operation and maintenance section should also describe who is responsible for inspections and maintenance (e.g., the homeowner, homeowners' association, permittee, etc.).

Resources

- ✓ Menu of BMPs www.epa.gov/npdes/stormwater/menuofbmps
- ✓ California Stormwater Quality Association's New Development and Redevelopment Handbook http://www.cabmphandbooks.com/Development.asp
- ✓ Georgia Quality Growth Program www.georgiaqualitygrowth.com
- ✓ EPA Smart Growth Web site www.epa.gov/dced/
- ✓ Smart Growth Online www.smartgrowth.org/
- ✓ EPA Low Impact Development Resource Center www.epa.gov/owow/nps/lid/
- ✓ Low Impact Development Center www.lowimpactdevelopment.org

Comprehensive or Master Planning
Often, when the MS4 is a municipality, the permittees address stormwater management using the established local comprehensive or master planning process. Comprehensive or master planning typically is required by state law and is to be used as guide in decision-making about the built and natural environment by the governing body of the permittee (i.e., city council, planning commission, county board). A comprehensive plan contains long-term planning recommendations for the community and often addresses water quality issues either directly with specific water quality goals or indirectly through the encouragement of land use practices that minimize impervious surface (i.e., high density "villages") or encourage open space.

The inclusion of water quality-related goals in the comprehensive plan could assist local planners and policymakers to institutionalize the stormwater principles necessary to implement an effective SWMP.

However, the comprehensive plan is not a substitute for a SWMP Plan because it cannot be changed or updated readily and does not include necessary implementation details of the stormwater program.

Post-Construction BMP Standards

While the legal authority described above should require the installation of BMPs at sites, a permittee should also have additional specifications or guidance on what types of BMPs are expected or required. Ideally, the ordinance will include language that refers to a guidance manual for BMP design and implementation. The recommended manual should contain sizing criteria, performance criteria, and guidance on selection and location of BMPs. The manual and preferred BMPs should be available to project applicants early in the planning phase of a project. The standards should include guidance for proper district or subarea design (e.g., a redevelopment district), proper site design (e.g., sending gutter water into landscaping), source control (e.g., covering trash cans), and stormwater treatment BMPs (e.g., sand filters).

Plan Review and Approval Procedures

The review of post-construction plans should be based on formal review specifications, a checklist, or similar criteria. Plan review staff should document the BMPs considered, whether they were addressed on the plans, and any identified deficiencies. Some permittees use contract staff to review some or all plans. Be sure to review plans completed by contractual as well as permittee staff.

TIP:

Review several types of recent development projects that have gone through the review process. Include small residential and large commercial development projects as well as both new development and redevelopment projects, if applicable.

Post-Construction BMP Inventory

The permittee should maintain inventory detailing the types and locations of planned and installed post-construction BMPs projects. There may be two types of inventories: (1) a traditional database for site-level structural BMPs, and (2) a tracking system for planning or development practices BMPs. Ideally, both types of information would be managed in a database and linked to a GIS for optimum tracking. Structural post-construction BMPs must be inspected and maintained to remain effective. Tracking the locations, conditions, ages of the structural BMPs as well as the inspection findings is critical to ensuring the proper maintenance occurs for the life of the BMP. For planning-related BMPs, tracking systems may be linked to code revisions or development permits. Note that some revisions may occur with State or regional codes or standards, which might require a separate tracking system.

BMP Inspection and Maintenance

Proper BMP installation, operation, and maintenance are critical to optimizing the effectiveness of post-construction BMPs. If BMPs are not maintained, they can become concentrated sources of pollutants themselves. Comprehensive "as built" inspections are necessary at the conclusion of a project to ensure the BMP has been built properly and regular inspections are critical to ensure the BMP is being maintained as needed. Permittees may inspect private BMPs or require that the owners/operators of the facility inspect them through maintenance agreements or other mechanisms. Often, permittees require that facility owner/operators submit documentation detailing inspection dates and maintenance performed.

Enforcement

Legal authority is needed to require owner/operators to maintain BMPs. This can be outlined in a maintenance agreement or other binding contract, but it must be included in municipal code or regulation as well. The permittee should have available enforcement actions to require the owner/operator to perform necessary inspections and maintenance. Some permittees have authority to abate problem facilities (i.e., maintain the facility and charge the owner/operator) if necessary.

Public Construction Projects

Municipal permittees must apply the same local requirements to public construction projects as is required of private projects. Some municipal permittees develop and design public construction projects in-house without direct involvement from the department that reviews most private construction projects; therefore, it is important that the public project designers are trained and proficient in stormwater BMPs as well. If the permittee hires outside designers for public projects, stormwater guidelines should be provided to them to ensure compliance with local and general permit requirements. Permittees should have an inventory of publicly owned stormwater management and treatment facilities and should have an inspection and maintenance program established.

Training and Education

Permittees should provide training to plan review and BMP inspection staff (if applicable). This training should include classroom presentations and in-field training as well as follow-up evaluations to demonstrate that the training was effective.

TIP:

A review of existing codes and land development regulations can be extensive. The following are previous efforts to evaluate development codes that may be helpful in this process:

Center for Watershed Protection Codes and Ordinances worksheet http://www.cwp.org/COW_worksheet.htm

EPA list of smart growth scorecards www.epa.gov/smartgrowth/scorecards/project.htm

King County Washington "Built Green" Checklists http://www.builtgreen.net/checklists.html

Evaluating Post-Construction Programs

Development can significantly alter landscapes by increasing imperviousness (e.g., roofs, driveways, parking lots) and changing drainage patterns, thereby increasing the volume and velocity of runoff from the site. Increased volume leads to degradation of receiving waters and increased flood frequency. Stormwater from newly developed impervious areas can also contain a variety of pollutants that are detrimental to water quality, such as sediment, nutrients, road salts, heavy metals, pathogenic bacteria, and petroleum hydrocarbons. Two groups of BMPs can minimize the impacts of stormwater from new development and redevelopment projects: nonstructural site design or source control measures, which prevent or reduce the generation of pollutants, and structural treatment BMPs that detain and treat stormwater to control the volume of runoff and reduce pollutant loading to receiving waters.

Postconstruction stormwater impacts are not likely to be controlled entirely with site-level BMPs. Thus regional, district and subarea planning is increasingly recognized as a means to control overall imperviousness. Postconstruction BMP standards are likely to include many interlinking requirements that affect common land development practices, such as street design, community layout, and land use mix. The aim of such standards is to revise building practices that drive impervious surface generation within a watershed to reduce the effects of the built environment at a meaningful scale. Note that this approach to stormwater management is new, so an evaluation of this area may address future planning activities in addition to current activities.

There are several approaches permittees may use to implement planning-level BMPs, each of which is are appropriate in different development settings and offers a unique set of benefits. Four of these approaches or frameworks—redevelopment, infill, compact design, and conservation development—are described below and may be found in a comprehensive plan or SWMP:

- *Redevelopment*: Under this framework, a permittee is looking to redevelop already impervious districts and lots. Programs to support redevelopment include downtown redevelopment plans, vacant property reforms, brownfields redevelopment, and corridor redevelopment plans. These programs are typically more successful when supported by financial programs (e.g., tax incentives and grants), policy support (e.g., priority infrastructure), and technical assistance and staffing support.

- *Infill*: Infill development, like redevelopment, takes place in areas supported by existing road, water, and sewer infrastructure. Infill development tends to have a smaller footprint than conventional new development projects. Infill sites, whether individual lots or larger parcels, are generally undeveloped and may be able to manage stormwater flows onsite. The policies described above for redevelopment would apply to infill development, as well as any policies to mitigate flows from infill.

- *Compact Design*: Compact designs seek to meet development needs on a smaller footprint to achieve both development and conservation goals. These designs can be used in redevelopment (e.g., transit-oriented development) or new development (e.g., cluster housing or rural or urban villages) situations and are suitable in urban, urbanizing, and rural settings. The key to successful designs lies in coordinating interlinking aspects of transportation, land use, and open spaces. This framework is particularly amenable to design guidelines for a district, including stormwater management.

- *Conservation Development*: This framework, typically used in rural areas or along the urbanizing fringe, is targeted for the lowest impact development. Successful programs will be tied to specific conservation objectives (e.g., habitat preservation, groundwater recharge) and will link the rural development scheme with rural economic development objectives.

TIP:
When permittees review development codes to identify areas where stormwater benefits can be incorporated, the following are typically examined:

- ✓ Review of parking demand or indications of overly high parking ratios
- ✓ Overlarge setbacks from the street or other lot lines
- ✓ Minimum lot size requirements in urbanizing areas
- ✓ Highly separated uses embedded in codes
- ✓ Subdivision and street requirements
- ✓ A review of barriers to low impact development, redevelopment or other land efficient forms, including State or institutional barriers and standards

When evaluating the post-construction, new and redevelopment component of a SWMP, it is helpful to discuss the process chronologically in the order that a project would occur. Ask the permittee's planning staff to walk you through the process as if you were a developer proposing a project. Discuss what post-construction stormwater BMPs are required for new and redevelopment projects, how and when developers are informed of the stormwater requirements in the initial planning stages, how plans are reviewed for stormwater standards, on what legal authority requirements and standards are based, what is required for plan approval, how the BMPs are inspected during and after construction, and how the permittee ensures that BMPs are adequately operated and maintained.

Typically, an on-site evaluation for post-construction BMPs will involve interviewing planning and engineering staff. Planners usually work with developers to determine what is required for plan submittal, but engineering staff may actually review the plans and verify design calculations.

Before the Program Evaluation

To prepare for the post-construction program evaluation, you should review or obtain the following information:

- **NPDES MS4 permit provisions.** Review the permit requirements for the post-construction program to identify any specific requirements (such as a design standard for post-construction controls). The NPDES permit will serve as the primary basis for the program evaluation.

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report
- ✓ Comprehensive plans
- ✓ Economic development plans

- **SWMP provisions.** The permittee's SWMP planning document(s) will describe the activities and BMPs the permittee has committed to implement and include measurable goals that provide deadlines for program implementation.
- **Latest annual report.** The annual report should be reviewed to identify past activities and help the inspector become familiar with the permittee's program.

Records Review

The following records might help in evaluating the compliance and performance of the permittee's post-construction program. Ask for copies of relevant information where it will help in writing a report or documenting a permit violation.

Documentation	What to Look For
Local ordinances	One or more of the following ordinances may be used by a permittee to regulate post-construction BMPs ▪ Grading ordinance ▪ Stormwater ordinance ▪ Landscaping ordinance ▪ Other portions of the code used by code enforcement staff to enforce aesthetic concerns ▪ Zoning codes or land development regulations (where the permittee chooses to amend existing codes to implement post-construction improvements) ▪ Economic development and capital improvement plans that support the district or comprehensive planning goals ▪ Design guidelines for larger development areas (e.g. subdivisions, mixed use districts, downtown redevelopment programs) ▪ Local and district open space and park plans that serve to support the post-construction program
Comprehensive or General Plans	Review for language that requires consideration of water quality concerns when evaluating development projects
Design standards, BMP manuals, or fact sheets	These can be state or local standards or be taken from a non-regulatory source
Post-construction plans reviewed and approved by the permittee	Where possible, try to review the plans for projects that you will also visit during the field portion of the evaluation
Post-construction BMP tracking system	Database or other system used to track the location of post-construction BMPs that have been installed and the maintenance performed or required for each BMP

Elements to Address During the Program Evaluation

Although not specified in detail in NPDES regulations, a successful post-construction program will generally be composed of the following elements:

- Ordinance/legal authority
- Comprehensive or master planning
- Post-construction BMP standards

- Plan Review and approval procedures
- Post-construction BMP inventory
- BMP inspections
- Enforcement
- Public construction projects
- Training and education

The common program elements are the key issues to consider during the review. For each of the elements listed above, this Guidance presents common program activities and questions to consider during the program evaluation. The questions are suggested for you to address each program component. Of course, a comprehensive program evaluation must be tailored to the specific issues associated with each permittee and should include more specific questions regarding the permittee's permit structure and management challenges.

ORDINANCE/LEGAL AUTHORITY

- ✓ What legal authority does the permittee have to require post-construction BMPs on development sites and to ensure maintenance?
- ✓ Does the permittee's legal authority address post-construction requirements for all projects disturbing one acre or more?
- ✓ Does the legal authority require site design, source control, and stormwater treatment BMPs?
- ✓ What exemptions does the ordinance or other legal authority allow?
- ✓ What procedures for alternative compliance (i.e., planning-level BMPs and other non-structural controls) are allowed?
- ✓ Does the legal authority authorize the permittee to require stormwater management plans to address post-construction impacts?

COMPREHENSIVE OR MASTER PLANNING

- ✓ Does the comprehensive or master plan include elements encouraging the control of water quality or quantity (e.g., flooding) from existing or new developments?
- ✓ Does the plan include elements to encourage protection of natural features (such as wetlands, buffer strips, etc.)?
- ✓ Does the comprehensive or master plan include elements to encourage minimization of impervious surfaces?
- ✓ Does the comprehensive plan include elements to encourage open space?

POST-CONSTRUCTION BMP STANDARDS

- ✓ What technical guidance (e.g., BMP manual) does the permittee use as the standard for design and selection of post-construction BMPs? It is not necessary to do a thorough review of the manual or standards used by the permittee. Question the planners regarding the following key items:
    - o Are project proponents required to follow the technical manual?

- Does the guidance provide siting and use criteria for the BMPs to ensure proper and adequate BMPs are being selected and implemented?
- Does the guidance provide siting and use criteria for BMP selection based on the development context (i.e., BMP selection appropriate for ultra urban-areas versus those more appropriate for more rural settings with larger parcels)?
- Are pollutants of concern that are typically generated by the proposed development type considered when selecting or approving BMPs?
- Does the technical manual provide guidance on sizing, performance, and location of BMPs?
- When was the BMP manual last updated?

✓ Does the permittee have different requirements or standards for different types of developments (e.g., specific post-construction requirements for gas stations or automobile repair facilities)?

✓ Does the permittee have design manuals related to land-efficient site designs (e.g. better site design, better models for large retailers)?

✓ Does the permittee promote source control and site design standards to reduce the generation of pollutants in addition to treatment BMPs?

✓ Does the permittee include in standards and manuals specifications for innovative site design practices, such as low-impact development and other techniques that manage runoff on-site?

✓ Are project applicants encouraged or required to use vegetative BMPs that promote infiltration, such as swales, biofiltration practices, etc., where possible?

✓ Does the permittee offer financial incentives to support post-construction stormwater goals (e.g., programs to support redevelopment, such as enterprise zones, or stormwater utility credits)?

TIP:

Select 2 to 3 approved projects with post-construction BMPs to review with the permittee. Try to choose different project types (residential, commercial) and sizes. Also review at least one public project plan to see if the permittee is applying adequate standards to municipal developments.

PLAN REVIEW AND APPROVAL PROCEDURES

✓ What is the project size threshold for the permittee to require post-construction BMPs?

✓ Does the permittee apply standard conditions that incorporate post-construction installation and maintenance requirements into its plan review process?

- Obtain a copy of the standard conditions. Do they specifically address post-construction stormwater management?

✓ Do plan reviewers use specific criteria or a checklist when reviewing plans?

✓ Does the permittee consider pollutants of concern or whether the project discharges to a 303(d) listed impaired water when determining which BMPs are required?

✓ Does the permittee consider such regional concerns as smart growth initiatives, watershed master plans, and other larger-scale planning efforts to ensure that each new development and redevelopment plan is consistent with the goals of these initiatives?

✓ When reviewing plans approved by the permittee:

- Look for whether adequate BMPs are included on plans, details, and drawings, what types of standard conditions or notes are included, whether maintenance requirements are specified, and whether the location of BMPs would hinder maintenance.
- Look for BMPs that may not be easily characterized, in particular the comprehensive planning and land-efficient planning BMPs.
- For commercial/industrial projects, review whether adequate source control BMPs are required on plans.
- Were comments provided by the permittee to the project proponent reasonable and appropriate?

✓ What types of projects must be reviewed by the permittee for post-construction stormwater controls? Does the permittee have a process to identify priority projects identified in the MS4 NPDES permit?

✓ What types of standards or technical guidance do the permittee's reviewers use to review projects?

✓ Does the permittee condition improvements to existing developments with requirements for post-construction stormwater controls? How are these redevelopment requirements triggered?

POST-CONSTRUCTION BMP INVENTORY

✓ How does the permittee track the installation and maintenance of post-construction BMPs?

✓ What information is collected?

- Location
- Owner/operator
- Recommended maintenance schedule
- Inspection findings

BMP INSPECTION AND MAINTENANCE

✓ Does the permittee require maintenance agreements for all projects with post-construction BMPs?

✓ Are "as-built" inspections required at the conclusion of a development project?

- Do staff conduct these inspections or are they self-certified?

✓ Does the permittee inspect private facilities or require inspections by owner/operators?

✓ If the permittee performs the inspections, how often are they performed?

✓ If owner/operators are required to inspect and maintain their BMPs, how is this authorized? Through a MOU? Through conditions of approval? Through another type of agreement?

✓ How does the permittee ensure inspections are occurring?

- Does the permittee send reminder notices?
- Does the permittee require the owner/operator to submit inspection reports?

ENFORCEMENT

- ✓ How does the permittee require proper maintenance and repair after the inspection?
- ✓ What types of enforcement actions are provided by ordinance (e.g., notices of violation, abatement)?
- ✓ Is the permittee's enforcement authority limited (e.g., limits on the dollar amount of fines, inability to issue civil penalties)?

PUBLIC CONSTRUCTION PROJECTS

- ✓ Does the permittee use post-construction BMPs for public projects?
- ✓ Has the permittee instituted a pilot program to test and showcase innovative BMPs on public property or in public buildings?
- ✓ Are they tracking the location, inspection history, and condition of the BMPs?
- ✓ Who inspects them? How often?

TRAINING AND EDUCATION

Training for staff

- ✓ Are plan reviewers trained on post-construction BMPs and requirements?
- ✓ What type of training do staff performing "as built" and post-construction inspections receive?
- ✓ How often are the trainings conducted?
- ✓ How many staff have been trained?
- ✓ What type of training or education does the permittee provide to city-contracted developers and engineers on post-construction requirements?

Developer and plan designer education

- ✓ What types of educational materials have been developed and distributed to developers and designers regarding post-construction BMPs and application requirements?
- ✓ How are the materials distributed? At the permit desk? During inspections?
- ✓ What type of training does the permittee provide or advertise to local developers and designers?
    - o How often is this training conducted?
    - o How many developers and designers have been trained?
- ✓ Are they required to attend?

In-Field Program Evaluation Activities

In-field evaluation activities primarily focus on verifying that structural and source control BMPs approved by the permittee were installed and are being maintained properly in the field. Select several completed projects that were subject to post-construction requirements. Take along the approved plans so that the locations and types of BMPs can be verified.

Note whether BMPs are installed as designed or if BMPs have been modified or removed after the project has been completed. For example, trash storage areas could have been modified after installation, slopes might have become destabilized, or storm drain stenciling could have been removed or become illegible.

In addition, in-field evaluation activities should include inspections of publicly owned stormwater BMPs, such as detention basins, to verify that they are being adequately maintained.

Common Issues Identified During Program Evaluations

The following are some areas where past on-site evaluations have found problems in post-construction programs. These areas should be closely considered during evaluations:

- ✓ The plan review staff lack training on design requirements for development standards and conditioning of new development projects.
- ✓ The permittee lacks review criteria, checklists, or a formal plan review process to assist plan review staff in reviewing development projects.
- ✓ The permittee does not assess BMPs for effectiveness at more than one scale (e.g., at both the site and watershed scales).
- ✓ The permittee institutes blanket BMP requirements (i.e., those that apply to all projects) that do not take into account the development setting.
- ✓ The permittee institutes BMP requirements that act as unintended barriers to better models for development and redevelopment.
- ✓ The permittee developed its program from a "Menu of BMPs" that has resulted in BMPs that are easy to administer but are not the most effective or do not address target stressors.
- ✓ The permittee does not consistently condition plans with post-construction stormwater controls.
- ✓ The permittee does not require inspection and maintenance of post-construction controls.
- ✓ The permittee lacks a system to track approved structural and source control BMPs for inspections and ongoing maintenance.
- ✓ The permittee's BMP tracking system is based on conventional, structural measures that are more readily quantified than non-structural techniques that work on a watershed basis, such as comprehensive planning or improved street designs.
- ✓ The permittee has not updated approved BMP lists to reflect advances in low impact development or comprehensive planning-related BMPs.

4.6 Industrial/Commercial Facilities

Regulatory Requirements

Applicable federal regulations for the NPDES stormwater Phase I and Phase II MS4 regulations are listed at right. NPDES MS4 permits must address these requirements and often include more specific state requirements. This program area is mainly applicable to Phase I MS4 permittees; Phase II MS4 permittees address stormwater discharges from industrial facilities and commercial businesses as part of their education programs.

Federal Regulations

NPDES MS4 permits must address these requirements and often include more specific state requirements:

- ✓ Phase I MS4 Regulations
  - 40 CFR 122.26(d)(2)(iv)(C)
  - 40 CFR 122.26(d)(2)(i)(A)
  - 40 CFR 122.26(d)(2)(ii)
- ✓ Phase II MS4 Regulations
  - 40 CFR 122.34(b)(ii)

General Permits

To minimize the impact of stormwater discharges from industrial facilities, the NPDES program includes an industrial stormwater permitting component. Operators of industrial facilities included in one of the 11 categories of stormwater discharges associated with industrial activity that discharge or have the potential to discharge stormwater to an MS4 or directly to waters of the United States require authorization under an NPDES industrial stormwater permit. Construction activity is one of these 11 categories, but because of the nature of construction stormwater controls, the category is discussed separately from the other 10 categories. Most states are authorized to implement the NPDES stormwater permitting program. EPA remains the permitting authority in several states and territories, on Indian Country lands, and at some federal facilities.

Resources

- ✓ EPA Menu of BMPs www.epa.gov/npdes/stormwater/menuobmps
- ✓ Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices www.epa.gov/npdes/pubs/contents_indguide.pdf
- ✓ Sacramento County Industrial Stormwater Compliance Program www.sactostormwater.org/industrial/compliance.asp
- ✓ Multi-Sector General Permit www.epa.gov/npdes/msgp

For those areas where EPA is the permitting authority, the **Multi-Sector General Permit (MSGP)** provides facility-specific requirements for many types of industrial facilities with a single permit. The permit outlines steps that facility operators must take prior to being eligible for permit coverage, including development and implementation of a SWPPP.

It is important to note that some permittees will also have coverage under industrial stormwater general permits or have individual permits for maintenance facilities that fall under one of the covered industrial categories, such as landfills, waste transfer stations, or transportation facilities. Please refer to the "MS4 Maintenance Activities" section of Conducting an Evaluation for information regarding municipal facilities that may also require industrial stormwater permit coverage.

Common Activities

The industrial and commercial facilities program component can be implemented by various departments and staff. Many municipal permittees use existing pretreatment and restaurant inspectors to fulfill the stormwater requirements. Some permittees choose to hire outside consultants to perform inspections and maintain the inventory of facilities.

Legal Authority

Many municipal permittees have adopted stormwater ordinances that outline general or specific discharge prohibitions that apply to industrial and commercial properties. These ordinances should list discharge exemptions, inspection requirements, and penalties for non-compliance. Some permittees, however, must

rely on multiple existing codes (i.e., health, building, hazardous materials) designed to protect health and human safety. In these cases, the program coordinator and inspection staff should be able to articulate the combination of codes that provide the authority to inspect, prohibit, or stop illegal discharges, require BMPs, and enforce instances of noncompliance.

Facility Inventory

The types of industrial and commercial facilities that a permittee needs to inspect can vary significantly from permittee to permittee. Some localities may have large industrial areas with few commercial businesses, while others may have a large number of restaurants and retail businesses but no industrial facilities at all. Still other permittees may have a mix of many different types of industrial and commercial facilities. Permittees should characterize the facilities and prioritize them based on their potential impact on stormwater quality, and the inspection program should be based on this prioritization approach.

Many permittees have developed a database to inventory industrial/commercial facilities and manage the inspection program. The inventory can be created using multiple resources, such as the permitting authority's list of facilities that are covered under the state industrial general permit, business licenses, list of pretreatment significant industrial users, and phone books or other professional directories. As per the federal regulations, the inventory should be organized by watershed with a description (such as standard industrial classification (SIC) codes) that "best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity." The database inventory should include facility type, past inspection or enforcement results, proximity to receiving waters, potential pollutant sources on-site, and other pertinent information to assist in inspection prioritization and management. Many permittees use the same database to manage the construction inspection program as well.

Standards, BMPs, and Outreach

Many municipal permittees have stormwater ordinances that include specific BMPs or standards for industrial and commercial facilities to protect water quality and minimize stormwater pollution. Others have adopted pollution prevention standards for new or redevelopment of industrial/commercial facilities that are required through conditions of approval, improvement permits, etc. Phase I MS4 permittees have developed brochures, fact sheets, and posters to hand out to operators during inspections to educate them about appropriate BMPs. Many permittees have developed these materials in multiple languages to use in a variety of communities. Some permittees have Web sites with links to relevant outside resources for more information. Many permittees also acknowledge that educating facility operators is essential to implementing BMPs and minimizing stormwater pollution and should be done, not only during inspections, but also through workshops, conferences, and professional meetings.

Staff Training

To ensure that inspectors are knowledgeable and proficient in the newest and most effective approaches to minimizing stormwater pollution from industrial/commercial facilities, many permittees require annual BMP training for inspection staff. This training may be presented in-house or staff may attend trainings provided by the permitting authority or industry. It is important to cross-train any other staff (e.g., pretreatment, health department) used for stormwater inspections as well.

Inspections

Most effective industrial/commercial inspection programs maintain a complete facility inventory and group them according to priorities established by the permittee. An inspection frequency is determined based on priority, and a database is used to manage such information as inspection findings, enforcement actions, and required follow-up activities. Many permittees use and cross-train existing staff to perform industrial/commercial inspections, but some permittees may need to maintain an exclusive stormwater inspector due to a potentially large number of high-priority facilities. There should be an inspection

standard operating procedure that has been formalized and documented. It should include a checklist to be used during the inspection and possibly a report format. Inspectors should be aware of federal, state, and local stormwater regulations that may apply to industrial/commercial facilities. Inspectors should be familiar with various types of BMPs commonly used at the types of facilities typically found in the permit area and should be able to educate facility operators about such BMPs. In addition, inspectors should understand and use the permittee's established enforcement escalation response plan to gain compliance as necessary. The inspection staff should be proficient in the enforcement escalation procedure and should properly document all enforcement actions accordingly. Inspections should be used not only to identify non-compliance issues, but as an opportunity to educate facility operators about proper stormwater BMPs.

Program Support and Resources

Permittees should have an established source of funding for their industrial/commercial facilities program, including adequate resources for frequent inspections. Funds can come from fees paid by the business owners. If general funds are used to support the program, permittees should ensure that industrial and commercial inspections are line-item appropriations not subject to reduction or elimination based on board politics or budget constraints.

Enforcement

The ordinance establishing legal authority for the industrial/commercial inspection component of the SMWP should define all stormwater discharge prohibitions, describe any exemptions or waivers, detail the enforcement escalation procedure, and outline any fines or other penalties for noncompliance. Inspectors should have the ability to levy a penalty such as a compliance directive, notice of violation (NOV), or administrative fine to the facility during an inspection if non-compliance is noted. Significant fines or penalties should be included in the ordinance for egregious violations or recidivism.

Evaluating Industrial/Commercial Inspection Programs

The evaluation of an industrial/commercial inspection program focuses on the permittee's legal authority to require and enforce their program, prioritization of facilities, and in-field inspection procedures. The evaluation should begin with a thorough review of the permittee's ordinances, standards, guidance, and other relevant written materials.

Before the Program Evaluation

To prepare for the industrial/commercial inspection program evaluation, you should review or obtain the following information prior to the evaluation:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report
- ✓ List of NPDES facilities
- ✓ Inspection reports

- **MS4 NPDES permit provisions.** Review the permit requirements for the industrial/commercial inspection program to identify any specific requirements (such as a minimum inspection frequency). The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP planning document(s) will describe the activities and BMPs the permittee has committed to implement and may include measurable goals that provide deadlines for program implementation.
- **Latest annual report.** The most recent annual report should be reviewed to identify past activities and help you become familiar with the permittee's program.
- **List of NPDES industrial facilities.** Try to obtain a list of industrial facilities in the permit area that are covered under an industrial stormwater general permit issued by the permitting authority or are included in the pretreatment program of local or regional POTWs. This list can be used during the program evaluation to determine whether the permittee is including these facilities in

the inspection program and to understand the types of facilities that are found in the permit area. The list can also help identify potential sites for field inspections. The list can also be crosschecked with a similar list requested and obtained from the permittee.

- **Industrial inspection reports.** Review reports from inspections performed by the permitting authority and talk to state or EPA inspectors to determine if there have been past industrial stormwater violations at facilities located in the permit area.

Records Review

During the evaluation, you should ask for copies of relevant information to assist in writing the report or documenting a permit violation. The following records might help in evaluating the compliance and performance of the permittee's industrial/commercial inspection program.

Documentation	What to Look For
Local ordinances, regulations, or policies that might apply to industrial/commercial facilities	▪ Stormwater ordinance ▪ Health codes ▪ Municipal code sections dealing with aesthetics; vehicles; dumpsters, trash, solid waste; and litter, trash, sweeping ▪ Building codes
Enforcement escalation procedure or response plan	Flow chart or procedure that specifies a process by which fines can be levied and legal action taken against facility operators or business owners who violate stormwater rules and ordinances
Tracking system	Database or other system used to track the following information: ▪ The number and type of industrial facilities in the permit area ▪ Prioritization scheme or other method that determines inspection schedule and frequency ▪ The number, frequency, and results, along with follow-up actions resulting from inspections ▪ The number and type of enforcement actions at facilities
Examples of inspection reports	▪ Hand-written field notes and formal write-ups if both are used
Examples of enforcement files or cases	▪ Records should document enforcement and follow-up activities ▪ Review both a completed file and one that is in progress if possible
Training	▪ Review any records documenting how often training has been provided to municipal inspectors, who prepared and delivered the training, who attended, and how long the training lasted, as well as any examples of the training materials used ▪ Educational information, brochures, or other BMP guidance used by staff or distributed to facility operators

Elements to Address During a Phase I MS4 Program Evaluation

Although not specified in detail in the NPDES Phase I MS4 regulations, a successful industrial/commercial inspection program will generally be composed of the following elements:

- Legal authority
- Facility inventory/prioritization
- Standards, BMPs, and outreach
- Staff training
- Facility inspections
- Program support and resources
- Enforcement/referrals

The common program elements are the key issues to consider during the review.

LEGAL AUTHORITY

- ✓ Does the Phase I permittee have the authority to require industrial and commercial facilities to implement stormwater BMPs? Does the Phase I permittee have the authority to conduct inspections and enforce requirements?
    - o What ordinance(s), code, or policy provides this legal authority?
- ✓ What types of facilities are covered under this legal authority?
- ✓ Who (e.g., specific staff, department, etc.) has the authority to enforce the ordinances and/or inspect the facilities?
- ✓ What exemptions does the ordinance or other legal authority allow?

FACILITY INVENTORY

- ✓ Has the permittee completed an inventory of industrial/commercial facilities discharging to the stormwater system?
- ✓ What types of facilities are included on the inventory?
- ✓ What sources were used to create the inventory?
    - o Facilities that filed NOIs for EPA MSGP or state industrial general permit coverage?
    - o Significant industrial users within the pretreatment program?
    - o Business licenses?
    - o Phone book?
    - o "Windshield" survey?
- ✓ Does the inventory include all the industrial/commercial facilities subject to the industrial general permit?
    - o Does the permittee periodically check to see if new facilities that must be covered by an industrial stormwater general permit have filed an NOI?
    - o What is the process for notifying the permitting authority of non-filers?
- ✓ If applicable, does the inventory include all the facilities specified as required in the MS4 NPDES permit?
- ✓ How is the inventory updated? How often?

- ✓ What information is maintained about the facilities?
- ✓ How is the inventory maintained and stored?
- ✓ Does the permittee prioritize the facilities?
- ✓ Is the prioritization based on facility type, past inspection or enforcement results, proximity to receiving waters, potential pollutant sources on-site, and so forth?
- ✓ Is the prioritization used to determine frequency of inspections?
- ✓ Has the permittee mapped the locations of prioritized facilities to cross-reference reports of dumping, illicit discharges, or other water quality issues?

STANDARDS, BMPS, AND OUTREACH

- ✓ Has the permittee adopted standards or BMPs that industrial/commercial facilities are required to implement (e.g., all car dealerships must install a wash rack plumbed to the sanitary sewer)?
- ✓ Are the requirements for new developments only or are they triggered by improvements of existing facilities? Are there schedules for implementing retrofits?
- ✓ Are these standards applicable to existing facilities, new facilities, or both?
- ✓ Does the permittee refer facility operators to specific stormwater BMP or standards guidance documents?
- ✓ What type of educational program has been developed for industrial and commercial facility operators?
- ✓ What type of brochures, handouts, or guidance on BMPs is provided to these facilities by the permittee?
- ✓ When is this information provided? During inspections? During training events? During professional organization presentations?

STAFF TRAINING

- ✓ What type of training do the industrial and commercial inspectors receive?
- ✓ How often?
- ✓ If additional inspectors are used (e.g., food safety inspectors for restaurant inspections, pretreatment inspectors), are they trained specifically on stormwater BMPs and requirements? By whom?

INSPECTIONS

- ✓ Who performs inspections and for what types of facilities (e.g., health inspectors for restaurants, pretreatment inspectors for industrial facilities with a pretreatment permit)
- ✓ How often are industrial and commercial facilities inspected?
  - o How is the frequency determined?
- ✓ Does the permittee's industrial/commercial inspector(s) use a standard checklist during inspections?

TIP:
It is a good idea to ride with the inspector during the in-field portion of the evaluation. This is a good time to talk informally about the any program, staffing, and noncompliance issues.

- ✓ Is a report written after the inspection? How is the inspection documented in the file?
- ✓ Does the permittee verify NPDES permit coverage for facilities?
- ✓ For industrial facilities, does the inspector review the SWPPP and monitoring data during the inspection?
- ✓ Does the permittee refer non-filers to the permitting authority?
- ✓ Do inspectors provide educational materials during inspections? What types?
- ✓ If multiple departments or agencies perform inspections, how is information transferred or cataloged?

PROGRAM SUPPORT AND RESOURCES

- ✓ Does the program have a dedicated source of funding to support inspectors?

ENFORCEMENT

- ✓ In instances of noncompliance, do the inspection staff use a formalized, approved enforcement escalation procedure?
- ✓ How was the enforcement escalation procedure developed? Is it used? Is it effective?
- ✓ Who is authorized to apply various enforcement procedures (e.g., NOVs, fines)?
- ✓ What types of penalties are readily available to the inspection staff?
- ✓ What is the most common method of gaining compliance (e.g., NOVs, fines, abatement)?
- ✓ Have the permittee describe a recent non-compliance issue at an industrial/commercial facility to assess how compliance was achieved.
- ✓ At what point are non-compliance cases referred to the NPDES permitting authority? How many have been referred in the last 12 months?

In-Field Phase I Program Evaluation Activities

To determine whether the permittee is adequately inspecting for compliance at industrial/commercial facilities, it is necessary to observe the inspectors "in action." Discourage inspectors from merely describing the inspection process; you need to observe an actual inspection in process.

Schedule at least a half-day for this in-field activity being sure to allow enough time for travel between facilities. If the permittee is conducting both commercial and industrial inspections, try to observe inspections at each type of facility. If the permittee has more than one inspector, accompany a different inspector at each type of facility. In general, small, less complex facilities are better to visit than large industrial facilities. Work with the permittee to select typical facilities. For example, if the vast majority of facilities are vehicle maintenance facilities, visit several of those. It should be made clear that the inspectors are to conduct the inspections; you are only to observe.

Try to limit the number of people that attend each inspection. Too many staff can overwhelm a small facility, making it harder for the inspector to conduct a representative inspection. Discuss which facilities are to be inspected early in the evaluation process. This will allow enough time to schedule inspection staff and arrange transportation logistics.

Many times, inspectors do not participate in the office evaluation, so the in-field activity is a good opportunity to ask the same questions to see if the answers are consistent. Also, many inspectors are more open to discussing "problems" with the program than are stormwater program managers. Try to spend some time with the municipal inspector talking informally about the program.

First and foremost, during a site visit the municipal inspector should be able to determine whether illegal discharges are occurring or could be imminent from industrial/commercial facilities. Visiting a site during a rain event is optimal to observe potential issues. In the event that the inspector does feel immediate action is necessary, it is important that the inspector either have the legal authority to cease discharges and require immediate BMPs, or be aware of who does have this ability and under what legal authority. The inspector should be aware of all applicable ordinances, as well as administrative, civil, and criminal recourse in the event of non-compliance. The inspector should be aware of the enforcement escalation procedure or plan as well.

As the inspector conducts the industrial or commercial inspection, observe the following:

- ✓ Is the inspector knowledgeable about stormwater BMPs, requirements, and ordinances?
- ✓ Is the inspector familiar with the applicable industrial stormwater general permit (state or federal)?
- ✓ When inspecting an industrial facility, does the inspector check whether the facility has a waste discharge identification number, and does the inspector review the facility's SWPPP?
- ✓ Does the inspector use a checklist or otherwise document inspection findings in the field?
- ✓ What kind of written feedback is provided to the operator and within what timeframe do violations need to be addressed?
- ✓ What kind of report is generated as a result of the inspection? Does it detail all problems found at the facility or does it document only that the inspection occurred?
- ✓ Are findings from inspections tracked in a central location or database?
- ✓ How does the inspector track follow-up inspections or enforcement actions?
- ✓ Is the inspector thorough? Does the inspector walk the entire site and identify all potential pollutant sources?
- ✓ Does the inspector note flow pathways and check for discharges from the facility at outfalls or to storm drain inlets?
- ✓ Is the inspector able to educate the facility manager on proper BMPs or requirements? What educational material is provided?

TIP:

It is a good practice to visit at least one facility with historic or existing compliance issues. This can be an excellent way to demonstrate how effective the inspection and enforcement program is, and often the inspector will welcome outside assistance and advice.

Document all findings in the field in as much detail as possible. An Industrial/Commercial Inspection Worksheet has been included as Appendix C to assist in this documentation.

Elements to Address During a Phase II MS4 Program Evaluation

- ✓ Has the permittee identified specific business sectors that might be a significant source of stormwater pollutants to the MS4?
- ✓ What type of educational program has been developed to address stormwater discharges from industrial facilities and commercial businesses?
- ✓ What type of brochures, handouts, or guidance on BMPs is provided to these businesses by the permittee?
- ✓ How is this information provided? As a result of complaints or illicit discharge incidents? During training events? During professional organization presentations?
- ✓ How does the permittee evaluate the effectiveness of education and outreach efforts in terms of measuring changes in stormwater management and pollution prevention practices at industrial facilities and commercial businesses?

Common Issues Identified During Program Evaluations

The following are some typical problem areas associated with the industrial/commercial SWMP component. These areas should be closely considered during evaluations:

- ✓ The permittee has yet to fully implement an inspection program for industrial and/or commercial facilities.
- ✓ The inventory of industrial/commercial facilities is not complete and is not regularly updated.
- ✓ Facilities have not been prioritized according to water quality threat.
- ✓ The permittee has not conducted outreach to facilities on the types of stormwater BMPs that should be implemented.
- ✓ Industrial/commercial inspectors have not been trained on stormwater BMPs and requirements.
- ✓ The permittee does not have a process to identify non-filers to the permitting authority.
- ✓ The permittee lacks written procedures and standards for conducting industrial/commercial inspections and for enforcement.
- ✓ The permittee cross-trains existing inspectors (e.g., pretreatment, food safety) to perform stormwater inspections but does not provide adequate time and resources to perform them.

CHAPTER 4.7: ILLICIT DISCHARGE DETECTION AND ELIMINATION

4.7 Illicit Discharge Detection and Elimination

Regulatory Requirements

EPA's federal regulations for the stormwater Phase I and Phase II MS4 regulations are listed at right. NPDES MS4 permits must address these requirements and often include more specific requirements.

Federal Regulations

- ✓ Phase I MS4 Regulations 122.26(d)(2)(iv)(B)
- ✓ Phase II MS4 Regulations 40 CFR 122.34(b)(3)

Common Activities

Legal Authority

Permittees must develop and implement an effective program to prohibit illicit discharges from entering the MS4. The prohibition of illicit discharges should be linked to legal authority to ensure proper enforcement. This legal authority can be included in public health and safety regulations, specific stormwater regulations, sewer use bylaws, local ordinance, or a combination of several parts of the code.

Resources

- ✓ Menu of BMPs www.epa.gov/npdes/stormwater/menuofbmps
- ✓ Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments www.cwp.org/
- ✓ Illicit Discharge Detection and Elimination Manual www.neiwpcc.org/PDF_Docs/iddmanual.pdf

Mapping

Phase I MS4 permittees should have developed a map of known municipal outfalls discharging to waters of the United States as part of their source identification conducted for Part I of their NPDES application. Phase II permittees are required to develop a map of outfalls and the names of locations of all waters of the United States that receive discharges from those outfalls. To be useful, these maps should also include the storm drain pipe network and catch basin locations, along with other relevant information such as the location of stormwater treatment facilities, watershed boundaries for each outfall, critical land uses and pollutant sources, and municipal facilities. Outfalls and drainage areas should be prioritized in order of their potential to be a source of illicit discharges. Ideally, this information would be managed in a database linked to a GIS.

Field Screening

Field screening of outfalls during dry weather can help to identify illicit discharges in priority areas. Of particular concern are areas of older development, areas with a high concentration of automobile-related industries, and areas with high concentrations of industrial facilities among others. Documentation of the illicit discharge detection and elimination (IDDE) program component in the SWMP Plan should include a detailed summary of the departmental responsibility for field activities, frequency of inspections, inspection procedures, inspection equipment, and documentation procedures for field activities.

Investigation of Potential Illicit Discharges

Municipalities should have a written procedure for how they will locate, eliminate, and prevent illicit discharges to the MS4. The procedure should address both spills and illegal connections to the MS4 and should be available to all staff responsible for responding to illicit discharges. The procedure should also specify how spills and illicit discharge incidents are tracked.

Spill Response and Prevention

The purpose of spill response programs is to reduce the risk of spills and improve response and cleanup when they occur. These programs usually require coordination among fire, police, health, and public works departments. The departments responsible for implementing the program should be identified and the SMWP should address employee training, reporting procedures, spill containment, storage and

disposal activities, documentation, and follow-up procedures. For each of these elements, particular attention should be given to good housekeeping and materials management practices. Procedures can be implemented through modification of ordinances and enforcement or through coordination with existing spill prevention or spill containment programs. Most permittees address this element through the development of a spill response plan.

Public Awareness and Reporting Program

Permittees should promote, publicize, and facilitate public reporting of illicit discharges or water quality impacts associated with discharges to the MS4 or receiving waters. Typical public awareness and reporting programs may include developing a hotline number, educating school students, using inserts in utility bills, and developing media announcements. Permittees should have a system in place to quickly route all public calls to appropriate staff, track the calls, and document response and enforcement, if used, for reporting purposes.

TIP:

IDDE public awareness efforts are often discussed during the evaluation of the public education and involvement program.

Proper Management of Used Oil and Toxics

Permittees should provide information on where the public can safely recycle or dispose of used oil and toxic materials to minimize illegal dumping.

Preventing Sanitary Sewer Discharges

Although not a specific requirement of Phase II programs, Phase I MS4 permittees are required to limit infiltration to the MS4 of seepage from municipal sanitary sewers. Many permittees have developed a sanitary sewer overflow program to address discharges from their sanitary sewers. Others have developed programs to promote proper maintenance of septic tanks.

Education and Training

Training for staff should include spill response procedures and procedures on how to locate, eliminate, and prevent illicit discharges. Permittees should also educate the public on the hazards of illegal dumping and illicit discharges to the MS4.

TIP:

Maintenance field crews are usually the best "eyes and ears" available to the permittee to detect illicit discharges and illegal dumping activities. It is important that the information observed in the field is communicated the appropriate staff for follow up and outreach.

Evaluating Illicit Discharge Detection and Elimination Programs

Common sources of illegal, non-stormwater discharges include sanitary wastewater, automobile maintenance waste products such as motor oil or antifreeze, laundry wastewater, household toxic substances, spills from car accidents, runoff from excess irrigation, and industrial sources of cooling waters, rinse water, and other process wastewater. Although these illicit discharges can enter the storm sewer system in various ways, they generally result from either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills). Illicit discharges can be further divided into those discharging continuously and those discharging intermittently.

Phase I NPDES MS4 regulations require that a program be developed to detect and remove illicit discharges into the storm sewer by prohibiting these discharges, field screening outfalls, investigating potential illicit discharges, controlling the infiltration of sanitary sewage into the storm sewer, and developing programs for spill response and prevention, public awareness and reporting, and used oil and toxics disposal.

Typically, staff charged with implementing the IDDE SWMP component are from multiple departments and agencies, although this varies from permittee to permittee. The primary responsibility for detecting and investigating illicit discharges normally falls to the public works department. Public works field crews are in the field every day and are the best source of information about what is happening in the permit area. Also, public works departments often have access to the maps and equipment necessary to track discharges to their source. Normally, public works field staff are not authorized to use enforcement against dischargers, so code enforcement staff may be necessary to investigate cases. Many permittees use the fire department for cleanup of spills, and sometimes police departments are charged with manning a "hotline" for complaints called in by citizens and for ultimately investigating dumping or other illegal activities.

Before the Program Evaluation

To prepare for the IDDE program evaluation, an evaluator should review or obtain the following information prior to the evaluation:

Pre-Evaluation Checklist
- ✓ MS4 permit provisions
- ✓ SWMP provisions
- ✓ Most recent annual report

- **MS4 NPDES permit provisions.** Review the permit requirements for the IDDE program to identify any specific requirements, such as a proactive outfall screening. The NPDES permit will serve as the primary basis for the program evaluation.
- **SWMP provisions.** The permittee's SWMP planning document(s) will describe the activities and BMPs they have committed to implement and may include measurable goals that provide deadlines for program implementation.
- **Latest annual report.** The annual report should be reviewed to identify past activities and help you become familiar with the IDDE program.

Records Review

Consider reviewing the following records during the on-site evaluation to determine the permittee's capabilities and extent of implementation.

Documentation	What to Look For
Ordinance and policies	▪ Code which allows the permittee to prohibit illicit discharges from commercial, industrial, or residential sources ▪ Should include or reference an enforcement escalation policy
Enforcement escalation policy	▪ Should describe the process for eliminating the source of an illicit discharge and for obtaining recourse or abatement if necessary ▪ Should describe which staff are authorized to enforce the applicable ordinances and which enforcement mechanisms are available
Illicit discharge tracking records and databases	Database or other system used to track the following information: ▪ The number and type of illicit discharges located in the permit area ▪ Follow-up actions once discharges are located ▪ Locations of discharge incidents (e.g., on a map or in a GIS)

Documentation	What to Look For
Dry-weather monitoring or screening records	▪ Describes the location and description of dry weather flows ▪ Monitoring data associated with a discharge ▪ Information about the source of a discharge and actions take to identify sources
Spill Response Plan and records	▪ These records may be maintained by a different agency such as the fire department, but the permittee should have access to the information and be provided a regular report of spills that impact the MS4
Recycled oil and household hazardous waste educational materials	▪ These materials may be presented during the public outreach part of the evaluation
Web site or other educational materials for reporting illicit discharges and dumping	▪ Review educational materials to determine if the general public has adequate information to identify and report illicit discharges ▪ Materials should have a reporting number that is viable 24 hours a day
Training records	▪ Training records should be available to document that the permittee's employees are regularly trained on recognize an illicit discharge

Elements to Address During the Program Evaluation

The NPDES regulations specifically require the following elements in an IDDE program for both Phase I and Phase II programs:

- Legal authority
- Mapping
- Field screening
- Investigation of potential illicit discharges
- Spill response and prevention
- Public awareness and reporting program
- Proper management of used oil and toxics
- Preventing sanitary sewer discharges
- Education and training

The common program elements are the key issues to consider during the review. For each of the elements listed above, this Guidance presents common program activities and questions to consider during the program evaluation. The questions are suggested for you to address each program component. Of course, a comprehensive program evaluation must be tailored to the specific issues associated with each permittee and should include more specific questions regarding the permittee's permit structure and management challenges.

CHAPTER 4.7: ILLICIT DISCHARGE DETECTION AND ELIMINATION

LEGAL AUTHORITY

- ✓ Does the permittee have an ordinance to prohibit illicit discharges and dumping to the MS4?
- ✓ What exclusions are included in this ordinance?
- ✓ What enforcement mechanisms are authorized in the event of an illicit discharge being detected?
- ✓ Has an enforcement escalation plan been developed?

MAPPING

- ✓ Does the permittee have a map showing storm drain pipes, outfalls, and storm drain inlets?
- ✓ Is the map readily available to the personnel who would respond to an illicit discharge incident?
- ✓ Does the permittee have a map of the storm drain system showing the locations of outfalls and municipally maintained structural stormwater controls?

TIP:

The IDDE mapping and field screening discussion may need to be coordinated with the discussion of MS4 maintenance activities. Ideally, the maps developed for public agency activities and for IDDE would be the same because often public works field maintenance crews are involved with inspections of outfalls.

FIELD SCREENING

- ✓ How are field screening areas identified?
- ✓ Are areas of the MS4 prioritized based on incidents of illicit discharges, land use, dumping reports, etc.?
- ✓ How often are field screening areas evaluated?
- ✓ Are outfalls inspected during dry weather to identify any potential dry-weather discharges? What does the inspection include?
- ✓ If dry-weather flows are present, are they being sampled to determine potential sources of pollutants? For what parameters?
- ✓ Does the permittee have a database (or other method) to track locations of illicit discharges, spills, and illegal dumping?
- ✓ Does the database track dry-weather monitoring or screening data?

INVESTIGATION OF POTENTIAL ILLICIT DISCHARGES

- ✓ Does the permittee have a procedure for tracing the source of an active illicit discharge?
- ✓ Who performs the investigations?
- ✓ Are these procedures written in a document or plan?
- ✓ What equipment does the permittee use to find illicit discharges?
- ✓ Does the permittee have equipment to videotape storm drains, or can it quickly contract out this work?
- ✓ How are investigations tracked?
- ✓ Has an enforcement response plan been adopted for use when an illicit discharge source has been located?

- ✓ Review complete paperwork trails for several illicit discharge events (including a spill and an unknown illicit discharge in the storm drain system).
  - o Was the full investigation process documented?
  - o Are adequate enforcement actions taken when required?
- ✓ Does the permittee have the ability to collect cleanup and abatement costs from the responsible party?

SPILL RESPONSE AND PREVENTION

- ✓ Does the permittee have a clear set of procedures in place that details who is responsible for responding to spills and emergency situations?
- ✓ Do field staff have spill containment supplies in their vehicles, and are they trained to contain minor spills?
- ✓ Is a contractor or other entity available for larger spills?
- ✓ Does the permittee have the ability to collect cleanup and abatement costs from the responsible party?
- ✓ How are spills and spill response tracked to ensure adequate reporting?

PUBLIC AWARENESS AND REPORTING PROGRAM

- ✓ Does the permittee prioritize subwatersheds or neighborhoods and assign resources for educational efforts based on frequency and types of illicit discharge incidents?
- ✓ Is there a general phone number or "hotline" in the phone book or Web site that people can call to report a spill or dumping?
- ✓ What types of public outreach materials are available to publicize public reporting?
- ✓ Does the permittee track the number of public calls or complaints reporting illicit discharges?

PROPER MANAGEMENT OF USED OIL AND TOXICS

- ✓ Assess education activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials such as household hazardous waste.
- ✓ Does the permittee have recycling or collection facilities to which the public can take used oil and other toxics?
- ✓ What type of toxics does the permittee manage recycling and disposal?

PREVENTING SANITARY SEWER DISCHARGES

- ✓ Has the permittee conducted any studies or evaluations to determine whether sanitary sewers are contributing pollutants to the MS4?
- ✓ What is the extent of infiltration and inflow into the sanitary sewer system? How is this impacting discharge from the MS4?
- ✓ If the permittee also operates a sanitary sewer system, do they have procedures to prevent sewage spills and SSOs to the MS4?

EDUCATION AND TRAINING

- ✓ What type of training do field staff (e.g., storm sewer maintenance crews, street sweepers) receive on spill response and IDDE?
- ✓ Are staff generally educated about what illicit discharges are and how to report them?

In-Field Program Evaluation Activities

IDDE activities can be difficult to evaluate in the field. If, during an on-site evaluation, the permittee receives a report of a potential illicit discharge, you could accompany the response staff (if allowed) to view their response procedures. Other in-field activities include viewing the equipment available for responding to illicit discharge events (e.g., response trucks, spill containment equipment, video equipment for investigating storm drains) and talking to field staff about their knowledge of and training in illicit discharge identification, reporting, and response.

Another field activity is observing the dry-weather screening program. Staff can take you to screening/sampling points to demonstrate the permittee's dry-weather sampling procedures. An Outfall Visual Inspection Worksheet has been included in Appendix C to assist in this field inspection.

Although field activities are somewhat subjective, during all field activities you should get a sense of whether the staff are aware of illicit discharges and proactive in identifying and addressing them. For example, if the industrial inspector observes obvious illicit discharges while driving to an inspection, does the inspector ignore these incidents or stop and report them?

Common Issues Identified During Program Evaluations

The following are some areas in which past on-site program evaluations have found problems with IDDE program components. Consider these activities as you conduct evaluations:

- ✓ IDDE programs are largely reactionary spill response programs and do not contain a proactive element to detect or prevent discharges.
- ✓ The permittee lacks adequate documented procedures for how to conduct illicit connection and illegal discharge investigations (e.g., the permittee does not have written procedures for tracking and identifying the source of a discharge).
- ✓ The permittee fails to conduct any dry-weather screening to identify illicit discharges.
- ✓ If a discharge is found, the permittee does not have specific criteria, which could include numeric criteria, to determine whether the discharge is illicit. In most cases, unless the discharge is obviously illicit (e.g., presence of discoloration, oil sheen), the permittee assumes the discharge is either irrigation runoff or groundwater and does not conduct further investigation of the quality or source of the discharge.
- ✓ Staff are not adequately trained on illicit discharge identification, reporting, and response.
- ✓ The permittee does not track illicit discharge events and does not target areas of the MS4 for additional inspection based on areas with past incidents.

5. Post-Evaluation Activities

5.1 Preparing the Written Report

After the MS4 SWMP evaluation, it is important that a written description of findings is provided to the permittees. Using only an oral outbrief is not a sufficient way to convey any recommendations or requirements for program improvement. Keep in mind that an NPDES permit is a contract between the permittee and the permitting authority and all correspondence regarding that contract should be in writing. Also, remember that a SWMP evaluation is typically taken very seriously by MS4 staff and management. The written findings often are distributed amongst upper management or to the governing body of the MS4 (i.e., city council). And finally, the permittee has undoubtedly invested numerous staff hours preparing for the evaluation and providing you with necessary information during the on-site evaluation itself. Therefore, it is incumbent upon you to take the necessary time to develop a concise, thorough, and fair written assessment of the findings obtained.

As soon as possible after the evaluation, it is recommended that you review all notes and supporting information obtained prior to and during the on-site evaluation and document the findings and conclusions. As a general guideline, the final report should be provided to the permittee within 6 to 8 weeks after the evaluation. Less time may be needed to prepare a report for an abbreviated program evaluation or for a screening level evaluation. On the other hand, more time may be needed if contractors perform the evaluation because the draft report would need to be reviewed by permitting authority staff to approve all findings, conclusions, and recommendations.

Conclusions drawn should be defensible and based on permit requirements and conditions, the SWMP, measurable goals, or a best professional judgment interpretation of the NPDES regulations and Clean Water Act. In addition, it is critical that conclusions drawn are consistently applied to all permittees evaluated. If a permitting authority uses more than one staff person to conduct an evaluation, an effort should be made to calibrate assessment techniques to ensure equitable evaluations. This can be accomplished by daily discussions amongst the evaluators to compare findings during the evaluation as well as quality assurance reviews of the resulting evaluation report.

The report should state which permittee(s) were evaluated, for what SWMP components, the date, a basic description of how the evaluation was conducted, relevant findings, and any recommendations for future evaluations or follow-up activities.

Depending upon the goals of the evaluation, there are many different ways to document the findings:

- **Determination of compliance status.** If assessing the compliance status of a permittee with its MS4 permit and SWMP is the only goal of an evaluation, then the report can very simply, describe each permit requirement the MS4 is not complying with and the associated requirement. The report can also indicate the areas of compliance as well, or state up front that if the permit requirement is not discussed in the report, no recommendations or requirements apply to that item.
- **Assistance with permit issuance or renewal process.** If the evaluation is conducted after the issuance of a new permit or during renewal of an existing permit (Phase I or Phase II MS4s), the report might discuss recommendations for effective implementation of the new SMWP or discuss recommended changes to the existing SWMP determined during the audit.

- **Assessing pollutants of concern.** If the permitting authority conducted the evaluation to assign an applicable waste load allocation, or to assist the permittee in implementing the waste load allocation for a particular pollutant of concern, the report may focus on only those components which minimize that pollutant. Or the report may make recommendations about how the SWMP could be changed to better address an existing waste load allocation.

As previously stated, the most common goal of an evaluation is to determine compliance with an existing permit. In this instance, in addition to providing recommendations for improvement or required actions to gain compliance, the permitting authority may find it helpful to provide positive feedback as well. Typically, it is not advisable to describe SWMP components that are not associated with a particular evaluation finding as this type of descriptive detail is found in the annual reports.

Findings can be divided into three categories:

1. **Permit violations.** Permit violations are areas where the evaluation found the permittee not in compliance with a specific permit requirement or SWMP commitment. Use of the qualifier "potential" can be used depending on the severity of the violation.
2. **Program deficiencies or recommendations for improvement.** Program deficiencies are areas of concern impeding effective program implementation. They are typically areas where the permit or SWMP does not describe specifically how the permittee should conduct an activity, yet the permitting authority evaluator believes the permittee should alter how they conduct the activity to meet water quality goals. Deficiencies can also be areas where future permit violations could result if the permittee continues on its present path.
3. **Positive or commendable program elements.** Positive program elements indicate activities that are "above and beyond" the requirements of the permit and SWMP. It is always a good idea to commend innovative approaches and techniques utilized by permittees. Not only does this encourage the permittee to continue implementing the program, it allows other permittees to learn about the approach if they read the evaluation document.

EXAMPLE FINDING:

The Parks and Recreation Department has developed a pollutant-based BMP manual.

The manual is innovative in that a diverse work group first identified the pollutants of concern and then developed suites of BMPs to minimize their occurrence or impacts on receiving waters. The resulting manual provides about 30 individual BMPs grouped into four categories: organic, chemical, maintenance, and administrative.

Each BMP description provides procedures; maps; monitoring frequency; additional references; the names of city and non-city employees who perform the task; site-specific equipment needs; possible locations of use; possible surfaces affected; procedures for spilled, dumped, or mishandled products or activities; evaluation criteria; and the staff responsible for BMP development.

People from multiple department sections collaborated on the BMPs to ensure that they are appropriate and can be implemented. The manual could be a guide for other city departments or Phase I and II programs throughout the country because it describes the entire BMP development process from conception through field-testing.

The following are format suggestions to use when drafting findings from the MS4 program evaluation:

- Organize findings by program component (e.g., all findings related to the industrial/commercial facilities component)
- Group similar findings for that component together (i.e., all positive attributes)

- Provide a heading for each individual finding that is a complete sentence and that clearly summarizes the significant point. For example, if there is a permit violation, the heading should state what the permittee is doing that is a violation: "The City does not currently inspect all industrial facilities annually as required by the permit."
- Describe each finding in detail. The narrative description should clearly define the finding and then describe the supporting information obtained or observed during the evaluation that led to this conclusion. The finding narrative should describe what the permittee was required to do (which is particularly important for a permit violation), briefly restate (paraphrase) the finding, and then provide the information obtained during the evaluation that supports this finding in as much detail as possible. When describing a positive attribute the finding should clearly state how the activity being described is innovative and not merely compliant.
- Insert applicable permit citations and language in potential permit violations. If a program deficiency relates to a particular part of the permit or SWMP, be sure to cite the appropriate language as well.

EXAMPLE FINDING:

The City has failed to notify industries and commercial facilities of the stormwater requirements and appropriate BMPs for implementation.

Part F.3.b(4) of the permit requires the permittee to implement, or require the implementation of, designated minimum BMPs (based on the site's threat to water quality rating) at each industrial site within its jurisdiction. BMP implementation was to occur by no later than 365 days after the permit was adopted. At the time of the evaluation, the City had yet to implement, or inform applicable industrial sites of their responsibility to implement, appropriate BMPs. The City needs to inform all applicable industrial sites of their responsibility and also needs to provide them with the minimum BMPs outlined in the SWMP.

In some cases, it might not be possible to determine compliance with a program component because of the limitations of the MS4 program evaluation process (i.e., not reviewing each industrial inspection report), because of time constraints, or because the requirement itself is not definable. The written report should then state that this is the case and provide as much supporting information as possible, such as "Compliance with public education and participation permit requirements could not be determined because..." If there were no findings of note for a particular SWMP component, it is important to state this fact so it is clear that the component was reviewed: "No recommendations or requirements were identified for this program component."

After an MS4 program evaluation report is developed, the permitting authority typically distributes the report to the permittee(s) evaluated with a cover letter summarizing the findings of the evaluation and any enforcement action being taken or corrections required. It is important that the report be distributed in a timely manner to ensure that requirements and recommendations can be instituted by the permittee(s).

The cover letter should request a written response within a specific time period (e.g., 30 to 60 days) addressing any permit violations or deficiencies noted. Normally, permittees are given an opportunity to refute findings or appeal violations noted. A meeting also can be scheduled with the permittee(s) to discuss proposed modifications to its SWMP to address the permit violations and deficiencies described in the report. In either case, the permitting authority should request a formal response describing the compliance process and schedule including appropriate milestones. The permitting authority should review the response and continue to work with the permittee(s) to improve the SWMP per the evaluations findings.

Photo Logs

Photo logs are used to visually illustrate items noted during field inspections. A photo log can be an important part of an MS4 program evaluation report and can assist a permitting authority in assessing potential permit violations. It is important to keep in mind that you are not inspecting the actual construction sites and industrial facilities visited for compliance with general permit or SWPPP conditions, but documenting the condition of these facilities with photos can help to assess compliance with MS4 permit conditions.

TIP:

Photos do not need to be used in the MS4 program evaluation report. An evaluator can take photos to help remember issues identified during field visits. The photos can also help you build a photo library of stormwater BMPs and problems.

To address potential legal concerns related to digital photographs, EPA published a guidance document on the use of digital photographs—*Digital Camera Guidance for EPA Civil Inspections and Investigations*. This document identifies requirements necessary to ensure the integrity of digital pictures. It addresses image capturing, storage, and handling and provides an overview of digital camera technology, peripheral equipment, and recommended steps. If digital images are to be used in court, their credibility usually depends on reliability, reproducibility, and security. As stated in the guidance, it is acceptable to make changes to digital images such as cropping, enlarging, or making them lighter/darker to improve the sharpness, provided the evaluator does all the following:

- Records how, when, and where the picture was taken,
- Logs the steps used in processing the image when they include techniques other than those used in a traditional photographic darkroom,
- Complies with a written SOP that includes the recommended steps set forth in this document, and
- Ensures the preservation of the original digital image.

To view EPA's *Digital Camera Guidance for EPA Civil Inspections and Investigations*, visit http://www.epa.gov/compliance/resources/publications/monitoring/cwa/inspections/npdesinspect/npdesinspectapph.pdf.

In general, it is important to keep careful notes of the photographs taken, including location and why the photograph was taken. It is helpful for the first photo taken to be of the facility sign or building. This helps to orient the photo log layout when photos are viewed after the evaluation.

For an MS4 program evaluation, it is not necessary to photo document all aspects of the facilities inspected, however, photos should be used to highlight issues on site that may lend credence to an issue described in the MS4 program evaluation report. For example, stormwater problems at a municipal maintenance yard should be documented with photos to provide additional documentation of problems. During inspections of construction sites or industrial facilities, photos can help document the issues the permittee's inspector addressed. At a minimum, even if the photos are not used in a formal report, the photos can help recall conditions at the sites visited.

Taking Photos

A digital camera should be used to take pictures where possible. Also, it is usually not necessary to set the resolution of the camera to its highest settings—most photo logs do not need high-resolution photos. Additional tips on taking good photos during an MS4 program evaluation include:

- **Take lots of pictures.** With digital cameras, deleting extra photos is easy. For something particularly important, take at least 4-5 pictures.
- **Use photos to identify sites.** When inspecting multiple sites, use the first picture to photograph the sign, SWPPP cover, or file name to be able to identify the facility later.
- **Consider perspective.** Have someone stand in the photo or place something of recognizable size, like a hard hat or clip board, to gain perspective.

Creating Photo Logs

Photo logs are often created using word processing software or presentation (e.g., PowerPoint) software. The following steps for creating a photo log are based on Microsoft Word:

- It is recommended that photo logs be created in Microsoft Word and the photos saved in a standard format such as jpeg or gif. Consider the resolution of the photos: many reports are made available electronically, and high-resolution photos can cause file size to exceed many users' download capabilities.
- Size the photos to be 3.5" tall with the width set by Microsoft Word for landscape view and 3.5" width with the height set by Microsoft Word for portrait view.
- Center the photos and captions on the page. (Note: Microsoft Word requires that the picture layout not be "in line with text" in order for the photo to be centered on the page.) Generally a page will have two landscape oriented photos or one portrait.
- Each photo should be numbered.
- Document the date and/or time to help identify photos.
- Photo captions should briefly describe what is observed in the picture and the location (both the facility or site name and the location within the facility or site).
- A photo log can contain a separate narrative to describe the findings, or individual photos can be referred to within the body of the MS4 program evaluation report.

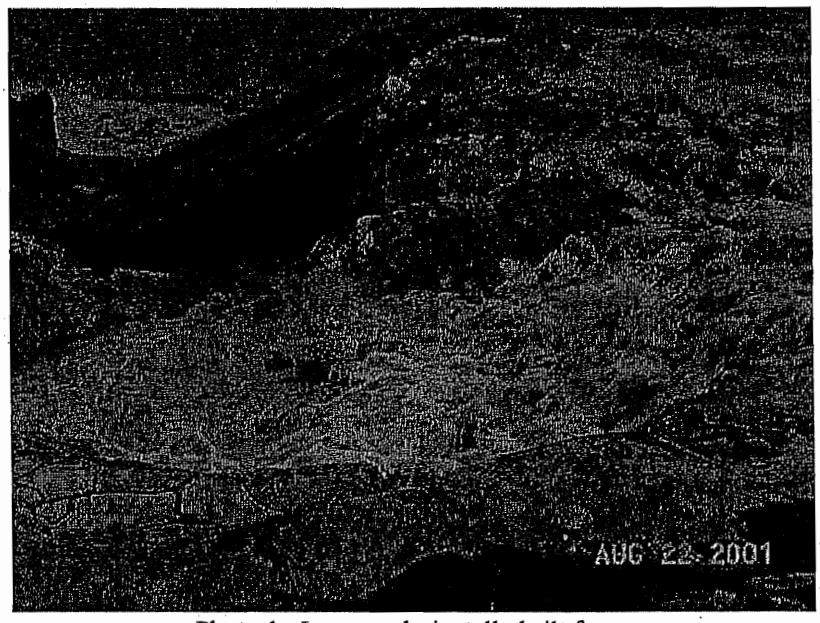

Photo 1: Improperly installed silt fence

5.2 Follow-Up Activities

An MS4 program evaluation can result in several different follow-up activities, from enforcement to technical assistance to permit reissuance. Several of these activities are described below.

Technical Assistance

Many MS4 program evaluation findings will result in a deficiency that requires the permittee to modify or improve a program area to achieve compliance. The permitting authority can help ensure compliance by providing technical assistance to the permittee on issues related to these deficiencies. As a reference and useful tool for permittees, EPA has developed case studies of selected stormwater programs available at http://cfpub.epa.gov/npdes/stormwater/casestudies.cfm

Where necessary, the permitting authority may wish to provide additional technical assistance or training to address specific deficiencies identified during the evaluation.

Follow-Up MS4 Program Evaluations

Follow-up MS4 program evaluations should be conducted where major deficiencies have been identified and the permittee needs additional time to correct them. The permittee should be given time to correct any deficiencies, but a follow-up evaluation should be scheduled for deficiencies that cannot be documented via annual reports or written correspondence.

Targeted Evaluations

If an MS4 program evaluation identifies a program area that appears to be a common problem amongst several permittees, then the permitting authority may want to conduct targeted evaluations of that program area at additional permittees. For example, if stormwater compliance problems are identified at most of the public works yards visited, the permitting authority might want to target additional inspections for those yards.

Permit Issuance or Renewal

A thorough review of submitted annual reports along with an on-site evaluation is very helpful when issuing MS4 permits. Specific permit requirements could be drafted to address any deficiencies identified during the evaluation. Also, the evaluation may reveal current permit requirements that are no longer applicable or need to be revised to meet current conditions. An MS4 program evaluation is also an excellent time to collect additional data for permit reissuance, or verify data or clarify information submitted with the permit reapplication.

MS4 Enforcement

Taking enforcement on a violation identified during an evaluation will obviously depend on a variety of factors including the severity of the violation, any discharge to a water of the U.S., history of past violations, and other factors. To make a case for an enforcement action, it is important to collect information that documents the violation, including copies of records, photographs, or other documentation. An enforcement action is the last course of action to ensure compliance, but even the possible threat of an enforcement action will usually help bring about compliance.

Appendix A – Glossary & Acronyms

Authorized Program Or Authorized State – A state, Territorial, Tribal, or interstate NPDES program which has been approved or authorized by EPA under 40 CFR Part 123.

Best Management Practice (BMP) – Policies or practices that prevent, reduce, or mitigate the impacts of stormwater runoff. These methods can be structural (e.g., devices, ponds) or non-structural (e.g., policies to reduce imperviousness). BMPs classified as "non-structural" are those that rely predominantly on behavioral changes rather than construction in order to be effective. "Structural" BMPs are engineered or constructed to prevent or manage stormwater. BMPs are often further classified into (1) source control BMPs to prevent pollution, (2) water quality BMPs to reduce or prevent pollutants in runoff, (3) flow control BMPs to reduce the volume of stormwater and (4) infiltration BMPs to increase infiltration.

Best Professional Judgment (BPJ) – Using all reasonably available and relevant data to make a decision.

CIP – Capital Improvement Project

Clean Water Act – Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

Construction General Permit (CGP) – Where EPA is the permitting authority, the Construction General Permit (CGP) outlines a set of provisions construction operators must follow to comply with the requirements of the NPDES stormwater regulations. The CGP covers any site one acre and above, including smaller sites that are part of a larger common plan of development or sale, and replaces and updates previous EPA permits.

Co-permittee – A permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

Combined Sewer Overflow (CSO) – A discharge of untreated wastewater from a combined sewer system at a point prior to the headworks of a publicly owned treatment works. CSOs generally occur during wet weather (rainfall or snowmelt). During periods of wet weather, these systems become overloaded, bypass treatment works, and discharge directly to receiving waters.

Comprehensive Plan – A general plan that identifies a community's long-range growth and development goals. Comprehensive plans and watershed plans often overlap in areas of natural resources, analysis of current conditions, and growth trends. Comprehensive and/or watershed plans often include smaller subarea plans, with additional details on infrastructure, open space, parks, neighborhood design, drainage, and circulation.

DOT – Department of Transportation

EPA – United States Environmental Protection Agency

Floatables – Plastics and other floating debris (e.g., oil, grease, toilet paper).

General permit – An NPDES permit issued under 40 CFR 122.28 that authorizes a category of discharges under the CWA within a geographical area. A general permit is not specifically tailored for an individual discharger.

Geographic Information System (GIS) – A computer application used to store, view, and analyze geographical information, especially maps (*taken from the American Heritage Dictionary*).

IDDE – Illicit Discharge Elimination and Detection

Illicit Discharge – Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.

Impervious Surface – A hard surface area that either prevents or retards the entry of water into the soil mantle as occurs under natural conditions (prior to development), and from which water runs off at an increased rate of flow or in increased volumes. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots, compacted soil, and roadways. "Effective impervious surface" is commonly used to describe impervious surfaces connected to receiving water directly or with a conveyance device (e.g., curbs, pipes, gutters).

Integrated Pest Management (IPM) – Planned program that coordinates economically and environmentally acceptable methods of pest control with the judicious and minimal use of toxic pesticides. IPM programs are based on a careful assessment of local conditions, including such factors as climate, crop characteristics, the biology of the pest species, agricultural practices, soil quality, and government regulations. The tactics employed range from changes in agricultural methods, such as better tillage to prevent soil erosion and interplanting of different crop varieties; natural biological weapons, such as the introduction of beneficial insects that eat the harmful species; and mechanical tools, such as vacuums that pull the insects off of the crops. Toxic pesticides are used only when all other methods have failed (*taken from the Columbia Press Encyclopedia*).

MOU – Memorandum of Understanding

MEP – Maximum extent practicable

Multi-Sector General Permit (MSGP) – Authorizes the discharge of stormwater from industrial facilities, consistent with the terms of the permit, in areas of the United States where EPA manages the NPDES permit program.

Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law)...including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into waters of the United States. (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

National Pollutant Discharge Elimination System (NPDES) – A national program under Section 402 of the Clean Water Act for regulation of discharges of pollutants from point sources to waters of the United States. Discharges are illegal unless authorized by an NPDES permit.

Notice of Intent (NOI) – Submission of a completed NOI constitutes notice that the entity intends to be authorized to discharge pollutants to waters of the United States, from the facility or site identified in the

form, under a State or EPA general permit such as the Phase II MS4 General Permit, the Multi-Sector General Permit (MSGP) for industrial stormwater, or the Construction General Permit (CGP).

Notice of Violation (NOV) – Enforcement mechanism used to inform regulated entities of noncompliance

Outfall – A point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Permitting Authority – The United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

Pollutant of concern (POC) – Any pollutant that has been identified as a cause of impairment in any water body to which the MS4 discharges.

Publicly Owned Treatment Works (POTW) – A treatment works, as defined by Section 212 of the CWA, that is owned by the state or municipality. This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant [40 CFR 403.3]. Privately-owned treatment works, Federally-owned treatment works, and other treatment plants not owned by municipalities are not considered POTWs.

Sanitary sewer overflow (SSO) – Occasional unintentional discharges of raw sewage from municipal sanitary sewers. SSOs have a variety of causes, including but not limited to severe weather, improper system operation and maintenance, and vandalism. EPA **estimates that there are at least 40,000 SSOs each year.**

Stormwater – Stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Pollution Prevention Plan (SWPPP) – Plan developed to minimize the discharge of pollutants from an industrial site (including construction activities) to the maximum extent practicable using BMPs.

Total Maximum Daily Load (TMDL) – A water quality assessment that determines the source or sources of pollutants of concern for a particular waterbody, considers the maximum amount of pollutants the waterbody can assimilate, and then allocates to each source a set level of pollutants that it is allowed to discharge (i.e., a wasteload allocation).

Waters of the United States – 1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; 2. All interstate waters, including interstate wetlands"; 3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or c. Which are used or could be used for industrial purposes by industries in interstate commerce; 4. All impoundments of waters otherwise defined as waters of the United States under this definition; 5. Tributaries of waters identified

in paragraphs (1) through (4) of this definition; 6. The territorial sea; and 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

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ATTACHMENT NO. 34

National Pollutant Discharge Elimination System Permit (NPDES) No. CAS004001

California Regional Water Quality Control Board
Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.waterboards.ca.gov/losangeles

Linda S. Adams
Cal/EPA Secretary

Arnold Schwarzenegger
Governor

August 23, 2007

Mr. Donald L. Wolfe, Director
County of Los Angeles
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803-1331

And

Directors of Public Works/City Engineers
Los Angeles County Municipal Co-Permittees

TRANSMITTAL OF THE LOS ANGELES COUNTY MUNICIPAL STORM WATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AS AMENDED BY REGIONAL BOARD ORDER R4-2007-0042 ON AUGUST 9, 2007 (BOARD ORDER 01-182; NPDES PERMIT NO. CAS004001)

Dear Mr. Wolfe, Directors of Public Works, and City Engineers:

We are pleased to transmit to you a copy of the municipal storm water permit for the County of Los Angeles (LA Storm Water Permit) that was amended by the Los Angeles Regional Water Quality Control Board (LA Water Board) at its meeting on August 9, 2007 pursuant to Division 7 of the California Water Code. Board Order 01-182 (as amended by Board Orders R4-2006-0074 and R4-2007-0042) serves as the permit under the National Pollutant Discharge Elimination System (NPDES) for storm water discharges and urban runoff within the County of Los Angeles.

The LA Water Board reopened the LA Storm Water Permit to incorporate the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria (MDR Bacteria) Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for summer dry weather discharges from the MS4 to Marina del Rey Harbor (MDRH). The LA Water Board adopted the MDR Bacteria TMDL in 2003 (Resolution No. 2003-012). This TMDL was subsequently approved by the State Water Resources Control Board (Resolution No. 2003-0072), Office of Administrative Law, and the United States Environmental Protection Agency and became effective on March 18, 2004. This TMDL required compliance with the summer dry weather WLAs and winter dry weather WLAs by March 18, 2007.

The MDR Bacteria summer dry weather WLAs were incorporated as Receiving Water Limitations along with a supporting prohibition on discharges from the MS4 to MDRH that are inconsistent with the limits. The LA Storm Water Permit already prohibits discharges that cause or contribute to the exceedance of water quality standards. The proposed changes make more

specific the permit provisions as they relate to discharges of bacteria that could impact Mothers' Beach and the back basins (Basins D, E, and F) of Marina del Rey Harbor during summer dry weather. The changes affect the County of Los Angeles and the Los Angeles County Flood Control District and the Cities of Los Angeles and Culver City.

For your use and public dissemination, an electronic copy of the current LA Storm Water Permit may be downloaded from our website at:

http://www.waterboards.ca.gov/losangeles/html/programs/stormwater/lams4.html

We would greatly appreciate your staff directing others to the website for further information on storm water management updates as necessary.

We thank you and your staff for the assistance with developing language that recognizes the ongoing work of the County and the Cities toward improving water quality in Marina del Rey, while also strengthening public health protection for the hundreds of thousands of people who live in and visit Marina del Rey. In particular, I would like to acknowledge the efforts of Mr. Pestrella who proactively sought to work with me on this issue, as well as the broader issue of our partnership in addressing water quality issues.

Should you have any comments or questions please do not hesitate to call me directly at (213) 576-6609. Alternatively, your staff may contact Carlos Urrunaga at (213) 620-2083.

Sincerely,

Deborah J. Smith
Interim Executive Officer

Enclosure

cc: Mr. Michael Levy, Office of the Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board,
Mr. Craig Hooks, Director, Office of Wetlands Oceans and Watersheds, USEPA, HQ
Mr. James Hanlon, Director, Office of Wastewater Management, USEPA, HQ
Mr. Eugene Bromley, USEPA, Region 9
Mr. David E. Janssen, Chief Administrative Officer, County of Los Angeles, Attn. Jan Takata
Mr. Mark Pestrella, Assistant Deputy Director, Watershed Management Division, County of Los Angeles, Department of Public Works
Interested Parties

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001
(Amended on September 14, 2006 by Order R4-2006-0074
and
on August 9, 2007 by Order R4-2007-0042)

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. Existing Permit

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. Nature of Discharges and Sources of Pollutant

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective

sources are: PAHs which are products of internal combustion engine operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment, of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions, (i) a focus on setting contaminant limits rather than programmatic evaluations, (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., [*Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight,* Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Haile, R.W. et al. (1999); *Huntington Beach Closure Investigation: Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight,* Rachel T. Noble *et al.* (2001*); Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001)].

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water

nor remove pollutants, and thus the natural purification characteristics are lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In, Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B., (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization: Water Resources Research*, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System--Impacts, Solutions and Prognoses*: The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*: Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979); Dubuque, Iowa, Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*: Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi)

automotive dealers/gas stations; (vii) primary metal products (*Critical Source Selection and Monitoring Report*, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list, contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry; Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp., California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al.*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1993); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al.* editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, , L.L. Tiefenthaler *et al.* Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil Grit Separators in Suburban MD,* Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff*

from Impervious Surfaces in Four Urban Catchments of Different Landuse, Ranabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI, March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) - (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   Public Information and Participation
   Development Planning
   Development Construction
   Public Agency Activities
   Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline-monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing,* Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

   About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

   About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).

   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an 'Interpretative Policy Memorandum on Reapplication Requirements' for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 – 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p) provides that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000,* on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-08), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*, (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

    - The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.

    - The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

Malibu Creek and Rural Santa Monica Bay WMA
Ballona Creek and Urban Santa Monica Bay WMA
Los Angeles River WMA
San Gabriel River WMA
Dominguez Channel/Los Angeles Harbor WMA, and
Santa Clara River WMA

Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th. Cir, 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999)

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways. (*Headwaters, Inc. vs. Talent Irrigation District,* 243 F.3d. 526 (9th Cir., 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

Findings Related To The Incorporation Of The Santa Monica Bay Beaches Dry Weather Bacteria TMDL And The Marina Del Rey Harbor Mothers' Beach And Back Basins Bacteria TMDL

28. The Regional Board adopted the Santa Monica Bay Beaches Dry Weather TMDL for Bacteria (hereinafter "Dry Weather Bacteria TMDL") on January 24, 2002. The TMDL was subsequently approved by the State Board, the Office of Administrative Law (OAL), and the USEPA and became effective on July 15, 2003.

29. The Regional Board adopted the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL (hereinafter "MDR Bacteria TMDL") on August 7, 2003. The TMDL was subsequently approved by the SWRCB, the OAL, and the USEPA and became effective on March 18, 2004.

30. The Waste Load Allocations (WLAs) in the Dry Weather Bacteria TMDL and the MDR Bacteria TMDL are expressed as the number of allowable days that the Santa Monica Bay beaches, Mothers' Beach and Basins D, E, and F in Marina del Rey Harbor may exceed the Basin Plan water quality objectives for protection of Water Contact Recreation (REC-1) in marine waters, specifically the water quality objectives for bacteria. Appropriate modifications to this order are therefore included in Parts 1 (Discharge Prohibitions) and 2 (Receiving Water Limitations), pursuant to 40 CFR 122.41(f) and 122.62, and Part 6.I.1 of this Order. Additionally, 40 CFR 122.44(d)(1)(vii)(B) requires that NPDES permits be consistent with the assumptions and requirements of any available waste load allocation. Tables 7-4.1, 7-4.2a, and 7-4.3 of the Basin Plan set forth the pertinent provisions of the Dry Weather Bacteria TMDL. Tables 7-5.1, 7-5.2, and 7-5.3 of the Basin Plan set forth the pertinent provisions of the MDR Bacteria TMDL. They require that during Summer Dry Weather there shall be no exceedances in the Wave Wash of the single sample or the geometric mean bacteria objectives set to protect the Water Contact Recreation (REC-1) beneficial use in marine waters. Accordingly, a prohibition is included in this Order barring discharges from a MS4 to Santa Monica Bay or Marina del Rey Harbor that result in exceedance of these objectives. Since the TMDL and the WLAs contained therein are expressed as receiving water conditions, Receiving Water Limitations have been included in this Order that are consistent with and implement the zero exceedance day WLAs.

31. Pursuant to federal regulations at 40 CFR 124.8, and 125.56, Fact Sheets were prepared to provide the bases for incorporating the Dry Weather Bacteria TMDL and the MDR Bacteria TMDL into this Order. These Fact Sheets are hereby incorporated by reference into these findings.

32. The iterative approach to regulating municipal storm water is not an appropriate means of implementing the Santa Monica Bay beaches or the MDR Summer Dry Weather WLAs for any and all of the following reasons: (a) The WLAs do not regulate the discharge of storm water; (b) The harm to the public from violating the WLAs is dramatic both in terms

of health impacts to exposed beachgoers, and the economic cost to the region associated with related illnesses; (c) Under the iterative approach over three permit cycles, required elements of the MS4 permit (e.g., elimination of illicit connections/illicit discharges (IC/ID) into their MS4s, revisions to their SQMP, etc.) have not resulted in the elimination of exceedances of water quality standards at the beaches or in Basins D, E, and F of Marina del Rey Harbor.

33. On March 14, 2007, Marina del Rey watershed responsible agencies submitted to the Regional Board the results of a non-point source study conducted over a one year period between July 2005 and July 2006, which was required under the terms of the MDR TMDL. The study was designed to determine the relative bacterial loading to the harbor from sources including but not limited to storm drains, boats, birds, and other non-point sources. The study has not yet been peer reviewed, and is currently under review by Regional Board staff.

34. On January 8, 2007, as required by the MDR Bacterial TMDL, Marina del Rey watershed responsible agencies submitted to the Regional Board an implementation plan describing the strategy by which they intend to comply with the MDR Bacterial TMDL. This implementation plan was developed through a process that included both Regional Board staff and representatives from Heal the Bay and Santa Monica Baykeeper.

35. The Regional Board acknowledges the County's timely submittals of reports required by the TMDL and implementation measures initiated thus far towards meeting water quality standards for bacteria in Marina del Rey. As a result of the adoption of the MDR Bacterial TMDL in 2003, the County has funded or received grants to initiate the following activities:

- Marina Beach Water Quality Improvement Project, Phase I and Phase II through a CBI grant;
- Mothers' Beach and Back Basins Bacterial TMDL Non-point Source Study;
- Marina del Rey Harbor Mothers' Beach and Back Basins Report of Small Drain Identification;
- Marina del Rey Vessel Discharge Report;
- Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan; and
- Three low-flow diversion projects, which were partially funded by a grant, two of which have been completed.

In addition to participation in the above studies, the County and other Marina del Rey watershed responsible agencies continue to implement BMPs proposed in the January 8, 2007, Implementation Plan.

36. The Receiving Water Limitations have been revised to implement the Summer Dry Weather WLAs set forth in Basin Plan Tables 7-4.1 and 7-5.1. These Receiving Water Limitations apply at the compliance

monitoring sites identified in the *Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan* dated April 7, 2004[1] and the *Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan* dated April 13, 2007. Compliance with the Receiving Water Limitations shall be determined using monitoring data obtained in conformance with the *Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan* dated April 7, 2004; the *Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan* dated April 13, 2007; and the Monitoring and Reporting Program CI 6948.

37. If the Receiving Water Limitations are exceeded at a compliance monitoring site, the Regional Board will generally issue an appropriate investigative order pursuant to Cal. Water Code § 13267 or § 13225 to the Permittees and other responsible agencies or jurisdictions within the relevant subwatershed to determine the source of the exceedance. Following these actions, Regional Board staff will generally evaluate the need for further enforcement as follows:

a) If the Regional Board determines that the exceedance did not result from discharges from the MS4, then the MS4 Permittees would not be responsible for violations of these provisions.

b) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that their MS4 does not discharge dry weather flow into Santa Monica Bay or Basins D, E, or F in Marina del Rey Harbor, those Permittees would not be responsible for violations of these provisions even if the Receiving Water Limitations are exceeded at an associated compliance monitoring site.

c) If the Regional Board determines that Permittees in the relevant subwatershed have demonstrated that their MS4 summer dry weather discharge into Santa Monica Bay or Basins D, E, or F in Marina del Rey Harbor is treated to a level that does not exceed either the single sample or the geometric mean bacteria objectives, those Permittees shall not be responsible for violations of these provisions even if the Receiving Water Limitations are exceeded at an associated compliance monitoring site.

d) If the Regional Board determines that one or more Permittees have caused or contributed to violations of these Receiving Water Limitations, the Regional Board will consider appropriate enforcement action, including a cease and desist order with or without a time schedule for compliance, or other appropriate

[1] If the Regional Board determines that publicly owned storm drains that flow during dry weather are situated at additional shoreline locations, the *Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan* may be revised by the Regional Board Executive Officer approval, after providing the opportunity for public comment, to include these locations as compliance monitoring sites.

enforcement action depending upon the circumstances and the extent to which the Permittee(s) has endeavored to comply with these provisions.

38. A Permittee would not be responsible for violations of these provisions if the Regional Board Executive Officer determines that the Permittee has adequately documented through a source investigation of the subwatershed, pursuant to protocols established under Cal. Water Code 13178, that bacterial sources originating within the jurisdiction of the Permittee have not caused or contributed to the exceedance of the Receiving Water Limitations.

39. Water Code section 13389 exempts the Regional Board from compliance with Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of waste discharge requirements. Therefore the Regional Board is not required to prepare environmental documents to evaluate this permit modification. Nevertheless, the Regional Board has considered the policies and requirements set forth in Chapters 1 through 2.6 of CEQA, and further, has considered the final substitute environmental documents for the Santa Monica Bay Beaches Bacteria TMDL and the MDR Bacteria TMDL.

F. Implementation

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual; and was developed with

the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its

requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

Part 1. A. The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or

2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

c) Category C - Flows incidental to urban activities:

(1) Reclaimed and potable landscape irrigation runoff;

(2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

(3) Drains for foundations, footings, and crawl spaces;

(4) Air conditioning condensate;

(5) Dechlorinated/debrominated swimming pool discharges;

(6) Dewatering of lakes and decorative fountains;

(7) Non-commercial car washing by residents or by non-profit organizations; and

(8) Sidewalk rinsing.

The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of antidegradation policies and TMDLs.

Part 1. B. Discharges of Summer Dry Weather flows from MS4s into Santa Monica Bay[2] or into Marina del Rey Harbor Basins D, E, or F, including Mothers' Beach, that cause or contribute to exceedances of the bacteria Receiving Water Limitations in Part 2.5 and 2.6 below, are prohibited.[3]

[2] Santa Monica Bay encompasses the coastal waters from Point Dume to Point Fermin and seaward to the 500-meter depth contour. It includes all beaches from the Los Angeles/Ventura County line south to the Outer Cabrillo Beach located just south of the Palos Verdes Peninsula.

[3] Responsibility for such prohibited discharges is determined as indicated in Footnote 3 part (2) of Table 7-4.1 and Footnote 2 part (1) of Table 7-5.1 of the Basin Plan. All Permittees within a subwatershed of the Santa Monica Bay Watershed Management Area are jointly responsible for compliance with the limitations imposed in Tables 7-4.1 and 7-5.1 of the Basin Plan.

Part 2. RECEIVING WATER LIMITATIONS

1. Except as provided in Part 2.5 and 2.6 below, discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

   d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not

have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

5. During Summer Dry Weather there shall be no discharges of bacteria from MS4s into the Santa Monica Bay that cause or contribute to exceedances in the Wave Wash, of the applicable bacteria objectives. The applicable bacteria objectives include both the single sample and geometric mean bacteria objectives set to protect the Water Contact Recreation (REC-1) beneficial use, as set forth in the Basin Plan.[4]

6. During Summer Dry Weather there shall be no discharges of bacteria from MS4s into Marina del Rey Harbor Basins D, E, or F, including Mothers' Beach that cause or contribute to exceedances of the applicable bacteria objectives. The applicable bacteria objectives include both the single sample and geometric mean bacteria objectives set to protect the Water Contact Recreation (REC-1) beneficial use, as set forth in the Basin Plan.[5]

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and

[4] Samples collected for determining compliance with the receiving water limitations of Part 2.5 shall be processed in accordance with the sampling procedures and analytical methodology set forth in the *Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan* dated April 7, 2004 and the Monitoring and Reporting Program CI 6948.

[5] Samples collected for determining compliance with the receiving water limitations of Part 2.6 shall be processed in accordance with the sampling procedures and analytical methodology set forth in the *Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Shoreline Monitoring Plan* dated April 13, 2007 and the Monitoring and Reporting Program CI 6948.

shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;
2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;
3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;
4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;
5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;
6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;
7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and
8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;

2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;

3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

   b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

   c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

   d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

   e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

   f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

   g) Meet four times per year and, as necessary.

G. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

   a) Illicit discharges and illicit connections and require removal of illicit connections;

   b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

   c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from

industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and

implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

   a) "No Dumping" Message

   Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

   b) Countywide Hotline

   The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than

March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School

District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002, and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1.	
Watershed	***Target Pollutants for Outreach***
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator

	Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections; and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC §

13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances ;

- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industrial/ Commercial,* (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP

but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-

regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the

General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. Development Construction Program

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage

facilities, receiving waters, or adjacent properties by wind or runoff;

c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1. above and shall:

a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:

A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:

For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management

- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

   a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

      (1) Investigation of any complaints received;

      (2) Upon notification, immediate response to overflows for containment; and

      (3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

   b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

      (1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

      (2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

   a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

   b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

   c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

   d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A:	Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
Priority B:	Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
Priority C:	Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations, "water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"Authorized Discharge" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"Automotive Service Facilities" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"Basin Plan" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"Beneficial Uses" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"Best Management Practices (BMPs)" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"Commercial Development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Dry Weather" means those days with less than 0.1 inch of rainfall, and occurring more than three days after a Rain Day.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);
8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires

that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program.".

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003)
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces
7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:

a) Vehicle or equipment fueling areas;
b) Vehicle or equipment maintenance areas, including washing and repair;
c) Commercial or industrial waste handling or storage;
d) Outdoor handling or storage of hazardous materials;
e) Outdoor manufacturing areas;
f) Outdoor food handling or processing;
g) Outdoor animal care, confinement, or slaughter; or
h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Days" are those days with greater than or equal to 0.1 inch of rainfall.

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[6]
Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.
4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.

[6] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.html#SEA

7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[7]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"Summer Dry Weather" means Dry Weather days occurring from April 1 through October 31 of each year.

[7] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage of wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;
iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Counter-measures (SPCC) plan.

December 13, 2001 (As amended on September 14, 2006 by Order R4-2006-0074 and on August 9, 2007 by Order R4-2007-0042)

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wave Wash" means the point at which a storm drain or creek empties and the effluent from the storm drain initially mixes with the receiving ocean water.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.

2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.

3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).

2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].

2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. Duty to Mitigate [40 CFR 122.41 (d)]

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. Inspection and Entry [40 CFR 122.41(i), CWC § 13267]

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;
2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;
3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and,
4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. Signatory Requirements [40 CFR 122.41(k) & 122.22]

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. Reopener and Modification [40 CFR 122.41(f) & 122.62]

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements, guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][8]

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR 122.41(m)][9]

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

[8] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[9] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][10]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;

   b) The permitted facility was being properly operated by the time of the upset;

   c) The Permittee submitted notice of the upset as required; and,

   d) The Permittee complied with any remedial measures required.

2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the

[10] *Supra.* See footnote number 3.

prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:

a) Criminal Penalties for:

(1) Negligent Violations:

The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:

The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of

violation; or some combination thereof, depending on the violation or combination of violations.

Q. Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. Rescission

Regional Board Order No. 96-054 is hereby rescinded.

S. Expiration

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

_____

Dennis A. Dickerson
Executive Officer

ATTACHMENT NO. 35

Order No. 97-03-DWQ; http://www.waterboards.ca.gov/stormwtr/docs/induspmt.pdf

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5538
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977
FAX (916) 341-5543 • Internet Address: http://www.waterboards.ca.gov/stormwtr/index.html

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

To: STORM WATER DISCHARGER

SUBJECT: CHECKLIST FOR SUBMITTING A NOTICE OF INTENT

In order for the State Water Resources Control Board to expeditiously process your Notice of Intent (NOI), the following items must be submitted to either of the addresses indicated below:

1._____ NOI (please keep a copy for your files) with all applicable sections completed and original signature of the facility operator;

2._____ Check made out to the "State Water Resources Control Board" with the appropriate fee. The regular fee is **$830.00** ($700 plus 18.5% surcharge).

3. _____ Site Map of the facility (see NOI instructions). DO NOT SEND BLUEPRINTS

U.S. Postal Service Address

State Water Resources Control Board
Division of Water Quality
Attn: Storm Water Section
P.O. Box 1977
Sacramento, CA 95812-1977

Overnight Mailing Address

State Water Resources Control Board
Division Of Water Quality
Attn: Storm Water, 15th Floor
1001 I Street
Sacramento, CA 95814

NOIs are processed in the order they are received. A NOI receipt letter will be mailed to the facility operator within approximately two weeks. Incomplete NOI submittals will be returned to the facility operator within the same timeframe and will specify the reason(s) for return. If you need a receipt letter by a specific date (for example, to provide to a local agency), we advise that you submit your NOI thirty (30) days prior to the date the receipt letter is needed.

Please do not call us to verify your NOI status. A copy of your NOI receipt letter will be available on our web page within twenty-four (24) hours of processing. Go to: http://www.waterboards.ca.gov/stormwtr/databases.html to retrieve an electronic copy of your NOI receipt letter. If you have any questions regarding this matter, please contact us at (916) 341-5538.

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BACKGROUND

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (U.S. EPA) published final regulations that establish application requirements for storm water permits. The regulations require that storm water associated with industrial activity (storm water) that discharges either directly to surface waters or indirectly through municipal separate storm sewers must be regulated by an NPDES permit.

U.S. EPA developed a four-tier permit issuance strategy for storm water discharges associated with industrial activity as follows:

Tier I, Baseline Permitting--One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.

Tier II, Watershed Permitting--Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.

Tier III, Industry-Specific Permitting--Specific industry categories will be targeted for individual or Industry-specific general permits.

Tier IV, Facility-Specific Permitting--A variety of factors will be used to target specific facilities for individual permits.

The regulations allow authorized states to issue general permits or individual permits to regulate storm water discharges.

Consistent with Tier I, Baseline Permitting, of the U.S. EPA permitting strategy, the State Water Board issued a statewide General Permit on November 19, 1991 that applied to all storm water discharges requiring a permit except construction activity. The monitoring requirements of this General Permit were amended September 17, 1992. A separate statewide general permit has been issued for construction activity.

To obtain authorization for continued and future storm water discharge under this General Permit, each facility operator must submit a Notice of Intent (NOI). This approach is consistent with the four-tier permitting strategy described in Federal regulations, i.e., Tier 1, Baseline Permitting. Tier 1, Baseline Permitting, enables the State to begin reducing pollutants in industrial storm water in the most efficient manner possible.

This General Permit generally requires facility operators to:

1. Eliminate unauthorized non-storm water discharges;
2. Develop and implement a storm water pollution prevention plan (SWPPP); and
3. Perform monitoring of storm water discharges and authorized non-storm water discharges.

TYPES OF STORM WATER DISCHARGES COVERED BY THIS GENERAL PERMIT

This General Permit is intended to cover all new or existing storm water discharges and authorized non-storm water discharges from facilities required by Federal regulations to obtain a permit including those (1) facilities previously covered by the San Francisco Bay Regional Water Quality Control Board Order No. 92-011 (as amended by Order No. 92-116), (2) facilities designated by the Regional Water Quality Control Boards (Regional Water Boards), (3) facilities whose operators seek coverage under this General Permit, (4) and facilities required by future U.S. EPA storm water regulations.

The General Permit is intended to cover all facilities described in Attachment 1, whether the facility is primary or is auxiliary to the facility operator's function. For example, although a school district's primary function is education, a facility that it operates for vehicle maintenance of school buses is a transportation facility that is covered by this General Permit.

The definition of "storm water associated with industrial activity" is provided in Attachment 4, Definition 9, of this General Permit. Facilities that discharge storm water associated with industrial activity requiring a General Permit are listed by category in 40 Code of Federal Regulations (CFR) Section 122.26(b)(14) (Federal Register, Volume 55 on

Pages 48065-66) and in Attachment 1 of this General Permit. The facilities can be publicly or privately owned. General descriptions of these categories are:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N);

2. Manufacturing facilities;

3. Mining/oil and gas facilities;

4. Hazardous waste treatment, storage, or disposal facilities;

5. Landfills, land application sites, and open dumps that receive industrial waste;

6. Recycling facilities such as metal scrap yards, battery reclaimers, salvage yards, automobile yards;

7. Steam electric generating facilities;

8. Transportation facilities that conduct any type of vehicle maintenance such as fueling, cleaning, repairing, etc.;

9. Sewage treatment plants;

10. Construction activity (covered by a separate general permit); and

11. Certain facilities (often referred to as "light industry") where industrial materials, equipment, or activities are exposed to storm water.

For the most part, these facilities are identified in the Federal regulations by a Standard Industrial Classification (SIC).

Category 1 Dischargers

The following categories of facilities currently have storm water effluent limitation guidelines for at least one of their subcategories. They are cement manufacturing (40 CFR Part 411); feedlots (40 CFR Part 412); fertilizer manufacturing (40 CFR Part 418); petroleum refining (40 CFR Part 419); phosphate manufacturing (40 CFR Part 422); steam electric power generation (40 CFR Part 423); coal mining (40 CFR Part 434); mineral mining and processing (40 CFR Part 436); ore mining and dressing (40 CFR Part 440); and asphalt emulsion (40 CFR Part 443). A facility operator whose facility falls into one of these general categories should examine the effluent guidelines to determine if the facility is categorized in one of the subcategories that have storm water effluent guidelines. If

a facility is classified as one of those subcategories, that facility is subject to the standards listed in the CFR for that category and is subject to this General Permit. This General Permit contains additional requirements (see Section B.6.) for facilities with storm water effluent limitations guidelines.

Category 5 Dischargers

Inactive or closed landfills, land application sites, and open dumps that have received industrial wastes (Category 5) may be subject to this General Permit unless the storm water discharges from the sites are already regulated by an NPDES permit issued by the appropriate Regional Water Board. Facility operators of closed landfills that are regulated by waste discharge requirements (WDRs) may be required to comply with this General Permit. In some cases, it may be appropriate for closed landfills to be covered by the State Water Board's General Permit during closure activities. The Construction Activities General Permit should cover new landfill construction. Facility operators should contact their Regional Water Board to determine the appropriate permit coverage.

Category 10 Dischargers

Facility operators of Category 10 (light industry) facilities are not subject to this General Permit if they can certify that the following minimum conditions at their facilities are met:

1. All prohibited non-storm water discharges have been eliminated or otherwise permitted.

2. All areas of past exposure have been inspected and cleaned, as appropriate.

3. All materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

4. All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

5. There is no exposure of materials associated with industrial activity through other direct or indirect pathways such as particulates from stacks and exhaust systems.

6. There is periodic re-evaluation of the facility to ensure Conditions 1, 3, 4, and 5 are continuously met.

Currently, facility operators that can certify that the above conditions are met are not required to notify the State Water

Board or Regional Water Board. These facility operators are advised to retain such certification documentation on site.

The Ninth Circuit Court of Appeals invalidated the exemption granted by U.S. EPA for storm water discharges from facilities in Category 11 that do not have exposure and remanded the regulation to U.S. EPA for further action. The State Water Board, at this time, is not requiring storm water discharges from facilities in Category 11 that do not have exposure to be covered by this General Permit. Instead, the State Water Board will await future U.S. EPA or court action clarifying the types of storm water discharges that must be permitted. If necessary, the State Water Board will reopen the General Permit to accommodate such a clarification.

Section 1068 of the Intermodal Surface Transportation Act of 1991 exempts municipal agencies serving populations of less than 100,000 from Phase I permit requirements for most facilities they operate (uncontrolled sanitary landfills, power plants, and airports are still required to be permitted in Phase I). Phase II of the Permit Program scheduled to begin August 7, 2001 will cover the facilities that are exempt from Phase I permit requirements.

TYPES OF DISCHARGES NOT COVERED BY THIS GENERAL PERMIT

1. CONSTRUCTION ACTIVITY: Discharges from construction activity of five acres or more, including clearing, grading, and excavation. A separate general permit was adopted on August 20, 1992 for this industrial category.

2. FACILITIES WHICH HAVE NPDES PERMITS CONTAINING STORM WATER PROVISIONS: Some storm water discharges may be regulated by other individual or general NPDES permits issued by the State Water Board or the Regional Water Boards. This General Permit shall not regulate these discharges. When the individual or general NPDES permits for such discharges expire, the State Water Board or Regional Water Board may authorize coverage under this General Permit or another general NPDES permit, or may issue a new individual NPDES permit consistent with the Federal and State storm water regulations. Interested parties may petition the State Water Board or appropriate Regional Water Board to issue individual or General NPDES Permits. General Permits may be issued for a particular industrial group or watershed area.

3. FACILITIES DETERMINED INELIGIBLE BY REGIONAL WATER BOARDS: Regional Water Boards may determine that discharges from a facility or groups of facilities, otherwise eligible for coverage under this General Permit, have potential water quality impacts that may not be appropriately addressed by

this General Permit. In such cases, a Regional Water Board may require such discharges to be covered by an individual or general NPDES permit. Interested persons may petition the appropriate Regional Water Board to issue individual NPDES permits. The applicability of this General Permit to such discharges will be terminated upon adoption of an individual NPDES permit or a different general NPDES permit.

4. FACILITIES WHICH DO NOT DISCHARGE STORM WATER TO WATERS OF THE UNITED STATES: The discharges from the following facilities are not required to be permitted:

   a. FACILITIES THAT DISCHARGE STORM WATER TO MUNICIPAL SANITARY SEWER SYSTEMS: Facilities that discharge storm water to municipal sanitary sewer systems or combined sewer systems are not required by Federal regulations to be covered by an NPDES storm water permit or to submit an NOI to comply with this General Permit. (It should be noted that many municipalities have sewer use ordinances that prohibit storm drain connections to their sanitary sewers.)

   b. FACILITIES THAT DO NOT DISCHARGE STORM WATER TO SURFACE WATERS OR SEPARATE STORM SEWERS: Storm water that is captured and treated and/or disposed of with the facility's NPDES permitted process wastewater and storm water that is disposed of to evaporation ponds, percolation ponds, or combined sewer systems are not required to obtain a storm water permit. To avoid liability, the facility operator should be certain that no discharge of storm water to surface waters would occur under any circumstances.

5. MOST SILVICULTURAL ACTIVITIES: Storm water discharges from most silvicultural activities such as thinning, harvesting operations, surface drainage, or road construction and maintenance are exempt from this permit. Log sorting or log storage facilities that fall within SIC 2411 are required to be permitted.

6. MINING AND OIL AND GAS FACILITIES: Oil and gas facilities that have not released storm water resulting in a discharge of a reportable quantity (RQ) for which notification is or was required pursuant to 40 CFR Parts 110, 117, and 302 at any time after November 19, 1987 are not required to be permitted unless the industrial storm water discharge contributed to a violation of a water quality standard. Mining facilities that discharge storm water that does not come into contact with any overburden, raw materials, intermediate product, finished product, by-product, or waste product located at the facility are not required to be permitted. These facilities must be permitted if they have a new release of storm water resulting in a discharge of an RQ.

7. FACILITIES ON INDIAN LANDS: the U.S. EPA will regulate Discharges from facilities on Indian lands.

NOTIFICATION REQUIREMENTS

Storm water discharges from facilities described in the section titled "Types of Storm Water Discharges Covered by This General Permit" must be covered by an NPDES permit. An NOI must be submitted by the facility operator for each individual facility to obtain coverage. Certification of the NOI signifies that the facility operator intends to comply with the provisions of the General Permit. Facility operators who have filed NOIs for the State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-011 (as amended by Order No. 92-116) will be sent an abbreviated NOI soon after adopting this General Permit that must be completed and returned within 45 days of receipt. Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. A landowner may also file an NOI for a facility if the landowner, rather than the facility operator(s), is responsible for compliance with this General Permit.

A facility operator that does not submit an NOI for a facility must submit an application for an individual NPDES permit. U.S. EPA's regulations [40 CFR 122.21 (a)] exclude facility operators covered by a general permit from requirements to submit an individual permit application unless required by the Regional Water Board. The NOI requirements of this General Permit are intended to establish a mechanism which can be used to establish a clear accounting of the number of facility operators complying with the General Permit, their identities, the nature of operations at the facilities, and location.

All facility operators filing an NOI after the adoption of this General Permit must comply with this General Permit. Existing facility operators who have filed NOIs prior to the adoption of this General Permit shall continue to complete the requirements of the previous General Permit through June 30, 1997 including submitting annual reports to the Regional Water Boards by July 1, 1997. Group Leaders are required to submit a 1996-97 Group Evaluation Report by August 1, 1997.

DESCRIPTION OF GENERAL PERMIT CONDITIONS

Prohibitions

This General Permit authorizes storm water and authorized non-storm water discharges from facilities that are required to be covered by a storm water permit. This General Permit prohibits discharges of material other than storm water (non-storm water discharges) that are not authorized by the General Permit and discharges containing hazardous substances in storm water in excess of reportable quantities established at 40 CFR 117.3 and 40 CFR 302.4. Authorized non-storm water discharges are addressed in the Special Conditions of the General Permit.

Effluent Limitations

NPDES Permits for storm water discharges must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to prevent and reduce pollutants and any more stringent controls necessary to meet water quality standards.

U.S. EPA regulations (40 CFR Subchapter N) establish effluent limitation guidelines for storm water discharges from facilities in ten industrial categories. For these facilities, compliance with the effluent limitation guidelines constitutes compliance with BAT and BCT for the specified pollutants and must be met to comply with this General Permit.

For storm water discharges from facilities not among the ten industrial categories listed in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. The reasons why establishment of numeric effluent limitations is not feasible are discussed in detail in State Water Board Orders No. WQ 91-03 and WQ 91-04. Therefore, this General Permit allows the facility operator to implement best management practices (BMPs) to comply with the requirements of this General Permit. This approach is consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits".

Receiving Water Limitations

Storm water discharges shall not cause or contribute to a violation of an applicable water quality standard. The General Permit requires facility operators to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges through the development and implementation of BMPs which constitutes compliance with BAT and BCT and, in most cases, compliance with water quality standards. If receiving water quality standards are exceeded, facility operators are required to submit a written report providing additional BMPs that will be implemented to achieve water quality standards.

Storm Water Pollution Prevention Plans (SWPPPs)

All facility operators must prepare, retain on site, and implement an SWPPP. The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges.

This General Permit requires development and implementation of an SWPPP emphasizing BMPs. This approach provides the flexibility necessary to establish appropriate BMPs for different types of industrial activities and pollutant sources. As this General Permit covers vastly different types of facilities, the State Water Board recognizes that there is no single best way of developing or organizing an SWPPP. The SWPPP requirements contain the essential elements that all facility operators must consider and address in the SWPPP. This General Permit's SWPPP requirements are more detailed than the previous general permit's SWPPP requirements, and the suggested order of the SWPPP elements have been rearranged (1) to correspond more closely with other storm water permits in effect throughout the country, and (2) to generally follow a more logical path. Facility operators that have already developed and implemented SWPPPs under previous general permits are required to review the SWPPP's requirements contained in this General Permit and then review their existing SWPPP for adequacy. If the existing SWPPP adequately identifies and assesses all potential sources of pollutants and describes the appropriate BMPs necessary to reduce or prevent pollutants, the facility operator is not required to revise the existing SWPPP.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to the facility's storm drain system. Unauthorized non-storm water discharges can be generated from a wide variety of potential pollutant sources. They include waters from the rinsing or washing of vehicles, equipment, buildings, or pavement; materials that have been improperly disposed of or dumped; and spilled; or leaked materials. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping can often be addressed through BMPs. Unauthorized non-storm water discharges may enter the storm drain system via conveyances such as floor drains. All conveyances should be evaluated to determine whether they convey unauthorized non-storm water discharges to the storm drain system. Unauthorized non-storm water discharges (even when commingled with storm water) shall be eliminated or covered by a separate NPDES Permit.

There are many non-storm water discharges that, under certain conditions, should not contain pollutants associated with

industrial activity (i.e., air conditioning condensate, potable water line testing, landscaping overflow, etc.). Item D, Special Conditions, provides the conditions where certain listed non-storm water discharges are authorized by this General Permit.

Monitoring Program

The General Permit requires development and implementation of a monitoring program. The objectives of the monitoring program are to (1) demonstrate compliance with the General Permit, (2) aid in the implementation of the SWPPP, and (3) measure the effectiveness of the BMPs in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

All facility operators (with the exception of inactive mining operations) are required to:

1. Perform visual observations of storm water discharges and authorized storm water discharges.

2. Collect and analyze samples of storm water discharges. Analysis must include pH, total suspended solids (TSS), total organic carbon (TOC), specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities, and those parameters listed in Table D of this General Permit. The Table D parameters are those listed in the U.S. EPA Multi-Sector General Permit. Facility operators subject to Federal storm water effluent limitation guidelines in 40 CFR Subchapter N must also sample and analyze for any pollutant specified in the appropriate category of 40 CFR Subchapter N.

Facility operators are not required to collect samples or perform visual observations during adverse climatic conditions. Sample collection and visual observations are required only during scheduled facility operating hours. Visual observations are required only during daylight hours. Facility operators that are unable to collect any of the required samples or visual observations because of the above circumstances must provide documentation to the Regional Water Board in their annual report.

Facility operators may be exempt from performing sampling and analysis if they: (1) do not have areas of industrial activity exposed to storm water, (2) receive an exemption from a local agency which has jurisdiction over the storm sewer system, or (3) receive an exemption from the appropriate Regional Water Board. Facility operators must always perform sampling and analysis for any pollutant specified in storm water effluent limitation guidelines.

This General Permit contains a new procedure where facility operators, if they meet certain minimum conditions, may certify compliance with the General Permit and reduce the number of

sampling events required to be sampled for the remaining term of the General Permit. Each Regional Water Board may develop instructions, guidance, and checklists to assist facility operators to complete sampling reduction requests.

Local agencies that wish to provide sampling and analysis exemptions or reductions to facility operators within their jurisdiction shall develop a certification program that clearly indicates the certification procedures and criteria used by the local agency. At a minimum, these programs should include site inspections, a review of the facility operator's SWPPP, and a review of other records such as monitoring data, receiving water data, etc. The certification program shall be approved by the local Regional Water Board before implementation.

Alternative Monitoring

Facility operators are required to develop a facility-specific monitoring program that satisfies both the minimum monitoring program requirements and the objectives of the monitoring program. Some facility operators have indicated that cost-effective alternative monitoring programs can be developed that provide equivalent or more accurate indicators of pollutants and/or BMP performance than a monitoring program based upon the minimum monitoring program requirements. An example of such an alternative monitoring program would be one that identifies sample locations at or near pollutant sources rather than sampling an entire drainage area where the storm water discharge has been diluted with storm water from areas with little or no industrial activity.

The State Water Board does not want to preclude facility operators from developing better, and perhaps more cost-effective, monitoring programs. This General Permit allows facility operators to submit alternative monitoring programs for approval by the Regional Water Board. For individual facilities, these proposals must be facility specific and demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness. Facility operators with similar industrial activities may also propose alternative monitoring programs for approval by the Regional Water Boards. These proposals must demonstrate how the alternative monitoring program will result in an equivalent or more accurate indicator of pollutants and/or BMP effectiveness for all of the participating facilities.

Facility operators shall continue to comply with the existing monitoring program requirements until receiving approval by the Regional Water Board.

Group Monitoring

Each facility operator may either perform sampling and analysis individually or participate in a group monitoring program. A group monitoring program may be developed either by a group leader representing a group of similar facilities or by a local agency which holds a storm water permit for a municipal separate storm sewer system for industrial facilities within its jurisdiction. The group leader or local agency responsible for the group monitoring program must schedule all participating facilities to sample two storm events over the life of this General Permit. Facility operators subject to Federal effluent limitations guidelines in 40 CFR Subchapter N must individually sample and analyze for pollutants listed in the appropriate Federal regulations.

Participants within a group may be located within the jurisdiction of more than one Regional Water Board. Multi-Regional Water Board groups must receive the approval of the State Water Board Executive Director (with the concurrence of the appropriate Regional Water Boards).

Each group leader or local agency responsible for group sampling must: (1) provide guidance or training so that the monitoring is done correctly, (2) recommend appropriate BMPs to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges from group participants, (3) evaluate and report the monitoring data to the State Water Board and/or the appropriate Regional Water Board(s), and (4) conduct two on-site inspections at each facility over the five year term of this General Permit to evaluate facility compliance and recommend BMPs to achieve compliance with this General Permit. The group leader or local agency may designate, hire, or train inspectors to conduct these inspections that are or are not directly affiliated with the group leader or local agency. It is the group leader's or local agency's responsibility to select inspectors that are capable of evaluating each facility's compliance with the General Permit and can recommend appropriate BMPs. All group monitoring plans are subject to State Water Board and/or Regional Water Board(s) review. Consistent with the four-tier permitting strategy described in the Federal regulations, the Regional Water Board(s) may evaluate the data and results from group monitoring to establish future permitting decisions. As appropriate, the State Water Board and/or the Regional Water Board(s) may terminate or require substantial amendment to the group monitoring plans. The State Water Board and/or the Regional Water Board(s) may terminate a facility's participation in group monitoring or require additional monitoring activities.

Retention of Records

The facility operator is required to retain records of all monitoring information, copies of all reports required by this General Permit, and records of all data used to complete the NOI for a period of five years from the date of measurement, report, or monitoring activity. This period may be extended by the State and/or Regional Water Boards. All records are public documents and must be provided to the Regional Water Boards on request.

Watershed Management

The State and Regional Water Boards are undertaking a focussed effort in watershed management throughout the State. In reissuing this General Permit, the State Water Board recognizes both the evolving nature of watershed management and the long-term desirability of structuring monitoring programs to support the Watershed Management Initiative. Therefore, the amended monitoring and reporting provisions provide flexibility for individual facility operators or groups of facility operators to propose and participate in, subject to Regional Water Board approval, watershed monitoring programs in lieu of some or all of the monitoring requirements contained in this General Permit.

Facility Operator Compliance Responsibilities

This General Permit has been written to encourage individual facility operators to develop their own SWPPP and monitoring programs. Many facility operators, however, choose to obtain compliance assistance either by hiring a consultant on an individual basis or by participating in a group monitoring plan. Regardless of how a facility operator chooses to pursue compliance, it is the facility operator that is responsible for compliance with this General Permit.

The State Water Board recognizes that industrial activities and operating conditions at many facilities change over time. In addition, new and more effective BMPs are being developed by various facility operators and by industrial groups. The SWPPP and monitoring program requirements include various inspections, reviews, and observations all of which recognize, encourage, and mandate an iterative self-evaluation process that is necessary to consistently comply with this General Permit. In general, facility operators that develop and implement SWPPPs that comply with this General Permit should not be penalized when discovering minor violations through this iterative self-evaluation process. The General Permit provides facility operators up to 90 days to revise and implement the SWPPP to correct such violations.

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

Subchapter N) shall not exceed the specified effluent limitations.

2. Storm water discharges and authorized non-storm water discharges regulated by this General Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.

3. Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement.

C. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. Storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.

3. A facility operator will not be in violation of Receiving Water Limitation C.2. as long as the facility operator has implemented BMPs that achieve BAT/BCT and the following procedure is followed:

a. The facility operator shall submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report shall include an implementation schedule. The Regional Water Board may require modifications to the report.

b. Following approval of the report described above by the Regional Water Board, the facility operator shall revise its SWPPP and monitoring program to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

4. A facility operator shall be in violation of this General Permit if he/she fails to do any of the following:

a. Submit the report described above within 60 days after either the facility operator or the Regional Water Board determines that discharges are causing or contributing to an exceedance of an applicable water quality standard;

b. Submit a report that is approved by the Regional Water Board; or

c. Revise its SWPPP and monitoring program as required by the approved report.

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.

b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:

i. The non-storm water discharges are in compliance with Regional Water Board requirements.

ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.

iii. BMPs are specifically included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.

iv. The non-storm water discharges do not contain significant quantities of pollutants.

v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.

vi. The non-storm water discharges are reported and described annually as part of the annual report.

c. The Regional Water Board or its designee may establish additional monitoring programs and reporting requirements for any non-storm water discharge authorized by this General Permit.

d. Discharges from firefighting activities are authorized by this General Permit and are not subject to the conditions of Paragraph b. above.

E. PROVISIONS

1. All facility operators seeking coverage by this General Permit must submit an NOI for each of the facilities they operate. Facility operators filing an NOI after the adoption of this General Permit shall use the NOI form and instructions (Attachment 3) attached to this General Permit. Existing facility operators who have filed an NOI pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall submit an abbreviated NOI form provided by the State Water Board. The abbreviated NOI form shall be submitted within 45 days of receipt.

2. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in accordance with Section A of this General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement an SWPPP in accordance with Section A of this General Permit when the industrial activities begin.

3. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing Monitoring Program and shall implement any necessary revisions to their Monitoring Program in accordance with Section B of the General Permit in a timely manner, but in no case later than August 1, 1997. Facility operators beginning industrial activities after adoption of this General Permit must develop and implement a Monitoring Program in

accordance with Section B of this General Permit when industrial activities begin.

4. Facility operators of feedlots as defined in 40 CFR Part 412 that are in full compliance with Section 2560 to Section 2565, Title 23, California Code of Regulations (Chapter 15) will be in compliance with all effluent limitations and prohibitions contained in this General Permit. Facility operators of feedlots that comply with Chapter 15, however, must perform monitoring in compliance with the requirements of Section B.4.d. and B.14. of this General Permit. Facility operators of feedlots must also comply with any Regional Water Board WDRs or NPDES general permit regulating their storm water discharges.

5. All facility operators must comply with lawful requirements of municipalities, counties, drainage districts, and other local agencies regarding storm water discharges and non-storm water discharges entering storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NPDES permits issued by the Regional Water Boards to local agencies.

6. All facility operators must comply with the standard provisions and reporting requirements for each facility covered by this General Permit contained in Section C, Standard Provisions.

7. Facility operators that operate facilities with co-located industrial activities (facilities that have industrial activities that meet more than one of the descriptions in Attachment 1) that are contiguous to one another are authorized to file a single NOI to comply with the General Permit. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities are authorized if the SWPPP and Monitoring Program addresses each co-located industrial activity.

8. Upon reissuance of a successor NPDES general permit by the State Water Board, the facility operators subject to this reissued General Permit may be required to file an NOI.

9. Facility operators may request to terminate their coverage under this General Permit by filing a Notice of Termination (NOT) with the Regional Water Board. The NOT shall provide all documentation requested by the Regional Water Board. The facility operator will be notified when the NOT has been approved. Should the NOT be denied, facility operators are responsible for continued compliance with the requirements of this General Permit.

10. Facility operators who have filed an NOI, pursuant to State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Board Order No. 92-11 (as amended by Order No. 92-116) shall:

    a. Complete the 1996-97 activities required by those general permits. These include, but are not limited to, conducting any remaining visual observations, sample collection, annual site inspection, annual report submittal, and (for group monitoring leaders) Group Evaluation Reports; and

    b. Comply with the requirements of this General Permit no later than August 1, 1997.

11. If the Regional Water Board determines that a discharge may be causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, the Regional Water Board may order the facility operator to comply with the requirements described in Receiving Water Limitation C.3. The facility operator shall comply with the requirements within the time schedule established by the Regional Water Board.

12. If the facility operator determines that its storm water discharges or authorized non-storm water discharges are causing or contributing to an exceedance of any applicable water quality standards, the facility operator shall comply with the requirements described in Receiving Water Limitation C.3.

13. State Water Board Order No. 91-013-DWQ (as amended by Order No. 92-12-DWQ) and San Francisco Bay Regional Water Board Order No. 91-011 (as amended by Order No. 92-116) are hereby rescinded.

F. REGIONAL WATER BOARD AUTHORITIES

1. Following adoption of this General Permit, Regional Water Boards shall:

    a. Implement the provisions of this General Permit, including, but not limited to, reviewing SWPPPs, reviewing annual reports, conducting compliance inspections, and taking enforcement actions.

    b. Issue other NPDES general permits or individual NPDES storm water permits as they deem appropriate to individual facility operators, facility operators of specific categories of industrial activities, or facility operators in a watershed or geographic area. Upon issuance of such NPDES permits by a Regional Water Board, the affected facility operator shall no longer

be regulated by this General Permit. Any new NPDES permit issued by the Regional Water Board may contain different requirements than the requirements of this General Permit.

2. Regional Water Boards may provide guidance to facility operators on the SWPPP and the Monitoring Program and reporting implementation.

3. Regional Water Boards may require facility operators to conduct additional SWPPP and Monitoring Program and reporting activities necessary to achieve compliance with this General Permit.

4. Regional Water Boards may approve requests from facility operators whose facilities include co-located industrial activities that are not contiguous within the facilities (e.g., some military bases) to comply with this General Permit under a single NOI. Storm water discharges and authorized non-storm water discharges from the co-located industrial activities and from other sources within the facility that may generate significant quantities of pollutants are authorized provided the SWPPP and Monitoring Program addresses each co-located industrial activity and other sources that may generate significant quantities of pollutants.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 1997.

AYE: John P. Caffrey
John W. Brown
James M. Stubchaer
Marc Del Piero
Mary Jane Forster

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché

Administrative Assistant to the Board

SECTION A: STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

1. *Implementation Schedule*

A storm water pollution prevention plan (SWPPP) shall be developed and implemented for each facility covered by this General Permit in accordance with the following schedule.

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement the SWPPP no later than October 1, 1992. Facility operators beginning industrial activities after October 1, 1992 shall develop and implement the SWPPP when industrial activities begin.

b. Existing facility operators that submitted a Notice of Intent (NOI), pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing SWPPP and shall implement any necessary revisions to their SWPPP in a timely manner, but in no case later than August 1, 1997.

2. *Objectives*

The SWPPP has two major objectives: (a) to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility; and (b) to identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. BMPs may include a variety of pollution prevention measures or other low-cost and pollution control measures. They are generally categorized as non-structural BMPs (activity schedules, prohibitions of practices, maintenance procedures, and other low-cost measures) and as structural BMPs (treatment measures, run-off controls, over-head coverage.) To achieve these objectives, facility operators should consider the five phase process for SWPPP development and implementation as shown in Table A.

The SWPPP requirements are designed to be sufficiently flexible to meet the needs of various facilities. SWPPP requirements that are not applicable to a facility should not be included in the SWPPP.

A facility's SWPPP is a written document that shall contain a compliance activity schedule, a description of industrial activities and pollutant sources, descriptions of BMPs, drawings, maps, and relevant copies or references of parts of other plans. The SWPPP shall be revised whenever appropriate and shall be readily available for review by facility employees or Regional Water Board inspectors.

3. *Planning and Organization*

a. *Pollution Prevention Team*

The SWPPP shall identify a specific individual or individuals and their positions within the facility organization as members of a storm water pollution prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP implementation and revision, and conducting all monitoring program activities required in Section B of this General Permit. The SWPPP shall clearly identify the General Permit related responsibilities, duties, and activities of each team member. For small facilities, storm water pollution prevention teams may consist of one individual where appropriate.

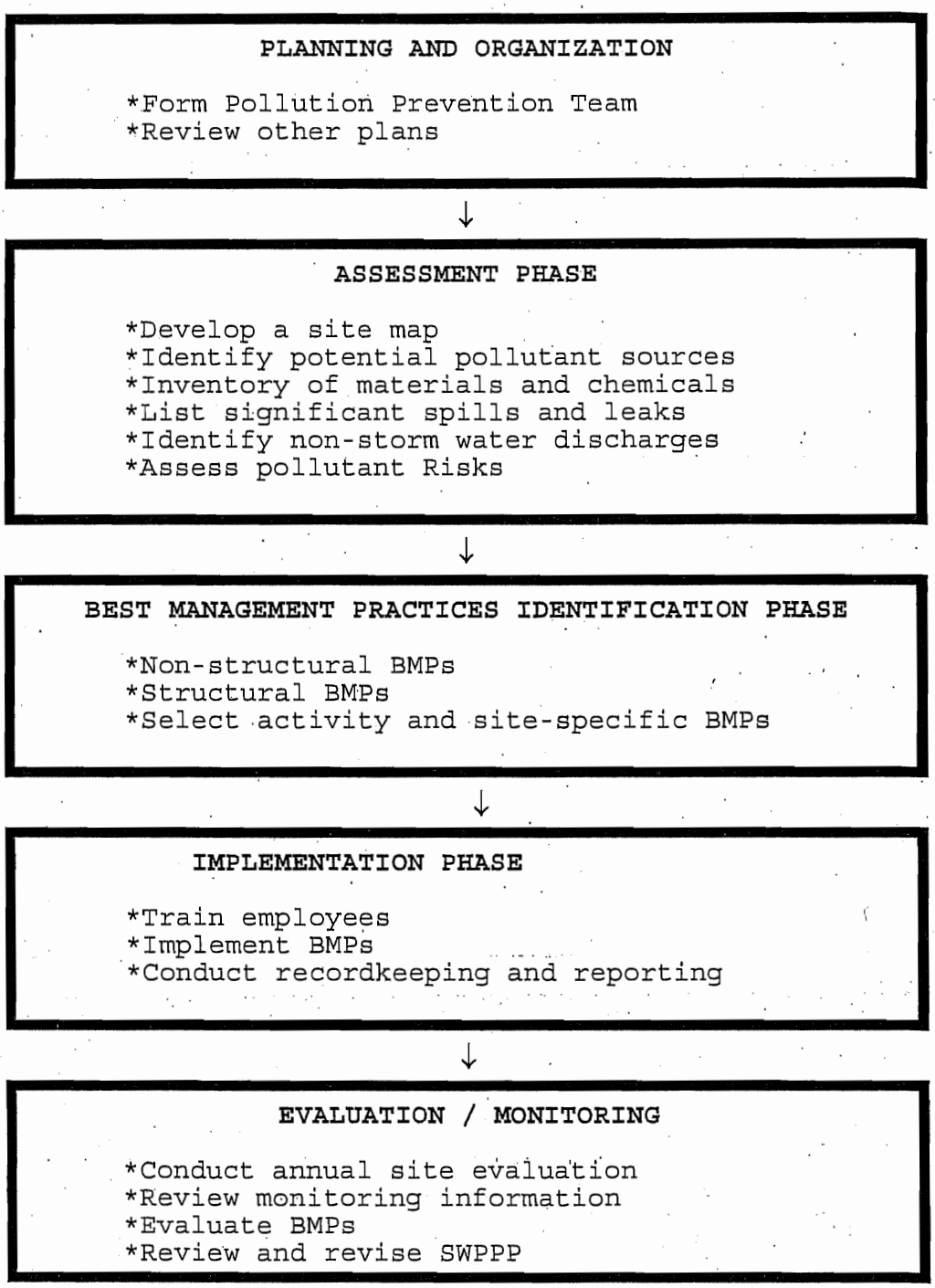
b. *Review Other Requirements and Existing Facility Plans*

The SWPPP may incorporate or reference the appropriate elements of other regulatory requirements. Facility operators should review all local, State, and Federal requirements that impact, complement, or are consistent with the requirements of this General Permit. Facility operators should identify any existing facility plans that contain storm water pollutant control measures or relate to the requirements of this General Permit. As examples, facility operators whose facilities are subject to Federal Spill Prevention Control and Countermeasures' requirements should already have instituted a plan to control spills of certain hazardous materials. Similarly, facility operators whose facilities are subject to air quality related permits and regulations may already have evaluated industrial activities that generate dust or particulates.

4. *Site Map*

The SWPPP shall include a site map. The site map shall be provided on an 8-½ x 11 inch or larger sheet and include notes, legends, and other data as appropriate to ensure that the site map is clear and understandable. If necessary, facility operators may provide the required information on multiple site maps.

TABLE A
FIVE PHASES FOR DEVELOPING AND IMPLEMENTING INDUSTRIAL STORM WATER POLLUTION PREVENTION PLANS



The following information shall be included on the site map:

a. The facility boundaries; the outline of all storm water drainage areas within the facility boundaries; portions of the drainage area impacted by run-on from surrounding areas; and direction of flow of each drainage area, on-site surface water bodies, and areas of soil erosion. The map shall also identify nearby water bodies (such as rivers, lakes, and ponds) and municipal storm drain inlets

where the facility's storm water discharges and authorized non-storm water discharges may be received.

b. The location of the storm water collection and conveyance system, associated points of discharge, and direction of flow. Include any structural control measures that affect storm water discharges, authorized non-storm water discharges, and run-on. Examples of structural control measures are catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers, etc.

c. An outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures.

d. Locations where materials are directly exposed to precipitation and the locations where significant spills or leaks identified in Section A.6.a.iv. below have occurred.

e. Areas of industrial activity. This shall include the locations of all storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity which are potential pollutant sources.

5. *List of Significant Materials*

The SWPPP shall include a list of significant materials handled and stored at the site. For each material on the list, describe the locations where the material is being stored, received, shipped, and handled, as well as the typical quantities and frequency. Materials shall include raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials.

6. *Description of Potential Pollutant Sources*

a. The SWPPP shall include a narrative description of the facility's industrial activities, as identified in Section A.4.e above, associated potential pollutant sources, and potential pollutants that could be discharged in storm water discharges or authorized non-storm water discharges. At a minimum, the following items related to a facility's industrial activities shall be considered:

i. Industrial Processes

Describe each industrial process, the type, characteristics, and quantity of significant materials used in or resulting from the process, and a description of the manufacturing, cleaning, rinsing, recycling, disposal, or other activities related to the process. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

ii. Material Handling and Storage Areas

Describe each handling and storage area, type, characteristics, and quantity of significant materials handled or stored, description of the shipping, receiving, and loading procedures, and the spill or leak prevention and response procedures. Where applicable, areas protected by containment structures and the corresponding containment capacity shall be described.

iii. Dust and Particulate Generating Activities

Describe all industrial activities that generate dust or particulates that may be deposited within the facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle.

iv. Significant Spills and Leaks

Describe materials that have spilled or leaked in significant quantities in storm water discharges or non-storm water discharges since April 17, 1994. Include toxic chemicals (listed in 40 CFR, Part 302) that have been discharged to storm water as reported on U.S. Environmental Protection Agency (U.S. EPA) Form R, and oil and hazardous substances in excess of reportable quantities (see 40 Code of Federal Regulations [CFR], Parts 110, 117, and 302).

The description shall include the type, characteristics, and approximate quantity of the material spilled or leaked, the cleanup or remedial actions that have occurred or are planned, the approximate remaining quantity of materials that may be exposed to storm water or non-storm water

discharges, and the preventative measures taken to ensure spill or leaks do not reoccur. Such list shall be updated as appropriate during the term of this General Permit.

v. Non-Storm Water Discharges

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse water, wash water, etc.). Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

vi. Soil Erosion

Describe the facility locations where soil erosion may occur as a result of industrial activity, storm water discharges associated with industrial activity, or authorized non-storm water discharges.

b. The SWPPP shall include a summary of all areas of industrial activities, potential pollutant sources, and potential pollutants. This information should be summarized similar to Table B. The last column of Table B, "Control Practices", should be completed in accordance with Section A.8. below.

7. *Assessment of Potential Pollutant Sources*

a. The SWPPP shall include a narrative assessment of all industrial activities and potential pollutant sources as described in A.6. above to determine:

i. Which areas of the facility are likely sources of

pollutants in storm water discharges and authorized non-storm water discharges, and

ii. Which pollutants are likely to be present in storm water discharges and authorized non-storm water discharges. Facility operators shall consider and evaluate various factors when performing this assessment such as current storm water BMPs; quantities of significant materials handled, produced, stored, or disposed of; likelihood of exposure to storm water or authorized non-storm water discharges; history of spill or leaks; and run-on from outside sources.

b. Facility operators shall summarize the areas of the facility that are likely sources of pollutants and the corresponding pollutants that are likely to be present in storm water discharges and authorized non-storm water discharges.

Facility operators are required to develop and implement additional BMPs as appropriate and necessary to prevent or reduce pollutants associated with each pollutant source. The BMPs will be narratively described in Section 8 below.

8. *Storm Water Best Management Practices*

The SWPPP shall include a narrative description of the storm water BMPs to be implemented at the facility for each potential pollutant and its source identified in the site assessment phase (Sections A.6. and 7. above). The BMPs shall be developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Each pollutant and its source may require one or more BMPs. Some BMPs may be implemented for multiple pollutants and their sources, while other BMPs will be implemented for a very specific pollutant and its source.

TABLE B
EXAMPLE
ASSESSMENT OF POTENTIAL POLLUTION SOURCES AND CORRESPONDING BEST MANAGEMENT PRACTICES
SUMMARY

Area	Activity	Pollutant Source	Pollutant	Best Management Practices
Vehicle & Equipment Fueling	Fueling	Spills and leaks during delivery	fuel oil	- Use spill and overflow protection - Minimize run-on of storm water into the fueling area - Cover fueling area - Use dry cleanup methods rather than hosing down area - Implement proper spill prevention control program - Implement adequate preventative maintenance program to preventive tank and line leaks - Inspect fueling areas regularly to detect problems before they occur - Train employees on proper fueling, cleanup, and spill response techniques.
		Spills caused by topping off fuel tanks	fuel oil	
		Hosing or washing down fuel area	fuel oil	
		Leaking storage tanks	fuel oil	
		Rainfall running off fueling area, and rainfall running onto and off fueling area	fuel oil	

The description of the BMPs shall identify the BMPs as (1) existing BMPs, (2) existing BMPs to be revised and implemented, or (3) new BMPs to be implemented. The description shall also include a discussion on the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. The SWPPP shall provide a summary of all BMPs implemented for each pollutant source. This information should be summarized similar to Table B.

Facility operators shall consider the following BMPs for implementation at the facility:

a. Non-Structural BMPs

Non-structural BMPs generally consist of processes, prohibitions, procedures, schedule of activities, etc., that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures. Facility operators should consider all possible non-structural BMPs options before considering additional structural BMPs (see Section A.8.b. below). Below is a list of non-structural BMPs that should be considered:

i. Good Housekeeping

Good housekeeping generally consist of practical procedures to maintain a clean and orderly facility.

ii. Preventive Maintenance

Preventive maintenance includes the regular inspection and maintenance of structural storm water controls (catch basins, oil/water separators, etc.) as well as other facility equipment and systems.

iii. Spill Response

This includes spill clean-up procedures and necessary clean-up equipment based upon the quantities and locations of significant materials that may spill or leak.

iv. Material Handling and Storage

This includes all procedures to minimize the potential for spills and leaks and to minimize exposure of significant materials to storm water and authorized non-storm water discharges.

v. Employee Training

This includes training of personnel who are responsible for (1) implementing activities identified in the SWPPP, (2) conducting inspections, sampling, and visual observations, and (3) managing storm water. Training should address topics such as spill response, good housekeeping, and material handling procedures, and actions necessary to implement all BMPs identified in the SWPPP. The SWPPP shall identify periodic dates for such training. Records shall be maintained of all training sessions held.

vi. Waste Handling/Recycling

This includes the procedures or processes to handle, store, or dispose of waste materials or recyclable materials.

vii. Recordkeeping and Internal Reporting

This includes the procedures to ensure that all records of inspections, spills, maintenance activities, corrective actions, visual observations, etc., are developed, retained, and provided, as necessary, to the appropriate facility personnel.

viii. Erosion Control and Site Stabilization

This includes a description of all sediment and erosion control activities. This may include the planting and maintenance of vegetation, diversion of run-on and runoff, placement of sandbags, silt screens, or other sediment control devices, etc.

ix. Inspections

This includes, in addition to the preventative maintenance inspections identified above, an inspection schedule of all potential pollutant sources. Tracking and follow-up procedures shall be described to ensure adequate corrective actions are taken and SWPPPs are made.

x. Quality Assurance

This includes the procedures to ensure that all elements of the SWPPP and Monitoring Program are adequately conducted.

b. Structural BMPs

Where non-structural BMPs as identified in Section A.8.a. above are not effective, structural BMPs shall be considered. Structural BMPs generally consist of structural devices that reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Below is a list of structural BMPs that should be considered:

i. Overhead Coverage

This includes structures that provide horizontal coverage of materials, chemicals, and pollutant sources from contact with storm water and authorized non-storm water discharges.

ii. Retention Ponds

This includes basins, ponds, surface impoundments, bermed areas, etc. that do not allow storm water to discharge from the facility.

iii. Control Devices

This includes berms or other devices that channel or route run-on and runoff away from pollutant sources.

iv. Secondary Containment Structures

This generally includes containment structures around storage tanks and other areas for the purpose of collecting any leaks or spills.

v. Treatment

This includes inlet controls, infiltration devices, oil/water separators, detention ponds, vegetative swales, etc. that reduce the pollutants in storm water discharges and authorized non-storm water discharges.

9. Annual Comprehensive Site Compliance Evaluation

The facility operator shall conduct one comprehensive site compliance evaluation (evaluation) in each reporting period (July 1-June 30). Evaluations shall be conducted within 8-16 months of each other. The SWPPP shall be revised, as appropriate, and the revisions implemented within 90 days of the evaluation. Evaluations shall include the following:

a. A review of all visual observation records, inspection records, and sampling and analysis results.

b. A visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system.

c. A review and evaluation of all BMPs (both structural and non-structural) to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed. A visual inspection of equipment needed to implement the SWPPP, such as spill response equipment, shall be included.

d. An evaluation report that includes, (i) identification of personnel performing the evaluation, (ii) the date(s) of the evaluation, (iii) necessary SWPPP revisions, (iv) schedule, as required in Section A.10.e, for implementing SWPPP revisions, (v) any incidents of non-compliance and the corrective actions taken, and (vi) a certification that the facility operator is in compliance with this General Permit. If the above certification cannot be provided, explain in the evaluation report why the facility operator is not in compliance with this General Permit. The evaluation report shall be submitted as part of the annual report, retained for at least five years, and signed and certified in accordance with Standard Provisions 9. and 10. of Section C. of this General Permit.

10. *SWPPP General Requirements*

a. The SWPPP shall be retained on site and made available upon request of a representative of the Regional Water Board and/or local storm water management agency (local agency) which receives the storm water discharges.

b. The Regional Water Board and/or local agency may notify the facility operator when the SWPPP does not meet one or more of the minimum requirements of this Section. As requested by the Regional Water Board and/or local agency, the facility operator shall submit an SWPPP revision and implementation schedule that meets the minimum requirements of this section to the Regional Water Board and/or local agency that requested the SWPPP revisions. Within 14 days after implementing the required SWPPP revisions, the facility operator shall provide written certification to the Regional Water Board and/or local agency that the revisions have been implemented.

c. The SWPPP shall be revised, as appropriate, and implemented prior to changes in industrial activities which (i) may significantly increase the quantities of pollutants in storm water discharge, (ii) cause a new area of industrial activity at the facility to be exposed to storm water, or (iii) begin an industrial activity which would introduce a new pollutant source at the facility.

d. Other than as provided in Provisions B.11, B.12, and E.2 of the General Permit, the SWPPP shall be revised and implemented in a timely manner, but in no case more than 90 days after a facility operator determines that the SWPPP is in violation of any requirement(s) of this General Permit.

e. When any part of the SWPPP is infeasible to implement by the deadlines specified in Provision E.2 or Sections A.1, A.9, A.10.c, and A.10.d of this General Permit due to proposed significant structural changes, the facility operator shall submit a report to the Regional Water Board prior to the applicable deadline that (i) describes the portion of the SWPPP that is infeasible to implement by the deadline, (ii) provides justification for a time extension, (iii) provides a schedule for completing and implementing that portion of the SWPPP, and (iv) describes the BMPs that will be implemented in the interim period to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges. Such reports are subject to Regional Water Board approval and/or modifications. Facility operators shall provide written notification to the Regional Water Board within 14 days after the SWPPP revisions are implemented.

f. The SWPPP shall be provided, upon request, to the Regional Water Board. The SWPPP is considered a report that shall be available to the public by the Regional Water Board under Section 308(b) of the Clean Water Act.

SECTION B. MONITORING PROGRAM AND REPORTING REQUIREMENTS

1. *Implementation Schedule*

Each facility operator shall develop a written monitoring program for each facility covered by this General Permit in accordance with the following schedule:

a. Facility operators beginning industrial activities before October 1, 1992 shall develop and implement a monitoring program no later than October 1, 1992. Facility operators beginning operations after October 1, 1992 shall develop and implement a monitoring program when the industrial activities begin.

b. Facility operators that submitted a Notice Of Intent (NOI) pursuant to State Water Resources Control Board (State Water Board) Order No. 91-013-DWQ (as amended by Order No. 92-12) or San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Order No. 92-11 (as amended by Order No. 92-116), shall continue to implement their existing monitoring program and implement any necessary revisions to their monitoring program in a timely manner, but in no case later than August 1, 1997. These facility operators may use the monitoring results conducted in accordance with those expired general permits to satisfy the pollutant/parameter reduction requirements in Section B.5.c., Sampling and Analysis Exemptions and Reduction certifications in Section B.12., and Group Monitoring Sampling credits in B.15.k. For facilities beginning industrial activities after the adoption of this General Permit, the monitoring program shall be developed and implemented when the facility begins the industrial activities.

2. *Objectives*

The objectives of the monitoring program are to:

a. Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit.

b. Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges are evaluated and revised to meet changing conditions.

c. Aid in the implementation and revision of the SWPPP required by Section A of this General Permit.

d. Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water

discharges and authorized non-storm water discharges. Much of the information necessary to develop the monitoring program, such as discharge locations, drainage areas, pollutant sources, etc., should be found in the Storm Water Pollution Prevention Plan (SWPPP). The facility's monitoring program shall be a written, site-specific document that shall be revised whenever appropriate and be readily available for review by employees or Regional Water Board inspectors.

3. *Non-storm Water Discharge Visual Observations*

a. Facility operators shall visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges;

b. Facility operators shall visually observe the facility's authorized non-storm water discharges and their sources;

c. The visual observations required above shall occur quarterly, during daylight hours, on days with no storm water discharges, and during scheduled facility operating hours[1]. Quarterly visual observations shall be conducted in each of the following periods: January-March, April-June, July-September, and October-December. Facility operators shall conduct quarterly visual observations within 6-18 weeks of each other.

d. Visual observations shall document the presence of any discolorations, stains, odors, floating materials, etc., as well as the source of any discharge. Records shall be maintained of the visual observation dates, locations observed, observations, and response taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

4. *Storm Water Discharge Visual Observations*

a. With the exception of those facilities described in Section B.4.d. below, facility operators shall visually

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[1] "Scheduled facility operating hours" are the time periods when the facility is staffed to conduct any function related to industrial activity, but excluding time periods where only routine maintenance, emergency response, security, and/or janitorial services are performed.

observe storm water discharges from one storm event per month during the wet season (October 1-May 30). These visual observations shall occur during the first hour of discharge and at all discharge locations. Visual observations of stored or contained storm water shall occur at the time of release.

b. Visual observations are only required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days[2] without storm water discharges and that occur during scheduled facility operating hours.

c. Visual observations shall document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor, and source of any pollutants. Records shall be maintained of observation dates, locations observed, observations, and response taken to reduce or prevent pollutants in storm water discharges. The SWPPP shall be revised, as necessary, and implemented in accordance with Section A of this General Permit.

d. Feedlots (subject to Federal effluent limitations guidelines in 40 Code of Federal Regulations [CFR] Part 412) that are in compliance with Sections 2560 to 2565, Article 6, Chapter 15, Title 23, California Code of Regulations, and facility operators with storm water containment facilities shall conduct monthly inspections of their containment areas to detect leaks and ensure maintenance of adequate freeboard. Records shall be maintained of the inspection dates, observations, and any response taken to eliminate leaks and to maintain adequate freeboard.

5. *Sampling and Analysis*

a. Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled. Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.

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[2] Three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm water discharges occur during the three (3) working days and the non-working days.

b. Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least (3) three working days without storm water discharge.

c. The samples shall be analyzed for:

i. Total suspended solids (TSS) pH, specific conductance, and total organic carbon (TOC). Oil and grease (O&G) may be substituted for TOC; and

ii. Toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. If these pollutants are not detected in significant quantities after two consecutive sampling events, the facility operator may eliminate the pollutant from future sample analysis until the pollutant is likely to be present again; and

iii. Other analytical parameters as listed in Table D (located at the end of this Section). These parameters are dependent on the facility's standard industrial classification (SIC) code. Facility operators are not required to analyze a parameter listed in Table D when the parameter is not already required to be analyzed pursuant to Section B.5.c.i. and ii. or B.6 of this General Permit, and either of the two following conditions are met: (1) the parameter has not been detected in significant quantities from the last two consecutive sampling events, or (2) the parameter is not likely to be present in storm water discharges and authorized non-storm water discharges in significant quantities based upon the facility operator's evaluation of the facilities industrial activities, potential pollutant sources, and SWPPP. Facility operators that do not analyze for the applicable Table D parameters shall certify in the Annual Report that the above conditions have been satisfied.

iv. Other parameters as required by the Regional Water Board.

6. *Facilities Subject to Federal Storm Water Effluent Limitation Guidelines*

Facility operators with facilities subject to Federal storm water effluent limitation guidelines, in addition to the requirements in Section B.5. above, must complete the following:

a. Collect and analyze two samples for any pollutant specified in the appropriate category of 40 CFR Subchapter N. The sampling and analysis exemptions and reductions described in Section B.12. of this General Permit do not apply to these pollutants.

b. Estimate or calculate the volume of storm water discharges from each drainage area;

c. Estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 CFR Subchapter N; and

d. Identify the individual(s) performing the estimates or calculations in accordance with Subsections b. and c. above.

7. *Sample Storm Water Discharge Locations*

a. Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event.

b. If the facility's storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event.

c. If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event.

d. Facility operators that determine that the industrial activities and BMPs within two or more drainage areas are substantially identical may either (i) collect samples from a reduced number of substantially identical drainage areas, or (ii) collect samples from each substantially identical drainage area and analyze a combined sample from each substantially identical drainage area. Facility operators must document such a determination in the annual report.

8. *Visual Observation and Sample Collection Exceptions*

Facility operators are required to be prepared to collect samples and conduct visual observations at the beginning of the wet season (October 1) and throughout the wet season

until the minimum requirements of Sections B.4. and B.5. are completed with the following exceptions:

a. A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual Report why the sampling or visual observations could not be conducted.

b. A facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied. The facility operator shall include an explanation in the Annual Report why the visual observations and sample collection should be conducted after the first hour of discharge.

9. *Alternative Monitoring Procedures*

Facility operators may propose an alternative monitoring program that meets Section B.2 monitoring program objectives for approval by the Regional Water Board. Facility operators shall continue to comply with the monitoring requirements of this Section and may not implement an alternative monitoring plan until the alternative monitoring plan is approved by the Regional Water Board. Alternative monitoring plans are subject to modification by the Regional Water Boards.

10. *Monitoring Methods*

a. Facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of Section B.2. This shall include:

i. Rationale and description of the visual observation methods, location, and frequency.

ii. Rationale and description of the sampling methods, location, and frequency; and

iii. Identification of the analytical methods and corresponding method detection limits used to detect pollutants in storm water discharges. This shall include justification that the method detection limits are adequate to satisfy the objectives of the monitoring program.

b. All sampling and sample preservation shall be in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater" (American Public Health Association). All monitoring instruments and equipment (including a facility operator's own field instruments for measuring pH and Electro Conductivity) shall be calibrated and maintained in accordance with manufacturers' specifications to ensure accurate measurements. All laboratory analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this General Permit or by the Regional Water Board. All metals shall be reported as total metals. With the exception of analysis conducted by facility operators, all laboratory analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Facility operators may conduct their own sample analyses if the facility operator has sufficient capability (qualified employees, laboratory equipment, etc.) to adequately perform the test procedures.

11. *Inactive Mining Operations*
Inactive mining operations are defined in Attachment 1 of this General Permit. Where comprehensive site compliance evaluations, non-storm water discharge visual observations, storm water discharge visual observations, and storm water sampling are impracticable, facility operators of inactive mining operations may instead obtain certification once every three years by a Registered Professional Engineer that an SWPPP has been prepared for the facility and is being implemented in accordance with the requirements of this General Permit. By means of these certifications, the Registered Professional Engineer having examined the facility and being familiar with the provisions of this General Permit shall attest that the SWPPP has been prepared in accordance with good engineering practices. Facility operators of mining operations who cannot obtain a certification because of noncompliance must notify the appropriate Regional Water Board and, upon request, the local agency which receives the storm water discharge.

12. *Sampling and Analysis* Exemptions and Reductions

A facility operator who qualifies for sampling and analysis exemptions, as described below in Section B.12.a.i., or who qualifies for reduced sampling and analysis, as described below in Section B.12.b., must submit the appropriate certifications and required documentation to the Regional Water Boards prior to the wet season (October 1) and recertify as part of the Annual Report submittal. A facility operator that qualifies for either the Regional Water Board or local agency certification programs, as described below in Section B.12.a.ii. and iii., shall submit certification and documentation in accordance with the requirements of those programs. Facility operators who provide certifications in accordance with this Section are still required to comply with all other monitoring program and reporting requirements. Facility operators shall prepare and submit their certifications using forms and instructions provided by the State Water Board, Regional Water Board, or local agency or shall submit their information on a form that contains equivalent information. Facility operators whose facility no longer meets the certification conditions must notify the Regional Water Boards (and local agency) within 30 days and immediately comply with the Section B.5. sampling and analysis requirements. Should a Regional Water Board (or local agency) determine that a certification does not meet the conditions set forth below, facility operators must immediately comply with the Section B.5. sampling and analysis requirements.

a. Sampling and Analysis Exemptions

A facility operator is not required to collect and analyze samples in accordance with Section B.5. if the facility operator meets all of the conditions of one of the following certification programs:

i. No Exposure Certification (NEC)

This exemption is designed primarily for those facilities where all industrial activities are conducted inside buildings and where all materials stored and handled are not exposed to storm water. To qualify for this exemption, facility operators must certify that their facilities meet all of the following conditions:

(1) All prohibited non-storm water discharges have been eliminated or otherwise permitted.

(2) All authorized non-storm water discharges have been identified and addressed in the SWPPP.

(3) All areas of past exposure have been inspected and cleaned, as appropriate.

(4) All significant materials related to industrial activity (including waste materials) are not exposed to storm water or authorized non-storm water discharges.

(5) All industrial activities and industrial equipment are not exposed to storm water or authorized non-storm water discharges.

(6) There is no exposure of storm water to significant materials associated with industrial activity through other direct or indirect pathways such as from industrial activities that generate dust and particulates.

(7) There is periodic re-evaluation of the facility to ensure conditions (1), (2), (4), (5), and (6) above are continuously met. At a minimum, re-evaluation shall be conducted once a year.

ii. Regional Water Board Certification Programs

The Regional Water Board may grant an exemption to the Section B.5. Sampling and Analysis Requirements if it determines a facility operator has met the conditions set forth in a Regional Water Board certification program. Regional Water Board certification programs may include conditions to (1) exempt facility operators whose facilities infrequently discharge storm water to waters of the United States, and (2) exempt facility operators

that demonstrate compliance with the terms and conditions of this General Permit.

iii. Local Agency Certifications

A local agency may develop a local agency certification program. Such programs must be approved by the Regional Water Board. An approved local agency program may either grant an exemption

from the Section B.5. Sampling and Analysis Requirements or reduce the frequency of sampling if it determines that a facility operator has demonstrated compliance with the terms and conditions of this General Permit.

b. Sampling and Analysis Reduction

i. A facility operator may reduce the number of sampling events required to be sampled for the remaining term of this General Permit if the facility operator provides certification that the following conditions have been met:

(1) The facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;

(2) All prohibited non-storm water discharges have been eliminated or otherwise permitted;

(3) The facility operator demonstrates compliance with the terms and conditions of the General Permit for the previous two years (i.e., completed Annual Reports, performed visual observations, implemented appropriate BMPs, etc.);

(4) The facility operator demonstrates that the facility's storm water discharges and authorized non-storm water discharges do not contain significant quantities of pollutants; and

(5) Conditions (2), (3), and (4) above are expected to remain in effect for a minimum of one year after filing the certification.

ii. Unless otherwise instructed by the Regional Water Board, facility operators shall collect and analyze samples from two additional storm events (or one additional storm event when certification filed for the wet season beginning October 1, 2001) during the remaining term of this General Permit in accordance with Table C below. Facility operators shall collect samples of the first

storm event of the wet season. Facility operators that do not collect samples from the first storm event of the wet season shall collect samples from another storm event during the same wet season. Facility operators that do not collect a sample in a required wet season shall collect the sample from another storm event in the next wet season. Facility operators shall explain in the Annual Report why the first storm event of a wet season was not sampled or a sample was not taken from any storm event in accordance with the Table C schedule.

Table C
REDUCED MONITORING SAMPLING SCHEDULE

Facility Operator Filing Sampling Reduction Certification By	Samples Shall be Collected and Analyzed in These Wet Seasons	
	Sample 1	Sample 2
Oct. 1, 1997	Oct. 1, 1997-May 31, 1998	Oct. 1, 1999-May 31, 2000
Oct. 1, 1998	Oct. 1, 1998-May 31, 1999	Oct. 1, 2000-May 31, 2001
Oct. 1, 1999	Oct. 1, 1999-May 31, 2000	Oct. 1, 2001-May 31, 2002
Oct. 1, 2000	Oct. 1, 2000-May 31, 2001	Oct. 1, 2001-May 31, 2002
Oct. 1, 2001	Oct. 1, 2001-May 31, 2002	-

13. *Records*

Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years. These records shall include:

a. The date, place, and time of site inspections, sampling, visual observations, and/or measurements;

b. The individual(s) who performed the site inspections, sampling, visual observations, and or measurements;

c. Flow measurements or estimates (if required by Section B.6);

d. The date and approximate time of analyses;

e. The individual(s) who performed the analyses;

f. Analytical results, method detection limits, and the analytical techniques or methods used;

g. Quality assurance/quality control records and results;

h. Non-storm water discharge inspections and visual observations and storm water discharge visual observation records (see Sections B.3. and 4.);

i. Visual observation and sample collection exception records (see Section B.5.a, 7.d, 8, and 12.b.ii.);

j. All calibration and maintenance records of on-site instruments used;

k. All Sampling and Analysis Exemption and Reduction certifications and supporting documentation (see Section B.12);

l. The records of any corrective actions and follow-up activities that resulted from the visual observations.

14. *Annual Report*

All facility operators shall submit an Annual Report by July 1 of each year to the Executive Officer of the Regional Water Board responsible for the area in which the facility is located and to the local agency (if requested).

The report shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report required in Section A.9., an explanation of why a facility did not implement any activities required by the General Permit (if not already included in the Evaluation Report), and records specified in Section B.13.i. The method detection limit of each analytical parameter shall be included. Analytical results that are less than the method detection limit shall be reported as "less than the method detection limit." The Annual Report shall be signed and certified in accordance with Standard Provisions 9. and 10. of Section C of this General Permit. Facility operators shall prepare and submit their Annual Reports using the annual report forms provided by the State Water Board or Regional Water Board or shall submit their information on a form that contains equivalent information.

15. *Group Monitoring*

Facility operators may participate in group monitoring as described below. A facility operator that participates in group monitoring shall develop and implement a written site-specific SWPPP and monitoring program in accordance with the General Permit and must satisfy any group monitoring requirements. Group monitoring shall be subject to the following requirements:

a. A group monitoring plan (GMP) shall be developed and implemented by a group leader representing a group of

similar facility operators regulated by this General Permit or by a local agency which holds an NPDES permit (local agency permittee) for a municipal separate storm sewer system. GMPs with participants that discharge storm water within the boundaries of a single Regional Water Board shall be approved by that Regional Water Board. GMPs with participants that discharge storm water within the boundaries of multiple Regional Water Boards shall be approved by the State Water Board. The State Water Board and/or Regional Water Board(s) may disapprove a facility's participation in a GMP or require a GMP participant to conduct additional monitoring activities.

b. Each GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5. over the five-year period of this General Permit. The two storm event minimum applies to new and existing members. The group leader or local agency permittee shall schedule sampling to meet the following conditions: (i) to evenly distribute the sample collection over the five-year term of this General Permit, and (ii) to collect samples from the two storm events at each participant's facility in different and non-consecutive wet seasons. New participants who join in Years 4 and 5 of this General Permit are not subject to Condition (ii) above. Group leaders shall explain in the annual Group Evaluation Report why any scheduled samples were not collected and reschedule the sampling so that all required samples are collected during the term of this General Permit.

c. The group leader or local agency permittee must have the appropriate resources to develop and implement the GMP. The group leader or local agency permittee must also have the authority to terminate any participant who is not complying with this General Permit and the GMP.

d. The group leader or local agency permittee is responsible for:

   i. Developing, implementing, and revising the GMP;

   ii. Developing and submitting an annual Group Evaluation Report to the State Water Board and/or Regional Water Board by August 1 of each year that includes:

      (1) An evaluation and summary of all group monitoring data,

      (2) An evaluation of the overall performance of the GMP participants in complying with this General Permit and the GMP,

(3) Recommended baseline and site-specific BMPs that should be considered by each participant based upon Items (1) and (2) above, and

(4) A copy of each evaluation report and recommended BMPs as required in Section B.15.d.v. below.

iii. Recommending appropriate BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges;

iv. Assisting each participant in completing their Annual Comprehensive Site Compliance Evaluation and Annual Report;

v. Conducting a minimum of two on-site inspections of each participant's facility (it is recommended that these inspections be scheduled during the Annual Comprehensive Site Compliance Evaluation) during the term of this General Permit to evaluate the participant's compliance with this General Permit and the GMP, and to recommend any additional BMPs necessary to achieve compliance with this General Permit. Participants that join in Years 4 and 5 shall be scheduled for one evaluation. A copy of the evaluation and recommended BMPs shall be provided to the participants;

vi. Submitting a GMP (or revisions, as necessary), to the appropriate Regional Water Board(s) and State Water Board no later than September 1, 1997 (or August 1 in subsequent years). Once approved, a group leader or local agency permittee shall submit a letter of intent by August 1 of each year to continue the approved GMP. The letter of intent must include a roster of participants, participant's Waste Discharge Identification number (WDID#), updated sampling schedules, and any other revisions to the GMP;

vii. Revising the GMP as instructed by the Regional Water Board or the State Water Board; and

viii. Providing the State Water Board and/or Regional Water Board with quarterly updates of any new or deleted participants and corresponding changes in the sampling and inspection schedule.

e. The GMP shall:

i. Identify the participants of the GMP by name, location, and WDID number;

ii. Include a narrative description summarizing the industrial activities of participants of the GMP and explain why the participants, as a whole, have sufficiently similar industrial activities and BMPs to be covered by a group monitoring plan;

iii. Include a list of typical potential pollutant sources associated with the group participant's facilities and recommended baseline BMPs to prevent or reduce pollutants associated with industrial activity in the storm water discharges and authorized non-storm water discharges;

iv. Provide a five-year sampling and inspection schedule in accordance with Subsections b. and d.v. above.

v. Identify the pollutants associated with industrial activity that shall be analyzed at each participant's facility in accordance with Section B.5. The selection of these pollutants shall be based upon an assessment of each facility's potential pollutant sources and likelihood that pollutants associated with industrial activity will be present in storm water discharges and authorized non-storm water discharges in significant quantities.

f. Sampling and analysis shall be conducted in accordance with the applicable requirements of this Section.

g. Unless otherwise instructed by the Regional Water Board or the State Water Board Executive Director, the GMPs shall be implemented at the beginning of the wet season (October 1).

h. All participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section including the submittal of an Annual Report by July 1 of each year to the appropriate Regional Water Board.

i. GMP participants subject to Federal storm water effluent limitation guidelines must perform the monitoring described in Section B.6. and submit the results of the monitoring to the appropriate Regional Water Board within the facility operator's Annual Report.

j. GMPs and Group Evaluation Reports should be prepared in accordance with State Water Board (or Regional Water Board) guidance.

k. GMP participants may receive Sampling and Analysis Reduction sampling credit in accordance with the following conditions:

i. Current or prior participants (group participants) of approved GMPs, who have not collected and analyzed samples from six storm events as required in Section B.7.b.i.(1), may substitute credit earned through participation in a GMP for up to four of the six required storm events. Credits for GMP participation shall be calculated as follows:

(1) Credit may only be earned in years of participation where the GMP participant was not scheduled to sample and the GMP was approved.

(2) One credit will be earned for each year of valid GMP participation.

(3) One additional credit may be earned for each year the overall GMP sample collection performance is greater than 75 percent.

ii. GMP participants substituting credit as calculated above shall provide proof of GMP participation and certification that all the conditions in Section B.12.b.i. have been met. GMP participants substituting credit in accordance with Section B.15.k.i.(3) shall also provide GMP sample collection performance documentation.

iii. GMP participants that qualify for Sampling and Analysis Reduction and have already sampled a storm event after October 1, 1997 shall only be required to sample one additional storm event during the remainder of this General Permit in accordance with the "Sample 2" schedule (or "Sample 1" schedule when certification filed for the wet season beginning October 1, 2001) in Table C of this Section.

n. Group leaders shall furnish, within 60 days of receiving a request from the State Water Board or Regional Water Board, any GMP information and documentation necessary to verify the Section B.15.k. sampling credits. Group leaders may also provide this information and documentation to the group participants.

16. *Watershed Monitoring Option*

Regional Water Boards may approve proposals to substitute watershed monitoring for some or all of the requirements of this Section if the Regional Water Board finds that the watershed monitoring will provide substantially similar monitoring information in evaluating facility operator compliance with the requirements of this General Permit.

TABLE D
ADDITIONAL ANALYTICAL PARAMETERS

Subsector	SIC	Activity Represented	Parameters
SECTOR A. TIMBER PRODUCTS			
A1	2421	General Sawmills and Planing Mills	**COD;TSS;Zn**
A2	2491	Wood Preserving	**As;Cu**
A3	2411	Log Storage and Handling	**TSS**
A4	2426	Hardwood Dimension and Flooring Mills	**COD;TSS**
A4	2429	Special Product Sawmills, Not Elsewhere Classified	**COD;TSS**
A4	243X	Millwork, Veneer, Plywood, and Structural Wood	**COD;TSS**
A4	(except 2434--Wood Kitchen Cabinet Manufacturers)		
A4	244X	Wood Containers	**COD;TSS**
A4	245X	Wood Buildings and Mobile Homes	**COD;TSS**
A4	2493	Reconstituted Wood Products	**COD;TSS**
A4	2499	Wood Products, Not Elsewhere Classified	
SECTOR B. PAPER AND ALLIED PRODUCTS MANUFACTURING			
B1	261X	Pulp Mills	
B2	262X	Paper Mills	
B3	263X	Paperboard Mills	**COD**
B4	265X	Paperboard Containers and Boxes	
B5	267X	Converted Paper and Paperboard Products, Except Containers and Boxes	
SECTOR C. CHEMICAL AND ALLIED PRODUCTS MANUFACTURING			
C1	281X	Industrial Inorganic Chemicals	**Al;Fe;N+N**
C2	282X	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic, and Other Manmade Fibers Except Glass	**Zn**
C3	283X	Drugs	
C4	284X	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations	**N+N;Zn**
C5	285X	Paints, Varnishes, Lacquers, Enamels, and Allied Products	
C6	286X	Industrial Organic Chemicals	
C7	287X	Nitrogenous and Phosphatic Basic Fertilizers, Mixed Fertilizer, Pesticides, and Other Agricultural Chemicals	**Fe;N+N;Pb;Zn;P**
C8	289X	Miscellaneous Chemical Products	
	3952	Inks and Paints, Including China Painting Enamels, India Ink, (limited to list) Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints, and Artist's Watercolors	
SECTOR D. ASPHALT PAVING/ROOFING MATERIALS MANUFACTURERS AND LUBRICANT MANUFACTURERS			
D1	295X	Asphalt Paving and Roofing Materials	**TSS**
D2	2992	Lubricating Oils and Greases	

Parameter Names

Al - Aluminum	Cd - Cadmium	Cu - Copper	Mg - Magnesium	BOD - Biochemical Oxygen Demand
As - Arsenic	CN - Cyanide	Fe - Iron	Ag - Silver	N + N - Nitrate & Nitrite Nitrogen
NH_3- Ammonia	Hg - Mercury	P - Phosphorus	Se - Selenium	Pb - Lead
Zn - Zinc	TSS -Total Suspended Solids	COD - Chemical Oxygen Demand		

Subsector	SIC	Activity Represented	Parameters

SECTOR E. GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM PRODUCT MANUFACTURING			
E1	3211	Flat Glass	
E1	322X	Glass and Glassware, Pressed or Blown	
E1	323X	Glass Products Made of Purchased Glass	
E2	3241	Hydraulic Cement	
E3	325X	Structural Clay Products	Al
E3	326X	Pottery and Related Products	Al
E3	3297	Non-Clay Refractories	Al
E4	327X	Concrete, Gypsum, and Plaster Products (Except Lime) (except 3274).	TSS;Fe
E4	3295	Minerals and Earths, Ground, or Otherwise Treated	TSS;Fe
SECTOR F. PRIMARY METALS			
F1	331X	Steel Works, Blast Furnaces, Rolling & Finishing Mill	Al;Zn
F2	332X	Iron and Steel Foundries	Al;TSS;Cu;Fe;Zn
F3	333X	Primary Smelting and Refining of Nonferrous Metals	
F4	334X	Secondary Smelting and Refining of Nonferrous Metals	
F5	335X	Rolling, Drawing, and Extruding of Nonferrous Metals	Cu;Zn
F6	336X	Nonferrous Foundries (Castings)	Cu;Zn
F7	339X	Miscellaneous Primary Metal Products	
SECTOR G. METAL MINING (ORE MINING AND DRESSING) EXCEPT INACTIVE METAL MINING ACTIVITIES ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
1	101X	Iron Ores	
G2	102X	Copper Ores	TSS;COD;N+N
G3	103X	Lead and Zinc Ores	
G4	104X	Gold and Silver Ores	
G5	106X	Ferroalloy Ores, Except Vanadium	
G6	108X	Metal Mining Services	
G7	109X	Miscellaneous Metal Ores	
SECTOR H. COAL MINES AND COAL MINING-RELATED FACILITIES			
NA	12XX	Coal Mines and Coal Mining-Related Facilities	TSS;Al;Fe
SECTOR I. COAL MINES AND COAL MINING-RELATED FACILITIES			
I1	131X	Crude Petroleum and Natural Gas	
I2	132X	Natural Gas Liquids	
I3	138X	Oil and Gas Field Services	
SECTOR J. MINERAL MINING AND DRESSING EXCEPT INACTIVE MINERAL MINING ACTIVITIES OCCURRING ON FEDERAL LANDS WHERE AN OPERATOR CANNOT BE IDENTIFIED			
J1	141X	Dimension Stone	TSS
J1	142X	Crushed and Broken Stone, Including Rip Rap	TSS
J1	148X	Nonmetallic Minerals, Except Fuels	TSS
J2	144X	Sand and Gravel	TSS;N+N
J3	145X	Clay, Ceramic, and Refractory Materials	
J4	147X	Chemical and Fertilizer Mineral Mining	
J4	149X	Miscellaneous Nonmetallic Minerals, Except Fuels	

Subsector	SIC	Activity Represented	Parameters
SECTOR K. HAZARDOUS WASTE TREATMENT STORAGE OR DISPOSAL FACILITIES			
NA	4953	Hazardous Waste Treatment Storage or Disposal	**NH_3;Mg;COD;As Cd;CN;Pb Hg;Se;Ag**
SECTOR L. LANDFILLS AND LAND APPLICATION SITES			
NA	4953	Landfills and Land Application Sites That Receive or Have Received Industrial Wastes, Except Inactive Landfills or Land Applications Sites Occurring on Federal Lands Where an Operator Cannot be Identified	**TSS;Fe**
SECTOR M. AUTOMOBILE SALVAGE YARDS			
NA	5015	Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale and for Scrap	**TSS;Fe;Pb;Al**
SECTOR N. SCRAP RECYCLING FACILITIES			
NA	5093	Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials	**TSS;Fe;Pb Al;Cu;Zn;COD**
SECTOR O. STEAM ELECTRIC GENERATING FACILITIES			
NA	4911	Steam Electric Power Generating Facilities	**Fe**
SECTOR P. LAND TRANSPORTATION FACILITIES THAT HAVE VEHICLE AND EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
P1	40XX	Railroad Transportation	
P2	41XX	Local and Highway Passenger Transportation	
P3	42XX	Motor Freight Transportation and Warehousing	
P4	43XX	United States Postal Service	
P5	5171	Petroleum Bulk Stations and Terminals	
SECTOR Q. WATER TRANSPORTATION FACILITIES THAT HAVE VEHICLE (VESSEL) & EQUIPMENT MAINTENANCE SHOPS AND/OR EQUIPMENT CLEANING OPERATIONS			
NA	44XX	Water Transportation	**Al;Fe;Pb;Zn**
SECTOR R. SHIP AND BOAT BUILDING OR REPAIRING YARDS			
NA	373X	Ship and Boat Building or Repairing Yards	
SECTOR S. AIR TRANSPORTATION FACILITIES			
NA	45XX	Air Transportation Facilities That Have Vehicle Maintenance Ships, Material Handing Facilities, Equipment Cleaning Operations, or Airport and/or Aircraft Deicing/Anti-icing Operations	**BOD;COD;NH_3;pH**

Subsector	SIC	Activity Represented	Parameters
SECTOR T. TREATMENT WORKS			
NA	4952	Treatment Works Treating Domestic Sewage or Any Other Sewage Sludge or Wastewater Treatment Device or System Used in the Storage, treatment, recycling, or Reclamation of Municipal or Domestic Sewage with a Design Flow of 1.0 MGD or More or Required to Have an Approved Pretreatment Program	
SECTOR U. FOOD AND KINDRED PRODUCTS			
U1	201X	Meat Products	
U2	202X	Dairy Products	
U3	203X	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties	
U4	204X	Grain Mill Products	TSS
U5	205X	Bakery Products	
U6	206X	Sugar and Confectionery Products	
U7	207X	Fats and Oils	BOD;COD;TSS;N+N
U8	208X	Beverages	
U9	209X	Miscellaneous Food Preparations and Kindred Products	
NA	21XX	Tobacco Products	
ECTOR V. TEXTILE MILLS, APPAREL, AND OTHER FABRIC PRODUCT MANUFACTURING			
1	22XX	Textile Mill Products	
V2	23XX	Apparel and Other Finished Products Made From Fabrics and Similar Materials	
SECTOR W. FURNITURE AND FIXTURES			
NA	25XX	Furniture and Fixtures	
NA	2434	Wood Kitchen Cabinets	
SECTOR X. PRINTING AND PUBLISHING			
NA	2732	Book Printing	
NA	2752	Commercial Printing, Lithographic	
NA	2754	Commercial Printing, Gravure	
NA	2759	Commercial Printing, Nor Elsewhere Classified	
NA	2796	Platemaking and Related Services	
SECTOR Y. RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISC. MANUFACTURING INDUSTRIES			
Y1	301X	Tires and Inner Tubes	Zn
Y1	302X	Rubber and Plastics Footwear	Zn
Y1	305X	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting	Zn
Y1	306X	Fabricated Rubber Products, Not Elsewhere Classified	Zn
Y2	308X	Miscellaneous Plastics Products	

Subsector	SIC	Activity Represented	Parameters
Y2	393X	Musical Instruments	
Y2	394X	Dolls, Toys, Games, and Sporting and Athletic Goods	
Y2	395X	Pens, Pencils, and Other Artists' Materials	
Y2	396X	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal	
Y2	399X	Miscellaneous Manufacturing Industries	
SECTOR Z. LEATHER TANNING AND FINISHING			
NA	311X	Leather Tanning and Finishing	
NA	NA	Facilities that Make Fertilizer Solely From Leather Scraps and Leather Dust	
SECTOR AA. FABRICATED METAL PRODUCTS			
AA1	3429	Hardware, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	3441	Fabricated Structural Metal	**Zn;N+N;Fe;Al**
AA1	3442	Metal Doors, Sash, Frames, Molding, and Trim	**Zn;N+N;Fe;Al**
AA1	3443	Fabricated Plate Work (Boiler Shops)	**Zn;N+N;Fe;Al**
AA1	3444	Sheet Metal Work	**Zn;N+N;Fe;Al**
AA1	3451	Screw Machine Products	**Zn;N+N;Fe;Al**
AA1	3452	Bolts, Nuts, Screws, Rivets, and Washers	**Zn;N+N;Fe;Al**
AA1	3462	Iron and Steel Forgings	**Zn;N+N;Fe;A**
AA1	3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	**Zn;N+N;Fe;Al**
AA1	3494	Valves and Pipe Fittings, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	3496	Miscellaneous Fabricated Wire Products	**Zn;N+N;Fe;Al**
AA1	3499	Fabricated Metal Products, Not Elsewhere Classified	**Zn;N+N;Fe;Al**
AA1	391X	Jewelry, Silverware, and Plated Ware	**Zn;N+N;Fe;Al**
AA2	3479	Coating, Engraving, and Allied Services	**Zn;N+N**
SECTOR AB. TRANSPORTATION EQUIPMENT, INDUSTRIAL OR COMMERCIAL MACHINERY			
NA	35XX	Industrial and Commercial Machinery (except 357X Computer and Office Equipment)	
NA	37XX	Transportation Equipment (except 373X Ship and Boat Building and Repairing	
SECTOR AC. ELECTRONIC, ELECTRICAL. PHOTOGRAPHIC, AND OPTICAL GOODS			
NA	36XX	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	
NA	38XX	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
NA	357X	Computer and Office Equipment	

Section C: STANDARD PROVISIONS

1. Duty to Comply

The facility operator must comply with all of the conditions of this General Permit. Any General Permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for (a) enforcement action for (b) General Permit termination, revocation and reissuance, or modification or (c) denial of a General Permit renewal application.

The facility operator shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this General Permit has not yet been modified to incorporate the requirement.

2. General Permit Actions

This General Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the facility operator for a General Permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any General Permit condition.

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this General Permit, this General Permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition, and the facility operator so notified.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a facility operator in an enforcement action that it would have been necessary to halt or reduce the general permitted activity in order to maintain compliance with the conditions of this General Permit.

4. Duty to Mitigate

The facility operator shall take all responsible steps to minimize or prevent any discharge in violation of this General Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The facility operator at all times shall properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the facility operator to achieve compliance with the conditions of this General Permit and with the requirements of storm water pollution prevention plans (SWPPPs). Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance may require the operation of backup or auxiliary facilities or similar systems installed by a facility operator when necessary to achieve compliance with the conditions of this General Permit.

6. Property Rights

This General Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The facility operator shall furnish the Regional Water Quality Control Board (Regional Water Board), State Water Resources Control Board (State Water Board), U.S. Environmental Protection Agency (U.S. EPA), or local storm water management agency, within a reasonable time specified by the agencies, any requested information to determine compliance with this General Permit. The facility operator shall also furnish, upon request, copies of records required to be kept by this General Permit.

8. Inspection and Entry

The facility operator shall allow the Regional Water Board, State Water Board, U.S. EPA, and local storm water management agency, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the facility operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this General Permit;

b. Have access to and copy at reasonable times any records that must be kept under the conditions of this General Permit;

c. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized non-storm water discharge; and

d. Conduct monitoring activities at reasonable times for the purpose of ensuring General Permit compliance.

9. Signatory Requirements

a. All Notices of Intent (NOIs) submitted to the State Water Board shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

b. All reports, certifications, or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency shall be signed by a person described above or by a duly authorized representative. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above and retained as part of the SWPPP.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be attached to the SWPPP prior to submittal of any reports, certifications, or information signed by the authorized representative.

10. Certification

Any person signing documents under Provision 9. above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Reporting Requirements

a. Planned changes: The facility operator shall give advance notice to the Regional Water Board and local storm water management agency of any planned physical alteration or additions to the general permitted facility. Notice is required under this provision only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

b. Anticipated noncompliance: The facility operator will give advance notice to the Regional Water Board and local storm water management agency of any planned changes at the permitted facility which may result in noncompliance with General Permit requirements.

c. Compliance schedules: Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this General Permit shall be submitted no later than 14 days following each scheduled date.

d. Noncompliance reporting: The facility operator shall report any noncompliance at the time monitoring reports are submitted. The written submission shall contain (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3) steps taken or planned to reduce and prevent recurrence of the noncompliance.

12. Oil and Hazardous Substance Liability

Nothing in this General Permit shall be construed to preclude the institution of any legal action or relieve the facility operator from any responsibilities, liabilities, or penalties to which the facility operator is or may be subject under Section 311 of the CWA.

13. Severability

The provisions of this General Permit are severable; and if any provision of this General Permit or the application of any provision of this General Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this General Permit shall not be affected thereby.

14. Reopener Clause

This General Permit may be modified, revoked, and reissued, or terminated for cause due to promulgation of amended regulations, receipt of U.S. EPA guidance concerning regulated activities, judicial decision, or in accordance with 40 CFR 122.62, 122.63, 122.64, and 124.5. This General Permit may be reopened to modify the provisions regarding authorized non-storm water discharges specified in Section D. Special Conditions.

15. Penalties for Violations of General Permit Conditions.

a. Section 309 of the CWA provides significant penalties for any person who violates a General Permit condition

implementing Sections 301, 302, 306, 307 308, 318, or 405 of the CWA, or any General Permit condition or limitation implementing any such section in a General Permit issued under Section 402. Any person who violates any General Permit condition of this General Permit is subject to a civil penalty not to exceed $25,000 per day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA.

b. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties in some cases greater than those under the CWA.

16. Availability

A copy of this General Permit shall be maintained at the facility and be available at all times to the appropriate facility personnel and to Regional Water Board and local agency inspectors.

17. Transfers

This General Permit is not transferable from one facility operator to another facility operator nor may it be transferred from one location to another location. A new facility operator of an existing facility must submit an NOI in accordance with the requirements of this General Permit to be authorized to discharge under this General Permit.

18. Continuation of Expired General Permit

This General Permit continues in force and effect until a new general permit is issued or the State Water Board rescinds the General Permit. Facility operators authorized to discharge under the expiring general permit are required to file an NOI to be covered by the reissued General Permit.

19. Penalties for Falsification of Reports

Section 309(c)(4) of the CWA provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both.

Attachment 1

FACILITIES COVERED BY THIS GENERAL PERMIT

Industrial facilities include Federal, State, municipally owned, and private facilities from the following categories:

1. FACILITIES SUBJECT TO STORM WATER EFFLUENT LIMITATIONS GUIDELINES, NEW SOURCE PERFORMANCE STANDARDS, OR TOXIC POLLUTANT EFFLUENT STANDARDS (40 Code of Federal Regulations (CFR) SUBCHAPTER N). Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443).

2. MANUFACTURING FACILITIES: Standard Industrial Classifications (SICs) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441, and 373.

3. OIL AND GAS/MINING FACILITIES: SICs 10 through 14 including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(l) because of performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for area of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990); oil and gas exploration, production, processing, or treatment operations; or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations. Inactive mining operations are mined sites that are not being actively mined but which have an identifiable facility operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined material; or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: Includes those operating under interim status or a general permit under Subtitle C of the Federal Resource, Conservation, and Recovery Act (RCRA).

5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: Sites that receive or have received industrial waste from any of

the facilities covered by this General Permit, sites subject to regulation under Subtitle D of RCRA, and sites that have accepted wastes from construction activities (construction activities include any clearing, grading, or excavation that results in disturbance of five acres or more).

6. RECYCLING FACILITIES: SICs 5015 and 5093. These codes include metal scrapyards, battery reclaimers, salvage yards, motor vehicle dismantlers and wreckers, and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc.

7. STEAM ELECTRIC POWER GENERATING FACILITIES: Includes any facility that generates steam for electric power through the combustion of coal, oil, wood, etc.

8. TRANSPORTATION FACILITIES: SICs 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity.

9. SEWAGE OR WASTEWATER TREATMENT WORKS: Facilities used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of one million gallons per day or more or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act.

10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE <u>EXPOSED</u> TO STORM WATER: SICs 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225.

Attachment 2

STORM WATER CONTACTS FOR THE STATE AND REGIONAL WATER BOARDS

See Storm Water Contacts at:
http://www.waterboards.ca.gov/stormwtr/contact.html

NOTICE OF INTENT (NOI) INSTRUCTIONS

TO COMPLY WITH STATE WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER NO. 97-03-DWQ NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT NO. CAS000001

Who Must Submit

The facility operator must submit an NOI for each industrial facility that is required by U.S. Environmental Protection Agency (U.S.EPA) regulations to obtain a storm water permit. The required industrial facilities are listed in Attachment 1 of the General Permit and are also listed in 40 Code of Federal Regulations Section 122.26(b)(14).

The facility operator is typically the owner of the business or operation where the industrial activities requiring a storm water permit occur. The facility operator is responsible for all permit related activities at the facility.

Where operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing an NOI and complying with this General Permit. Landowners may also file an NOI for a facility if the landowner, rather than the facility operator, is responsible for compliance with this General Permit.

How and Where to Apply

The completed NOI form, a site map, and appropriate fee must be mailed to the State Water Resources Control Board (State Water Board) at the following address:

State Water Resources Control Board
Division of Water Quality
P.O. Box 1977
Sacramento, CA 95812-1977
Attn: Storm Water Permitting Unit

Please Note: Do not send the original or copies of the NOI submittal to the Regional Water Quality Control Board (Regional Water Board). The original NOI will be forwarded to the Regional Water Board after processing.

Do not send a copy of your Storm Water Pollution Prevention Plan (SWPPP) with your NOI submittal. Your SWPPP is to be kept on site and made available for review upon request.

When to Apply

Facility operators of existing facilities must file an NOI in accordance with these instructions by March 30, 1992. Facility

operators of new facilities (those beginning operations after March 30, 1992) must file an NOI in accordance with these instructions at least 14 days prior to the beginning of operations.

Once the completed NOI, site map, and appropriate fee have been submitted to the State Water Board, your NOI will be processed and you will be issued a receipt letter with a Waste Discharge Identification (WDID) Number. Please refer to this number when you contact either the State or Regional Water Boards.

Fees

The total annual fee is $830. Checks should be made payable to: SWRCB

Change of Information

If the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form. Section I of the line-by-line instructions includes information regarding changes to the NOI.

Questions

If you have any questions completing the NOI, please call the appropriate Regional Water Board (Attachment 2) or the State Water Board at (916) 341-5538.

NOI LINE-BY-LINE INSTRUCTIONS

Please type or print your responses on the NOI. Please complete the NOI form in its entirety and sign the certification.

Section I--NOI STATUS

Check box "A" if this is a new NOI registration.

Check box "B" if you are reporting changes to the NOI (e.g., new contact person, phone number, mailing address). Include the facility WDID #. Highlight all the information that has been changed.

Please note that a change of information **does not** apply to a change of facility operator or a change in the location of the facility. These changes require a Notice of Termination (NOT) and submittal of a new NOI and annual fee. Contact the State Water Board or Regional Water Boards for more information on the NOT Form and instructions.

Regardless of whether you are submitting a new or revised NOI, you must complete the NOI in its entirety and the NOI must be signed.

Section II--Facility Operator Information

Part A: The facility operator is the legal entity that is responsible for all permit related compliance activities at the facility. In most cases, the facility operator is the owner of the business or operation where the industrial activity occurs. Give the legal name and the address of the person, firm, public organization, or any other entity that is responsible for complying with the General Permit.

Part B: Check the box that indicates the type of operation.

Section III--Facility Site Information

Part A: Enter the facility's official or legal name and provide the address. Facilities that do not have a street address must provide cross-streets or parcel numbers. Do not include a P.O. Box address in Part A.

Part B: Enter the mailing address of the facility if different than Part A. This address may be a P.O. Box.

The contact person should be the plant or site manager who is familiar with the facility and responsible for overseeing compliance of the General Permit requirements.

Part C: Enter the total size of the facility in either acres or square feet. Also include the percentage of the site that is impervious (areas that water cannot soak into the ground, such as concrete, asphalt, and rooftops).

Part D: Determine the Standard Industrial Classification (SIC) code which best identifies the industrial activity that is taking place at the facility. This information can be obtained by referring to the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget which is available at public libraries. The code you determine should identify the industrial activity that requires you to submit the NOI. (For example, if the business is high school education and the activity is school bus maintenance, the code you choose would be bus maintenance, not education.) Most facilities have only one code; however, additional spaces are provided for those facilities that have more than one activity.

Part E: Identify the title of the industrial activity that requires you to submit the NOI (e.g., the title of SIC Code 2421 is Sawmills and Planing Mills, General). If you cannot identify the title, provide a description of the regulated activity(s).

Section IV--Address for Correspondence

Correspondence relative to the permit will be mailed occasionally. Check the box which indicates where you would like such correspondence delivered. If you want correspondence sent to another contact person or address different than indicated in Section II or Section III then include the information on an extra sheet of paper.

Section V--Billing Address Information

To continue coverage under the General Permit, the annual fee must be paid. Use this section to indicate where the annual fee invoices should be mailed. Enter the billing address if different than the address given in Sections II or III.

Section VI--Receiving Water Information

Provide the name of the receiving water where storm water discharge flows from your facility. A description of each option is included below.

1. Directly to waters of the United States: Storm water discharges directly from the facility to a river, creek, lake, ocean, etc. Enter the name of the receiving water (e.g., Boulder Creek).

2. Indirectly to waters of the United States: Storm water discharges over adjacent properties or right-of-ways prior to discharging to waters of the United States. Enter the name of the closest receiving water (e.g., Clear Creek).

Section VII--Implementation of Permit Requirements

Parts A and B: Check the boxes that best describe the status of the Storm Water Pollution Prevention Plan (SWPPP) and the Monitoring Program.

Part C: Check yes or no to questions 1 through 4. If you answer no to any question, you need to assign a person to these tasks immediately.

As a permit holder you are required to have an SWPPP and Monitoring Program in place prior to the beginning of facility operations. Failure to do so is in direct violation of the General Permit. Do not send a copy of your SWPPP with your NOI submittal.

Please refer to Sections A and B of the General Permit for additional information regarding the SWPPP and Monitoring Program.

Section VIII--Site Map

Provide a "to scale" drawing of the facility and its immediate surroundings. Include as much detail about the site as possible. At a minimum, indicate buildings, material handling and storage areas, roads, names of adjacent streets, storm water discharge points, sample collection points, and a north arrow. Whenever

possible limit the map to a standard size sheet of paper (8.5" x 11" or 11" x 17"). **Do not send blueprints** unless you are sending one page and it meets the size limits as defined above.

A location map may also be included, especially in cases where the facility is difficult to find, but are not to be submitted as a substitute for the site map. The location map can be created from local street maps and U.S. Geological Survey (USGS) quadrangle maps, etc.

A revised site map must be submitted whenever there is a significant change in the facility layout (e.g., new building, change in storage locations, boundary change, etc.).

Section IX--Certification

This section should be read by the facility operator. The certification provides assurances that the NOI and site map were completed by the facility operator in an accurate and complete fashion and with the knowledge that penalties exist for providing false information. It also requires the Responsible Party to certify that the provisions in the General Permit will be complied with.

The NOI must be signed by:

For a Corporation: a responsible corporate officer (or authorized individual).

For a Partnership or Sole Proprietorship: a general partner or the proprietor, respectively.

For a Municipality, State, or other non-Federal Public Agency: either a principal executive officer or ranking elected official.

For a Federal Agency: either the chief or senior executive officer of the agency.

State of California
State Water Resources Control Board

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE
GENERAL PERMIT TO DISCHARGE STORM WATER
ASSOCIATED WITH **INDUSTRIAL ACTIVITY** (WQ ORDER No. 97-03-DWQ)
(Excluding Construction Activities)

SECTION I. NOI STATUS (please check only one box)

A. [ ] New Permittee B. [ ] Change of Information WDID # |_____|

SECTION II. FACILITY OPERATOR INFORMATION (See instructions)

A. NAME:		Phone:
Mailing Address:		
City:	State:	Zip Code:
Contact Person:		
B. OPERATOR TYPE: (check one) 1.[ ] Private Individual 2.[ ]Business 3.[ ]Municipal 4.[ ]State 5.[ ]Federal 6.[ ]Other		

SECTION III. FACILITY SITE INFORMATION

A. FACILITY NAME		Phone:
Facility Location:		County:
City:	State: CA	Zip Code:
B. MAILING ADDRESS:		
City:	State:	Zip Code:
Contact Person:		
C. FACILITY INFORMATION Total Size of Site: _____ (check one) Acres [ ] Sq. Ft. [ ]		Percent of Site Impervious (*including rooftops*)

D. SIC CODE(S) OF REGULATED ACTIVITY: E. REGULATED ACTIVITY (*describe each SIC code*):

1. |_____| |_____|
2. |_____| |_____|
3. |_____| |_____|

FOR STATE USE ONLY:

SECTION IV. ADDRESS FOR CORRESPONDENCE

|__| Facility Operator Mailing Address (Section II) |__| Facility Mailing Address (Section III, B.) |__| Both

SECTION V. BILLING ADDRESS INFORMATION

SEND BILL TO: [ ] Facility Operator Mailing Address (Section II) [ ] Facility Mailing Address (Section III, B.) [ ] Other (*enter information below*)

Name: ____________________	Phone: ___ - ___ - ____
Mailing Address: ____________________	
City: ____________________ State: ___	Zip Code: _____ - ____
Contact Person: ____________________	

SECTION VI. RECEIVING WATER INFORMATION

Your facility's storm water discharges flow: (*check one*) [ ] Directly OR [ ] Indirectly to waters of the United States.

Name of receiving water: ____________________
(river, lake, stream, ocean, etc.)

SECTION VII. IMPLEMENTATION OF PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (*check one*)
[ ] A SWPPP has been prepared for this facility and is available for review.
[ ] A SWPPP will be prepared and ready for review by (enter date): ___/___/___.

B. MONITORING PROGRAM (check one)
[ ] A Monitoring Program has been prepared for this facility and is available for review.
[ ] A Monitoring Program will be prepared and ready for review by (enter date): ___/___/___.

C. PERMIT COMPLIANCE RESPONSIBILITY
Has a person been assigned responsibility for:
1. Inspecting the facility throughout the year to identify any potential pollution problems? .... ___YES ___NO
2. Collecting storm water samples and having them analyzed?....... ___YES ___NO
3. Preparing and submitting an annual report by July 1 of each year? .... ___YES ___NO
4. Eliminating discharges other than storm water (*such as equipment or vehicle wash-water*) into the storm drain?....... ___YES ___NO

SECTION VIII. SITE MAP

I HAVE ENCLOSED A SITE MAP YES[ ] A new NOI submitted without a site map will be rejected.

SECTION IX. CERTIFICATION

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that I have read the entire General Permit, including all attachments, and agree to comply with and be bound by all of the provisions, requirements, and prohibitions of the permit, including the development and implementation of a Storm Water Pollution Pervention Plan and a Monitoring Program Plan will be complied with."

Printed Name: ____________________

Signature: ____________________ Date ____________

Title: ____________________

DEFINITIONS

1. "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment measures, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may include any type of pollution prevention and pollution control measure necessary to achieve compliance with this General Permit.

2. Clean Water Act (CWA) means the Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; 33 USC. 1251 et seq.

3. "Facility" is a collection of industrial processes discharging storm water associated with industrial activity within the property boundary or operational unit.

4. "Non-Storm Water Discharge" means any discharge to storm sewer systems that is not composed entirely of storm water.

5. "Significant Materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA); any chemical the facility is required to report pursuant to Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

6. "Significant Quantities" is the volume, concentrations, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance; adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable water quality standards for the receiving water.

7. "Significant Spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 CFR 110.10 and 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

8. "Storm water" means storm water runoff, snow melt runoff, and storm water surface runoff and drainage. It excludes infiltration and runoff from agricultural land.

9. "Storm Water Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the facilities identified in Categories 1 through 9 of Attachment 1 of this General Permit, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials; manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

   For the facilities identified in Category 10 of Attachment 1 of this General Permit, the term only includes storm water discharges from all areas listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery <u>are exposed to storm water</u>.

   Material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph) include those facilities designated under 40 CFR 122.26(a)(1)(v).

Attachment 5

ACRONYM LIST

BAT	Best Available Technology Economically Achievable
BCT	Best Conventional Pollutant Control Technology
BMPs	Best Management Practices
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Federal Superfund)
CFR	Code of Federal Regulations
CWA	Clean Water Act
General Permit	General Industrial Activities Storm Water Permit
GMP	Group Monitoring Plan
NEC	No Exposure Certification
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
O&G	Oil and Grease
RCRA	Resource, Conservation, and Recovery Act
Regional Water Board	Regional Water Quality Control Board
RQ	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act of 1986
SIC	Standard Industrial Classification
SMCRA	Surface Mining Control and Reclamation Act
SPCC	Spill Prevention Control and Countermeasures
State Water Board	State Water Resources Control Board
SWPPP	Storm Water Pollution Prevention Plan
TOC	Total Organic Carbon
TSS	Total Suspended Solids
U.S. EPA	U.S. Environmental Protection Agency
WDID	Waste Discharger Identification
WDRs	Waste Discharge Requirements

ATTACHMENT NO. 36

Report of Waste Discharge and SQMP

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100

HARRY W. STONE, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE. WM-9

January 31, 2001

Mr. Dennis A. Dickerson, Executive Officer
California Regional Water Quality
Control Board - Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013-1105

RECEIVED
2001 JAN 31 A 10:36
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Dear Mr. Dickerson:

REPORT OF WASTE DISCHARGE FOR MUNICIPAL STORMWATER AND URBAN RUNOFF DISCHARGES IN THE COUNTY OF LOS ANGELES (ORDER NO. 96-054, NPDES NO. CAS614001)

Enclosed is the Report of Waste Discharge for the Los Angeles River, San Gabriel River, Dominguez Channel, Ballona Creek, and Malibu Creek Watersheds in Los Angeles County.

The Report consists of the following components:

- Permit Application
- Performance Standards
- Watershed Management Area Plans

We look forward to working with your staff to expedite the approval process of the Report. I have directed my staff to work with the Regional Water Quality Control Board in making any necessary modifications.

If you have any additional questions, please contact Mr. Mustafa Ariki at (626) 458-5948, Monday through Thursday, 7:30 a.m. to 6 p.m.

Very truly yours,

HARRY W. STONE
Director of Public Works

BRIAN T. SASAKI
Deputy Director

GH:kk
A:\ROWD-TRANSMITTAL-LETTER.WPD

Enc.

cc: All Permittees

R0000002

Pursuant to
NPDES PERMIT ORDER NO. 96-054
(CAS614001)

REPORT OF WASTE DISCHARGE (ROWD)

February 01, 2001

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, LOS ANGELES COUNTY,
AND THE INCORPORATED CITIES

Prepared By

Los Angeles County Department of Public Works
Watershed Management Division, NPDES Section

RECEIVED
2001 JAN 31 A 10:41

R0000004

APPENDIX TO THE WATERSHED MANAGEMENT AREA PLANS
(WMAPs)

STORMWATER QUALITY MANAGEMENT PLAN (SQMP)

February 01, 2001

- Public Information and Participation Program
- Development Construction Program
- Illicit Connection/Illicit Discharge Elimination Program
- Development Planning Program
- Public Agency Activities Program

R0000005

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. xx-xxx
(NPDES NO. CASxxxxxx)

WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL STORMWATER AND URBAN RUNOFF DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, COUNTY OF LOS ANGELES, AND THE CITIES OF LOS ANGELES COUNTY

R0000006

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ATTACHMENT C
Stormwater Management Program Budget Summary Form C-1

R0000008

Permittee shall submit reports to the Executive Officer on the progress made under the SPCA. The frequency of the progress report submittal shall be quarterly unless otherwise prescribed by the Executive Officer. Failure to comply with the terms and conditions of the SPCA shall constitute a violation of this Order and shall be a cause for enforcement action by the Regional Board; and,

d. The Executive Officer shall not take enforcement action against a Permittee until the Executive Officer has notified the Permittee in writing that the Administrative Review Process has been exhausted and that the Executive Officer has determined that a violation exists and it warrants enforcement.

H. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit non-stormwater discharges, to the maximum extent practicable, to the storm drain system, including, but not limited to:

a. A prohibition on illicit discharges and illicit connections and a requirement for removal of illicit connections;

i. Prohibit the discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

ii. Prohibit the discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

iii. Prohibit the discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

iv. Prohibit the discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials, unless such containers are new and unopened with a visibly clean exterior;

v. Prohibit the discharge of chlorinated swimming pool water and filter backwash to the MS4;

vi. Prohibit the discharge of runoff from the washing of toxic

materials to the MS4;

vii. Prohibit washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4; and

viii. Prohibit the discharge from washing out concrete trucks, pumps, tools, and equipment to the MS4.

b. Control spills, dumping, or disposal of materials into the MS4, such as;

i. Litter, landscape debris and construction debris;

ii. Any state or federally banned pesticide, fungicide or herbicide;

iii. Food wastes; and

iv. Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

c. A requirement for compliance with conditions in ordinances, permits, contracts, or orders; and,

d. The ability to carry out all inspection, surveillance and monitoring procedures, within the Permitttee's legal jurisdiction, necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4.

I. Annual Stormwater Program Report, Assessment, and Budget Summary

1. The Discharger shall submit, by October 15 of each year beginning the Year 2002, an Annual Stormwater Program Report, Assessment, and Budget Summary documenting the status of the general program and individual tasks contained in the WMAPs, in accordance with the requirements identified in the Monitoring and Reporting Program Part I.A of this order. The Annual Stormwater Program Report, Assessment, and Budget Summary shall cover the previous fiscal year from July 1 through June 30, and shall include the information necessary to assess the Discharger's compliance status relative to this Order, and the effectiveness of implementation of permit requirements on stormwater quality. The Annual Stormwater Program Report, Assessment, and Budget Summary shall include any proposed changes to the WMAPs.

PART 4. SPECIAL PROVISIONS

Requirements of the permit shall take effect 60 days from permit adoption provided the US EPA Regional Administrator has no objections unless new permit requirements require additional resources and budgeting, wherein effective date will be 90 days after the next budget cycle.

Implementation Plans for any future watershed based requirement modifications, will be formulated and added to the SQMP at that time.

All requirements listed in the SQMP are to be applied. The following special provisions were either extracted from the SQMP or are additional requirements and are only presented hereafter for emphasis because of their importance.

A. Public Information and Participation

1. Programs for the General Public

a. The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, and general stormwater management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book as they are developed/published.

b. Permittees shall mark storm drain inlets with a legible "no dumping" message. In addition, signs with language prohibiting illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels under Permittee's jurisdiction.

c. Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events to the extent possible.

d. Each Permittee shall distribute outreach materials to the general public and school children at appropriate public counters and events. Outreach material shall include information such as proper disposal of litter, green waste, and pet waste, proper vehicle maintenance techniques, proper lawn care, and water conservation practices.

2 Programs for Industrial/Commercial Businesses

a. Permittees shall implement an industrial/commercial educational site

visit program.

b. Permittees shall visit automotive service and food service facilities as outlined in the SQMP in its jurisdiction once every two years. During site visits, Permittees shall:

i. Consult with a representative of the facility to explain applicable stormwater regulations;

ii. Distribute and discuss applicable BMP and educational materials; and,

iii. Conduct a site walk-through to verify for, at a minimum, evidence of BMP implementation.

c. Permittees shall revisit automotive and food service facilities where evidence of illicit discharge is found within six months of the date of the initial visit. If necessary, Permittees will begin enforcement action to remove sources of illicit discharges.

d. Based on Pollutants of Concern source identification, additional target businesses may be identified to be included in the site visit program. Each Permittee shall visit a maximum of 125 such businesses twice during the term of this permit. Permittees shall report on the types and proposed actions to be taken in regard to the additional target businesses in annual reports.

e. Permittees shall provide an annual update of the visited automotive service, food service, and other targeted facilities to the Regional Board in the annual report. The database shall include at a minimum; facility name, site address, applicable SIC code(s), and NPDES stormwater permit coverage.

f. Permittees shall train their employees in targeted positions (whose jobs or activities directly affect stormwater quality, or those who respond to questions from the public), including inspection staff, on the requirements of the SQMP within one year from the date of the permit adoption, and annually thereafter, as necessary.

B. Programs for Development Planning

1. The Discharger shall implement the approved Standard Urban Stormwater Mitigation Plan (SUSMP) (See SQMP, Development Planning). The SUSMP addresses conditions and requirements for discretionary development and

redevelopment projects. Appropriate elements of the SUSMP will be included as project requirements.

2. Permittees shall make appropriate modifications to their internal planning procedures for preparing/reviewing CEQA documents, and for linking stormwater quality mitigation conditions to legal discretionary project approvals.

3. Permittees shall train their employees in targeted positions (whose jobs or activities are engaged in development planning) on the requirements of the SUSMP within one year from the date of the permit adoption, and annually thereafter, as necessary.

4. The Permittee shall include watershed and stormwater management considerations in the appropriate elements of the Permittee's General Plan whenever these elements are significantly rewritten. Appropriate elements include, but are not limited to, water quality protection, development goals and policies, open space goals and policies, preservation of and integration with natural features, and water conservation policies.

C. Programs for Development Construction

1. Permittees shall require the preparation, submittal, and implementation of a Local Stormwater Pollution Prevention Plan (Local SWPPP) prior to issuance of a grading permit for priority construction projects unless the project falls under the requirements of the State's General Construction Activities Permit.

2. Permittees shall prepare and implement a Local SWPPP on Permittee's construction projects, as required in Part 4.C.1.

3. The Local SWPPP shall include appropriate construction site BMPs selected from documents such as the California Stormwater BMP Handbook, the Caltrans Stormwater Quality Handbook, EPA database and American Society of Civil Engineers (ASCE) database. In addition, Permittees shall ensure the following minimum requirements are met, to the maximum extent practicable, at construction sites regardless of size:

   a. Sediments generated on the project site shall be retained using structural drainage controls;

   b. Construction-related materials, wastes, spills, or residues shall be retained on project sites;

   c. Non-stormwater runoff from equipment and vehicle washing and any

other activity shall be contained at project sites;

d. Erosion from slopes and channels will be minimized, by implementing BMPs, including, but not limited to, limiting grading scheduled during the wet season, inspecting graded areas during rain events, planting and maintaining of vegetation on slopes, and covering slopes susceptible to erosion.

4. Local SWPPPs must include the rationale used for selecting or rejecting BMPs. The project architect, engineer of record, or authorized qualified designee, must sign a statement on the submitted Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on stormwater quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activities."

The landowner shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect correct conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows:

i. For a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

ii. For a partnership or sole proprietorship: by a general partner or the proprietor; or

iii. For a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, District Engineer, City Engineer, District Manager), or the manager of the construction activity if authority to sign stormwater quality plans has been assigned or delegated to the manager in accordance with established agency policy.

5. Permittees shall require proof of filing a Notice of Intent for coverage under the State General Construction Activity Stormwater Permit and a State SWPPP prior to issuing a grading permit for all projects requiring coverage under the state general permit.

6. Permittees shall inspect sites with Local SWPPP and Wet Weather Erosion Control Plan (WWECP) for stormwater quality requirements during routine inspection a minimum of once during the wet season. For inspected sites that have not adequately implemented their local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks.

7. Permittees shall discuss stormwater controls and provide stormwater control educational materials targeted to the construction community when requested by the public and/or inspectors.

8. Permittees shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) on the requirements of the SQMP within one year from the date of adoption of the permit, and annually thereafter, as necessary.

D. Public Agency Activities

Corporation Yards

1. Permittees shall prohibit the discharge of untreated stormwater runoff to the storm drain system from toxic or hazardous material storage areas no later than one year from the adoption of the permit, where practicable.

2. Permittees shall prohibit the discharge of untreated stormwater runoff to the storm drain system from new fueling areas and new repair/maintenance areas for vehicle maintenance and repair facilities no later than one year from the adoption of the permit.

8. There shall be no application of pesticides or fertilizers during a rain event that results in runoff.

   Permittees shall ensure that staff applying pesticides are either certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator.

9. Permittees shall train their employees in targeted positions (whose jobs and activities affect stormwater quality) regarding the requirements of the SQMP within one year from the adoption of the permit, and annually thereafter, as necessary.

10. Permittees shall conduct trash collection along, or in improved open channels within their jurisdiction.

11. The Discharger shall encourage the establishment of voluntary programs for the collection of trash in natural stream channels.

E. Programs for Illicit Connections and Illicit Discharges

1. Refer to Part 1.A.2. for conditions of illicit discharges.

2. Permittees shall investigate the cause, determine the nature and estimated amount of reported illicit discharge/dumping incidents, and refer documented non-stormwater discharges/connections or dumping to an appropriate agency for investigation, containment and cleanup. If the source of the illicit discharge has been identified, appropriate action including issuance of an enforcement order that will result in cessation of the illicit discharge, and/or elimination of the illicit connection, shall take place after the Permittee gains knowledge of the discharge/connection.

3. Each Permitee shall train its employees in targeted positions, as defined by the SQMP, on how to identify and report illicit discharges within one year from the date of the permit adoption, and annually thereafter, as necessary.

4. Automotive, food facility, construction and Permittee facility site visits shall include distribution of educational material that describes illicit discharges and provides a contact number for reporting illicit discharges.

5. New information developed for Phase I industrial facility educational material shall include information describing illicit discharges. The information shall include: types of discharges prohibited. how to prevent illicit discharges. what to do in the event of an illicit discharge, and the array of enforcement action the facility may be subjected to, including penalties that can be assessed.

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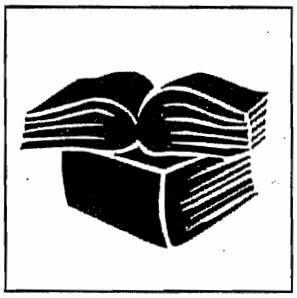
QUALITY CONTROL BOARD
LOS ANGELES REGION

Stormwater Quality Management Plan (SQMP)

Public Information and Participation Program

Industrial and Commercial
Educational Program



URS Corporation
Camp Dresser & McKee Inc.
Consensus Planning
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FEBRUARY 2001

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The objectives of this program component are to:

- Select and incorporate appropriate construction control measures for stormwater quality management from construction sites.
- Conduct and inspection program, including enforcement procedures as necessary, to verify that the construction control measures are implemented and performed effectively throughout the construction period.

Vehicle Maintenance / Material Storage Facilities Management

This program component is applicable to all Permittees who own and operate vehicle maintenance or materials storage facilities. Activities at these facilities may generate waste, spills and leaks that could potentially reach the storm drain system and receiving waters. The goal of this program is to make stormwater quality a consideration when conducting activities at municipal facilities.

The objectives of this program component are to:

- Identify and evaluate sources of pollutants from public vehicle maintenance/material storage facilities that may affect the quality of stormwater discharge from the facility.
- Identify and implement site-specific best management practices to reduce or prevent pollutants in stormwater discharges.

Landscape and Recreational Facilities Management

This program component is applicable to all Permittees who own and operate recreational facilities. Maintenance practices at parks and recreation facilities generally include fertilizer and pesticide applications, vegetation maintenance and disposal, swimming pool chemical maintenance and draining, and trash and debris management. All of these activities have the potential to contribute pollutants to the storm drain system. If improperly managed, potential pollutants can be transported in runoff (stormwater and non-stormwater discharges) to the storm drain system and subsequently to receiving waters. The goal of the program for landscape and recreational facilities management is to make the stormwater quality a consideration when conducting operation and maintenance activities.

The objectives of this program component are to:

- Minimize the discharge of pesticides, herbicides and fertilizers to the storm drain system and receiving waters.
- Prevent the disposal of landscape waste into the storm drain system.
- Minimize the trash, debris and other pollutants from entering Permitee-owned recreational water bodies.
- Discharge municipal swimming pool water in a manner that will not contribute pollutants to receiving waters.

R0000256

Storm Drain Operation and Management

The storm drain system functions primarily to collect and convey surface runoff to receiving waters during storms in order to prevent flooding. A common municipal activity includes the maintenance of the storm drain system to maintain hydraulic function as intended during storms. The goal of this program is to reduce the impact of storm drain operation and maintenance activities on stormwater quality.

The objectives of this program component are to:

- Inspect and clean catch basins annually and keep appropriate records.
- Remove trash and debris annually from open channels and properly dispose of these materials to prevent them from being washed to receiving waters.
- Report prohibited non-stormwater discharges observed during the course of normal daily activities so they can be investigated, contained and cleaned up, or eliminated.
- Review maintenance activities to verify that they minimize the amount of pollutants discharged to receiving waters.

Streets and Roads Maintenance

Streets and roads may collect litter and debris from nearby activities, as well as from vehicular traffic. During the course of routine maintenance waste materials are often generated. The goal of this component is to reduce the impact of Permittee street and road operations and maintenance on stormwater quality.

The objectives of this program component are to:

- Sweep curbed streets to reduce the discharge of pollutants associated with activities occurring in street and road rights-of-way.
- Minimize the discharge of pollutants associated with the maintenance of streets and roads.

Parking Facilities Management

Permittees who own parking lots with more than 25 parking spaces located in areas with potential exposure to stormwater must have a parking facilities management plan. The goal of this component is to reduce the impact of these parking facilities on the quality of stormwater discharges and receiving waters. The object of this program component is to remove debris from parking facilities to reduce the amount of material that comes into contact with stormwater.

Public Industrial Activities

Industrial activities, whether private or public, have the potential to discharge pollutants to the storm drain system. Many industrial facilities are subject to the California General Industrial Activities Storm Water Permit (General Industrial Permit) for control of stormwater pollution. The goal of the General Industrial Permit is to reduce the impact of industrial facilities on stormwater quality. This provision of the Permit may procedurally simplify and reduce the cost of Permittees' compliance for their industrial facilities (Phase 1) by providing the option to obtain coverage under the Permit in lieu of the General Industrial Permit.

Appendix B

BMP Lists For Industrial/Commercial Site Visits

Appendix B
BMP Lists For Industrial/Commercial Site Visits

The Permit requires the Principal Permittee, in consultation with the Permittees, to develop BMP lists for each group of facilities that requires educational site visits. These groups of facilities include:

- All industrial groups regulated under Phase 1 of the Federal stormwater program (Phase 1 Facilities)
- Motor vehicle repair shops, motor vehicle body shops, motor vehicle parts and accessories facilities, gas stations, and restaurants (Other Specific Facilities).

The BMPs must:

- Address multiple pollutants.
- Initially focus on pollutant source minimization, education, good housekeeping, and site design alternatives.
- Target source areas and activities with the highest potential to generate substantial pollutant loads.

The BMP lists are included as Appendix B1 (Phase 1 Facilities) and Appendix B2 (Other Specific Facilities). These BMP lists must be incorporated into outreach measures conducted during the educational site visits. This may include using them as fact sheets to hand out to appropriate facilities, incorporating their information into educational materials, or using them to increase the knowledge of staff who will be conducting the site visits.

There is no expectation on the part of the Regional Board, nor does the Permit require, that such lists be completed by a Permittee during the course of conducting an educational site visit at a facility. In addition, there is no expectation on the part of the Regional Board that these lists be utilized by Permittees at their own municipal facilities. BMPs appropriate for municipal facilities are described in the Model Public Agency Activities Program. Permittees must comply with the requirements of that model program at their own municipal facilities.

The BMP lists are *not* required to be implemented by all facilities but are only *suggested* BMPs. They are provided as guidance to help facility owners develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Some facilities may be subject to other state or federal environmental protection programs such as the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) program. Implementing the BMPs suggested in this document does not replace a facility's requirement to comply with these other programs.

Generally, source controls will be easier and less costly for facilities to implement in the near term. These types of controls include good housekeeping activities, employee training, and methods to reduce the source of pollutants by substituting products, reducing their use, and using/storing them inside. Structural controls may need to be carefully considered to ensure they are appropriate and cost-effective. For some activities, however, such as land disturbing activities, structural controls may be the primary solution.

B.1 PHASE 1 FACILITIES

In California, the *General Industrial Storm Water Permit* (General Industrial Permit) is the stormwater regulatory document for industrial facilities. On September 29, 1995, USEPA issued the *NPDES Storm*

Water Multi-Sector General Permit for Industrial Activities (Multi-Sector Permit) to serve as a general permit for industrial facilities in most other areas of the United States. The Multi-Sector Permit provides lists of typical activities, pollutant sources, pollutants, and suggested BMPs for industrial facilities, breaking them out into 29 "sectors" of industrial activity. The lists of BMPs in the Multi-Sector Permit were developed following an extensive survey of facilities, a review of existing Stormwater Pollution Prevention Plans, and additional discussion and review. With this in mind, the list of BMPs in Appendix B1 was taken directly from the Multi-Sector Permit. The BMPs were edited slightly to put them in a common format. Care was taken to avoid interpreting the BMP, adding to or deleting from its intent. For additional guidance on pollutant sources, special considerations and references, please see the original Multi-Sector Permit.

B.2 OTHER SPECIFIC FACILITIES

The BMP lists for these facilities are arranged into three sections: Vehicle Service Facilities, Gasoline Stations, and Restaurants. The BMP lists represent a compilation of activities developed by other stormwater management programs and wastewater agencies. The basis for the vehicle service facility BMPs is the document *Your Shop Can Make a Difference! What vehicle service shops can do to protect water quality in the Bay and Delta* (Bay Area Stormwater Management Agencies Association and Bay Area Dischargers Association, 1995). The Gasoline Station BMPs are based on the document *Retail Gasoline Outlet BMPs* (California Storm Water Quality Task Force, March 1997). These BMPs are very detailed due to extensive refinement over several years by state task forces and committees that included industry representatives. The bases for the restaurant BMPs are a wide range of documents created throughout Los Angeles County.

B.3 BMP LIST INDEX

Table B-1 is an index to all BMP lists, their categories and SIC codes.

Table B-1
Index of BMP Lists for Industrial/Commercial Facilities

EPA Sectors	SIC Codes (exceptions in parentheses)	Industry Types/Sector Title
A	24 (2434)	Timber Products Facilities
B	26	Paper and Allied Products Mfg Facilities
C	28 (283)	Chemicals and Allied Products Mfg Facilities
D	29	Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers
E	32	Glass, Clay, Concrete, and Gypsum Product Facilities
F	33	Primary Metals Facilities
G	10	Metal Mining Facilities
H	12	Coal Mines and Coal Mining-Related Facilities
I	13	Oil & Gas Extraction Facilities
J	14	Mineral Mining and Processing Facilities
K	4953	Hazardous Waste Treatment, Storage or Disposal Facilities
L	4953	Landfills and Land Application Sites
M	5015	Automobile Salvage Yards
N	5093	Scrap & Waste Recycling

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EPA Sectors	SIC Codes (exceptions in parentheses)	Industry Types/Sector Title
O	4911	Steam Electric Power Generating Facilities
P	40 41 42 43 5171	Vehicle and Equipment Maintenance Areas at Land Transportation Facilities
Q	44	Vehicle and Equipment Maintenance Areas at Water Transportation Facilities
R	373	Ship & Boat Building or Repairing Yards
S	45	Vehicle and Equipment Maintenance and Deicing Areas at Air Transportation Facilities
T	4952	Treatment Works
U	20 21	Food and Kindred Products Facilities
V	22 23	Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities
W	2434 25	Wood and Metal Furniture and Fixture Manufacturing Facilities
X	27	Printing and Publishing Facilities
Y	30 39	Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Z	31	Leather Tanning and Finishing Facilities
AA	34	Fabricated Metal Products Industry
AB	35 (357) 37 (373)	Facilities that Manufacture Transportation Equip., Industrial, or Commercial Machinery
AC	357 38 36	Manufacturers of Electronic and Electrical Equipment
SIC Codes (exceptions in parentheses)		**Commercial Types**
5013 5014 5541 7532-7534 7536-7539		Vehicle Service Facilities
5812		Restaurants

Appendix B1

BMPs for Phase 1 Facilities

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Timber Products Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Log, Lumber, and Other Wood Product Storage Areas

- ❑ Divert storm water around storage areas with ditches, swales and/or berms.
- ❑ Locate storage areas on stable, well-drained soils with slopes of 2-5 percent.
- ❑ Line storage areas with crushed rock or gravel or porous pavement to promote infiltration, minimize discharge and provide sediment and erosion control.
- ❑ Stack materials to minimize surface areas of materials exposed to precipitation.
- ❑ Practice good housekeeping measures such as frequent removal of debris.
- ❑ Provide collection and treatment of runoff with containment basins, sedimentation ponds and infiltration basins.
- ❑ Use ponds for collection, containment and recycle for log spraying operations.
- ❑ Use silt fence and rip rap check dams in drainage ways.

Residue Storage Areas

- ❑ Locate stored residues away from drainage pathways and surface waters.
- ❑ Avoid contamination of residues with oil, solvents, chemically treated wood, trash, etc.
- ❑ Limit storage time of residues to prevent degradation and generation of leachates.
- ❑ Divert storm water around residue storage areas with ditches, swales and/or berms.
- ❑ Assemble piles to minimize surface areas exposed to precipitation.
- ❑ Spray surfaces to reduce windblown dust and residue particles.
- ❑ Place materials on raised pads of compacted earth, clay, shale, or stone to collect and drain runoff.
- ❑ Cover and/or enclose stored residues to prevent contact with precipitation using silos, van trailers, shed, roofs, buildings or tarps.
- ❑ Limit slopes of storage areas to minimize velocities of runoff which may transport residues.
- ❑ Provide collection and treatment of runoff with containment basins, sedimentation ponds and infiltration basins.
- ❑ Use silt fence and rip rap check dams in drainage ways.

Loading and Unloading and Material Handling Areas

- ❑ Provide diversion berms and dikes to limit run on.
- ❑ Cover loading and unloading areas.
- ❑ Enclose material handling systems for wood wastes.
- ❑ Cover materials entering and leaving areas.
- ❑ Provide good housekeeping measures to limit debris and to provide dust control.
- ❑ Provide paved areas to enable easy collection of spilled materials.

Chemical Storage Areas

- ❑ Provide secondary containment around chemical storage areas.
- ❑ Inventory of fluids to identify leakage.
- ❑ Locate storage areas away from high traffic areas and surface waters.
- ❑ Develop spill prevention, containment and countermeasure (SPCC) plans and implement.
- ❑ Cover and/or enclose chemical storage areas.
- ❑ Provide drip pads to allow for recycling of spills and leaks.

Wood Surface Protection and Preserving Activities

- ❑ Extend drip time in process areas before moving to storage areas.
- ❑ Pave and berm areas used by equipment that has come in contact with treatment chemicals.
- ❑ Dedicate equipment that is used for treatment activities to that specific purpose only to prevent the tracking of treatment chemicals to other areas on the site.
- ❑ Locate treatment chemical loading and unloading areas away from high traffic areas where tracking of the chemical may occur.
- ❑ Provide drip pads under conveyance equipment from treatment process areas.
- ❑ Provide frequent visual inspections of treatment chemical loading and unloading areas during and after activities occur to identify any spills or leaks needing clean-up.
- ❑ Cover and/or enclose treatment areas.
- ❑ Provide containment in treated wood storage areas.
- ❑ Cover storage areas to prevent contact of treated wood products with precipitation.
- ❑ Elevate stored, treated wood products to prevent contact with run on/runoff.

Paper and Allied Products Manufacturing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Outdoor Loading and Unloading

- ❑ Confine loading/unloading activities to a designated response and control area.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Cover loading/unloading area/or conduct these activities indoors.
- ❑ Develop and implement spill plans.
- ❑ Use berms or dikes around area page 50850.
- ❑ Inspect containers for leaks or damage prior to loading.
- ❑ Use catch buckets, drop cloths, and other spill prevention measures where liquid materials are loaded/unloaded.
- ❑ Provide paved areas to enable easy collection of spilled materials.

Raw and/or Waste Material Storage Areas

- ❑ Confine storage to a designated area.
- ❑ Store materials inside.
- ❑ Cover storage areas with a roof or tarp.
- ❑ Use dikes or berms for storage tanks and drum storage.
- ❑ Cover dumpsters used for waste paper and other materials.
- ❑ Store materials on concrete pads to allow for recycling and spills of leaks.
- ❑ Expedite recycling process for exposed scrap paper.
- ❑ Develop and implement spill plans.
- ❑ Provide paved areas to enable easy collection of spilled materials.
- ❑ Provide good housekeeping (i.e., dust and debris collection) where cyclones are utilized.

Log, Lumber and Other Wood Product Storage Areas

- ❑ Divert storm water around storage areas with ditches, swales, and/or berms.
- ❑ Practice good housekeeping measures such as frequent removal of debris.
- ❑ Line storage areas with crushed rock or gravel or porous pavement to promote infiltration, minimize discharge and provide sediment and erosion control.
- ❑ Use ponds for collection, containment and recycle for log spraying operations.

Chemical and Allied Products Manufacturing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Good Housekeeping

- ❑ Schedule regular pickup and disposal of garbage and waste materials or other measures to dispose of waste. Individuals responsible for waste management and disposal should be informed of the procedures established under the plan.
- ❑ Routinely inspect for leaks and conditions of drums, tanks and containers. Ensure that spill cleanup procedures are understood by employees.
- ❑ Keep an up to date inventory of all materials present at the facility. While preparing the inventory, all containers should be clearly labeled. Hazardous containers that require special handling, storage, use and disposal considerations should be clearly marked and readily recognizable.
- ❑ Maintain clean ground surfaces by using brooms, shovels, vacuum cleaners or cleaning machines. Employee training should address procedures for equipment and containers cleaning and washing. The training should emphasize the human hazards and the potential environmental impacts from the discharges of washwaters.
- ❑ Facilities should consider evaluating existing security systems such as fencing, lighting, vehicular traffic control, and securing of equipment and to prevent accidental or intentional entry which could cause a discharge of pollutants to waters of the United States.

Material Handling and Storage Areas

- ❑ For areas where liquid or powdered materials are stored, facilities should consider providing either diking, curbing, or berms.
- ❑ For all other outside storage areas including storage of used containers, machinery, scrap and construction materials, and pallets, facilities should consider preventing or minimizing storm water runon to the storage area by using curbing, culverting, gutters, sewers or other forms of drainage control.
- ❑ For all storage areas, roofs, covers or other forms of appropriate protection should be considered to prevent exposure to weather. In areas where liquid or powdered materials are transferred in bulk from truck or rail cars, permittees should consider appropriate measures to minimize contact of material with precipitation.
- ❑ Permittees should consider providing for hose connection points at storage containers to be inside containment areas and drip pans to be used in areas which are not in a containment area, where spillage may occur (e.g., hose reels, connection points with rail cars or trucks) or equivalent measures.
- ❑ In areas of transfer of contained or packaged materials and loading/unloading areas, permittees should consider providing appropriate protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks or an equivalent.
- ❑ In order to prevent facilities from discharging contaminated storm water from areas where precipitation is contained, contained areas should be restrained by valves or other positive means to prevent the discharge of a spill or leak. Containment units may be emptied by pumps or ejectors; however, these should be manually activated. Flapper type drain valves should not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open or closed design. If facility drainage is not engineered as above, the final discharge point of all in-facility sewers should be equipped to prevent the discharge in the event of an uncontrolled spill of materials.
- ❑ Use storm water management practices to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site.
- ❑ For areas with a potential for significant soil erosion, use permanent stabilization practices to stabilize disturbed areas. The measures will minimize the amount of sediment materials in the discharge.

Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Material Storage, Handling, and Processing

- ❑ Cover material storage and handling areas with an awning tarp or roof.
- ❑ Practice good stockpiling practices such as: storing materials on concrete or asphalt pads; surrounding stockpiles with diversion dikes or curbs; and revegetating areas used for stockpiling in order to slow runoff.
- ❑ Use curbing, diking or channelization around material storage, handling and processing areas to divert run on around areas where it can come into contact with material stored or spilled on the ground.
- ❑ Utilize secondary containment measures such as dikes or berms around asphalt storage tanks and fuel oil tanks.
- ❑ Use dust collection systems (i.e., baghouses) to collect airborne particles generated as a result of material handling operations or aggregate drying.
- ❑ Properly dispose of waste materials from dust collection systems and other operations.
- ❑ Remove spilled material and dust from paved portions of the facility by shoveling and sweeping on a regular basis.
- ❑ Utilize catch basins to collect potentially contaminated storm water.
- ❑ Implement spill plans to prevent contact of runoff with spills of significant materials.
- ❑ Clean material handling equipment and vehicles to remove accumulated dust and residue.
- ❑ Use a detention pond or sedimentation basin to reduce suspended solids.
- ❑ Use an oil/water separator to reduce the discharge of oil/ grease.

Glass, Clay, Cement, Concrete, and Gypsum Product Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Storing Dry Bulk Materials

- ❑ Store materials in an enclosed silo or building. Materials may include sand, gravel, clay, cement, fly ash, kiln dust, and gypsum.
- ❑ Cover material storage piles with a tarp or awning.
- ❑ Divert run on around storage areas using curbs, dikes, diversion swales or positive drainage away from the storage piles.
- ❑ Install sediment basins, silt fence, vegetated filter strips, or other sediment removal measures downstream/downslope.
- ❑ Only store washed sand and gravel outdoors.

Handling Bulk Materials

- ❑ Use dust collection systems (e.g., bag houses) to collect airborne particles generated as a result of handling operations.
- ❑ Remove spilled material and settled dust from paved portions of the facility by shoveling and sweeping on a regular basis.
- ❑ Periodically clean material handling equipment and vehicles to remove accumulated dust and residue.
- ❑ Install sediment basins, silt fence, vegetated filter strips, or other sediment removal measures downstream/downslope.

Mixing Operations

- ❑ Use dust collection systems (e.g., bag houses) to collect airborne particles generated as a result of mixing operations.
- ❑ Remove spilled material and settled dust from the mixing area by shoveling and sweeping on a regular basis.
- ❑ Clean exposed mixing equipment after mixing operations are complete.
- ❑ Install sediment basins, silt fence, vegetated filter strips, or other sediment removal measures downstream/downslope.

Vehicle and Equipment Washing

- ❑ Designate vehicle and equipment wash areas that drain to recycle ponds or process wastewater treatment systems.
- ❑ Train employees on proper procedure for washing vehicles and equipment including a discussion of the appropriate location for vehicle washing.
- ❑ Conduct vehicle washing operation indoors or in a covered area.
- ❑ Clean wash water residue from portions of the site that drain to storm water discharges.

Dust Collection

- ❑ Maintain dust collection system and baghouse. Properly remove and recycle or dispose of collected dust to minimize exposure of collected dust to.

Pouring and Curing Pre-cast Concrete Products

- ❑ Pour and cure precast products in a covered area.
- ❑ Clean forms before storing outdoors.

Primary Metals Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Metal Product Stored Outside Such as Returns, Scrap Metal, Turnings, Fines, Ingots, Bars, Pigs, Wire

- ❑ Store all wastes indoors or in sealed drums, covered dumpsters, etc.
- ❑ Minimize raw material storage through effective inventory control.
- ❑ Minimize run on from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, curbing, concrete pads, etc.

Outdoor Storage or Handling of Fluxes

- ❑ Store fluxes in covered hoppers, silos, or indoors and protect from wind-blown losses.
- ❑ Stabilize areas surrounding storage and material handling areas and establish schedule for sweeping.

Storage Piles, Bins, or Material Handling of Coke or Coal

- ❑ Where possible store coke and coal under cover or indoors and protect from wind-blown losses.
- ❑ Prevent or divert run on from adjacent areas with swales, dikes, or curbs.
- ❑ Minimize quantities of coke or coal stored onsite through implementation of effective inventory control.
- ❑ Trap particulates originating in coke or coal storage or handling areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.

Storage or Handling of Casting Sand

- ❑ Store raw sand in silos, covered hoppers, or indoor whenever possible.
- ❑ Prevent or divert run on from adjacent areas with swales, dikes, or curbs.
- ❑ Minimize quantities of sand stored onsite through implementation of effective inventory control.
- ❑ Tarp or otherwise cover piles.
- ❑ Trap particulates originating in coke or coal storage or handling areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer of vegetation, catch-basin filters, retention/detention basins or equivalent.

Vehicle Fueling and Maintenance

- ❑ See the fact sheet AVehicle and Equipment Maintenance Areas at Land Transportation Facilities.

Outdoor Storage Tanks or Drums of Gas, Diesel, Kerosene, Lubricants, Solvents

- ❑ Store tanks and drums inside when possible.
- ❑ Establish regular inspection of all tanks and drums for leaks, spills, corrosion, damage, etc.
- ❑ Utilize effective inventory control to reduce the volume of chemicals stored onsite.
- ❑ Prevent run on to and runoff from tank and drum storage areas, provide adequate containment to hold spills and leaks.
- ❑ Prepare and train employees in dealing with spills and leaks properly, use dry clean-up methods when possible.

Slag or Dross Stored or Disposed of Outside in Piles or Drums

- ❑ Collect waste waters used for granulation of slag.
- ❑ Store slag and dross indoors, under cover, or in sealed containers.
- ❑ Establish regular disposal of slag or dross to minimize quantities stored and handled onsite.
- ❑ Minimize run on to slag storage areas with diversion dikes, berms, curbing, vegetated swales.
- ❑ Trap particulates originating in slag storage areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.

Fly Ash, Particulate Emissions, Dust Collector Sludges and Solids, Baghouse Dust

- ❑ Store all dusts and sludges indoors to prevent contact with storm water or losses due to wind.
- ❑ Establish regular disposal schedule to minimize quantities of pollutants stored and handled onsite.

Storage and Disposal of Waste Sand or Refractory Rubble in Piles Outside

- ❑ Move piles under cover or tarps whenever possible.
- ❑ Establish regular disposal schedule to minimize quantities stored onsite.
- ❑ Stabilize areas of waste product storage and perform regular sweeping of area.

Scrap Processing Activities (Shredding Etc.)

- ❑ See the fact sheet AScrap and Waste Recycling Facilities.

Machining Waste Stored Outside or Exposed to Storm Water-fines, Turnings, Oil, Borings, Gates, Sprues, Scale

- ❑ Store all wastes indoors or in sealed drums, covered dumpsters, etc.
- ❑ Stabilize areas of waste product storage and perform regular sweeping and cleaning of any residues.
- ❑ Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present.
- ❑ Minimize run on from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, curbing, concrete pads, etc.

Obsolete Equipment Stored Outside

- ❑ Where possible, dispose of unused equipment properly, or move indoors.
- ❑ Cover obsolete equipment with a tarp or roof.
- ❑ Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present.
- ❑ Minimize runoff coming into contact with old equipment through berms, curbs, or placement on a concrete pad.

Material Losses from Handling Equipment Such as Conveyors, Trucks, Pallets, Hoppers, Etc.

- ❑ Schedule frequent inspections of equipment for spills or leakage of fluids, oil, or fuel.
- ❑ Inspect for collection of particulate matter on and around equipment and clean. Where possible cover these areas to prevent losses to wind and precipitation.
- ❑ Store pallets, hoppers, etc. which have residual materials on them under cover, with tarps, or inside.

Losses During Charging of Coke Ovens or Sintering Plants

- ❑ Cover any exposed areas related to furnace charging/material handling activities.
- ❑ Stabilize areas around all material handling areas and establish regular sweeping.
- ❑ Route runoff from particulate generating operations to sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.

Particulate Emissions from Blast Furnaces, Electric Arc Furnaces, Induction Furnaces and Fugitive Emissions from Poorly Maintained or Malfunctioning Baghouses, Scrubbers, Electrostatic Precipitators, Cyclones

- ❑ Establish schedule for inspection and maintenance of all pollution control equipment-check for any particulate deposition from leaks, spills, or improper operation of equipment and remedy.
- ❑ Route runoff from particulate generating operations to sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.

Storage of Products Outside after Painting, Pickling, or Cleaning Operations

- ❑ Store all materials inside or under cover whenever possible.
- ❑ Prevent run on to product storage areas through curbs, berms, dikes, etc.
- ❑ Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present.
- ❑ Remove residual chemicals from intermediate or finished products before storage or transport outside.

Casting Cooling or Shakeout Operations Exposed to Precipitation or Wind

- ❑ Perform all pouring, cooling, and shakeout operations indoors in areas with roof vents to trap fugitive particulate emissions.
- ❑ Recycle into process as much casting sand as possible.

Landfilling or Open Pit Disposal of Wastes Onsite

- ❑ See the fact sheet ALandfills and Land Application Sites.≡

Losses of Particulate Matter from Machining Operations (Grinding, Drilling, Boring, Cutting). Through Deposition or Storage of Products Outside.

- ❑ Store all intermediate and finished products inside or under cover.
- ❑ Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present.
- ❑ Clean products of residual materials before storage outside.
- ❑ Stabilize storage areas and establish sweeping schedule.

Areas of the Facility with Unstabilized Soils Subject to Erosion.

- ❑ Minimize run on from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, vegetated swales, etc.
- ❑ Stabilize all high traffic areas including all vehicle entrances, exits, loading, unloading, and vehicle storage areas.
- ❑ Conduct periodic sweeping of all traffic areas.
- ❑ Trap sediment originating in unstabilized areas. Filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.
- ❑ Inspect and maintain all BMPs on a regular basis.
- ❑ Provide employee training on proper installation and maintenance of sediment and erosion controls.

Improper Connection of Floor, Sink, or Process Wastewater Drains.

- ❑ Inspect and test all floor, sink, and process wastewater drains for proper connection to sanitary sewer and remove any improper connections to storm sewer or waters of the United States.

Metal Mining Facilities; Coal Mines and Coal Mining-Related Facilities; Mineral Mining and Processing Facilities

Land Disturbance Activities

Land-disturbed Area	*Discharge Diversions*	*Conveyance Systems*	*Runoff Dispersion*	*Sediment Control and Collection*	*Vegetation*	*Containment*	*Treatment*
Haul Roads and Access Roads	Dikes, curbs, berms	Channels, gutters, culverts, rolling dips, road sloping, roadway water deflectors	Check dams, rock outlet protection, level spreaders, stream alteration, drop structures	Gabions, riprap, native rock retaining walls, straw bale barriers, sediment traps/catch basins, vegetated buffer strips	Seeding, willow cutting establishment		
Pits, Quarries, or Underground Mines.	Dikes, curbs, berms	Channels, gutters	Serrated slopes, benched slopes, contouring, stream alteration	Sediment settling ponds, straw bale barrier, siltation berms	Seeding	Plugging and grouting	Chemical/ physical treatment
Overburden, Waste Rock and Raw Material Piles	Dikes, curbs, berms	Channels, gutters	Serrated slopes, benched slopes, contouring, stream alteration	Plastic matting, plastic netting, erosion control blankets, mulch-straw, compaction, sediment/settling ponds, silt fences, siltation berms	Topsoiling, seedbed preparation, seeding	Capping	Chemical/ physical treatment, artificial wetlands
Reclamation	Dikes, curbs, berms	Channels, gutters	Check dams, rock outlet protection, level spreaders, serrated slopes, benched slopes, contouring, drain fields, stream alteration, drop structures	Gabions, riprap, native rock retaining walls, biotechnical stabilization, straw bale barriers, sediment traps/catch basins, vegetated buffer strips, silt fences, siltation berms, brush sediment barriers	Topsoiling, seedbed preparation, seeding, willow cutting establishment	Capping, plugging and grouting	Chemical/ physical treatment, wetlands

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Oil and Gas Extraction Facilities

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General Activities

- ❑ Utilize diking and other forms of containment and diversion around storage tanks, drums of oil, acid, production chemicals, and liquids, reserve pits, and impoundments.
- ❑ Use diking and other forms of containment and diversion around material handling and processing areas.
- ❑ Use porous pads under drum and tank storage areas.
- ❑ Use covers and/or lining for waste reserve and sludge pits to avoid overflows and leaks.
- ❑ Use drip pans, catch basins, or liners during handling of materials such as tank bottoms.
- ❑ Reinject or treat produced water instead of discharging it.
- ❑ Limit the amount of land disturbed during construction of access roads and facilities.
- ❑ Employ spill plans for pipelines, tanks, drums, etc.
- ❑ Recycle oily wastes, drilling fluids and other materials onsite, or dispose of properly.
- ❑ Take wastes offsite to be disposed of instead of burying them.
- ❑ Use oil water separators.

Hazardous Waste Treatment, Storage, or Disposal Facilities

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Outdoor Unloading and Loading

- ❑ Confine loading/unloading activities to a designated area.
- ❑ Consider performing loading/unloading activities indoors or in a covered area.
- ❑ Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps).
- ❑ Close storm drains during loading/unloading activities in surrounding areas.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Inspect the unloading/loading areas to detect problems before they occur.
- ❑ Inspect all containers prior to loading/unloading of any raw or spent materials.
- ❑ Consider berming, curbing, or diking loading/ unloading areas.
- ❑ Use dry clean-up methods instead of washing the areas down.
- ❑ Train employees on proper loading/unloading techniques.

Landfills and Land Application Sites

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Land Disturbance Activities

- ❑ Stabilize soils with temporary seeding, mulching, and geotextiles; leave vegetative filter strips along streams.
- ❑ Implement structural controls such as dikes, swales, silt fences, filter berms, sediment traps and ponds, outlet protection, pipe slope drains, check dams, and terraces to convey runoff, to divert storm water flows away from areas susceptible to erosion, and to prevent sediments from entering water bodies.
- ❑ Frequently inspect all stabilization and structural erosion control measures and perform all necessary maintenance and repairs.
- ❑ Stabilize haul roads and entrances to landfill with gravel or stone.
- ❑ Construct vegetated swales along road.
- ❑ Clean wheels and body of trucks or other equipment as necessary to minimize sediment tracking (but contain any wash waters [process wastewaters]).
- ❑ Frequently inspect all stabilization and structural erosion control measures and perform all necessary maintenance and repairs.

Application of Fertilizers, Pesticides, and Herbicides

- ❑ Observe all applicable Federal, State, and local regulations when using these products.
- ❑ Strictly follow recommended application rates and methods (i.e., do not apply in excess of vegetative requirements).
- ❑ Have materials such as absorbent pads easily accessible to clean up spills.

Exposure of Chemical Material Storage Areas to Precipitation

- ❑ Provide barriers such as dikes to contain spills.
- ❑ Provide cover for outside storage areas.
- ❑ Have materials such as absorbent pads easily accessible to clean up spills.

Exposure of Waste at Open Face

- ❑ Minimize the area of exposed open face as much as is practicable.
- ❑ Divert flows around open face using structural measures such as dikes, berms, swales, and pipe slope drains.
- ❑ Frequently inspect erosion and sedimentation controls.

Waste Tracking Onsite

- ❑ Clean wheels and exterior of trucks or other equipment as necessary to minimize waste tracking (but contain any wash waters [process wastewaters]).

Uncontrolled Leachate

- ❑ Frequently inspect leachate collection system and landfill for leachate leaks.
- ❑ Maintain landfill cover and vegetation.
- ❑ Maintain leachate collection system

Automobile Salvage Yards

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Dismantling and Vehicle Maintenance

- ❑ Drain all fluids from vehicles upon arrival at the site.
- ❑ Segregate the fluids and properly store or dispose of them.
- ❑ Maintain an organized inventory of materials used in the maintenance shop.
- ❑ Keep waste streams separate (e.g., waste oil and mineral spirits). Nonhazardous substances that are contaminated with a hazardous substance is considered a hazardous substance.
- ❑ Recycle anti-freeze, gasoline, used oil, mineral spirits, and solvents.
- ❑ Dispose of greasy rags, oil filters, air filters, batteries, spent coolant, and degreasers properly.
- ❑ Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries).
- ❑ Drain oil filters before disposal or recycling.
- ❑ Store cracked batteries in a non-leaking secondary container.
- ❑ Promptly transfer used fluids to the proper container. Do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
- ❑ Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
- ❑ Plug floor drains that are connected to the storm or sanitary sewer. If necessary, install a sump that is pumped regularly.
- ❑ Inspect the maintenance area regularly for proper implementation of control measures.
- ❑ Filtering storm water discharges with devices such as oil-water separators.
- ❑ Train employees on proper waste control and disposal procedures.

Outdoor Vehicle, Equipment, and Parts Storage

- ❑ Use drip pans under all vehicles and equipment waiting for maintenance and during maintenance.
- ❑ Store batteries on impervious surfaces. Curb, dike or berm this area.
- ❑ Confine storage of parts, equipment and vehicles to designated areas.
- ❑ Cover all storage areas with a permanent cover (e.g., roofs) or temporary cover (e.g., canvas tarps).

Vehicle, Equipment and Parts Washing Areas

- ❑ Avoid washing parts or equipment outside.
- ❑ Use phosphate-free biodegradable detergents.
- ❑ Consider using detergent-based or water-based cleaning systems in place of organic solvent degreasers.
- ❑ Designate an area for cleaning activities.
- ❑ Contain steam cleaning washwaters or discharge under an applicable NPDES permit.
- ❑ Ensure that washwaters drain well.
- ❑ Inspect cleaning area regularly.
- ❑ Install curbing, berms or dikes around cleaning areas.
- ❑ Train employees on proper washing procedures.

Liquid Storage in Above Ground Containers

- ❑ Maintain good integrity of all storage containers.
- ❑ Install safeguards (such as diking or berming) against accidental releases at the storage area.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Improper Connection with Storm Drains

- ❑ Plug all floor drains if it is unknown whether the connection is to storm drain or sanitary sewer systems.
- ❑ Alternatively, install a sump that is pumped regularly.
- ❑ Perform dye testing to determine if interconnections exist between sanitary water system and storm drain system.
- ❑ Update facility schematics to accurately reflect all plumbing connections.
- ❑ Install a safeguard against vehicle washwaters and parts cleaning waters entering the storm drain unless permitted.
- ❑ Maintain and inspect the integrity of all underground storage tanks; replace when necessary.
- ❑ Train employees on proper disposal practices for all material.

Scrap and Waste Recycling Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Inbound Recyclable and Waste Material Control

- ❑ Provide public education brochures on acceptable recyclable materials.
- ❑ Educate curbside pick-up drivers on acceptable materials. Reject unacceptable materials at the source.
- ❑ Employee training.
- ❑ Provide totally-enclosed drop-off containers for public.
- ❑ Establish program to encourage suppliers of scrap, waste and other salvageable materials to drain residual fluids prior to arrival at the facility.
- ❑ Establish acceptance program for handling, storage and disposal of lead-acid batteries.
- ❑ Establish procedures for rejecting or handling, storing and disposal of hazardous wastes and other nonhazardous residual fluids.
- ❑ Establish procedures to properly handle industrial turnings and cuttings and prohibiting cutting oils and metallic fines from coming in contact with runoff.
- ❑ Identify inspector training requirements.

Outside Scrap Material Storage: Liquids

- ❑ Conduct inspections for fluids, e.g., oils, transmission fluids, antifreeze, brake fluid, and fuels. Establish handling/ storage/disposal procedures for these materials.
- ❑ Drain and collect liquids in a designated area.
- ❑ Provide covered storage or impervious areas with curbing/berms or other appropriate containment.
- ❑ Store liquid materials in covered areas or impervious areas with curbing/berms or other appropriate measure.
- ❑ Establish spill prevention procedures.
- ❑ Provide adequate supply of materials for dry clean up of spills or leaks.
- ❑ Prevent runoff into liquid storage areas. Store liquid wastes in materially compatible containers.
- ❑ Minimize/eliminate the accumulation of liquid wastes.
- ❑ Establish procedures if hazardous wastes are discovered after material accepted.
- ❑ Conduct periodic inspections of storage areas.
- ❑ Conduct preventative maintenance of BMPs as necessary.

Outside Scrap Material Storage: Bulk Solid Materials

- ❑ Store only processed materials, i.e., baled plastic and aluminum and glass cullet.
- ❑ Provide containment pits with sumps pumps that discharge to sanitary sewer system. Prevent discharge of residual fluids to storm sewer.
- ❑ Provide dikes and curbs around bales of waste paper.
- ❑ Use tarpaulins or covers over bales of wastepaper.
- ❑ Conduct regularly scheduled sweeping of storage areas to minimize particulate buildup.
- ❑ Minimize runoff from coming into areas where significant materials are stored, e.g., diversion structures such as curbing, berms, containment trenches, surface grading, and elevated concrete pads or other equivalent measure.
- ❑ Use adsorbents to collect leaking or spills of oil, fuel, transmission and brake fluids, e.g., dry absorbent, drip pans.
- ❑ Install media filters such as catch basin filters and sand filters.
- ❑ Install oil/water separator in storage areas with vehicle transmissions and engines. Locate spill plans under stored vehicles.
- ❑ Provide non-recyclable waste storage bins and containers.
- ❑ Conduct periodic inspections.
- ❑ Conduct preventative maintenance as necessary.
- ❑ Provide equipment operator training to minimize damage to controls, e.g., curbing and berms.

Storage Other: Lightweight Materials

- ❑ Store equivalent of the average daily volume of recyclable materials indoors.
- ❑ Provide good housekeeping.
- ❑ Disconnect all floor drains from storm sewer system.
- ❑ Prohibit illicit discharges and illegal dumping to floor drains that are connected to the storm sewer.
- ❑ Direct tipping floor washwaters to sanitary sewer system if permitted by local sanitary authority.
- ❑ Identify/provide supplier training or information bulletins on requirements for acceptance of lightweight materials.
- ❑ Encourage supplier participation in program to minimize/eliminate, as practicable, volume of semisolid and liquid residues in recyclable materials, e.g., residual fluids in aluminum and plastic containers.
- ❑ Provide covered storage, container bins or equivalent for lighter-weight materials such as glass, plastics, aluminum cans, paper, cardboard.
- ❑ Minimize/eliminate residue from bottles, containers, etc. from coming in contact with runoff. Establish dry clean up methods.
- ❑ Establish procedures and employee training for the handling, storage and disposal of residual fluids from small containers.
- ❑ Prohibit washdown of tipping floor areas.
- ❑ Provide good housekeeping to eliminate particulate and residual materials buildup. Establish cleaning schedule for high traffic areas.
- ❑ Provide covered disposal containers or equivalent for residual waste materials.
- ❑ Eliminate floor drains discharging to storm sewer.

Residual Non-recyclable Materials

- ❑ Store residual non-recyclable materials in covered containers for transport to a proper disposal facility.
- ❑ Bale residual non-recyclable materials and cover with tarpaulin or equivalent.

Recyclable Material Processing

- ❑ Conduct processing operations indoors. Clean up residual fluids.
- ❑ Conduct routine preventive maintenance on all processing equipment.
- ❑ Schedule frequent good housekeeping to minimize particulate and residual materials buildup.

Scrap Processing Operations

- ❑ Provide training to equipment operators on how to minimize exposure of runoff to scrap processing areas.
- ❑ Schedule frequent cleaning of accumulated fluids and particulate residue around all scrap processing equipment.
- ❑ Schedule frequent inspections of equipment for spills or leakage of fluids, oil, fuel, hydraulic fluids.
- ❑ Conduct routine preventive maintenance of equipment per original manufacturer's equipment (OME) recommendations. Replace worn or malfunctioning parts.
- ❑ Site process equipment on elevated concrete pads or provide runoff diversion structures around process equipment, berms, containment trenches or surface grading or other equivalent measure. Discharge runoff from within bermed areas to a sump, oil/ water separator, media filter or discharge to sanitary sewer.
- ❑ Conduct periodic maintenance and clean out of all sumps, oil/water separators, media filters.
- ❑ Dispose of residual waste materials properly (e.g., according to RCRA).
- ❑ Provide curbing, dikes, and berms around scrap processing equipment to prevent contact with runoff.
- ❑ Where practicable, locate process equipment (e.g., balers, briquetters, small compactors) under an appropriate cover.
- ❑ Provide cover over hydraulic equipment and combustion engines. Provide dry clean up materials, e.g., dry-adsorbents, drip pans, absorbent booms, etc. to prevent contact of hydraulic fluids, oils, fuels, etc., with storm water runoff.
- ❑ Provide alarm, pump shutoff, or sufficient containment for hydraulic reservoirs in the event of a line break.
- ❑ Stabilize high traffic areas (e.g., concrete pads, gravel, pavement) around processing equipment, where practicable.
- ❑ Provide site gages or overfill protection devices for all liquid and fuel storage reservoirs and tanks.
- ❑ Establish spill prevention and response procedures, including employee training.
- ❑ Provide containment bins or equivalent for shredded material, especially lightweight materials such as fluff (preferably at the discharge of these materials from the air classification system).

Supplies for Process Equipment

- ❑ Locate storage drums containing liquids, including oils and lubricants indoors. Alternatively, site palletized drums and containers on an impervious surface and provide sufficient containment around the materials. Provide sumps, oil/water separators, if necessary.
- ❑ Conduct periodic inspections of containment areas and containers/drums for corrosion.
- ❑ Perform preventive maintenance of BMPs, as necessary.
- ❑ Instruct employees on proper material handling and storage procedures.

Scrap Lead Acid Battery Program

- ❑ Establish inspection and acceptance procedures for scrap lead-acid batteries.
- ❑ Provide supplier training on acceptance practices for scrap batteries.
- ❑ Provide employee training on the safe handling, storage and disposition of scrap batteries.
- ❑ Separate all scrap batteries from other scrap materials.
- ❑ Store scrap batteries under cover or equivalent.
- ❑ Establish procedures for the storage, handling, disposition of cracked or broken batteries in accordance with applicable Federal regulations, e.g., RCRA.
- ❑ Establish procedures to collect and dispose of leaking battery acid according to Federal regulations, e.g., RCRA.
- ❑ Provide covered storage or equivalent to prevent exposure to either precipitation or runoff.

Vehicle and Equipment Maintenance

- ❑ Avoid washing equipment and vehicles outdoors.
- ❑ Eliminate outdoor maintenance areas.
- ❑ Establish an inventory of materials used in the maintenance shop that could become a potential pollutant source with storm water runoff, e.g., fuels, solvents, oils, lubricants.
- ❑ Store and dispose of oily rags, filters (oil and air), batteries, engine coolant, transmission fluid, use oil, brake fluid, and solvents in a manner that minimizes potential contact with runoff and in compliance with State and Federal regulations.
- ❑ Label and track recycling of waste materials, e.g., batteries, solvent, used oil.
- ❑ Drain oil filters before disposal or recycling.
- ❑ Drain all fluids from all parts or components that will become scrap material or secondhand parts.
- ❑ Store liquid waste materials in compatible containers.
- ❑ Store and dispose used batteries in accordance with scrap lead acid battery program.
- ❑ Disconnect all floor drains connected to storm sewer system.
- ❑ Prohibit non-storm water discharges, e.g., dumping of used liquids down floor drains and washdown of maintenance areas.
- ❑ Provide employee training on appropriate storage and disposal of waste materials.
- ❑ Provide good housekeeping measures.
- ❑ Conduct inspections of work areas for compliance with BMPs.

Fueling

- ❑ Establish spill prevention and clean-up procedures.
- ❑ Provide dry-absorbent materials or equivalent.
- ❑ Provide employee training, i.e., avoid topping off fuel tanks.
- ❑ Divert runoff from fueling areas.
- ❑ Use spill and overflow protection devices.
- ❑ Provide high level alarm on fuel storage tanks.
- ❑ Minimize/eliminate runoff onto fueling areas.
- ❑ Reduce exposure of fueling areas to precipitation by covering the fueling area.
- ❑ Provide dry adsorbents to clean up fuel spills.
- ❑ Conduct periodic inspections of fueling areas.
- ❑ Provide curbing or posts around fuel pumps to prevent collisions during vehicle ingress and egress.

Vehicle and Equipment Washing

- ❑ Avoid washing vehicles and equipment outdoors.
- ❑ Use biodegradable, phosphate free detergents.
- ❑ Recycle wash water.
- ❑ Provide vehicle wash rack with dedicated trap.
- ❑ Use autoshut-off valves on washing equipment.

Outdoor Vehicle Parking and Storage

- ❑ Use drip pans under all equipment and vehicles waiting maintenance.
- ❑ Cover vehicle and equipment storage areas.
- ❑ Conduct inspections of storage and parking areas for leaks and filled drip pans.
- ❑ Provide employee training.

Vehicle and Equipment Painting (where applicable)

- ❑ Keep paint and solvents away from traffic areas.
- ❑ Conduct sanding and painting in nonexposed areas, e.g., under cover, in accordance with OSHA standards.
- ❑ Cleanup accumulated particulate matter.
- ❑ Minimize overspraying parts.
- ❑ Dispose or recycle paint, solvents and thinner properly.
- ❑ Provide training to employees.
- ❑ Conduct periodic inspections of paint spraying areas.

Erosion and Sediment Control

- ❑ Minimize runon from adjacent properties, e.g., diversion dikes, berms, or equivalent.
- ❑ Trap sediment at downgradient locations and outlets serving unstabilized areas. This may include filter fabric fences, gravel outlet protection, sediment traps, vegetated or riprap swales, vegetated strips, diversion structures, catch- basin filters, retention/detention basins or equivalent.
- ❑ Runoff containing oil and grease may include the use of absorbent booms or sand filters in front of outlet structures or other equivalent measures.
- ❑ Stabilize all high traffic areas, including all vehicle entrances and exit points.
- ❑ Conduct periodic sweeping of all traffic areas.
- ❑ Conduct inspections of BMPs.
- ❑ Perform preventative maintenance as needed on BMPs.
- ❑ Provide employee training on the proper installation and maintenance of erosion and sediment controls.

Activities Specific to Liquid Waste Recycling Facilities

Individual Drum/Container Storage

- ❑ Ensure container/drums are in good condition. Store waste materials in materially compatible drums.
- ❑ Use containers that meet National Fire Protection Association (NFPA) guidelines.
- ❑ Put individual containers on pallets. Limit stack height of individual containers/drums. Provide straps, plastic wrap, or equivalent around stacked containers to provided stability.
- ❑ Label/mark drums. Segregate hazardous and flammable wastes. Comply with NFPA guidelines for segregation of flammable wastes.
- ❑ Provide adequate clearance to allow material movement and access by material handling equipment.
- ❑ Provide semipermanent or permanent cover over wastes.
- ❑ Provide adequate clearance between stored materials to allow movement and handling.
- ❑ Establish clean up procedures, including the use of dry adsorbents, in the event of spills or leaks.
- ❑ Prohibit washing down of material storage areas.
- ❑ Disconnect or seal all floor drains from storm sewer system.
- ❑ Develop spill prevention, countermeasures and control (SPCC) procedures for all liquid container storage areas. Ensure employees are familiar with SPCC procedures. Schedule/conduct periodic employee training.
- ❑ Provide secondary containment, dikes, berms, containment trench, sumps, or other equivalent measure, in all storage areas.

Bulk Liquid Storage

- ❑ Use welded pipe connections versus flange connections. Inspect all flange gaskets for deterioration.
- ❑ Apply corrosion inhibitors to exposed metal surfaces.
- ❑ Provide high level alarms for storage tanks.
- ❑ Provide redundant piping, valves, pumps, motors, as necessary, at all pumping stations.
- ❑ Provide manually activated shutoff valves in the event of spill. Install visible and/or audible alarms in the event of a spill.
- ❑ Install manually activated drainage values, or equivalent, versus flapper-type drain values.
- ❑ Provide adequate security against vandalism and tampering.
- ❑ Provide secondary containment around all bulk storage tanks, including berms, dikes, surface impoundments or equivalent. Ensure surfaces of secondary containment areas are adequately sealed to prevent leaks.
- ❑ Provide stationary boxes around all return and fill stations to eliminate/minimize hose drainage and minor waste transfer spills.

Waste Transfer Areas

- ❑ Provide secondary containment or equivalent measures around all liquid waste transfer facilities.
- ❑ Provide cover over liquid waste transfer areas.
- ❑ Establish clean up procedures for minor spills including the use of dry adsorbents.

Inspections

- ❑ Conduct inspections of all material storage, handling and transfer areas.
- ❑ Document signs of corrosion, worn parts or components on pumps and motors, leaking seals and gaskets.
- ❑ Conduct periodic nondestructive testing (NDT) of all bulk storage tanks for signs of deteriorating structural integrity.

Preventive Maintenance

- ❑ Conduct periodic preventive maintenance of all structural controls, replace worn parts on components on valves, pumps, motors per manufacturer's recommendations.

Vehicle Maintenance (if applicable)

- ❑ Establish an inventory of materials used in the maintenance shop that could become a potential pollutant source with storm water runoff, e.g., fuels, solvents, oils, lubricants.
- ❑ Store and dispose of oily rags, filters (oil and air), batteries, engine coolant, transmission fluid, use oil, brake fluid, and solvents in a manner that minimizes potential contact with runoff and in compliance with State and Federal regulations.
- ❑ Label and track recycling of waste materials, e.g., batteries, solvent, used oil.
- ❑ Drain oil filters before disposal or recycling.
- ❑ Drain all fluids from all parts or components that will become scrap material or secondhand parts.
- ❑ Store liquid waste materials in compatible containers.
- ❑ Store and dispose used batteries in accordance with scrap lead acid battery program.
- ❑ Disconnect all floor drains connected to storm sewer system.
- ❑ Prohibit non-storm water discharges, e.g., dumping of used liquids down floor drains and washdown of maintenance areas.
- ❑ Provide employee training on appropriate storage and disposal of waste materials.
- ❑ Provide good housekeeping measures.
- ❑ Conduct inspections of work areas for compliance with BMPs.

Vehicle Cleaning (if applicable)

- ❑ Avoid washing vehicles and equipment outdoors.
- ❑ Use biodegradable, phosphate free detergents.
- ❑ Recycle wash water.
- ❑ Provide vehicle wash rack with dedicated sediment trap.
- ❑ Use autoshut-off valves on washing equipment.

Training

- ❑ Provide employee training on proper material handling and storage procedures. Require familiarization with applicable SPCC measures.

Steam Electric Power Generating Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Fugitive Dust Emissions

- ❑ Consider establishing procedures to minimize offsite tracking of coal dust. To prevent offsite tracking the facility may consider specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

Delivery Vehicles

- ❑ Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container.
- ❑ Develop procedures to control leakage or spillage from vehicles or containers, and ensure that proper protective measures are available for personnel and environment.

Fuel Oil Unloading Areas

- ❑ Use containment curbs in unloading areas.
- ❑ During deliveries station personnel familiar with spill prevention and response procedures may be present to ensure that any leaks or spills are immediately contained and cleaned up.
- ❑ Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices should be placed beneath fuel oil connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors).

Chemical Loading/Unloading Areas

- ❑ Use containment curbs at chemical loading/unloading areas to contain spills.
- ❑ During deliveries station personnel familiar with spill prevention and response procedures may be present to ensure that any leaks or spills are immediately contained and cleaned up.
- ❑ Where practicable chemical loading/unloading areas should be covered, and chemicals should be stored indoors.

Miscellaneous Loading/Unloading Areas

- ❑ Consider covering the loading area.
- ❑ Minimize storm water runon to the loading area by grading, berming, or curbing the area around the loading area to direct storm water away from the area.
- ❑ Locate the loading/unloading equipment and vehicles so that leaks can be controlled in existing containment and flow diversion systems.

Liquid Storage Tanks

- ❑ Use protective guards around tanks.
- ❑ Use containment curbs.
- ❑ Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices should be placed beneath chemical connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors).
- ❑ Use dry cleanup methods.

Large Bulk Fuel Storage Tanks

- ❑ Comply with applicable State and Federal laws, including Spill Prevention Control and Countermeasures (SPCC).
- ❑ Use containment berms.

Oil/Chemical Storage

- ❑ The structural integrity of all above ground tanks, pipelines, pumps and other related equipment should be visually inspected on a weekly basis.
- ❑ All repairs deemed necessary based on the findings of the inspections should be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

Oil Bearing Equipment in Switchyards

- ❑ Consider level grades and gravel surfaces to retard flows and limit the spread of spills.
- ❑ Collect storm water runoff in perimeter ditches.

Residue Hauling Vehicles

- ❑ Inspect all residue hauling vehicles for proper covering over the load, adequate gate sealing and overall integrity of the body or container.
- ❑ Vehicles without load covers or adequate gate sealing, or with poor body or container conditions may be repaired as soon as practicable.

Ash Loading Areas

- ❑ Reduce and/or control the tracking of ash or residue from ash loading areas. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before each loaded vehicle departs.

Areas Adjacent to Disposal Ponds or Landfills

- ❑ Develop procedures to reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles.
- ❑ Reduce ash residue on exit roads leading into and out of residue handling areas.

Landfills, Scrapyards, and General Refuse Sites

- ❑ See the fact sheet AScrap and Waste Recycling Facilities.

Vehicle Maintenance Activities

- ❑ See the fact sheet AVehicle and Equipment Maintenance Areas at Land Transportation Facilities.

Material Storage Areas

- ❑ Consider flat yard grades, runoff collection in graded swales or ditches, erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins), covering lay down areas, storing the materials indoors, covering the material with a temporary covering made of polyethylene, polyurethane, polypropylene, or hypalon.
- ❑ Storm water runon may be minimized by constructing an enclosure or building a berm around the area.

Vehicle and Equipment Maintenance Areas at Land Transportation Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Fueling

- ❑ Use spill and overflow protection.
- ❑ Minimize runon of storm water into the fueling area by grading the area such that storm water only runs off.
- ❑ Reduce exposure of the fuel area to storm water by covering the area.
- ❑ Use dry cleanup methods for fuel area rather than hosing the fuel area down.
- ❑ Use proper petroleum spill control.
- ❑ Perform preventive maintenance on storage tanks to detect potential leaks before they occur.
- ❑ Inspect the fueling area to detect problems before they occur.
- ❑ Train employees on proper fueling techniques.

Vehicle and Equipment Maintenance

- ❑ Maintain an organized inventory of materials used in the maintenance shop.
- ❑ Dispose of greasy rags, oil filters, air filters, batteries, spent coolant, and degreasers properly.
- ❑ Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries).
- ❑ Drain oil filters before disposal or recycling.
- ❑ Drain and contain all fluids from wrecked vehicles and Aparts≡ cars.
- ❑ Store cracked batteries in a nonleaking secondary container.
- ❑ Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
- ❑ Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
- ❑ Plug floor drains that are connected to the storm or sanitary sewer. Alternatively, install a sump that is pumped regularly.
- ❑ Inspect the maintenance area regularly for proper implementation of control measures.
- ❑ Train employees on proper waste control and disposal procedures.

Outdoor Vehicle and Equipment Storage and Parking

- ❑ Use drip pans under all vehicles and equipment waiting for maintenance.
- ❑ Cover the storage area with a roof.
- ❑ Inspect the storage yard for filling drip pans and other problems regularly.
- ❑ Train employees on procedures for storage and inspection items.

Locomotive Sanding Areas

- ❑ Cover sand storage piles.
- ❑ Install sediment traps.
- ❑ Install curbs or dikes around storage piles to minimize storm water runon.

Painting Areas

- ❑ Keep paint and paint thinner away from traffic areas to avoid spills.
- ❑ Spray paint in an Occupational Safety and Health Act (OSHA) approved hood.
- ❑ Use effective spray equipment that delivers more paint to the target and less over-spray.
- ❑ Avoid sanding in windy weather and collect and dispose of waste properly.
- ❑ Recycle paint, paint thinner, and solvents.
- ❑ Inspect painting procedures to ensure that they are conducted properly.
- ❑ Train employees on proper sanding, painting, and spraying techniques.

Vehicle or Equipment Washing Areas

- ❑ Avoid washing parts or equipment outside.
- ❑ Use phosphate-free biodegradable detergents.
- ❑ Designate an area for cleaning activities.
- ❑ Contain and recycle washwaters.
- ❑ Ensure that washwaters drain well.
- ❑ Inspect cleaning area regularly.
- ❑ Train employees on proper washing procedures.

Liquid Storage in Above Ground Storage

- ❑ Maintain good integrity of all storage containers.
- ❑ Install safeguards (such as diking or berming) against accidental releases at the storage area.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Cold Weather Activities

- ❑ Minimize salt application.
- ❑ Use uncontaminated dirt or ash, if use is necessary.
- ❑ Train employees on proper salt, dirt, sand, or ash application.

Improper Connections to Storm Drain

- ❑ Plug all floor drains connected to storm drain or if connection is unknown. Alternatively, install a sump that is pumped regularly.
- ❑ Perform smoke or dye testing to determine if interconnections exist between sanitary water system and storm drain system.
- ❑ Update facility schematics to accurately reflect all plumbing connections.
- ❑ Install a safeguard against vehicle washwaters entering the storm sewer unless permitted.
- ❑ Maintain and inspect the integrity of all underground storage tanks; replace when necessary.
- ❑ Train employees on proper disposal practices for all materials.

Vehicle and Equipment Maintenance Areas at Water Transportation Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Pressure Washing

- ❑ Collect discharge water and remove all visible solids before discharging to a sewer system, or where permitted, to a drainage system, or receiving water.
- ❑ Perform pressure washing only in designated areas where wash water containment can be effectively achieved.
- ❑ Use no detergents or additives in the pressure wash water.
- ❑ Direct deck drainage to a collection system sump for settling and/or additional treatment.
- ❑ Implement diagonal trenches or berms and sumps to contain and collect wash water at marine railways.
- ❑ Use solid decking, gutters, and sumps at lift platforms to contain and collect wash water for possible reuse.

Surface Preparation, Sanding, and Paint Removal.

- ❑ Enclose, cover, or contain blasting and sanding activities to the extent practical to prevent abrasives, dust, and paint chips from reaching storm sewers or receiving water.
- ❑ Where feasible, cover drains, trenches, and drainage channels to prevent entry of blasting debris to the system.
- ❑ Prohibit uncontained blasting or sanding activities performed over open water.
- ❑ Prohibit blasting or sanding activities performed during windy conditions which render containment ineffective.
- ❑ Inspect and clean sediment traps to ensure the interception and retention of solids prior to entering the drainage system.
- ❑ Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
- ❑ Collect spent abrasives routinely and store under a cover to await proper disposal.

Painting

- ❑ Enclose, cover, or contain painting activities to the maximum extent practical to prevent overspray from reaching the receiving water.
- ❑ Prohibit uncontained spray painting activities over open water.
- ❑ Prohibit spray painting activities during windy conditions which render containment ineffective.
- ❑ Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters, preferably indoors or under cover.
- ❑ Have absorbent and other cleanup items readily available for immediate cleanup of spills.
- ❑ Allow empty paint cans to dry before disposal.
- ❑ Keep paint and paint thinner away from traffic areas to avoid spills.
- ❑ Recycle paint, paint thinner, and solvents.
- ❑ Train employees on proper painting and spraying techniques, and use effective spray equipment that delivers more paint to the target and less overspray.

Drydock Maintenance

- ❑ Clean and maintain drydock on a regular basis to minimize the potential for pollutants in the storm water runoff.
- ❑ Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
- ❑ If hosing may be used as a removal method, collect wash water to remove solids and potential metals.
- ❑ Clean the remaining areas of the dock after a vessel has been removed and the dock raised.
- ❑ Remove and properly dispose of floatable and other low-density waste (wood, plastic, insulations, etc.).

Drydocking

- ❑ Use plastic barriers beneath the hull, between the hull and drydock walls for containment.
- ❑ Use plastic barriers hung from the flying bridge of the drydock, from the bow or stern of the vessel, or from temporary structures for containment.
- ❑ Weight the bottom edge of the containment tarpaulins or plastic sheeting during a light breeze.
- ❑ Use plywood and/or plastic sheeting to cover open areas between decks when sandblasting (scuppers, railings, freeing ports, ladders, and doorways).
- ❑ Install tie rings or cleats, cable suspension systems, or scaffolding to make implementation containment easier.

Nondrydock Containment

- ❑ Hang tarpaulin from the boat, fixed, or floating platforms to reduce pollutants transported by wind.
- ❑ Pave or tarp surfaces under marine railways.
- ❑ Clean railways before the incoming tide.
- ❑ Haul vessels beyond the high tide zone before work commences or halt work during high tide.
- ❑ Place plastic sheeting or tarpaulin underneath boats to contain and collect waste and spent materials and clean and sweep regularly to remove debris.
- ❑ Use fixed or floating platforms with appropriate plastic or tarpaulin barriers as work surfaces and for containment when work is performed on a vessel in the water to prevent blast material or paint overspray from contacting storm water or the receiving water.
- ❑ Sweep, rather than hose, debris present on the dock.

Engine Maintenance and Repairs

- ❑ Maintain an organized inventory of materials used in the maintenance shop.
- ❑ Dispose of greasy rag, oil filters, air filters, batteries, spent coolant, and degreasers properly.
- ❑ Label and track the recycling of waste material (i.e., used oil, spent solvents, batteries).
- ❑ Drain oil filters before disposal or recycling.
- ❑ Store cracked batteries in a non-leaking secondary container.
- ❑ Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
- ❑ Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
- ❑ Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly.
- ❑ Inspect the maintenance area regularly for proper implementation of control measures.
- ❑ Train employees on proper waste control and disposal procedures.

Material Handling: Bulk Liquid Storage and Containment.

- ❑ Store permanent tanks in a paved area surrounded by a dike system that provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Maintain good integrity of all storage tanks.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Material Handling: Containerized Material Storage

- ❑ Store containerized materials (fuels, paints, solvents, etc. in a protected, secure location and away from drains.
- ❑ Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
- ❑ Identify potentially hazardous materials, their characteristics, and use.
- ❑ Control excessive purchasing, storage, and handling of potentially hazardous materials.
- ❑ Keep records to identify quantity, receipt date, service life, users, and disposal routes.
- ❑ Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
- ❑ Educate personnel for proper storage, use, cleanup, and disposal of materials.
- ❑ Provide sufficient containment for outdoor storage areas the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Use temporary containment where required by portable drip pans.
- ❑ Use spill troughs for drums with taps.

Material Handling Designated Material Mixing Areas

- ❑ Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters. Locate designated areas preferably indoors or under a shed.
- ❑ If spills occur,
  - stop the source of the spill immediately
  - contain the liquid until cleanup is complete
  - deploy oil containment booms if the spill may reach the water
  - cover the spill with absorbent material
  - keep the area well ventilated
  - dispose of cleanup materials properly
  - do not use emulsifier or dispersant

Shipboard Process Water Handling

- ❑ Keep process and cooling water used aboard ships separate from sanitary wastes to minimize disposal costs for the sanitary wastes.
- ❑ Keep process and cooling water from contact with spent abrasives and paint to avoid discharging these pollutants.
- ❑ Inspect connecting hoses for leaks.

Shipboard Sanitary Waste Disposal

- ❑ Discharge sanitary wastes from the ship being repaired to the yard's sanitary system or dispose of by a commercial waste disposal company.
- ❑ Use appropriate material transfer procedures, including spill prevention and containment activities.

Bilge and Ballast Water

- ❑ Collect and dispose of bilge and ballast waters that contain oils, solvents, detergents, or other additives to a licensed waste disposal company.

Ship and Boat Building or Repairing Yards

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Pressure Washing

- ❑ Collect discharge water and remove all visible solids before discharging to a sewer system, or where permitted, to a drainage system, or receiving water.
- ❑ Perform pressure washing only in designated areas where wash water containment can be effectively achieved.
- ❑ Use no detergents or additives in the pressure wash water.
- ❑ Direct deck drainage to a collection system sump for settling and/or additional treatment.
- ❑ Implement diagonal trenches or berms and sumps to contain and collect wash water at marine railways.
- ❑ Use solid decking, gutters, and sumps at lift platforms to contain and collect wash water for possible reuse.

Surface Preparation, Sanding, and Paint Removal

- ❑ Enclose, cover, or contain blasting and sanding activities to the extent practical to prevent abrasives, dust, and paint chips from reaching storm sewers or receiving water.
- ❑ Where feasible, cover drains, trenches, and drainage channels to prevent entry of blasting debris to the system.
- ❑ Prohibit uncontained blasting or sanding activities performed over open water.
- ❑ Prohibit blasting or sanding activities performed during windy conditions that render containment ineffective.
- ❑ Inspect and clean sediment traps to ensure the interception and retention of solids prior to entering the drainage system.
- ❑ Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
- ❑ Collect spent abrasives routinely and store under a cover to await proper disposal.

Painting

- ❑ Enclose, cover, or contain painting activities to the maximum extent practical to prevent overspray from reaching the receiving water.
- ❑ Prohibit uncontained spray painting activities over open water.
- ❑ Prohibit spray painting activities during windy conditions which render containment ineffective.
- ❑ Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters, preferably indoors or under cover.
- ❑ Have absorbent and other cleanup items readily available for immediate cleanup of spills.
- ❑ Allow empty paint cans to dry before disposal.
- ❑ Keep paint and paint thinner away from traffic areas to avoid spills.
- ❑ Recycle paint, paint thinner, and solvents.
- ❑ Train employees on proper painting and spraying techniques, and use effective spray equipment that delivers more paint to the target and less overspray.

Drydock Maintenance

- ❑ Clean and maintain drydock on a regular basis to minimize the potential for pollutants in the storm water runoff.
- ❑ Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
- ❑ If hosing may be used as a removal method, collect wash water to remove solids and potential metals.
- ❑ Clean the remaining areas of the dock after a vessel has been removed and the dock raised.
- ❑ Remove and properly dispose of floatable and other low-density waste (wood, plastic, insulations, etc.).

Drydocking

- ❑ Use plastic barriers beneath the hull, between the hull and drydock walls for containment.
- ❑ Use plastic barriers hung from the flying bridge of the drydock, from the bow or stern of the vessel, or from temporary structures for containment.
- ❑ Weight the bottom edge of the containment tarpaulins or plastic sheeting during a light breeze.
- ❑ Use plywood and/or plastic sheeting to cover open areas between decks when sandblasting (scuppers, railings, freeing ports, ladders, and doorways).
- ❑ Install tie rings or cleats, cable suspension systems, or scaffolding to make implementation containment easier.

Nondrydock Containment

- ❑ Hang tarpaulin from the boat, fixed, or floating platforms to reduce pollutants transported by wind.
- ❑ Pave or tarp surfaces under marine railways.
- ❑ Clean railways before the incoming tide.
- ❑ Haul vessels beyond the high tide zone before work commences or halt work during high tide.
- ❑ Place plastic sheeting or tarpaulin underneath boats to contain and collect waste and spent materials and clean and sweep regularly to remove debris.
- ❑ Use fixed or floating platforms with appropriate plastic or tarpaulin barriers as work surfaces and for containment when work is performed on a vessel in the water to prevent blast material or paint overspray from contacting storm water or the receiving water.
- ❑ Sweep, rather than hose, debris present on the dock.

Engine Maintenance and Repairs

- ❑ Maintain an organized inventory of materials used in the maintenance shop.
- ❑ Dispose of greasy rag, oil filters, air filters, batteries, spent coolant, and degreasers properly.
- ❑ Label and track the recycling of waste material (i.e., used oil, spent solvents, batteries).
- ❑ Drain oil filters before disposal or recycling.
- ❑ Store cracked batteries in a non-leaking secondary container.
- ❑ Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
- ❑ Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
- ❑ Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly.
- ❑ Inspect the maintenance area regularly for proper implementation of control measures.
- ❑ Train employees on proper waste control and disposal procedures.

Material Handling: Bulk Liquid Storage and Containment

- ❑ Store permanent tanks in a paved area surrounded by a dike system which provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Maintain good integrity of all storage tanks.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Material Handling: Containerized Material Storage

- ❑ Store containerized materials (fuels, paints, solvents, etc. in a protected, secure location and away from drains.
- ❑ Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
- ❑ Identify potentially hazardous materials, their characteristics, and use.
- ❑ Control excessive purchasing, storage, and handling of potentially hazardous materials.
- ❑ Keep records to identify quantity, receipt date, service life, users, and disposal routes.
- ❑ Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
- ❑ Educate personnel for proper storage, use, cleanup, and disposal of materials.
- ❑ Provide sufficient containment for outdoor storage areas the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Use temporary containment where required by portable drip pans.
- ❑ Use spill troughs for drums with taps.

Material Handling Designated Material Mixing Areas

- ❑ Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters. Locate designated areas preferably indoors or under a shed.
- ❑ If spills occur,
  - stop the source of the spill immediately
  - contain the liquid until cleanup is complete
  - deploy oil containment booms if the spill may reach the water
  - cover the spill with absorbent material
  - keep the area well ventilated
  - dispose of cleanup materials properly
  - do not use emulsifier or dispersant

Shipboard Process Water Handling

- ❑ Keep process and cooling water used aboard ships separate from sanitary wastes to minimize disposal costs for the sanitary wastes.
- ❑ Keep process and cooling water from contact with spent abrasives and paint to avoid discharging these pollutants.
- ❑ Inspect connecting hoses for leaks.

Shipboard Sanitary Waste Disposal

- ❑ Discharge sanitary wastes from the ship being repaired to the yard's sanitary system or dispose of by a commercial waste disposal company.
- ❑ Use appropriate material transfer procedures, including spill prevention and containment activities.

Bilge and Ballast Water

- ❑ Collect and dispose of bilge and ballast waters that contain oils, solvents, detergents, or other additives to a licensed waste disposal company.

Vehicle and Equipment Maintenance and Deicing Areas at Air Transportation Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Aircraft, Ground Vehicle and Equipment Maintenance Areas

- ❑ Perform all maintenance activities indoors.
- ❑ Maintain an organized inventory of materials used.
- ❑ Drain all parts of fluids prior to disposal.
- ❑ Prohibit the practice of hosing down the apron or hangar floor.
- ❑ Use dry cleanup methods in the event of spills.
- ❑ Collect the storm water runoff from maintenance and/or service areas and provide treatment or recycling.

Aircraft, Ground Vehicle, and Equipment Cleaning Areas

- ❑ Perform all cleaning operations indoors.
- ❑ Collect the storm water runoff from the area and provide treatment or recycling.

Aircraft, Ground Vehicle, and Equipment Storage Areas

- ❑ The storage of aircraft, ground vehicles, and equipment awaiting maintenance may be confined to designated areas.
- ❑ Store aircraft and ground vehicles indoors.
- ❑ Use drip pans for the collection of fluid leaks.
- ❑ Consider perimeter drains, dikes or berms surrounding storage areas.

Material Storage Areas

- ❑ Storage units of all materials (e.g., used oils, hydraulic fluids, spent solvents and waste aircraft fuel) may be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil", "contaminated Jet A", etc.).
- ❑ Store materials indoors.
- ❑ Maintain a centralized storage areas for waste materials.
- ❑ Install berms and dikes around storage areas.

Airport Fuel System and Fueling Areas

- ❑ Where above ground storage timers are present, pollution prevention plan requirements should be consistent with requirements established in 40 CFR 112.7 guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) plan.

Deicing Operations

- ❑ Evaluate present chemical application rates to ensure against excessive over application. Devices which meter the amount of chemical being applied to runways help to prevent over application.
- ❑ Emphasize anti-icing operations which would preclude the need to deice; less chemical is required to prevent the formation of ice on a runway than is required to remove ice from a runway.
- ❑ Consider installing runway ice detection systems (RID) otherwise known as Apavement sensors≡ which monitor runway temperatures. Pavement sensors provide an indication of when runway temperatures are approaching freezing conditions, thus alerting operators of the need to conduct anti-icing operations.
- ❑ Deicing/anti-icing chemicals applied during extremely cold, dry conditions, are often ineffective since they do not adhere to the ice surface and may be scattered as a result of windy conditions or aircraft movement. In an effort to improve the efficiency of the application, operators should consider prewetting the deicing chemical to improve the adhesion to the iced surface.
- ❑ Consider using chemicals which have less of an environmental impact on receiving waters. Potassium acetate, has a lower oxygen demand than glycol, is nontoxic to aquatic habitat or humans, and was approved by the FAA for runway deicing operations in November, 1991 (AC No. 150/520030A CHG 1).
- ❑ Consider pretreating aircraft with hot water or forced air prior to the application of chemical deicer to reduce the amount of chemical deicer used during the operation.
- ❑ When deicing/anti-icing operations are conducted on aircraft during periods of dry weather, operators should ensure that storm water inlets are blocked to prevent the discharge of deicing/anti-icing chemicals to the storm sewer system. Mechanical vacuum systems or other similar devices can then be used to collect the spent deicing chemical from the apron surface for proper disposal to prevent those materials from later becoming a source of storm water contamination.
- ❑ Establishing a centralized deicing station would provide better control over aircraft deicing/anti-icing operations in that it enables operators to readily collect spent deicing/anti-icing chemicals.
- ❑ Once spent deicer/anti-icer chemicals are collected, operators can select from various methods of disposal such as disposal to sanitary sewer facility, retention and detention ponds, or recycling.

Treatment Works

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Preparation of Biological and Physical Treatment Process

- ❑ Use drip pans under drums and equipment where feasible.
- ❑ Store process chemicals inside buildings.
- ❑ Inspect the storage yard for filling drip pans and other problems regularly.
- ❑ Train employees on procedures for storing and inspecting chemicals.

Soil Amending and Grass Fertilizing

- ❑ Use the appropriate amount of fertilizer.
- ❑ Do not overfertilize.
- ❑ Train employee on proper fertilizing techniques.

Liquid Storage in Above Ground Storage Containers

- ❑ Maintain good integrity of all storage containers.
- ❑ Install safeguards (such as diking or berming) against accidental releases at the storage area.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Pest Control

- ❑ Minimize pesticide application.
- ❑ Only apply pesticide if needed.
- ❑ Train employees on proper pesticide application.

Sludge Drying Beds

- ❑ Ensure drying bed is draining properly (e.g., check for clogging); avoid overfilling drying bed; grade the land to divert flow around drying bed; berm, dike, or curb drying bed areas; cover drying beds.

Sludge Storage Piles

- ❑ Confine storage of sludge to a designated area as far from any receiving water body as possible; store sludge on an impervious surface (e.g., concrete pad); grade the land to divert flow around storage piles; berm, dike, or curb sludge storage piles; cover sludge storage piles.

Sludge Transfer

- ❑ Promptly remove any sludge spilled during transfer; conduct transfer operations over an impervious surface; avoid transferring sludge during rain events; grade the land to divert flow around transfer areas; berm, curb, or dike transfer areas; avoid locating transfer operations near receiving water bodies.

Incineration-Ash Impoundments/ Piles

- ❑ Line ash impoundments with clay (or other type of impervious material); ensure ash impoundments will hold maximum volume of ash and a 10-year, 24-hour rain event; curb, berm, or dike ash storage areas; avoid locating ash storage areas near receiving water bodies.

Miscellaneous

- ❑ Properly dispose of grit/scum; properly dispose of screens on a daily basis; maximize vegetative cover to stabilize soil and reduce erosion.

Food and Kindred Products Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Raw Material Unloading/Product Loading

- ❑ Ensure that a facility representative is present during unloading/loading activities.
- ❑ Inspect the unloading/loading areas to detect problems before they occur.
- ❑ Close storm drains during loading/unloading activities in surrounding area.
- ❑ Inspect all containers prior to unloading/loading of any raw or spent materials.
- ❑ Install backflow prevention devices on liquid transfer equipment.
- ❑ Inspect all connection equipment (e.g., hoses and couplings), and replace when necessary, before performing unloading/loading activities.
- ❑ Perform all unloading/loading activities in a covered and/or enclosed areas.
- ❑ Use drip pans when loading/unloading liquid product.
- ❑ Situate loading/unloading areas indoors or in a covered area.
- ❑ Use rubber seals in truck loading dock areas to contain spills indoors.
- ❑ Drain hoses back into truck, railcar, etc. after loading/unloading materials.
- ❑ Install high level alarm on tanks to prevent overfilling.
- ❑ Ensure that berms and dikes are built around the unloading/loading areas, if applicable.
- ❑ If outside or in covered areas, minimize run on of storm water into the unloading/loading areas by grading the areas to ensure that storm water runs off.
- ❑ Use dry cleanup methods for unloading/loading areas rather than washing the areas down.
- ❑ Train employees on proper unloading/loading techniques.
- ❑ Initiate an inventory control for all raw and spent materials.

Storage Containers: Liquid Storage

- ❑ Inspect the external condition (corrosion, leaks) of the containers.
- ❑ Inspect the general area around the containers.
- ❑ Ensure that beams and dikes are built around the containers.
- ❑ Cover and/or enclose.
- ❑ Bulkhead liquid storage tanks indoors (i.e., tank outlets located inside buildings).
- ❑ Ensure that all containers are closed (e.g., valves shut, lids and manways sealed, caps closed).
- ❑ Wash containers indoors before storing empty containers outdoors.
- ❑ If outside or in a covered area, minimize run on of storm water into a storage area by grading area to ensure that storm water runs Aoff≅ and not Aon≅.
- ❑ Train employees on proper storage techniques (e.g., filling and transferring contents).
- ❑ Maintain employee training on proper handling and transportation of materials.
- ❑ Maintain an inventory control of all raw and spent materials.
- ❑ Employ measures to protect against spillage from the overflows (e.g., high level sensors, alarms).

Storage Containers: Solid Storage

- ❑ Consider vacuum emission control systems for airborne dust and particulate matter.

Waste Management: Wastewater

- ❑ Perform treatment processes in-house, if possible.
- ❑ Inspect the outside pipe connections (couplings, valve seals and gaskets, flanges, etc.) of the treatment system for leaks, corrosion, and poor maintenance upkeep.

Waste Management: Solid Waste

- ❑ Inspect the general area around the solid waste (e.g., look for signs of leaching).
- ❑ Store waste so that it is physically contained (dumpsters, drums, bags).
- ❑ Store waste in an enclosed/covered area.
- ❑ If outside or in a covered area, minimize exposure to storm water by grading the area to ensure that storm water runs Aoff≅ and not Aon≅.
- ❑ Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.
- ❑ Route trash compactor leakage to treatment system or sanitary sewer.

Waste Management: Air Emissions

- ❑ Clean around vents and stacks to atmosphere from process and storage areas.
- ❑ Place tubs around vents and stacks for easy collection of settling particles.
- ❑ Inspect air emission control systems (e.g., baghouses) regularly and repair and replace as necessary.
- ❑ Route overflows/condensates from process vents to onsite treatment system or to the sanitary sewer.

Pest Control

- ❑ Follow manufacturers directions for application of pest control materials to site.
- ❑ Time application for dry weather conditions.
- ❑ Store partially full containers indoors or undercover.
- ❑ Apply insecticides during breeding months.
- ❑ Protect rat bait houses from storm water.

Improper Connections to the Storm Drain

- ❑ Perform smoke or dye testing to determine if interconnections exist between the sanitary sewer and storm drain.
- ❑ Plug all floor drains leading to storm drains.
- ❑ Update facility schematics to accurately reflect all plumbing connections.

General

- ❑ Offer employee incentives so that employees will develop cost effective, worker efficient BMPs.
- ❑ Request outside firm to conduct a storm water inspection/audit.
- ❑ Inspect material transfer lines/connections for leaks or signs of wear and repair or replace as necessary.

Activities for Specific Facilities:

Meat Products

- ❑ Inspect area around animal holding pens.
- ❑ Enclose/cover fowl hanging area.
- ❑ Enclose/cover the animal holding pens.
- ❑ Grade the areas around the animal holding pens to ensure storm water runs Aoff≡ and not Aon≡ to the holding pen.
- ❑ Train employees on proper material (i.e., hide, hair, feathers, animal parts) clean-up procedures around and within the animal holding pens.
- ❑ Store animal manure and other materials from clean-up activities in appropriate containers in an enclosed/covered area.
- ❑ Area for trailers holding empty bird cages should have storm water run on/runoff controls in place.
- ❑ Use mechanical sweepers around site to clean up fugitive feathers, dust, and manure.

Dairy Products

- ❑ Inspect area around aged/spoiled dairy products.
- ❑ Store aged/spoiled dairy products in enclosed area.
- ❑ Train employees on proper disposal methods for all aged/spoiled dairy products.
- ❑ Ensure that all aged/spoiled product (e.g., bottles, cartons, plastic containers) are disposed of in a proper manner (bagged, covered).

Canned Frozen and Preserved Fruits, Vegetables, and Frozen Specialties

- ❑ Inspect all fruit and vegetable storage areas.
- ❑ Store all fruits and vegetables in appropriate containers (e.g., bins, bushels, baskets, buckets) and in enclosed/covered areas.
- ❑ Store empty fruit and vegetable containers in an enclosed/covered area.
- ❑ Train employees on proper handling/disposal methods for fresh/rotten fruits and vegetables.
- ❑ Consider air emission control systems for all cooking processes to reduce particulate matter.
- ❑ Minimize fruit and vegetable storage time outdoors.

Grain Mills

- ❑ Inspect the general area around the grain storage.
- ❑ Store all grain in appropriate containers (e.g., silos, hoppers) in an enclosed/covered area.
- ❑ Train employees on grain handling procedures.
- ❑ Consider a vacuum control system in all grain mixing areas.

Bakery Products

- ❑ Inspect ingredient storage areas.
- ❑ Store all ingredients (e.g., corn sweeteners, flour, shortening, syrup, vegetable oils) in appropriate containers (e.g., tanks, drums, bags) in an enclosed/covered area.
- ❑ Remove flour/oil dust accumulation around ventilation exhaust systems.
- ❑ Install an air emission control system for all baking processes to reduce particulate matter.

Sugar and Confectionery

- ❑ Consider a vacuum control system in all granular and powdered processing areas.

Fats & Oils

- ❑ Inspect all fats and oils storage areas.
- ❑ Store all fats and oils, (e.g., butcher shop materials, hair, hide, tallow, bone meal, and offal) in enclosed/covered areas.
- ❑ Ensure all fats and oils are physically contained.

Beverages

- ❑ Ensure grain is stored in enclosed/covered area.
- ❑ Consider an air emission control system for all grain handling and brewing processes.
- ❑ Protect reusable beverage containers that are stored outdoors from storm water contact.

Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Preparation (e.g., Desizing and Scouring).

- ❑ Waste stream reuse for typical bleach unit processing; recycle J-box or kier drain wastes to saturator.
- ❑ Make use of countercurrent washing.
- ❑ Use washer waste from scour operation for batch scouring.

Dyeing

- ❑ Perform analysis of spent dye baths for residual materials.
- ❑ Where feasible, obtain background information and data necessary before making product substitutions. This includes OSHA form 20 data and technical data.
- ❑ Be aware of potential problem chemicals, such as aryl phenol ethoxylates, chlorinated aromatics, chlorinated aromatics, and metals.
- ❑ Employ pad batch dyeing to eliminate the need for salts and chemical specialties from the dyebath, with associated reduction in cost and pollution source reduction.

Finishing

- ❑ Reuse residual portions of finish mixes as much as possible by adding back to them the required components to make up the next mix.
- ❑ Return noncontact cooling water and stream condensates to either a hot water holding tank or a clear well. If neither is available, segregate waste streams from sources which do not generally require treatment from other waste streams that do require treatment.

General Water Conservation Techniques

- ❑ Use "low liquor ratio" dyeing machines where practicable.
- ❑ Use of foam processing (mercerizing, bleaching, dyeing, finishing) where practicable as a water conservation process.

Chemical Screening and Inventory Control

- ❑ Employ prescreening practices to evaluate and consider chemicals on a wide range of environmental and health impact criteria.
- ❑ Develop and perform a routine raw material quality control program.
- ❑ Review and develop procedures for source reduction of metals.
- ❑ Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
- ❑ Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
- ❑ Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly.
- ❑ Inspect the maintenance area regularly for proper implementation of control measures.
- ❑ Train employees on proper waste control and disposal procedures.

Material Handling: Bulk Liquid Storage and Containment

- ❑ Store permanent tanks in a paved area surrounded by a dike system which provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Maintain good integrity of all storage tanks.
- ❑ Inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
- ❑ Train employees on proper filling and transfer procedures.

Material Handling: Containerized Material Storage

- ❑ Store containerized materials (fuels, paints, solvents, etc.) in a protected, secure location and away from drains.
- ❑ Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
- ❑ Label all materials clearly.
- ❑ Identify potentially hazardous materials, their characteristics, and use.
- ❑ Control excessive purchasing, storage, and handling of potentially hazardous materials.
- ❑ Keep records to identify quantity, receipt date, service life, users, and disposal routes.
- ❑ Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
- ❑ Educate personnel for proper storage, use, cleanup, and disposal of materials.
- ❑ Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Use temporary containment where required by portable drip pans.
- ❑ Use spill troughs for drums with taps.

Material Handling: Designated Material Mixing Areas

- ❑ Mix solvents in designated areas away from drains, ditches, and surface waters.
- ❑ If spills occur,
  - stop the source of the spill immediately
  - contain the liquid until cleanup is complete
  - deploy oil containment booms if the spill may reach the water
  - cover the spill with absorbent material
  - keep the area well ventilated
  - dispose of cleanup materials properly
  - do not use emulsifier or dispersant

Wood and Metal Furniture and Fixture Manufacturing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Outdoor Unloading and Loading

- ❑ Confine loading/unloading activities to a designated area.
- ❑ Perform all loading/unloading activities in a covered or enclosed area.
- ❑ Close storm drains during loading/unloading activities in surrounding areas.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Inspect all containers prior to loading/unloading of any raw or spent materials.
- ❑ Berm, curb, or dike loading/unloading areas.
- ❑ Use dry clean-up methods instead of washing the areas down.
- ❑ Train employees on proper loading/unloading techniques.

Outdoor Material Storage

- ❑ Confine storage of raw materials, parts, and equipment to designated areas.
- ❑ Train employees on proper waste control and disposal.
- ❑ Berm, curb, or dike any areas around tanks.
- ❑ Ensure that all containers are properly sealed and valves closed.
- ❑ Inventory all raw and spent materials.
- ❑ Inspect air emission control systems regularly, and repair or replace when necessary.
- ❑ Store wastes in covered, leak proof containers (e.g., dumpsters, drums).
- ❑ Store wastes in enclosed and/or covered areas.
- ❑ Ensure hazardous and solid waste disposal practices are performed in accordance with applicable Federal, State, and local requirements.
- ❑ Ship all wastes to offsite landfills or treatment facilities.

Printing and Publishing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Plate Preparation

- ❑ Use aqueous-developed lithographic plates or wipe-on plates.

Printing

- ❑ Use press wipes as long as possible before discarding or laundering; dirty ones for the first pass, clean ones for the second pass.
- ❑ Squeeze or centrifuge solvent out of dirty rags.
- ❑ Set up an in-house dirty rag cleaning operation if warranted or send to approved industrial laundries, if available.
- ❑ Dedicate press for inks with hazardous pigments/solvents.
- ❑ Segregate used oil from solvents or other materials.
- ❑ Use water-based inks in gravure and flexographic printing process.

Clean Up

- ❑ Label sinks as to proper disposal of liquids.
- ❑ Keep equipment in good condition.
- ❑ Use doctor blades and squeegees to remove as much ink as possible prior to cleaning with solvent and rags.
- ❑ Control solvent use during equipment cleaning, use only what you need.
- ❑ Designate special areas for draining or replacing fluids.
- ❑ Substitute nontoxic or less toxic cleaning solvents.
- ❑ Recover waste solvents onsite with batch distillation if warranted or utilize professional solvent recyclers.
- ❑ Centralize liquid solvent cleaning in one location. Have refresher courses in operating and safety procedures.

Stencil Preparation for Screen Printing

- ❑ Recapture excess ink from silkscreen process before washing the screen to decrease amount of ink used and cleaning emulsion used.

Material Handling and Storage Areas

- ❑ Store containerized materials (fuels, paints, inks, solvents, etc.) in a protected, secure location and away from drains.
- ❑ Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
- ❑ Identify potentially hazardous materials, their characteristics, and use.
- ❑ Eliminate/reduce exposure to storm water.
- ❑ Control excessive purchasing, storage, and handling of potentially hazardous materials.
- ❑ Keep records to identify quantity, receipt date, service life, users, and disposal routes secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
- ❑ Educate personnel for proper storage, use, cleanup, and disposal of materials.
- ❑ Maintain good integrity of all storage tanks inspect storage tanks to detect potential leaks and perform preventive maintenance.
- ❑ Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
- ❑ Use temporary containment where required by portable drip pans.
- ❑ Use spill troughs for drums with taps.
- ❑ Train employees on proper filling and transfer procedures.
- ❑ Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
- ❑ Handle solvents in designated areas away from drains, ditches, and surface waters. Locate designated areas preferably indoors or under a shed.
- ❑ If spills occur,
    - stop the source of the spill immediately
    - contain the liquid until cleanup is complete
    - deploy oil containment booms if the spill may reach the water
    - cover the spill with absorbent material
    - keep the area well ventilated
    - dispose of cleanup materials properly
    - do not use emulsifier or dispersant

Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Outdoor Unloading and Loading

- ❑ Confine loading/unloading activities to a designated area.
- ❑ Consider performing loading/unloading activities indoors or in a covered area.
- ❑ Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps).
- ❑ Close storm drains during loading/unloading activities in surrounding areas.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Inspect the unloading/loading areas to detect problems before they occur.
- ❑ Inspect all containers prior to loading/unloading of any raw or spent materials.
- ❑ Consider berming, curbing, or diking loading/unloading areas.
- ❑ Dead-end sump where spilled materials could be directed.
- ❑ Drip pans under hoses.
- ❑ Use dry clean-up methods instead of washing the areas down.
- ❑ Train employees on proper loading/unloading techniques and spill prevention and response.

Outdoor Material Storage

- ❑ Confine storage of materials, parts, and equipment to designated areas.
- ❑ Consider secondary containment using curbing, berming, or diking all liquid storage areas.
- ❑ Train employees on proper waste control and disposal.
- ❑ Train employees in spill prevention and response.
- ❑ Consider covering tanks.
- ❑ Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed).
- ❑ Wash and rinse containers indoors before storing them outdoors.
- ❑ If outside or in covered areas, minimize run on by grading the land to divert flow away from containers.
- ❑ Leak detection and container integrity testing.
- ❑ Direct runoff to onsite retention pond.
- ❑ Inventory all raw and spent materials.
- ❑ Clean around vents and stacks.
- ❑ Place tubs around vents and stacks to collect particulate.
- ❑ Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary.
- ❑ Store wastes in covered, leak proof containers (e.g., dumpsters, drums).
- ❑ Consider shipping all wastes to offsite landfills or treatment facilities.
- ❑ Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.

Zinc Handling

- ❑ Train employee train regarding the handling and emptying of zinc bags.
- ❑ Indoor storage of zinc bags.
- ❑ Thoroughly cleanup zinc spills without washing the zinc into a storm drain.
- ❑ Consider the use of 2,500 pound sacks (from which spills are less likely) rather than 50 to 100 pound sacks.
- ❑ Provide a cover for the dumpster or move the dumpster inside.
- ❑ Provide a lining for the dumpster.
- ❑ Review dust collectors and baghouses as possible sources of zinc. Improperly operating dust collectors or baghouses may be replaced or repaired as appropriate; the plan may also provide for regular maintenance of these facilities.
- ❑ Review dust generation from rubber grinding operations and as appropriate, install a dust collection system.
- ❑ Prevent and/or clean up drips or spills of zinc stearate slurry that may be released to a storm drain. Alternate compounds to zinc stearate may also be considered.

Leather Tanning and Finishing Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Temporary Outdoor Storage of Fresh or Brine Cured Hides

- ❑ Store hides indoors if possible.
- ❑ Cover the hides with a roof or temporary covering (e.g.,polyethylene, tarpaulin etc.).
- ❑ Minimize storm water run on by enclosing the area or building a berm around the area.
- ❑ Inspect area regularly for proper implementation of good housekeeping and control measures.

Beamhouse Operations

- ❑ Store chemical drums & bags and empty lime & depilatory chemical containers indoors if possible, preventive maintenance.
- ❑ Cover chemical drums & bags, empty lime & depilatory chemical containers and leather scraps with roof or temporary covering (e.g., tarpaulins, polyethylene) and store on elevated impermeable surface.
- ❑ Curbing, containment dikes around chemical storage, empty lime & depilatory chemical containers and leather scrap storage area.
- ❑ Inspect area regularly for leaking drums, broken bags, proper implementation of good housekeeping and control measures, (broken cracked dikes), material inventory, material storage and operation & maintenance.
- ❑ Clean up leaks & spills quickly & completely, use drip pans for leaking equipment.
- ❑ Good Housekeeping-all paved areas should be swept regularly, eliminate unnecessary flushing with water and label chemical drums and containers.
- ❑ Employee training on good housekeeping, proper handling of chemicals.

Tanyards

- ❑ BMPs for Tanyards (empty chemical containers and hides, leather dust, shavings) are the same as those listed above for Beamhouse Activities.

Retan and Wet Finish

- ❑ Dust reduction through frequent inspection of vacuum, collector (bag & cyclone), and filter systems.
- ❑ Dust reduction through enclosure and covering.
- ❑ Preventive maintenance/inspection of dust collection systems.
- ❑ Good Housekeeping-regular sweeping of paved areas, eliminate unnecessary flushing with water and label chemical drums and containers.
- ❑ Employee training on good housekeeping, proper handling of chemicals.

Dry Finish

- ❑ Preventive maintenance, inspection of spray booths.
- ❑ Employee training on proper disposal of spent solvents.

Receiving and Shipping

- ❑ Cover shipping & receiving area.
- ❑ Cover trucks.
- ❑ Vehicle positioning-locating trucks while transferring materials to prevent spills onto the ground surface.
- ❑ Grade berm or curb area to prevent storm water run on contamination, divert rain gutters away from loading area.
- ❑ Clean spills immediately.
- ❑ Inspect trucks for leaks.
- ❑ Employee training in spill prevention.

Liquid Storage in Above Ground Tanks

- ❑ Clearly tag valves to avoid human error.
- ❑ Install overflow protection devices on tank systems to warn operator or to automatically shut down transfer pumps when tanks reach full capacity.
- ❑ Secondary containment around tanks.
- ❑ Employee training.
- ❑ Inspection of tank foundations, connections, coatings, valves and piping systems.
- ❑ Comply with existing spill prevention, cleanup and countermeasure plans (SPCC plan) and State and Federal laws.
- ❑ Integrity testing by qualified professional.

Improper Connections to Storm Drains

- ❑ Plug all floor drains connected to storm drain.
- ❑ Perform smoke or dye testing to determine if interconnections exist between sanitary water system and storm drain system.
- ❑ Update facility schematics to accurately reflect all plumbing connections.
- ❑ Install a safeguard against washwaters from processing areas entering the storm sewer unless permitted.
- ❑ Train employees on proper disposal practices for all materials.

Waste Management

- ❑ Conduct waste reduction assessment-develop guidelines for the elimination of waste generation emissions.
- ❑ Institute industrial waste source reduction and recycling BMPs.
- ❑ Move waste management activities indoors (after safety concerns are addressed) and cover waste piles, dumpsters, hoppers, place on impermeable elevated surfaces.
- ❑ Prevent storm water run on by curbing, building berms.
- ❑ Cover trucks & inspect for leaking wastes.
- ❑ Inspection of waste management areas for leaking containers, spills, damaged containers, uncovered waste piles, dumpsters, hoppers.
- ❑ Inspection of roof areas & outside equipment.
- ❑ Develop and maintain proper erosion control or site stabilization measures.
- ❑ Train employees on proper disposal practices for all materials.

Fabricated Metal Products Industry

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Metal Fabricating Areas

- ❑ Sweep fabrication areas. Absorb dust through a vacuum system to avoid accumulation on roof tops and onto the ground.
- ❑ Sweep on a regular basis all accessible paved areas.
- ❑ Maintain floors in a clean and dry condition.
- ❑ Remove waste and dispose of regularly.
- ❑ Remove obsolete equipment expeditiously.
- ❑ Train employees on good housekeeping measures.

Storage Areas for Raw Metal

- ❑ The storage of raw materials should be under a covered area whenever possible and protected from contact with the ground.
- ❑ The amount of material stored should be minimized to avoid corrosive activity from longterm exposed materials.
- ❑ Diking or berming the area to prevent or minimize runon may be considered.
- ❑ Check raw metals for corrosion.
- ❑ Keep area neat and orderly, stack neatly on pallets or off the ground; and cover exposed materials.

Receiving, Unloading, and Loading Areas

- ❑ These areas should be enclosed where feasible using either curbing, berming, diking or other accepted containment systems in case of spills during delivery of chemicals such as lubricants, coolants, rust preventatives, solvents, oil, sodium hydroxide, hydrochloric acid, calcium chloride, polymers, sulfuric acid, and other chemicals used in the metal fabricating processes.
- ❑ Directing roof down spouts away from loading sites and equipment and onto grassy or vegetated areas should help prevent storm water contamination by pollutants that have accumulated in these areas.
- ❑ Clean up spills immediately.
- ❑ Check for leaks and remedy problems regularly.
- ❑ Unload under covered areas when possible.

Storage of Heavy Equipment

- ❑ Vehicles should be stored indoors when possible.
- ❑ If stored outdoors, the use of gravel, concrete or other porous surfaces should be considered to minimize or prevent heavy equipment from creating ditches or other conveyances that would cause sedimentation runoff and increase TSS loadings.
- ❑ Clean equipment prior to storage.
- ❑ Divert drainage to the grass swales, filter strips, retention ponds, or holding tanks.

Metal Working Fluid Areas

- ❑ Store used metal working fluid with fine metal dust indoors.
- ❑ Use tight sealing lids on all fluid containers.
- ❑ Use straw, clay absorbents, sawdust, or synthetic absorbents to confine or contain any spills, or other absorbent material and establish recycling programs for used fluids when possible.

Unprotected Liquid Storage Tanks

- ❑ Cover all tanks whenever possible.
- ❑ Berm tanks whenever possible.
- ❑ Dike area or install grass filters to contain spills.
- ❑ Keep area clean.
- ❑ Check piping, valves and other related equipment on a regular basis.

Chemical Cleaners and Rinse Water

- ❑ Use drip pans and other spill devices to collect spills or solvents and other liquid cleaners.
- ❑ Recycle wastewater.
- ❑ Store recyclable waste indoors or in covered containers.
- ❑ Substitute nontoxic cleaning agents when possible.

Raw Steel Collection Areas

- ❑ Materials should be kept in a covered storage bin or kept inside until pickup.
- ❑ The use of pitched structures should be considered.
- ❑ Collect scrap metals, fines, iron dust and store under cover and recycle.

Paints and Painting Equipment

- ❑ Paint and sand indoors when possible.
- ❑ Avoid painting and sandblasting operations outdoors in windy weather conditions.
- ❑ If done outside, enclose sanding and painting areas with tarps or plastic sheeting.
- ❑ Use waterbased paints when possible.
- ❑ Use tarps, drip pans, or other spill collection devices to contain and collect spills of paints, solvents or other liquid material.

Vehicle and Equipment Maintenance Areas

- ❑ Changing fluids or parts should be done indoors when possible.
- ❑ If maintenance is performed outdoors, fluids used in maintaining these vehicles should be contained in the area by using drip pans, large plastic sheets, canvas or other similar controls under the vehicles, or berming the area.
- ❑ Hydraulic fluids should be properly stored to prevent leakage and storm water contamination.
- ❑ Discard fluids properly or recycle if possible.

Hazardous Waste Storage Areas

- ❑ All hazardous waste may be stored in sealed drums.
- ❑ Establish centralized drum storage satellite areas throughout the complex to store these materials.
- ❑ Store indoors or under cover where possible.
- ❑ Do not stack containers in such a way as to cause leaks or damage to the containers.
- ❑ Use pallets to store containers when possible.
- ❑ Store materials with adequate space for traffic without disturbing drums.
- ❑ Maintain low inventory level of chemicals based on need.
- ❑ Dike or use grass swales, ditches or other containment to prevent runon or runoff in case of spills.
- ❑ Label materials clearly.
- ❑ Check for corrosion and leakage of storage containers.
- ❑ Properly dispose of outdated materials.
- ❑ Post notices prohibiting dumping of materials into storm drains.
- ❑ All other applicable Federal, State, and local regulations may be followed.

Transporting Chemicals to Storage Areas

- ❑ Forklift operators should be trained to avoid puncturing drums.
- ❑ Store drums as close to operational building as possible.
- ❑ Label all drums with proper warning and handling instructions.

Finished Products (Galvanized) Storage

- ❑ Materials should be stored in such a way to minimize contact with precipitation and runoff.
- ❑ Consider storing finished products indoors, on a wooden pallets concrete pad, gravel surface, or other impervious surface.

Wooden Pallets and Empty Drums

- ❑ Clean contaminated wooden pallets.
- ❑ Cover empty drums.
- ❑ Cover contaminated wooden pallets.
- ❑ Store drums and pallets indoors.
- ❑ Clean empty drums.
- ❑ Store pallets and drums on concrete pads.

Retention Ponds (Lagoon)

- ❑ Provide routine maintenance.
- ❑ Remove excess sludge periodically.
- ❑ Aerate periodically to maintain pond's aerobic character and ecological balance.

Facilities that Manufacture Transportation Equipment, Industrial, or Commercial Machinery

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Outdoor Unloading and Loading

- ❑ Confine loading/unloading activities to a designated area.
- ❑ Consider performing loading/unloading activities indoors or in a covered area.
- ❑ Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps).
- ❑ Close storm drains during loading/unloading activities in surrounding areas.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Inspect the unloading/loading areas to detect problems before they occur.
- ❑ Inspect all containers prior to loading/unloading of any raw or spent materials.
- ❑ Consider berming, curbing, or diking loading/unloading areas.
- ❑ Use dry cleanup methods instead of washing the areas down.
- ❑ Train employees on proper loading/unloading techniques.

Outdoor Material Storage

- ❑ Confine storage of materials, parts, and equipment to designated areas.
- ❑ Consider curbing, berming, or diking all liquid storage areas.
- ❑ Train employees on proper waste control and disposal.
- ❑ Consider covering tanks.
- ❑ Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed).
- ❑ Wash and rinse containers indoors before storing them outdoors.
- ❑ If outside or in covered areas, minimize runon of storm water by grading the land to divert flow away from containers.
- ❑ Inventory all raw and spent materials.
- ❑ Clean around vents and stacks.
- ❑ Place tubs around vents and stacks to collect particulate.
- ❑ Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary.
- ❑ Store wastes in covered, leak proof containers (e.g., dumpsters, drums).
- ❑ Consider shipping all wastes to offsite landfills or treatment facilities.
- ❑ Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.

Manufacturers of Electronic and Electrical Equipment

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Outdoor Unloading and Loading

- ❑ Confine loading/unloading activities to a designated area.
- ❑ Consider performing loading/unloading activities indoors or in a covered area.
- ❑ Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps).
- ❑ Close storm drains during loading/unloading activities in surrounding areas.
- ❑ Avoid loading/unloading materials in the rain.
- ❑ Inspect the unloading/loading areas to detect problems before they occur.
- ❑ Inspect all containers prior to loading/unloading of any raw or spent materials.
- ❑ Consider berming, curbing, or diking loading/unloading areas.
- ❑ Dead-end sump where spilled materials could be directed.
- ❑ Drip pans under hoses.
- ❑ Use dry clean-up methods instead of washing the areas down.
- ❑ Train employees on proper loading/unloading techniques and spill prevention and response.

Outdoor Material Storage

- ❑ Confine storage of materials, parts, and equipment to designated areas.
- ❑ Consider secondary containment using curbing, berming, or diking all liquid storage areas.
- ❑ Train employees in spill prevention and response techniques.
- ❑ Train employees on proper waste control and disposal.
- ❑ Consider covering tanks.
- ❑ Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed).
- ❑ Wash and rinse containers indoors before storing them outdoors.
- ❑ If outside or in covered areas, minimize run on of storm water by grading the land to divert flow away from containers.
- ❑ Leak detection and container integrity testing.
- ❑ Direct runoff to onsite retention pond.
- ❑ Inventory all raw and spent materials.
- ❑ Clean around vents and stacks.
- ❑ Place tubs around vents and stacks to collect particulate.
- ❑ Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary.
- ❑ Store wastes in covered, leak proof containers (e.g., dumpsters, drums).
- ❑ Consider shipping all wastes to offsite landfills or treatment facilities.
- ❑ Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.

Appendix B2

BMPs for Other Specifications

Vehicle Service Facilities

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Changing Oil and Other Fluids

- ❑ Whenever possible, change vehicle fluids indoors and only on floors constructed of non-porous materials. Avoid working over asphalt and dirt floors – surfaces that absorb vehicle fluids.
- ❑ If vehicle fluids must be removed outdoors, always use a drip pan. Prevent spills from reaching the street or storm drain by working over an absorbent mat and covering nearby storm drains, or working in a bermed area. If necessary, use absorbent socks to create a bermed area.
- ❑ When draining fluids into a drain pan, place a larger drip pan (e.g., 3' x 4') under the primary drain pan to catch any spilled fluids.
- ❑ Divert storm water around storage areas with ditches, swales and/or berms. Transfer fluids drained from vehicles to a designated waste storage area as soon as possible. Drain pans and other open containers of fluids should not be left unattended unless they are covered and within secondary containment.
- ❑ Store waste containers of antifreeze and oil within secondary containment. Antifreeze and waste oil should be stored separately and recycled, or disposed of as hazardous waste.
- ❑ Never pour vehicle fluids or other hazardous wastes into sinks, toilets, floor drains, outside storm drains, or in the garbage. These substances should be kept in designated storage areas until recycled or safe disposal.
- ❑ Drain fluids from leaking or wrecked vehicles as soon a possible, to avoid leaks and spills.
- ❑ Consider using a quarter barrel, vacuum pump, or drain pan with built-in pump to transfer fluids.

Cleaning Engines and Parts, and Flushing Radiators

- ❑ Eliminate discharges from these operations to the sanitary sewer and storm drains. Use a licensed service to haul and recycle or dispose of wastes.
- ❑ Designate specific areas or service bays for engine, parts, or radiator cleaning. Do not wash or rinse parts outdoors.
- ❑ Use self-contained sinks and tanks when working with solvents. Keep sinks and tanks covered when not in use.
- ❑ Inspect degreasing solvent sinks regularly for leaks, and make necessary repairs immediately.
- ❑ Avoid soldering over drip tanks. Sweep up drippings and recycle or dispose as hazardous waste.
- ❑ Rinse and drain parts over the solvent sink or tank, so that solvents will not drip or spill onto the floor. Use drip boards or pans to catch excess solutions and divert them back to a sink or tank.
- ❑ Allow parts to dry over the hot tank. If rinsing is required, rinse over the tank as well.
- ❑ Collect and reuse parts cleaning solvents and water used in flushing and testing radiators. When reuse is no longer possible, these solutions may be hazardous wastes, and must be disposed of properly.
- ❑ Never discharge cleaning solutions used for engines or parts into the sewer system without adequate treatment. Most facilities have these solutions hauled off-site as hazardous waste because of the permits necessary for on-site treatment.
- ❑ Rinse water may only be discharged to the sanitary sewer with adequate treatment and approval of the sewage treatment plant.
- ❑ Never discharge wastewater from steam cleaning, or engine/parts cleaning to a street, gutter, or storm drain.
- ❑ Sweep or use a vacuum to clean up dust and debris from scraping or bead blasting radiators.
- ❑ Use static tanks for rinsing to reduce the volume of discharged rinse water.
- ❑ Use counter-current rinsing to reduce water usage and rinse water discharges.

Washing Cars and Other Vehicles

Regular Activity

- ❑ If car washing is a central business activity, the most desirable option is to treat and recycle the wash water.
- ❑ Designate a vehicle washing area and wash cars and trucks only in that area. This "wash pad" should be bermed or protected from storm drains and should drain to an oil/water separator before discharging to the sewer.
- ❑ Cover an outside wash pad or minimize the area of an uncovered pad to reduce the amount of rainwater reaching the sewer. Consult the local sewage treatment plant for guidance.
- ❑ Minimize the use of acid-based wheel cleaners. These products may require additional treatment (beyond oil/water separation) before discharge to the sewer.

Occasional Activity

- ❑ Even biodegradable soap is toxic to fish and wildlife. Whenever possible, take vehicles to a commercial car wash.
- ❑ If soap is used in washing, the wash water must be collected and discharged, preferably with treatment, to the sanitary sewer. This water cannot be discharged to a storm drain.
- ❑ Never rinse off spray-on acid-based wheel cleaners where rinse water may flow to a street, gutter, or storm drain.

New Vehicles

- ❑ If cleaning the exterior of new vehicles with only water, the discharged water may go directly to the storm drain.
- ❑ Always protect the storm drains from solvents used to remove protective coatings from new cars. Discharges of these solvents to the sanitary sewer must receive adequate treatment and approval of the sewage treatment plant.

Body Repair and Painting

- ❑ Whenever possible, conduct all body repair and painting work indoors or under cover.
- ❑ When receiving damaged vehicles, inspect for leaks. Use drip pans if necessary.
- ❑ When cleaning auto body parts before painting, minimize use of hose-off degreasers. Brush off loose debris and use rags to wipe down parts.
- ❑ Use dry cleanup methods such as vacuuming or sweeping to clean up dust from sanding metal or body filler. Debris from wet sanding can be allowed to dry overnight on the shop floor, then swept and vacuumed. Liquid from wet sanding should not be discharged to the storm drain.
- ❑ Minimize waste paint and thinner by carefully calculating paint needs based on surface area and using the proper sprayer cup size.
- ❑ Do not use water to control overspray or dust in the paint booth unless this wastewater is collected. This water should be treated before discharge into the sewer system.
- ❑ Clean spray guns in a self-contained cleaner. Recycle the cleaning solution when it becomes too dirty to use. Never discharge cleaning waste to the sewer or storm drain.
- ❑ Use sanding tools equipped with a vacuum to pick up debris and dust.
- ❑ Reduce waste by using low-volume paint mixing equipment and high-efficiency painting tools.

Keeping a Clean Shop

- ❑ Use drip pans under leaking vehicles to capture fluids.
- ❑ Sweep or vacuum the shop floor frequently. Use mopping as an alternative to hosing down work areas.
- ❑ If mopping is used to clean shop floors:
  - Spot clean any spilled oil or fluids using absorbents or rags.
  - Use dry cleanup methods: Sweep the floor using absorbents.
  - After steps 1 and 2 above (if mopping is still needed), mop and discharge mop water to the sanitary sewer.
- ❑ Do not pour mop water into the parking lot, street, gutter, or storm drain.
- ❑ Remove unnecessary hoses to discourage washing down floors and outside paved areas.
- ❑ Regularly sweep parking lots and areas around facility instead of washing them down with water.
- ❑ Clean fuel dispensing areas with absorbent instead of water.
- ❑ Collect all metal filings, dust, and paint chips from grinding, shaving, and sanding, and dispose of the waste properly. Never discharge these wastes to the storm drain or sanitary sewer.
- ❑ Collect all dust from brake pads separately and dispose of the waste properly. Never discharge these wastes to the storm drain or sanitary sewer.
- ❑ Send rags to an industrial laundry.
- ❑ Consider using an oleophilic mop (picks up oil and not water) to reduce the volume of waste liquids collected and to reduce disposal cost.

Storage

- ❑ Store hazardous materials and wastes where they are protected from rain and in a way that prevents spills from reaching the sanitary sewer or storm drain.
- ❑ Keep lids on waste barrels and containers, and store them indoors or under cover to reduce exposure to rain.
- ❑ All hazardous wastes must be labeled according to hazardous waste regulations. Consult the Fire Department or a local hazardous waste agency for details.
- ❑ Keep wastes separated to increase waste recycling/disposal options and to reduce costs.
- ❑ Never mix waste oil with fuel, antifreeze, or chlorinated solvents. Consult a hazardous waste hauler for details.
- ❑ Double-contain all bulk fluids to prevent accidental discharges to the sewer and storm drain. Consult the Fire Department for details.
- ❑ Keep storage areas clean and dry. Conduct regular inspections so that leaks and spills are detected as soon as possible.
- ❑ Carefully transfer fluids from drip pans or collection devices to designated waste storage areas, as soon as possible.
- ❑ When receiving vehicles to be parted or scavenged, park them on a paved surface and immediately drain and collect gasoline and other fluids properly.
- ❑ Drain all fluids from components, such as engine blocks, that may be stored for reuse or reclamation. Keep these components under cover and on a drip pan or sealed floor.
- ❑ Store new batteries securely to avoid breakage and acid spills during earthquakes. Shelving should be secured to the wall. Store used batteries indoors and in plastic trays to contain potential leaks. Recycle old batteries.

Spill Control

- ❑ The best spill control is prevention.
- ❑ Maintain and keep current, as required by other regulations, a spill response plan and ensure that employees are trained on the elements of the plan.
- ❑ Minimize the distance between waste collection points and storage areas.
- ❑ Contain and cover all solid and liquid wastes □ especially during transfer.
- ❑ Purchase and maintain the proper absorbent materials for containment and cleanup of different spills, and make sure they are easily accessible anywhere in the shop. Saturated absorbents generally must be disposed of as hazardous waste.
- ❑ Clean up spills immediately and completely. Spills are not considered cleaned up until the absorbent is picked up.
- ❑ Cover nearby downstream storm drains when transferring fuel from tank truck to fuel tank.
- ❑ Seal or remove floor drains to prevent accidental discharge to the sewer system.

Recycling / Treatment

- ❑ Recycle solvents, paints, oil filters, antifreeze, motor oil, batteries, and lubricants.
- ❑ Set up a system (separate, well-labeled containers in a convenient location) to make it easy for employees to separate wastes and to recycle.
- ❑ Choose treatment systems that are easy to maintain and repair.
- ❑ Properly maintain and service all pretreatment equipment, including sumps, separators, and grease traps to ensure proper functioning. Follow manufacturer's maintenance instructions and consider using a licensed service to conduct maintenance on a regular basis.
- ❑ Frequently inspect equipment for malfunctioning parts, leaks, and the accumulation of pollutants such as oil and grease. Since pretreatment equipment is supposed to remove pollutants, a lack of accumulation may be a sign of a malfunction.
- ❑ Retain only a licensed service to haul away and dispose of wastes.
- ❑ Install self-contained, zero-discharge treatment systems that recycle wastewater.

Purchasing

- ❑ Ask a local supplier for information on less toxic chemical cleaners and other products. There are alternatives to chlorinated solvents; chlorofluorocarbons; and 1,1,1, trichloroethane (TCA).
- ❑ Ask a local supplier for information on the composition of brake pads. Recent studies have shown that brake dust washed off streets by rain may be the single biggest contributor of copper, a major pollutant, to waterways. Awareness and understanding of this problem and the available alternatives will help create future solutions.
- ❑ Minimize inventory by purchasing only as much product as needed in the foreseeable future. This will reduce storage space needs, inventory tracking costs, and liability for storing hazardous materials and waste.

Education and Training

- ❑ Train all employees upon hiring, and annually thereafter, on personal safety, chemical management, and proper methods for handling and disposing of waste. Make sure that all employees understand stormwater discharge prohibitions, wastewater discharge requirements, and these best management practices. Use a training log or similar method to document training.
- ❑ Post instructional/informational signs around the shop for customers and employees. Put signs above all sinks prohibiting discharges of vehicle fluids and wastes. Put signs on faucets (hose bibbs) reminding employees and customers to conserve water and not to use water to clean up spills.
- ❑ Label drains within the facility boundary, by paint/stencil (or equivalent), to indicate whether they flow to an oil/water separator, directly to the sewer, or to a storm drain. Labels are not necessary for plumbing fixtures directly connected to the sanitary sewer.

Gasoline Stations

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Existing Facilities:

Fuel Dispensing Areas

- ❑ Maintain fuel dispensing areas using dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills. Fueling areas should never be washed down unless the wash water is collected and disposed of properly.
- ❑ Fit underground storage tanks with spill containment and overfill prevention systems meeting the requirements of Section 2635(b) of Title 23 of the California Code of Regulations.
- ❑ Fit fuel dispensing nozzles with "hold-open latches" (automatic shutoffs) except where prohibited by local fire departments.
- ❑ Post signs at the fuel dispenser or fuel island warning vehicle owners/operators against "topping off" of vehicle fuel tanks.

Facility - General

- ❑ "Spot clean" leaks and drips routinely. Leaks are not cleaned up until the absorbent is picked up and disposed of properly.
- ❑ Maintain and keep current, as required by other regulations, a spill response plan and ensure that employees are trained on the elements of the plan.
- ❑ Manage materials and waste to reduce adverse impacts on storm water quality.
- ❑ Train all employees upon hiring and annually thereafter on proper methods for handling and disposing of waste. Make sure that all employees understand storm water discharge prohibitions, wastewater discharge requirements, and these best management practices. Use a training log or similar method to document training.
- ❑ Label drains within the facility boundary, by paint/stencil (or equivalent), to indicate whether they flow to an oil/water separator, directly to the sewer, or to a storm drain. Labels are not necessary for plumbing fixtures directly connected to the sanitary sewer.
- ❑ Inspect and clean if necessary, storm drain inlets and catch basins within the facility boundary before October 1 each year.

Outdoor Waste Receptacle Area

- ❑ Spot clean leaks and drips routinely to prevent runoff of spillage.
- ❑ Minimize the possibility of storm water pollution from outside waste receptacles by doing at least one of the following:
  - use only watertight waste receptacle(s) and keep the lid(s) closed, or
    grade and pave the waste receptacle area to prevent run-on of storm water, or
  - install a roof over the waste receptacle area, or
  - install a low containment berm around the waste receptacle area, or
  - use and maintain drip pans under waste receptacles.

Air/Water Supply Area

- ❑ Minimize the possibility of storm water pollution from air/water supply areas by doing at least one of the following:
- ❑ Spot clean leaks and drips routinely to prevent runoff of spillage, or
  - grade and pave the air/water supply area to prevent run-on of storm water, or
  - install a roof over the air/water supply area, or
  - install a low containment berm around the air/water supply area.

New or Substantially Remodeled Facilities:

Note: Substantially Remodeled Facilities - One of the following criteria must be met before a facility is deemed to be substantially remodeled and the design elements described above are required to be included in the new design and construction:

- the canopy cover over the fuel dispensing area is new or is being substantially replaced (not including cosmetic/facial appearance changes only) and the footing is structurally sufficient to support a cover of the minimum dimensions described above, or
- one or more fuel dispensers are relocated or added in such a way that the Portland cement concrete (or, equivalent) paving and grade break or the canopy cover over the fuel dispensing area do not meet the minimum dimensions as defined above. Replacement of existing dispensers or underground storage tanks do not, by themselves, constitute a substantial remodel.

Fuel Dispensing Areas

- ❑ Fuel dispensing areas must be paved with Portland cement concrete (or, equivalent smooth impervious surface), with a 2% to 4% slope to prevent ponding, and must be separated from the rest of the site by a grade break that prevents run-on of storm water to the extent practicable. The fuel dispensing area is defined as extending 6.5 feet from the corner of each fuel dispenser or the length at which the hose and nozzle assembly may be operated plus 1 foot, whichever is less. The paving around the fuel dispensing area may exceed the minimum dimensions of the "fuel dispensing area" stated above.
- ❑ The fuel dispensing area must be covered, and the cover's minimum dimensions must be equal to or greater than the area within the grade break or the fuel dispensing area, as defined above. The cover must not drain onto the fuel dispensing area.

Note: Special note on the paving BMP. This best management practice is not specifically intended to apply to facilities that install a new canopy where no canopy existed.

Note: Special note on the canopy BMP. This best management practice is not specifically intended to apply to facilities that:

- are located in geographic areas not subject to federal or state storm water regulations
- do not discharge storm water either directly to surface waters or indirectly, through municipal separate storm drain systems
- do not add fuel dispensers
- replace, relocate, or add fuel dispensers within the parameters described in the BMP
- increase their throughput of fuel dispensed without modifying their equipment
- make only cosmetic or facial appearance changes to their existing canopy

Outdoor Waste Receptacle Area

- ❑ Grade and pave the outdoor waste receptacle area to prevent run-on of storm water to the extent practicable.

Air/Water Supply Area

- ❑ Grade and pave the air/water supply area to prevent run-on of storm water to the extent practicable.

Note: For the purposes of the waste receptacle area and air/water supply area BMPs only, the facility is considered substantially remodeled if the area around the waste receptacle area or air/water supply area is being regraded or repaved.

Restaurants

The following comprehensive list of Best Management Practices (BMPs) are not required to be implemented by all facilities but are only *suggested BMPs* that may be appropriate for this industry type or sector. The BMPs are provided as guidance to help facility owners conduct a site-specific assessment and develop their own programs to reduce potential pollutants to the storm drain system and receiving waters. Facility owners may develop and use additional BMPs if desired.

Housekeeping

- ❑ Clean floor mats, filters, and garbage cans in a mop sink, floor drain, or proper outside area connected to the sanitary sewer with an oil/water separator. Don't wash them in a parking lot, alley, sidewalk, or street.
- ❑ Pour washwater into a janitorial or mop sink. Don't pour onto a parking lot, alley, sidewalk, or street.
- ❑ Use dry methods for spill cleanup (sweeping, cat litter, etc.). Don't hose down spills.
- ❑ Keep dumpster area clean and lid closed. Don't fill it with liquid waste or hose it out.
- ❑ Cover, repair or replace leaky dumpsters and compactors, and/or drain the pavement beneath them to the sanitary sewer.

Recycling and Disposal

- ❑ Separate wastes. Keep recyclable wastes in separate containers according to the type of material. They are easier to recycle if separated.
- ❑ Recycle grease and oil. Don't pour it into sinks, floor drains, or onto a parking lot or street. Look in the yellow pages for "Renderers" or call the County of Los Angeles' Recycling & Household Hazardous Waste Hotline (888) CLEANLA.
- ❑ Recycle the following materials:
  - food waste (non-greasy, non-animal food waste can be composted)
  - paper and cardboard
  - container glass, aluminum, and tin
  - pallets and drums
- ❑ Dispose of toxic waste properly. Toxic waste includes used cleaners, and rags (soaked with solvents, floor cleaners, and detergents). For disposal information call: (888) CLEANLA.

Purchasing

- ❑ Look for and purchase "recycled" and "recyclable" containers. In doing so, a use for the recyclable materials that people collect and recycle is ensured.

Education and Training

- ❑ By including urban runoff training in employee orientations and reviews, employees can help prevent pollution. Promote these BMPs:
  - Storage containers should be regularly inspected and kept in good condition.
  - Place materials inside rigid, durable, water-tight and rodent-proof containers with tight fitting covers.
  - Store materials inside a building or build a covered area that is paved and designed to prevent runoff from entering storm drains.
  - Place temporary plastic sheeting over materials or containers and secure the cover with ties and weighted objects. (Not appropriate for storing liquids.)
  - Post BMPs where employees and customers can see them. Showing customers ocean protection is good public relations.
  - Explain BMPs to other food businesses through business associations or chambers of commerce.
  - Stencil catch basins near the workplace with Stormwater Program stencils that say "No Dumping: This drains to ocean."

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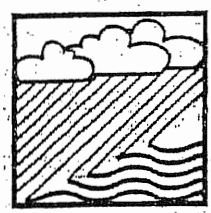

Stormwater Quality Management Plan (SQMP)

Development Construction Program

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Stormwater Quality Management Plan (SQMP)

Development Construction Program

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Camp Dresser & McKee Inc.
Consensus Planning
Psomas and Associates
Larry Walker Associates
Geoff Brosseau

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Each Permittee will seek to achieve compliance by developers with minimum water quality protection requirements (Table 2-1) and applicable BMPs through site inspections, review of self-audits by developers/contractors, enforcement procedures, and other means as described in this section.

3.1 PERMITTEE SITE INSPECTION RESPONSIBILITIES

Each Permittee will adopt site inspection procedures, as necessary, to assess whether the minimum requirements for Development Construction Projects are being achieved and applicable BMPs are being implemented. Site inspections will also determine if Local SWPPPs/WWECPs are being implemented at projects where they apply. Each Permittee will also develop and implement enforcement procedures to require that corrective actions be undertaken when the requirements are not met. The program will include the following elements:

- Permittee Inspections;
- Developer/Contractor Self-Inspections; and
- Enforcement Procedures

3.2 INSPECTION PROCEDURES

Development Construction Projects are routinely checked by municipal inspectors to verify that the construction work is being performed in accordance with the project plans, building and grading permits, and applicable municipal codes. When a project is in violation of these permits or codes, inspectors have the authority to enforce respective permit conditions by issuing verbal warnings, written notices, or stop work orders. Additional administrative actions may be taken, including revoking the building or grading permit or issuing fines. Inspections may be conducted for various reasons, and at various times and include Permittee site inspections currently performed in ongoing programs, as well as routine owner/contractor self-inspections. At their sole discretion, and when warranted, the Permittee may implement SWPPP/WWECPs and take other measures deemed necessary to protect public health, safety, and welfare with their own resources or by contract.

3.2.1 Permittee Inspections

Permittees or their designated agents must conduct at least one inspection of all Construction Priority Projects and all projects subject to the state General Construction Permit active during the rainy season. If the inspected site is not meeting minimum water quality protection requirements, Permittee inspectors must follow-up within a reasonable time frame to assure that

the minimum requirements are implemented. When conducting an inspection, the Permittee's inspector shall observe the site for compliance with the minimum water quality protection requirements. Permittee inspections shall include observations of storm water management practices.

The primary mechanism Permittee inspectors will use to determine if minimum water quality protection requirements and BMPs for development construction are being met will be to assess the site against the narrative requirements in Table 2-1. These narrative requirements are intended to be easy to interpret field observations that allow an assessment of site conditions during both dry and wet conditions. Inspection training will focus on how to recognize whether minimum water quality protection requirements are being achieved at any time during the year.

Each Permittee must be able to demonstrate the existence of a site inspection and enforcement program to achieve compliance with minimum BMP requirements. Appendix H provides a model checklist that is particularly suited for more detailed inspections if it is determined that minimum water quality protection requirements are not being achieved and corrective actions need to be documented.

Additional inspections should be conducted at the discretion of the Permittee to verify compliance with storm water pollution prevention measures, particularly when grading activities are being conducted during the rainy season. The need for such inspections may vary depending upon several factors including:

- Site conditions;
- Previous violations;
- History of developer or contractor performance; and
- Weather patterns.

3.2.2 Developer/Contractor Self-Inspection Requirements

Construction is a dynamic operation where changes are expected. BMPs for construction sites are usually temporary measures that require frequent maintenance to maintain their effectiveness and may require relocation and re-installation, particularly as project grading progresses. Therefore, developer/construction self-inspections are required, particularly during the rainy season.

There are two primary purposes of the self-inspections conducted by developers and contractors:

- To ensure that BMPs are properly implemented and functioning effectively, and
- To identify maintenance (e.g., sediment removal) and repair needs.

An example form is provided in Appendix C that may be provided to developers and contractors by the Permittee for use in recording self-inspection results. When requested, self-inspection forms are to be made available to Permittee inspectors for their review.

Developers and/or contractors of projects subject to the General Construction Permit are required to perform self-inspections. In addition, self-inspections are required for Construction Priority Projects. At a minimum, a developer self-inspection checklist, noting date, time, conditions and inspection date, must be kept on-site and made available for inspection, if requested. Self-inspections must be performed according to the following schedule:

- Before every rainfall event that is predicted to produce observable runoff and after every rainfall event that produces observable runoff, and
- At 24-hour intervals during extended rainfall events (except weekends or holidays when there is no ongoing site activity on those days).

More frequent inspections to ensure that developers are maintaining BMPs in good condition would be of benefit and Permittees may elect to require additional inspections by developers. For example, weekly self-inspections could be conducted during the wet season.

3.3 INSPECTION CRITERIA

3.3.1 Criteria for All Development Construction Projects

When conducting permittee inspections, the most important element of the inspection is to ensure that appropriate controls are in place that reduce pollutants from entering the storm drainage system. One element of which is to determine that the minimum requirements for Development Construction Projects are being achieved. If the inspector cannot affirmatively find that the minimum requirements are being achieved, the inspector shall require the developer to conform with those requirements.

The inspector may utilize the following framework when conducting an inspection:

1) Determine what BMPs are necessary to meet the minimum requirements;

2) Determine if BMPs are being used;

3) Determine whether BMPs are being implemented properly; and

4) Review developer's self-inspection checklist to determine whether minimum self-inspections have been performed.

An example checklist for documenting deficiencies and identifying corrective actions when conducting Permittee inspections is provided in Appendix H. If BMPs are either lacking or being implemented improperly, Section 3.4 provides a discussion of appropriate enforcement actions.

3.3.2 Criteria for Construction Priority Projects

Permittees must conduct at least one inspection of all active Construction Priority Projects during the rainy season. If the inspected site is not meeting minimum water quality protection requirements, Permittee inspectors must immediately direct compliance with these requirements and conduct a follow-up inspection to confirm that compliance is attained.

When conducting the initial Permittee inspection of Construction Priority Projects, the inspector will use the inspection checklist (or an equivalent) to evaluate conformance with minimum requirements and required BMPs and to document deficiencies and corrective actions. If BMPs are either lacking or improperly implemented, refer to Section 3.4 for a discussion of appropriate enforcement actions. Appendix H provides an example checklist for site inspections.

3.3.3 Criteria for Development Construction Projects Subject to General Construction Permit

The Regional Board is responsible for verifying and enforcing requirements of the General Construction Permit. When Permittee inspections are conducted at sites covered by the General Construction Permit, the inspector will document observations of potential violations using a checklist similar to the example provided in Appendix H. If violations are observed during the inspection, the Permittee must notify the Regional Board of the possible violation and the location of the construction site via facsimile or telephone within the next 2 business days.

3.4 PROCEDURES FOR CORRECTIVE AND ENFORCEMENT ACTIONS

Enforcement of storm water pollution prevention requirements for Development Construction Projects will be conducted by the Permittee's inspectors and/or other Permittee staff with enforcement authority. Violations observed will be documented by the inspectors in accordance with the Permittee's existing procedures for recording violations. Depending on the severity of the violation, enforcement can range from a verbal warning, to a written notice, stop work order, having the work performed by the Permittee's own staff or by a contractor secured by the

Permittee, or prosecution. Violations of the minimum requirements listed in Section 2.1 are to be treated with the same seriousness as violations of code provisions of similar importance.

Permittee inspectors will conduct a follow-up inspection to determine if corrective actions have been taken in accordance with minimum requirements. Escalating enforcement steps, leading up to the issuance of stop work orders and providing flexibility for the inspector to establish appropriate compliance time frames on a case-by-case basis, are to be used as needed to ensure compliance. Existing inspection/enforcement procedures should be used to achieve this result. *If a significant and/or immediate threat to water quality is observed by a Permittee's inspector, action should be taken to require the developer/contractor to immediately cease the discharge.* The threat to water quality shall be assessed by the inspector considering if runoff from a construction site will not be reasonably controlled by the protective measures in place or if a failure of BMPs is resulting in the release of sediments or other pollutants to a degree that may be substantially degrading water quality. The typical progressive enforcement steps that each Permittee should apply to the inspection enforcement program are:

1) Verbal warnings;
2) Written warnings; and
3) Stop work orders.

A discussion of these measures is provided below. While the provisions are not binding, the elements of these provisions should be incorporated in the Permittee's enforcement approach to the maximum extent practicable. Each Permittee's program should be consistent with existing enforcement mechanisms while generally conforming to the elements described in Sections 3.4.1 through 3.4.4.

3.4.1 Verbal Warnings

A common initial method of requesting corrective action and enforcing compliance is a verbal warning from the Permittee's inspector to the private contractor. Verbal warnings are often sufficient to achieve correction of the violation, often while the inspector is present at the construction site. The inspector will notify the developer/contractor's project supervisor of the violation, and document the violation and the notification to the project supervisor in the inspection file. A specific time frame for correcting the problem and a follow-up inspection date should be documented by the inspector. In judging the degree of severity, the Permittee inspector may also take into account any history of similar or repeated violations by the same developer or contractor at this or other sites.

3.4.2 Written Warnings

If the deficiency noted in the verbal warning is not corrected by the next inspection, a written notice of violation shall be issued describing the infraction that is to be corrected and the time frame for correction and for a follow-up inspection. A copy of the notice is to be given to the contractor's project supervisor and placed in the active inspection file. If the violation has been corrected to the satisfaction of the inspector, the inspector will document compliance in the inspection file. An example of a notice of violation form and a notice of correction form are provided in Appendix I. [Note that use of the specific forms provided as examples in Appendix I is not required.]

3.4.3 Stop Work Orders

If a notice of violation has not been addressed by the next inspection, or if the developer has not complied with their permit requirements, *or if a significant threat to water quality is observed* (such as a failure of BMPs resulting in a significant release of sediment or other pollutants off site), a stop work order may be issued by the appropriate municipal official. Stop work orders prohibit further construction activity until the problem is resolved and provide a time frame for correcting the problem. The stop work order will describe the infraction and specify what corrective action must be taken. A copy of the stop work order will be given to the private contractor's project supervisor and placed in the active inspection file. To restart work once a stop work order has been issued, the private contractor's project supervisor must request the inspector to re-inspect the project and verify that the deficiencies have been satisfactorily corrected. If the inspector is satisfied with the corrections, the inspector may sign off on that phase of the project, and work may proceed. A copy of a sample stop work order form is provided in Appendix I. In severe cases, the building or grading permit may be revoked.

3.4.4 Fines

A fine may also be issued if the Permittee has the authority to do so.

3.5 SITE INSPECTION AND ENFORCEMENT EMPLOYEE TRAINING

Each Permittee will implement a training program for staff involved with development construction activities. The minimum requirements are:

- Training must promote a clear understanding of the potential for construction activities to pollute storm water; and
- Training must cover the identification of violations of minimum water quality protection requirements for developer construction and implementation of corrective BMPs.

All existing construction inspection staff and other staff directly involved in development construction activities should receive formal training at least once after implementation of the Permittee's development construction program, and new staff should receive formal training after assignment to Permittee's development construction staff. Refresher training will be conducted periodically as necessary.

Training should cover the following areas:

- Minimum BMP requirements for Development Construction Projects;
- Description and contents of Local SWPPPs and WWECPs;
- Appropriate BMP applications and implementation;
- Inspection and enforcement procedures; and
- Use of inspection checklists.

Additional guidance for training employees involved in development construction activities is contained in Appendix J.

Relevant materials should be distributed to staff as appropriate. These may include checklists, guidance documents, materials included as appendices to this document, or other documentation that may be used later as reference information. The training program for construction inspection staff developed by Los Angeles County has been distributed to all Permittees and may be utilized to conduct formal training.

Informal training will be conducted periodically in conjunction with routine staff meetings, site inspections, or other opportunities as appropriate. Informal training is encouraged to include discussion of "lessons learned" in the field, introduction of new information, and periodic review of normal storm water inspection procedures.

The appendices of this Model Program (excluding Appendix A) are advisory only unless specifically identified in this Model Program as a requirement.

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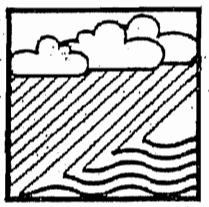
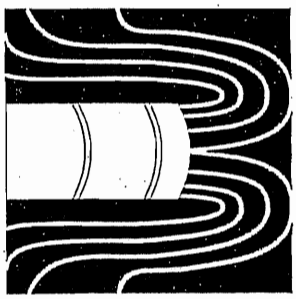


Stormwater Quality Management Plan (SQMP)

Illicit Connection and Illicit Discharge Elimination



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3-1 Illicit Discharge/Illicit Connection Elimination Strategy

- Determine drainage areas where disposal incidents have the greatest potential negative effect on stormwater quality.
- Determine drainage areas that have recurring incidents of illicit disposal.

Guidance is included in Appendix C.

A prioritization process for investigation and elimination of illicit connections and associated suspected illicit discharges is discussed in Section 3.2.2.

2.2.5 Education Program for Inspectors, Maintenance and Field Staff

Permittee staff will be required to implement the baseline objectives of observing, reporting, investigating and eliminating illicit discharges to the storm drain system.

Standardized procedures will be implemented to educate inspectors, maintenance workers, and other field staff to notice illicit discharges during the course of their daily activities and report them. The standard procedures include:

- Compile and/or prepare training materials, such as handouts and posters. Topics will include:
  - Stormwater quality requirements
  - Types of illicit discharges/disposal
  - Reporting forms
- Identify staff who conduct field activities and others who may benefit from training.
- Present information on illicit discharges during regular safety and tailgate meetings.
- Discuss how to report illicit discharges:
  - Call in report to request investigation and cleanup.
  - Fill out illicit discharge reporting forms.

Guidance for conducting the staff educational program for noticing and reporting illicit discharges is included in Appendix D.

The education program will also help appropriate Permittee staff to determine the appropriate follow-up activity when evidence of illicit discharges is observed. This includes:

- If the nature and source of the discharge is known or readily apparent, enforcement procedures will be initiated as discussed in Section 2.2.6.
- If the nature and source of the discharge is not known, additional investigation techniques will be used to determine the nature of the material and investigate the source. Guidance is included in Appendix E.

Appendix D

Education Program Guidance for Inspectors, Maintenance and Field Staff

Appendix D
Education Program Guidance For Inspectors, Maintenance And Field Staff

General training will be conducted as part of the Five-Year Storm Water Public Education Strategy described in Section 2.V.C.1.b.iv of the Permit. Specific training on illicit discharges should be conducted for inspectors, maintenance and field staff who may encounter illicit discharges during their regular activities. The following are some of the issues that should be considered when conducting a training program.

- **Who should be trained?** Training for noticing and reporting suspected discharge or disposal may target a broad range of Permittee staff including all field workers and supervisors involved in storm drain system operation and maintenance as well as field inspectors. Training for investigation and follow-up may be targeted at selected Permittee staff with designated inspection, investigation and enforcement responsibility.
- **Who should train?** Trainers selected to conduct employee training should be familiar with both the work performed by the staff and stormwater pollution control principles. A trainer would typically be a superintendent, foreman, or lead worker who oversees the work of small to large crews or inspection staff.
- **What?** The training should cover two major areas: observation/noticing and reporting suspected illicit discharges or disposal; and follow-up to identify the nature and source of the discharge and take appropriate enforcement action to eliminate the discharge.
- **When?** Training can be conducted during regular safety or tailgate meetings or can be scheduled separately. All targeted employees should receive training at least once per year.

The scope of the training should include:

All staff:

- Overview of Clean Water Act and NPDES program
- Potential sources of stormwater pollution
- Potential impact of illicit non-stormwater discharges on receiving waters
- Field observation of illicit discharges/disposal/connections
- Reporting procedures and forms

Staff responsible for investigation and enforcement:

- Identification of nature and source of illicit discharges/disposal
- Municipal code requirements for stormwater pollution prevention on private property

In March 1997, a comprehensive training curriculum reference document, the *Municipal Activities, Public Employee Trainer Manual*, was distributed to all Permittees for their use. It was developed in response to Permit requirements that Permittees have "training materials for

educating appropriate Permittee employees regarding compliance with applicable stormwater permits." It contains suggestions on how to conduct an effective training program, such as:

- How to determine the appropriate audience
- Steps to organize, prepare and conduct a training session
- How to select appropriate presentation materials for specific categories of employees
- Who to contact regarding questions on the training program

The manual also contains all of the materials necessary to conduct the training sessions, including the presentation narrative, slides, video, and handouts.

Appendix C5 of the manual contains specific information for training staff in illicit discharge control, and suggests best management practices that should be used. Copies of the first two pages of Appendix C5 are attached.

APPENDIX C5
ACTIVITY CATEGORY: ILLICIT DISCHARGE CONTROL

This activity involves routine inspection for illegal connections to the storm drain system and evidence of illegal dumping activities. Many municipal employees; such as road maintenance crews, storm drain maintenance personnel, inspectors, sanitation workers, etc., can routinely look for and report incidents of illicit discharges to the storm drain system.

[*Word Slide MA-C5-1 Illicit Discharge Control Activities*]

Illicit Discharge Control Activities

- Illicit connection prevention, detection and removal
- Illegal dumping control

Word Slide MA-C5-1

Illicit discharge control is different from the other categories. Most of these BMPs are preventative measures taken by employees to control pollutant sources from the public's activities. Preventative measures include:

- **Illicit connection prevention, detection and removal**
- **Illegal dumping control**

Activity: Illicit Connection Prevention, Detection and Removal

[*Word Slide MA-C5-2 Activity: Illicit Connection Prevention, Detection and Removal*]

SUGGESTED BMPs
Activity: Illicit Connection Prevention, Detection and Removal

- Prohibit non-stormwater physical connections to the storm drain system
- Conduct visual inspections during construction
- Conduct field screenings
- If needed, use methods to verify physical connections
- Keep accurate records

Word Slide MA-C5-2

- **Prohibit non-stormwater physical connections to the storm drain system** - Ensure that existing building and plumbing codes prohibit non-stormwater physical connections to the storm drain system.
- **Conduct visual inspections during construction** - During the construction phase of new developments, conduct visual inspections to determine if any illegal connections are present.
- **Conduct field screenings** - Conduct field screenings to identify outfalls with characteristics of illegal connections.
- **If needed, use methods to verify physical connections** - Use smoke and dye testing or television camera inspections to verify physical connections.
- **Keep accurate records** - Keep records to track inspections and catalog the storm drain system.

APPENDIX C5
ACTIVITY CATEGORY: ILLICIT DISCHARGE CONTROL

Activity: Illegal Dumping Control

[*Word Slide MA-C5-3 Activity: Illegal Dumping Control*]

SUGGESTED BMPs
Activity: Illegal Dumping Control

- Train employees to recognize and report illegal dumping
- Call 1-888-CLEANLA or City specific number

Word Slide MA-C5-3

- **Train all employees to recognize and report illegal dumping** - Visual observations of catch basins and outfalls can be used to identify areas of suspected illegal dumpings. The following observations at a site could be indications of illegal dumping.
  - Odors
  - Deposits and stains
  - Liquid present during dry weather, especially if it is colored or is associated with an odor.

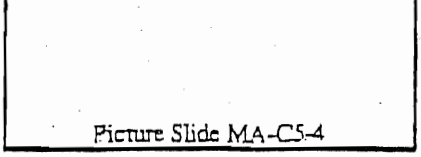
  Field analysis of the deposits and liquids present also helps to identify dumpings. pH, dissolved oxygen levels, water temperature, chlorine levels, copper levels, detergents and phenols are all useful analysis to help identify areas of illegal dumping.

- **Call 1-888-CLEANLA or City specific number** - Use this hotline to report illegal dumping and to ask questions about suspected dumping. Several other offices are available for questions and reporting:
  - Stormwater program offices - Your city may have an office devoted to the stormwater program. They should have information about illegal dumping available.
  - Call 911 or the police or fire department to report illegal dumping of hazardous material.

[*Note to Trainer: Determine if your city has a specific number for reporting illegal dumping. If there is such a number, provide it in this section.*]

[*Picture Slide MA-C5-4 Illegal Dumping*]

Illegal Dumping



Picture Slide MA-C5-4

- Example of illegal dumping. Any substance being dumped down a storm drain is an example of illegal dumping.
- Call 1-888-CLEANLA to report the incident.

Question and Answer Session

[*Note to Trainer: Provide some time now for questions on the last section of material.*]

ATTACHMENT NO. 37

U.S. EPA document on Evaluating the Effectiveness of Municipal Storm Water Programs

EPA
United States Environmental Protection Agency and the EPA Region III states of Pennsylvania, Maryland, Delaware, District of Columbia, Virginia and West Virginia

Evaluating the Effectiveness of Municipal Stormwater Programs

EPA 833-F-07-010

January 2008

Introduction

NPDES Stormwater Management Programs

EPA stormwater regulations require National Pollutant Discharge Elimination Program (NPDES) permits for stormwater discharges from many municipal separate storm sewer systems (MS4s). Phase I of the stormwater permit program generally addresses municipalities with greater than 100,000 in population, while Phase II addresses smaller jurisdictions within urban areas. Additional information on EPA's stormwater program is available at www.epa.gov/npdes/stormwater.

Stormwater Phase II programs address the following program components:

- Public education and outreach
- Public involvement
- Illicit discharge detection and elimination
- Construction Site Runoff Control
- Post-Construction Runoff Control
- Pollution Prevention/Good Housekeeping for Municipal Operations

In addition to the programs above, Stormwater Phase I programs also must address stormwater runoff from industrial facilities.

Operators of regulated MS4s are required to develop a stormwater management plan (SWMP) that includes measurable goals and to implement needed stormwater management controls (BMPs). The process of developing a plan, implementing the plan, and evaluating the plan is a dynamic, iterative process that helps move communities toward achievement of their goals (Figure 1).

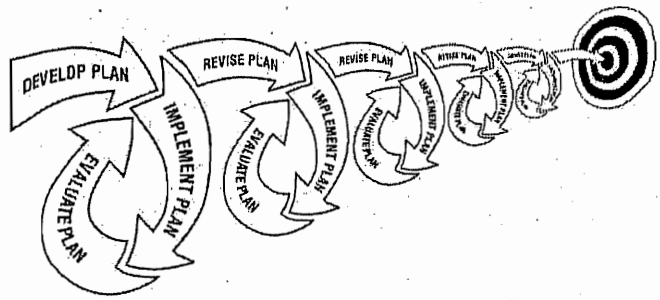


Figure 1. The iterative process of stormwater management (Develop, implement, evaluate, repeat).

40 CFR 122.26(d)(2)(v) and 122.34(g) requires MS4s to assess controls and the effectiveness of their stormwater programs. Municipal stormwater programs are also required to reduce the discharge of pollutants to the "maximum extent practicable" and satisfy the water quality requirements of the Clean Water Act. In addition, a number of government and scientific reports have found that better water quality data is needed if MS4s are to evaluate the effectiveness of their program in meeting water quality goals (NRC, 2004; Schwarzenback, et. al, 2006; Vaux, 2005).

This document discusses three approaches to evaluation of municipal SWMP effectiveness:

- Assessing program operations;
- Evaluating social indicators; and
- Monitoring water quality.

Other guidance is available to assist managers in evaluating overall implementation of the SWMP to the maximum extent practicable, e.g., EPA's MS4 *Program Evaluation Guidance* (www.epa.gov/npdes/pubs/ms4guide_withappendixa.pdf).

Purposes of Program Evaluation

- **Meet regulatory requirements.** EPA stormwater regulations require that the effectiveness of the SWMP be evaluated, including assessment of SWMP implementation, evaluation of BMP effectiveness, and the extent to which improvements in stormwater outfall discharge quality have occurred.
- **Document progress toward water quality goals.** Evaluation of SWMP effectiveness is essential to measure progress toward meeting benchmark conditions, complying with water quality standards, or restoring beneficial uses.
- **Justify commitment of resources.** Knowledge of program effectiveness can help justify SWMP expenditures to decision-makers and to the public, and help improve cost-effective implementation and management of the SWMP.
- **Provide feedback to the management program.** Stormwater management is an iterative process and knowledge of program effectiveness is essential for the permit renewal process and for mid-course corrections to improve the program.
- **Assess reductions in pollutants of concern.** If a waterbody is impaired, it may be helpful to assess the effectiveness of the SWMP in reducing the pollutants of concern.

Stormwater Management Goals

Setting Goals for SWMPs

Stormwater management plans must be guided by specific measurable water quality-based goals, but also typically include, programmatic, BMP-implementation, and social goals. NPDES permit conditions often serve as minimum goals for a SWMP, but an MS4 may have other goals for restoration or protection of water quality that go beyond minimum permit conditions and reflect local understanding of the storm drain system and receiving water conditions. Guidance on setting measurable goals for SWMPs can be found in EPA's *Measurable Goals Guidance for Phase II Small MS4s* (**www.epa.gov/npdes/pubs/measurablegoals.pdf**).

Programmatic goals might address education and outreach to a range of audiences, establishment of partnerships with business owners, or adoption of ordinances. BMP implementation goals may call for some number of practices to be installed in key locations according to a certain schedule. Goals for public involvement could include targets for number of participants in clean-up or tree-planting activities, number and quality of responses to attitude surveys, or changes in the use of lawn fertilizer.

The ultimate goal of any NPDES stormwater management program is to reduce pollutant discharges to the maximum extent practical, prohibit illicit discharges to the MS4, and protect water quality. Water quality goals may pertain to pollution prevention (reduction of potential pollutants at the source), improvements in stormwater outfall discharge quality, reduction of pollutant loads to receiving waters (e.g., a TMDL), restoration of aquatic resources (e.g., stream channel stabilization, fishery restoration), compliance with water quality standards, or restoration of beneficial uses. Intermediate benchmarks that indicate progress toward meeting water quality standards are important elements of successful long-term SWMPs.

Matching Evaluation to Management Goals

Evaluation of the effectiveness of a SWMP must relate directly to its goals. Two central questions are: *Are we meeting the municipal SWMP goals?* and *Are we meeting NPDES stormwater regulatory requirements?* If a goal is to keep a swimming beach open, it is often necessary to determine the extent to which water quality criteria for bacteria are being met. If a goal is to reduce nutrient loads by 40% from a watershed, it is then necessary to measure nutrient loads and compare measured loads against the goal. Meeting your water quality goals is the ultimate sign of program success, however, meeting programmatic or social goals can also be indicators of a successful program. Information on how these goals are met will serve as critical feedback in the iterative process of stormwater management.

Evaluating Stormwater Management Program Effectiveness

Stormwater program evaluation must be more than an exercise in collecting and tabulating data; evaluation data must be analyzed, interpreted, and reported so that results can be applied to such purposes as documenting effectiveness of BMPs, reporting information to government or the public, and planning future management activities.

Stormwater programs address multiple objectives and program evaluation can focus on a variety of desired outcomes that parallel these objectives. Approaches to the evaluation of stormwater program effectiveness may therefore fall on a continuum from basic verification of compliance with regulatory requirements to assessing changes in knowledge and behavior to detecting changes in receiving water quality (Figure 2). The NPDES stormwater evaluation program in Baltimore County, Maryland (**www.baltimorecountymd.gov/Agencies/environment/watersheds/epnpdesmain.html**) is a good example of effective evaluation of an MS4 program.

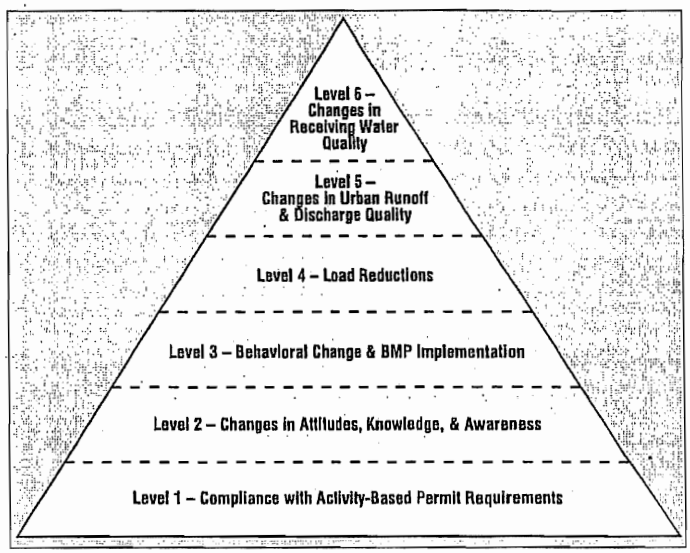


Figure 2. Approaches to evaluation of stormwater program effectiveness. (Source: CASQA, 2007)

In this document, we consider the range of evaluation approaches in three groups: program operations, social indicators, and water quality. Every evaluation approach must contain appropriate water quality measures to be meaningful.

Assess program operations

Assessment of stormwater program operations and activities verifies basic compliance with permit requirements and, more importantly, documents that tangible efforts have been made to reduce the impacts of urban stormwater. This approach to program evaluation can be applied to all of the components of a SWMP.

Track structural BMP implementation. Tracking the type and number of structural BMPs installed provides managers with direct feedback on how implementation is progressing and whether goals set forth in the permit are being achieved. Data on BMP specifications, location, date of completion, compliance with permit conditions, and ongoing operation and maintenance may be important to record. See USEPA Techniques for Tracking, Evaluating, and Reporting the Implementation of Nonpoint Source Control Measures: Urban (www.epa.gov/owow/nps/urban.pdf) for more information on the topic of tracking BMPs implemented in your jurisdiction.

Document management activities. Documenting management activities and pollutant source reduction efforts can be as important as tracking structural BMPs. How much material has been collected through street-sweeping and parking lot maintenance? How many site inspections were conducted and what were the results? How many and what type of illicit discharges were identified and eliminated? How many trainings and outreach activities were conducted, and how many people were reached? Baltimore City, Maryland, focuses limited stormwater management resources in a small highly urbanized watershed to demonstrate how making communities more livable can improve water quality. An important part of this effort is to document management activities so that both managers and residents can easily follow progress.

Evaluate social indicators

Social indicators—changes in knowledge, attitudes, and behavior of people—are important for two reasons. First, some SWMPs may have goals for increasing knowledge and awareness and changing attitudes among groups such as residents, business owners, and municipal employees. Second, social indicators—especially behavior changes—are important intermediate benchmarks in a successful SWMP when many years are needed to measure a water quality response. For more information, see *Developing a Social Component for the NPS Evaluation Framework* (www.uwex.edu/ces/regionalwaterquality/Flagships/Indicators.htm). This approach to program evaluation is typically applied to the public education and public participation components of a SWMP.

Gauge the effects of public education efforts. Changes in awareness, knowledge, and attitudes can be measured effectively using statistically valid surveys or questionnaires; for example see *Stormwater Knowledge, Attitude and Behaviors: A 2005 Survey of North Carolina Residents* (www.ncstormwater.org/pdfs/stormwater_survey_12506.pdf). Other approaches include monitoring attendance at public meetings, tracking requests for information, and counting hits on web sites. Keep in mind that simply reporting the number of meetings held or the number of brochures printed is not an effective method to document changes in stormwater knowledge.

Assess behavior changes. Measurement of change in pollution-generating behavior in a watershed can be an important indicator of progress toward achieving SWMP goals. Examples include: changes in lawn fertilizer sales in response to a publicity campaign, pounds of hazardous waste turned in at collection events, participation in streambank clean-up events, and sign-ups for environmental action pledges.

Monitor water quality

Water quality monitoring is the most direct—and usually the best—approach to evaluating the effectiveness of a SWMP. Program evaluation through water quality monitoring can apply to several of the SWMP components, including illicit discharge detection, construction site runoff control and post-construction runoff control. The collection of water quality data (along with BMP performance data) would be especially useful for discharges to an impaired water body with an approved TMDL. (For more information about the TMDL program, visit www.epa.gov/owow/tmdl). Detailed guidance on design and operation of monitoring is available elsewhere, e.g., *USDA-NRCS National Handbook of Water Quality Monitoring* (ftp://ftp.wcc.nrcs.usda.gov/downloads/wqam/wqm1.pdf) and *EPA Monitoring Guidance for Determining the Effectiveness of Nonpoint Source Controls* (Sept. 1997, EPA 841-B-96-004).

Water quality monitoring approaches range from qualitative observations to highly quantitative measurements, covering areas as small as individual BMPs to large receiving waters such as lakes or estuaries. A good monitoring program for evaluation of SWMP effectiveness will probably contain several elements at various levels of detail and scale. Before embarking on new monitoring, however, it is important to collect and evaluate historic and current data from existing monitoring activities. Data from state 305(b) assessments, 303(d) lists, and published TMDLs, ongoing state and federal agency monitoring programs, water supply intake testing, and watershed volunteer groups, for example, can be useful both in designing a monitoring program and in supplementing program results.

Monitoring can focus on **biological** (e.g., *E. coli*, fish), **physical** (e.g., flow, suspended sediment, streambank stability), or **chemical** (e.g., phosphorus, trace metals) dimensions of the water resource. Measured water quality variables should be directly linked to both the pollutant sources and the BMPs being implemented. In general, a monitoring program should focus on selecting a few good water quality variables to measure well, rather than trying to track a long list of indicators. For example, for a swimming beach impaired by bacteria, it would be appropriate to monitor the swimming area, nearby storm drain outfalls, and tributary flows for *E. coli*. If stream channel blow-outs are an issue and BMPs addressing excessive flows are implemented, monitoring of streamflow and channel cross-section conditions would be a good choice. For algal blooms, monitoring of nutrient concentrations and loads to the receiving water might be appropriate.

Water quality monitoring must take hydrologic variation into account. Most stormwater pollution processes are driven by rainfall that varies from year to year. If several dry years follow

implementation of a SWMP, the program may appear to be highly effective in reducing pollutant loads simply because runoff is unusually low. Conversely, several years of wet weather could result in higher pollutant loads simply because of increased runoff volume despite BMP implementation. Consequently, it is important to monitor precipitation and streamflow to help interpret results from all but a few highly qualitative monitoring approaches.

MS4s can take a variety of monitoring approaches to evaluate their SWMP effectiveness. Several common approaches that can be implemented for physical, chemical, and biological dimensions of water quality are listed at the end of this document.

Feedback: The Iterative Approach to Stormwater Management

Management of stormwater programs is an iterative process, beginning with planning, progressing through implementation and program evaluation, and then returning to the beginning of the cycle with feedback to further program planning. Effectiveness evaluation assesses how well implementation is working and estimates benefits derived from the program for the primary purpose of assessing progress toward program goals and compliance with regulatory requirements. Results can also be used to make practical changes in management strategies. Effective program feedback will enable local governments to guide decisions on shifting priorities to achieve goals more cost-effectively, including modification of activities that need improvement, expansion of effective activities, and cessation of efforts that are no longer productive. Results of SWMP evaluation should be presented to decision-makers in a clear manner that addresses the questions formulated when the evaluation plan was designed.

Reporting

Annual reports are a good place to summarize evaluation results and to take stock of what is working and what is not. Data gathered throughout the year should be used to answer critical questions such as:

- What is the current status in meeting stormwater goals and NPDES regulatory requirements?
- What are the estimated load reductions and other benefits of BMP implementation?
- What are the costs associated with program implementation?
- How do the costs of program implementation relate to water quality changes?
- What stormwater program changes are necessary to meet the stated goals?

The Baltimore City, Maryland MS4 2005 NPDES permit, for example, requires the permittee to provide an annual narrative summary describing the results and analyses of program data, including monitoring data accumulated throughout the reporting year. Identification of water quality improvements or degradation is a key part of this requirement.

Fourth-year reports are a good opportunity to use data gathered under the entire permit period to guide future management direction. Continuation of a NPDES permit typically requires the permittee to submit with its permit renewal application a summary of its SWMP describing how water quality goals are being achieved. Information in the application would include measured pollutant load reductions resulting from SWMP implementation and achievement of other benchmarks or water quality standards. Analysis of evaluation data is also used to justify or support changes in the permit and SWMP.

Feedback to the stormwater management program

NPDES regulations require assessment and revision of the stormwater management program in order to continue, to the maximum extent practicable, to not cause or contribute to water quality standards exceedances. As part of the iterative management process, stormwater program activities should be adjusted based on the results of an effectiveness evaluation. If a management goal has been achieved, effort in this area might be reduced to a maintenance level and resources reallocated to another pollutant or goal. If a goal has not been achieved, or satisfactory progress has not been made, additional resources can be applied and new strategies implemented. Such adjustments provide the direction for a municipality's permit renewal and will ensure progress toward program goals.

Effectiveness evaluation can also apply to ongoing stormwater programs through the process of adaptive management. Through this, evaluation results on program operations, social or water quality can provide rapid feedback to guide management activities. For example, an MS4 might establish dry weather action levels—or targets—for water quality constituents such as turbidity, phosphorus, and trace metals in tributaries draining to receiving water. Exceedance of an action level in samples taken from a tributary during dry weather would trigger an immediate investigation upstream to find and eliminate illicit connections and illegal discharges. Dry weather action levels would be reviewed and updated annually based on monitoring data and progress toward meeting SWMP goals.

In another example (Figure 3), coastal beaches and storm drains discharging near them are monitored for fecal bacteria. When compared against storm drain action levels for bacteria (sampled at the storm drain) and bacteria water quality criteria for body contact recreation (sampled in the open coastal receiving water), results of the paired samples guide management decisions on actions needed to protect the beach and follow up on sources of high bacteria counts.

Multi-faceted stormwater management programs can be evaluated as well. Baltimore City's NPDES stormwater permit requires it to restore a watershed or combination of watersheds containing 10% of the City's total impervious area during each five-year permit. The City conducts comprehensive watershed assessments and goals for restoration are developed based on

		Beach	
		Meets bacteria criteria	Fails to meet bacteria criteria
Storm drain discharge	Below bacteria action level	No action required	Storm drain discharge not causing beach impairment; continue to monitor and investigate other sources
	Above bacteria action level	Storm drain discharge not causing beach impairment; investigate storm drain sources	Storm drain discharge causing beach impairment; investigate storm drain sources ASAP

Figure 3. Decision table for storm drain and beach bacteria levels.

severity of water quality problems, input form local watershed associations, the possibility for inter-jurisdictional cooperation, and the availability of restoration opportunities. One restoration priority is Watershed 263 (www.cwp.org/RR_Photos/Baltimore_City_profile_sheet.pdf) where Baltimore City plans to restore a degraded stream system and simultaneously address other social and economic problems associated with older urban environments. The goals in this watershed include; replacing school yard asphalt with green infrastructure to filter stormwater; replacement of sidewalk sections with trees to remove nutrients and reduce the "heat island" effect; conversion of vacant abandoned lots into gardens for local residents to use; reduce the buildup of trash and litter through increased municipal street sweeping; and installing innovative ultra-urban BMPs wherever possible. A catch basin downstream of all of these activities will be monitored for water quality and compared to a similar watershed in the City with no controls. Since the installation of BMPs will be progressive, monitoring data will show the effectiveness of differing management strategies. Information will be fed back into future management plans for this watershed and others across the City to ensure that stormwater is being controlled to the maximum extent practicable.

In summary, a municipal stormwater management program needs to set clear goals and identify appropriate monitoring methods to evaluate those goals in order to assess the effectiveness of the stormwater program in protecting water quality.

Additional Resources

Monitoring/Evaluation Guidance or References

California Stormwater Quality Association (CASQA), 2007, *Municipal Stormwater Program Effectiveness Assessment Guidance*. Available at www.casqa.org

Southern California Coastal Water Research Project, *Model Monitoring Program for Municipal Separate Storm Sewer Systems In Southern California*. ftp://ftp.sccwrp.org/pub/download/PDFs/419_smc_mm.pdf

EPA, 1992, NPDES Stormwater Sampling Guidance Document, EPA 833-B-92-001. www.epa.gov/npdes/pubs/owm0093.pdf

Center for Watershed Protection, *Smart Watershed Benchmarking Tool*. Available at www.cwp.org

Chesapeake Bay Program, *BMP Efficiencies and Definitions*. www.chesapeakebay.net/pubs/subcommittee/nsc/uswg/BMP_Pollutant_Removal_Efficiencies.pdf

International Stormwater BMP Database, *Development of Performance Measures: Determining Urban Stormwater Best Management Practice Removal Efficiencies* (www.bmpdatabase.org/docs/task3_1.pdf) and *Urban Stormwater BMP Performance Monitoring: A Guidance Manual for Meeting the National Stormwater BMP Database Requirements* (www.bmpdatabase.org/docs/Urban%20Stormwater%20BMP%20Performance%20Monitoring.pdf)

Stormwater Manager's Resource Center, *Environmental Indicator Profile Sheet: BMP Performance Monitoring*. www.stormwatercenter.net/monitoring%20and%20assessment/Ind%20profiles/IndPros25.pdf

State/Municipal examples of monitoring/evaluation programs

Baltimore County, *Watershed Management and Monitoring*. www.baltimorecountymd.gov/Agencies/environment/watersheds/ep_watershed_monitoring.html

City of Hialeah, FL *Stormwater Utility Monitoring Program*. http://hialeahfl.gov/dept/streets/stormwater/plans/monitoring

Maryland Watershed Restoration Action Strategy. www.dnr.state.md.us/watersheds/surf/proj/wras.html

Ventura, California, MS4 Permit www.swrcb.ca.gov/rwqcb4/html/programs/stormwater/venturaMs4.html

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Schwarzenbach, R.P., B, I. Escher, K. Fenner, T. B. Hofstetter, C. A. Johnson, U. von Gunten, B. Wehrli. 2006."The Challenge of Micropollutants in Aquatic Systems" Science, volume 313, p1072.

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NOTE: This document is not law or regulation; it provides recommendations and explanations that MS4s may consider in determining how to comply with requirements of the CWA and NPDES permit requirements.

Useful Water Quality Monitoring Approaches for Evaluation of SWMPs

Visual observations. Some water quality conditions can be assessed by visual (qualitative) observations of controls, outfalls or receiving waters. Searching for and correcting illicit discharges through observation of oil and grease sheens, floatables, or odors at outfalls is one example. Progress in streambank stabilization and channel restoration might be monitored by regular photography of critical locations. In general, qualitative observations should be supplemented by quantitative measurements where possible, such as with dry weather sampling at outfalls or regular surveys of representative stream cross-sections. The City of Albuquerque MS4 Floatable & Gross Pollutant Study (www.cabq.gov/flood/pdf/FINALREPORT-OCTOBER2005.pdf) is an example of a systematic approach to qualitative observations of water quality conditions. Examples of survey techniques for streambank assessment can be found in the Maryland Stream Corridor Assessment Survey (www.dnr.maryland.gov/streams/pubs/surveyprotocols2.pdf) and the USACE/USEPA Review of protocols for stream assessment (www.mitigationactionplan.gov/Physical%20Stream%20Assessment%20Sept%2004%20Final.pdf).

BMP performance monitoring. Monitoring of individual BMP performance provides a direct measure of pollutant reduction efficiency of these key components of a SWMP. Conceptually, BMP input/output monitoring is simple—measure pollutant concentrations or loads entering and leaving a wet pond for example, and compute the difference. In practice, BMP monitoring is more complex, requiring careful collection of data concerning storm and runoff characteristics and information on BMP attributes, as well as water quality information. There are several sources of information on BMP performance and on protocols for collecting, storing, analyzing, and reporting BMP monitoring data, including the National Stormwater BMP Database (www.bmpdatabase.org) and the USEPA and ASCE *Urban Stormwater BMP Performance Monitoring Manual*. Some examples of individual BMP monitoring studies can be found at the Villanova Urban Stormwater Partnership (www3.villanova.edu/VUSP/index.html).

Probability monitoring. Monitoring sites can be selected across a broad geographic area according to some statistical design to broadly characterize water quality conditions in a watershed or to identify possible contamination hotspots. Site selection could be random to achieve wide spatial coverage or stratified to focus monitoring on particular environment types or represent specific target populations. Data from a statistical sample of stream riffle sites across a watershed could be used to assess the overall condition of watershed macroinvertebrate communities. A monitoring program addressing sediment toxicity in a bay might geographically direct sampling to ensure that sediments in different depositional environments or with different physical characteristics are sampled, or that samples are collected within the areas affected by discharges from major tributaries. Results of probability monitoring can be used to guide SWMP implementation efforts and to assess long-term trends in response to SWMP implementation. An example of a probability design applied to evaluating sediment toxicity is found in the NOAA report Magnitude and Extent of Contaminated Sediment and Toxicity in Chesapeake Bay (ccma.nos.noaa.gov/publications/NCCOSTM47.pdf).

Short-term extensive network monitoring. Short-term grab-sampling at the outlets of numerous small watersheds or other drainages within a large MS4 can identify impaired waters and rank areas for implementation priority. Data collected simultaneously across the MS4 can help characterize the geographical distribution of pollutant sources. The City of Los Angeles monitors a network of shoreline stations in Santa Monica Bay for bacteria to identify stormwater impacts on recreational uses of the bay. This approach can apply not only to streams draining small watersheds but also to storm drains during both wet-weather and dry-weather conditions. If continued over several years, this kind of monitoring can be a good opportunity for volunteer groups to participate in the SWMP evaluation process. Data collected by volunteers could be reported separately or incorporated within "official" data sets used for regulatory purposes depending upon the methods used and level of training provided to volunteers.

Site-specific monitoring. High-value resources such as popular swimming beaches, important shellfish beds, or high-priority habitats could require specific monitoring to regularly assess the status of use support. Similarly, known high-priority pollutant sources or hotspots of impairment like contaminated aquatic sediments, an eroding stream channel threatening property, or a stream reach with a degraded fish population could be monitored to assess progress in restoration. Depending on the situation, such monitoring can be done in the critical area itself to assess its condition or upstream and downstream of the area to evaluate changes in pollutant stressors. Fairfax County's MS4 program conducts an Industrial and High-Risk Runoff monitoring program to identify and investigate industrial and other high-risk sites to determine if they are contributing substantial pollutant loadings to the MS4. The San Diego Bay MS4 permittees operate a Toxic Hot Spots Monitoring Program to locate and track areas of aquatic sediment contamination related to discharges from MS4s around the Bay.

Long-term fixed stations. Permanent monitoring stations at major discharges from an MS4 or on a receiving water above and below an MS4 can be used to measure changes in pollutant loads discharged from the MS4. Such stations are usually located where it is easy to measure flow and collect representative samples. Accurate load measurement requires consideration of many factors including patterns of hydrologic variation, seasonal patterns of pollutant concentrations, and desired statistical power; it is advisable to consult a monitoring expert before setting up a sample program to monitor pollutant loads. Flow, concentration, and load data from long-term fixed stations can be used for many purposes, including assessing compliance with water quality standards, collection of representative data from drainage areas that are undergoing similar activities and where the discharges are expected to be of similar quality as required in some MS4s under Phase I rules, documenting water quality trends, and marking progress toward meeting pollutant load goals, e.g., for a TMDL. The Los Angeles County stormwater monitoring program operates a system of mass emissions stations (www.ladpw.com/WMD/npdes/Int_report/Section_1.pdf) to update estimated pollutant loads to the ocean and to document long-term trends in pollutant concentrations. The San Diego region urban runoff monitoring program maintains similar long-term mass loading stations (www.projectcleanwater.org/pdf/science_mon/2003-2004_monitoring_summary.pdf) that regular assessment of the biological communities as well as chemical pollutant loads in major drainages.

Receiving water monitoring. Protection of a water body receiving discharges from an MS4 is often the ultimate goal of stormwater management. However, an MS4 may not be the only stormwater discharge into a water body, and achievement of the MS4's discharge quality goals may not eliminate the impairment in the receiving water. It may nevertheless be important to monitor water quality in the river, lake, estuary, or bay that receives its discharge, especially if localized impacts can be identified. Evaluation of the effectiveness of a SWMP on maintaining recreational benefits, for example, might involve monitoring both storm drains and swimming beaches for *E. coli*. If a goal of a SWMP is to reduce the impacts of toxic materials delivered in stormwater, a program monitoring a combination of water and sediment chemistry, sediment toxicity, and benthic communities in the receiving water might be appropriate.

ATTACHMENT NO. 38

U.S. EPA letter dated April 10, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 10 2008

Ms. Tam M. Doduc, Chair
Ms. Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Doduc and Ms. Rice:

I understand that certain specific provisions of the 2001 Municipal Separate Storm Sewer System ("MS4") permit for the County of Los Angeles have been called into question as going beyond what is required under section 402(p) of the CWA. (Commission on State Mandates, File Nos. 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21.) The permit conditions at issue are: 1) the requirements for conducting inspections at industrial and commercial facilities including, restaurants and automobile servicing, [Parts 4.C.2.a. and b.] and, 2) the requirement for permittees not subject to the Trash TMDL to locate and maintain trash receptacles at transit stops [Part 4.F.5.c.3.]. California RWQCB, Los Angeles Region, Order No. 01-182, NPDES No. CAS004001 (Dec. 13, 2001). This letter discusses these permit conditions in the context of EPA's expectations for MS4 permits.

Section 402(p) of the Clean Water Act, 33 U.S.C. 1342(p), requires EPA (or authorized states) to issue National Pollutant Discharge Elimination System ("NPDES") permits to regulate the discharge of stormwater from MS4s. Typically, these MS4s are owned and operated by cities and counties. Pursuant to the Clean Water Act, these permits must require the MS4 to: 1) "effectively prohibit" non-stormwater discharges, and 2)"reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. 1342(p)(3)(B)(ii) and (iii).

The NPDES regulations require medium and large MS4s to develop stormwater management programs that the permitting authority will consider when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Stormwater permitting has generally relied on the use of best management practices ("BMPs"), including both structural and non-structural controls, for achieving compliance with these requirements. The EPA also expects stormwater permits to follow an iterative process whereby each successive permit becomes more refined, detailed, and expanded as needed, based on experience under the previous permit. See, 55 Fed. Reg. 47990, 48052 ("EPA anticipates that storm water management programs will evolve and mature over time."); 64 Fed. Reg. 68722, 68754 (Dec. 8, 1999) ("EPA envisions application of the MEP standard as an iterative process."); Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits (Sept. 1, 1996) ("The interim permitting approach uses BMPs in first-round storm water permits, and

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expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards"). See also, "Evaluating the Effectiveness of Municipal Stormwater Programs" (January 2008) (http://www.epa.gov/npdes/pubs/region3_factsheet_swmp.pdf). While the standard of "maximum extent practicable" (MEP) allows for flexibility, that flexibility is not boundless and requires some level of vigor. EPA has created a national menu of stormwater BMPs to provide additional guidance concerning appropriate BMPs for stormwater management plans. Other factors to consider in ensuring appropriate controls include "technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness." Building Indus. Ass'n v. State Water Res. Control Bd., 124 Cal. App. 4th 866, 889 (2004). See also "In re Cities of Bellflower, et al.", SWRCB 2000-11.

At the outset, I note the Los Angeles MS4 permit is a third generation Phase I MS4 permit that should be building upon the experiences from previous permits. Both of the provisions at issue here seem well within a reasonable expectation of controls that reduce pollutants to the "maximum extent practicable." EPA regulations at 40 C.F.R. §122.26(d)(2)(iv) set forth the basic elements to be included in a Phase I MS4's stormwater management program. Subparagraph (A) requires a description of "source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the [MS4] that are to be implemented during the life of the permit." Subparagraph (B) requires a program for detection and removal of illicit discharges and improper disposal into the storm sewer, including a program for inspections and enforcement. A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practicable and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants and that there are no non-stormwater discharges or illicit connections. Thus these programs are founded in both 402(p)(3)(B)(ii) and (iii) and are well within the scope of 40 C.F.R. §122.26(d)(2)(iv)(A) and (B).[1]

Similarly, maintaining trash receptacles at all public transit stops is well within the scope of these regulations. Among the minimum controls required to reduce pollutants from runoff from commercial and residential areas are practices for "operating and maintaining public streets, roads, and highways . . . ." §122.26(d)(2)(iv)(A)(3). I believe these requirements are also practical and effective.[2] Moreover, this permit provision is consistent with EPA's national menu

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[1]EPA's "MS4 Program Evaluation Guidance" (January 2007) envisions that an MS4 permit would include a requirement for an inspection program for common industrial/commercial businesses, such as restaurants and gas stations, within the jurisdiction of the MS4. Id. at 76 - 77, 81. The inspection requirements of the LA MS4 permit are consistent with the recommended activities in the Guide.

[2]The provision applicable to the TMDL permittees is also clearly consistent with EPA's 2002 guidance on TMDLs and storm water permitting. "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit

of BMPs for stormwater management programs, which recommends a number of BMPs to reduce trash discharges. See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=5. Among the recommendations is "improved infrastructure" for trash management when necessary, which includes the placement of trash receptacles at appropriate locations based on expected need. The requirements of the Los Angeles County MS4 permit are consistent with this recommendation. See also, "MS4 Program Evaluation Guidance" (January 2007) at pp. 50, 79. EPA's expectations of the programs to reduce pollutants to the maximum extent practicable specifically refer to control of litter and trash, regardless of whether the particular receiving water is already impaired for trash.

I hope that this explanation helps clarify EPA's expectations for MS4 permit requirements under the Clean Water Act. I look forward to continuing to work with the State on our shared goal of ensuring consistency and effectiveness in storm water permitting as a vital tool in protecting the quality of our waters. Should you have further questions about these issues, please have your staff contact Douglas Eberhardt of my staff at (415) 972-3420 or have your counsel's office contact Laurie Kermish of the Office of Regional Counsel at (415) 972-3917.

Sincerely,

Alexis Strauss 10 April 2008

Alexis Strauss
Director, Water Division

cc: Mr. Michael Lauffer, Chief Counsel
State Water Resources Control Board

Ms. Paula Higashi, Executive Director
Commission on State Mandates

Requirements Based on Those WLAs" (November 22, 2002) which is available at: http://cfpub.epa.gov/npdes/pubs.cfm?program_id=6

Exhibit E

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS
ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

RECEIVED
JUN 23 2008
COMMISSION ON
STATE MANDATES

June 23, 2008

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Los Angeles County's Review of State Agency Comments
Public Transit Trash Receptacles and State Permit Inspections
Storm Water Pollution Control Test Claims [03-TC-04, -19, -20, -21]

The enclosed review considers comments filed by the State Water Resources Control Board on April 18, 2008 and the State Department of Finance on March 27, 2008 regarding the referenced test claims filed by the County of Los Angeles and twenty cities.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

Wendy L. Watanabe
Acting Auditor-Controller

WLW:CY:LK
Enclosures

"To Enrich Lives Through Effective and Caring Service"

Los Angeles County's Review of State Agency Comments
Public Transit Trash Receptacles and State Permit Inspections
Storm Water Pollution Control Test Claims [03-TC-04, -19, -20, -21]

The enclosed review considers comments filed by the State Water Resources Control Board [State Water Board] on April 18, 2008 and the State Department of Finance [Finance] on March 27, 2008 regarding the referenced test claims filed by the County of Los Angeles [County] and twenty cities [cities].

The County contends that reimbursement is required under article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing State-permitted industrial and commercial facility and construction site inspections and public transit trash receptacle services as specified in the California Regional Water Quality Control Board, Los Angeles Region's, [Regional Water Board] Executive Order Number 01-182 [Order], Permit Number CAS004001, issued December 13, 2001, [Permit].

The State Water Board and Finance contend otherwise.

Inspection Mandates

Finance's position on the inspection requirements is summarized on page 3 of its analysis as follows:

> "Although these inspections and other permit requirements may result in additional costs to local agencies, those costs are not reimbursable because the conditions implement federal NPDES permit requirements and do not shift responsibilities from the state to local agencies."

However, as discussed in Sections 1-3 below, Finance fails to note that the inspection duties here are for State-permitted industrial and commercial facilities and construction sites.

The County contends that under prior law the State had sole and exclusive responsibility for conducting the subject inspections. After the instant Permit was issued, the County was required to perform these inspections. Clearly, a shift of responsibilities from the state to local agencies occurred.

Further, there is no evidence in the record that the County requested the duties claimed herein. For example, the State Water Board's Exhibit 36 which

includes the County's Permit Application to the Regional Water Board, dated January 31, 2001, does not include a request to conduct State-permitted industrial and commercial facility and construction site inspections. To the contrary, this application indicates, on page 22, that "Permittees shall implement an industrial/commercial educational site visit program. (emphasis added)", not an inspection program.

Moreover, according to the declaration of Adam Ariki, Assistant Deputy Director of the Water Works Division of the Los Angeles County Department of Public Works [LADPW], attached hereto as Exhibit 1, Mr. Ariki indicates on page 1 that:

> ".. it was their [Regional Water Board] idea to have LADPW perform these inspections in lieu of Regional Board staff performing these inspections themselves"

The substitution of the County for the State in conducting the instant inspections is further corroborated by a letter attached to Mr Ariki's declaration from the Regional Water Board to LADPW dated December 17, 2001, around the time the instant Permit was issued, indicating that the Regional Water board was trying to contract with the County to perform the subject inspections but that the Regional Water Board was "unable to proceed in further developing the proposal". The result was that this 'proposal' was subsequently mandated in the instant Permit, without County payment.

To make matters worse, the County incurred substantial costs in implementing the State mandated inspection services and found itself without sufficient fee authority to recover its costs. As noted in Section 5, the State still charges and keeps the fees for these inspections --- even though the County conducts them.

In addition, the State Water Board notes on page 17 of their April 18, 2008 letter that this "approach may result in two different entities inspecting the same businesses to review storm water practices". Of course, it is unfortunate when businesses undergo duplicate inspections. But it is unconscionable to charge them twice for doing so.

And it is undisputed that the County is now mandated to perform extensive duties in inspecting State-permitted facilities and construction sites pursuant to the Regional Water Board's Executive Order Number 01-182, which details pages of new requirements under:

> Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;
>
> Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Resources Control ("State Water Board") permits], page 31;
>
> Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water permits], pages 42-45;

As will be seen, in Sections 1-3 below, federal law did not mandate that the County conduct the new inspections specified in the instant Permit. The State did.

Trash Receptacle Mandates

Regarding public transit trash receptacle services, Finance argues that this service is not reimbursable. Finance explains, on pages 3-4 of its analysis, that:

> "... the claimants had discretion over what activities and conditions to include in the permit application . ... As a result, the permit requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Such requirements are not reimbursable mandates."

However, the County did not decide to put public transit trash receptacle services in the Permit. The State did. Indeed, the State Water Board's Exhibit 36 which includes the County's Permit Application to the Regional Water Board, dated January 31, 2001, does not include a request for a public transit trash receptacle services or even a similar program.

Further, the State Water Board erroneously suggests on page 19 of their April 18, 2008 letter, that because "most cities routinely place trash receptacles at bus stops", the State did not subsequently mandate a new duty. However, where such duties are voluntarily performed under prior law, the costs of performing the same duties become subject to reimbursement when mandated

in accordance with article XIII B, section 6 of the California Constitution and its implementing statutory provision in Government Code Section 17565:

> "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." [Emphasis added.]

Therefore, under Government Code Section 17565, reimbursement is now required for the costs claimed herein as the public transit trash receptacle services are no longer discretionary.

The State Water Board contends that the claimed activities are not 'a new program or higher level of service' and consequently not reimbursable. In the State Water Board's April 18, 2008 letter to Paula Higashi, Executive Director of the Commission on State Mandates [Commission], Elizabeth Miller Jennings, Office of Chief Counsel, State Water [1], states on page 2, that:

> "In order to obtain reimbursement, the claimants must show that the requirements constitute a new program or higher level of service. They must prove either: (1) the program must carry out a governmental function of providing services to the public, or (2) the requirements, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the State."

Here, the claimed State-permitted industrial and commercial facility and construction site inspections [discussed in Sections 1-3] as well as the public transit trash receptacle services [discussed in Section 4] impose new and unique requirements on local governments.

1a. Inspection of Commercial Facilities

[1] Ms. Jennings also attached a letter opining on the nature of pertinent federal Clean Water Act [CWA] requirements from Ms. Alexis Strauss, Director, Water Division, United States Environmental Protection Agency [USEPA], Region IX.

Part 4.C.2.a of the Order requires the County to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. The purpose of the inspection is to assure that these facilities are implementing programs, known as Best Management Practices ("BMPs"), to prevent the discharge of waste into locations where it will be picked up by stormwater and carried into the rivers and other waters of the state.

Since at least 1969, State agencies have had the responsibility to prevent or regulate the discharge of waste that could be carried into the rivers and other waters of the state. In that year the Legislature adopted the Porter-Cologne Water Quality Act, Water Code §§ 13000 et seq. Under the Porter-Cologne Act, the Legislature imposed on the State Water and the regional water quality control boards ("regional boards") responsibility for the coordination and control of water quality. Water Code § 13001.

This responsibility includes the regulation of discharges from any entity that could affect the quality of the water of the state, including inspection of those facilities. Under the Act, any person who discharges "waste" or proposes to discharge "waste" that could affect the quality of the "waters of the state," other than into a community sewer system, must file a report of the discharge with the regional that has the authority over that discharge. Water Code §§ 13260 and 13263. "Waste" and "waters of the state" are defined broadly. "Waste" includes all waste substances associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operation. Water Code § 13050(d). "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state. Water Code § 13050(e). Upon receipt of the report of discharge, the regional board, after a hearing, issues a permit, known as waste discharge requirements, authorizing or conditioning (including disallowing) the discharge. Water Code § 13263. The regional is given the authority to require any person to furnish technical and monitoring reports describing any discharge or proposed discharge of waste, and can inspect the facility of any such person to ascertain whether the purpose of the Act are being met. Water Code § 13267(b) and (c). The State Water is given this same authority if it will not duplicate the efforts of the Regional Board. *Id.*, subd. (f).

The Porter-Cologne Act contains no exceptions for discharges from restaurants, automotive service facilities, retail gas station, or automobile dealerships. Accordingly, the State, through the State Water and the regional water quality control boards, has had the responsibility since 1969 for

regulating the discharge or proposed discharge of any waste from these facilities.

As set forth above, the purpose of the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships is to assure that these facilities are implementing BMPs that will prevent the discharge of waste into locations where it could be carried into rivers and other waters of the state. The restaurant inspections are to assure that oil, grease, trash or waste are not entering areas exposed to stormwater, all to prevent these materials from being picked up by stormwater and then being discharged into waters of the state. The automotive service facility inspections are to assure that materials at these facilities do not come into contact with stormwater or other runoff that would carry these materials into waters of the state. The retail gas outlet and automotive dealership inspections likewise are to assure that fuel, debris and waste does not enter storm drain and catch basins and then enter waters of the state.

These inspections are all tasks for which the State has been responsible since at least 1969. These are all obligations of the State and regional boards under the Porter-Cologne Act since 1969.

1b. The Order requires the County to conduct these inspections to assure compliance with State law

The Order explicitly requires the County to conduct these inspections to assure compliance with State law, including a resolution issued by a state agency, i.e., the Regional Water Board. The Order specifically provides that inspections of restaurants are to be performed in order to assure that BMPs "are being effectively implemented in compliance with state law, County and municipal ordinances, Regional Resolution No. 98-08, and the SQMP." Order, Part 4.C.2.a(1) (emphasis added). The inspection of automotive service facilities, retail gasoline outlets and automobile dealerships similarly are to confirm that BMPs are being "effectively implemented . . . in compliance with Regional Resolution No. 98-08. Order, Parts 4.C.2.a(2) and (3) (emphasis added). (A copy of Resolution No. 98-08 was included in Section 7 of the test claim filed by the cities of Artesia et al. [03-TC-20] on November 28, 2007.)

1c. These inspection obligations are new programs or higher levels of service

The obligation to inspect restaurants, automotive service facilities, retail gas outlets and automotive dealerships is a new program or a higher level of service. A "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. These inspection obligations are such a program; inspections for the purpose of policing compliance with state law are a uniquely governmental function and are uniquely imposed on the municipalities that are permittees under the Order.[2]

These inspection obligations are also new. A program is "new" if the local governmental entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. Here, the Order constitutes both waste discharge requirements issued by the Regional Water Board and a NPDES municipal stormwater permit issued under the federal Clean Water Act. This is the third such order issued to the County. The Regional Water Board previously issued orders to the County in 1991 and 1996. Neither the 1991 nor the 1996 order imposed these inspection obligations. The inspection obligations were imposed by the Regional Water Board for the first time in the Order issued in 2001.

1d. The inspections are not required by the federal Clean Water Act

The federal Clean Water Act imposes certain obligations on the County. Under the Clean Water Act, the County are required to (i) prohibit non-stormwater discharges into the storm sewers, and (2) reduce the discharge of pollutants in stormwater to the maximum extent practicable. 33 U.S.C. §1342(p). As noted above, the Order itself constitutes both waste discharge requirements and NPDES permit issued under the federal Clean Water Act.

---

[2] While these services are completely new and clearly constitute a 'new program', these inspections even if viewed as a higher level of service also qualify for reimbursement as claimed herein. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in an increase in the actual level or quality of governmental services provided. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

The federal Clean Water Act does not require the County to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships. The federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are solely municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). The federal regulations do not require inspections of restaurants, automotive service facilities, retail gas stations, or automotive dealerships.

Indeed, the 1991 and 1996 orders issued by the Regional Water Board to the County did not contain these inspection obligations. If the federal Clean Water Act had required the County to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships, the Regional Water Board could not have issued the prior orders without including these inspections. The Regional Water Board, however, did issue the prior orders without requiring these inspections.[3]

The State's argument that, because the Order also constituted a federal NPDES permit, the inspections are federally mandated, lacks merit. An NPDES permit can contain both federal and non-federal requirements. *See City of Burbank v. State Water Resources Control* (2005) 35 Cal.4th 613, 618, 628. Where state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *See Long Beach Unified School District v State of California* (1990) 225 Cal.App.3d 155, 172-173.

Moreover, a "new program or higher level of service" imposed by the State upon a municipality as a result of a federal law or federal program is not necessarily a "federal mandate." In order to be a federal mandate, the obligation must be imposed upon the municipality by federal law itself. The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has a "true choice" in the matter of implementation, *i.e.*, whether the state freely chose to impose that program on

[3] Because the current federal regulations were not in effect at the time of the issuance of 1991 order, it could be argued that the 1991 order was issued under a prior set of regulations. The current regulations however, were in existence at the time the 1996 order was issued.

local municipalities as opposed to performing the obligation itself. *See Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

Here, the inspections are not required by federal statute or regulations; they exceed the requirements of the federal Clean Water Act. Here, the State has had the obligation to regulate restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969. This included the right to inspect such facilities to prevent activities that would result in the discharge of waste that could affect the quality of the waters of the state. Water Code § 13267(c). In 2001, the Regional Water Board freely chose to shift those inspection obligations to the County. Nothing under the federal Clean Water Act required the Regional Water Board to do so; nothing prevented the Regional Water Board from continuing to perform these inspections itself.

2a. Inspection of Industrial Facilities

The inspections of industrial facilities that hold State Water stormwater permits for compliance with those permits are new programs or higher level of service mandated by the State. The Order imposes new inspection obligations that were required to be performed by the State

Part 4.c.2.b requires the County to inspect industrial facilities to determine those facilities' compliance with the State's program for preventing waste from being discharged from those facilities, including permits issued by the State Water Board. As with the inspection of restaurants, gas stations and the other facilities, the requirement to inspect industrial is also a new program, one formerly performed by the State itself.

The Clean Water Act requires certain industrial facilities to have permits for stormwater discharges associated with their industrial activity. 33 U.S.C. § 1342(p)(3); 40 C.F.R. § 122.26(c). These industrial stormwater permits are issued either by the State Water Boards or the Regional Water Boards. In California, the State Water issues a general permit to which industrial facilities can subscribe. Alternatively, an industrial discharger can obtain its own permit from a Regional Water Board. The Order refers to these industrial facilities as "Phase I Facilities." Order, pp. 31, 62.

Under the Porter-Cologne Water Quality Act, the State Water and the regional boards have both the authority and the obligation to issue these permits to "Phase I Facilities." Water Code § 13377. The State Water has issued these industrial stormwater permits since 1991. (See State Water Order No. 91-013-

DWQ.) The most current general permit was issued in 1997. (See State Water Resources Control Order No. 97-03-WQ, a copy of which was included in Section 7 of the test claim filed by the cities of Artesia et al. [03-TC-20] on November 28, 2007.)

Significantly, the Legislature has authorized the State Water and regional boards to charge these industrial dischargers a fee which is deposited in the State's Waste Discharge Permit Fund and separately accounted for. Water Code § 13260(d)(2)provides in pertinent part:

> (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created.
>
> (B) Notwithstanding subparagraph (A) the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the National Pollutant Discharge Elimination System (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

The Legislature has then directed that a portion of this fee should be spent specifically on inspection of these industrial facilities. "Not less than 50 percent in the Waste Discharge Permit Fund that is separately accounted for . . . is available, upon appropriation by the Legislature, for expenditure by the regional with jurisdiction over the permitted industry or construction site that generated the fee to carry out the stormwater programs in the region." Water Code § 13260(d)(2)(B)(ii). "Each regional . . . shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." *Id.*, subd.(d)(2)(B)(iii) (emphasis added).

Like the inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships, the State Water and regional boards have had the authority under the Porter-Cologne Act to regulate these discharges from "Phase I" facilities since 1969, including the authority to inspect these facilities. Water Code §§ 13260, 13263, 13267. The obligation to inspect these "Phase I" industrial facilities that hold the State issued stormwater permits has rested with the Regional Water Boards since 1991. The State Water Board, in adopting the general industrial permit it issues to these Phase I facilities, stated that "following adoption of this General Permit, the Regional

Water Boards shall enforce its provisions." Order No. 97-03-DWQ, Finding 13 (emphasis added).

In 2001, the Regional Water Board imposed this obligation on the County. There is no question that the Regional Water Board imposed this inspection requirement to assure Phase I facilities' compliance with state law. The inspection required to be performed by the County is a "compliance inspection." Order, Part 4.2.b. The inspection shall include a determination as to whether the industrial discharger has a waste discharge identification number and a stormwater pollution prevention plan. The waste discharge identification number is a number assigned by the State in conjunction with its permit program. The stormwater pollution prevention plan is a requirement of the state-issued general permit. The inspection is also for the purpose of determining whether the industrial facility is implementing BMPs in compliance with Regional Resolution No. 98-08, a resolution of the Regional Water Board itself.

Accordingly, the inspections of Phase I facilities is a new program or higher level of service imposed on the County:

> (1) The State Water and the regional boards have had authority to regulate and inspect these facilities since 1969. Water Code §§ 13260, 13263, 13267.
>
> (2) The inspection is to determine compliance with the general industrial stormwater permit issued by the State Water Board. The State has specifically provided that the regional shall enforce the provisions of this permit. State Water Order No. 97-03-DWQ, Finding 13.
>
> (3) The State and the regional charge these industrial facilities a fee for this program. Water Code § 13260(d)(2).
>
> (4) The State Water and the regional boards do not share any of these fees with the County.
>
> (5) The inspections are compliance inspections to determine compliance with the State Water permit, and Regional Resolution No. 98-08.

(6) The inspection obligation is new. The Regional Water Board imposed this obligation on the County in 2001. Prior orders did not impose this obligation on the County.

2b. The obligation to inspect industrial facilities with State-issued stormwater permits is not contained in the federal Clean Water Act

As discussed above, the federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). These regulations do not require inspections of industrial facilities with state-issued stormwater permits.

3a. Inspection of Construction Sites

The inspection of State-permitted construction sites is a new State-mandated program.

Under the Clean Water Act, the definition of industrial activities includes construction. See 40 C.F.R. § 122.26(b)(14)(x). In 2001, construction sites where activity resulted in the disturbance of greater than five acres of total land area were required to obtain stormwater permits. In 2003 this requirement was expanded to sites where the activities resulted in the disturbance of greater than one acre. See 40 CFR Section 122.26(b)(14)(x) and (15).

As with the industrial facilities, the State Water and regional boards are charged with issuing these permits. Water Code § 13377. The State Water has issued a general construction stormwater permit since 1992. See State Water Resources Control Order No. 92-08-DWQ. The most current general construction stormwater permit was issued in 1999. See State Water Resources Control Order No. 99-08-DWQ. Like industrial facilities, the State charges a fee for these permits. Like industrial facilities, a portion of that fee is to go to Regional Water Boards to be spent "solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." Water Code § 13260(d)(2)(B)(iii).

Like general industrial stormwater permit, the general construction stormwater permit issued by the State Water imposes the inspection obligation on the Regional Water Boards. State Order No. 99-08-DWQ specifically provides that "[f]ollowing adoption of this General Permit, the Regional Water Board's shall enforce the provisions herein . . . ." State Order No. 99-08-DWQ, Finding 11. Part D.1 of that Order further specifically provided that "RWQCBs [Regional Water Boards] shall . . . implement the provision of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPs, reviewing SWPPPs, reviewing monitoring reports, conducting compliance inspections, and taking enforcement actions." Thus, the specific responsibility for inspection of construction sites was allocated by the State Water to the regional boards, including the Regional Water Board.

The same analysis that applies the obligation to inspect industrial facilities applies to the obligation to inspect construction sites. Like inspection of the Phase I facilities in 2001, the Regional Water Board simply shifted this obligation from itself to the County. The obligation to inspect these construction sites for compliance with the State Water Board's permit is a new program or higher level of service mandated on the County:

> (1) The State Water and the regional boards have had the authority and obligation to regulate these discharges since 1969. Water Code §§ 13260, 13263 and 13267.
>
> (2) The State Water Resources has issued permits to these facilities since 1992. See State Order No. 92-08-DWQ.
>
> (3) The State orders adopting the general permit imposed the obligation to inspect construction sites on the Regional Water Boards. See State Order No. 99-08-DWQ, part D.1.
>
> (4) The State and the regional boards charge a fee to the owners or developers of these construction sites. Water Code § 13260(d)(2). The State Water Boards and the regional boards do not share any of these fees with the County.

(5) The inspections are compliance inspections to determine compliance with the State Water program and permit.

(6) The obligation is new. The Regional Water Board imposed the obligation on the County in 2001. Prior to 2001, the County did not have this obligation.

4. Public Transit Trash Receptacles

The installation and maintenance of trash receptacles at public transit stops are new programs or higher levels of service mandated upon the County.

Part 4.F.5.c.3. of the Order [regarding installation and maintenance of trash receptacles at transit stops, pages 48-49] requires the County to place trash receptacles at all transit stops within their jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary. This requirement also constitutes a new program or higher level of service mandated upon the County.

As set forth above, a "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. A program is "new" if the local government entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles v. State of California*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in increase in the actual level or quality of governmental services. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

The obligation to install trash receptacles at all transit stops is a new program or higher level of service. The collection of trash is a program that carries out a governmental function of providing services to the public. The Order directed the County how and where to collect trash. It resulted in a new program or higher level of service along with a concomitant increase in costs.

Nothing in the federal Clean Water Act requires the County to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean

Water Act itself imposes this obligation. Indeed, this obligation is not found in other stormwater permits issued to the County throughout the state. The fact that it does not exist in other stormwater permits demonstrates that it is not a federal requirement.

The State Water Board's April 18, 2008 filing with the Commission included a letter from Mr. Alexis Strauss, Director, Water Division, United States Environmental Protection Agency [USEPA], Region IX. who indicated that the pertinent federal standard in this matter is whether or not there was a "reasonable expectation of controls that reduce pollutants to the "maximum extent practicable". Ms. Strauss explains her position, on page 2 of her letter, as follows:

> "... the Los Angeles MS4 permit is a third generation Phase 1 MS4 permit that should be building upon the experiences from previous permits. Both of the provisions at issue here seem well within a reasonable expectation of controls that reduce pollutants to the "maximum extent practicable." ... A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practical and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants that there are no non-stormwater discharges or illicit connections. ...
>
> Similarly, maintaining trash receptacles at all public transit stops is well within the scope of these regulations. ... Moreover, this permit provision is consistent with EPA's national menu of BMPs for stormwater management programs, which recommends a number of BMPs to reduce trash discharges. See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=&Rbutton=detail&bmp=5."

However, no federal mandates to comply with the requirements claimed herein are to be found. Granted, such requirements may be permitted under federal law ... and even encouraged as 'reasonable expectations'. But such requirements are not mandated on the County by federal law. Rather, as previously discussed, such requirements are mandated on the County under State law.

Previously, the Commission considered a case where federal law permitted and even encouraged a State mandated program to implement "Two-Way Traffic Signal Communication". Even so -- the Commission found a reimbursable state mandated program. The Commissioners explain, on the first page of their decision, that:

> " The Commission recognized federal regulations and a federal manual providing for uniform traffic control devices and traffic coordination among jurisdictions. However, the Commission found that these authorities do not obligate the state or local agencies to install software capable of two-way communication in traffic signal controllers." [www.csm.ca.gov/tcdocs/4504sod.pdf

In this present case also, there is an abundance of federal guidance and encouragement to have the County install and maintain trash receptacles at all public transit stops. But these are merely federal suggestions, not mandates.

Here, as in the San Diego Tentative Order 2001-01, State mandates were included in the federal MS4 Permits. As noted by Professor John H. Minan, former chairman of the San Diego Regional Water Board, in a San Diego Law Review article, attached in pertinent part in Exhibit Two, on page 2:

> "In the early 1990s, regional boards began issuing MS4 permits based on the provisions in the CWA. Some MS4 permits, for example those issued by the San Diego Regional Water Quality Control Board to San Diego and Orange County, "exceed" the requirements of federal law. [FN30] As discussed in the Part below dealing with the California Environmental Quality Act, [FN31] this feature of going beyond the federal requirements is legally significant."

Hence these State practices, similar to the ones test-claimed herein, are not isolated instances.

Here, the new mandates requiring the County to install and maintain trash receptacles at all public transit stops are not compelled by federal law but by State law. Accordingly, such State requirements impose a new program of higher level or service upon the County --- impose a reimbursable program upon the County as none of the State funding disclaimers, discussed below apply.

5. The State Funding Disclaimers Under Government Code § 17556 Do Not Apply

The seven disclaimers specified in Government Code § 17556 do not apply to the instant test claim, as shown below.

Government Code § 17556(a): "The claim is submitted by a local agency . . . which requested legislative authority for that local agency . . . to implement the Program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority." This disclaimer is not applicable because the County did not request legislative authority for the Order.

Government Code § 17556(b): "The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts." This disclaimer is not applicable because the Order did not affirm what had been declared existing law or regulation by action of the courts.

Government Code § 17556(c): The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." This disclaimer is not applicable because no federal law or regulation is implemented in the Order, and the Order exceeds that mandated by federal law, as discussed above.

Government Code § 17556(d): "The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." This disclaimer is not applicable because the County does not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

It should further be noted that the State collects fees for inspections but does not share these funds with the County. The State Water and the Regional Water Board have in fact received funds from permit fees associated with the General Industrial Permit and the General Construction Permit, fees that were specifically assessed to pay for the costs of implementing the stormwater permit program. Water Code § 13260(d). The State receives an annual fee of $700 from every

industrial facility, plus applicable surcharges (but subject to certain reductions) that is required to have a General Industrial Permit. 23 Cal. Code Reg. § 2200(b)(2)(A). For construction sites required to have a General Construction Permit, the annual fee is $200 plus $20 per acre, up to a maximum of $2,200. 23 Cal. Code Reg. § 2200(b)(3). The State shares none of these fees with the County.

In addition, the State Water Board erroneously contends, on page 19 of their April 18, 2008 letter, that "Any additional costs associated with trash removal at these transit stops ... could be borne by transit users through higher transit fees'. Here the County has no fee authority, or insufficient fee authority, to impose fees on transit users. Moreover, it is unclear how such fees would be of benefit only to such users. Certainly they would get no better a ride. Further, the Commission has found insufficient fee authority in prior test claims – even where purportedly set forth in the test claimed statutes.

For example, in the Sudden Infant Death Syndrome Training program, the Commission's Parameters and Guidelines, indicate on page 2 that:

> "The [test-claimed] Statute .. authorizes local agencies that provide instruction and training to assess a fee sufficient to pay for the cost for training...
>
> [However] ... The Commission found that the authority to impose fees upon firefighters cannot be realistically exercised by local agencies and special districts. Thus the Commission finds that the fee authority exception to reimbursement under Government Code Section 17556, Subdivision (d), does not apply and that that the test claim statute imposes "costs mandated by the State" on local agencies and special districts". [www.csm.ca.gov/tdocs/4412pg.pdf]

Further, it should be noted that the County's costs in providing the mandated services claimed herein are not *de minimis*, and far exceed the minimum reimbursement amount of $1,000 per annum. [Government Code Section 17564(a)]

The cost schedules attached as Exhibit 1 to the County's test claim on "Inspection of Industrial/Commercial Facilities" and attached as Exhibit 2 to the County's test claim on "Transit Trash Receptacles" are reproduced below, on pages 20-23, to clearly illustrate the scope of work and substantial costs imposed

upon the County under the instant Permit. Certainly, such costs are not *de minimis*.

6. Conclusion

Accordingly, for all of the above reasons, reimbursement for providing State-permitted industrial and commercial facility and construction site inspections and public transit trash removal services pursuant to the Regional Water Board's Executive Order Number 01-182, Permit Number CAS004001, issued December 13, 2001, is required.

Cost Schedule Attachment
Declaration of Shari Afshari

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section C. 2. a. And b.
Inspection of Industrial/Commercial Facilities

December 13, 2001 – September 15, 2003

1. Identify all and inspect all restaurants within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections).

1744 restaurant facilities identified
Inspection by Field Inspection Unit $234,931.83

December 13, 2001 – September 15, 2003

2. Identify and inspect all automotive service facilities within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

1110 automotive service facilities identified
Inspection by Field Inspection Unit $149,526.36

December 13, 2001 – September 15, 2003

3. Identify and inspect all retail gasoline outlets and automotive dealerships within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

249 retail gasoline outlets and automotive dealerships identified
Inspection by Field Inspection Unit $ 33,542.45

December 13, 2001 – September 15, 2003

4. Identify and inspect all Phase I (Tier 1 and Tier 2) facilities within the jurisdiction:

Job codes: W0005522 and W0005536 (Industrial/Commercial Facility stormwater inspections):

387 Tier 1 (including 96 facilities subject to General or Site specific NPDES permit) facilities identified, 543 Tier 2 (including 31 facilities subject to General or Site specific NPDES permit) facilities identified, Inspection by the Field Inspection Unit	$125,155.31
Total	$543,155.95

Cost Schedule Attachment
Declaration of Aras Ahmed

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

December 13, 2001 – October 31, 2002

1. Identifying all transit stops within the jurisdiction

Job code (X3003087,
Installation of NPDES trash receptacles) $ 19,989.17

August 1, 2002 – January 12, 2003

2. Selecting the proper trash receptacle design, evaluating proper placement of trash receptacles, specification and drawing preparation

Job code (X3003087) $ 38,461.87

August 1, 2002 – January 12, 2003

3. Preliminary engineering works (Construction contract preparation and specification reviewing process, Bid advertising and awarding process)

Job code (X3003087) $ 19,662.02

January 12, 2003 – April 11, 2003

4. Constructing and installing trash receptacle units
describe contract and amount

Fabrication and installation of 366 units	$214,003.86
1,615 sf of concrete pad used	$ 16,751.72
Total Cost	$230,755.58

Construction Management

Job code (X3003087) $ 34,628.31

5. Trash collection and receptacle maintenance

Force Account cost for maintaining and
Collecting trash in FY 2002-03 $ 3,513.94

Maintenance contractor cost for maintaining
and collecting trash in FY 2002-03
321 units x $22.50 per week x 13 weeks $ 93,892.50

6. Projected Cost for on-going maintenance in FY 2003-04

321 units x $22.50 per week x 52 weeks $375,570.00

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

Los Angeles County's Review of State Agency Comments
Public Transit Trash Receptacles and State Permit Inspections
Storm Water Pollution Control Test Claims [03-TC-04, -19, -20, -21]

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, and, when necessary requesting postponements of hearings, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claims, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/23/08; Los Angeles, CA
Date and Place

Signature

Exhibit I
Page 1 of 2

DECLARATION OF ADAM ARIKI, P.E.

I, Adam Ariki, P.E. hereby declare:

1. I am currently the Assistant Deputy Director of the Water Works Division of the Los Angeles County Department of Public Works (LADPW).

2. In 2001, I held the position of Senior Civil Engineer, and supervised the section of LADPW's Watershed Management Division that was responsible for compliance with the Los Angeles County Municipal Storm Water Permit (Permit) issued by the Los Angeles Regional Water Quality Control Board (Regional Board).

3. I have personal knowledge of the matters set forth herein and, if called to testify, could and would testify competently thereto.

4. In conjunction with my duties in 2001, I participated in meetings with staff of the Los Angeles Regional Board in which the parties discussed a request by the Los Angeles Regional Board to enter into a contract pursuant to which the LADPW would perform, for the benefit of the Regional Board, inspections of sites that held general industrial stormwater permits. The Regional Board would pay the County of Los Angeles for the performance of these inspections.

5. To my knowledge, these negotiations were initiated by Regional Board staff, and it was their idea to have LADPW perform these inspections in lieu of Regional Board staff performing these inspections themselves.

6. By letter dated December 17, 2001, the Executive Officer of the Regional Board advised LADPW that the Regional Board was terminating these discussions. Attached hereto is a copy of the letter from Dennis Dickerson, Executive Officer, to Donald Wolfe, Assistant Director, advising that the Regional Board staff was terminating these discussions.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18 day of June, 2008 at Alhambra, California.

Adam Ariki

Winston H. Hickox
Secretary for Environmental Protection

California Regional Water Quality Control Board

Los Angeles Region

Over 50 Years Serving Coastal Los Angeles and Ventura Counties
Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.swrcb.ca.gov/rwqcb4

Gray Davis
Governor

December 17, 2001

Mr. Donald L. Wolfe, Assistant Director
County of Los Angeles Department of Public Works
900 South Freemont Avenue
Alhambra, CA 91803-1331

Dear Mr. Wolfe:

INSPECTION OF FACILITIES COVERED UNDER THE CALIFORNIA GENERAL INDUSTRIAL ACTIVITIES STORM WATER GENERAL PERMIT (GENERAL PERMIT)

During the last several months, staff from the County of Los Angeles and the Regional Board met a number of times and worked together in an effort to develop a contract proposal with the County to inspect facilities covered under the General Permit. These efforts were an attempt to further the partnership between the Regional Board and local agencies in the arena of storm water management in the region. They were also an attempt to tap into the County's staff expertise in an efficient way in order to thoroughly and expeditiously address the challenging task of overseeing a large number of industrial sites covered under the General Permit and identifying the significant number of facilities that have not yet obtained coverage.

Your staff worked diligently and was very helpful and cooperative during the whole process.

Unfortunately, we are unable to proceed in further developing this proposal at this time. I hope that in the future the opportunity to renew our discussion will present itself.

Should you have any questions regarding this matter, please do not hesitate to contact me at (213) 576-6605, or Dan Radulescu at (213) 576-6668.

Sincerely,

Dennis A. Dickerson
Executive Officer

cc: Mr. Carl Sjoberg, County of Los Angeles Department of Public Works
Mr. John Youngerman, Stormwater Section, State Water Resources Control Board

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Westlaw.
40 SANDLR 245
40 San Diego L. Rev. 245
(Cite as: 40 San Diego L. Rev. 245)

C San Diego Law Review
February-March 2003

Articles

*245 MUNICIPAL STORM WATER PERMITTING IN CALIFORNIA

John H. Minan [FNa1]

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***246** I. Introduction

This Article deals with the regulation of discharges of waste in storm water from municipal separate storm sewer systems (MS4s). [FN1] In the last few years, significant regulatory action has occurred in this area, especially in California. The permitting of MS4s has generated political controversy in the regulated community, which has bubbled over into legal challenges. [FN2]

Although some legal questions have been settled by the courts, the ***247** situation is dynamic. At the federal level there have been two notable storm water decisions, Defenders of Wildlife v. Browner and Environmental Defense Center v. U.S. Environmental Protection Agency. [FN3] There have been two administrative decisions issued by the State Water Resources Control Board. [FN4] Petitions to the State Water Resources Control Board challenging the Los Angeles, Orange County, and Santa Ana storm water permits have been filed and are pending resolution. [FN5] In late 2001, a lawsuit was filed by the Building Industry Association challenging the San Diego MS4 permit [FN6] and requesting a writ of mandate to set it aside. In mid-2002, the California Court of Appeal for the Sixth District decided Howard Jarvis Taxpayers Ass'n v. City of Salinas, [FN7] in which the city's storm drainage fee was held invalid for failing to comply with the voter approval requirements of proposition 218. Additional administrative and judicial legal challenges to these and other storm water permits are likely in the future.

***248** Predictably, public policy decisionmakers and attorneys practicing environmental and land use law will be swept up in the controversy surrounding the subject of municipal storm water regulation. The stakes are high. The goal of this Article is to provide a framework for understanding some of the emerging legal issues.

II. The Federal-State Structure

The Federal Water Pollution Control Act, more commonly referred to as the Clean Water Act (CWA), is based on Congress's authority under the Commerce Clause "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." [FN8] It is premised on the realization that the protection of aquatic resources necessitated broad authority to control water pollution and that the discharge of pollutants be controlled at the source. [FN9]

The CWA generally uses two different regulatory approaches or philosophies to control water pollution. The predominant regulatory strategy is based on controlling the discharge of pollutants through the use of effluent limits, which are set in uniform, technology-based terms. [FN10] Dischargers are legally authorized to release pollutants [FN11] to waters of the United States pursuant to the effluent limits contained in their permit. The other approach focuses on regulating dischargers based on their impact to the receiving water quality. Discharge limits are set in terms of the amount of pollution allowed in a defined water body or water body segment with consideration given to local conditions, such as the beneficial uses of the receiving water and its assimilative pollutant capacity. [FN12]

The starting point to understanding the storm water regulation is the CWA. It is the principal federal statute dealing with water pollution, including MS4 storm water permitting. [FN13] The CWA consists of a number of general programs, including the National Pollutant Discharge ***249** Elimination System (NPDES) point source program, [FN14] the pretreatment program applicable to indirect dischargers, [FN15] the nonpoint source (NPS) program, [FN16] the dredge and fill program, [FN17] and the oil spill program. [FN18]

Municipal storm water regulation is part of the NPDES permit program, although it also seeks to deal with some of the problems common to NPS pollution. In 1987, Congress added section 402(p) to the CWA. [FN19] Congress directed that storm water discharges be regulated as "point sources" [FN20] and then established a framework for issuing permits. [FN21]

Section 402(p)(3)(B) is the controlling federal statutory provision for municipal storm water discharges. The statute establishes the following federal permit requirements for municipal storm water discharges:

> Permits for discharges from municipal storm sewers –
> (i) may be issued on a system- or jurisdiction-wide basis;

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(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable [MEP], including management practices, *250 control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. [FN22]

Since 1987, the U.S. Environmental Protection Agency (EPA) has promulgated regulations governing storm water discharges. They are contained primarily in 40 C.F.R. § 122.26, [FN23] with additional references in Parts 122, 123, and 124. As would be expected, these regulations add considerable implementing detail to the statutory mandate found in section 402(p).

Although MS4 permits are NPDES permits, they differ considerably from the technology-based treatment standards and numeric effluent criteria associated with "end-of-pipe" discharges. [FN24] The rationale for treating storm water discharges differently from traditional end-of-pipe discharges is based on the variability of storm water discharge. Storm water is highly variable, both as to flow and as to pollutant type and concentration. The MEP standard was created by Congress to allow permits to be tailored to the specific nature of MS4 discharges. Included in this grant of flexibility was the idea that the permit requirements could be directed at sources of pollution on a system-wide basis.

Issuing permits on a system-wide basis allows municipal entities and other political subdivisions responsible for different parts of a single MS4 system to be co-permittees on a single permit. [FN25] This approach is advantageous because it facilitates coordination and consolidation of MS4 activities and spreads the burden for monitoring, analysis, and development and implementation amongst those parties to the permit.

The next important structural consideration to understand is the role of the states in administering the CWA's provisions. The EPA is authorized by the CWA to delegate NPDES permit issuing responsibilities to a state provided that the state has a permit program that is substantially equivalent to the federal program. [FN26] California has enacted equivalency legislation authorizing it to implement and administer the CWA. [FN27] The authority to issue MS4 permits is exercised *251 by the nine California Regional Water Quality Control Boards within the state. [FN28] The State Regional Water Quality Control Board has administrative review authority over the regionally issued storm water permits. [FN29]

In the early 1990s, regional boards began issuing MS4 permits based on the provisions in the CWA. Some MS4 permits, for example those issued by the San Diego Regional Water Quality Control Board to San Diego and Orange County, "exceed" the requirements of federal law. [FN30] As discussed in the Part below dealing with the California Environmental Quality Act, [FN31] this feature of going beyond the federal requirements is legally significant.

The topic of storm water regulation has recently attracted the attention of the California Legislature. In 1998, it added the Storm Water Enforcement Act [FN32] to the Water Code. In 2001, it added section 13383.5 to the Water Code requiring the State Water Resources Control Board to develop, by January 1, 2003, minimum storm water monitoring and *252 sampling requirements for specified municipalities and industries. [FN33] As the politics of storm water regulation heat up, which they undoubtedly will, one can confidently predict more involvement by the legislature.

The federal-state structural relationship is fundamental to understanding storm water regulation in California. Decisionmakers and attorneys practicing in this area must understand both the CWA and the **Porter-Cologne Water Quality Control Act**, [FN34] which is the water quality control law through which California implements the CWA.

III. The Storm Water Pollution Problem

The significance of the storm water problem can be easily stated: it has been found to be the leading cause of water quality impairment in California, [FN35] as well as nationally. In November 2001, the State Water Resources Control Board and Regional Water Quality Control Boards adopted a strategic plan for the next five years. One of the identified challenges contained in the plan is reducing storm water pollution. The strategic plan captures the essence of the storm water problem:

The recent repeated closures of beaches in Southern California due to excessive bacteria levels in coastal waters has

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accordance with the Clean Water Act.") (citation omitted).

[FN28]. Cal. Water Code §§ 13200-13228 (West 1992 & Supp. 2003); see also id. § 13160 (West 1992) (dealing with the state board's authority to exercise any powers delegated to California by the CWA).

[FN29]. Cal. Water Code § 13320 (West 1992).

[FN30]. See San Diego Regional Water Quality Control Board, Comparison Between the Requirements of Tentative Order 2001-01, the Federal NPDES Storm Water Regulations, the Existing San Diego Municipal Storm Water Permit (Order 90-42), and Previous Drafts of the San Diego Municipal Storm Water Permit, agenda item 5, attach. 4, at 2-3 (Dec. 13, 2000) (on file with author). The comparison states:

> Approximately 60% of the requirements in Tentative Order 2001-01 are based solely on the 1990 federal NPDES Storm Water Regulations. The remaining 40% of the requirements in the Tentative Order "exceed the federal regulations." Requirements that "exceed the federal regulations" are either more numerous, more specific/detailed, or more stringent than the requirements in the regulations.

Id. at 2. The comparison goes on to discuss the provisions that exceed the federal regulations. "The 40% of the requirements in Tentative Order 2001-01 which 'exceed the federal regulations' are based almost exclusively on (1) guidance documents developed by the USEPA; and (2) the SWRCB's orders describing statewide precedent setting decisions on MS4 permits." Id. at 2-3.

[FN31]. See discussion infra Part V.A.

[FN32]. 1998 Cal. Stat. 998 (1998) (codified at Cal. Water Code §§ 13399.25-.43 (West Supp. 2003)).

[FN33]. 2001 Cal. Stat. 492 (codified at Cal. Water Code § 13383.5(b) (West Supp. 2003)) ("This section only applies to regulated municipalities that were subject to a storm water permit on or before December 31, 2001, and to regulated industries that are subject to the General Permit for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities.").

[FN34]. Cal. Water Code §§ 13200-13270 (West 1992 & Supp. 2003)). For a useful introduction to the Porter-Cologne Act, see William R. Attwater & James Markle, Overview of California Water Rights and Water Quality Law, 19 Pac. L.J. 957, 994-1012 (1988). The reader is cautioned, however, that changes to federal and state law have occurred since this article was published in 1988.

[FN35]. Storm Water Enforcement Act § 1, 1998 Cal. Stat. 998 ("The Legislature hereby finds and declares all of the following: (a) Unregulated storm water runoff is a leading cause of contamination of the state's surface water and groundwater.").

[FN36]. State Water Resources Control Board & Regional Water Quality Control Boards, Strategic Plan 8 (2001), available at http:// www.swrcb.ca.gov/strategicplan/01strategic_plan.pdf. The state and regional boards completed a strategic plan in 1995 and revised it in 1997. Id. at 4. The current strategic plan was promulgated on November 15, 2001. Its purpose is to highlight priorities that need to be addressed during the next five years. Id.

[FN37]. As used in this Article, the term "storm sewer system" is broadly inclusive. It includes roads with drainage systems, municipal streets, curbs, gutters, ditches, natural drainage features or channels, and man-made channels or storm drains. When natural drainage features or channels, such as an urban stream, are used as part of the storm sewer system, they are both part of the municipal conveyance system and the receiving water.

[FN38]. As used in this Article, the term "receiving waters" also is broadly inclusive. It includes, for example, creeks, streams, rivers, lakes, reservoirs, estuaries, bays, and the ocean.

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–Professor John H. Minan's Website

John "Jack" H. Minan has been a Professor of Law at USD since 1979. Currently, he teaches Property, Land Use Planning and Water Law. Prior to joining USD, Professor Minan taught at the University of Toledo College of Law and at the United States Naval Academy, Annapolis, Maryland. He also taught at the National Judicial College as the lead faculty member of an exchange program designed to introduce Russian judges to the American legal system. At USD, Professor Minan has taught a variety of law courses, including Torts, Community Property, Trusts and Estates, Estate Planning, Federal Estate and Gift Tax, and Comparative Law.

Jack has a B.S. from the University of Louisville, an M.B.A. from the University of Kentucky, and a J.D. from the University of Oregon. He has completed Ph.D. course work in Operations Analysis at American University. Following law school, Jack was selected for the U.S. Department of Justice Honors Program. In the early 1970's, he practiced admiralty law as a trial attorney with the Civil Division in Washington, D.C.

Jack has been the educational leader for a number of continuing legal education programs and has been the leader of programs in Brazil, the People's Republic of China, Austria, Switzerland, France, Australia, New Zealand, Hong Kong, Thailand, Indonesia, Morocco, Egypt and in several republics of the former Soviet Union.

Professor Minan is an active scholar. He has authored or co-authored six books, four contributions to books, more than thirty-five scholarly articles, and a number of published reports and proceedings. At the outset of his career, his scholarship focused on the legal problems associated with the development of solar energy. His work established him as one of the few national experts in this area. His scholarship also includes a number of publications on socialist legal systems. More recently, his interest has shifted to commercial law and water law. He has a treatise on leasing law under Article 2A of the Uniform Commercial Code and has published articles on water quality.

Professor Minan has served on numerous Law School and University committees at USD. He has been Associate Dean for Academic Affairs, Acting Dean of Summer Programs, and the Director of USD's International and Comparative Law Programs at Trinity College, Dublin, at Magdalen College, Oxford, and in Florence, Italy. He also served on the USD search committee for the Vice President for Finance and Administration.

Professor Minan has an active record of public service. He served two terms on the California Regional Water Quality Control Board (1999-2006), and was elected its chairman six consecutive years (2001-2006). Jack was on the Governing Board of the Southern California Wetlands Recovery Project, an organization consisting of seventeen state and federal agencies (2001-2006). He served on San Diego River Conservancy, a state agency dedicated to acquiring and managing public lands adjacent to the San Diego River (2003-2006), and was its vice chairman (2005-2006).

TH

Jack is active with the American Bar Association (ABA). Professor Minan is chairman of Environmental Law Committee of the State and Local Government Section (2005-2007), and is an active member of the Section of Environment, Energy and Resources. For several years, he was a *pro bono* hearing officer for the San Diego Housing Commission. He coauthored the citizen's Clean Air Initiative amending San Diego's General Plan. In 1991, he prepared the environmental assessment for San Diego's proposed Jackson Drive extension through Mission Trails Regional Park. He has qualified as an expert witness on matters involving Land Use Planning and Real Property.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ADDRESS ALL CORRESPONDENCE TO:
ACCOUNTING DIVISION
500 W. TEMPLE ST., ROOM 603
LOS ANGELES, CA 90012-2706

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Oscar Alvarez states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 23rd day of June , 2008, I served the attached:

Documents: **Los Angeles County's Review of State Agency Comments on Public Transit Trash Receptacles and State Permit Inspections Storm Water Pollution Control Test Claims [03-TC-04, -19, -20, -21], including *a 1 page letter of Wendy L. Watanabe, dated 6/23/08, a 23 page narrative, a 1 page declaration of Leonard Kaye, a 2 page Exhibit 1, and a 6 page Exhibit 2,* now pending before the Commission on State Mandates.**

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of June, 2008, at Los Angeles, California.

Oscar Alvarez

Original List Date: 10/8/2003
Last Updated: 9/28/2007
List Print Date: 06/20/2008
Claim Number: 03-TC-20
Issue: Waste Discharge Requirements

Mailing Information: Other

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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JUN 2 5 2008
COMMISSION ON STATE MANDATES

TEST CLAIM NO. 03-TC-21

CLAIMANTS' REBUTTAL TO AND COMMENTS ON RESPONSES SUBMITTED BY THE DEPARTMENT OF FINANCE, STATE WATER RESOURCES CONTROL BOARD AND LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

INCORPORATION BY REFERENCE OF WRITTEN NARATIVE SUBMITTED IN SUPPORT OF TEST CLAIM NO. 03-TC-20

In support of their rebuttal to the responses submitted by the Department of Finance, the State Water Resources Control Board and the Regional Board, the claimants hereby incorporate by reference the written narrative submitted by the claimants in Test Claim No. 03-TC-20 in support of their test claim. A copy of that written narrative is attached.

FURTHER REBUTTAL TO AND COMMENTS ON RESPONSES SUBMITTED BY THE DEPARTMENT OF FINANCE, STATE WATER RESOURCES CONTROL BOARD AND LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

The claimants submit the further rebuttal to and comments on the responses submitted by the Department of Finance, State Water Resources Control Board, and Regional Water Quality Control Board.[1]

I. THE NEW MANDATES

Claimants the Cities and the County of Los Angeles seek a subvention of funds for the following state mandates contained in Los Angeles Regional Water Quality Control Board ("Regional Board") Order No. 01-182 ("Order"):

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Resources Control Board ("State Water Board") permits], page 31;

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], pages 42-45;

[1] The comments that follow are identical to the comments and rebuttal that the claimants filed in Test Claim No. 03-TC-20.

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], pages 48-49.

As set forth in the written narrative in support of the Cities' Test Claim No. 03-TC-20:

> (1) The State Board and the Regional Board (collectively, the "Water Boards") have had responsibility for preventing restaurants, automotive service facilities, retail gas stations and automotive dealerships from discharging waste into waters of the state since 1969. *See* Water Code §§ 13260 and 13263.
>
> (2) The State Board and the Regional Board have had responsibility for preventing industrial facilities and construction sites from discharging waste and other pollutants into waters of the state since 1969. *Id.*
>
> (3) The purpose of the inspection and trash receptacle obligations imposed by the Order is to prevent facilities and individuals from discharging waste and pollutants into waters of the state.
>
> (4) The Order requires the Cities and the County to conduct inspections to assure compliance with state law, including Regional Board orders. *See e.g.* Order, Part 4.C.2.a (1) (inspections are to be performed to assure that best management practices ("BMPs") "are being effectively implemented *in compliance with state law*, county and municipal ordinances, *Regional Board Resolution No. 98-08*, and SQMP"); Order, Parts 4.C.2.a (2) and (3) (inspections are to confirm that BMPs are being "effectively implemented . . . in compliance with *Regional Board Resolution No. 98-08*"); Order, Part 4.C.2.(b) (inspection shall determine whether industrial facility is "effectively implementing BMPs in compliance with county and municipal ordinances, *Regional Board Resolution No. 98-08*, and SQMP"); Order, Part 4.E (inspection of construction sites for compliance with state issued general construction stormwater permit requirements).
>
> (5) The inspection and trash receptacle requirements are new obligations imposed by the Order.

Neither the Department of Finance nor the Water Boards dispute these points.

Instead, the Department of Finance and the Water Boards contend that these inspection and trash receptacle requirements are federal mandates. The Water Boards also contend that the obligations are not unique governmental functions and that the County and the Cities can assess service charges or fees for the costs incurred.

II. A LOCAL AGENCY OR SCHOOL DISTRICT IS ENTITLED TO REIMBURSEMENT WHERE (1) THE MANDATE EXCEEDS FEDERAL REQUIREMENTS OR (2) THE STATE FREELY CHOSES TO IMPOSE THE MANDATE

Article XIIIB, Section 6 of the California Constitution provides:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the cost of the program or increased level of service . . . .

In making a determination as to whether the claimants are entitled to a subvention of funds under Article XIIIB, Section 6, the Commission on State Mandates shall not find the cost to be mandated by the state if, after hearing, the commission finds that "the statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." Government Code § 17556(c). Thus, in order to constitute a federal mandate, the statute or executive order must both (1) implement a federal law or regulation and (2) result in costs mandated by the federal government. On the other hand, Government Code § 17556(c) specifically recognizes that a mandate is not immunized from reimbursement merely because a federal program is involved, and that a local agency or school district is entitled to reimbursement to the extent the order mandates costs "which exceed the mandate in that federal law or regulation."

Thus, the courts have recognized that a local agency or school district is entitled to reimbursement, even where a federal program is involved, where (1) the state-mandated activities exceed federal requirements, *see Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172-173, or (2) the federal government imposes the mandate upon the state and the state then freely chooses to impose that program on the local agency or school district, as opposed to performing the obligation itself, *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94. *See also San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 881-82 (procedural activities that are mandated by federal law, but triggered by state mandates, are also entitled to reimbursement).[2]

III. THE INSPECTION OBLIGATIONS ARE STATE MANDATES

There are three categories of inspections that are mandated by the Order and are at issue here: (1) inspections of restaurants, automotive service facilities, retail gasoline

[2] Copies of the statutes and cases cited herein were previously submitted in support of Test Claim No. 03-TC-20.

outlets and automotive dealerships; (2) inspections of industrial facilities that hold a state-issued General Industrial Storm Water Permit, referred to in the Order as "Phase I facilities"; and (3) inspections of construction sites that hold a state-issued General Construction Storm Water Permit. The Cities submit that each one of these inspection obligations is a state mandate because the Regional Board imposed the inspection obligation even though it was not required to do so by federal law, or because the Regional Board freely chose to shift its own obligation onto the Cities and County, or both.

There are eight pieces of evidence that are relevant to one or more of the inspection categories and demonstrate that these inspections were not required by federal law or that the Regional Board freely chose to impose these inspection obligations on the Cities and the County:

1. *These inspection obligations were not contained in two prior permits issued to the Cities and the County.* As the Water Boards themselves state (Water Board Letter, dated April 18, 2008 (hereafter "Water Boards Ltr.") at 7-8), and as discussed in the Cities' written narrative in support of it Test Claim No 03-TC-20 (written narrative at 9), the Order is the third NPDES storm water permit issued to the Cities and the County. The inspection requirements at issue here were not contained in either the first or the second permit, both of which EPA had the opportunity to review for compliance with federal law. *See* 40 C.F.R. 123.44(a)(1).

2. *No federal statute or regulation requires the Cities or the County to inspect restaurants, automotive service facilities, retail gas outlets, automotive dealerships or facilities that hold general industrial or general construction stormwater permits.* The Federal Clean Water Act regulations identify only the following facilities as facilities that are required to be inspected: municipal landfills; hazardous waste treatment, disposal and recovery facilities; industrial facilities that are subject to §313 of Title III of the Superfund Amendment and the Authorization Act of 1986; and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). No mention is made of restaurants, automotive service facilities, retail gas stations, automotive dealerships, or facilities that hold general industrial or general construction stormwater permits.

3. *Likewise, storm water NPDES permits issued by the EPA itself do not contain the requirement to inspect restaurants, auto service facilities, retail gas outlets and automotive dealerships, or require the extensive inspection of facilities that hold general industrial stormwater permits as contained in the Order here.* Submitted herewith is the Declaration of Julie Quinn, MESM, of URS Corporation. Ms. Quinn has performed a survey of Phase I Municipal Separate Storm Water System permits issued by EPA to municipalities similar to the Cities and the County. As set forth by Ms. Quinn:

None of the Phase I NPDES MS4 permits issued by EPA required the inspection of commercial facilities or industrial facilities that are not required to be covered under a NPDES Permit (Quinn Declaration, ¶ 5);

None of the Phase I NPDES MS4 permits issued by EPA included the extensive requirements for inspection of industrial facilities covered by NPDES general industrial permits that are included in the Phase I NPDES MS4 permit issued to the Los Angeles County permittees by the California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182 (Quinn Dec., ¶ 6).

If these inspection requirements were federally mandated, then EPA would have placed them in the permits that EPA issued. The fact that EPA-issued permits themselves do not include these inspection requirements proves that they are not federal requirements.

4. *The Administrator of EPA, as well as the head of the water division for EPA Region IX, have specifically stated that a municipality has an obligation under a storm water permit like the Order here only to assure compliance with local ordinances; the state retains responsibility to inspect for compliance with the state law, including state-issued permits:*

a. Letter, dated July 12, 2001 from EPA Administrator Christine Todd Whitman to The Hon. David Dreier, p. 1: "The Clean Water Act regulations concerning permits for discharges for municipal storm sewers provide that the State permit authority and the local government holding the permit share responsibility for inspections of facilities discharging to these storm sewers. *The State is responsible for enforcing its general Clean Water Act storm water permits*, while a local government permit holder needs to enforce local storm water ordinances (which may be similar, but not identical to, the State general permits). (Emphasis added.)

b. Letter dated April 30, 2001 from Alexis Strauss, Director, Water Division, Region IX, to the Hon. Steven Horn, p. 2: "[W]e believe that neither the MS4 permittees nor the State should be saddled with the entire inspection burden for industrial and commercial facilities. *The State is also responsible for enforcing its general NPDES storm water permits*, while the MS4 permittees need to enforce local storm water ordinances (which are often similar to the State general permits)." (Emphasis added.)

c. Letter dated May 16, 2001 from Alexis Strauss, Director, Water Division, Region IX, to James DeStefano, Interim City Manager, City of Diamond Bar, p. 1: "[W]e believe that neither the MS4 permittees nor the State should be saddled with the entire inspection burden for industrial and commercial facilities. *The State is also responsible for enforcing its general NPDES storm water permits*, while the MS4 permittees need to

enforce local storm water ordinances (which are often similar to the State general permits)." (Emphasis added.)[3]

5. *The California Legislature has empowered the State Board to assess fees on general industrial and general construction stormwater permittees, which fees shall be shared with Regional Boards and used for inspections and regulatory compliance.* Water Code § 13260(d)(2). Every holder of a general industrial or general construction stormwater permit must submit an annual fee to the State Board for its permit. Water Code § 13260(d)(1)(A). The Legislature has directed that a portion of this fee should be spent specifically on inspection of industrial and construction facilities. "Not less than fifty percent in the Waste Discharge Permit Fund that is separately accounted for . . . is available, on appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out the stormwater programs in the region. Water Code § 13260(d)(2)(B)(ii). "Each regional board . . . shall spend not less than fifty percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." *Id.*, subd.(d)(2)(B)(iii).

6. *The State Board, in issuing the general industrial stormwater permit for facilities identified in the Order as "Phase I facilities", imposed the inspection obligation on the Regional Board.* In adopting the general industrial stormwater permit, the State Board did not impose any obligation on the cities or any local agency. Instead, in adopting the general industrial permit, the State Board provided that "following adoption of this general permit, *the regional water boards shall enforce its provisions*." See State Board Order No. 97-03-DWQ, Finding 13 (emphasis added).

7. *The State Board, in issuing the general construction stormwater permit, imposed the inspection obligation on the Regional Board.* State Board Order No. 99-08-DWQ specifically provides that "[f]ollowing adoption of this General Permit, the RWQCBs shall enforce the provisions herein . . . ." State Board Order No. 99-08-DWQ, Finding 11. Part D.1 of that order specifically provides that "RWQCBs shall . . . implement the provisions of this General Permit. Implementation of this General Permit may include, but is not limited to . . . conducting compliance inspections, and taking enforcement actions."

8. *In 2001, the Regional Board initiated negotiation of a contract with the County whereby the Regional Board would pay the County to perform inspections of facilities that held general industrial stormwater permits (the "Phase I facilities") on the Regional Board's behalf. Immediately after issuance of the Order, the Regional Board terminated those negotiations.* Submitted in support of the County's test claim, Test Claim No. 03-TC-19, is the Declaration of Adam Ariki describing those negotiations. A copy of that declaration is also submitted herewith. Mr. Ariki describes how the

[3] Copies of these letters are submitted herewith, attached to the declaration of Howard Gest.

Regional Board's staff initiated negotiations over a contract with the County whereby the Regional Board would pay the County to perform inspections of facilities that held general industrial storm water permits (the "Phase I facilities" under the Order) on the Regional Board's behalf. If the obligation to inspect these Phase I Facilities was an obligation imposed by federal law on the County or other municipalities, the Regional Board would not have initiated the negotiation of a contract for the County to perform these inspections on the Regional Board's behalf.

Inspections of Restaurants, Automotive Service Facilities, Retail Gasoline Outlets and Automotive Dealerships

The evidence cited above demonstrates that the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships was not a federal requirement. First, to the extent the Department of Finance or the Water Boards argue that the fact that these inspections are in a NPDES permit is sufficient in itself to establish that they are federal requirements, this argument has been specifically rejected by the California Supreme Court. The Supreme Court has held that a NPDES permit issued by the Regional Board can contain both federal and non-federal requirements. *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618, 628.

Second, if inspection of these commercial facilities was federally mandated, it would have been included in the first two permits. The fact that these inspection obligations were omitted from the first two permits demonstrates that they were not federally required. EPA had an opportunity to review these permits for compliance with federal law.

Third, no federal statute or regulation requires a municipal stormwater permit to include an obligation to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships.

Fourth, and most significantly, if federal law required municipal stormwater permittees to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships, then that obligation would be present in the municipal stormwater permits issued by EPA itself. EPA can be presumed to follow its own, federal requirements. The fact that EPA-issued permits do not include an obligation to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships demonstrates that this inspection obligation is not a federal requirement.

In addition to this inspection obligation exceeding federal law, the Regional Board freely chose to impose this inspection obligation on the Cities and the County. *See Hayes v. Commission on State Mandates*, supra, 11 Cal.App.4th at 1593-94. Since 1969, the Regional Board has had the obligation to prevent the discharge of pollutants into waters of the state from all dischargers, including restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. Water Code §§ 13260 and 13263. The Regional Board could have retained that obligation. Instead, it shifted the cost of that obligation onto the Cities and the County.

Nevertheless, the Water Boards argue that they were required to impose these inspection obligations under the general statutory language of the Clean Water Act. The Water Boards appear to argue that, because the Water Boards are to identify Best Management Practices (BMPs) in the permits, and a municipal stormwater permit should reduce the discharge of pollutants from municipal separate storm sewers to the maximum extent practicable, *see* 42 U.S.C. §1342(p)(3)(B), any requirement that the Regional Board places in a permit is federally mandated. *See* Water Board Ltr. at 6-7, 15.

This argument is rebutted by the EPA-issued permits themselves. In issuing its permits, EPA was also required to have the municipalities subject to its permits reduce pollutants to the maximum extent practicable. No obligation to inspect restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships, however, was included.

Moreover, under 33 U.S.C. § 1342(p)(3), the municipal stormwater permit shall require controls to reduce the discharge of pollutants to the maximum extent practicable "*from* municipal storm sewers." Here, the inspection requirements are not meant to prevent the discharge of pollutants from the municipal storm sewer, but instead are meant to prevent restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships themselves from discharging pollutants that might enter waters of the state, including into the municipal storm sewer system. As noted above, the obligation to regulate discharges from these facilities is an obligation of the Water Boards themselves under the California Water Code. Because these inspections go to reducing the discharge of pollutants from these facilities, and not to the discharge of pollutants from municipal storm sewers, they are not federally mandated by the Clean Water Act.

Finally, the scope of the required inspections shows that the inspections were not solely federal requirements. The inspections required the Cities and the County to inspect for compliance with state law, including Regional Board orders. Under the Order, the Cities and the County were required to inspect restaurants to ensure that BMPs were being effectively implemented "in compliance with state law" and "Regional Board Resolution No. 98-08." Order, Part 4.c.2.a(1). Similarly, inspections of the automotive service facilities, retail gasoline outlets, and automotive dealerships, were also to confirm that BMPs were being effectively implemented "in compliance with . . . Regional Board Resolution 98-08." Order, Part 4.c.2.a(2) and (3).

In this regard, the Water Boards miscite the court's decision in *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985. The court in that case did not hold that the inspection requirements were federally mandated. The court only held that no statute or regulation prohibited the Regional Board from imposing these obligations. *See* Slip Opinion, Part 4.J (Inspection Requirements).[4] As noted, a Regional Board can include an NPDES permit both federal and non-federal requirements.

[4] The court's discussion of the inspection requirements is included in the unpublished portion of this opinion.

City of Burbank v. State Water Resources Control Board, supra, 35 Cal.4th at 618, 628. That inclusion incurred here.

Inspections of General Industrial Stormwater Permittees

Like inspections of restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships, the inspection of facilities that hold state-issued general industrial stormwater permits is not a federal requirement. Additionally, there is no question that this inspection obligation, for which the State and Regional Board obtain a fee, was an obligation that the Regional Board freely chose to impose on the Cities and the County in lieu to performing the inspections itself. *See Hayes v. Commission on State Mandates*, supra, 11 Cal.App.4th at 1593-94.

First, like the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships, the inspection of facilities that hold state-issued general industrial stormwater permits is not required by federal law. As with the other inspections, the obligation to inspect these facilities was not included in the first or second stormwater permits issued to the Cities and the County. Like the other inspections, no mention of these inspections is contained in the federal regulation addressing inspections. *See* 40 C.F.R. § 122.26(d)(2)(iv)(C). Like the other inspections, the MS4 permits issued by EPA itself do not include the extensive requirements for inspection of industrial facilities that are included in the order. *See* Quinn Decl., ¶ 6, and permits attached thereto.

Any doubt as to whether the obligation to inspect facilities that hold state-issued general industrial stormwater permits for compliance with the terms of those permits is not a state mandate is removed by the statements of the EPA Administrator and the head of the Water Division of EPA Region IX. In a letter issued to Congressman David Dreier, coincident with the Regional Board's preparation of and circulation of drafts of the Order, EPA Administrator Whitman stated that "the State is responsible for enforcing its general Clean Water Act stormwater permits, while a local government permit holder needs to enforce local stormwater ordinances . . . ." EPA Region IX Water Division Director Strauss, at approximately the same time, similarly stated in letters to Congressman Stephen Horn and to the City Manager of the City of Diamond Bar that "the State is also responsible for enforcing its general NPDES stormwater permits, while the MS4 permittees needs to enforce local stormwater ordinances . . . ."

If federal law required the Cities and the County to inspect facilities that hold state-issued general industrial stormwater permits, then Administrator Whitman and the Director Strauss would not have told the Congressmen and the City Manager for the City of Diamond Bar that this was a state obligation. There is no question that the EPA Administrator and the Regional IX Director of the Water Division have explicitly stated that enforcement of state-issued permits is a state, not a city or County, obligation.[5]

[5] In their written response, the Water Boards have submitted a letter dated April 10, 2008 from the Director Strauss. Significantly, the Director does not retract or address the

Second, the Regional Board freely chose to shift the obligation to inspect these facilities from itself to the Cities and the County. Under the Clean Water Act, the obligation to issue general industrial stormwater permits, and the enforcement of those permits, is held by the state. In addition, the Regional Board has had the obligation to regulate these facilities under the California Water Code since 1969 and has had the specific obligation to enforce that the state-issued general industrial stormwater permits since 1991. *See* e.g., State Water Board Order No. 97-03-DWQ, Finding 13 (with respect to the general permit issued in 1997).

The State Board and the Regional Board obtain annual fees from the general industrial stormwater permittees. These fees are to be used, in part, for inspections and regulatory compliance. Water Code § 13260(d)(2)(B). None of fees collected by the State or Regional Board are shared with the Cities or the County.

The Regional Board could have continued to meet its obligations to enforce the state-issued general industrial stormwater permit, including inspections for compliance therewith. Nothing required the Regional Board to impose that obligation on the Cities or the County. This is evidenced by the fact that, up to the time of the issuance of the Order itself, the Regional Board was negotiating a contract with the County whereby the Regional Board would pay the County to undertake these inspections on the Regional Board's behalf. The Regional Board would not have been negotiating such a contract if this inspection obligation was not its own. Rather than to continue to expend its own funds, however, the Regional Board simply chose to shift the cost of the program from itself to the Cities and the County. This shifting of cost is precisely the conduct that Article XIII B, Section 6 was adopted to prevent.

In support of their argument, the Water Boards cite the case of *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377. The Water Boards contend that the court in *Rancho Cucamonga* held that federal law required inspections such as the inspections at issue here (Water Board Ltr. at 10-11). To the contrary, the court's decision in *City of Rancho Cucamonga* is consistent with the Cities and the County's position that federal law does not require the Cities or the County to inspect for compliance with state law. The court in *City of Rancho Cucamonga* said:

> Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. *But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.*

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position she articulated in 2001. Indeed, if the Director had articulated a different position, such position would not be entitled to any deference in that the Director's earlier position was different. *See Riegel v. Medtronic, Inc.* (Feb. 20, 2008) 552 U.S. ___, Slip. Opp. at 13.

135 Cal.App.4th at 1377 (emphasis added).

Finally, the Water Boards argue (Water Boards Ltr. at 20) and the Department of Finance appears to argue (March 27, 2008 letter at 3-4) that the Cities and the County proposed these inspection obligations. This argument is incorrect. Excerpts of the Report of Waste Discharge, which acts as an application in part for renewal of the stormwater permit, is enclosed in the material submitted by the Water Boards. That report proposed that the permittees would implement an industrial/commercial "educational site visit program." They would visit automotive service and food service facilities once every two years, consult with a representative about stormwater regulations, distribute materials discussing BMPs, and conduct a site walk through. *See* Report of Waste Discharge at 22-23 (R000030-31).

This proposal is significantly different from the inspection obligation imposed by Regional Board under the Order. Whereas the report of waste discharge proposed educational visits, the Order required *compliance inspections* of restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships. Compliance inspections are quite different in both intent and resource commitment from educational visits. Furthermore, nowhere in the Report of Waste Discharge do the applicants propose compliance inspections of facilities that hold general industrial and general construction stormwater permits for compliance with those permits. This obligation was unilaterally imposed by the Regional Board, and done so over the written and oral objections of the Cities and the County.[6] The Water Boards' argument that the Cities or the County proposed these inspection requirements is simply incorrect.

Inspections of General Construction Stormwater Permittees

The analysis applicable to the obligation to inspect general industrial stormwater permittees is equally applicable to the obligation to inspect general construction stormwater permittees. First, the State Board and the Regional Board have had the authority and obligation to regulate these discharges from these sites since 1969. Water Code §§ 13260 and 13263. Second, the State Board has issued general construction stormwater permits to these facilities since 1992. These orders imposed the obligation to inspect these construction sites on the Regional Board. *See* State Board Order No. 99-08-DWQ, Part D.1. Third, the State Board and the Regional Board collect a fee from these permittees to be used, in part, for these inspections and regulatory compliance. Water Code § 13260(d)(2). The Water Boards do not share any of these fees with the Cities or the County. Fourth, EPA clearly stated that the state has the obligation to enforce its own state-issued permits. *See* letters from EPA Administrator Whitman and the Director

[6] The Cities and the County submitted to the Regional Board written objections to the inspections being proposed by the Regional Board. The Cities and County also expressed oral objections at the hearing on the permit. The Cities' and the County's written and oral objections are contained in the administrative record for the adoption of the order.

Strauss. Nevertheless, in 2001, the Regional Board shifted the cost and obligation to inspect construction facilities for compliance with the state-issued general construction permit from itself to the Cities and the County.[7]

IV. THE INSTALLATION AND MAINTENANCE OF TRASH RECEPTACLES ARE STATE MANDATES

Part 4.F.5.c.3 of the Order requires the Cities and the County to place trash receptacles at all transit stops within their jurisdiction no later than February 3, 2003, and to maintain those receptacles as necessary. The Department of Finance and the Water Boards do not dispute that this is a new obligation imposed by the Order. Instead, they again argue that this is a federal mandate.

Nothing, however, in the Clean Water Act requires Cities to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation. It was not required in either of the two prior permits, and it is not found in the federal regulations.

Significantly, like the inspection requirements, no EPA-issued stormwater permit contains an obligation to install trash receptacles. As set forth in the Declaration of Julie Quinn, who performed a survey of EPA issued permits:

> None of the Phase I NPDES MS4 permits issued by EPA required the installation of trash receptacles at transit stops.

Quinn Decl., ¶ 6 (sic). If installation of trash receptacles was a federal requirement, it would be present in the EPA-issued permits. This requirement is not present in those permits, demonstrating that it is not a federal requirement.

Nevertheless, the Water Boards argue that the Regional Board had discretion to include this requirement in the Order (Water Boards Ltr. at 15). Discretion, however, implies that it is not a requirement. A Regional Board must issue a permit that complies with the Clean Water Act. Its discretionary authority, however, gives it the authority to include matters that exceed federal requirements. *See City of Burbank v. State Water Resources Control Board*, supra, 35 Cal.4th at 618, 628. If it is assumed that the Regional Board had the discretion to require the installation of trash receptacles, as argued by the Water Boards, then the Regional Board also had the discretion to not require their

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[7] The Water Boards imply that the Cities and the County had themselves proposed inspection of construction sites for compliance with the state-issued general construction stormwater permit. *See* Water Boards Ltr. at 8. To the contrary, the provisions of the Report of Waste Discharge cited by the Water Boards do not require inspections of construction facilities for compliance with the state general construction stormwater permit. Instead, those sections only require inspections for compliance with local ordinances and preparation of a "local" stormwater pollution prevention plan. *See* Report of Waste Discharge at 26 (R000034).

installation. The discretion not to require the installation of trash receptacles demonstrates that this requirement was not federally required.

Here, the requirement to install trash receptacles exceeded the requirements of federal law, and thus constituted a state mandate. The trash receptacle requirement is not found in any other permit issued by regional boards throughout the state. It is no found in any EPA-issued permit.

Like with inspections, the Water Boards appear to argue that the Cities or the County proposed this requirement that trash receptacles be installed at all transit stops (Water Boards Ltr. at 8). To the contrary, no such proposal was made. The pages in the stormwater quality management plan cited by the Water Boards speak of minimizing trash and debris from entering recreational water bodies and removing trash and debris from open channels (SQMP, ES-6 & 7). There is no proposal to install trash receptacles at every transit stop, which is a different activity, addressing a different source.[8]

V. THE INSPECTIONS AND INSTALLATION AND MAINTENANCE OF TRASH RECEPTACLES ARE NEW PROGRAMS OR HIGHER LEVELS OF SERVICE MANDATED UPON THE CITIES AND THE COUNTY

The inspections and the installation and maintenance of trash receptacles at transit stops at issue in these test claims are new programs or higher levels of service within the meaning of Article XIII B, Section 6. A "program" within the meaning of Article XIII B, Section 6, is a program that carries out a governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d, 46, 56.

These inspection and trash receptacle obligations are such programs. The inspections are for the purpose of policing compliance with state law, a uniquely governmental function. This obligation is imposed on municipalities under the Order. No private NPDES permittee is required to inspect another NPDES permittee to verify that other permittee's compliance with an NPDES permit; enforcement is a uniquely governmental function. Likewise, the collection of trash is also a program that carries out a governmental function of providing services to the public.

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[8] The Water Boards note that the Cities and the County do not claim subvention for trash receptacle requirements for Cities and portions of the County subject to the "Trash TMDL." (Water Boards Ltr. at 4 n.4.) Contrary to the Water Boards' statement, however, the test claimants do not concede that the Trash TMDL might not also impose state mandates. The test claims do not here seek subvention for activities that go to implementing the Trash TMDL because the installation of trash receptacles applies only to permittees or portions of the County not subject to the Trash TMDL. The obligations imposed by the Trash TMDL are different and become effective at a different time. *See* Order, page 48.

Nevertheless, the Water Boards argue that NPDES permits are not peculiar to local government. The Water Boards argue that other dischargers are required to obtain an NPDES permit, and therefore these permits are not unique to local governments (Water Boards Ltr. at 20-21).

The Water Boards argument is inapposite. The test is not whether the general program applies to both governmental and non-governmental entities. The test is whether the specific executive orders at issue apply to both governmental and non-governmental entities. *See Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537. Thus, in determining that local agencies were entitled to reimbursement for firefighter's protective clothing whose purchase was required by executive orders promulgated under Cal/OSHA, an act that applies to both private and public entities, 190 Cal.App.3d at 530-31, 541, the court said "[t]he question is whether the *executive orders* constitute the type of 'program' that is subject to the constitution imperative of subvention under Article XIII B, Section 6." *Id.* at 537 (emphasis added).

The Water Boards do not argue, and there is no dispute, that no private NPDES permittee is required to inspect restaurants, automotive facilities, retail gasoline outlets and automotive dealerships. No private NPDES permittee is required to inspect facilities that hold state-issued general industrial or general construction stormwater permits (other than its own facility or site). No private permittee is required to install trash receptacles at transit stops. The inspection of commercial and industrial facilities for compliance with state-issued permits and the installation and collection of trash are a governmental functions, not ones engaged in by private parties.

VI. THE CITIES AND THE COUNTY DO NOT HAVE AUTHORITY TO LEVY SERVICE CHARGES, FEES OR ASSESSMENTS TO PAY FOR THE STATE MANDATE PROGRAMS

Finally, the Water Boards argue that the Cities and the County can adopt fees or levy service charges to pay for the inspections and the installation of trash receptacles ordered by the Regional Board. They further argue that the cost of installing these trash receptacle requirements can be born by transit users through higher transit fees. Water Boards Ltr. at 19. To the contrary, the Cities and the County cannot levy service charges or assess fees to pay for the inspections or the installation of the trash receptacles.

First, with respect to facilities that hold state-issued general industrial or general construction stormwater permits, the state has already occupied the field. As discussed above, the state already imposes an annual fee on general industrial and general construction stormwater permittees. That fee is explicitly designated, in part, to cover inspections of these facilities and regulatory compliance. Water Code § 13260(d)(2)(B).

This state fee thus preempts any fee that the Cities or County could charge for inspection of these facilities. In order for a fee to be considered a "fee" as opposed to a "special tax," the fee cannot exceed the reasonable cost of providing the services necessary for which the fee is charged. *See Mills v. County of Trinity* (1980) 108

Cal.App.3d 656, 659-660. Any fee assessed by the Cities or the County for inspection of these facilities would be a double assessment, and thus run afoul of this rule.

Likewise, it would be difficult for the Cities or the County to assess a fee for the inspection of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. Although the cities could enact a general business license on all businesses, the cities could not charge other businesses for the cost of inspecting this subgroup without again running the risk of charging fees on the other businesses for services not related to regulation of them.

The Water Boards assert that the City of Los Angeles adopted a fee ordinance based on property assessments for implementation of its program (Water Boards Ltr. at 19). The Water Boards, however, mischaracterize the Los Angeles ordinance. Although the Water Boards do not identify that ordinance, they are presumably referring to Ordinance No. 178132, which the Water Boards submitted as documentation in support of their response.

City of Los Angeles Ordinance No. 178132 does not adopt fees for inspections of commercial facilities or facilities that hold general industrial or general construction storm water permits. The fee is not assessed on any of these businesses. Instead the fee is a plan check fee assessed on developers for approval of plans on those developments that are required to have post-construction controls.[9] This plan check fee is no different than any other plan check fee assessed to assure compliance with building codes. It is not related to regulating commercial or industrial facilities. Indeed, as a one time fee, it is not intended to and could not fund ongoing expenditures such as an ongoing inspection program.

The suggestion that the Cities or County could charge transit riders also lacks merit. The Cities and the County do not operate the public transit system. The public transit systems are operated either by certain individual cities or by a regional agency. Accordingly, any money paid by those transit users would not go to the cities who are obligated to install these trash receptacles.

The Water Boards also suggest that any additional cost arising from these mandates is de minimis. To the contrary, the Cities have all alleged that their costs exceed $1,000. The County has set forth in its test claim that it incurred $543,155.95 for inspection costs through September 15, 2003 and $440,903.39 in installation and $375,570.00 for maintenance for trash receptacles. The Cities and the County have shown that they've incurred substantial, additional costs.

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[9] The Order orders the Cities and County to require developments of homes on hillsides, developments of ten or more residential units, and developments with 100,000 or more square feet of impervious surface area, to have post construction controls that will infiltrate or treat stormwater runoff above a certain amount coming from the new development (Order at 35-38).

VII. CONCLUSION

In 2001, the Regional Board did not want to spend money from its budget to perform its obligations. The Regional Board did not want to spend its funds to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships to prevent those facilities from discharging pollutants to waters of the state. The Regional Board did not want to spend money from its budget to inspect facilities for compliance with the state-issued general industrial permit, and did not want to spend money from its budget to inspect construction sites for compliance with the state-issued general construction stormwater permit. The Regional Board did not want to spend its funds on controlling the discharge of trash into waters of the state. The Regional Board sought to eliminate its expenditures on these tasks by shifting the obligation to the Cities and the County. Shifting of costs from the state to local government, however, is the precise conduct that Article XIII, Section 6 is meant to prevent.

For the foregoing reasons, the Cities and the County are entitled to reimbursement for the obligations imposed by the Order to inspect restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, and general industrial and general construction stormwater permittees, and to install and maintain trash receptacles at transit stops. The test claims of the Cities and the County should be approved.

Dated: June 24, 2008

BURHENN & GEST
Howard Gest
David W. Burhenn

By: _____
Howard Gest

CERTIFICATION

I hereby certify and declare under the penalty of perjury that this rebuttal and response is true and complete to the best of my personal knowledge, information and belief.

Executed this 24th day of June, 2008 at Los Angeles, California.

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Section 5: WRITTEN NARRATIVE IN SUPPORT OF TEST CLAIM OF THE CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, VERNON AND WESTLAKE VILLAGE REGARDING MANDATES IMPOSED UNDER AN EXECUTIVE ORDER OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ORDER NUMBER 01-182

This written narrative is submitted on behalf of the Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Vernon and Westlake Village (hereinafter, "Cities") regarding the following mandates contained in California Regional Water Quality Control Board, Los Angeles Region (hereinafter, "RWQCB") Order Number 01-182 ("Order"):

5(A) DESCRIPTION OF NEW ACTIVITIES AND COSTS

1. The New Mandates

The Cities seek a subvention of funds for the following state mandates contained in the Order:

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Resources Control Board ("State Water Board") permits], page 31;

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], pages 42-45;

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], pages 48-49.

2. Description of Mandates

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], Order, pages 28-31

Part 4.C.2.a of the Order provides, in relevant part, as follows:

> Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.
>
> (a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented *in compliance with State law*, County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:
>
> - has received educational materials on storm water pollution prevention practices;
> - does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
> - keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
> - does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
> - removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP,

Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automotive shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensure that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

(Emphasis added.)

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of stormwater from industrial facilities, including compliance with State Water Board permits], Order, page 31

Part 4.C.2.b of the Order provides, in relevant part, as follows:

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

. . .

(b) Phase I Facilities

> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected each Permittee shall conduct compliance inspections as specified below.
>
> Frequency of Inspection
>
> Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provide that the Permittee inspects at least 20% of the facilities in Tier 2 each year.
>
> Level of Inspection: Each Permittee shall confirm that each operator:
>
> - *has a current Waste Discharge Identification (WDID) number* for facilities discharging storm water associated with industrial activity; and that *a Storm Water Pollution Prevention Plan is available on-site*; and
> - is effectively implementing BMPs in compliance with County and municipal ordinances, *Regional Board Resolution 98-08*, and the SQMP.

(Emphasis added.)

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of stormwater from those sites, including compliance with State Water Board permits], Order, pages 42-45

Part 4.E.2.b of the Order provides, in relevant part, as follows:

> 2. For construction sites one acre or greater, each Permittee shall comply with all conditions in section E.1 above and shall:
>
> . . .
>
> (b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Part 4.E.3. of the Order provides, in relevant part, as follows:

> 3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1 and E.2. and shall:
>
> a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, *proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer.* A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
>
> b) Require *proof of an NOI and a copy of the SWPPP at any time a transfer of ownership* takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
>
> c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

(Emphasis added.)

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], Order, pages 48-49.

Part 4.F.5.c.3 of the Order provides, in relevant part, as follows:

> 5. Storm Drain Operation and Management
>
> . . .
>
> (c) Permittees not subject to a trash TMDL shall:
>
> . . .
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

3. The inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships are new programs or higher levels of service mandated by the State

a. The State has had responsibility for regulation of discharges from restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969

Part 4.C.2.a of the Order requires the Cities to inspect restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. The purpose of the inspection is to assure that these facilities are implementing programs, known as Best Management Practices ("BMPs"), to prevent the discharge of waste into locations where it will be picked up by stormwater and carried into the rivers and other waters of the state.

Since at least 1969, State agencies have had the responsibility to prevent or regulate the discharge of waste that could be carried into the rivers and other waters of the state. In that year the Legislature adopted the Porter-Cologne Water Quality Act, Water Code §§ 13000 et seq. Under the Porter-Cologne Act, the Legislature imposed on the State Water Board and the regional water quality control boards ("regional boards") responsibility for the coordination and control of water quality. Water Code § 13001.

This responsibility includes the regulation of discharges from any entity that could affect the quality of the water of the state, including inspection of those facilities. Under the Act, any person who discharges "waste" or proposes to discharge "waste" that could affect the quality of the "waters of the state," other than into a community sewer system, must file a report of the discharge with the regional board that has the authority over that discharge. Water Code §§ 13260 and 13263. "Waste" and "waters of the state" are defined broadly. "Waste" includes all waste substances associated with human habitation, or of human or animal origin, or from any producing, manufacturing or

processing operation. Water Code § 13050(d). "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state. Water Code § 13050(e). Upon receipt of the report of discharge, the regional board, after a hearing, issues a permit, known as waste discharge requirements, authorizing or conditioning (including disallowing) the discharge. Water Code § 13263. The regional board is given the authority to require any person to furnish technical and monitoring reports describing any discharge or proposed discharge of waste, and can inspect the facility of any such person to ascertain whether the purpose of the Act are being met. Water Code § 13267(b) and (c). The State Water Board is given this same authority if it will not duplicate the efforts of the Regional Board. *Id.*, subd. (f).

The Porter-Cologne Act contains no exceptions for discharges from restaurants, automotive service facilities, retail gas station, or automobile dealerships. Accordingly, the State, through the State Water Board and the regional water quality control boards, has had the responsibility since 1969 for regulating the discharge or proposed discharge of any waste from these facilities.

b. The purpose of the inspection obligations imposed by the Order is to prevent or minimize the discharge of waste into waters of the state

As set forth above, the purpose of the inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships is to assure that these facilities are implementing BMPs that will prevent the discharge of waste into locations where it could be carried into rivers and other waters of the state. The restaurant inspections are to assure that oil, grease, trash or waste are not entering areas exposed to stormwater, all to prevent these materials from being picked up by stormwater and then being discharged into waters of the state. The automotive service facility inspections are to assure that materials at these facilities do not come into contact with stormwater or other runoff that would carry these materials into waters of the state. The retail gas outlet and automotive dealership inspections likewise are to assure that fuel, debris and waste does not enter storm drain and catch basins and then enter waters of the state.

These inspections are all tasks for which the State has been responsible since at least 1969. These are all obligations of the State and regional boards under the Porter-Cologne Act since 1969.

c. The Order requires the Cities to conduct these inspections to assure compliance with State law

The Order explicitly requires the Cities to conduct these inspections to assure compliance with State law, including a resolution issued by a state agency, i.e., the RWQCB. The Order specifically provides that inspections of restaurants are to be performed in order to assure that BMPs "are being effectively implemented *in compliance with state law,* County and municipal ordinances, *Regional Board Resolution*

No. 98-08, and the SQMP." Order, Part 4.C.2.a(1) (emphasis added). The inspection of automotive service facilities, retail gasoline outlets and automobile dealerships similarly are to confirm that BMPs are being "effectively implemented . . . in compliance with *Regional Board Resolution No. 98-08*. Order, Parts 4.C.2.a(2) and (3) (emphasis added). (A copy of Resolution No. 98-08 is included in Section 7.)

d. These inspection obligations are new programs or higher levels of service.

The obligation to inspect restaurants, automotive service facilities, retail gas outlets and automotive dealerships is a new program or a higher level of service. A "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. These inspection obligations are such a program; inspections for the purpose of policing compliance with state law are a uniquely governmental function and are uniquely imposed on the municipalities that are permittees under the Order.[1]

These inspection obligations are also new. A program is "new" if the local governmental entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. Here, the Order constitutes both waste discharge requirements issued by the RWQCB and a NPDES municipal stormwater permit issued under the federal Clean Water Act. This is the third such order issued to the Cities. The RWQCB previously issued orders to the Cities in 1991 and 1996. Neither the 1991 nor the 1996 order imposed these inspection obligations. The inspection obligations were imposed by the RWQCB for the first time in the Order issued in 2001.

e. The inspections are not required by the federal Clean Water Act

The federal Clean Water Act imposes certain obligations on the Cities. Under the Clean Water Act, the Cities are required to (i) prohibit non-stormwater discharges into the storm sewers, and (2) reduce the discharge of pollutants in stormwater to the maximum extent practicable. 33 U.S.C. §1342(p). As noted above, the Order itself

[1] The inspections could also be considered a higher level of service. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in an increase in the actual level or quality of governmental services provided. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

constitutes both waste discharge requirements and NPDES permit issued under the federal Clean Water Act.

The federal Clean Water Act does not require Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships. The federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are solely municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). The federal regulations do not require inspections of restaurants, automotive service facilities, retail gas stations, or automotive dealerships.

Indeed, the 1991 and 1996 orders issued by the RWQCB to these Cities did not contain these inspection obligations. If the federal Clean Water Act had required Cities to inspect restaurants, automotive service facilities, retail gas outlets or automotive dealerships, the RWQCB could not have issued the prior orders without including these inspections. The RWQCB, however, did issue the prior orders without requiring these inspections.[2]

It is possible that the State Water Board or the RWQCB may argue that, because the Order also constituted a federal NPDES permit, the inspections are federally mandated. This argument would lack merit. An NPDES permit can contain both federal and non-federal requirements. *See City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 618, 628. Where state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *See Long Beach Unified School District v State of California* (1990) 225 Cal.App.3d 155, 172-173.

Moreover, a "new program or higher level of service" imposed by the State upon a municipality as a result of a federal law or federal program is not necessarily a "federal mandate." In order to be a federal mandate, the obligation must be imposed upon the municipality by federal law itself. The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has a "true choice" in the matter of implementation, *i.e.*, whether the state freely chose to impose that program on local municipalities as opposed to performing the obligation itself. *See Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

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[2] Because the current federal regulations were not in effect at the time of the issuance of 1991 order, it could be argued that the 1991 order was issued under a prior set of regulations. The current regulations however, were in existence at the time the 1996 order was issued.

Here, the inspections are not required by federal statute or regulations; they exceed the requirements of the federal Clean Water Act. Here, the State has had the obligation to regulate restaurants, automotive service facilities, retail gas stations and automotive dealerships since 1969. This included the right to inspect such facilities to prevent activities that would result in the discharge of waste that could affect the quality of the waters of the state. Water Code § 13267(c). In 2001, the RWQCB freely chose to shift those inspection obligations to the Cities. Nothing under the federal Clean Water Act required the RWQCB to do so; nothing prevented the RWQCB from continuing to perform these inspections itself.

4. The inspections of industrial facilities that hold State Water Board stormwater permits for compliance with those permits are new programs or higher level of service mandated by the State

a. The Order imposes new inspection obligations that were required to be performed by the State

Part 4.c.2.b requires the cities to inspect industrial facilities to determine those facilities' compliance with the State's program for preventing waste from being discharged from those facilities, including permits issued by the State Water Board. As with the inspection of restaurants, gas stations and the other facilities, the requirement to inspect industrial is also a new program, one formerly performed by the State itself.

The Clean Water Act requires certain industrial facilities to have permits for stormwater discharges associated with their industrial activity. 33 U.S.C. § 1342(p)(3); 40 C.F.R. § 122.26(c). These industrial stormwater permits are issued either by the State Water Board or the regional boards. In California, the State Water Board issues a general permit to which industrial facilities can subscribe. Alternatively, an industrial discharger can obtain its own permit from a regional water quality control board. The Order refers to these industrial facilities as "Phase I Facilities." Order, pp. 31, 62.

Under the Porter-Cologne Water Quality Act, the State Water Board and the regional boards have both the authority and the obligation to issue these permits to "Phase I Facilities." Water Code § 13377. The State Water Board has issued these industrial stormwater permits since 1991. (See State Water Board Order No. 91-013-DWQ.) The most current general permit was issued in 1997. See State Water Resources Control Board Order No. 97-03-WQ, a copy of which is included in Section 7.

Significantly, the Legislature has authorized the State Water Board and regional boards to charge these industrial dischargers a fee which is deposited in the State's Waste Discharge Permit Fund and separately accounted for. Water Code § 13260(d)(2)provides in pertinent part:

(A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund, which is hereby created.

(B) Notwithstanding subparagraph (A) the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the National Pollutant Discharge Elimination System (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

The Legislature has then directed that a portion of this fee should be spent specifically on inspection of these industrial facilities. "Not less than 50 percent in the Waste Discharge Permit Fund that is separately accounted for . . . is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out the stormwater programs in the region." Water Code § 13260(d)(2)(B)(ii). "Each regional board . . . shall spend not less than 50 percent of that money *solely on stormwater inspection and regulatory compliance issues* associated with industrial and construction stormwater programs." *Id.*, subd.(d)(2)(B)(iii) (emphasis added).

Like the inspections of restaurants, automotive service facilities, retail gas stations and automotive dealerships, the State Water Board and regional boards have had the authority under the Porter-Cologne Act to regulate these discharges from "Phase I" facilities since 1969, including the authority to inspect these facilities. Water Code §§ 13260, 13263, 13267. The obligation to inspect these "Phase I" industrial facilities that hold the State Board issued stormwater permits has rested with the regional boards since 1991. The State Water Board, in adopting the general industrial permit it issues to these Phase I facilities, stated that "following adoption of this General Permit, *the Regional Water Boards shall enforce its provisions.*" Order No. 97-03-DWQ, Finding 13 (emphasis added).

In 2001, the RWQCB imposed this obligation on the Cities. There is no question that the RWQCB imposed this inspection requirement to assure Phase I facilities' compliance with state law. The inspection required to be performed by the cities is a "compliance inspection." Order, Part 4.2.b. The inspection shall include a determination as to whether the industrial discharger has a waste discharge identification number and a stormwater pollution prevention plan. The waste discharge identification number is a number assigned by the State in conjunction with its permit program. The stormwater pollution prevention plan is a requirement of the state-issued general permit. The inspection is also for the purpose of determining whether the industrial facility is implementing BMPs in compliance with Regional Board Resolution No. 98-08, a resolution of the RWQCB itself.

Accordingly, the inspections of Phase I facilities is a new program or higher level of service imposed on the cities:

> (1) The State Board and the regional boards have had authority to regulate and inspect these facilities since 1969. Water Code §§ 13260, 13263, 13267.
>
> (2) The inspection is to determine compliance with the general industrial stormwater permit issued by the State Board. The State Board has specifically provided that the regional board shall enforce the provisions of this permit. State Water Board Order No. 97-03-DWQ, Finding 13.
>
> (3) The State Board and the regional board charge these industrial facilities a fee for this program. Water Code § 13260(d)(2).
>
> (4) The Water Board and the regional boards do not share any of these fees with the cities.
>
> (5) The inspections are compliance inspections to determine compliance with the State Water Board permit, and Regional Board Resolution No. 98-08.
>
> (6) The inspection obligation is new. The RWQCB imposed this obligation on the Cities in 2001. Prior orders did not impose this obligation on the Cities.

b. The obligation to inspect industrial facilities with State-issued stormwater permits is not contained in the federal Clean Water Act

As discussed above, the federal Clean Water Act regulations set forth those facilities required to be inspected pursuant to the Act. Those facilities are municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). These regulations do not require inspections of industrial facilities with state-issued stormwater permits.

5. The inspection of construction sites that hold State Board permits for compliance with those permits is a new program mandated by the state

Under the Clean Water Act, the definition of industrial activities includes construction. See 40 C.F.R. § 122.26(b)(14)(x). In 2001, construction sites where activity resulted in the disturbance of greater than five acres of total land area were required to obtain stormwater permits. In 2003 this requirement was expanded to sites where the activities resulted in the disturbance of greater than one acre.

As with the industrial facilities, the State Water Board and the regional boards are charged with issuing these permits. Water Code § 13377. The State Water Board has issued a general construction stormwater permit since 1992. See State Water Resources Control Board Order No. 92-08-DWQ. The most current general construction stormwater permit was issued in 1999. See State Water Resources Control Board Order No. 99-08-DWQ. Like industrial facilities, the State charges a fee for these permits. Like industrial facilities, a portion of that fee is to go to regional boards to be spent "solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." Water Code § 13260(d)(2)(B)(iii).

Like general industrial stormwater permit, the general construction stormwater permit issued by the State Water Board imposes the inspection obligation on the regional boards. State Board Order No. 99-08-DWQ specifically provides that "[f]ollowing adoption of this General Permit, the RWQCBs shall enforce the provisions herein . . . ." State Board Order No. 99-08-DWQ, Finding 11. Part D.1 of that Order further specifically provided that "RWQCBs shall . . . implement the provision of this General Permit. Implementation of this General Permit may include, but is not limited to requesting the submittal of SWPPPs, reviewing SWPPPs, reviewing monitoring reports, conducting *compliance inspections*, and taking enforcement actions." Thus, the specific responsibility for inspection of construction sites was allocated by the State Water Board to the regional boards, including the RWQCB.

The same analysis that applies the obligation to inspect industrial facilities applies to the obligation to inspect construction sites. Like inspection of the Phase I facilities in 2001, the RWQCB simply shifted this obligation from itself to the cities. The obligation to inspect these construction sites for compliance with the State Water Board's permit is a new program or higher level of service mandated on the Cities:

> (1) The State Water Board and the regional boards have had the authority and obligation to regulate these discharges since 1969. Water Code §§ 13260, 13263 and 13267.
>
> (2) The State Water Resources Board has issued permits to these facilities since 1992. See State Board Order No. 92-08-DWQ.

(3) The State Board orders adopting the general permit imposed the obligation to inspect construction sites on the regional boards. See State Board Order No. 99-08-DWQ, part D.1.

(4) The State Board and the regional boards charge a fee to the owners or developers of these construction sites. Water Code § 13260(d)(2). The Water Boards and the regional boards do not share any of these fees with the Cities.

(5) The inspections are compliance inspections to determine compliance with the State Water Board program and permit.

(6) The obligation is new. The RWQCB imposed the obligation on the Cities in 2001. Prior to 2001, the Cities did not have this obligation.

6. The installation and maintenance of trash receptacles at transit stops are new programs or higher levels of service mandated upon the Cities

Part 4.F.5.c.3. of the Order requires the cities to place trash receptacles at all transit stops within their jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary. This requirement also constitutes a new program or higher level of service mandated upon the Cities.

As set forth above, a "program" within the meaning of Article XIII B, section 6, of the California Constitution is a program that carries out a governmental function of providing services to the public. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56. A program is "new" if the local government entity had not previously been required to institute it. *County of Los Angeles v. Comm'n on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. A "higher level of service" refers to state mandated increases in the services provided by local agencies. *County of Los Angeles v. State of California*, 43 Cal.3d at 56. A higher level of service exists where the mandate results in increase in the actual level or quality of governmental services. *See San Diego Unified School District v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 877.

The obligation to install trash receptacles at all transit stops is a new program or higher level of service. The collection of trash is a program that carries out a governmental function of providing services to the public. The Order directed the cities how and where to collect trash. It resulted in a new program or higher level of service along with a concomitant increase in costs.

Nothing in the federal Clean Water Act requires cities to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation. Indeed, this obligation is not found in other stormwater permits issued to

the cities throughout the state. The fact that it does not exist in other stormwater permits demonstrates that it is not a federal requirement.

The Order mandated that the Cities install and maintain trash receptacles at all transit stops. This is a new program or higher level or service mandated upon the Cities.

7. The State Funding Disclaimers Under Government Code § 17556 Do Not Apply

The seven disclaimers specified in Government Code § 17556 do not apply to the instant test claim, as shown below.

Government Code § 17556(a): "The claim is submitted by a local agency . . . which requested legislative authority for that local agency . . . to implement the Program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority." This disclaimer is not applicable because the Cities did not request legislative authority for the Order.

Government Code § 17556(b): "The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts." This disclaimer is not applicable because the Order did not affirm what had been declared existing law or regulation by action of the courts.

Government Code § 17556(c): The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation." This disclaimer is not applicable because no federal law or regulation is implemented in the Order, and the Order exceeds that mandated by federal law, as discussed above.

Government Code § 17556(d): "The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." This disclaimer is not applicable because the Cities do not have the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

Government Code § 17556(e): "The statute or executive order provides for offsetting savings to local agencies . . . which result in no net costs to the local agencies . . . , or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate." This disclaimer is not applicable as no offsetting savings are provided in the Order and no revenue to fund the implementation of the Order was provided.

Government Code § 17556(f): "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election." This disclaimer is not applicable as the Order does not impose duties imposed by a statewide ballot measure.

Government Code § 17556(g): "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." This disclaimer is not applicable as the Order did not create or eliminate a crime or infraction or change the penalty for a crime or infraction.

B. DESCRIPTION OF EXISTING ACTIVITIES AND COSTS THAT ARE MODIFED BY THE MANDATE

Not Applicable. The only possible exception is if the installation and maintenance of trash receptacles is viewed as a modification of the Cities' existing trash collection activities. See the discussion in Section 5(A) above.

C. INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE:

The actual increased costs incurred by the Cities during the current fiscal year exceeds $1,000.

D: ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The actual or estimated increased costs that will be incurred by the Cities during the next fiscal year will exceed $1,000.

E. STATEWIDE ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES OR SCHOOL DISTRICTS WILL INCUR TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED:

The mandates in the Order, including those at issue in this test claim, apply to the County of Los Angeles, the Los Angeles Flood Control District, and 84 cities in the County of Los Angeles (except for the trash receptacle obligation, which does not apply to cities subject to a "Trash TMDL".) The increased costs that all the municipalities will incur to implement the mandates during the next fiscal year are not currently known, but

will exceed $1,000. It is also not known the number of municipalities outside the County of Los Angeles that are subject to similar mandates.

F. IDENTIFICATION OF FUNDING SOURCES AVAILABLE FOR THIS PROGRAM:

(i) Dedicated state funds

There are no known dedicated state funds available to fund the inspection programs or placement of trash receptacles mandated by the Order.

(ii) Dedicated federal funds

There are no known dedicated federal funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iii) Other nonlocal agency funds

There are no known nonlocal agency funds available to fund the inspection programs or of trash receptacles mandated by the Order.

(iv) The local agency's general purpose funds

There are no general purpose funds available to fund the inspection programs or installation and maintenance of trash receptacles mandated by the Order without taking those funds from other programs.

(v) Fee authority to offset costs

The State collects fees for inspections but does not share those funds with the Cities. The State Water Board and the RWQCB have in fact received funds from permit fees associated with the General Industrial Permit and the General Construction Permit, fees that were specifically assessed to pay for the costs of implementing the stormwater permit program. Water Code § 13260(d). The State receives an annual fee of $700 from every industrial facility, plus applicable surcharges (but subject to certain reductions) that is required to have a General Industrial Permit. 23 Cal. Code Reg. § 2200(b)(2)(A). For construction sites required to have a General Construction Permit, the annual fee is $200 plus $20 per acre, up to a maximum of $2,200. 23 Cal. Code Reg. § 2200(b)(3). The State shares none of these fees with the Cities.

G. IDENTIFICATION OF PRIOR MANDATE DETERMINATIONS MADE BY THE BOARD OF CONTROL OR THE COMMISSION ON STATE MANDATES THAT MAY BE RELATED TO THE ALLEGED MANDATE.

The Cities are not aware of any prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to these mandates.

DECLARATION OF HOWARD GEST

I, HOWARD GEST, hereby declare and state as follows:

1. I am a member of Burhenn & Gest LLP and, as such, am one of the attorneys responsible for representing the claimants in Test Claim Nos. 03-TC-20 and 03-TC-21.

2. I have personal knowledge of the matters set forth herein and, if called to testify, could and would testify competently thereto.

3. I represented the County of Los Angeles and the Los Angeles County Flood Control District with respect to appeals from the adoption of the Los Angeles County Municipal Stormater Permit.

4. Attached hereto are copies of (a) a letter dated July 12, 2001 from EPA Administrator Christine Todd Whitman to the Hon. David Dreier; (b) a letter dated April 30, 2001 from Alexis Strauss, Director, Water Division, EPA Region IX to the Hon. Steve Horn; and (c) a letter dated May 16, 2001 from Alexis Strauss, Director, Water Division, EPA Region IX to James DeStefano, Interim City Manager, City of Diamond Bar.

5. Each letter is a part of the administrative record for the Los Angeles County Municipal Stormwater Permit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24 day of June, 2008 at Los Angeles, California.

Howard Gest

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 2001

THE ADMINISTRATOR

The Honorable David Dreier
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Dreier:

Thank you for your letter of April 24, 2001 concerning Clean Water Act permits for discharges from storm sewers owned by local governments. Your letter explains that several local governments are concerned that enforcement of pollution controls at individual industrial and commercial sites that discharge to the local storm sewer systems should be the responsibility of the State permit authority and that local governments should not be required to participate in this effort.

I understand that throughout the State, communities are facing a considerable challenge in the need to address storm water issues. While the State has already begun to substantially increase its staffing resources devoted to the storm water program, EPA recognizes that funding for the State storm water program needs to increase. We are continuing to discuss ways to further increase the State's investment, including discussions of EPA funding.

Urban runoff is the leading cause of water quality impairment throughout the country and in the Santa Monica Bay and the Los Angeles area. Effective programs for reducing pollution from municipal storm sewers are essential to protecting and restoring the Nation's water resources.

The Clean Water Act regulations concerning permits for discharges from municipal storm sewers provide that the State permit authority and the local government holding the permit share responsibility for inspections of facilities discharging to these storm sewers. The State is responsible for enforcing its general Clean Water Act storm water permits, while a local government permit holder needs to enforce local storm water ordinances (which may be similar, but not identical to, the State general permits). The specific responsibilities of the permit holder to monitor and control storm water pollutants from industrial and commercial facilities are normally determined through a cooperative process when a permit is prepared.

It is important to note that the storm water regulations require the local government permit holder to perform activities such as control, inspect, monitor, and require compliance of industrial and commercial facilities and that the permit holder must have the legal authority to ensure compliance. Such programs are already required in many storm water permits, such as the permits for Orange, Riverside and San Diego Counties, and they play a significant role in ensuring the overall effectiveness of the storm water program.

EPA has been intensively involved with all nine California Regional Boards and the State Water Resources Control Board to effectively implement the storm water program. From the initial issuance of the storm water permits to the current round of reissuing those permits, EPA has been working closely with the State to encourage stakeholder participation and cooperation in storm water programs. In addition, EPA and the State have worked together to respond to a petition filed by the Natural Resources Defense Council (NRDC) to withdraw the NPDES storm water program administered by the Los Angeles Regional Board. In response to the NRDC petition, Region 9 met with NRDC and the State to discuss steps to respond to the concerns in the petition.

If you have any additional questions or concerns please contact me, or your staff may call Shawna Roesch in the Office of Congressional and Intergovernmental Relations at (202) 564-3641.

Sincerely yours,

Christine Todd Whitman

R0003169

UNITED STATES ENVIRONMENTAL PRO
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-

cc: DD, DS
WP, KS
JL, RS
RS RM

VFH

P 2:37

April 30, 2001

The Honorable Stephen Horn
U.S. House of Representatives
2331 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Horn:

Thank you for your letter of April 12, 2001, to Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency (EPA), and the accompanying correspondence from your constituent, Larry Forester, representing the Steering Committee for the Coalition for Practical Regulation. I have been asked to respond to your constituent's concerns regarding EPA, Region 9's letter of December 19, 2000 to the Los Angeles Regional Board concerning requirements for inspections of industrial and commercial facilities by municipal separate storm sewer system (MS4) permittees.

As you may be aware, urban runoff is the leading cause of water quality impairment in Santa Monica Bay and the Los Angeles area. This problem, and the State's inability to apply adequate resources to its storm water program, were key factors cited in a petition filed by the Natural Resources Defense Council (NRDC) to withdraw the NPDES storm water program administered by the Los Angeles Regional Board. Current storm water fees received by the State do not provide enough funds to meet all storm water program needs. The State currently collects about $3 million in fees annually from storm water dischargers, and these fees are used entirely to fund storm water program activities, including inspections, enforcement, permitting and other activities. However, the storm water fees cover only about 30% of the cost of the current program, with the rest of the funding coming from other sources. As such, the fees are not adequate to fully fund the State's program and its various activities including inspections.

In response to the NRDC petition, the October 5, 2000 meeting referenced in your constituent's letter was our first meeting with the State to discuss what steps the State could take to respond to the concerns in the petition. The State had already begun to substantially increase its staffing resources devoted to the storm water program and we are continuing to discuss ways to further increase the State's investment through grant money from EPA. Also discussed were the NPDES regulatory requirements for MS4 permits, specifically the existing Federal regulatory requirement that MS4 permittees implement inspection and pollution control programs for certain industrial and commercial facilities. Such programs are already required in many MS4 permits, such as the permits for Orange, Riverside and San Diego Counties, and they play a significant role in ensuring the overall effectiveness of the storm water program through the combined efforts of the State and MS4 permittees.

The storm water program is intentionally a flexible program that allows for different approaches to best address unique local challenges such as those presented by arid environments. The scope of an MS4 inspection program is normally negotiated with the State when a permit is reissued. We agree that a cooperative effort between the State and MS4 permittees on inspections is needed, and we believe that neither the MS4 permittees nor the State should be saddled with the entire inspection burden for industrial and commercial facilities. The State is also responsible for enforcing its general NPDES storm water permits, while the MS4 permittees need to enforce local storm water ordinances (often similar to the State general permits).

EPA has been intensively involved with all nine California Regional Boards and the State Water Resources Control Board to effectively implement the storm water program. From the initial issuance of the MS4 permits to the current round of reissuing those permits, we have been working closely with the State to encourage stakeholder participation and cooperation in the MS4 storm water programs. EPA staff have been participating in the monthly meetings between the State and the MS4 permittees to discuss the pending reissuance of the Los Angeles County MS4 permit, and we are committed to maintaining a cooperative and constructive dialogue among the stakeholders. As mentioned above, the October 5, 2000 meeting was an initial meeting with the State on how to resolve the NRDC petition, and the existing monthly meetings with the Los Angeles County MS4 permittees have been a key forum for cities to provide input on the permit and engage in an ongoing dialogue with the State and EPA. We welcome and encourage active participation by all permittees in these monthly meetings.

We trust this information will be helpful in responding to your constituent's concerns. If we can be of further assistance, please call our Congressional Liaison Officer, Sunny Nelson at (415) 744-1562.

Sincerely,

Alexis Strauss
Director
Water Division

cc: Dennis Dickerson, Los Angeles Regional Board

R0001994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

In Reply
Refer to: WTR-5

MAY 16 2001

2001 MAY 24 P 2:47

James DeStefano
Interim City Manager
City of Diamond Bar
21825 E. Copley Drive
Diamond Bar, CA 91765-4178

Dear Mr. DeStefano:

Thank you for your letter of April 30, 2001, regarding EPA, Region 9's letter of December 19, 2000 to the Los Angeles Regional Board concerning requirements for inspections of industrial and commercial facilities by municipal separate storm sewer system (MS4) permittees. Your letter requested clarification of a number of issues in the December 19, 2000 letter.

As you may be aware, urban runoff is the leading cause of water quality impairment in Santa Monica Bay and the Los Angeles area. This problem, and the State's inability to apply adequate resources to its storm water program, were key factors cited in a petition filed by the Natural Resources Defense Council (NRDC) to withdraw the NPDES storm water program administered by the Los Angeles Regional Board. Current storm water fees to the State do not provide enough funds to meet all storm water program needs. In response to the NRDC petition, we met with NRDC and the State on October 5, 2000 to discuss what steps the State could take to respond to the concerns in the petition. The State had already begun to substantially increase its staffing resources devoted to the storm water program and we are continuing to discuss ways to further increase the State's investment through grant money from EPA. Also discussed were the NPDES regulatory requirements for MS4 permits, specifically the existing Federal regulatory requirement that MS4 permittees implement inspection and pollution control programs for certain industrial and commercial facilities. Such programs are already required in many MS4 permits, such as the permits for Orange, Riverside and San Diego Counties, and they play a significant role in ensuring the overall effectiveness of the storm water program through the combined efforts of the State and MS4 permittees.

The scope of an MS4 inspection program is normally negotiated with the State when a permit is reissued. We agree that a cooperative effort between the State and MS4 permittees on inspections is needed, and we believe that neither the MS4 permittees nor the State should be saddled with the entire inspection burden for industrial and commercial facilities. The State is also responsible for enforcing its general NPDES storm water permits, while the MS4 permittees need to enforce local storm water ordinances (which are often similar to the State general permits).

R0002033

With regards to the intent of the "educational visits" in the existing MS4 permit, we contacted Los Angeles Regional Board staff to obtain additional information on this matter since the permit was issued by the Los Angeles Regional Board. According to Board staff, the intent of the "educational visits" in the 1996 permit was to provide a period of time during which MS4 permittees could engage in outreach activities to industrial and commercial facilities concerning storm water pollution control and best management practices which could be implemented by the facilities to reduce pollutant discharges. Since storm water pollution control was new to some facilities, the Board thought that such outreach was appropriate prior to actual enforcement of the pollution control measures. The Board also intended, however, that future permits, such as the permit under development at the present time, would require enforcement of local storm water pollution control ordinances. We believe that this is generally consistent with the characterization in our letter.

EPA has been intensively involved with all nine California Regional Boards and the State Water Resources Control Board to effectively implement the storm water program. From the initial issuance of the MS4 permits to the current round of reissuing those permits, we have been working closely with the State to encourage stakeholder participation and cooperation in the MS4 storm water programs. EPA staff have been participating in the monthly meetings between the State and the MS4 permittees to discuss the pending reissuance of the Los Angeles County MS4 permit, and we are committed to maintaining a cooperative and constructive dialogue among the stakeholders. We welcome and encourage active participation by all permittees in these monthly meetings.

Should you have any questions, please call me at (415) 744-1860, or refer your staff to Eugene Bromley of the CWA Standards and Permits Office at (415) 744-1906.

Sincerely,

Alexis Strauss 15 May 2001

Alexis Strauss
Director, Water Division

cc: Dennis Dickerson, Los Angeles Regional Board

R0002034

DECLARATION OF ADAM ARIKI, P.E.

I, Adam Ariki, P.E. hereby declare:

1. I am currently the Assistant Deputy Director of the Water Works Division of the Los Angeles County Department of Public Works (LADPW).

2. In 2001, I held the position of Senior Civil Engineer, and supervised the section of LADPW's Watershed Management Division that was responsible for compliance with the Los Angeles County Municipal Storm Water Permit (Permit) issued by the Los Angeles Regional Water Quality Control Board (Regional Board).

3. I have personal knowledge of the matters set forth herein and, if called to testify, could and would testify competently thereto.

4. In conjunction with my duties in 2001, I participated in meetings with staff of the Los Angeles Regional Board in which the parties discussed a request by the Los Angeles Regional Board to enter into a contract pursuant to which the LADPW would perform, for the benefit of the Regional Board, inspections of sites that held general industrial stormwater permits. The Regional Board would pay the County of Los Angeles for the performance of these inspections.

5. To my knowledge, these negotiations were initiated by Regional Board staff, and it was their idea to have LADPW perform these inspections in lieu of Regional Board staff performing these inspections themselves.

6. By letter dated December 17, 2001, the Executive Officer of the Regional Board advised LADPW that the Regional Board was terminating these discussions. Attached hereto is a copy of the letter from Dennis Dickerson, Executive Officer, to Donald Wolfe, Assistant Director, advising that the Regional Board staff was terminating these discussions.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18 day of June, 2008 at Alhambra, California.

Adam Ariki

Winston H. Hickox
Secretary for Environmental Protection

California Regional Water Quality Control Board

Los Angeles Region

Over 50 Years Serving Coastal Los Angeles and Ventura Counties
Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.swrcb.ca.gov/rwqcb4

Gray Da
Governo

December 17, 2001

Mr. Donald L. Wolfe, Assistant Director
County of Los Angeles Department of Public Works
900 South Freemont Avenue
Alhambra, CA 91803-1331

Dear Mr. Wolfe:

INSPECTION OF FACILITIES COVERED UNDER THE CALIFORNIA GENERAL INDUSTRIAL ACTIVITIES STORM WATER GENERAL PERMIT (GENERAL PERMIT)

During the last several months, staff from the County of Los Angeles and the Regional Board met a number of times and worked together in an effort to develop a contract proposal with the County to inspect facilities covered under the General Permit. These efforts were an attempt to further the partnership between the Regional Board and local agencies in the arena of storm water management in the region. They were also an attempt to tap into the County's staff expertise in an efficient way in order to thoroughly and expeditiously address the challenging task of overseeing a large number of industrial sites covered under the General Permit and identifying the significant number of facilities that have not yet obtained coverage.

Your staff worked diligently and was very helpful and cooperative during the whole process.

Unfortunately, we are unable to proceed in further developing this proposal at this time. I hope that in the future the opportunity to renew our discussion will present itself.

Should you have any questions regarding this matter, please do not hesitate to contact me at (213) 576-6605, or Dan Radulescu at (213) 576-6668.

Sincerely,

Dennis A. Dickerson
Executive Officer

cc: Mr. Carl Sjoberg, County of Los Angeles Department of Public Works
Mr. John Youngerman, Stormwater Section, State Water Resources Control Board

R0007972

California Environmental Protection Agency
****The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption****
****For a list of simple ways to reduce demand and cut your energy costs, see the tips at: http://www.swrcb.ca.gov/news/echallenge.html****
Recycled Paper
Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On June 24, 2008 I served the foregoing document, described as

TEST CLAIM NO. 03-TC-21; CLAIMANTS' REBUTTAL TO AND COMMENTS ON RESPONSES SUBMITTED BY THE DEPARTMENT OF FINANCE, STATE WATER RESOURCES CONTROL BOARD AND LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☐ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☒ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 24, 2008 at Los Angeles, California.

Danette Armstead

Danette Armstead

Service List

Ms. Tracy Egoscue
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Mr. Leonard Kaye, Esq.
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500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Sergio Ramirez
City of Foster City
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State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

DECLARATION OF JULIE QUINN, MESM

I, Julie Quinn, hereby declare:

1. I am a water quality and water resources professional with URS Corporation. I have a Bachelor of Science degree from University of California, Riverside, with a major in Environmental Science, and a Master of Environmental Science and Management from University of California, Santa Barbara.

2. I have personal knowledge of the matters set forth herein and, if called to testify, could and would testify competently thereto.

3. I was requested to perform a survey of Phase I National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer systems (MS4) permits issued by the United States Environmental Protection Agency (EPA). I was further asked to review those permits to determine whether they included any of the following: (1) a requirement to inspect industrial facilities that are covered under a NPDES general industrial stormwater permit; (2) a requirement to inspect restaurants, automotive service facilities, or retail gasoline outlets and automotive dealerships; and (3) a requirement to install trash receptacles at all transit stops within the MS4 permittee's jurisdiction.

4. Attached as Exhibit 1 is a letter report summarizing the results of this survey. This letter report sets forth the Phase I NPDES MS4 permits that I reviewed and the conclusions of the survey.

5. None of the Phase I NPDES MS4 permits issued by EPA required the inspection of commercial facilities or industrial facilities that are not required to be covered under a NPDES permit.

6. None of the Phase I NPDES MS4 permits issued by EPA included the extensive requirements for inspection of industrial facilities covered by NPDES general industrial permits that are included in the Phase I NPDES MS4 permit issued to the Los Angeles County permittees by the California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.

6. None of the Phase I NPDES MS4 permits issued by EPA required the installation of trash receptacles at transit stops.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of June, 2008 at Santa Ana, California.

Julie Quinn

Julie Quinn, MESM

URS

June 17, 2008

Mr. Howard Gest
Burhenn & Gest LLP
624 South Grand Avenue, Suite 2200
Los Angeles California
90017-3321

Subject: ***Phase I Municipal Separate Storm Sewer Systems (MS4) Permit Survey***

Dear Mr. Gest,

URS Corporation is pleased to submit this letter report describing the results of the National Pollution Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit survey. The survey involved obtaining copies of Phase I NPDES MS4 permits issued directly by the United States Environmental Protection Agency (USEPA). These Phase I NPDES MS4 Permits were obtained and reviewed to determine if they contained provisions similar to the two specific requirements of the Phase I NPDES MS4 permit issued to Los Angeles County on December 13, 2001 (NPDES Permit No. CAS004001) and as amended on September 14, 2006 and August 9, 2007 (hereafter referred to as the NPDES MS4 Permit issued to the Los Angeles County permittees).

Los Angeles County MS4 Permit Requirements

The two specific requirements of the NPDES MS4 Permit issued to the Los Angeles County permittees in question are:

- Installation of trash receptacles as specified in Part 4.F.5.c.3. This provision requires the installation and maintenance of trash receptacles at all transit stops within the permittees jurisdiction.
- Required commercial/industrial inspection programs as specified in Part 4.C. The Industrial/Commercial Facilities Control Program described in Part 4.C. requires permittees to establish ongoing programs to track, inspect, and ensure compliance at industrial and commercial facilities that are critical sources of storm water pollutants. Inspections include commercial facilities such as restaurants, automotive service stations, retail gasoline outlets, automotive dealerships, and Phase I Tier 1 and 2 facilities that have not been inspected by the Regional Water Quality Control Board.

The specific Los Angles County MS4 Permit requirements summarized above are provided in Attachment A.

Phase I NPDES MS4 Permits Regulated by USEPA

There are several states that are not designated to administer the Phase I NPDES MS4 Permit Program. Therefore, dischargers in those states are issued NPDES MS4 permits and regulated directly by the USEPA. In some instances the USEPA will review NPDES MS4 permits issued by delegated states and make findings regarding if the NPDES MS4 permits comply with the Clean Water Act and other federal regulations.

URS Corporation
2020 East First Street, Suite 400
Santa Ana, CA 92705
Tel: 714.835.6886
Fax: 714.667.7147

The following states and United States lands are non-designated states:

United States

- Massachusetts
- New Hampshire
- Idaho
- Alaska
- New Mexico

United States Lands

- Puerto Rico
- District of Columbia
- Pacific Islands
- Guam
- Indian Lands

Provisions of USEPA Issued Phase I NPDES MS4 Permits

The following table summarizes the results of a review of the Phase I NPDES MS4 permits issued by the USEPA to municipal entities in non-designated states as well as the Phase I NPDES MS4 permit issued to the District of Columbia. None of the Phase I NPDES MS4 permits issued in non-designated states had provisions similar to the Industrial/Commercial Facilities Control Program required by the NPDES MS4 Permit issued to the Los Angeles County permittees. These requirements are unique in requiring inspections for commercial facilities such as restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. Additionally, the level of inspection requires the MS4 permittees to confirm that operators of Phase I industrial facilities have a current Waste Discharge Identification (WDID) number, Storm Water Pollution Prevention Plan (SWPPP), effective BMP implementation, and participation in enforcement actions for those commercial/industrial facilities not in compliance. Although the Phase I NPDES MS4 permits issued to the municipalities in the non-designated states did require permittees to develop inspection procedures, prioritize, monitor, and in some cases inspect those facilities specifically identified in the federal regulations, 40 CFR 122.26(d)(2)(iv)(C), sometimes referred to in the permits as "high risk", these requirements were distinctly different from the requirement to implement comprehensive inspections of all industrial and commercial facilities as specified in the NPDES MS4 Permit issued to the Los Angeles County permittees. Table 1 summarizes the sections of each Phase I NPDES MS4 permit where program elements addressing commercial/industrial activities are described.

Phase I NPDES MS4 Permits for the other lands of the U.S. (e.g. Guam, Indian Lands, Puerto Rico, & Pacific Islands) were not obtained in time to include in this survey. New Hampshire is a non-designated state but currently has no municipalities that have been issued a Phase I NPDES MS4 permit.

Permit Status

NPDES permits are issued for a period of five years. An application for renewal of the NPDES permits must be submitted prior to the expiration date. The status of the Phase I NPDES MS4 program in each non-designated state is described herein. Copies of the large and medium Phase I NPDES MS4 permits that were reviewed as part of this survey are provided in Attachment B.

Alaska

The state of Alaska has formally applied to the USEPA for authority to administer their NPDES program. Since they are applying to administer their own program, their two Phase I NPDES MS4 permits have not been renewed or re-issued. The Municipality of Anchorage Phase I NPDES MS4 permit that covers the Alaska Department of Transportation, City of Anchorage, Port of Anchorage, and University of Alaska at Anchorage expired in 2003 and has not been renewed.

Idaho

The Phase I NPDES MS4 permit covering the six co-permittees within Idaho (Ada County Highway District, City of Boise, Boise State University, Garden City, Idaho Department of Transportation, and Drainage District Number 3) expired in 2005. An application for renewal of the permit was submitted in 2004, but a revised permit has not been issued.

Massachusetts

There are two large Phase I municipalities within Massachusetts, Boston and Worcester. The City of Boston's Phase I NPDES MS4 permit was issued in 1999 and expired in 2004 and a draft revised permit is expected to be issued in late 2008. Worcester is the other large Phase I municipality within Massachusetts and a draft revised Phase I NPDES MS4 permit is expected in late June 2008.

New Hampshire

There have been no large or medium Phase I NPDES MS4 permits issued in New Hampshire.

New Mexico

The City of Albuquerque, Albuquerque Flood Control Authority, New Mexico Department of Transportation, and University of New Mexico at Albuquerque are co-permittees and are covered under a Phase I NPDES MS4 permit that expires on November 30, 2008. New Mexico has been pursuing primacy to administer a state regulated NPDES program but has not yet been designated to do so.

District of Columbia

Washington DC was issued a Phase I NPDES MS4 permit in 2000 that expired in 2005. In 2004 the USEPA issued a new Phase I NPDES MS4 permit that expires on August 18, 2009.

Non-Designated State	USEPA Re	equirements to inspect urants, automotive service ties, retail gasoline outlets, automotive dealerships?	Requirements to install trash receptacles?
Alaska	Alaska Department of Transport	No	No
	City of Anchorage		
	University of Alaska, Anchorage		
	Port of Anchorage	No	No
Idaho	Ada County Highway District	No	No
	City of Boise		
	Boise State University		
	Garden City		
	Idaho Department of Transportat		
	Drainage District 3		
Massachusetts	City of Boston	No	No
	City of Worcester	No	No
New Mexico	City of Albuquerque	No	No
	Albuquerque Flood Control Auth		
	New Mexico Department of Tran		
	University of New Mexico at Albu		
District of Columbia	Washington D.C.	No	No
New Hampshire	No MS4 permit(s) currently issue	N/A	N/A

Table Notes:

EPCRA = Emergency Planning and Community Right-to-Know Act

MS4 = Municipal Separate Storm Sewer System

Survey Conclusions

Upon reviewing the Phase I NPDES MS4 permits issued by USEPA, there were no provisions that called for the specific trash receptacles and commercial / industrial inspection programs as described in the NPDES MS4 Permit issued to the Los Angeles County permittees. The provisions in the permits describing monitoring and inspections required for "Industrial and High Risk" dischargers did not call for the detailed inspection program of commercial/industrial facilities as described in the Los Angeles NPDES MS4 Permit. Moreover, all of the Phase I NPDES MS4 permits issued by USEPA described "high risk" dischargers as facilities that treated, recovered, stored, or disposed of hazardous waste, facilities subject to EPCRA Title III, as well as landfills. The majority of the Phase I NPDES MS4 permits issued by USEPA called for prioritization and monitoring of these high risk facilities with inspection and monitoring results to be reported in the Annual Report.

The Phase I NPDES MS4 permits issued by EPA in the non-designated states contained requirements that were distinctly different from the inspection requirements for industrial facilities contained in the NPDES MS4 Permit issued to the Los Angeles County permittees. None of the EPA issued permits required inspection of restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. With the exception of the District of Columbia permit, none of the permits require inspection of all facilities that were issued general industrial stormwater permits.

Instead, all the EPA issued Phase I NPDES MS4 permits, except for the District of Columbia permit, require only a program to monitor and control pollutants from stormwater discharged from the facilities specifically identified in 40 C.F.R. 122.26(d)(2)(iv)(C). Those facilities are municipal landfills; hazardous waste treatment, disposal and recovery facilities subject to § 313 of the Emergency Planning and Community Right to Know Act; and industrial or commercial facilities that are determined to be contributing substantial pollutant loading to the MS4. Inspections are required only of these facilities. The District of Columbia Phase I NPDES MS4 permit does provide that the city's program to monitor and control pollutants from industrial facilities should include a program with respect to industrial facilities with NPDES Permits. However, that permit does not require compliance inspection of those sites to determine whether the facility is complying with the terms of its NPDES general industrial storm water permit, which is the case under the Phase I NPDES MS4 Permit issued to the Los Angeles permittees.

In contrast, the NPDES MS4 Permit issued to the Los Angeles County permittees requires a comprehensive Industrial/Commercial Facilities Control Program that includes the following unique requirements:

- Inspection of all commercial/industrial facilities regardless of whether they are contributing a substantial pollutant loading to the MS4;
- Inspection of commercial facilities such as restaurants, automotive service facilities, retail gasoline and automotive dealerships;
- Inspections to confirm that Phase I facilities have current WDID numbers, SWPPPs, and effective BMP implementation; and
- Participation in enforcement actions for commercial/industrial facilities not in compliance.

In summary, there were no provisions for installation of trash receptacles in any of the non-designated USEPA regulated states. Inspection of high risk commercial/industrial dischargers was present in the Phase I NPDES MS4 permits, but none required the establishment of an ongoing program to comprehensively inspect and enforce storm water compliance at all commercial and industrial facilities as specified in the NPDES MS4 Permit issued to the Los Angeles County permittees.

If you have any questions or comments regarding the results of this survey please do not hesitate to contact me at 714.648.2725.

Sincerely,
URS Corporation

Julie Quinn

Julie Quinn, MESM
Water Quality & Water Resources Professional

Attachment A

Los Angeles County Phase I NDPES MS4 Permit Provisions:

Trash Receptacles - Part 4.F.5.c.3.

&

Industrial/Commercial Facilities Control Program - Part 4.C.

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001
(Amended on September 14, 2006 by Order R4-2006-0074
and
on August 9, 2007 by Order R4-2007-0042)

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

	Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC §

Attachment B

Phase I NDPES MS4 Permits

Alaska

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4 (the "Act"),

THE MUNICIPALITY OF ANCHORAGE and
THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
(hereinafter "Permittees")

are authorized to discharge from all municipal separate storm sewer system outfalls existing as of the effective date of this Permit, to receiving waters which include the Eklutna River, Edmonds Creek, Mirror Creek, Peters Creek, Fire Creek, Eagle River, Meadow Creek, South Fork Eagle River, Ship Creek, Chester Creek, North Fork Chester Creek, Middle Fork Chester Creek, South Fork Chester Creek, Fish Creek, Campbell Creek, North Fork Campbell Creek, South Fork Campbell Creek, Little Campbell Creek, Craig Creek, Furrow Creek, Hood Creek, Little Survival Creek, Rabbit Creek, Little Rabbit Creek, Potter Creek, Bird Creek, Mink Creek, Indian Creek, and Glacier Creek, their tributaries, associated lake systems, and wetlands located within the corporate limits of the Municipality of Anchorage in accordance with the conditions set forth herein.

This permit shall become effective

This permit and the authorazation to discharge shall expire at midnight,

Signed this day of

Director, Office of Water,Region 10
U.S.EnvironmentalProtectionAgency

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PART I -- APPLICABILITY

A. PERMIT AREA

This Permit covers all areas within the corporate boundary of the Municipality of Anchorage served by the municipal separate storm sewer system ("MS4") owned or operated by the Permittees.

B. DISCHARGES AUTHORIZED UNDER THIS PERMIT

This Permit authorizes the discharge of storm water to waters of the United States from: (1) all portions of the MS4 owned or operated by the Municipality of Anchorage; and (2) portions of the MS4 within State of Alaska highway rights-of-way located within the corporate boundaries of the Municipality of Anchorage that are owned or operated by the Alaska Department of Transportation and Public Facilities. This Permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, and storm water associated with industrial activity, provided that the commingled flows fall within at least one of the categories of covered non-storm water discharges set forth in Part I.D. of this Permit.

C. PERMITTEES' RESPONSIBILITIES

1. Each Permittee is individually responsible
2. or permit compliance:

    a. related to portions of the MS4 owned or operated solely by that Permittee; and

    b. where this Permit directs action or inaction by that named Permittee.

3. Each Permittee is jointly responsible for permit compliance:

    a. related to portions of the MS4 where operational or storm water management program implementation authority has been transferred from one Permittee to another in accordance with an interagency or inter-jurisdictional agreement;

    b. related to portions of the MS4 where Permittees jointly own or operate a portion of the MS4; and andassessments required
    c. related to the submission of plans, reports, strategies by Part II of this Permit.

D. LIMITATIONS ON PERMIT COVERAGE

1. Non-Storm Water. Discharges of non-storm water are not authorized by this Permit except where such discharges satisfy one of the following three conditions:

a. The non-storm water discharges are in compliance with a separate NPDES permit;

b. The non-storm water discharges result from a spill and:

(1) are the result of an Act of God where reasonable and prudent measures have been taken to minimize the impact of such discharge; or

(2) consist of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to minimize the impact of such discharges; or

c. The non-storm water discharges satisfy each of the following two conditions:

(1) The discharges consist of water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, or flows from emergency fire fighting activities; and

(2) The discharges are not sources of pollution to waters of the United States. A discharge will be considered a source of pollution to waters of the United States if it:

(a) causes excessive foam in the receiving waters or contains floating and/or settleable solids;

(b) contains oil or other substances in amounts sufficient to create a visible film or sheen on the receiving waters;

(c) contains substances that are in amounts sufficient to be unsightly or deleterious or which produce color, odor, or other conditions to such a degree as to create a nuisance;

(d) contains any substance, or combination of substances, in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants or humans;

(e) contains any substances or combination of substances in amounts that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly or otherwise impair the designated use;

(f) results in the discharge of sufficient quantities of pollutants that would cause a violation of water quality standards; or

(g) results in the degradation or loss of State-designated beneficial uses of receiving waters (unless authorized by the State in accordance with the State's Antidegradation policy).

2. Discharges Threatening Water Quality. This permit does not authorize storm water discharges that the Regional Administrator determines will cause, or have the reasonable potential to cause, violations of water quality standards.

PART II -- STORM WATER MANAGEMENT PROGRAM

Permittees shall develop and implement a Storm Water Management Program which shall include all controls necessary to reduce the discharge of pollutants from the MS4 to the maximum extent practicable ("MEP"). The Storm Water Management Program should employ best management practices ("BMPs"), control techniques, system design and engineering methods, and other appropriate provisions.

The Storm Water Management Program shall cover the term of this Permit and shall be updated as necessary, or as required by the Regional Administrator, to ensure compliance with Section 402(p)(3)(B) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B). Modifications to the Storm Water Management Program shall be made in accordance with Part IV.H. of this Permit. The Storm Water Management Program and all approved updates made in accordance with Part IV.J. of this Permit, are hereby incorporated by reference. All components, conditions and requirements of the Storm Water Management Program are enforceable as conditions of this Permit.

All plans requiring submittal for review and approval shall be submitted to the U.S. Environmental Protection Agency ("EPA") and the Alaska Department of Environmental Conservation ("ADEC") in accordance with the requirements identified in Part II.A. and the procedures identified in Part IV.K. of this Permit. EPA, in consultation with ADEC, shall have the right to disapprove, or require modifications for approval to plans, within sixty (60) days of receipt. If EPA does not disapprove such plans within sixty (60) days, they shall be deemed approved.

A. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

1. Structural and Source Control Measures. The MS4 and any storm water structural and source controls shall be operated in a manner to reduce the discharge of pollutants to the MEP.

    a. Maintenance Activities and Maintenance Schedule. Permittees shall operate the existing structural control maintenance programs as detailed in Sections 3 and 5A of Part 1 of the Permit Application, which shall include the following:

        (1) Inspection and Maintenance Schedules. Permittees shall revise Sections 5.8.1.1 and 5.8.1.2 of Part 2 of the Permit Application to include definitive inspection and maintenance schedules for all Permittee-owned structural controls. Inspection schedules shall include the frequency of routine inspections for all categories of structural controls, including wetlands used as storm water

treatment, as well as a description of the inspection criteria and procedures. Maintenance programs shall establish guidelines and criteria for maintenance activities that are to be implemented for Permittee-owned structural controls, as well as a description of the maintenance activities required, such as "disposal of sediment or removal of debris." Permittees shall identify and submit the locations of all permittee-owned structural controls to the Regional Administrator with the first annual report due twelve (12) months from the effective date of this permit. The inspection and maintenance schedule shall be submitted to the Regional Administrator with the second annual report due twenty-four (24) months from the effective date of this Permit.

(2) Inspection and Maintenance Record-keeping. Each Permittee shall maintain an internal record-keeping system to track inspections and maintenance for those portions of the MS4 operated by that Permittee. Inspection and maintenance activities shall be recorded on standardized reporting forms and shall be submitted annually in conjunction with the annual reports beginning with the second annual report due twenty-four (24) months from the effective date of this permit.

(3) Inspection and Maintenance Evaluations. Permittees shall conduct annual evaluations to assess the appropriateness of the inspection and maintenance schedule to: (1) ensure that controls are operating in a manner that reduces pollutants to the MEP; and (2) assist in setting priorities for program development. Modifications to the inspection and maintenance schedule shall be submitted as part of the annual report required by Part IV.G. of this Permit.

(4) Structural and Source Controls Effectiveness Assessments and Analyses. Permittees shall continue to implement and refine the existing program to evaluate the effectiveness of structural and source controls. Information gathered and evaluated through this program shall be used in: estimating the effectiveness of controls; selecting, designing, and maintaining controls; and providing valuable information to management in land use planning and decision-making.

(a) During the five year term of this Permit, Permittees shall complete (at a minimum) the following structural and source control assessment projects which are further described in Appendix "A":

i) Oil and Grit Separator BMP Assessment

ii) Sedimentation Basin Assessment

iii) Storm Water Treatment in Wetlands Assessment

iv) Assessment of Non-Structural Source Controls to include increased use of Greenbelts and Pervious Surfaces

v) Fecal Coliform Bacteriological Impacts Assessment

vi) Stream Sediment - Characterization

(b) Schedule and Scope of Assessments. Permittees shall provide a proposed schedule and detailed overview of the scope of all assessments required in Part II.A.1.a.(4) for approval to the Regional Administrator within 90 days after the effective date of this Permit. This schedule shall be a topic for discussion during the first annual meeting as set forth in Part II.A.7. Assessments will be initiated according to the approved schedule and scope, with incorporation of modifications as set forth in writing by the Regional Administrator.

(c) Reporting Requirements. Permittees shall submit completed assessment reports to the Regional Administrator in accordance with the approved schedule required in Part II.A.1.a.(4)(b).

b. Areas of New Development and Significant Redevelopment. The Municipality of Anchorage shall limit to the MEP the discharge of pollutants in storm water resulting from new development and from redeveloped areas after construction is completed. The primary emphasis shall be on prevention, through planned development, and secondarily through storm water treatment via required implementation of BMPs. In accordance with this program area:

(1) As part of its revisions to the Anchorage Bowl Comprehensive Development Plan the Municipality of Anchorage shall evaluate new land use policies to reduce urban runoff pollution to the MEP. Policies to be evaluated shall include, but are not limited to:

(a) Establishment of incentive plans to encourage preservation of at least 25% (or a lesser percentage based on site limitations) of native vegetation on developing acreage to aid in on-site treatment of runoff water.

(b) Establishment of minimum nondisturbance and structural setback requirements from lakes for developing acreage together with incentive programs for existing property owners who voluntarily elect to dedicate nondisturbance easements adjacent to lakes.

(c) Establishment of an incentive plan to encourage dedicated setbacks from waterbodies of at least 50 feet in new subdivisions within the Municipality, unless otherwise specified as greater in the Anchorage Wetlands Management Plan. The Municipality of Anchorage shall also evaluate the establishment of an incentive plan to encourage existing property owners to dedicate setbacks from waterbodies or otherwise reduce adverse impacts of storm water to waterbodies.

(d) Requiring permitting and review of land-clearing activities to retain as much pervious surface area as possible.

(2) The Municipality of Anchorage shall establish an Open Space Plan for the purpose of guiding future growth and development in the Municipality while taking into consideration storm water impacts. The Open Space Plan shall be adopted and submitted to the Regional Administrator within twenty-four (24) months after the effective date of this Permit.

(3) The Municipality of Anchorage shall submit a general schedule and list of actions describing the procedures under which the elements set forth in Part II.A.1.b.(1) of this Permit will be considered during the Anchorage Bowl Comprehensive Development Plan revision process to the Regional Administrator no later than 90 days after the effective date of this Permit.

(4) The Municipality of Anchorage shall adopt a minimum of two of the elements set forth in Part II.A.1.b.(1), or equivalent incentive programs and shall report results to the Regional Administrator with the annual report in the year coinciding with completion of the Anchorage Bowl Comprehensive Plan revision. Extensions or modifications to this requirement can be requested in writing to the Regional Administrator in conjunction with the annual reports.

(5) The policies, development regulations and permitting requirements adopted and implemented by the Municipality of Anchorage shall be no less stringent than policies and management strategies of the Anchorage Wetlands Management Plan.

(6) The Municipality of Anchorage shall ensure that its local ordinances and design criteria are consistent with applicable State and Federal regulations, as well as with findings resulting from the assessments required in Part II.A.1.a.(4)(a).

(7) New Develoment and Significant Redevelopment Program Requirements. To satisfy the requirements of this program, the Municipality of Anchorage shall comply with the following elements for all new development and significant redevelopment within the Municipal boundaries defined by this permit.

(a) The MOA shall develop and submit project review and approval procedures, for new development and significant redevelopment, as part of the first annual report required by Part IV.G. of this Permit. The Municipality of Anchorage shall begin implementation of these project review and approval procedures for new development and significant redevelopment within twelve (12) months of the effective date of this Permit. Project review and approval procedures shall include:

i) procedures for incorporating and addressing post-construction storm water quality concerns as part of the permitting process for new development and significant redevelopment,

ii) a description of review standards (Permittees may review ADEC standards and modify in cooperation with ADEC, as appropriate) and a description of the site development review process, and

iii) minimum design criteria for all BMPs.

(b) The Municipality of Anchorage shall develop an inspection and enforcement strategy for new development and significant redevelopment (private and public) to ensure that all specified BMPs are implemented in accordance with the approved plan. The Municipality of Anchorage shall submit, for review and approval, an inspection and enforcement strategy and procedures as part of the first annual report due twelve (12) months after the effective date of this Permit. Implementation shall begin within sixty (60) days after approval. An annual summary of activities shall be submitted as part of the annual report beginning with the second annual report due twenty-four (24) months after the effective date of this permit.

(c) The MOA shall develop and provide staff training for personnel responsible for plan review and inspection of development sites. DOT&PF shall also develop and provide staff training for personnel responsible for plan review and inspection of DOT&PF development. Training shall include information on BMPs, their applications, and effectiveness. Training shall begin within two (2) years from the effective date of this permit. Summaries of the training (materials, dates, and attendees) shall be submitted as part of the annual reports beginning with the second annual report due twenty-four (24) months of the effective date of this permit.

(d) The MOA shall provide public education to developers, landowners, and other potentially affected parties. Public education shall also target existing property owners to increase awareness on basic land use regulations within the Municipality of Anchorage. Summaries of the training (materials, dates, and attendees) shall be submitted as part of the annual reports beginning with the second annual report due twenty-four (24) months of the effective date of this permit.

c. Roadways. Permittees shall operate and maintain public streets, roads, highways, and parking areas in a manner to reduce to the MEP the impact on receiving waters of discharges from the MS4. Permittees shall minimize to the MEP the discharge of pollutants, including those pollutants related to street sweeping, snow removal, deicing or sanding activities. Permittees shall continue their current practices of road, street, and highway maintenance, with improvements and modifications as required to reduce the pollutant load to the MEP. In addition, a program relating to the application of substances used in deicing operations, and the management of snow disposal areas shall be implemented. In accordance with this program area:

(1) Permittees shall examine, assess, and implement procedures of deicing to ensure that there are no adverse impacts on water quality. Permittees shall submit existing studies of alternative deicing agents to EPA and ADEC no later than 90 days from the effective date of this Permit. Permittees shall complete and submit to EPA and ADEC studies of deicing agents under consideration, as further described in Appendix "A," within twelve (12) months of the effective date of this Permit. Investigative results and a management and monitoring plan that addresses deicer application areas, application and dilution rates of sand and chemical deicers,

disposition of snow associated with removal efforts, recommended BMPs designed to reduce discharges to receiving waters to the MEP, and monitoring to determine BMP effectiveness shall be submitted to EPA for review and approval a minimum of thirty (30) days prior to further use of chemical deicers. This management and monitoring plan shall be adhered to by both MOA and DOT&PF and updated as information becomes available in subsequent monitoring efforts. Updates to the deicing management and monitoring plan shall be submitted to EPA with the annual reports as required in Part IV.G. of this Permit.

(2) Permittees shall examine, assess, and implement sanding procedures to ensure runoff is reduced to the MEP. Permittees shall establish a sand storage, application, and monitoring program to include volume balance and particulate analysis of material added to municipality streets. Permittees shall submit plans for street sanding and sweeping practices that reflect results of recent studies. Existing street sediment analysis shall be submitted to the Regional Administrator no later than 90 days from the effective date of this Permit. Permittees shall complete and submit to EPA and ADEC additional studies of street sediment impacts, further described in Appendix "A," within four (4) years of the effective date of this Permit. Program updates and enhancements shall be submitted with the annual reports as required in Part IV.G. of this Permit;

(3) By the end of the first year of the permit term, Permittees shall develop (or update) and implement a snow disposal policy that establishes requirements for all publicly-owned snow disposal sites. This snow disposal policy shall require the use of BMPs and an inspection and maintenance schedule and shall be part of Permittees' Storm Water Management Program.

(4) Permittees shall not establish any new snow disposal site prior to providing an opportunity for public review and submittal of plan for review and approval from ADEC. Any new snow disposal site plan shall include controls to address the migration of meltwater to reduce the discharge of pollutants to the MEP to surface waters for the purpose of this permit.

d. Floodplain Management. The Municipality of Anchorage shall ensure that construction activities and development located in floodplain areas, and flood control devices be designed to prevent violations of Alaska State Water Quality Standards to the MEP. To satisfy this program area, the MOA shall comply with the following elements:

(1) All development proposed within floodplains shall be assessed by the Municipality of Anchorage during the Flood Hazard Review process to ensure potential impacts on the water quality of receiving water bodies has been properly addressed. If a use, structure, or activity is proposed in a floodway or floodway fringe area, the MOA shall prohibit that proposal as stipulated in AMC Section 21.60.060.

(2) Information regarding impervious surface area located in the floodplain corridors should be used (in conjunction with other environmental indicators) as a planning tool. The Municipality of Anchorage shall collect data on the percentage of impervious surface area located in floodplain boundaries for all development proposed after the effective date of this Permit. The Municipality shall collect similar data for existing development in floodplain areas, in accordance with the mapping program and other activities designed to improve water quality, as detailed in Appendix "A."

(3) Critical unmapped areas shall be prioritized by the Municipality of Anchorage with an emphasis on developed and developing acreage and shall be submitted to the Federal Emergency Management Agency ("FEMA") for designation of flood hazard boundaries. Results shall be submitted to EPA with the second annual report required by Part IV.G. of this Permit.

(4) The Municipality of Anchorage shall determine the status of compliance with the mandatory (five years or less) review of existing flood hazard maps as required by Chapter 21.60.020(B) of the Anchorage Municipal Code.

e. Pesticide, Herbicide, and Fertilizer Application. Permittees shall implement the following program to control the discharge of pesticides, fertilizers, and herbicides to the MS4:

(1) Permittees shall develop a pesticide screening program which, at a minimum, shall incorporate the following elements:

(a) Permittees shall evaluate the use of pesticides, herbicides, and fertilizers in Anchorage by compiling readily available information from sources including, but not limited to, the Cooperative Extension Service, ADEC's pesticide program, primary retail and wholesale outlet sources, and commercial applicators. The end result of this effort shall be to determine the types of products recommended and used in the Anchorage area. The information gathered through this effort shall be provided to the Regional

Administrator and ADEC as part of the first annual report required by Part IV.G. of this Permit.

(b) Based on the above evaluation, Permittees shall develop and implement a field screening assessment design for pesticides detection and evaluation as per Appendix "A" of this Permit. Collected information shall be included in the annual reports required by Part IV.G. of this Permit.

(2) Based on the information collected in year one (1) of this Permit, Permittees shall begin implementation of an ongoing education program in year two (2) of this Permit for promoting the proper use of pesticides, herbicides, and fertilizers with the overall goal of reducing, to the MEP, the discharges of such to the MS4. Such a program may incorporate existing materials such as those developed by the University of Alaska Cooperative Extension Service and ADEC. Permittees shall submit copies of all materials distributed as part of the public education program with the second annual report required by Part IV.G. of this Permit. Additional materials distributed thereafter shall be included in the annual reports.

(3) Based on the results of the field screening assessment and the available local information, Permittees shall develop and implement a plan for the on-going control of pesticide, herbicide, and fertilizer use within one year of completion of the field screening assessment. The plan shall include re-evaluation of the public education program with appropriate revisions. Permittees shall identify areas for which additional testing may be warranted and shall take all steps necessary for timely testing and appropriate implementation. The plan shall include the measures to be used for assessing program results. Actions taken under this condition shall be submitted as part of the annual report required by Part IV.G. of this Permit.

2. Illicit Discharges. Permittees shall implement a program to detect and eliminate illicit discharges into the MS4. Details of the program are to be incorporated into the annual report required under Part IV.G. of this Permit. The program shall include the following program areas:

a. Prevention. Permittees shall implement an ongoing program to detect and remove (or require the discharger to the MS4 to obtain a separate NPDES permit for) illicit discharges into the MS4.

(1) Permittees shall effectively prohibit non-storm water discharges (except those identified in the following subsection), to the MS4,

including all used motor vehicle fluids and household chemical wastes, by enforcement of Municipal ordinances.

(2) Unless identified by either Permittees or the Regional Administrator as sources of pollutants to waters of the United States, the following non-storm water discharges need not be addressed by Permittees' Illicit Discharge and Illegal Disposal Program: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

(3) Discharges and flows from emergency fire fighting activities shall not be addressed by Permittees' Illicit Discharge Program unless identified by either Permittees or the Regional Administrator as sources of pollutants to waters of the United States.

b. Ongoing field screening. Permittees shall maintain an ongoing program to screen the MS4 for illicit discharges, to include, at a minimum, the following program elements:

(1) Permittees shall conduct a visual inspection of all major outfalls during dry weather periods in years two (2) and five (5) of this Permit term. Permittees shall submit an inspection plan, listing the outfalls and inspections criteria, to the Regional Administrator for review and approval within 90 days of the effective date of this Permit. Permittees shall submit documentation regarding protocols and parameters of the field screening as part of the first annual report required by Part IV.G. of this Permit.

(2) Permittees shall conduct chemical analysis of the dry weather flow for those outfalls identified as likely to contribute pollutants to the storm drain system in accordance with the monitoring plan outlined in Appendix "A.". Chemical analysis shall be prioritized based on information obtained through visual inspections, citizen complaints, bioassessment monitoring, and/or previous monitoring results. Permittees shall submit results of this monitoring to the Regional Administrator and ADEC with the annual reports required in Part IV.G. of this Permit.

c. Investigation of suspected illicit discharges. Permittees shall implement

this program area to locate and eliminate suspected sources of illicit discharges to the MS4.

(1) Permittees shall use the results of existing and on-going dry-weather screening and citizen reports as the primary basis for locating illicit discharges.

(2) The Municipality of Anchorage shall evaluate and properly address all citizen and agency reports of illicit discharges , as well as other information made available to the Municipality.

(3) Permittees shall perform field testing to identify and isolate sources of suspected illicit dischargesin a timely manner.

(4) Permitttees shall issue a notice of violation, when appropriate, to any party found responsible for the illicit discharge, connection or disposal.

(5) Permittees shall require an expeditious compliance schedule for the elimination of any illicit discharge by any party responsible for the illicit discharge.

(6) Permittees shall submit a copy of their procedures for the investigation of suspected illicit discharges with the first annual report required by Part IV.G. of this Permit.

(7) Permittees shall investigate the 45 outfalls identified in Table 5-4 of Section 5.9.3.1 of Part II of the Permit Application by the end of the second year of the Permit term. Conclusions and follow-up action resulting from these investigations shall be submitted to the Regional Administrator with the annual report due at the end of year two of the Permit term.

d. Procedures to Prevent, Contain and Respond to Spills. Permittees shall finalize the Emergency Response Program identified in Section 5B of Part 1 of the Permit Application in order to formalize the spill response roles of state and municipal departments and to provide a coordinated response to spills that may discharge into the MS4. Final program plans shall be completed within twenty-four (24) months of the effective date of this Permit and shall be submitted with the second annual report required by Part IV.G. of this Permit.

e. Public Reporting of Illicit Discharges. Permittees shall promote and facilitate public reporting of the presence of illicit discharges to the MS4.

(1) Permittees shall establish and operate a central phone number (i.e.,

a hotline number) for public reporting of illicit dischargesas stated in Section 5.9.1.2 of Part 2 of the Permit Application. Permittees shall establish procedures that govern the appropriate follow-up response to calls received through the hotline. The establishment and operation of a central phone number (i.e., a hotline number) shall be completed within twelve (12) months from the effective date of this Permit. Permittees shall submit procedures governing the appropriate follow-up response to calls received through the hotline to the Regional Administrator with the first annual report required by Part IV.G. of this Permit.

(2) Permittees shall establish and maintain a log that contains of a list of all reports, date of report, follow-up action taken, and results. Reports shall include all suspected illicit discharges, public and otherwise, requiring investigation by Part II.A.2.(c). A copy of this log shall be submitted with the annual reports required by Part IV.G. of this Permit.

(3) Permittees shall promote public reporting of illicit discharges through brochures and other means. Permittees shall submit program plans for the promotion of public reporting of illicit discharges with the first annual report required by Part IV.G. of this Permit.

f. Educational and Public Information Activities. Permittees shall continue to implement and develop additional program elements where necessary to inform and educate the public on proper management and disposal of used oil, other automotive fluids, and household chemicals. Programs such as Free Dump Day are encouraged. Permittees shall develop a coordinated business and industry education program for implementation in the second year of this permit term, and continuing thereafter, to control illicit discharges as stated in Section 5.9.1.2 of Part 2 of the Permit Application.

3. Industrial and High Risk Runoff Program. Permittees shall implement a program to identify, monitor and control pollutants in storm water discharges to the MS4 from: municipal landfills (open and closed); hazardous waste recovery, treatment, storage, and disposal facilities; privately-owned snow disposal sites; facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11023; and any other industrial facility that either the Permittees or the Regional Administrator determines is contributing a substantial pollutant loading to the MS4. The program shall include the following program procedures:

a. Facility Identification: Permittees shall complete an identification of industrial and high risk runoff facilities and develop procedures to map and record details of the facilities. Procedures to identify, map, and record

the high risk facilities shall be completed, and implementation commenced, within three (3) years of the effective date of this Permit. Mapping of all identified facilities shall be completed by the end of this permit term.

b. Outreach. Permittees shall develop (or incorporate existing) educational and outreach materials concerning storm water runoff management at targeted industrial categories including, but not limited to: automotive repair shops, gas stations, snow disposal sites, nurseries and greenhouses, and floatplane and other transportation facilities. The development of educational materials (if necessary), and the distribution of such materials to the targeted industries shall be achieved within two years of the effective date of this Permit. All information developed and/or distributed shall be included in the annual report required by Part IV.G. of this Permit.

c. Investigation of Wrongful Discharge. Permittees shall develop procedures to govern the investigation of the identified facilities suspected of contributing pollutants to the MS4, including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. Procedures governing the investigation of identified facilities shall be submitted as part of the first and second annual reports required by Part IV.G. of this Permit.

Permittees shall work with such facilities to gain voluntary compliance in reducing pollutants to the MEP. Facilities that fail to cooperate and continue to contribute to the pollutant load or operate in violation of NPDES discharge permits shall be reported to the permitting agency for further action. Permittees shall make a good faith effort to track referrals to ensure appropriate measures are taken. Any activity arising from this program element shall be reported in the annual report required by Part IV.G. of this Permit for the year in which the activity took place.

4. Construction Site Runoff Program. Permittees shall implement a construction site runoff program to reduce, to the MEP, the discharge of pollutants from public and private construction sites. The program shall incorporate the following elements:

a. Storm Water Quality Pollution Prevention Plans. The Municipality of Anchorage shall require property owners and developers to prepare and submit for approval Storm Water Pollution Prevention Plans for construction within the boundaries of the Municipality of Anchorage as of the effective date of this permit. Permittees shall implement procedures for site plan review that incorporate consideration of potential water quality impacts from construction sites within the Municipality of Anchorage.

(1) Approved Storm Water Pollution Prevention Plans shall require appropriate BMPs to reduce runoff impacts to waterbodies to the MEP and shall contain provisions addressing erosion and sediment control, material containment, spill prevention, and other areas as applicable.

(2) Storm Water Pollution Prevention Plans for construction sites shall be subject to review and approval by the Municipality of Anchorage.

(3) The Municipality of Anchorage shall develop Storm Water Pollution Prevention Plan review and approval procedures and shall submit such procedures to the Regional Administrator as part of the first annual report required by Part IV.G. of this Permit. This submittal shall include:

(a) a description of the Storm Water Quality Pollution Prevention Plan review and approval process;

(b) written criteria and standards for plan approval; and

(c) a description of periodic staff training on control technologies and on the review and approval process.

b. Structural and Non-structural BMPs. Permittees shall maintain and update existing requirements for the selection, implementation, installation, and maintenance of construction BMPs in years four (4) and five (5) of this permit term. The criteria for BMP selection and design shall consider such factors as project type, size, duration, soil type, and proximity to waters of the United States. BMP requirements, and subsequent modifications, shall be submitted as part of the annual reports required in Part IV.G. of this Permit.

c. Procedures for Site Inspection and Enforcement. Permittees shall implement procedures for inspection and enforcement of control measures at construction sites.

(1) Permittees shall submit a description of the procedures and strategies for conducting site inspections and enforcement for review and approvalwith the first annual report required by Part IV.G. of this Permit. These procedures and strategies shall include:

(a) inspections to ensure BMPs are being installed and maintained according to the approved plan and that all pollution sources have been addressed;

(b) inspection strategy detailing frequency, prioritization, and follow-up;

(c) plans for training of inspection and enforcement staff; and
(d) enforcement provisions to insure compliance with requirements for operation and maintenance of BMPs.

(2) Permittees shall commence implementation of the site inspections and enforcement procedures within twenty-four (24) months of the effective date of this Permit.

d. Training and Education for Construction Site Operators. Permittees shall develop a training program for construction site operators and developers. Permittees shall submit a description of this training program with the first annual report required by Part IV.G. of this Permit. Implementation of the training program shall begin within twenty-four (24) months of the effective date of this Permit. Permittees shall ensure that:

(1) Such training is provided at a minimum of once per year; and

(2) Attendance at such training is encouraged through incentive programs or mandatory attendance requirements.

e. Permittees shall notify construction site owners operating sites greater than 5 acres in area of their additional responsibilities under the NPDES permitting program for construction site runoff.

5. Public Education Programs: Permittees shall employ educational and outreach opportunities to reduce, to the MEP, impacts to the MS4 from non-point source inputs caused by human activity.

a. Permittees shall maintain public education activities with regard to storm water pollution prevention as required by Parts II.A.1.b., II.A.1.e., II.A.2., II.A.3., and II.A.4. of this Permit.

b. All public education and outreach materials distributed pursuant to this permit shall contain easily understood graphics and narratives converted from technical information on Anchorage area water quality.

c. Permittees shall establish an ongoing, broad-based technical advisory board to assist with providing information to public forums on issues related to storm water pollution and the monitoring program. The technical advisory board shall be comprised of members representing local, state, and federal agencies, non-profit interests, local citizens, and

private experts and shall be established and submitted to the Regional Administrator within twelve (12) months of the effective date of this permit.

6. Monitoring Programs. Permittees shall establish a comprehensive monitoring program to: (1) assess and characterize aquatic resources, water quality problems and sources, (2) assist in problem prioritization and resource targeting, and (3) assist in evaluating the effectiveness of specific controls as well as the overall Storm Water Management Program. Permittees shall establish a set of environmental indicators that will require tracking and monitoring to address storm water impacts to the MS4 that are further described, with corresponding schedules, in Appendix "A" of this permit. Appendix "A" shall be submitted annually for review and approval and shall be included for discussion during the annual coordination meetings required in Part II.A.7 of this Permit. Appendix "A"shall, at a minimum, consist of the following:

   a. Structural and Source Control Assessments. Assessments to be completed during this Permit term are identified in Part II.A.1.a.(4)(a) of this Permit and Appendix "A."

   b. Watershed Mapping. Permittees shall map the Campbell, Chester, Rabbit, and Ship Creek watersheds during this Permit term. Details of the mapping program are contained in Appendix "A."

   c. Sand and Deicer Impacts. Permittees shall continue to investigate the impacts of street sanding by performing a mass balance of street sediment, analysis of the street sediment adsorbed pollutants, and an analysis of commercial lot impacts from sediment buildup and runoff as identified in Part II.A.1.c.(2) of this Permit and Appendix "A." Permittees shall perform an analysis of the potential impacts of deicing agents in accordance with Part II.A.1.c.(1) of this Permit and Appendix "A."

   d. Pesticides, Herbicides, and Fertilizers. Field screening and appropriate follow-up investigation shall take place as identified in Part II.A.1.e.(1) - (3) of this Permit and Appendix "A."

   e. Illicit Discharges. Permittees shall perform dry weather field screening and appropriate investigative monitoring of outfalls as required in Part II.A.2.b. and Part II.A.2.c. of this Permit and Appendix "A."

   f. Receiving Water Monitoring. Permittees shall conduct receiving water monitoring to obtain flow and event mean concentrations of fecal coliform, copper, lead, zinc, hardness, total suspended solids, turbidity, temperature, and pH in the Campbell, Chester, Rabbit, and Ship Creek watersheds. Permittees shall conduct a macroinvertebrate assessment in the Campbell, Chester, Rabbit, and Ship watersheds, and in at least three

(3) additional Anchorage streams for which significant future development is anticipated. Details of these monitoring plans are included in Appendix "A."

g. Dry Weather and Wet Weather Periods. Permittees shall review the nationally recognized definitions for dry and wet weather periods and submit geographically appropriate modifications to the Regional Administrator for review and approval within six (6) months after the effective date of this permit.

7. Programmatic Coordination. Permittees shall conduct an annual meeting to coordinate their implementation of the Storm Water Management Program within their respective agencies as well as with other municipal, state, and federal agencies and groups who undertake activities that may impact, contribute to, or in some way overlap Permittees' storm water management efforts. The agenda for these annual meetings shall be comprised of topics of interest to the Permittees and the Anchorage Office of the EPA. Meetings shall be held approximately two months following submission of each annual report. The first meeting shall serve as an orientation and planning effort and shall take place no later than 90 days after the effective date of this Permit. The logistics for this first meeting will be handled by EPA (Permittees shall be active participants); all subsequent meetings will be organized by the Permittees. Such elements that Permittees shall consider for coordination efforts include public education relating to storm water management, monitoring activities and results, the application of BMPs, data management using such techniques as GIS applications, staff and targeted training, enforcement, capital project support, and watershed planning. Permittees shall include a summary of the previous year's efforts and annual meeting in the annual report required by Part IV.G of this Permit. Information which Permittees shall consider for inclusion in the report of the annual meeting are the names and affiliations of those in attendance, the dates and times of meetings held to coordinate consistent approaches, and a comprehensive summary of the meetings.

B. DEADLINES FOR PROGRAM COMPLIANCE

Permittees shall implement the Storm Water Management Program in accordance with the compliance schedule detailed in Part III of this Permit.

C. LEGAL AUTHORITY

Each Permittee shall ensure that it retains legal authority to control discharges to and from those portions of the MS4 over which it has jurisdiction. This legal authority may be established by statute, ordinance, permit, contract, or order (or any combination thereof), and shall enable each Permittee to:

1. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity and the quality of storm water discharged from sites of industrial activity;

2. prohibit illicit discharges to the MS4;

3. control the discharge to the MS4 of spills, dumping or disposal of materials other than storm water;

4. control through an interagency agreement between Permittees the contribution of pollutants from one portion of the MS4 to other portions of the MS4;

5. require compliance with conditions in ordinances, permits, contracts, or orders; and

6. carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition on illicit discharges to the MS4.

D. STORM WATER MANAGEMENT PROGRAM RESOURCES

Permittees shall provide adequate finances, staff, equipment, and support capabilities to implement their activities under the Storm Water Management Program.

E. TRANSFER OF OWNERSHIP, OPERATIONAL AUTHORITY, OR RESPONSIBILITY FOR STORM WATER MANAGEMENT PROGRAM IMPLEMENTATION

Permittees shall implement the Storm Water Management Program on all new areas added to the MS4 as expeditiously as practicable, but not later than three years from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately. Prior to land annexation, Permittees shall include a schedule for extending the Storm Water Management Program to the annexed areas in the Storm Water Management Program. At least 30 days prior to transfer of operational authority or responsibility for Storm Water Management Program implementation, Permittees shall prepare a schedule for transfer of responsibility for Storm Water Management Program implementation on the effected portions of the MS4.

F. RETENTION OF STORM WATER MANAGEMENT PROGRAM RECORDS

Permittees shall retain the Storm Water Management Program developed in accordance with Parts II and III of this Permit for at least 3 years after coverage under this Permit terminates.

PART III -- SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE

Reports of compliance or noncompliance with interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement
Table III.A. Schedules for Implementation and Compliance

Storm Water Management Program Component Activity	Compliance Date
1. Structural and Source Control	
a. Maintenance Activities and Maintenance Schedule	
- Identify locations of structural controls	-12 months after effective permit date
- Revision of Application Sections 5.8.1.1. & 5.8.1.2, and program development	-24 months after effective permit date
- Submit Inspection and Maintenance records	-with annual reports
- Effectiveness Assessments of Structural and Source Controls	-per schedule in Appendix "A"
b. Areas of New Development and Significant Redevelopment	
- Comprehensive Master Planning Process	-90 days after effective permit date
- Resulting actions	-Concurrent with Final Comprehensive Plan
- Open Space Plan	-24 months after effective permit date
- Project Review and Approval Procedures	-12 months after effective permit date
- Implementation of Approved Procedures Post-Construction Inspection & Enforcememt Strategy	-12 months after effective permit date
- Submit Strategy for Review & Approval	-60 days after approval
- Implement Strategy	
- Submit Summaries of inspections &	
- enforcement	-annually
c. Roadways De-icing	
- Complete/Submit existing studies/management plan	-90 days after effective permit date -12 months after effective permit date (plan prior to chemical deicing)

- Submit New Assessments Street Sanding -90 days after effective permit date
- Complete/Submit existing studies -24 months after effective permit date
- Submit New Assessments Snow Disposal Policy -12 months after effective permit date

d. Flood Management
- Collect data on impervious surface area -begin after effective permit date according to schedule in Appendix "A"
- Identify critical unmapped areas/submit to FEMA & results to EPA -24 months after effective permit date

e. Pesticide, Herbicide, and Fertilizer Application
- Study of Use & Application -12 months after effective permit date
- Field Screening -contingent on Use Study per schedule in Appendix "A"
- Development and Implementation of Public Education Program -begin in year 2 of the permit term & continue throughout permit term
- Submit Long-term plan for on-going control of Pesticides -12 months after completion of field screening

2. Illicit Discharge Program

a. Prevention of illicit connections and discharges and improper disposal -Ongoing throughout the permit term

b. Ongoing field screening
- Protocols of Screening Process -90 days after effective permit date
- Visual Screening -in years 2 and 5 of permit term

c. Investigation of Suspected Illicit Discharges
- Procedures Submitted -12 months after effective permit date
- Investigate 45 outfalls identified in Permit Application -24 months after effective permit date

d. Procedures to Prevent, Contain and Respond to Spills
- Procedures Submitted -24 months after effective permit date

e. Public Reporting of Illicit Discharges, Illicit Connections, and Improper Disposal
- Establish Hotline & submit procedures for Follow-up -12 months after effective permit date
- Maintain & submit Log of Activity & Follow- up -submit with annual reports -beginning in year 2 & continuing thereafter

f. Develop/Implement Educational Program
- Ongoing throughout the permit term

3. Industrial and High Risk Runoff

a. Program Development
- Identify & Map Facilities — -Years 3, 4, & 5 of the permit term

b. Educational Material
-Develop Materials & Make Available — -24 months after effective permit date

c. Investigation of Suspected Discharge
- Develop & Submit Procedures — -Years 1 & 2 of permit term with annual reports

- Summarize Investigative Activities & Referral Follow-up — -Submit with annual reports throughout permit term

4. Construction Site Runoff

a. Program Development
- Project Review & Approval Procedures — -12 months after effective permit date (continue existing procedures - effective immediately)

b. BMP Selection Requirements
- Update BMP requirements — -Years 4 & 5 of permit term

c. Site Inspection and Enforcement Procedures
- Submittal of Strategy — -12 months after effective permit date
- Site Inspection Procedure Implementation — -24 months after effective permit date

d. Training and Education for Site Operators
- Procedures Submitted — -12 months after effective permit date
- Implementation — -24 months after effective permit date

5. Public Participation and Education

Continued Public Education Efforts — -thoughout permit term

c. Technical Advisory Board — -12 months after effective permit date

- 12 months after effective permit date

6. Monitoring

a. Structural & Source Control Assessments — -All monitoring shall take place in accordiance

	with schedules included in Appendix "A" which is to be submitted annually for review and approval
b. Watershed Mapping	
c. Roadway Sand & Deicer Analyses	
d. Pesticides, Herbicides, & Fertilizers	
e. Illicit Discharges	
f. Receiving Water Monitoring - Chemical monitoring in four priority watersheds to obtain event mean concentrations - Macroinvertebrate monitoring in four priority watersheds plus 3 watersheds incurring development pressure	
g. - Dry & Wet Weather Definitions	-six (6) months after effective date of permit
7. Programmatic Coordination Conduct annual meetings	-annually, beginning 90 days after effective permit date

PART IV -- ADDITIONAL PERMIT CONDITIONS

A. STANDARD PERMIT CONDITIONS

1. Duty to comply. Permittees must comply with all conditions of this Permit. Any Permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for Permit termination, revocation and reissuance, or modification; or denial of a Permit renewal application.

    a. Permittees shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the Permit has not yet been modified to incorporate the requirement.

    b. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $27,500 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or

imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Clean Water Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

c. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $27,500. Penalties for Class II violations are not to exceed $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $137,500.

2. Duty to reapply. If Permittees wish to continue an activity regulated by this Permit after the expiration date of this Permit, Permittees must apply for and obtain a new permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

4. Duty to mitigate. Permittees shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper operation and maintenance. Permittees shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Permittees to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by Permittees only when the operation is necessary to achieve compliance with the conditions of the Permit.

6. Permit actions. This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by Permittees for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

7. Property rights. This Permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to provide information. Permittees shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit or to determine compliance with this Permit. Permittees shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this Permit.

9. Inspection and entry. Permittees shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

    a. Enter upon Permittees' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;

    b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;

    c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and

    d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

10. Monitoring and records.

    a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

    b. Except for records of monitoring information required by this Permit related to Permittees' sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), Permittees shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the Permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

11. Signatory requirement.

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See 40 CFR § 122.22)

b. The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

12. Reporting requirements.

a. Planned changes. Permittees shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or

additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the Permit, nor to notification requirements under 40 CFR § 122.42(a)(1).

(3) The alteration or addition results in a significant change in Permittees' sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

b. Anticipated noncompliance. Permittees shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. Transfers. This Permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the Permit to change the name of Permittees and incorporate such other requirements as may be necessary under the Clean Water Act. (See 40 CFR § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this Permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report ("DMR") or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If Permittees monitors any pollutant more frequently than required by the Permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the Permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional

Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the Permit.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 days following each schedule date.

f. Twenty-four hour reporting.

(1) Permittees shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time Permittees become aware of the circumstances. A written submission shall also be provided within 5 days of the time Permittees become aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the Permit.

(b) Any upset which exceeds any effluent limitation in the Permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the Permit to be reported within 24 hours. (See 40 CFR § 122.44(g)).

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph (IV)(A)(12)(f)(2) of this Permit if the oral report has been received within 24 hours.

g. Other noncompliance. Permittees shall report all instances of noncompliance not reported under paragraphs (IV)(A)(12)(d-f) of this Permit, at the time monitoring reports are submitted. The reports shall

contain the information listed in paragraph (IV)(A)(12)(f) of this Permit.

h. Other information. Where Permittees become aware that Permittees failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, Permittees shall promptly submit such facts or information.

13. Bypass--

a. Definitions.

(1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. Permittees may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (IV)(A)(13)(c) & (d) of this Permit.

c. Notice--

(1) Anticipated bypass. If Permittees know in advance of the need for a bypass, Permittees shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. Permittees shall submit notice of an unanticipated bypass as required in paragraph (IV)(A)(12)(f) of this Permit (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a Permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) Permittees submitted notices as required under paragraph (IV)(A)(13)(c) of this Permit.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph (IV)(A)(13)(d)(1) of this Permit.

14. Upset--

a. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of Permittees. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (IV)(A)(14)(c) of this Permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that Permittees can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) Permittees submitted notice of the upset as required in paragraph (IV)(A)(12)(f) of this Permit (24 hour notice); and

(4) Permittees complied with any remedial measures required under paragraph (IV)(A)(4) of this Permit.

d. Burden of proof. In any enforcement proceeding Permittees seeking to establish the occurrence of an upset has the burden of proof.

B. SEVERABILITY

The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit shall not be affected thereby.

C. STATE/ENVIRONMENTAL LAWS

1. Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve Permittees from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act, 33 U.S.C. § 1370.

2. Nothing in this Permit shall be construed to relieve Permittees of their obligation to comply in full with all state and federal environmental statutes and regulations.

D. ADDRESSES:

Submittals required by this Permit shall be made to the following addresses:

EPA REGIONAL OFFICE:	United States Environmental Protection Agency 222 W. 7th Ave., Box 19 Anchorage, Alaska 99513-7588 Attn: Jacqueline H. Poston
ADEC OFFICE:	Alaska Department of Environmental Conservation Watershed Management Section 555 Cordova St. Anchorage, AK 99501

E. ADDITIONAL MONITORING BY PERMITTEES

If Permittees monitor more frequently than required by this Permit, using test procedures approved under 40 CFR Part 136, or equivalent, or as specified in this Permit, the results of this monitoring shall be included with the data submitted as part of the annual report required by Part IV.G. of this Permit.

F. ARCHEOLOGICAL AND HISTORICAL SITES

1. Where municipal excavation and/or construction projects implementing requirements of this Permit will result in the disturbance of previously undisturbed land, Permittees shall, thirty (30) days prior to commencing land disturbance, submit the following to the State Historic Preservation Officer ("SHPO") for evaluation of possible effects on properties listed or eligible for listing on the National Register of Historic Places:

    a. a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground, and

b. a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas. The address of the SHPO is:

Ms. Judith E. Bittner
Chief, History and Archeology
Department of Natural Resources
Division of Parks and Outdoor Recreation
3601 "C" Street, Suite 1278
Anchorage, Alaska 99503-5921
(907) 269-8721

2. If Permittees receive requests for an archeological survey or notice of adverse effects from the SHPO, Permittees shall delay such activity until:

   a. a determination of no adverse effect has been made, or

   b. measures to minimize harm to historic properties have been agreed upon.

3. If Permittees do not receive notification of adverse effects or a request for an archeological survey from the SHPO within thirty (30) days, Permittees may proceed with the activity.

G. ANNUAL REPORTS

1. Within one (1) year of the effective date of this Permit, and annually thereafter, Permittees shall prepare and submit to EPA and ADEC an Annual Report. In addition, copies of all annual reports shall be available to the public through the municipal library system. The Annual Report shall be mailed to the addresses found at Part IV.D. of this Permit and shall include, at a minimum:

   a. A report on the status of implementing the components of the Storm Water Management Program that are established as Permit conditions;

   b. Proposed changes to the Storm Water Management Program required by this Permit. Such proposed changes shall be consistent with 40 CFR § 122.26(d)(2);

   c. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the Part 2 of the Permit Application;

   d. A summary of the data, including monitoring data, that Permittees accumulated throughout the reporting year;

   e. Annual expenditures and budget for the year following each annual report;

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs, including copies of all educational materials distributed in conjunction with efforts to reduce pollutant discharges to the MS4;

g. Identification of water quality improvements or degradation; and

h. All other information required by this Permit to be submitted with the Annual Report.

H. MODIFICATION OF THE PERMIT

All modifications to this Permit shall be made in accordance with 40 CFR §§ 122.62, 122.63, and 124.5. The Permit may be modified during the life of the Permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. adding a new Permittee who is the owner or operator of a portion of the MS4;

4. changes in portions of the Storm Water Management Program that are considered Permit conditions; or

5. other modifications deemed necessary by the Regional Administrator to meet the requirements of the Act.

I. TERMINATION OF COVERAGE FOR A SINGLE PERMITTEE

Permit coverage may be terminated, in accordance with the provisions of 40 CFR §§ 122.64 and 124.5, for a single Permittee without terminating coverage for other Permittees.

J. MODIFICATION OF STORM WATER MANAGEMENT PROGRAM

Only those portions of the Storm Water Management Program specifically required as permit conditions shall be subject to the modification requirements of 40 CFR §§ 122.62, 122.63 and 124.5. Addition of the following components, controls, or requirements by Permittees shall be considered minor changes to the Storm Water Management Program and not modifications to the Permit: replacement of an ineffective or infeasible BMP; implementing a requirement of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III of this Permit.

K. APPROVAL OF SUBMITTALS

1. The following approval procedures shall apply to:

   a. Schedule & Scope of Assessments (Part II.A.1.a.(4)(b));

   b. Roadway Deicing Management and Monitoring Plan (Part II.A.1.c.(1))

   c. Inspection and Enforcement Strategy for New Development and Significant Redevelopment (Part II.A.b.(6)(b));

   d. Site Inspection and Enforcement Strategy at Construction Sites (Part II.A.4.c.(1)); and

   e. Monitoring program (Part II.A.6. and Appendix "A");

   f. Definitions of Dry and Wet Weather (Part II.A.6.)

   This Part will refer to each of the foregoing six (6) reports as "submittals."

2. After reviewing any submittal or other item which is required to be submitted for review and approval pursuant to this Permit, EPA may:

   a. approve the submittal ("approval");

   b. approve the submittal with modifications ("modified approval");

   c. disapprove the submittal and direct Permittee(s) to revise the submittal in accordance with EPA's comments ("revision request"); or

   d. disapprove the submittal ("disapproval").

   Should EPA fail to issue its determination on a submittal timely submitted by Permittee(s), within 60 days of EPA's receipt that submittal shall be deemed to have received approval.

3. In the event of approval or modified approval by EPA, Permittees shall proceed to comply with any conditions imposed by the approved submittal, as approved or modified by EPA.

4. In the event of a revision request, Permittees shall, within five (5) days or such longer time as specified by EPA in its notice of request for revisions, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding any revision request, Permittees shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submittal.

5. If any submittal or resubmittal does not ultimately receive approval or modified approval by EPA, Permittees shall have failed to comply with the conditions and requirements of this Permit.

PART V -- DEFINITIONS

The following definitions apply to this Permit. Except as otherwise specifically provided, terms used in this Permit but not defined by this Part shall have the meaning ascribed to them by Section 502 of the Clean Water Act (33 U.S.C. § 1362), 40 CFR § 122.2, and 40 CFR § 122.26(b). These statutory and regulatory definitional sections are incorporated herein by reference.

1. "Discharge" refers to a discharge of storm water from the Municipal Separate Storm Sewer System (MS4).

2. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

3. "MEP" is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4. "MS4" is an acronym for "Municipal Separate Storm Sewer System" and is used in this Permit to refer to those portions of the Medium Municipal Separate Storm Sewer System within the corporate limits of the Municipality of Anchorage that are owned and operated by the Municipality of Anchorage or the Alaska Department of Transportation and Public Facilities.

5. "Permit Application" refers to the submissions required as part of the NPDES permit application process and includes Part One (May 1992), Part One Appendices (May 1992), Maps (May 1992), Part Two (May 1993), Part Two (May 1993), and the Response to Comments (December 1994).

6. "Permittee" refers to any "person," as defined at 40 CFR § 122.2, authorized by this NPDES Permit to discharge to Waters of the United States.

7. "Regional Administrator" means the Regional Administrator of Region 10 of the United States Environmental Protection Agency or an authorized representative of the Regional Administrator. The Regional Administrator may be contacted at the address set forth at Part IV.D. of this Permit.

8. "Storm Water Management Program" refers to the comprehensive program described in this permit to manage the quality of storm water discharged from the MS4. For the purposes of this Permit, the Storm Water Management Program is considered a single document, but may actually consist of separate programs (e.g., "chapters") for each Permittee.

COVER PAGE Permit No.: AKS052426

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Port of Anchorage

is authorized to discharge from a **Municipal Separate Storm Sewer System** located **at Port of Anchorage, 2000 Anchorage Port Road, Anchorage, Alaska,**

to receiving waters named **Cook Inlet,**

in accordance with discharge point(s), an approved storm water management plan, monitoring requirements, and other conditions set forth herein.

This permit shall become effective March 3, 1995.

This permit and the authorization to discharge shall expire at midnight, March 3, 2000.

Signed this 1st day of February, 1995.

Director, Water Division, Region 10
U.S. Environmental Protection Agency

PCS/SC
2/1/95

NPDES PERMIT
MUNICIPAL SEPARATE STORM SEWER SYSTEM
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PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. Permit Area

This permit covers all areas within the jurisdictional boundary of **the Port of Anchorage within the Municipality of Anchorage, Alaska,** served by, or otherwise contributing to discharges from, municipal separate storm sewers (MS4s) owned or operated by the permittee listed in Part I.C.

B. Authorized Discharges

This permit authorizes all existing or new storm water point source discharges to waters of the United States from the MS4. This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits. This permit will consider any and all activities conducted by lessees of the Port of Anchorage while within the jurisdictional boundaries of the Port, and which activity leads to a discharge either to or from the MS4s for which this permit is written, to be the activity of the Port and subject to the conditions of this permit.

C. Limitations on Coverage

The following discharges are not authorized by this permit:

1. *Non-storm Water:* storm water discharges that are mixed with non-storm water or storm water associated with industrial activity except where such discharges are:

   a. in compliance with a separate NPDES permit; or

   b. identified by and in compliance with Part II.B.7 of this permit.

2. *Endangered Species Protection:* storm water discharges whose direct, indirect, interrelated, interconnected, or interdependent impacts would jeopardize a listed endangered or threatened species or adversely modify designated critical habitat.

3. *Historic Preservation:* storm water discharges, or the permittee construction activities or implementation of storm water management controls, which adversely effect properties listed or eligible for listing in the National Register of Historic Places, unless the permittee is in compliance with requirements of the National Historic Preservation Act and has coordinated any necessary activities to avoid or minimize impacts with the appropriate State Historic Preservation Officer; and

4. *Coastal Zone Management:* storm water discharges not in compliance with any applicable requirements of a State's Coastal Zone Management Plan.

PART II. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to develop and implement a storm water pollution prevention and management program designed to limit, to the maximum extent practicable, the discharge of pollutants from the MS4. Either collectively, or separately, the permittee's storm water pollution prevention and management program shall satisfy the requirements of paragraphs A through I, below for all portions of the MS4 authorized to discharge under this permit.

A. **POLLUTION PREVENTION REQUIREMENTS**

The permittee shall develop and implement the following pollution prevention measures:

1. The permittee shall include requirements to consider water quality impacts of new and significant re-development in its comprehensive master planning process. The goal of such requirements shall be limiting, to the maximum extent practicable, the discharge of pollutants to pre-development levels.

2. The permittee shall ensure the establishment or availability of a program to collect used motor vehicle fluids (including oil and antifreeze) and batteries for recycle or reuse. Such program shall be readily available to all lessees. This program shall be publicized and promoted on a regular basis, but at least anually.

3. The permittee shall ensure the establishment or availability of a program to collect commonly-used hazardous materials (including paint, pesticides, herbicides, cleaners, solvents, and similar hazardous materials) for recycle, reuse, or safe disposal. The program shall be readily available to all lessees and include information on locations accepting such materials on a continuous basis. This program shall be publicized and promoted on a regular basis, but at least anually.

4. The permittee shall ensure the establishment of a program, including structural controls where necessary, to reduce the discharge of floatables (including solid wastes) to the maximum extent practicable.

B. **SWMP SYSTEM-WIDE REQUIREMENTS**

The permittee shall operate a Storm Water Management Program (SWMP) in accordance with Section 402(p)(3)(B) of the Clean Water Act, the storm water regulations (40 CFR Part 122.26) and the approved SWMP plan to be submitted to EPA by the permittee. SWMP controls and activities identified in the SWMP plan shall clearly identify areas of applicability on a system-wide basis, jurisdiction-wide basis, or specific-area basis. The SWMP, and all approved updates, are hereby incorporated into this permit by reference and shall be implemented in a manner consistent with the following requirements:

1. *Statutory Requirements:* SWMPs shall include controls necessary to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable (MEP). Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, Administrator or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet the statutory MEP standard. The SWMP shall be updated as necessary to ensure conformance with the statutory requirements of Clean Water Act §402(p)(3)(B)(ii) and (iii).

2. *Structural Controls:* The permittee shall operate and maintain any storm water structural controls over which it has jurisdiction, in a manner so as to reduce the discharge of pollutants (including floatables) to the MEP.

3. *Areas of New Development:* The Port of Anchorage shall utilize a comprehensive master planning process to develop, implement, and enforce controls to reduce, to the MEP, the discharge of pollutants from areas of new development and significant redevelopment after construction is completed.

4. *Roadways:* The permittee shall operate and maintain public streets, roads, highways, parking areas, and cargo storage/staging areas under its jurisdiction in a manner so as to reduce, to the MEP, discharge of pollutants (including those related to deicing or sanding activities).

5. *Flood Control Projects:* The permittee shall ensure any flood control project it undertakes assesses and minimize to the MEP the impacts on water quality of the receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water. If retro-fitting is found to be feasible, the permittee shall implement the retro-fitting of existing structural devices within 3 years of such determination of feasibility.

6. *Pesticide, Herbicide, and Fertilizer Application:* The permittee shall implement controls to reduce, to the MEP, the discharge of pollutants related to application of pesticides, herbicides, and fertilizers applied by Port employees, contractors, or lessees to public right of ways, parks, and all port lands and facilities.

7. *Illicit Discharges and Improper Disposal:* The permittee shall implement an ongoing program to detect and eliminate illicit discharges and improper disposal into the storm sewer. The permittee may chose to require the discharger to the MS4 to eliminate the illicit discharges or obtain a separate NPDES permit for such discharges.

a. The permittee shall effectively prohibit non-storm water discharges to the MS4.

b. Unless identified by either the permittee, the Administrator, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges need not be prohibited from entering the MS4, provided the necessity of such discharge(s) and appropriate control measures (if needed) to minimize the impacts of such sources, are developed under the SWMP:

(1) water line flushing;
(2) landscape irrigation;
(3) diverted stream flows;
(4) rising ground waters;
(5) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
(6) uncontaminated pumped ground water;
(7) discharges from potable water sources;
(8) uncontaminated foundation drains;
(9) air conditioning condensate;
(10) irrigation water;
(11) springs;
(12) uncontaminated water from crawl space pumps;
(13) uncontaminated footing drains;
(14) lawn watering;
(15) individual residential car washing;
(16) flows from riparian habitats and wetlands;
(17) dechlorinated swimming pool discharges;
(18) street wash waters;
(19) NPDES permitted non-contact cooling waters and remediated ground waters, provided appropriate management practices are implemented and the discharges are in accordance with the Municipality's storm water management program; and,
(20) discharges or flows from emergency fire fighting activities.

c. The permittee shall prevent discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall limit, to the maximum extent practicable, the infiltration of seepage from sanitary sewers into the MS4.

d. The permittee shall prohibit the discharge or disposal of all motor vehicle fluids and chemical wastes into separate storm sewers.

e. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. Where elimination of an illicit connection within seven (7) days is not possible, the Port of Anchorage shall require an expeditious

schedule for elimination of the discharge. In the interim, the Port of Anchorage shall require the operator of the illicit connection to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4. Elimination schedules should not exceed ninety (90) days, except for capital intensive projects which shall not exceed 455 days (one year ninety days).

8. *Spill Prevention and Response:* The permittee shall implement a program to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the permittee and its lessees.

9. *Industrial & High Risk Runoff:* The permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from: hazardous waste treatment, storage and disposal facilities that are subject to EPCRA Title III, Section 313; bulk storage facilities; and, any other industrial or commercial discharges the permittee determines are contributing a substantial pollutant loading to the MS4. The program shall include:

   a. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

   b. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

      (1) any pollutants limited in an existing NPDES permit for an identified facility;
      (2) oil and grease;
      (3) chemical oxygen demand (COD);
      (4) pH;
      (5) biochemical oxygen demand, five-day (BOD_5);
      (6) total suspended solids (TSS);
      (7) total phosphorous;
      (8) total Kjeldahl nitrogen (TKN);
      (9) nitrate plus nitrite nitrogen; and
      (10) any of the metals cadmium, copper, lead, and zinc which can be reasonably expected in storm water runoff from such industrial site; and,
      (11) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

10. *Construction Site Runoff:* The permittee shall implement a program to reduce, to the MEP, the discharge of pollutants from constructions sites, including:

   a. requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants

discharged to the MS4 upon commencement of, and during, the construction activities;

b. procedures for site planning which incorporate considerations for potential short and long term water quality impacts and minimizes, to the MEP, these impacts;

c. prioritized inspection of construction sites and enforcement of SWMP-required control measures;

d. appropriate education and training measures for construction site operators; and,

e. notification of all construction permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

11. *Public Education:* The permittee shall implement a public education program including:

a. a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4;

b. a program to promote, publicize, and facilitate the proper management and disposal of used oil and commonly-used hazardous materials.

c. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers by commercial and private applicators and distributors conducting such business within the Port of Anchorage jusrisdictional area.

C. **AREA-SPECIFIC STORM WATER MANAGEMENT PROGRAM REQUIREMENTS**
The following SWMP requirements apply only to the areas or discharges specified below. Management practices must also be developed in the SWMP for the following:

1. The Port of Anchorage (The Port) will provide an area for the washing of Port vehicles (that is, vehicles owned or operated by The Port) that will not result in the discharge of wash waters. The Port will encourage the use of detergent-free methods of vehicle washing and will require regular maintenance of the area to ensure wash waters, and resulting contaminants, will not be transported by storm water to waters of the U.S. This area is not required to be within Port jurisdictional boundaries, and does not have to be operated by the Port or Port personnel.

2. The Port may provide this area to its tenants solely for the purpose of vehicle washing. In such case, The Port accepts the responsibilty of proper operation and

maintenance of this area, and will ensure proper management practices are adhered to at all times.

3. All vehicle and equipment maintenance areas will be managed so as to control discharges from these areas to the maximum extent practicable. All hydrocarbon compounds used in these areas will be handled in a manner that will eliminate or minimize potential discharges to waters of the U.S.

D. **DEADLINES FOR PROGRAM COMPLIANCE**

1. Except as provided in PART III, compliance with the storm water management program shall be required within 120 days of the effective date of this permit.

2. Proposed modifications and updates to the SWMP, along with proposed schedules for implementation, shall be submitted with the Annual Report required under Part II.G. to EPA.

E. **ROLES AND RESPONSIBILITIES OF PERMITTEE AND LESSEES**

The SWMP plan shall clearly identify the roles and responsibilities of the permittee. Activities required of the lessees by the permittee must also be clearly identified.

F. **LEGAL AUTHORITY**

The permittee shall ensure legal authority exists to control discharges to and from those portions of the MS4 over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with entities having existing legal authority to:

1. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit illicit discharges to the municipal separate storm sewer;

3. Control the discharge of spills and the dumping or disposal of materials other than storm water into the MS4;

4. Control through interagency agreements among co-permittees the contribution of pollutants from one portion of the MS4 to another;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and,

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

G. **SWMP RESOURCES**

The permittee shall provide adequate finances, staff, equipment, and support capabilities to fully implement the storm water management program.

H. **SWMP REVIEW AND MODIFICATION**

1. *Program Review:* The permittee shall conduct an annual review of the current SWMP in conjunction with preparation of the annual system-wide report required under Part II.I. This annual review shall include:

   a. A review of the status of program implementation and compliance (or non-compliance) with all schedules of compliance contained in this permit;

   b. An assessment of the effectiveness of controls established by the SWMP;

   c. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings; and,

   d. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the MEP.

2. *Program Modification:* The approved SWMP, and its plan, shall not be modified by the permittee without the prior approval of the EPA, unless in accordance with items a. through c. below:

   a. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the permitting authority.

   b. Modifications replacing a failing Best Management Practice (BMP) identified in the SWMP with an alternate BMP may be requested in conjunction with the annual system-wide report required by Part II.I. below. Such requests must: 1) be made in writing; 2) provide an analysis of why the BMP is failing or ineffective (including cost prohibitive); 3) discuss the expectations of the effectiveness of the replacement BMP; and, 4) explain why the replacement BMP is expected to provide at least the same level of performance as originally expected of the BMP to be replaced.

   c. Modifications made under this paragraph shall not become enforceable permit conditions until such time as the modifications are approved by EPA.

   Modification requests and/or notifications shall be signed in accordance with Part VI.H.

3. *Modifications Required by the Permitting Authority:* The EPA may require the permittee to modify the SWMP as needed to:

   a. Address contributions by the MS4 discharges to impacts on receiving water quality;

   b. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or,

   c. Include such other conditions deemed necessary by the Administrator to comply with the goals and requirements of the Clean Water Act.

   Modifications requested by the Administrator shall be made in writing, set forth the time schedule for the permittee to develop the modification(s), and offer the permittee the opportunity to propose alternative program modifications to meet the objective of the requested modification.

I. SYSTEM-WIDE REPORT

The permittee shall prepare and submit a system-wide report no later than one year after the anniversary of the effective date of this permit (**March 3, 1995**), and continue to submit an updated system-wide report every year thereafter. The report shall include the following separate sections and an overview for the entire MS4:

1. The status of implementing the components of the SWMPs that are established as permit conditions (status of compliance with any schedules established under this permit shall be included in this section);

2. Proposed changes to the SWMPs that are established as permit conditions, including an update on areas added to the MS4 due to annexation or other legal means;

3. Revisions, if necessary, to the assessments of controls and management practices;

4. A summary of the data, including monitoring data, that is accumulated throughout the last reporting year;

5. Annual expenditures for the reporting period (i.e., the last year), and projected budget for the one year period comprising the next system-wide report;

6. A summary describing the number and nature of compliance actions, inspections, and public education programs; and,

7. Identification of water quality improvements or degradation, with a discussion of those management practices implemented or proposed for implementation to address identified water quality degradation.

PART III. SCHEDULES FOR COMPLIANCE

A. IMPLEMENTATION OF POLLUTION PREVENTION MEASURES

POLLUTION PREVENTION MEASURE	ACTIVITY DESCRIPTION	DATE DUE
Part II.A.1 - New Development & Re-Development	Implement construction-phase storm water runoff control program.	March 4, 1996
	Modify land use planning process within Port to require controls for storm water quality.	March 3, 1998
	Implement requirements for post-construction storm water quality controls for new and significant re-development.	July 30, 1998
Part II.A.2 - Vehicle Fluids	Implement public education program.	July 30, 1995
	Develop collection/recycling/safe disposal program.	March 4, 1996
	Implement collection/recycling/safe disposal program.	March 3, 1997
Part II.A.3 - Common Hazardous Waste	Implement public education program.	July 30, 1995
	Develop collection/recycling/safe disposal program.	March 4, 1996
	Implement collection/recycling/safe disposal program.	March 3, 1997
Part II.A.4 - Floatables	Implement public education program.	July 30, 1995
	Implement litter control program.	July 30, 1995
	Install floatables monitoring location (See Part V.A.2)	July 30, 1995
	Complete study for targeting of structural controls.	July 30, 1996
	Complete installation of structural controls on 100% of targeted storm sewer.	July 30, 1997

B. IMPLEMENTATION OF STORM WATER MANAGEMENT PLANS

SWMP ACTIVITY	ACTIVITY DESCRIPTION	DATE DUE
PART II.B - Storm Water Management Program (SWMP) plan development	Complete development of SWMP plan	June 5, 1995
Part II.B.7 - Illicit Discharges and Improper Disposal	Implement public education program.	July 30, 1995
	Complete screening of the MS4.	July 30, 1996
	Complete follow up investigations based on screening results.	July 30, 1999
Part II.I - System-wide Report	Episodic system and implementation status report	Annually: March 3

PART IV. SPECIAL PERMIT REQUIREMENTS

The following requirements are included in this permit as stipulations of water quality certification from the Alaska Department of Environmental Conservation (ADEC).

A. MONITORING

1. In Part II.B.9.b the parameter "Total Aqueous Hydrocarbons" will be substituted for the parameter "Oil and Grease" on the list of parameters to be monitored.

   The parameter "Total Aqueous Hydrocarbons" (TAqH) means those collective dissolved and water-accomodated monoaromatic and polynuclear aromatic petroleum hydrocarbons that are persistent in the water column; TAqH does not include floating surface oils and greases. TAqH is calculated by summing the values of the parameters Total Aromatic Hydrocarbons (TAH) and Total Polynuclear Hydrocarbons (PAH). The parameters TAqH, TAH, and PAH are all defined in the Adopted Draft Water Quality Standards, 18 AAC 70.020(b) Note #8, dated 9/13/94. The test methods to be used to determine the presence of these parameters are the EPA 602 method for TAH and the EPA 610 method for PAH. Equivalent methods may be substituted for EPA 610 that meet the performance standards, Minimum Detection Limits (MDLs), precision, and standard recoveries specified in method 610. The applicable criteria are contained in Note #8 (cited above).

2. Table V.A.1.a (Monitoring Frequency) shall be modified as follows:

   a) The monitoring frequency and the parameters listed for monitoring in years 2 and 3 shall be identical to that listed for year 4, such that the full list of parameters will be sampled in years 2, 3, and 4 at the frequency listed under YEAR 4.

   b) The parameter "Total Aqueous Hydrocarbons" will be substituted in the table for the parameter "Oil and Grease" (as discussed above).

   c) Delete "Other Water Quality Parameters" from the table.

B. **MISCELLANEOUS**

1. Copies of all reports required in the permit will be sent to the following ADEC offices:

   Alaska Department of Environmental Conservation
   Southcentral Regional Office
   3601 C Street, Suite 1334
   Anchorage, AK 99503
   (907) 563-6529

   Alaska Department of Environmental Conservation
   Anchorage Western District Office
   800 E. Dimond Blvd. #3-470
   Anchorage, Alaska 99515
   (907) 349-7755

2. In Part II.A.1., add the following statement: The permittee shall emphasize source reduction techniques as a means to reduce the discharge of pollutants. The permittee shall inform the lessees of the availability, through ADEC, of pollution prevention resources, technical assistance programs and other non-regulatory initiatives that will support the overall objective of eliminating the discharge of pollutants.

3. In Part II.B.11., add the following as paragraph (d): a program to promote, publicize and facilitate implementation of technologies and techniques to prevent pollution through source reduction and recycling.

PART V. MONITORING AND REPORTING REQUIREMENTS

A. Storm Event Monitoring

The permittee shall implement a wet-weather monitoring program for the MS4 to provide data necessary to: 1) assess the effectiveness and adequacy of control measures implemented under the SWMP; 2) estimate annual cumulative pollutant loadings from the MS4; 3) estimate event mean concentrations and seasonal pollutants in discharges from major outfalls; 4) identify and prioritize portions of the MS4 requiring additional controls; and, 5) identify water quality improvements or degradation.

1. *Representative Monitoring:*
   The permittee shall monitor representative outfalls and/or instream monitoring locations to characterize the quality of storm water discharges from the MS4.

   a. Monitoring Requirements: (See Table V.A.1.a).

   b. Outfall Descriptions: (See Table V.A.1.b)

2. *Wet Weather Screening Program:*
   The permittee shall implement a program to screen all areas contibuting storm water to the MS4 for the presence of excessive pollutants in discharges from the MS4. The wet weather screening program:

   a. Shall screen the entire MS4 at least once during the permit term.

   b. Shall specify the sampling and non-sampling techniques, parameters, collection techniques, and analytical methods to be used for initial screening purposes. For screening samples only, sample collection and analysis need not conform to the requirements of 40 CFR Part 136 and are not subject to the requirements of Paragraphs 3, 4, and 5 below.

Table V.A.1.a. - Monitoring Requirements for Outfalls 001, 002, and 003[1]

PARAMETER	MONITORING FREQUENCY				
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Biochemical Oxygen Demand (BOD_5) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Chemical Oxygen Demand (COD) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Suspended Solids (TSS) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Dissolved Solids (TDS) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Nitrogen (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Kjeldahl Nitrogen (TKN) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Phosphorus (mg/l)	---	---	---	Once/year	---
Dissolved Phosphorus (mg/l)	---	---	---	Once/year	---
Oil & Grease (mg/l)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year
Total Cadmium (ug/l)	---	---	---	Once/year	---
Total Copper (ug/l)	---	Once/year	---	Once/year	---
Total Lead (ug/l)	---	---	---	Once/year	---
Total Zinc (ug/l)	---	Once/year	---	Once/year	---
Ph (S.U.)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year
Hardness (as $CaCO_3$) (mg/l)	---	---	---	Once/year	---
Temperature (°C)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year

[1] This table represents the baseline monitoring requirements for the discharges and outfalls described in this permit. Some specific parameters and monitoring frequencies have have been modified pursuant to the special requirements as discussed in Part IV of this permit.

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Table V.A.1.b - Representative Monitoring Outfall Descriptions

OUTFALL	LOCATION	DESCRIPTION
001	Transit Area B	Storm water drain for Transit Area B. This area is 52.0 total acres with 16.2 acres of impervious surface.
002	Transit Area D and Transit Area A	Storm water drain for Transit Area D and a portion of Transit Area A. Transit Area D is 43.4 total acres and has 7.8 acres of impervious surface. This portion of Transit Area A has 55 total acres with 15 acres covered by impervious surface. The total acreage of impervious surface draining to outfall 002 is 22.8 acres.
003	Transit Area 12-B	Storm water drain for Transit Area 12-B. Area 12-B is 36.7 total acres with 16.8 acres of impervious surface.

c. Shall establish three monitoring locations for removal of floatable material in discharges from the MS4. The amount of material collected shall be estimated in cubic yards. Floatable material shall be measured periodically as necessary for maintenance of the removal device.

d. Shall submit, along with the system-wide report required by Part II.I, the following information:

(1) An estimate of the amount of floatable material collected (cubic yards);

(2) A summary of results and actions taken or proposed based on the results of the wet weather screening program.

e. Any monitoring location that collects an annual average of less than 3 cubic yards of floatables over any consecutive 3 calendar-year period during the permit term will no longer be considered a mandatory monitoring location. The Port must maintain at least one monitoring location for floatables regardless of the amount of floatables collected.

3. *Storm Event Data:*
Quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters listed above, The Port shall maintain records on site of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

4. *Sample Type, Collection, and Analysis:*
a. For discharges from storm water holding ponds or other storm water impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples taken during the first two hours of discharge shall be used for the analysis (if required) of pH, temperature, cyanide, oil & grease, fecal coliform, fecal streptococcus, total phenols, residual chlorine, and volatile organics. For all other parameters, data shall be reported

for flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be done in accordance the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

5. *Sampling Waiver:*
When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period.

B. **Dry Weather Monitoring**

1. *Dry Weather Screening Program:*
The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4. All portions (but not necessarily all outfalls) of the MS4 must be screened at least once during the permit term, in accordance with the schedule set forth in PART III.A.

2. *Screening Procedures:*
Screening methodology may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D).

3. *Follow-up on Dry Weather Screening Results:*
The permittee shall implement a program to locate and

eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Follow-up activities may be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

C. **Certification and Signature of Reports**

1. All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with Parts VII.H. & VII.I. of the permit.

D. **Reporting: Where to Submit**

1. Monitoring results obtained during each anual reporting period shall be submitted on Discharge Monitoring Report Form(s) and included with the annual system-wide reprt. A separate Discharge Monitoring Report Form is required for each event monitored. The first report may include less than twelve months of information.

2. Signed copies of discharge monitoring reports required under Part V., the System-Wide Report required by Part II.G., SWMP modifications and modification requests, requests for changes in monitoring outfalls and all other reports required herein, shall be submitted to:

U.S. EPA, Region 10
Wastewater Management and Enforcement Branch
Municipal Storm Water Permits (WD-135)
1200 Sixth Avenue
Seattle, Washington 98101

E. **Additional Notification**

1. Copies of the discharge monitoring reports required under Part V., the System-Wide Report required by Part II.G., and other reports requested by the State shall be submitted to:

Alaska Department of Environmental Conservation
Southcentral Regional Office
3601 C Street, Suite 1334
Anchorage, AK 99503
(907) 563-6529

Alaska Department of Environmental Conservation
Anchorage Western District Office
800 E. Dimond Blvd. #3-470
Anchorage, Alaska 99515
(907) 349-7755

F. Retention of Records

1. The permittee shall retain at The Port the latest approved version of the storm water management program developed in accordance with Part II of this permit until at least three years after coverage under this permit terminates. The permittee shall retain at The Port all records of all monitoring information, copies of all reports required by this permit, and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit or extended by request of the Director at any time.

PART VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply

1. The permittee must comply with all conditions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Criminal

   a. Negligent Violations The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

   b. Knowing Violations The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

   c. Knowing Endangerment The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 year, or both.

   d. False Statement The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4

years, or by both. (See Section 309(c)(4) of the Clean Water Act).

2. Civil Penalties - The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties - The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

   a. Class I penalty Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

   b. Class II penalty Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

C. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the permit expiration date, the permittee(s) must apply for and obtain a new permit. The application shall be submitted at least 180 days prior to expiration of this permit. The Administrator may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR 122.6 and any subsequent amendments.

D. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

E. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. Duty to Provide Information

The permittee shall furnish to the Administrator, within a time specified by the Director, any information which the

Administrator may request to determine compliance with this permit. The permittee shall also furnish to the Administrator upon request copies of records required to be kept by this permit.

G. **Other Information**
When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Director, he or she shall promptly submit such facts or information.

H. **Signatory Requirements**
All Discharge Monitoring Reports, storm water pollution prevention plans, reports, certifications or information either submitted to the Administrator or that this permit requires be maintained by the permittee, shall be signed by:

1. either a principal executive officer or ranking elected official.

2. a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director.

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

   c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of this paragraph must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

I. **Certification**
Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

J. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

K. Penalties for Falsification of Monitoring Systems

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the CWA.

L. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of CERCLA.

M. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

N. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision

of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

O. Requiring an individual permit

1. The Administrator may require the permittee authorized by this permit to obtain an individual NPDES permit. Any interested person may petition the Administrator to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form (as necessary), a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit, coverage under this permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part V.D. of this permit. The Administrator may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Administrator, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application as specified by 40 CFR 122.26(d) with reasons supporting the request to the Administrator. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part V.D. of this permit. The request may be granted by the issuance of a individual permit if the reasons cited by the owner or operator are adequate to support the request.

P. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

Q. **Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

R. **Monitoring and records**

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Administrator at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The time(s) analyses were initiated;

   e. The initials or name(s) of the individual(s) who performed the analyses;

   f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

S. **Monitoring Methods**

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

T. **Inspection and Entry**

The permittee shall allow the Administrator or an authorized representative of EPA, or the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and,

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

U. **Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

PART VII. PERMIT MODIFICATION

A. **Modification of the Permit**

The permit may be reopened and modified during the life of the permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. add a co-permittee who is the owner or operator of a portion of the MS4;

4. changes in portions of the storm water management program that are considered permit conditions; or

5. other modifications deemed necessary by the Administrator to meet the requirements of the Clean Water Act.

All modification to the permit will be made in accordance with 40 CFR 122.62, 122.63, and 124.5.

B. **Termination of Coverage for a Single Co-permittee**

Permit coverage may be terminated, in accordance with the provisions of 40 CFR 122.64 and 124.5, for a single co-permittee without terminating coverage for other co-permittees.

C. **Modification of Storm Water Management Program(s)**

Only those portions of the SWMPs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Replacement of a failing BMP implementing a required component of the SWMP with an alternate BMP expected to provide at least the same level of performance initially expected of the failing BMP, shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

D. **Changes in Monitoring Outfalls**

This permit is issued on a system-wide basis in accordance with CWA § 402(p)(3)(i) and authorizes discharges from all portions of the MS4. Since all outfalls are authorized, changes in monitoring outfalls, other than those with specific numeric effluent limitations, shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

PART VIII. DEFINITIONS

"Administrator" means the Regional Administrator.

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"CWA" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. (6-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

"Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

"Director" means the Regional Administrator or an authorized representative.

"Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4).

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"MS4" is an acronym for "municipal separate storm sewer system" and is used to refer to either a Large or Medium Municipal Separate Storm Sewer System.

"Large or Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or

(ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or

(iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"Municipal Separate Storm Sewer" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Storm sewer", unless otherwise indicated, refers to a municipal separate storm sewer.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"SWMP" is an acronym for "Storm Water Management Program."

"Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

"Waters of the United States" means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(b) All interstate waters, including interstate "wetlands";
(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
(3) Which are used or could be used for industrial purposes by industries in interstate commerce;
(d) All impoundments of waters otherwise defined as waters of the United States under this definition;
(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
(f) The territorial sea; and
(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States.

CHANGES TO DRAFT PERMIT

The following changes to the draft permit have been made for this final permit:

1) The Port of Anchorage commented that the outfall previously labelled 001, Transit Area A, was discovered by its consulting engineers to no longer exist, and asked that it be deleted from the application.

   EPA has deleted this outfall and re-numbered the remaining three outfalls as 001, 002, and 003 (see Table V.A.1.b).

2) Special requirements stipulated as part of the State of Alaska water quality certification are contained in Part IV of the permit. These special requirements include changes in monitoring, analytical test methods, and reporting requirements. Specifically:

   - The monitoring parameter "Total Aqueous Hydrocarbons" has been substituted for the parameter "Oil and Grease" found in Part II.B.9.b.

   - The analytical test methods EPA 602 and EPA 610 will be used to determine the presence of "Total Aqueous Hydrocarbons".

   - Copies of all documents, reports, and requests, required in the permit will be sent to the state offices as stipulated.

   In addition, the following changes to the permit have been made pursuant to the water quality stipulations and comments from the State:

   - Part II.A.1 has been expanded to include a statement on emphasizing source reduction techniques as a means to reduce the discharge of pollutants.

   - In Part II.B.4 the permittee is now directed to operate and maintain parking and cargo storage/staging areas in a manner to reduce, to the Maximum Extent Practicable, discharge of pollutants.

   - In Part II.B.11 the following was added as paragraph (d): a program to promote, publicize and facilitate implementation of technologies and techniques to prevent pollution through source reduction and recycling.

   - In Part II.B.7.b the items numbered 8, 12, and 13 now specify that the water be uncontaminated as found in #6.

   - The term "co-permittees" in Part II.C has been deleted.

- In Part II.C.1 the term "port vehicles" has been clarified to mean those vehicles owned or operated by The Port.

- The citation in Part H.1 has been changed to correctly read Part II.I.

- The phrase "at the permittees option" in Part V.A.4.b has been deleted.

- The reference in Part V.B.1 has been changed to correctly read Part III.A.

Idaho

Permit No.: IDS-02756-1
Application No.: IDS-02756-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101
206/553-0523

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4 (the "CWA"),

THE CITY OF BOISE, THE ADA COUNTY HIGHWAY DISTRICT, BOISE STATE UNIVERSITY, THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 3, DRAINAGE DISTRICT #3, AND THE CITY OF GARDEN CITY
(hereinafter "co-permittees ")

are authorized to discharge from all municipal separate storm sewer system outfalls existing as of the effective date of this permit, to the Boise River and its tributaries in accordance with the conditions set forth herein.

This permit shall become effective November 29, 2000

This permit and the authorization to discharge shall expire at midnight, November 29, 2005

Signed this 30th day of October, 2000

Randall F. Smith, Director
Office of Water, Region 10
U.S. Environmental Protection Agency

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PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. **PERMIT AREA.** This permit covers all areas within the corporate boundaries of **Boise, Idaho and Garden City, Idaho** served by, or otherwise contributing to discharges from, municipal separate storm sewer systems (MS4) owned or operated by the co-permittees listed in Part I.C.

B. **AUTHORIZED DISCHARGES.** This permit authorizes all existing storm water discharges to waters of the United States from the MS4 subject to the limitations of this permit. This permit also authorizes the discharge of storm water which has commingled with other flows including process wastewater and storm water associated with industrial activity, provided each such other flow is authorized under a separate National Pollutant Discharge Elimination System (NPDES) permit.

C. **CO-PERMITTEES.**

CITY OF BOISE (Boise City)
CITY OF GARDEN CITY (Garden City)
ADA COUNTY HIGHWAY DISTRICT (ACHD)
BOISE STATE UNIVERSITY (BSU)
IDAHO TRANSPORTATION DEPARTMENT DISTRICT 3 (ITD)
DRAINAGE DISTRICT #3 (DD3)

1. Except as described in Part I.C.2., the co-permittees' obligations to comply with the terms and conditions of this permit shall be joint and several.

2. Each co-permittee shall be individually obligated (and the remaining co-permittees shall not be obligated) to comply with those terms or conditions of this permit which:

   a. relate exclusively to discharges from portions of the MS4 owned or operated solely by that co-permittee;
   b. are identified in this permit as being the obligation of a single, named co-permittee; or
   c. have been identified in Table III.A or the Cooperative Agreement approved by EPA under Part II.F. of this permit as being the responsibility of that co-permittee .

PART II. STORM WATER MANAGEMENT PROGRAM

Each co-permittee shall implement a Storm Water Management Program (SWMP) designed to limit, to the Maximum Extent Practicable (MEP), the discharge of pollutants to and from that portion of the MS4 owned, operated, or utilized by that co-permittee . Each co-permittee shall implement the SWMP in accordance with the schedule contained in Part II, and as summarized in Table III.A, of the permit.

A. COMPONENTS OF STORM WATER MANAGEMENT PROGRAM.

1. *Structural Controls:* Each co-permittee shall operate and maintain the storm water structural controls for which it is the owner or operator, in a manner so as to reduce the discharge of pollutants to the MEP.

   a. Design Manuals. Design Manuals. Co-permittees shall adopt design manuals that incorporate Best Management Practices (BMPs) and operation and maintenance criteria for all existing and future structural controls under the jurisdiction of the co-permittees. This requirement may be satisfied by adopting by reference all or elements of the design manuals and guidebooks developed by other co-permittees, including the *January 1997 Boise Storm Water Best Management Practices (BMP) Guidebook*, the *July 1994 ITD Catalog of Storm Water Best Management Practices (BMP's)*, the *June 1999 City of Boise Storm Water Management Design Manual*, and the *December 1999 ACHD Development Policy Manual.* Design practices shall be incorporated into co-permittees' design, maintenance, and operation of all existing and future controls. The design manuals shall be based on sound engineering practices and shall utilize methodologies to control the addition of pollutants to storm water runoff to the MEP. Co-permittees shall finalize and implement the design manuals **no later than two years from the effective date of the permit.**

   b. Operation and Maintenance Program. Co-permittees shall develop and implement an operation and maintenance program, to include the following:
      - Definitive inspection and maintenance schedules for all co-permittee-owned structural controls which include the frequency of routine inspections. Actual inspections shall also be tracked.
      - Guidelines and criteria for maintenance activities that are to be implemented for co-permittee-owned structural controls, as well as a description of the maintenance activities required such as "disposal of sediment" and "removal of debris."
      - A description of the inspection, operation, and maintenance of storm water retention facilities owned or operated by co-permittees .

      The program shall incorporate measures, such as the assessment of retention basin outfalls, to evaluate the effectiveness of the proposed operation and maintenance program. Such measures shall be selected by the co-permittees, and a justification included in the program as to why they were chosen. The program shall ensure that co-permittees maintain drainage controls and structures to ensure that they operate as designed, such that the reduction of pollutants (including floatables) is maintained. Such structures include, but are not limited to: grates, basins, irrigation boxes, sediment tanks, skimmer boxes, drains, and pipes. The entire program shall be developed, and its implementation begun, **no later than one year from effective date of the permit.**

   c. Inspection and Maintenance Record Keeping. Each co-permittee that owns or operates structural controls shall maintain an internal record-keeping system to track inspections and maintenance for those portions of the MS4 operated by the co-permittee. The record-keeping system shall be in place and operable **within one year from effective date of the permit.** A joint record-keeping system to track activity undertaken by two or more co-permittees is allowable under this Part of the permit.

d. Annual Report. Copies of the **design manuals** shall be included in the **second annual report** of this permit term. Any **revisions or additions to the manual** shall be reported to the address in Section IV.E, along with the reason why the manual was altered, in the **first annual report after such changes occurred**. Co-permittees shall include with the **first annual report** a copy of the **operations and maintenance program**, including a maintenance schedule, for all structural controls owned or operated by co-permittees. Each co-permittee that has carried out **inspections and maintenance activities** shall submit a **summary** of such activity with **each annual report**. The summary shall include information on the number of structures cleaned, the number of hours dedicated to such cleaning, etc. Co-permittees shall also provide a summary of any data collected as part of the evaluation of the retention facilities as described above.

2. *Floatables:* The co-permittees shall ensure the establishment of a program to reduce the discharge of floatables (e.g., litter and other human-generated solid refuse). The floatables control program shall include source controls and, where necessary, structural controls.

   a. Awareness and local authority cooperation. The co-permittees shall incorporate into their public education program information designed to reduce the amount of floatables which can end up in the storm sewer system. The co-permittees shall work with other authorities charged with enforcing litter control, and incorporate information on the existence of fines, penalties etc., for violations of such ordinances into any distribution of public education materials (which can be undertaken in conjunction with II.A.11.a). Each co-permittee shall determine and utilize methods to reduce litter within their respective jurisdictions. There shall be methods in place to control litter on a daily basis, as well as control litter that may result from a major public event.
   b. Highway cleanup. The co-permittees shall implement a program or programs, such as the Adopt-a-Highway program, to facilitate litter removal from selected highways two times a year or as needed.
   c. Operation and Maintenance Program. The co-permittees shall ensure that the streets for which they have maintenance authority and responsibility are swept as needed to reduce the discharge of pollutants to the MEP. Co-permittees shall compile a report on the sweeping activity and shall assess the above levels of effort in each of the designated land use type areas with respect to the mitigation of contribution of pollutants from the highways and other public areas that are maintained. The report shall be completed **within 18 months of the effective date of the permit.**
   d. Annual Report. Co-permittees shall include in the **annual reports** any **cooperative efforts** undertaken with other authorities charged with enforcing litter control. Co-permittees shall report on any **interim results from the evaluation of the road sweeping program** during the **first annual report**. Co-permittees shall record and present **statistics from highway cleanup program(s)**, such as the Adopt-a-Highway program, that measure effectiveness and possible application on other co-permittee-maintained streets and roadways in **each annual report**. **Operation and Maintenance programs including reports of street sweeping** with the number of road miles that have been swept by land use type, shall be submitted with the **second annual report**.

3. *Areas of New Development and Significant Redevelopment:* Co-permittees shall adopt and utilize a comprehensive master planning process to develop, implement, and enforce controls to reduce the discharge of pollutants to the MEP from areas of new development and significant redevelopment.

   a. Design Practice Manuals. Each co-permittee shall develop and finalize a design manual incorporating BMPs or adopt for use the BMPs prepared by another approved source. Co-permittees shall ensure that adopted BMPs are utilized and followed by developers, contractors and others involved in land development activities, to ensure that minimum requirements, standards and procedures are applied before, during and after land development activities. In addition, co-permittees shall ensure that developers, contractors and others involved in land development activities have in place Operation and Maintenance plans at the time of permitting for storm water facilities on new development and redevelopment (including residential, commercial and industrial land uses). Manuals shall be developed and implemented within **two years of the effective date of the permit**.
   b. Project review. Project review and approval procedures shall be developed that include the ability to conduct inspections and follow-up after construction to ensure that approved Operation and Maintenance plans are being followed. Implementation of these procedures shall begin **within two years of the effective date of the permit.**
   c. Record keeping. Co-permittees shall develop and maintain an internal record keeping system to track all activity on project review and approval actions. This activity shall be completed and implemented within **two years from the effective date of the permit**.
   d. Annual Report. Co-permittees shall include copies of **design manuals** that include measures for areas of new development and significant redevelopment in the **second annual report**. The City of Boise shall include a copy of the City of Boise Storm Water Management Design Manual in its first annual report submission. **Project review and approval procedures** for new development and significant redevelopment shall also be submitted as part of the **second annual report**. A summary of each co-permittees previous year's **recordkeeping activity** shall be provided in each **annual report beginning the second year**.

4. *Roadways:* Each co-permittee shall operate and maintain public streets, roads, and highways under its jurisdiction and for which it has authority in a manner so as to reduce to the MEP the discharge of pollutants including those related to deicing or sanding activities.

   a. Management Practices. Co-permittees shall develop a management practices program. This program shall include those management practices identified during the inventory of co-permittee-owned storm water facilities and audit of site activities undertaken as part of the application for the MS4 Permit. The program shall also evaluate ways to reduce pollutant discharges associated with road maintenance and rehabilitation operations. The program shall be submitted and implemented **within two years of the effective date of the permit**.
   b. Snow and Ice Control and Removal Programs. Co-permittees shall monitor the application of chemicals and sand applied to roadways for snow and ice control. Co-

permittees shall implement programs for proper storage of de-icing materials to prevent materials from entering the storm sewer system (e.g., using covers or roofs for stockpiled materials), and research alternatives to salt for use in de-icing **within two years of the effective date of the permit.**

c. Annual Report. Co-permittees shall submit the **management practices program** that includes ways to reduce pollutants from road maintenance and rehabilitation in the **second annual report.** In addition, co-permittees shall report the **amount (in appropriate units) of chemicals** applied to roads as part of the snow and ice control program in **each annual report beginning with the second report.** The **alternatives to salt** for de-icing and a **statement indicting that de-icing materials are properly stored** shall be in the **second annual report.**

5. *Flood Management:* Each co-permittee shall ensure that any flood management projects it undertakes include an assessment of the impacts on receiving water quality. Co-permittees shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water.

   a. Inventory of Structural Flood Control Devices. **Within one year of the effective date of the permit**, co-permittees shall complete an inventory of all existing structural flood control devices (e.g., storm sewer inlets, detention basins, drainage channels) within their jurisdictions to determine the feasibility of retrofitting them to provide additional pollutant removal. Co-permittees shall consider retrofits such as installation of in-line sediment trap devices, detention facilities or wetlands/riparian vegetation. Such evaluation should be carried out in conjunction with the sediment analysis component of section IV. B. of this permit.
   b. Flood Management Projects. Co-permittees shall develop procedures **within one year of the effective date of the permit** to assure that flood management projects assess the impacts on the water quality of the receiving water.
   c. Annual Report. In the **first annual report**, co-permittees shall provide **procedures assessing water quality impacts from all flood management projects.** An **inventory of existing structural flood control devices** shall also be provided in the **first annual report** including information whether retrofit to provide additional pollutant removal is feasible.

6. *Pesticide, Herbicide, and Fertilizer Application:* Co-permittees shall implement controls to reduce to the MEP the discharge of pollutants related to the application of pesticides, herbicides, and fertilizers applied by the co-permittee's employees or contractors to public right of ways, parks, and other municipal facilities. Co-permittees with jurisdiction over lands not directly owned by that entity (e.g., private lands within an incorporated city) shall implement controls such as educational activities, permits, certifications, and other measures to reduce the discharge of pollutants related to application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators.

   a. Application Management. Co-permittees shall develop a list of regionally appropriate landscaping plants and turf with recommended fertilizer application rates. Co-permittees shall establish planting/landscape policies which encourage use of vegetation (either indigenous or imported) that is self sustainable without the need for

pesticides or fertilizers. This task shall be completed **within one year of the effective date of the permit.**

b. Distribution of Educational Materials. Co-permittees shall distribute educational materials to all contracted applicators. This task shall be completed **within 18 months of the effective date of the permit.**

c. Outreach Method Identification. Co-permittees shall identify and utilize outreach methods to educate homeowners and commercial businesses, such as greenhouses, nurseries, landscaping and yard-care businesses, on the impact of pesticides, herbicides, and fertilizers on aquatic resources and on the means to decrease their usage. Information should include the use of alternatives to commercial pesticides, as well as information on locally available methods for proper disposal of pesticides, herbicides and fertilizers after they have been used. Co-permittees may undertake this component of the storm water management plan as part of the overall public education component, identified in II.A.11.a.

d. Annual Report. Co-permittees shall include **the list of regionally appropriate landscape plants and turf and plant policies** with the **first annual report**. Co-permittees shall report on the **distribution of information** to contracted applicators in the **second annual report**. Information regarding what **outreach activities** have taken place on the effects of pesticides, herbicides, and fertilizers shall be in **each annual report**.

7. *Illicit Discharges and Improper Disposal*: Each co-permittee shall implement an ongoing program to detect and remove (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for) illicit discharges and improper disposal into the MS4. Each co-permittee shall effectively prohibit non-storm water discharges to the MS4, other than those authorized under a separate NPDES permit. Unless identified by any co-permittee, IDEQ, or the Water Office Director, as sources of pollutants to waters of the United States, the following non-storm water discharges need not be addressed by co-permittee's illicit discharge and improper disposal program:

- water line flushing;
- landscape irrigation;
- diverted stream flows;
- rising ground waters;
- uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- uncontaminated pumped ground water;
- discharges from potable water sources;
- foundation drains;
- air conditioning condensate;
- irrigation water;
- springs;
- water from crawl space pumps;
- footing drains;
- lawn watering;
- individual residential car washing;
- flows from riparian habitats and wetlands;
- de-chlorinated swimming pool discharges; or
- street wash waters.

Discharges and flows from emergency fire fighting activities need not be addressed by co-permittee's illicit discharge and improper disposal program unless such discharges and flows are determined by any co-permittee, IDEQ, or the Water Office Director, as significant sources of pollutants to waters of the United States. Each co-permittee shall prevent (or require the owner or operator of the sanitary sewer to eliminate) un-permitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. Each co-permittee shall limit the infiltration of seepage from sanitary sewers into the MS4. Each co-permittee shall provide education activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials (including antifreeze, paint, solvents, pesticides, and herbicides). Appropriate programs include the collection of used motor oil at curbside residences and the collection of hazardous waste at central locations. If conducted, these programs should be publicized on a regular basis.

a. Inspection and Enforcement. Co-permittees shall work together to implement a program to inspect and enforce against illicit connections. The program can be based on the *Boise City Stormwater Investigation Manual* and the *December 1998 ACHD Stormwater Investigation Manual*. Co-permittees shall use the results of existing and on-going dry-weather screening and citizen reports as the primary basis for locating illicit discharges. Co-permittees shall ensure that an appropriate number of personnel receive training in the detection of illicit connections. The program shall include a requirement to update the inventory, within **6 months of the effective date of the permit**, of all major outfalls within the jurisdictions of the co-permittees. Co-permittees shall ensure compliance with this program element by inspecting 20% or more of the major outfalls per permit year, totaling 100% of outfalls by the conclusion of the first permit term. If illicit connections are identified or detected, co-permittees shall require their disconnection.
b. Storm Water Management and Discharge Control Ordinance Enforcement. The City of Boise shall ensure enforcement of *Title 8, Chapter 15, The City of Boise Storm Water Management and Discharge Control Ordinance* (adopted May 2000). The City of Garden City shall ensure enforcement of *Garden City Code Title 4, Chapter 14, Ordinances for Stormwater Management and Discharge Control* (adopted on September 14, 1999). Each co-permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. Where elimination of an illicit connection within seven (7) days is not possible, the co-permittee shall require an expeditious schedule for removal of the discharge. In the interim, the co-permittee shall require the owner or operator of the illicit connection to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

c. Complaint Procedures. Co-permittees shall implement complaint investigation procedures (such as those outlined in the City of Boise and Ada County Stormwater Investigation Manuals) to guide staff through recording, investigating and following up on complaints regarding violations reported by the general public. Co-permittees shall publicize the availability of an approved complaint referral process and post notices informing the public of the existence of such resources. Co-permittees shall utilize appropriately trained staff in operating such a complaint response program. A program incorporating all such initiatives shall be in place and operational within **one year from the effective date of the permit.**

d. Annual Report. Co-permittees shall submit the **list of major outfalls** that was compiled in the **first annual report.** Co-permittees shall report the progress of the **inspection and enforcement program** to eliminate illicit connections to the storm sewer system in **each annual report.** The **annual reports** shall include summaries of activities carried out under this initiative, including the **number of outfalls/inspections** undertaken, **results of such inspections,** and **follow-up actions** taken. Copies of **complaint investigation procedures** shall be included in the **first annual report.**

8. *Spill Prevention and Response:* Co-permittees shall implement a program to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the co-permittee (and/or another public or private entity), and legal requirements for private entities within the co-permittee's municipal jurisdiction.

a. Spill Response Task Group. Co-permittees shall participate in an interagency spill response task group, such as the Boise City Fire Department Task Group, to ensure that a coordinated response to spills is achieved and that impacts upon aquatic resources from spilled pollutants are controlled to the MEP. As part of this activity, co-permittees shall provide educational materials and outreach to operators of industrial and commercial activity that have a potential to spill liquid and solid wastes during transportation of such materials. If participation does not already occur, co-permittees shall begin participation **within one year of the effective date of the permit.**

b. Annual Report. Co-permittees shall report on **activities undertaken** in conjunction with the interagency spill response task group, such as meetings attended, meeting notes, and copies of any cooperative agreements listing the responsibilities of relevant parties in **all annual reports.**

9. *Industrial & High Risk Runoff:* Co-permittees shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from the following sources:

- municipal landfills;
- hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA, 42 U.S.C. §11023); and
- any other industrial or commercial discharge the co-permittee determines is contributing a substantial pollutant loading to the MS4.

The program shall include:

- priorities and procedures for inspections and establishing and implementing control measures for such discharges; and
- a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents: Any pollutants limited in an existing NPDES permit for an identified facility; oil and grease; chemical oxygen demand (COD); pH; five-day biochemical oxygen demand (BOD_5); total suspended solids (TSS); total phosphorous; total Kjeldahl nitrogen (TKN); nitrate plus nitrite nitrogen; and any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv). Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. Co-permittees may require the industrial facility to conduct self-monitoring to satisfy this requirement.

a. Database of Facilities. Co-permittees shall develop and maintain a database of priority industrial sites based on the above criteria within **one year of the effective date of the permit**. The database shall contain information on the primary economic activity conducted at the site (characterized by Standard Industrial Classification (SIC) code), the location of the facility, and a summary of the facility's storm water management plan and permit requirements.

b. Inspection and Monitoring of High Risk Facilities. Co-permittees shall work together to inspect and monitor such facilities for compliance with the storm water ordinance and the NPDES industrial storm water general permit within **one year of the effective date of the permit**. Whenever possible, such inspections should be in conjunction with pretreatment inspections conducted by the City of Boise. The inspection program shall be developed utilizing state statutes, local ordinances, contracts, or joint powers agreements. The agreements shall be developed to ensure that the program is carried out as devised. The memorandum of understanding between the Ada County Highway District and the City of Boise shall apply upon the **effective date of the permit**. Other permittees should consider developing similar agreements. The inspection and monitoring program shall include provisions to record observations of a facility, report findings to the inspected facility, follow up with the facility if necessary, and exercise legal authority to issue notices of violations, fines, etc., as and when appropriate. All activity regarding the monitoring and inspection of such facilities shall be maintained in the centralized database described above.

c. Educational Materials. The *Storm Water Commercial and Industrial Best Management Practices Handbook*, developed by the City of Boise Public Works, shall be distributed with inspections as well as when requested.
d. Inspection Program. Co-permittees shall develop, formalize, and implement an inspection program of high risk industrial and other commercial facilities. The inspection program may be developed utilizing contract or joint powers agreements and shall be implemented within **one year of the effective date of the permit.**
e. Annual Report. Copies of the **inspection programs, including any agreements or MOUs**, shall be included in the **first annual report.** A **listing of any activities** taken place such as monitoring inspections, issuance of citations etc. shall be summarized from the industrial and commercial priority database and included in **each annual report.**

10. *Construction Site Runoff:* Co-permittees shall develop and implement a program to reduce to the MEP the discharge of pollutants from constructions sites, including:
- requirements for the use and maintenance of appropriate structural and nonstructural BMPs to reduce pollutants discharged to the MS4 during the time construction is underway;
- procedures for site planning which incorporate considerations for potential short and long term water quality impacts and which minimize these impacts;
- prioritized inspection of construction sites and enforcement of control measures;
- appropriate education and training measures for construction site operators; and
- notification of appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

a. Construction Site Discharge Control Program. Co-permittees shall implement a Construction Site Discharge Control Program **18 months from the effective date of the permit.** The program shall contain elements to control the contribution of pollutants from construction site activity to the MEP. The program shall require the owner or operator of the development site to prepare, and submit for approval, Erosion and Sediment Control (ESC) plans for construction within the boundaries of the co-permittee's jurisdiction. Co-permittees shall implement procedures for site plan review that incorporate consideration of potential water quality impacts from such construction sites. Approved ESC plans shall require BMPs and shall contain provisions addressing material containment, spill prevention, and other practices as applicable. Initiatives such as outreach and educational activities for construction site planners, developers, builders and operators shall be included in the implementation of the program. Such activities must extend to all construction activity within the municipality and all construction sites, regardless of size or ownership.
b. Inspection and Compliance. Co-permittees shall conduct inspections of construction sites to ensure compliance with the measures outlined in II.A.10(a) within **18 months of the effective date of the permit.** Co-permittees shall undertake enforcement measures against those operators of sites in violation of the measures in II.A.10(a), including the issuance of notices of violation and stop work orders.

c. Database and Record Keeping. Co-permittees shall develop and maintain a database of all active and completed construction sites permitted within their jurisdiction and completed during the term of this permit. Such a database shall contain basic information regarding the nature of the construction activity, size of land clearing and grading activities, and contact information on the contractor and/or developer and shall be utilized within **one year of the effective date of the permit.**

d. Annual Report. **Each annual report beginning with the second**, shall include the following: **the number of site plans that were reviewed, the number that passed review and the number that required revision prior to passing review; the number of inspections carried out summarized by month or other similar calendar-based total; the number of citations, notice-of-violations, or stop-work-orders issued by co-permittees; the type and number of educational materials distributed by co-permittees; the outreach events that representatives of co-permittees attended in order to disseminate information regarding the purpose of the program; and a summary of information compiled in the database of all active and completed construction activity.** Copies **construction site discharge programs** shall be included in the **second annual report.**

11. *Public Education:* Co-permittees shall implement a public education program as follows:

a. Public Education Program. The co-permittees shall implement a program to inform the public of the impact of pollutants in storm water on waters of the United States and how to avoid adding such pollutants to storm water runoff. This public education program shall include the following activities:

(1) The distribution of public education flyers, inserts or booklets to householders regarding appropriate methods for disposing of used motor oil and similar substances

(2) Programs and activities to promote awareness of locations where the drain discharges and promote importance of maintaining clean water resources. Examples of such activities and programs include a stenciling program and participation in educational forums such as Water Awareness Week

(3) Promoting the collection and/or composting of yard wastes from residential and commercial sites. Co-permittees shall promote the "Keep watershed clean" campaign and shall distribute copies of flyers previously developed, including but not limited to, the Storm Water Ordinance (developed by the City of Boise), RiverCare Tips to Protect Water Quality (developed by the City of Boise), and the Storm Water Trooper bookmark (developed by the City of Boise);

(4) Co-permittees shall distribute the *Storm Water Commercial and Industrial BMPs Handbook* to commercial and industrial facilities identified as priorities due to the nature of the industrial and commercial activities to be found at such sites. Co-permittees shall make available the *Storm Water Plant Materials - A Resource Guide* to other facilities and make developers and contractors aware of the existence of such information; and

(5) Co-permittees shall document the complaints received from the general public regarding violations to the storm water ordinance, and the co-permittees' response to complaints.

b. Annual Report. **Each annual report** shall include data on the following:

- **the number and type of flyers, inserts, or booklets distributed to householders regarding household hazardous waste ;**
- **the amount (in gallons) of used motor oil collected; the number of storm water inlets and drains stenciled during the year;**
- **the number of students and teachers attending "Water Awareness Week;"**
- **the amount (cubic yards) of yard wastes collected from residential and commercial sites;**
- **the number of flyers distributed including, but not limited to, the Storm Water Ordinance, RiverCare Tips, and the Storm Water Trooper bookmark;**
- **the number of Storm Water Commercial and Industrial BMPs handbooks distributed to commercial and industrial facilities;**
- **the number of Storm Water Plant Materials - A Resource Guide distributed to other facilities, and a list of developers and contractors receiving such information; and**
- **a list derived from a database, or similar record keeping procedure, that documents the complaints received regarding violations to the storm water ordinance, to include detail on what follow up was taken, and the resolution of the original complaint.**

The annual reports shall include a **description of who the target audience was** for the distribution of the educational flyers, booklets, etc., and why they were chosen.

B. DEADLINES FOR PROGRAM COMPLIANCE. Except as provided in Part II.A and Table III.A, compliance with the SWMP shall be required **30 days from the effective date** of the permit.

C. LEGAL AUTHORITY. Each co-permittee shall operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the co-permittee at a minimum to:

1. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit through ordinance, order or similar means, illicit discharges to the MS4;

3. Control through ordinance, order or similar means the discharge to the MS4 of spills, dumping or disposal of materials other than storm water;

4. Control through interagency agreements among co-permittees the contribution of pollutants from one portion of the MS4 to another portion of the MS4;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the MS4.

Co-permittees shall include with the **first annual report** a demonstration that each co-permittee possesses legal authority that satisfies the six criteria listed above. Co-permittees shall include with this demonstration copies of all statutes, ordinances, permits, contracts, orders or inter-jurisdictional agreements that they contend demonstrate the adequacy of their legal authority.

D. STORM WATER MANAGEMENT PROGRAM RESOURCES. Each co-permittee shall provide adequate finances, staff, equipment, and support capabilities to implement the SWMP as described in Part II.A and summarized in Table III.A.

E. STORM WATER MANAGEMENT PROGRAM MODIFICATION. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR §§ 122.62, 122.63 and 124.5. Addition of the following components, controls, or requirements by co-permittees shall be considered minor changes to the Storm Water Management Program and not require modifications to the Permit: replacement of an ineffective or infeasible BMP; implementing a requirement of the SWMP with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III of this Permit.

F. COOPERATIVE AGREEMENT. Co-permittees shall draft an enforceable Cooperative Agreement and submit it to EPA for approval **no later than one year from the effective date of this permit.** This Cooperative Agreement shall identify the roles and responsibilities of the co-permittees under this permit and shall be signed by all co-permittees and entered into within **one month** of written or verbal approval from EPA.

PART III. SCHEDULES FOR IMPLEMENTATION OF STORM WATER MANAGEMENT PROGRAM. The co-permittees shall implement the complete SWMP described in Parts II.A.1 through 11. Table III.A summarizes the SWMP, includes the dates by which specific components must be initiated, developed, implemented, or reported upon, and identifies the co-permittee(s) which have responsibility for each specific component. Modifications to the SWMP shall be consistent with Part II.E. of this permit.

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
STRUCTURAL CONTROLS (II.A. 1)		
(a) Design Manuals. Finalize and implement design manuals incorporating best management practices and operation and maintenance criteria or adopt for use design manuals prepared by other approved sources	— Within two years of the effective date of the permit.	(a) Each co-permittee is responsible for its own design manual
(b) Operation and Maintenance Program. Develop and implement an operation and maintenance program to include schedules of planned and actual inspection and maintenance activity on all structural controls owned or operated by co-permittees.	— Within one year of the effective date of the permit.	(b) Each co-permittee is responsible for developing its own program for its own respective system. ACHD will take the lead for developing a standard form.
(c) Inspection and Maintenance Record Keeping. Develop and utilize a record tracking system to record all inspection and maintenance activity with regard to the inspection and maintenance of structural controls carried out in compliance of II.A.1.(b).	— Within one year of the effective date of the permit.	(c) Each co-permittee is responsible for it own respective recordkeeping system.
FLOATABLES (II.A.2)		
(a) Awareness and local authority co-operation. Work with other non-permitted authorities charged with litter control and determine and utilize methods to reduce litter within respective jurisdictions.	— Upon the effective date of the permit	(a) Boise City, BSU, and Garden City (for respective jurisdiction)
(b) Highway Cleanup. Implement a program or programs, such as the Adopt-a-Highway program, to facilitate litter removal from selected highways two times a year or as needed.	— Upon the effective date of the permit.	(b) ACHD and ITD (for respective jurisdiction)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(c) Operation and maintenance program. Evaluate the effectiveness of the current level of road-sweeping activity on preventing pollutants from entering the storm sewer system.	— Within 18 months of the effective date of the permit.	(c) ACHD, Boise City, ITD, and BSU (for respective jurisdiction)
AREAS OF DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT (II.A.3)		
(a) Design Practice Manuals. Ensure that new development and significant re-development projects, designed by developers and contractors and others involved in land development activities, apply minimum requirements, standards, and procedures, as detailed in the respective design manuals, both during and after such land development activities.	— Two years from the effective date of the permit.	(a) ACHD, Boise City, and DD3 (with opportunity to adopt by reference part or all of Boise Storm Water Management Design Manual), Garden City
(b) Project review. Project review and approval process for new development and significant re-development shall be developed and adopted.	— Implemented within two years of the effective date of the permit.	(b) ACHD, Boise City, DD3, and Garden City
(c) Record Keeping. Develop and maintain an internal record keeping system to track all activity on project review and approval actions.	— System to be completed and in use two years from the effective date of the permit.	(c) ACHD, Boise City, DD3, and Garden City
ROADWAYS (II.A.4)		
(a) Management Practices. Evaluate ways to reduce pollutant discharges associated with road maintenance and rehabilitation operations. The program shall also include the management practices identified during the inventory of co-permittee-owned storm water facilities and audit of site activities listed in the permit application.	— Within two years of the effective date of the permit.	(a) ITD, ACHD, Boise City, and BSU (for respective systems)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(b) Snow and Ice Control and Removal Programs. Monitor the application of chemicals and sand applied to roadways for snow and ice control. Implement programs for proper storage of de-icing materials to prevent materials from entering the storm sewer system (e.g., using covers or roofs for stockpiled materials). Research alternatives to salt for use in de-icing.	— Within two years of the effective date of the permit.	(b) ACHD, ITD, and BSU
FLOOD MANAGEMENT (II.A.5)		
(a) Inventory of Structural Flood Control Devices. Complete an inventory of all structural flood control devices within their jurisdiction to determine the feasibility of retrofitting such devices to provide additional pollutant removal.	— Within one year of the effective date of the permit.	(a) Each co-permittee is responsible for it own respective flood control facilities (except Garden City and ITD).
(b) Flood Management Projects. Develop procedures for flood management projects that assess the impacts to the water quality of the receiving water.	— Within one year of the effective date of the permit	(b) Each co-permittee is responsible for it own respective flood control facilities.
PESTICIDES, HERBICIDES, AND FERTILIZER APPLICATION (II.A.6)		
(a) Application Management. Develop a list of regionally appropriate landscaping plants and turf with information on appropriate application and timing of fertilizers.	— Within one year from the effective date of the permit.	(a) Boise City and Garden City (for respective jurisdictions)
(b) Distribution of Educational Materials. Distribute educational materials to applicators contracted by the co-permittee.	— This task shall be completed within 18 months of the effective date of the permit.	(b) Boise City and Garden City (for respective jurisdictions)
(c) Outreach Method Identification. Identify and utilize outreach methods to educate homeowners, and commercial businesses, on the impact of pesticides, herbicides, and fertilizers on aquatic resources, and means to decrease their usage.	— To be reported on annual report.	(c) Boise City and Garden City (for respective jurisdictions)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
ILLICIT DISCHARGES AND IMPROPER DISPOSAL (II.A.7)		
(a) Inspection and Enforcement. Implement a program to inspect and enforce against illicit connections, including dry-weather screening, citizen reports, and employee training in the detection of illicit connections. If illicit connections are observed, co-permittees shall require their disconnection. The program shall inspect 20% or more of the known major outfalls per permit year, totaling 100% of outfalls by the conclusion of the first permit term.	— Upon the effective date of the permit.	(a) ACHD, Boise City, DD3, ITD, BSU, and Garden City (for respective systems)
Inventory all major outfalls within their jurisdiction.	— Within 6 months of the effective date of the permit.	
(b) Storm Water Management and Discharge Control Ordinance Enforcement. The City of Boise shall enforce Title 8, Chapter 15, The City of Boise Storm Water Management and Discharge Control Ordinance (adopted May 2000). The City of Garden City shall enforce the Garden City Code Title 4, Chapter 14, Ordinances for Storm Water Management and Discharge Control (adopted in September 1999).	— Upon the effective date of the permit.	(b) Boise City and Garden City for its respective ordinances
(d) Complaint Procedures. Implement a complaint manual to guide staff through recording, investigating and following up on complaints regarding violations reported by the general public. Publicize the availability of an approved complaint referral process and post notices informing the public of the existence of such resources. Utilize appropriately trained staff in operating such a complaint response program.	— Within one year from the effective date of the permit.	(d) Each permittee is responsible for developing a complaint manual for their respective system. Report forms shall be forwarded to the co-permittee with jurisdiction when appropriate.

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
SPILL PREVENTION AND RESPONSE (II.A.8)		
(a) Spill Response Task Group. Participate in an interagency spill response task group, to ensure that a coordinated response to spills is achieved, and impacts upon aquatic resources from spilled pollutants are controlled to the MEP.	— Upon the effective date of the permit or a maximum of one year from the effective date of the permit.	(a) Boise City, ACHD, DD3, ITD, Garden City, and BSU(reporting responsibility only)
INDUSTRIAL AND HIGH RISK RUNOFF (II.A.9)		
(a) Database of Facilities. Develop and maintain a database of priority industrial sites	— Within one year of the effective date of the permit.	(a) ACHD
(b) Inspection and Monitoring of High Risk Facilities. (i) Work together to inspect and monitor such facilities for compliance with the storm water ordinance and the NPDES industrial storm water general permit. (ii) Implement the MOU between the Ada County Highway District and the City of Boise.	— Inspection program to be developed and implementation begun within one year of the effective date of the permit. — Upon the effective date of the permit.	(b) (i) ACHD as lead agency Boise City and Garden City as participating agency within respective jurisdictions (ii) ACHD and City of Boise
(c) Educational Materials. Distribute the Storm water Commercial and Industrial Best Management Practices manual	— Upon the effective date of the permit.	(c) Garden City and Boise City (for respective jurisdiction)
(d) Shall develop, formalize, and implement an inspection program of high risk industrial and other commercial facilities. The inspection program may be developed utilizing state statutes, local ordinances, contracts, or joint powers agreements.	— Within a year of the effective date of the permit.	(d) ACHD and Garden City
CONSTRUCTION SITE RUNOFF (II.A.10)		
(a) Construction Site Discharge Control Program. Develop and implement a Construction Site Discharge Control Program.	— 18 months from the effective date of the permit.	(a) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)

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TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(b) Inspection and Compliance. Conduct inspections of construction sites.	— 18 months from the effective date of the permit.	(b) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)
(c) Database and Record Keeping. Maintain a database of all active and completed construction sites within their jurisdiction.	— within one year of the effective date of the permit.	(c) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)
PUBLIC EDUCATION (II.A.11)		
(a) Public Education Program. The plan shall include:	— Upon the effective date of the permit.	
(i) the distribution of public education flyers, inserts or booklets to householders regarding appropriate methods for disposing of used motor oil and similar substances,		(i) Boise City and Garden City in respective jurisdictions with participation by other co-permittees
(ii) programs and activities to promote awareness of locations where the drain discharges and promote importance of maintaining clean water resources. Examples of such activities and programs include a stenciling program and participation in educational forums such as "Water Awareness Week."		(ii) Boise City and Garden City in respective jurisdictions with participation by other co-permittees and ACHD and Boise City (as partners with statewide "Water Awareness Week" program)
(iii) promoting the collection and/or co composting of yard wastes from residential and commercial sites. Promoting the "Keep watershed clean" campaign, and distributing copies of flyers previously developed, including but not limited to, the Storm Water Ordinance, RiverCare Tips, and the Storm Water Trooper bookmark.	— Upon the effective date of the permit	(iii) Boise City

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TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(iv) Distribute the Storm Water Commercial and Industrial BMPs handbook to commercial and industrial facilities identified as priorities due to the nature of the industrial and commercial activities to be found at such sites. The city shall make the Storm Water Plant Materials - A Resource Guide available to other facilities, contractors, and developers.		(iv) Boise City
(v) Document complaints received from the general public regarding violations to the storm water ordinance, to follow up on such complaints, and detail actions taken.		(v) All co-permittees

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PART IV. MONITORING AND REPORTING REQUIREMENTS

A. STORM EVENT DISCHARGES

1. Co-permittees shall implement a wet-weather monitoring program, or contract with another co-permittee to implement such a program, as described in the *Boise NPDES Municipal Storm Water Permit Monitoring Plan*, (Ada County Highway District, June 1998). This program shall provide data necessary to:
   - assess the effectiveness and adequacy of control measures implemented under the SWMP;
   - estimate annual cumulative pollutant loadings from the MS4;
   - estimate event mean concentrations and seasonal pollutants in discharges from major outfalls;
   - identify and prioritize portions of the MS4 requiring additional controls, and
   - identify water quality improvements or degradation.

   The co-permittees are responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the MS4. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this section, plus any additional monitoring conducted by the co-permittees.
2. A minimum of **three storm events per site per permit year** shall be analyzed for the parameters listed in Table IV.A. The samples shall be collected from five (5) sites located throughout the jurisdiction of the co-permittees. These sites are identified in Table IV.B. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the EPA in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Water Office Director, use of an alternate monitoring location may commence **thirty days from the date of the request**.

   a. *Sample Type, Collection, and Analysis:* The following requirements apply only to samples collected for Part IV.A.
      (1) For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.
      (2) Grab samples taken during the first two hours of discharge shall be analyzed separately for (if required) pH, temperature, oil & grease, E. coli, and volatile organics. For all other parameters, data shall be reported as flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.
      (3) All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

(4) Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, and other test procedures have not been specified, any available method may be used after approval from the EPA.

b. Quality Assurance Plan:

(1) Co-permittees shall develop a Quality Assurance Plan (QAP) for all monitoring requirements identified in the permit. The plan shall be completed and implemented within **120 days of the effective date of the permit.**

(2) At a minimum, the plan shall include the following:

- Protocols for sampling techniques (field blanks, replicates, duplicates, control samples, etc.),
- Sample preservation methods,
- Sample shipment procedures,
- Instrument calibration procedures and preventive maintenance (frequency, standard, spare parts),
- Qualification and training of personnel, and
- Analytical test methods with associated method detection limits (when not prescribed in Table IV.A) and quality control checks.

(3) Throughout all sample collection and analysis activities, co-permittees shall use the EPA approved quality assurance, quality control, and chain-of-custody procedures described in: *Requirements for Quality Assurance Project Plans*, EPA QA/R-5 and Guidance on *Quality Assurance Project Plans*, EPA QA/G-5. These documents are available on the EPA Region 10 website at: http://www.epa.gov/r10earth/offices/oea/r10qahome.htm or available by mail at:

Quality and Data Management Program
Office of Environmental Assessment
U.S. EPA, Region 10
1200 6th Avenue, OEA-095
Seattle, Washington 98101

(4) Co-permittees shall amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

(5) Copies of the QAP shall be kept on site and made available to EPA and/or Idaho Department of Environmental Quality (IDEQ) upon request.

c. *Sampling Waiver*. When a discharger is unable to collect samples required by Part IV.A. due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, blizzards, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

d. *Storm Event Data:* For Part IV.A, quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters listed above, the co-permittees shall maintain records of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the

end of the previous measurable (greater than 0.1 inch rainfall) storm event ; and an estimate of the total volume (in gallons) of the discharge sampled.

Table IV.A – Representative Monitoring Requirements

PARAMETER	SAMPLING FREQUENCY
Biochemical Oxygen Demand (BOD_5) (mg/l)	3 representative storm events/permit year
Chemical Oxygen Demand (COD) (mg/l)	3 representative storm events/permit year
Dissolved Oxygen (DO) (mg/l)	3 representative storm events/permit year
Total Suspended Solids (TSS) (mg/l)	3 representative storm events/permit year
Total Dissolved Solids (TDS) (mg/l)	3 representative storm events/permit year
Total Kjeldahl Nitrogen (TKN) (mg/l)	3 representative storm events/permit year
Total Phosphorus (mg/l)	3 representative storm events/permit year
Orthophosphate (mg/l)	3 representative storm events/permit year
Oil & Grease (mg/l)	3 representative storm events/permit year
Total Petroleum Hydrocarbons	3 representative storm events/permit year
Arsenic (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Cadmium (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Copper (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Lead (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Mercury (µg/l) — Total and Dissolved per EPA Method 200.8[1], 245.1 or 245.2	3 representative storm events/permit year
Nickel (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Zinc (µg/l) — Total per EPA Method 200.8[1]	3 representative storm events/permit year
Organochlorine pesticides	3 representative storm events/permit year
Organphosphate pesticides per EPA Method 8141	3 representative storm events/permit year
E. coli, in col/100ml	3 representative storm events/permit year
pH (S.U.)	3 representative storm events/permit year
Discharge, Volume, in cubic feet	3 representative storm events/permit year
Hardness (as $CaCO_3$) (mg/l)	3 representative storm events/permit year
Temperature (•C)	3 representative storm events/permit year

Table IV.A – Representative Monitoring Requirements

PARAMETER	SAMPLING FREQUENCY
Volatile Organics as per EPA Method 8260	2/year, 2nd and 4th years of permit coverage
Base/Neutral Organics per EPA Method 8270	2/year, 2nd and 4th years of permit coverage
Acid Organics per EPA Method 8270	2/year, 2nd and 4th years of permit coverage
Pesticide Organics per EPA Method 8081 or Method 8270	2/year, 2nd and 4th years of permit coverage
Note: 1 Alternative Test Procedure approval is required of the lab or co-permittee prior to the submission of monitoring data using Method 200.8.	

Table IV.B – Representative Monitoring Outfall Descriptions

OUTFALL	LOCATION	RESPONSIBLE CO-PERMITTEE
001	51-N at Walnut Street	ACHD
002	Lucky Drive	ACHD
003	Koppel's	ACHD
004	Franklin Road	ACHD
005	Production Avenue	ACHD

B. SEDIMENT ANALYSIS

1. An analysis of sediments and decant water collected from storm water catch basins. The samples shall be collected by the lead sampling entity, as designated in the Cooperative Agreement, from a minimum of **three catch basins** representing residential, commercial, and industrial land uses within the permit area. The location and the rationale behind why the site was chosen shall be submitted to the address in Section IV.E **within six months of the effective date of the permit**. A minimum of **two samples per permit year** shall be collected and analyzed from the representative catch basins. Based upon the results obtained, co-permittees shall assess whether two samples per year can adequately characterize the wastes within the catch basin. Co-permittees shall report their findings in the annual reports following the years' activity. Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used. The following are to be sampled as part of this program:

total suspended solids,
total phosphorous,
ortho-phosphorous,
total petroleum hydrocarbons,
poly-aromatic hydrocarbons,
volatile organic compounds,
E. coli,
copper,
lead,
arsenic,
cadmium,
chromium,
nickel, and
zinc.

Co-permittees shall use the results from the analyses as part of an assessment of the BMPs employed as part of the storm water management program outlined in II.A.1 through 11. Co-permittees shall coordinate amongst themselves to ensure that results are disseminated and to ensure that personnel representing all of the departments and agencies having a role in the storm water management program are aware of the findings. In addition, co-permittees shall report all findings, and actions taken as a result of the findings, in the annual report.

C. FLOATABLES

1. *Floatable monitoring program*: Co-permittees shall establish a minimum of **two monitoring locations** within the permit area to be sampled by the lead sampling entity as designated in the Cooperative Agreement. Co-permittees shall remove floatable material in discharges to or from the MS4 at the frequency necessary for maintenance of the removal devices, but not less than twice per year. The amount of material collected shall be estimated in cubic yards.

2. *Annual Report*: Co-permittees shall submit, within the annual report required by Part IV.E, the following information:

   a. Percent of MS4 screened during the year and the cumulative percent of system screened;
   b. An estimate of the amount of floatable material collected (cubic yards);
   c. A summary of results and actions taken or proposed based on the results of the wet weather screening program.

D. DRY WEATHER DISCHARGES

1. *Dry Weather Screening Program:* Co-permittees shall implement a dry weather screening program, or contract with another co-permittee to implement such a program. The program shall detect the presence of illicit connections and improper discharges to the MS4. Co-permittees shall ensure compliance with the program element by inspecting (or contracting with another co-applicant to inspect) 20% or more of the major outfalls per permit year, totaling 100% of all major outfalls by the conclusion of the first permit term.

2. *Follow-up on Dry Weather Screening Results:* The dry weather program will also include the elimination of suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Each year's results shall be included in the corresponding annual report. Follow-up activities should be prioritized on the basis of:

   a. magnitude and nature of the suspected discharge;
   b. sensitivity of the receiving water; and
   c. other relevant factors.

E. ANNUAL REPORT

1. Within one **(1) year of the effective date of this permit**, and annually thereafter, Permittees shall prepare and submit to EPA and IDEQ an Annual Report postmarked by the 10th day of the following month. In addition, copies of all annual reports, including monitoring summaries, shall be available to the public through the municipal library system. The Annual Report shall include, at a minimum:

   a. The status of implementing the components of the Storm Water Management Program that are established as Permit conditions;
   b. Proposed changes to the Storm Water Management Program required by this Permit. Such proposed changes shall be consistent with 40 CFR § 122.26(d)(2);
   c. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the Part 2 of the Permit Application;
   d. A summary of the data that co-permittees accumulated throughout the reporting year;
   e. Annual expenditures and budget for the year following each annual report;
   f. A summary describing the number and nature of enforcement actions, inspections, and public education programs, including copies of all educational materials distributed in conjunction with efforts to reduce pollutant discharges to the MS4;
   g. Identification of water quality improvements or degradation;
   h. A summary of all storm event monitoring conducted throughout the year in a format that includes the requirements of Section I.A as well as a signature of the person responsible for data quality, parameter name, monitoring location, unit of measurement, sample type, method used, and date of sample collection; and
   i. All other information required by this Permit to be submitted with the Annual Report[1].

2. Preparation and submittal of a system-wide annual report shall be coordinated by **Ada County Highway District**. The report shall indicate which, if any, co-permittees have failed to provide required information on those portions of the MS4 for which they are responsible, by 45 days prior to the report due date. Joint responsibility for report submission shall be limited to participation in preparation of the overview for the entire system and inclusion of the identity of any co-permittee who failed to provide input to

[1] Please note that different sections of the permit contain requirements to submit different documents and programs in different annual reports.

the annual report. Each individual co-permittee shall be individually responsible for content of the report relating to the portions of the MS4 for which they are responsible and for failure to provide information for the system-wide annual report in a timely manner.

3. Signed copies of monitoring summaries, the annual report, requests for SWMP modification, requests for changes in monitoring locations, and all other reports required herein, shall be submitted to:

U.S. EPA, Region 10
Office of Water
NPDES Compliance Unit (OW-133)
1200 6th Avenue
Seattle, Washington 98101

Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 98706-1256

F. CERTIFICATION AND SIGNATURE OF REPORTS. All reports required by the permit and other information requested by the Water Office Director shall be signed and certified in accordance with Parts V.K. and V.L. of the permit.

PART V. STANDARD PERMIT CONDITIONS.

A. DUTY TO COMPLY. Except as provided in permit conditions in Part V.M Bypass of Treatment Facilities and Part V.N Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

1. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $27,500 per day for each violation).

2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §

3701 note) (currently $11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $27,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $137,500).

3. Criminal Penalties:

   a. Negligent Violations. The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

   b. Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

   c. Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

   d. False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this

permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

B. **DUTY TO REAPPLY.** If co-permittees intend to continue an activity regulated by this permit after the expiration date of this permit, such entities must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the co-permittees must submit a new application at least **180 days before the expiration date** of the permit or in conjunction with the **fourth annual report**. The reapplication package shall contain the information required of 40 CFR 122.21(f) which includes: name and mailing address(es) of the permittee(s) that operate the MS4, and names and titles of the primary administrative and technical contacts for the municipal permittee(s). In addition, permittees shall identify any previously unidentified water bodies that receive discharges from the MS4, a summary of any known water quality impacts on the newly identified receiving waters, a description of any changes in co-applicants, and the identification number of the existing NPDES MS4 permit. The reapplication package may incorporate by reference the fourth annual report when the reapplication requirements can found within such report.

C. **NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE.** It shall not be a defense for a co-permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. **DUTY TO MITIGATE.** Co-permittees shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. **PROPER OPERATION AND MAINTENANCE.** Each co-permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by co-permittees to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by co-permittees only when the operation is necessary to achieve compliance with the conditions of the permit.

F. **PROPERTY RIGHTS.** The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.

G. **TRANSFERS.** This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).

H. **DUTY TO PROVIDE INFORMATION.** Co-permittees shall furnish to the Water Office Director and IDEQ, within the time specified in the request, any information which the Water Office Director or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Co-permittees shall also furnish to the Water Office Director or IDEQ, upon request, copies of records required to be kept by this permit.

I. **OTHER INFORMATION.** When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or IDEQ, it must promptly submit the omitted facts or corrected information.

J. **INSPECTION AND ENTRY.** Co-permittees shall allow the Water Office Director, IDEQ, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon co-permittees' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

K. **MONITORING AND RECORDS.**

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The co-permittees shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit,

whichever is longer. This period may be extended by request of the Director or IDEQ at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;
   b. The name(s) of the individual(s) who performed the sampling or measurements;
   c. The date(s) analyses were performed;
   d. The names of the individual(s) who performed the analyses;
   e. The analytical techniques or methods used; and
   f. The results of such analyses.

L. **SIGNATORY REQUIREMENT.** All applications, reports or information submitted to the Director and IDEQ shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or IDEQ shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director and IDEQ, and

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the organization.

3. Changes to authorization. If an authorization under Part V.J.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.J.2. must be submitted to the Regional Administrator and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

M. CERTIFICATION. Any person signing documents under this section shall make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

N. REPORTING REQUIREMENTS.

1. Planned changes. Co-permittees shall give notice to the Water Office Director and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

   a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
   b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR § 122.42(a)(1).

2. Anticipated noncompliance. Co-permittees shall give advance notice to the Water Office Director and IDEQ of any planned changes in the permitted facility or activity which may result in noncompliance with this permit.

3. Transfers. This permit may be automatically transferred to a new permittee if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
   b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
   c. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit.

   If the notice described in paragraph c above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b above.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

   a. Monitoring results must be reported on a DMR or other form provided or specified by the Water Office Director for reporting results of monitoring of sludge use or disposal practices.

b. If co-permittees monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR specified by the Water Office Director.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Water Office Director in the permit.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour notice of noncompliance reporting.

a. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

(i) any noncompliance that may endanger health or the environment;

(ii) any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");

(iii) any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or

(iv) any violation of a maximum daily discharge limitation for any of the pollutants

b. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:

(i) a description of the noncompliance and its cause;

(ii) the period of noncompliance, including exact dates and times;

(iii) the estimated time noncompliance is expected to continue if it has not been corrected; and

(iv) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.

d. Reports must be submitted to the addresses in Part IV.E ("Annual Report").

7. Other noncompliance reporting. The co-permittee(s) must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring

reports for Part IV.E are submitted. The reports must contain the information listed in Part V.L.6 of this permit.

O. BYPASS

1. Bypass not exceeding limitations. Co-permittees may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice

   a. Anticipated bypass. If co-permittees know in advance of the need for a bypass, co-permittees shall submit prior notice, if possible at least ten days before the date of the bypass.
   b. Unanticipated bypass. Co-permittees shall submit notice of an unanticipated bypass as required in Part V.L.6 ("24-hour notice of noncompliance reporting").

3. Prohibition of bypass.

   a. Bypass is prohibited, and the Water Office Director or IDEQ may take enforcement action against a co-permittee for bypass, unless:
      (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
      (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
      (3) Co-permittees submitted notices as required under paragraph 2 of this Part.
   b. The Water Office Director may approve an anticipated bypass, after considering its adverse effects, if the Water Office Director determines that it will meet the three conditions listed above in paragraph 3.a of this Part.

P. UPSET

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part V.N.3 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A co-permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and that co-permittees can identify the cause(s) of the upset;
   b. The permitted facility was at the time being properly operated;

c. Co-permittees submitted 24-hour notice of the upset as required in Part V.L.6 of this permit (24-hour notice of noncompliance reporting); and
d. Co-permittees complied with any remedial measures required under Part V.D ("Duty to mitigate") of this permit.

3. Burden of proof. In any enforcement proceeding co-permittees seeking to establish the occurrence of an upset has the burden of proof.

Q. SEVERABILITY. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

R. STATE AND ENVIRONMENTAL LAWS. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve co-permittees from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act, 33 U.S.C. § 1370.

S. ADDITIONAL MONITORING BY CO-PERMITTEES. If co-permittees monitor more frequently than required by this permit, using test procedures approved under 40 CFR Part 136, or equivalent, or as specified in this permit, the results of this monitoring shall be included with the data submitted as part of the annual report required by Part IV.E of this permit.

Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.

PART VI. PERMIT MODIFICATION

A. MODIFICATION OF THE PERMIT. The permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR §§122.62, 122.64 and 124.5. The filing of a request by co-permittees for a permit modification, revocation and re-issuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. TERMINATION OF COVERAGE FOR A SINGLE CO-PERMITTEE. Permit coverage may be terminated, in accordance with the provisions of 40 CFR §§122.64 and 124.5, for a single co-permittee without terminating coverage for other co-permittees.

PART VII. DEFINITIONS

The following definitions apply to this permit. Except as otherwise specifically provided, terms used in this permit but not defined by this Part shall have the meaning ascribed to them by Section 502 of the Clean Water Act (33 U.S.C. § 1362), 40 CFR § 122.2, and 40 CFR § 122.26(b). These statutory and regulatory definitions are incorporated herein by reference. Some of the statutory and regulatory term definitions are included here for convenience.

"Act" means the Clean Water Act.

"Administrator" means the Administrator of the EPA, or an authorized representative.

"Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"BMPs" is an acronym for Best Management Practices.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"CWA" means Clean Water Act (also referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

"Director" means the Director of the Office of Water, EPA, or an authorized representative.

"Discharge" means discharge from the Municipal Separate Storm Sewer System (MS4).

"DMR" means discharge monitoring report.

"EPA" means the United States Environmental Protection Agency.

"Flood management project" means a project that takes into account the effects on the water quality of the receiving water body(s) and whether or not the structural flood control device can be retrofitted to control water quality.

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Grab" sample means an individual sample collected over a period of time not exceeding 15 minutes.

"IDEQ" means the Idaho Department of Environmental Conservation.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Individual residence" means a single or multi-family residences (e.g., single family homes and duplexes, town homes, apartments, etc.).

"Major outfalls," means municipal separate storm sewer outfalls that discharge from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), outfalls that discharge from a single pipe with an inside diameter of 12 inches or more or its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

"Maximum Extent Practicable," is the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p).

"MEP," is an acronym for "Maximum Extent Practicable."

"Method detection limit (MDL)" mean the minimum concentration of a substance (analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.

"MS4" is an acronym for "municipal separate storm sewer system."

"Municipal separate storm sewer system"means the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by the co-permittees; (ii) designed or used for collecting or conveying storm water; (iii) which is not part of a combined sewer; and (iv) which is not part of a Publically Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

"Permit year" means the year beginning from the day and month the permit becomes effective.

"QA/QC" means quality assurance/quality control

"Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural

resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Storm sewer," unless otherwise indicated, refers to a municipal separate storm sewer.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Management Program" means the SWMP required by Part II of the permit.

"Structural flood control device" means a device which has been designed and installed for the purpose of storm drainage during storm events.

"SWMP" is an acronym for "Storm Water Management Program."

"Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of co-permittees. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Water Office Director" means the Director of the Office of Water United States Environmental Protection Agency, Region 10, or an authorized representative of the Director.

"Waters of the United States" is defined at 40 CFR 122.2.

"24-hour composite" sample means a combination of at least 8 discrete sample aliquots of at least 100 milliliters, collected over periodic intervals from the same location, during the operating hours of a facility over a 24 hour period. The composite must be flow proportional. The sample aliquots must be collected and stored in accordance in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

Massachusetts

RECEIVED

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Clean Water Act, as amended, 33 U.S.C. §§1251 et seq., and the Massachusetts Clean Waters Act, as amended, Mass. Gen. Laws. ch. 21, §§26-53, the

Boston Water and Sewer Commission

is authorized to discharge from all of its new or existing separate storm sewers: **195 identified Separate Storm Sewer Outfalls and associated receiving waters are Listed in Attachment A** to receiving waters named: **Belle Island Inlet, Boston Harbor, Boston Inner Harbor, Brook Farm Brook, Bussey Brook, Canterbury Brook, Chandler's Pond, Charles River, Chelsea River, Cow Island Pond, Dorchester Bay, Fort Point Channel, Goldsmith Brook, Jamaica Pond, Little Mystic Channel, Mill Pond, Millers River, Mother Brook, Muddy River, Mystic River, Neponset River, Old Harbor, Patten's Cove, Reserved Channel, Sprague Pond, Stony Brook, Turtle Pond and unnamed wetlands, brooks and streams.**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective 30 days from date of signature.

This permit and the authorization to discharge expire at midnight, five years from the effective date.

This permit consists of 20 pages and **Attachment A** in Part I including monitoring requirements, etc., and 35 pages in Part II including General Conditions and Definitions.

Signed this 29 day of September, 1999

Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

Director, Division of
Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

PART I. MUNICIPAL SEPARATE STORM SEWER SYSTEM

A. DISCHARGES THROUGH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AUTHORIZED UNDER THIS PERMIT

1. Permit Area. This permit covers all areas within the corporate boundary of the City of Boston or otherwise contributing to new or existing separate storm sewers owned or operated by the Boston Water and Sewer Commission, the "permittee".

2. Authorized Discharges. This permit authorizes all storm water discharges to waters of the United States from all existing or new separate storm sewer outfalls owned or operated by the permittee (existing outfalls are identified in Attachment A). This permit also authorizes the discharge of storm water commingled with flows contributed by wastewater or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits and are in compliance with applicable Federal, State and Boston Water and Sewer Commission regulations (Regulations Regarding the Use of Sanitary and Combined Sewers and Storm Drains of the Boston Water and Sewer Commission). The permittee shall provide a notification to EPA and MA DEP of all new separate storm sewer outfalls as they are activated and of all existing outfalls which are de-activated. The annual report (Part I.E.) will reflect all of the changes to the number of outfalls throughout the year.

3. Limitations on Coverage. Discharges of non-storm water or storm water associated with industrial activity through outfalls listed at Attachment A are not authorized under this permit except where such discharges are:

   a. authorized by a separate NPDES permit; or

   b. identified by and in compliance with Part I.B.2.g.2 of this permit.

B. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to develop and implement a storm water pollution prevention and management program designed to reduce, to the maximum extent practicable the discharge of pollutants from the Municipal Separate Storm Sewer System. The permittee may implement Storm Water Management Program (SWMP) elements through participation with other public agencies or private entities in cooperative efforts satisfying the requirements of this permit in lieu of creating duplicate program elements. Either cumulatively, or separately, the permittee's storm water pollution prevention and management programs shall satisfy the requirements of Part I.B.1-7. below for all portions of the Municipal Separate Storm Sewer System (MS4) authorized to discharge under this permit and shall reduce the discharge of pollutants to the maximum extent practicable. The storm water pollution prevention and management program requirements of this Part shall be implemented through the SWMP submitted as part of the permit application and revised as necessary.

1. POLLUTION PREVENTION REQUIREMENTS The permittee shall develop and implement the following pollution prevention measures as they relate to discharges to the separate storm sewer:

a. Development The permittee shall assist and coordinate with the appropriate municipal agencies with jurisdiction over land use to ensure that municipal approval of all new development and significant redevelopment projects within the City of Boston which discharge to the MS4 is conditioned on due consideration of water quality impacts. The permittee shall cooperate with appropriate municipal agencies to ensure that development activities conform to applicable state and local regulations, guidance and policies relative to storm water discharges to separate storm sewers. Such requirements shall limit increases in the discharge of pollutants in storm water as a result of new development, and reduce the discharge of pollutants in storm water as a result of redevelopment.

b. Used Motor Vehicle Fluids The permittee shall coordinate with appropriate municipal agencies or private entities to assist in the implementation of a program to collect used motor vehicle fluids (including, at a minimum, oil and antifreeze) for recycle, reuse, or proper disposal. Such program shall be readily available to all residents of the City of Boston and publicized and promoted at least annually.

c. Household Hazardous Waste (HHW) The permittee shall coordinate with appropriate municipal agencies or private entities to assist in the implementation of a program to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal and promote proper handling and disposal. Such program shall be readily available to all private residents. This program shall be publicized and promoted at least annually.

2. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS: The permittee shall continue to implement the Storm Water Management Program (SWMP) which it described in its May 17, 1993 storm water permit application and updated June 1995 and June 1998 in accordance with Section 402(p)(3)(B) of the Clean Water Act (CWA or "the Act"). This SWMP outlined in the permit application, including all updates, is approvable upon issuance of this permit.

In accordance with Part I.E. Annual Report, no later than **March 1, 2000** the permittee shall describe all the updates which it has conducted and all additional measures it will take to satisfy the requirements of this permit and the goals of the storm water management program. The Controls and activities identified in the SWMP shall clearly identify goals, a description of the controls or activities, and a description of the roles and responsibilities of other entities' areas of applicability on a system, jurisdiction, or specific area basis. The permittee will specifically address its roles and activities as they relate to portions of the SWMP which are not under its direct control (e.g. street sweeping, HHW collection, development, redevelopment). The permit may be modified to designate the agencies that administer these programs as co-permittees or require a separate permit. These entities would then be responsible for applicable permit conditions and requirements. The SWMP, and all approved updates, are hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

a. Statutory Requirements: The SWMP shall include controls necessary to reduce the discharge of pollutants from the Municipal Separate Storm Sewer System to the Maximum Extent Practicable (MEP). Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, Director or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet this standard. The SWMP shall be updated as necessary to ensure conformance with the requirements of CWA § 402(p)(3)(B). The permittee shall select measures or controls to satisfy the following water quality prohibitions:

No discharge of toxics in toxic amounts.

No discharge of pollutants in quantities that would cause a violation of State water quality standards.

No discharge of either a visible oil sheen, foam, or floating solids, in other than trace amounts.

b. Structural Controls: The permittee shall operate and maintain all storm water structural controls which it owns or operates in a manner so as to reduce the discharge of pollutants to the MEP.

c. Areas of New Development and Significant Redevelopment: The permittee shall continue to implement its site plan review process and ensure compliance with its existing regulations. The permittee shall also coordinate with appropriate municipal agencies to assist in the development, implementation, and enforcement of controls to minimize the discharge of pollutants to the separate storm sewer system from areas of new development and significant re-development during and after construction. The permittee shall assist appropriate municipal agencies to ensure that development activities conform to applicable state and local regulations, guidance and policies relative to storm water discharges to separate storm sewers.

d. Roadways: The permittee shall coordinate with appropriate agencies to assist in the implementation of measures to ensure that roadways and highways are operated and maintained in a manner so as to minimize the discharge of pollutants to the separate storm sewer system (including those related to deicing or sanding activities).

e. Flood Control Projects: The permittee shall ensure that any flood management projects within its direct control are completed after consideration of impacts on the water quality of receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices it owns or operates to provide additional pollutant removal from storm water.

f. Pesticide, Herbicide, and Fertilizer Application: The permittee shall cooperate with appropriate municipal agencies to evaluate existing measures to reduce the discharge of pollutants related to the application of pesticides, herbicides, and fertilizers applied by municipal or public agency employees or contractors to public right of ways, parks, and other municipal facilities. The permittee shall evaluate the necessity to implement controls to reduce discharge of pollutants related to the application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators. The permittee shall require controls, within its authority, as necessary.

g. Illicit Discharges and Improper Disposal: The permittee shall continue to implement its program to detect and remove illicit discharges (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for the discharge) and improper disposal into the separate storm sewer.

1. The permittee shall effectively prohibit non-storm water discharges to the Municipal Separate Storm Sewer System, other than those authorized under this permit or a separate NPDES permit.

2. Unless identified by either the permittee, the Director, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges are authorized to enter the MS4. As necessary, the permittee may incorporate appropriate control measures in the SWMP to ensure these discharges are not significant sources of pollutants to waters of the United States.

(a) water line flushing;
(b) landscape irrigation;
(c) diverted stream flows;
(d) rising ground waters;
(e) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;

(f) uncontaminated pumped ground water;
(g) discharges from potable water sources;
(h) foundation drains;
(i) uncontaminated air conditioning or compressor condensate;
(j) irrigation water;
(k) uncontaminated springs;
(l) water from crawl space pumps;
(m) footing drains;
(n) lawn watering;
(o) non-commercial car washing;
(p) flows from riparian habitats and wetlands;
(q) swimming pool discharges which have been dechlorinated;
(r) street wash waters;
(s) discharges or flows from emergency fire fighting activities;
(t) fire hydrant flushing; and
(u) building washdown water which does not contain detergents.

3. The permittee shall prevent unpermitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall implement a program to identify and limit the infiltration of seepage from sanitary sewers into the MS4.

4. The permittee shall prohibit the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal wastes into separate storm sewers. The permittee must demonstrate that the prohibition is publicized at least annually, and that the information is available for non-English speaking residents of the City.

5. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. The permittee shall describe its procedure for identification and elimination of illicit discharges. This information shall be included in the annual report required under Part I.E. below. Where elimination of an illicit connection within sixty (60) days is not possible, the permittee shall establish a schedule for the expeditious removal of the discharge. In the interim, the permittee shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

h. Spill Prevention and Response: The permittee shall cooperate with appropriate federal, state, and municipal agencies in the development and implementation of a program to prevent, contain, and respond to spills that may discharge into or through the MS4. The spill response program may include a combination of spill response actions by the permittee (and/or other public or private entities), and requirements for private entities through the permittee's sewer use regulations. Except as explicitly authorized, materials from spills may not be discharged to Waters of the United States.

i. Industrial & High Risk Runoff: In cooperation with the DEP and EPA, the permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from municipal landfills; hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee determines is contributing a substantial pollutant loading to the MS4. The program shall include:

1. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

2. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

(a) any pollutants for which the discharger may monitor or which are limited in an existing NPDES permit for an identified facility;

(b) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv);

(c) any pollutant the permittee has a reasonable expectation is discharged in substantial quantity from the facility to the separate storm sewer system.

Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. The permittee may require the industrial facility to conduct self-monitoring to satisfy this requirement.

j. Construction Site Runoff: The permittee shall continue to implement its site plan review process and ensure compliance with its existing regulations. The permittee shall also cooperate with appropriate municipal agencies in the development and implementation of a program to reduce the discharge of pollutants from construction sites to the MS4, including:

1. requirements for the use and maintenance of appropriate structural and non-structural best management practices to reduce pollutants discharged to the MS4 during the time construction is underway;

2. procedures for site planning which incorporate considerations for potential short term and long term water quality impacts and measures to minimize these impacts;

3. prioritized inspection of construction sites and enforcement of control measures as required by the permittee;

4. providing assistance to appropriate municipal agencies in the development of education and training measures for construction site operators; and

5. providing assistance to appropriate municipal agencies in the development of a notification to appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

k. Public Education: The permittee, in coordination with other appropriate municipal agencies, shall implement a public education program including, but not limited to:

1. A program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4 (e.g. curb inlet stenciling, citizen "streamwatch" groups, "hotlines" for reporting dumping, outreach materials included in billings, advertising on public access/government cable channels, etc.);

2. a program to promote, publicize, and facilitate the proper management and disposal of used oil, vehicle fluids and lubricants, and household hazardous wastes;

3. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers;

4. where applicable and feasible, the permittee should publicize those best management practices (including but not limited to the use of reformulated or redesigned products, substitution of less toxic materials, and improvements in housekeeping) developed by municipal agencies or environmental organizations that facilitate better use, application, and/or disposal of materials identified in k.1 - k.3 of this section.

3. DEADLINES FOR PROGRAM COMPLIANCE: Except as provided in PART II, and Part I.B.7. the permittee shall continue to implement its Storm Water Management Program.

4. ROLES AND RESPONSIBILITIES OF PERMITTEE: The Storm Water Management Program shall clearly identify the roles and responsibilities of the permittee and appropriate municipal agencies impacting its efforts to comply with this permit.

5. LEGAL AUTHORITY: The permittee has demonstrated and shall maintain legal authority to control discharges to and from those portions of the MS4 which it owns or operates. This legal authority may be a combination of statute, regulation, permit, contract, or an order to:

a. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit illicit discharges to the MS4;

c. As necessary, control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;

d. Control through interagency or inter-jurisdictional agreements the contribution of pollutants from one portion of the MS4 to another;

e. Require compliance with conditions in regulations, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

6. STORM WATER MANAGEMENT PROGRAM RESOURCES The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement its SWMP.

7. STORM WATER MANAGEMENT PROGRAM REVIEW AND MODIFICATION

a. Demonstration Project: Within 180 days of the effective date of the permit, the permittee shall submit a plan to assess the effectiveness of existing non-structural BMPs. This plan shall identify a drainage area or sub-area which has undergone an investigation for illicit connections and is believed to be reasonably free of sanitary sewer influence. The plan shall clearly specify activities to be conducted, responsible parties and method of assessment. The project shall commence within one year of the effective date of the permit and continue for at least one year. Within 90 days of project completion the permittee shall submit a report which identifies measures undertaken and effectiveness of those measures.

b. Program Review: The permittee shall participate in an annual review of its current SWMP in conjunction with preparation of the annual report required under Part I.E. This annual review shall include:

1. A review of the status of program implementation and compliance with program elements and other permit conditions as necessary;

2. An assessment of the effectiveness of controls established by the SWMP;

3. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

4. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the maximum extent practicable (MEP).

5. An assessment of staff and funding levels adequate to comply with the permit conditions.

c. Program Modification: The permittee may modify the SWMP in accordance with the following procedures:

1. The approved SWMP shall not be modified by the permittee(s) without the prior approval of the Director, unless in accordance with items c.2. or c.3. below.

2. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the Director.

3. Modifications replacing or eliminating an ineffective or infeasible BMP specifically identified in the SWMP with an alternative BMP may be requested at any time. Unless the Director comments on or denies the request within 60 days from submittal, the permittee shall implement the modification and proposed schedule. Such requests must include the following:

(a) an analysis of why the BMP is ineffective or infeasible (including cost considerations),

(b) expectations on the effectiveness of the replacement BMP and proposed schedule for implementation, and

(c) an analysis of why the replacement of the BMP is expected to achieve the goals of the BMP to be replaced,

(d) in the case of an elimination of the BMP, an analysis of why the elimination is not expected to cause or contribute to a water quality impact.

4. Modification requests and/or notifications must be made in writing and signed in accordance with Part II.D.2.

d. Modifications required by the Permitting Authority: The Director or the State may require the permittee to modify the SWMP as needed to:

1. Address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;

2. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

3. Include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Modifications required by the Director shall be made in writing and set forth a time schedule for the permittee to develop the modification(s).

C. WET WEATHER MONITORING AND REPORTING REQUIREMENTS

1. Storm Event Discharges. The permittee shall implement a wet-weather monitoring program for the MS4 to provide data necessary to assess the effectiveness and adequacy of control measures implemented under the SWMP; estimate annual cumulative pollutant loadings from the MS4; estimate event mean concentrations and seasonal pollutants in discharges from all outfalls; identify and prioritize portions of the MS4 requiring additional controls, and identify water quality improvements or degradation. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this section, along with any additional pertinent information. There have been no numeric effluent limits established for this permit. Further monitoring or effluent limits may be established to ensure compliance with the goals of the Clean Water Act, appropriate Water Quality Standards, or applicable technology based requirements.

a. Representative Monitoring: Within 90 days after the effective date of this permit, the permittee shall submit a proposed sampling plan. The permittee shall monitor a minimum of five (5) representative drainage areas to characterize the quality of storm water discharges from the MS4. The proposed sampling plan shall consider monitoring each site three (3) times a year for a period of at least two years. All five sites shall be completed within the five year permit term and may be done partially or consecutively. The permittee shall choose locations representing the different land uses or is representative of drainage areas served by the MS4. The permittee may submit an alternative plan for sampling frequency only subject to the approval of EPA and DEP. At a minimum, the monitoring program shall analyze for the following parameters: pH, Temperature, Dissolved Oxygen, Total Suspended Solids, BOD5, COD, Fecal Coliform, Total Nitrogen, Nitrate/Nitrite, Ammonia (as N), Total Phosphorous, Ortho-Phosphate, Oil and Grease, Total Petroleum Hydrocarbons, Surfactants, Fluoride, Copper, and Zinc. Unless commented on or denied by the Director within 60 days after its submittal, the proposed sampling plan shall be deemed approved. This monitoring program shall commence no later than 180 days from the effective date of the permit unless otherwise specified by EPA and DEP. Subsequent monitoring locations and parameters for the remainder of the permit term shall be determined based upon the results of these sampling locations and other water quality information available to EPA, DEP and the permittee.

b. Receiving Water Quality Monitoring. The permittee shall monitor a minimum of four (4) receiving waters three (3) times a year throughout the permit term to characterize the water quality impacts of storm water discharges from the MS4. Sampling shall be conducted during a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (0.1 inch) storm event. Within 90 days after the effective date of this permit, the permittee shall submit its proposed sampling plan. At a minimum, the monitoring program shall analyze for the following parameters: pH, Temperature, Dissolved Oxygen, Total Suspended Solids, BOD5, COD, Fecal Coliform, Total Nitrogen, Nitrate/Nitrite, Ammonia (as N), Total Phosphorous, Ortho-Phosphate, Oil and Grease, Total Petroleum Hydrocarbons, Surfactants, Fluoride, Copper, and Zinc. Unless commented on or denied by the Director within 60 days after its submittal, the proposed sampling plan shall be deemed approved. This monitoring program shall commence no later than six months after the effective date of the permit.

c. Alternate Representative Monitoring: Monitoring locations may be substituted for just cause during the term of the permit. Requests for alternate monitoring locations by the permittee shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless commented on or denied by the Director, use of an alternate monitoring location may commence sixty (60) days from the date of the request.

2. Storm Event Data: For Part I.C.1.a Data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. The permittee shall maintain records of the date and duration (hours) of the storm event sampled; rainfall measurements or estimates (inches) of the storm event which generated the sampled runoff; the duration (hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and the total estimated volume (in gallons) of the discharge sampled. If manual sampling is employed, the permittee shall record physical observations of the discharge such as color and smell; and visible water quality impacts such as floatables, oil sheen, or evidence of sedimentation in the vicinity of the outfall (e.g. sandbars).

3. Sample Type, Collection, and Analysis: The following requirements apply to samples collected pursuant to Part I.C.1.a.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples shall be used for the analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil & grease, fecal coliform, and fecal streptococcus. For all other parameters, data shall be reported for flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be conducted in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

4. Sampling Waiver. When the permittee is unable to collect samples required by Part I.C.1.a due to adverse climatic conditions, the discharger must submit, in lieu of sampling data, a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

5. Sampling Results. The permittee shall record the results of sampling and assessment of the data in a report and submit results with its Annual Report.

6. Wet Weather Screening: The permittee shall develop and implement a program to identify, investigate, and address areas within their jurisdiction that may be contributing excessive levels of pollutants to the MS4 as a result of rainfall or snow melt. Screening shall be conducted at anytime precipitation causes a flow from the storm sewer. At a minimum the wet weather screening program:

a. shall screen all major outfalls at least once during the permit term;

b. shall record the structural integrity of the outfall (if visible); physical observations of the discharge (if visible) such as color and smell; and visible water quality impacts such as floatables, oil sheen, or evidence of sedimentation in the vicinity of the outfall (e.g. sandbars).

c. shall summarize the results of the program in its Annual Report.

d. The permittee may submit an alternate wet weather screening pilot program on a watershed or sub-watershed basis. The pilot project concept must be submitted to EPA and DEP within 90 days of the effective date of the permit. The permittee shall identify reasons it believes that a system wide screening program would not be effective. The pilot project may be conducted in conjunction with Receiving Water Quality Monitoring (C.1.b.), but not Representative Monitoring(C.1.a.)

D. DRY WEATHER DISCHARGES

1. Dry Weather Screening Program: At least once during the permit term, the permittee shall inspect all major outfalls, or nearest upstream location not subject to tidal influence or backflow, during dry weather to identify those outfalls with dry weather flow. Dry weather screening shall be conducted when there has been no greater than 0.10 inches of precipitation in the 72 hours prior to screening. The permittee shall record the structural integrity of the outfall (if visible). If flow is observed, the permittee shall record physical observations such as color, visible sheen, turbidity, floatables, smell, and an estimate of flow. If sewage is suspected, the permittee shall develop a schedule for follow-up activities to eliminate the source as soon as is practicable. The permittee shall summarize the results in its Annual Report

2. Screening Procedures: Screening methodology need not conform to the protocol at 40 CFR §122.26(d)(1)(iv)(D) or sample and collection methods of 40 CFR §136.

3. Follow-up on Dry Weather Screening Results: Follow-up activities shall be prioritized on the basis of:

   a. magnitude and nature of the suspected discharge;

   b. sensitivity of the receiving water; and

   c. other factors the permittee deems appropriate.

4. The permittee shall summarize the results of dry weather screening and submit with its Annual Report.

E. ANNUAL REPORT:

The permittee shall prepare and submit an annual report to be submitted by no later than **March 1, 2000** and annually thereafter. The report shall include the following separate sections, with an overview for the entire MS4:

1. The status of implementing the storm water management program(s);

2. Proposed changes to the storm water management program(s);

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. A summary of the data, including monitoring or screening data, that is accumulated throughout the reporting year;

5. A revised list of all current separate storm sewer outfalls and their locations, reflecting changes of the previous year.

6. Annual expenditures for the reporting period, with a breakdown of the major elements of the storm water management program, and the budget for the year following each annual report as well as an assessment of adequacy of staffing and equipment;

7. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

8. Identification of water quality improvements or degradation attributable to the permittee;

9. An analysis of the effectiveness and removal efficiencies of structural controls owned or operated by the permittee (such as the off-line particle separator in Fenwood Road); and,

10. An update on the illicit connection program to include the total number of identified connections with an estimate of flow for each, total number of connections found in the reporting period to include how they were found (i.e. citizen complaint, routine inspection), number of connections corrected in the reporting period to include total estimated flow, and the costs of such repairs to include how the repairs were financed (i.e. by the permittee, costs provided to the permittee by the responsible party, repairs effected and financed by the responsible party). As an attachment to the report, the permittee should submit any existing tracking system information.

F. CERTIFICATION AND SIGNATURE OF REPORTS

All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with the General Conditions-Part II of this permit.

G. REPORT SUBMISSION

1. Original signed copies of all notifications and reports required herein, shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
NPDES PROGRAMS (SPA)
P.O. Box 8127
Boston, MA 02114

2. Signed copies of all notifications and reports shall be submitted to the State at:

Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108
Attn: Mr. Steve Lipman

and

Massachusetts Department of Environmental Protection
Metro Boston/Northeast Regional Office
205A Lowell Street
Wilmington, MA 01887
Attn: Mr. Sabin Lord

H. RETENTION OF RECORDS

The permittee shall retain all records of all monitoring information, copies of all reports required by this permit and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be modified by alternative provisions of this permit or extended by request of the Director at any time. The permittee shall retain the latest approved version of the SWMP developed in accordance with Part I of this permit until at least three years after coverage under this permit terminates.

I. STATE PERMIT CONDITIONS

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the Massachusetts DEP pursuant to M.G.L. Chap. 21, §43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Clean Water Act, as amended, 33 U.S.C. §§1251 et seq., and the Massachusetts Clean Waters Act, as amended, Mass. Gen. Laws. ch. 21, §§26-53, the

City of Worcester
Department of Public Works

and is authorized to discharge from all new or existing separate storm sewers: **existing Separate Storm Sewer Outfalls which are listed in Attachment A (93 major outfalls) and all other known outfalls (170 minor outfalls)**

to receiving waters (in the BLACKSTONE RIVER BASIN) named: **Beaver Brook, Blackstone River, Broad Meadow Brook, Coal Mine Brook, Coes Pond, Curtis Pond, Fitzgerald Brook, Indian Lake, Kendrick Brook, Kettle Brook, Lake Quinsigamond, Leesville Pond, Middle River, Mill Brook, Mill Brook Tributary, Tatnuck Brook, Patch Reservoir, Poor Farm Brook, Smiths Pond, Weasel Brook and Williams Millpond** in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective thirty (30) days after the date of signature. - effective 10/30/98

This permit and the authorization to discharge expire at midnight, five years from the effective date.

This permit consists of **21** pages and **Attachment A** in Part I including wet and dry weather monitoring requirements, etc., and 35 pages in Part II including General Conditions and Definitions.

Signed this 30 day of September, 1998

Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

Director, Division of
Watershed Management
Department of Environmental
Protection
Commonwealth of Massachusetts
Boston, MA

PART I. MUNICIPAL SEPARATE STORM SEWER SYSTEM

A. DISCHARGES THROUGH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AUTHORIZED UNDER THIS PERMIT

1. Permit Area. This permit covers all areas within the corporate boundary of the City of Worcester served by, or otherwise contributing to discharges from new or existing separate storm sewers owned or operated by the Department of Public Works, the "permittee".

2. Authorized Discharges. This permit authorizes all storm water discharges to waters of the United States from all existing or new outfalls owned or operated by the permittee (existing outfalls are identified in Attachment A). This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits and in compliance with applicable Federal, State and local regulations.

   Storm water discharges related to industrial activity which are not under the jurisdiction of the storm water program are authorized. The permittee shall provide in the annual report (Part I.E.) to EPA and MA DEP a review of all new separate storm sewer outfalls that are activated and of all existing outfalls which are de-activated.

3. Limitations on Coverage. The following discharges are not authorized by this permit:

   a. Discharges of non-storm water or storm water associated with industrial activity through outfalls listed in Attachment A are not authorized under this permit except where such discharges are:

      I. authorized by a separate NPDES permit; or

      ii. identified by and in compliance with Part B.2.g of this permit.

B. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to continue to develop, implement and revise as necessary, a storm water pollution prevention and management program designed to reduce, to the maximum extent practicable, the discharge of pollutants from the Municipal Separate Storm Sewer System (MS4). The permittee may implement Storm Water Management Program (SWMP) elements through participation with other public agencies or private entities in cooperative efforts satisfying the requirements of this permit in lieu of creating duplicate program elements. Either cumulatively, or separately, the permittee's storm water pollution prevention and management ~~programs shall satisfy the requirements of~~ Part I.B.1-7. below for all portions of the MS4.

1. POLLUTION PREVENTION REQUIREMENTS The permittee shall develop and implement the following pollution prevention measures:

a. Development The permittee, in cooperation with the agency with jurisdiction over land use, shall include requirements to consider water quality impacts of new development and significant re-development. The permittee shall ensure that development activities conform to applicable state and local regulations, guidance and policies relative to the discharge of storm water into the MS4. The goals of these requirements shall be to limit increases in the discharge of pollutants into the MS4 from new development and to reduce the discharge of pollutants into the MS4 from existing sources due to re-development.

b. Used Motor Vehicle Fluids The permittee shall describe educational activities, public information activities and other appropriate activities to facilitate the proper management, including recycling, reuse and disposal, of used motor vehicle fluids. The permittee shall coordinate with appropriate public agencies or private agencies where necessary. Such activities shall be readily available to all private residents and be publicized and promoted on a regular basis (at least annually).

c. Household Hazardous Waste (HHW) The permittee shall coordinate with the appropriate public agency or private entities to ensure the implementation of a program to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such program shall be readily

available to all private residents and be publicized and promoted on a regular basis (at least annually).

2. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS: The permittee shall continue to implement the current elements of its' Storm Water Management Program (SWMP) which was described in the May 11, 1993 Part II application in accordance with Section 402(p)(3)(B) of the Clean Water Act (CWA or "the Act"), including any updates.

The current SWMP does not adequately address all the required elements described on Pages 5-11 below. The EPA sent a letter to the City of Worcester on June 6, 1997 specifying which portions of the current SWMP needed more description, effort, or clarification. The items included were the illicit connection program, a discussion of the City's indebtedness and funding for storm water programs, geographic mapping, reevaluation of wet weather sampling locations, construction area oversight, and public education. The City submitted a letter addressing these concerns on March 25, 1998. Although most issues were discussed, there is still some detail and proposed effort that is insufficient.

In particular, the sampling plan proposes grab samples at five different outfalls, three times per year. In order to get a sense of any trend and how parameter concentrations change over time during storm events, the permittee must conduct composite sampling or a series of grab samples for the summer sampling event at each of the five outfalls, as described later. In Section C. below, this permit includes minimum expectations for outfall monitoring and instream monitoring during wet weather. Instream monitoring could provide information on both the pollutant concentration peaks as well as the pollutant loading increases that occur as a result of storm events.

More detail and effort is needed for the catch basin cleaning and inspection program, as shown on Page 6. This last issue was not raised in the letter of June 6, 1997, but this program was found to be deficient upon further review.

Within **120** days after the effective date of this permit, the permittee shall submit a written description of all additional measures it will take, relative to items mentioned above, to satisfy the requirements of this permit and the goals of the proposed SWMP. **This submittal will include the entire SWMP effort, including all the original items as included in Worcester's Part II application.** This

shall be submitted to the EPA the MA DEP at the addresses in Section G. Unless disapproved by EPA or the MA DEP within 60 days after its submittal, the SWMP shall be deemed approved. The permittee shall respond to all written comments by EPA and the MA DEP and shall make all changes to the SWMP required for its approval. As noted later, compliance with the SWMP shall occur no later than 180 days after the effective date of the permit or no later than EPA and DEP's approval of the SWMP. This SWMP shall be displayed at a convenient location accessible to the public.

The Controls and activities identified in the SWMP shall clearly identify goals, a description of the controls or activities, and a description of the roles and responsibilities of other entities' areas of applicability on a system, jurisdiction, or specific area basis.

The permittee will specifically address how it will have input on any portions of the SWMP which may not be under its direct control (i.e. Mass Highway Department's maintenance of interstate highway) and how it will cooperate with such entities to achieve the goals of the SWMP.

If, during the life of this permit, EPA and the DEP determine that the permittee cannot substantively operate these programs to effectively reduce pollutants to the MS4, then the permit may be modified to designate one or more agencies that administer these programs as co-permittees. These entities would then be responsible for applicable permit conditions and requirements. Alternatively, one or more entities may be required to apply for and obtain an individual storm water permit for their discharges. The SWMP, and all approved updates, are hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

a. Statutory Requirements: SWMPs shall include controls necessary to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable,"MEP". Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, the Director or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet this "MEP" standard. The SWMPs shall be updated as necessary to ensure conformance with the requirements of CWA § 402(p)(3)(B). In implementing the SWMP, the permittee

is required to select measures or activities intended to meet these requirements:

No discharge of toxics in toxic amounts.

No discharge of pollutants in quantities that would cause a violation of State water quality standards.

No discharge of either a visible oil sheen, foam, or floating solids, in other than trace amounts, at any time.

No discharge of suspended or settleable solids in concentrations or combinations that would impair the uses of the class of receiving waters.

b. Structural Controls: The permittee shall operate and maintain any storm water structural controls, for which it is the owner or operator, in a manner so as to reduce the discharge of pollutants to the MEP. Each catch basin shall be cleaned at least every other year as described in the SWMP.

The cleaning program must include the recording and inputting of all activities in an automated database for all catch basins, including the date of cleaning, the location of each catch basin, and an estimate of how full the catch basin was when it was cleaned. For those catch basins which are found to be more than approximately 50% full, a follow up inspection will be conducted within 3 - 6 months and cleaning schedules modified as appropriate.

During the life of this permit, the permittee shall conduct a structural control demonstration. Within 180 days after the effective date of the permit, the permittee shall submit a demonstration proposal and schedule to the EPA and MA DEP. Unless disapproved by the EPA or the MA DEP within 30 days after its submittal, the proposed demonstration project shall be deemed approved.

The permittee can reference the MA DEP document titled, Stormwater Management, Volume 1: Stormwater Policy Handbook and Stormwater Management, Volume II: Stormwater BMP Handbook. This provides an overview of storm water controls, including ranges of removal for typical storm water pollutants. This proposal shall measure the removal efficiency of a particular structural control in the MS4 area for several pollutants with influent and effluent sampling during the life of this permit.

c. Areas of New Development and Significant Redevelopment: The permittee and/or cooperating agencies shall develop, implement, and enforce controls to minimize the discharge of pollutants to the separate storm sewer system from areas of new development and significant re-development during and after construction. The permittee and/or cooperating agencies shall ensure development activities conform to applicable state and local regulations, guidance and policies. The permittee and/or cooperating agencies shall consider water quantity and water quality impacts related to development and significant redevelopment. The permittee and/or cooperating agencies shall conform to the policy of the MA DEP titled **Performance Standards and Guidelines for Stormwater Management in Massachusetts.**

d. Roadways: The permittee shall coordinate with appropriate agencies to implement measures to ensure that roadways and highways are operated and maintained in a manner so as to minimize the discharge of pollutants to the separate storm sewer system (including discharges related to deicing and sanding activities and snow removal and disposal).

The permittee shall conduct an investigation of the drainage from roadways that are owned or operated by other entities, primarily the Massachusetts Highway Department. Within 180 days after the effective date of the permit, **the permittee shall report to the EPA and the MA DEP, which of these roadway drainage systems are connected to the MS4.** The SWMP will also include a description of how the permittee will coordinate with such entities to assure that discharges to the MS4 through such drainage meets the requirements of the permit.

e. Flood Control Projects: The permittee shall ensure any flood management projects consider impacts on the water quality of receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water.

f. Pesticide, Herbicide, and Fertilizer Application: The permittee shall implement measures to reduce the discharge of pollutants to the MS4 related to the application and storage of pesticides, herbicides, and fertilizers applied by municipal or public agency employees or contractors to public right of ways, parks, and other municipal facilities. The permittee, in cooperation with the entity with jurisdiction over land use (e.g. Parks Department), shall implement

controls to reduce discharge of pollutants to the MS4 related to the application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators and its own employees.

g. Authorized Non-Storm Water Discharges: Unless identified by either the permittee, the EPA, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges are authorized to enter the MS4. As necessary, the permittee shall incorporate appropriate control measures in the SWMP to insure that these discharges are not significant sources of pollutants to waters of the United States.

(a) water line flushing;
(b) landscape irrigation;
(c) diverted stream flows;
(d) rising ground waters;
(e) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
(f) uncontaminated pumped ground water;
(g) discharges from potable water sources;
(h) foundation drains;
(I) uncontaminated air conditioning or compressor condensate;
(j) irrigation water;
(k) uncontaminated springs;
(l) water from crawl space pumps;
(m) footing drains;
(n) lawn watering;
(o) non-commercial car washing;
(p) flows from riparian habitats and wetlands;
(q) swimming pool discharges which have been dechlorinated;
(r) street wash waters; and
(s) discharges or flows from emergency fire fighting activities.
(t) fire hydrant flushing
(u) building washdown water which does not contain detergents

h. Illicit Discharges and Improper Disposal: The permittee shall continue to implement its ongoing program to detect and remove (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for) illicit discharges and improper disposal into the separate storm sewer.

1. The permittee shall effectively prohibit unpermitted, industrial storm water discharges which are required to have a federal storm water permit, to the MS4.

2. The permittee shall prohibit unpermitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall identify and limit the infiltration of seepage from sanitary sewers into the MS4.

3. The permittee shall prohibit the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal wastes into separate storm sewers. Public education programs for proper disposal of these materials shall be included in the SWMP and publicized at least annually and shall include material for non-English speaking residents.

4. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. The permittee shall describe its procedure for the identification, costing and elimination of illicit discharges. This information shall be included in the annual report required under Part I.E. below. Where elimination of an illicit connection within thirty (30) days is not possible, the permittee shall establish a schedule for the expeditious removal of the discharge. In the interim, the permittee shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

i. Spill Prevention and Response: The permittee shall implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. The spill response procedures may include a combination of spill response actions by the permittee (and/or other public or private entities), and requirements for private entities through the permittee's sewer use ordinances. The discharges of materials resulting from spills is prohibited.

j. Industrial & High Risk Runoff: The permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from municipal landfills; hazardous waste treatment,

storage, disposal and recovery facilities and facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee determines is contributing a substantial pollutant loading to the MS4. A list of these facilities which discharge to the MS4 shall be

maintained and updated as necessary. This shall include industrial activities which are listed at 40 CFR §122.26(b)(14), which are required to obtain federal storm water permit coverage. The program shall include:

1. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

2. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

(a) any pollutants which the discharger may monitor for or are limited to in an existing NPDES permit for an identified facility;

(b) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

(c) any pollutant the permittee has a reasonable expectation is discharged in substantial quantity from the facility to the separate storm sewer system

Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. The permittee may require the industrial facility to conduct self-monitoring to satisfy this requirement.

3. Alternative Certification: In lieu of monitoring, the permittee may accept a certification from a facility stating that raw and waste materials, final and intermediate products, by-products, material handling equipment or activities, and/or loading/unloading operations are not expected to be exposed to storm water for the certification period. The permittee shall still reserve the right to conduct and shall consider conducting site inspections for these facilities during the life of this permit.

k. Construction Site Runoff: The permittee shall implement a program to reduce the discharge of pollutants from construction sites into the MS4, including:

1. requirements for the use and maintenance of appropriate structural and non-structural best management practices to reduce pollutants discharged to the MS4 during the time construction is underway;

2. procedures for site planning which incorporate considerations for potential short term and long term water quality impacts to the MS4 and minimizes these impacts;

3. prioritized inspections of construction sites and enforcement of control measures;

4. appropriate education and training measures for construction site operators;

5. notification to appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

l. Public Education: The permittee shall implement a public education program including, but not limited to the following items. Cooperation should be sought with city and state agencies where necessary. This program shall also include material for non-English speaking residents.

1. A program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials (e.g. floatables, industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4 (e.g. curb inlet stenciling, citizen "streamwatch" groups, "hotlines" for reporting dumping, outreach materials included in billings, public access/government cable channels, etc.);

2. a program to promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes;

3. a program to promote, publicize, and facilitate the proper use, application, and disposal of

pesticides, herbicides, and fertilizers by the public and commercial and private applicators and distributors;

4. where applicable and feasible, the permittee should publicize those best management practices (including but not limited to the use of reformulated or redesigned products, substitution of less toxic materials, and improvements in housekeeping) used by the permittee that facilitate better use, application, and/or disposal of materials identified in 1.1 and 1.2 above.

2. Deadlines for Program Compliance. Except as provided in PART II, and Part I.B.7. compliance with the storm water management program shall be required within **180** days from the effective date of the permit.

3. Roles and Responsibilities of Permittee: The Storm Water Management Program shall clearly identify the roles and responsibilities of the permittee and any party impacting its efforts to comply with this permit.

4. Legal Authority: The permittee and/or cooperating agencies shall ensure that they have and maintain legal authority to control discharges to and from those portions of the MS4 which it owns or operates. This legal authority may be a combination of statute, ordinance, permit, contract, or an order to:

a. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit illicit discharges to the MS4;

c. Control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;

d. Control through interagency or inter-jurisdictional agreements the contribution of pollutants from one portion of the MS4 to another;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

5. Storm Water Management Program Resources The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement its SWMP.

6. Storm Water Management Program Review and Modification

a. Program Review: The permittee shall participate in an annual review of its current or modified SWMP in conjunction with preparation of the annual report required under Part I.E. This annual review shall include:

1. A review of the status of program implementation and compliance with program elements and other permit conditions as necessary;

2. An assessment of the effectiveness of controls established by the SWMP;

3. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

4. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the maximum extent practicable (MEP).

5. An annual public informational meeting held within two months of submittal of the Annual report.

b. Program Modification: The permittee may modify the SWMP in accordance with the following procedures:

1. The approved SWMP shall not be modified by the permittee(s) without the prior approval of the Director, unless in accordance with items 2. or 3. below.

2. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the Director.

3. Modifications replacing an ineffective or unfeasible BMP specifically identified in the SWMP with an alternative BMP may be requested at any time. Unless denied by the Director, the modification shall be deemed approved and shall be implemented by the permittee 60 days from submittal of the request. Such requests must include the following:

(a) an analysis of why the BMP is ineffective or infeasible (including cost prohibitive),

(b) expectations on the effectiveness of the replacement BMP, and

(c) an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

4. Modification requests and/or notifications must be made in writing and signed in accordance with Part I.F.

c. Modifications required by the Permitting Authority: The permitting authority may require the permittee to modify the SWMP as needed to:

1. Address impacts on receiving water quality caused or contributed to by discharges from the MS4;

2. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

3. Include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Modifications requested by the Director shall be made in writing and set forth a time schedule for the permittee to develop the modification(s).

C. WET WEATHER MONITORING AND REPORTING REQUIREMENTS

1. Storm Event Discharges. The permittee shall implement a wet weather monitoring program for the MS4 to provide data necessary to assess the effectiveness and adequacy of control measures implemented under the SWMP; estimate annual cumulative pollutant loadings from the MS4; estimate event mean concentrations and seasonal pollutants in discharges from all major outfalls; identify and prioritize portions of the MS4 requiring additional controls, and identify water quality improvements or degradation.

The permittee is responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the MS4. Improvement in the quality of discharges from the MS4 will be assessed based on the

necessary monitoring information required by this section, along with any additional monitoring which is made available. There have been no effluent limits established for this draft permit. Numeric effluent limits may be established in the next permit to control impacts on water quality, to improve aesthetics, or for other reasons as necessary.

a. Representative Monitoring: The permittee shall monitor representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the MS4. Within **90** days after the effective date of this permit, the permittee will submit its proposed sampling plan to the EPA and MA DEP for review. The permittee shall choose locations representing different land uses, with a focus on what it considers priority areas, such as an outfall in the vicinity of a public beach. The plan shall outline the parameters to be sampled, the frequency of sampling and reporting of results. This submittal shall also include any related monitoring which the permittee has done since its MS4 permit application was originally submitted. Unless disapproved by the EPA or MA DEP within **30** days after its submittal, the proposed sampling plan shall be deemed approved.

The sampling locations which the permittee submitted in its letter of March 25, 1998 to EPA appear to be adequate. These locations shall be monitored at least three times per year (spring, summer and fall) for all the parameters suggested, including cadmium and replacing oil & grease with Total Petroleum Hydrocarbons (TPH). The summer sampling event shall consist of composite samples, which shall be composed of, at a minimum, samples taken at hours 0 (pre-runoff), 4, 8, 12, 16 and 20. These samples shall be flow composited.

Instream sampling: This sampling is required as a supplement to the outfall monitoring as follows:

1) The mouth of the Mill Brook Conduit shall be grab sampled for fecal coliform during the spring and summer sampling seasons;

2) the high zinc load that was found during the Blackstone River Initiative (BRI) sampling from the Mill Brook conduit shall be investigated. Findings shall be reported in the annual report;

3) the two instream locations to be sampled are:

a. Sampling station 00 from the BRI study; and

b. A station downstream of where Beaver Brook and Tatnuck Brook completely mix, but above the Kettle Brook confluence

These two stations will be monitored during the spring and summer sampling events. The sampling parameters will be identical to those of the outfall sampling, with the addition of flow at station 00. Similar to the outfall monitoring, the summer sampling event shall be conducted with composite samples. At station 00, flow can be determined from measuring the distance from a fixed point on the bridge to the water surface. The EPA will provide information on the relationship between this stage measurement and stream flows. The second sampling station can be flow composited using flow data derived from Station 00. For all instream sampling events, sampling shall be conducted during wet weather.

b. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Director, use of an alternate monitoring location may commence thirty (30) days from the date of the request.

2. Storm Event Data: For Part I.C.1.a - Representative Monitoring only - quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters which are to be sampled for in the sampling plan to be submitted, the permittee shall maintain records of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the total volume (in gallons) of the discharge sampled and a description of the presence and extent of floatable debris, oils, scum, foam, solids or grease in any storm water discharges or in the receiving waters.

3. Sample Type, Collection, and Analysis: The following requirements apply only to samples collected for Part C.1.a - Representative Monitoring.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water

discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples taken during the first two hours of discharge shall be used for the analysis of pH, temperature, Total Petroleum Hydrocarbons (TPH), fecal coliform and residual chlorine. For all other parameters, data shall be reported for flow weighted composite samples as described on Page 15.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.25 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be conducted in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

4. Sampling Waiver. When a discharger is unable to collect samples required by Part I.C.1.a (Representative Monitoring) due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms,etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

5. Wet Weather Screening Program: The permittee shall implement a program to identify, investigate, and address areas within their jurisdiction that may be contributing excessive levels of pollutants to the MS4. The wet weather screening program:

a. Shall screen the MS4, in accordance with the procedures specified in the SWMP, at least once during the permit term.

b. Shall specify the sampling and non-sampling techniques (such as observations or quantitative methods), to be used for initial screening and follow-up purposes. For samples collected for screening purposes only, sample collection and analysis need not conform to the requirements of 40 CFR Part 136 and are not subject to the requirements of Paragraphs 1, 2, and 3 above.

D. DRY WEATHER DISCHARGES

1. Dry Weather Screening Program: The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4. All major outfalls identified in the Part I application and all other areas (but not necessarily all outfalls) of the MS4 must be screened at least once during the permit term. A schedule of inspections shall be identified to support activities undertaken in accordance with Part I.B.2.g. and may be in conjunction with any activities undertaken in accordance with Part I.C.. The schedule of inspections shall be included in the annual report Part I.E.

2. Screening Procedures: Screening methodology may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR §122.26(d)(1)(iv)(D).

3. Follow-up on Dry Weather Screening Results: The permittee shall implement a program to locate and eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Follow-up activities shall be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

E. ANNUAL REPORT:

The permittee shall prepare an annual system-wide report to be submitted no later than April 1, 2000 and annually thereafter. The report shall include the following separate sections, with an overview for the entire MS4:

1. The status of implementing the storm water management program(s) (status of compliance with any schedules established under this permit shall be included in this section);

2. ~~Proposed changes to the storm water management~~ program(s);

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. An evaluation of all the authorized non-storm water discharges at Part I.B.2.g. and whether it was determined that any controls or restrictions are necessary for any of these and descriptions of such;

5. A summary of the data, including monitoring data, that is accumulated throughout the reporting year; a portion of this data shall be compared to National Urban Runoff Program (NURP) values, as was done in the Part II application and to ambient water quality criteria.

6. A revised list of all current separate storm sewer outfalls and their locations, reflecting changes of the previous year and justification for any new outfalls.

7. Annual expenditures for the reporting period, with a breakdown of the major elements of the storm water management program, and the budget for the year following each annual report;

8. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

9. Identification of water quality improvements or degradation; and,

10. Update on the illicit connection program to include the total number of identified connections with an estimate of flow for each, total number of connections found in the reporting period to include how they were found (i.e. citizen complaint, routine inspection), number of connections corrected in the reporting period to include total estimated flow, and the financing required for such to include how the repairs were financed (i.e. by the permittee, costs provided to the permittee by the responsible party, repairs effected and financed by the responsible party). As an attachment to the report, the permittee should submit any existing tracking system information. Also include updates to schedules and a summary of activities conducted under Parts I.C. and I.D.

F. CERTIFICATION AND SIGNATURE OF REPORTS

All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with the General Conditions - Part II of this permit.

G. REPORT SUBMISSION

1. All original, signed notifications and reports required herein, shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
Water Technical Unit (SEW)
P.O. Box 8127
Boston, MA 02114
Attn: George Papadopoulos, Permit Writer

2. Signed copies of all other notifications and reports shall be submitted to the State at:

Massachusetts Department of Environmental Protection
Division of Watershed Management
Watershed Planning and Permitting Section
627 Main Street
Worcester, Massachusetts 01608

H. RETENTION OF RECORDS

The permittee shall retain all records of all monitoring information, copies of all reports required by this permit and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be modified by alternative provisions of this permit or extended by request of the Director at any time. The permittee shall retain the latest approved version of the SWMP developed in accordance with Part I of this permit until at least three years after coverage under this permit terminates.

I. STATE PERMIT CONDITIONS

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the Massachusetts DEP pursuant to M.G.L. Chap. 21, §43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

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ATTACHMENT A

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID #	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
2	5F	MOUNTAIN ST WEST	48 inch storm drain	KENDRICK BROOK
6	6F	ARARAT ST	48 inch storm drain	UNNAMED BROOK TO KENDRICK BROOK
7	7F	BROOKS ST	24 inch storm drain	KENDRICK BROOK
8	6D	GROVE ST	36 inch storm drain	UNNAMED BROOK TO INDIAN LAKE
10	8F	W BOYLSTON DR/HWY	15 inch storm drain	MILL BROOK
11	7F	NEW BOND ST	24 inch storm drain	MILL BROOK TRIB
12	7E	INDIAN HILL RD NEAR NASHOBA PL	18 inch storm drain	INDIAN LAKE
16	7E	INDIAN LAKE RD	36 inch storm drain	INDIAN LAKE
17	7E	SHOREHAM RD	42 inch storm drain	INDIAN LAKE
27	10B	EDWIDGE ST	48 inch storm drain	UNNAMED BROOK TO TATNUCK BROOK
32	10C	MOWER ST	42 inch storm drain	TATNUCK BROOK
38	10C	MAPLE LEAF RD	48 inch storm drain	TATNUCK BROOK
39	11D	CHANDLER ST	42 inch storm drain	OVERLAND TO PATCH RESERVOIR
40	12D	BEAV BK PLAYGROUND	42 inch storm drain	BEAVER BROOK
45	13D	BEAVER BROOK PKWY	60 inch storm drain	BEAVER BROOK
46	12E	BEAVBK PLG/CHANDLER	48 inch storm drain	BEAVER BROOK
56	12E	BEAVBK PLG/CHANDLER	15 inch storm drain	BEAVER BROOK
58	13E	MID BEAV BK PLG	33 X 48 inch storm drain	BEAVER BROOK
62	14D	LAKESIDE AVE	21 inch storm drain	COES POND
65	15D	STAFFORD ST	48 inch storm drain	CURTIS POND
68	14D	MILL/PARK/MAIN	21 inch storm drain	BEAVER BROOK
69	14D	MILL/PARK/MAIN	12 inch storm drain	BEAVER BROOK
70	14D	MAIN ST	24 inch storm drain	BEAVER BROOK
72	13D	OLIVER ST/PARK AVE	24 X 36 inch storm drain	BEAVER BROOK
74	14D	WEBSTER ST	18 inch storm drain	MIDDLE RIVER
75	15D	CAMBRIDGE ST	24 inch storm drain	MIDDLE RIVER
77	15D	LYMAN ST	24 inch storm drain	CURTIS POND
78	15C	MAIN ST/TOWN LINE	12 inch storm drain	UNNAMED POND TO SMITHS POND
80	16C	STAFFORD ST	39 inch storm drain	KETTLE BROOK
81	16C	JAMES ST	36 inch storm drain	KETTLE BROOK
84	16E	SOUTHBRIDGE ST	54 inch storm drain	OVERLAND FLOW TO MIDDLE RIVER
85	15D	HWY/RR/S OF RIVER	36 inch storm drain	MIDDLE RIVER

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
86	16E	SOUTHBRIDGE ST	24 inch storm drain	OVERLAND FLOW TO MIDDLE RIVER
87	15E	CAMP ST	24 X 36 inch storm drain	MIDDLE RIVER
88	15E	SOUTHBRIDGE ST/I1WY	18 inch storm drain	BLACKSTONE RIVER
90	16F	FALMOUTH ST NEAR RR	24 inch storm drain	BLACKSTONE RIVER
91	17F	WISER AVE NEAR RR	30 inch storm drain	OVERLAND FLOW TO BLACKSTONE RIVER
92	17F	AGRAND ST/WARMLAND	36 inch storm drain	OVERLAND FLOW TO BLACKSTONE RIVER
93	18F	SEWAGE TMT PLANT	36 inch storm drain	WORCESTER SEWAGE TREATMENT PLANT
94	16G	MILLBURY ST	42 inch storm drain	BLACKSTONE RIVER
95	17G	MILLBURY ST	21 inch storm drain	BLACKSTONE RIVER
108	14H	JOLMA ROAD	12 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
109	14H	BRANDY LANE	36 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
110	12H	AYRSHIRE/COBURN	60 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
114	11H	BELMONT/LAKE	36 inch storm drain	QUINSIGAMOND LAKE
115	11H	SHERBROOK/LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
119	9H	PLANT ST	36 inch storm drain	COAL MINE BROOK
124	7F	W BOYLSTON ST/BOURNE ST	36 inch storm drain	MILL BROOK
125	7F	W BOYLSTON ST/SUMMERHILL ST	36 inch storm drain	MILL BROOK TRIB
128	7G	CONSTITUTION AVE	42 inch storm drain	POOR FARM BROOK
129	7H	PLANT/W BOYLSTON	30 inch storm drain	POOR FARM BROOK
130	7F	BROOKS ST	30 inch storm drain	KENDRICK BROOK
131	6G	CLARK ST	36 inch storm drain	POOR FARM BROOK
134	6F	W BOYLSTON ST	36 inch storm drain	KENDRICK BROOK
135	6F	EAMES ST	24 inch storm drain	KENDRICK BROOK
138	5F	HIGGINS ST	30 inch storm drain	KENDRICK BROOK
139	8F	NEPONSET/W BOYLSTON	12 inch storm drain	MILL BROOK
140	9F	W BOYLSTON TER/GOLD STAR	18 inch storm drain	MILL BROOK
141	9F	W BOYLSTON TER/GOLD STAR	24 inch storm drain	MILL BROOK
142	9F	GENNIE ST/DIST CTR	36 inch storm drain	MILL BROOK
143	9F	GENNIE ST/DIST CTR	66 inch storm drain	MILL BROOK
144	9F	GENNIE ST	15 inch storm drain	MILL BROOK
192	15F	PERRY/MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
194	15F	MAXWELL/MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
202	8D	SALISBURY ST	36 inch storm drain	UNNAMED BROOK TO FLAGG ST SCHOOL
1007	13C	WILLIAMSBURG DR	60 inch storm drain	UNNAMED BROOK TO WILLIAMS MILLPOND
1008	15D	JACQUES ST	15 inch storm drain	MIDDLE RIVER
1012	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1013	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1014	18G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1015	18G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1016	16E	HOPE AVE/HWY	24 inch storm drain	LEESVILLE POND
1019	15E	MIDDLE RIV/HWY	12 inch storm drain	MIDDLE RIVER
1020	15E	MIDDLE RIV/HWY	12 inch storm drain	MIDDLE RIVER
1021	15E	MIDDLE RIV/HWY	18 inch storm drain	MIDDLE RIVER
1022	15E	MIDDLE RIV/HWY	48 inch storm drain	MIDDLE RIVER
1039	7F	STORES ST/SHORE RD	24 inch storm drain	DITCH TO MILL BROOK TRIB
1040	7F	STORES ST/SHORE DR	24 inch storm drain	DITCH TO MILL BROOK TRIB
1043	17H	ROUTE 20	12 inch storm drain	BROAD MEADOW BROOK
1045	8H	LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
1046	9H	LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
1048	15D	STAFFORD ST	30 inch storm drain	CURTIS POND
1049	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1050	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1051	8F	RT 190/WEST OF KENWOOD AVE	18 inch storm drain	MILL BROOK
1052	6F	HIGGINS ST	12 inch storm drain	KENDRICK BROOK
2003	16C	STAFFORD ST	30 inch storm drain	KETTLE BROOK
2004	16C	JAMES ST	12 inch storm drain	KETTLE BROOK
2006	17G	MILLBURY ST	30 inch storm drain	BLACKSTONE RIVER
3000	15G	DUNKIRK AND HAMPTON	60 inch storm drain	BROAD MEADOW BROOK
3001	5F	MOUNTAIN ST WEST	3.5 X 4 inch storm drain	KENDRICK BROOK
3002	10B	BAILEY ST AT AIRPORT DR	36 inch storm drain	UNNAMED BROOK TO TATNUCK BROOK
3003	6F	ARARAT ST	18 inch storm drain	UNNAMED BROOK TO KENDRICK BROOK

New Mexico

NPDES PERMIT NO. NMS000101
ALBUQUERQUE MUNICIPAL SEPARATE STORM SEWER SYSTEM
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STORM WATER MANAGEMENT PROGRAM ATTACHMENT

Chapter 1: City of Albuquerque/Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
Chapter 2: New Mexico State Highway and Transportation Department
Chapter 3: University of New Mexico

Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

NPDES Permit No. NMS000101

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the "Act"),

City of Albuquerque
Public Works Department
P.O. Box 1293
Albuquerque, NM 87103

Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
2600 Prospect NE
Albuquerque, NM 87107

New Mexico State Highway and Transportation Department
District III
P.O.Box 91750
Albuquerque, NM 87199-1750

University of New Mexico
Department of Safety, Health and Environmental Affairs
1801 Tucker Street N.E.
Albuquerque, NM 87131

are authorized to discharge from all portions of the Albuquerque Municipal Separate Storm Sewer System (MS4) owned or operated by any permittee listed above, to waters of the United States,

in accordance with the Storm Water Management Program(s), effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, IV, V, VI, VII, and VIII herein.

This is the first NPDES permit issued for these portions of the municipal separate storm sewer system.

This permit shall become effective on

This permit and the authorization to discharge shall expire at midnight,

Issued on

Miguel I. Flores
Director
Water Quality Protection Division (6WQ)

Prepared by

Claudia V. Hosch & Maria Okpala
Environmental Engineers
Permitting Section (6WQ-PP)

PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT.

A. Permit Area. This permit covers all areas, except agricultural lands, within the corporate boundary of the City of Albuquerque, New Mexico served by, or otherwise contributing to discharges from municipal separate storm sewers owned or operated by the permittees listed above.

B. Discharges.

1. **Authorized Discharges:** This permit authorizes the permittee(s) to discharge to waters of the United States from those portions of the Municipal Separate Storm Sewer System owned or operated by the Permittees:

   a. storm water and

   b. storm water mixed with those categories of non-storm water that are identified in the permittee's Storm Water Management Program in accordance with Part II.A.6.a.

2. **Unauthorized Discharges:** This permit does not authorize:

   a. discharge of storm water associated with industrial activity;

   b. discharge of storm water or non-storm water that is required to be authorized under a separate NPDES permit; and

   c. any storm water or non storm water discharge (either into or from the Municipal Separate Storm Sewer System), by any person other than the Permittees. This permit does not transfer liability for the act of discharging without (or in violation of) an NPDES permit from the operator of the discharge to the permittee(s).

   d. Spills: discharges of material resulting from a spill, except where such discharges are:

      1. the result of an Act of God where reasonable and prudent measures have been taken to minimize the impact of the discharge, or

      2. necessary to prevent loss of life, personal injury, or severe property damage. (See also Parts II.A.7 and VI.E).

C. Permittee Responsibilities.

1. Each permittee is responsible for:

   a. Compliance with permit conditions relating to discharges from portions of the Municipal Separate Storm Sewer System where the permittee is the operator;

b. Storm Water Management Program implementation on portions of the Municipal Separate Storm Sewer System where the permittee is the operator;

c. Compliance with annual reporting requirements as specified in Part V.C.;

d. Collection of representative wet weather monitoring data required by Part V.A., according to such agreements as may be established between permittees; and

e. A plan of action to assume responsibility for implementation of storm water management and monitoring programs on their portions of the Municipal Separate Storm Sewer System should interjurisdictional agreements allocating responsibility between permittees be dissolved or in default.

2. Permittees are jointly responsible for permit compliance on portions of the Municipal Separate Storm Sewer System where operational or Storm Water Management Program implementation authority over portions of the Municipal Separate Storm Sewer System is shared or has been transferred from one permittee to another in accordance with legally binding agreements. Each permittee remains ultimately responsible for those portions, and only those portions of the MS4, within its operational control.

PART II. STORM WATER POLLUTION PREVENTION AND MANAGEMENT PROGRAM(S).

Each permittee shall contribute to the development, revision and implementation of a comprehensive Storm Water Management Program including pollution prevention measures, treatment or removal techniques, storm water monitoring, use of legal authority, and other appropriate means to control the quality of storm water discharged from the Municipal Separate Storm Sewer System. The Storm Water Management Program shall be implemented in accordance with Section 402(p)(3)(B) of the Act, and the Storm Water Regulations (40 CFR Part 122.26).

Controls and activities in the Storm Water Management Program shall identify areas of permittee responsibility on a jurisdiction, applicability, or specific area basis. The Storm Water Management Program shall include controls necessary to effectively prohibit the discharge of non-storm water into municipal separate storm sewers and reduce the discharge of pollutants from the Municipal Separate Storm Sewer System to the Maximum Extent Practicable (MEP). The permittees shall control pollutants in storm water discharges to the Maximum Extent Practicable by implementing the Storm Water Management Program in its entirety.

The Storm Water Management Program shall cover the term of the permit and shall be updated as necessary, or as required by the Director, to ensure compliance with the statutory requirements of Section 402(p)(3)(B) of the Act. Modifications to the Storm Water Management Program shall be made in accordance with Parts II.G., and III. Compliance with the Storm Water Management Program and any schedules in Part III. shall be deemed compliance with Parts II.A, and II.B. The Storm Water Management Program, and all updates made in accordance with Part II.G., are hereby incorporated by reference.

Implementation of the Storm Water Management Program may be achieved through participation with other permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II. in lieu of creating duplicate program elements for each individual permittee. The Storm Water Management Program, taken as a whole, shall achieve the "effective prohibition on the discharge of non-storm water" and "MEP" standards from Section 402(p)(3)(B) of the Act.

A. Storm Water Management Program Requirements.

1. *Structural Controls and Storm Water Collection System Operation:* The Municipal Separate Storm Sewer System and any storm water structural controls shall be operated in a manner to reduce the discharge of pollutants to the Maximum Extent Practicable.

2. *Areas of New Development and Significant Redevelopment:* A comprehensive master planning process (or equivalent) to develop, implement, and enforce controls to minimize the discharge of pollutants from areas of new development and significant re-development after construction is completed shall be implemented. The goals of such controls shall be:

   a. New development - limiting increases in the discharge of pollutants in storm water as a result of development, and

   b. Re-development - reducing the discharge of pollutants in storm water.

3. *Roadways:* Public streets, roads, and highways shall be operated and maintained in a manner to minimize discharge of pollutants, including those pollutants related to deicing or sanding activities.

4. *Flood Control Projects:* Impacts on receiving water quality shall be assessed for all flood management projects. The feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water shall be evaluated.

5. *Pesticide, Herbicide, and Fertilizer Application:* Each permittee shall implement controls to reduce the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied, by the permittee's employees or contractors, to public right of ways, parks, and other municipal property. Permittee(s) with jurisdiction over lands not directly owned by that entity (e.g. incorporated city) shall implement programs to reduce the discharge of pollutants related to commercial application and distribution of pesticides, herbicides, and fertilizers.

6. *Illicit Discharges and Improper Disposal:* Non-storm water discharges to the Municipal Separate Storm Sewer System shall be effectively prohibited. For the purpose of this permit, the following discharges need not be addressed as illicit discharges by the permittees nor prohibited from entering the Municipal Separate Storm Sewer System: discharges regulated by a separate NPDES permit; discharges for which an NPDES permit application has been submitted; and non-storm water discharges identified by the permittee as specified in item a. below.

   a. Permittees shall identify in the Storm Water Management Program any categories of non-storm water that are not prohibited from being discharged into the Municipal Separate Storm Sewer System, in accordance with conditions described in items (1) and (2) below.

      (1) Categories of non-storm water discharges that the permittees may exempt from the prohibition on non-storm water entering the Municipal Separate Storm Sewer System include those either:

         (a) listed in 40 CFR 122.26(d)(2)(iv)(B)(1); or

         (b) other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.).

      (2) Categories of non-storm water discharges exempted from the prohibition on non-storm water must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the Municipal Separate Storm Sewer System, because of either:

         (a) the nature of the discharges; or

         (b) conditions placed on the discharges by the permittees.

The Storm Water Management Program shall describe any local controls or conditions placed on discharges exempted from the prohibition on non-storm water. Permittees shall prohibit any individual non-storm water discharge otherwise exempted under this paragraph from the prohibition on non-storm water that is determined to be contributing significant amounts of pollutants to the Municipal Separate Storm Sewer System.

b. Each permittee shall implement the following programs to address the discharge of pollutants from sanitary sewers into the Municipal Separate Storm Sewer System:

(1) an ongoing program for prevention of unpermitted chronic dry and wet weather overflows from the sanitary sewer system (e.g. overflows caused by deteriorated or undersize lines, excessive inflow and infiltration, improper maintenance, etc.);

(2) a program for responding to and eliminating, as soon as practicable, unforseen episodic overflows from the sanitary sewer system (e.g. overflows caused by power outage, line breakage or blockage, vandalism, etc.); and

(3) an ongoing program to limit seepage from sanitary sewers into the MS4 (e.g. seepage due to minor cracks in lines, line joints separating due to land subsidence, etc.).

These programs may be implemented either directly or in conjunction with other permittees and/or the sanitary sewer system operator. Remediation schedules, not to exceed any compliance schedule placed on the sanitary sewer system operator by the State or EPA, may be developed to prioritize capital projects or repair and maintenance efforts. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the Municipal Separate Storm Sewer System.

c. The permittee(s) shall ensure the implementation of a program to reduce the discharge of floatables (e.g. litter and other human-generated solid refuse). The floatables control program shall include source controls and, where necessary, structural controls.

d. The discharge or disposal of used motor vehicle fluids, household hazardous wastes; and the intentional disposal of collected quantities of grass clippings, leaf litter, and animal wastes into separate storm sewers shall be prohibited. The permittee(s) shall ensure the implementation of programs to collect used motor vehicle fluids (at a minimum, oil and antifreeze) for recycle, reuse, or proper disposal and to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis.

e. A program to locate and eliminate illicit discharges and improper disposal into the Municipal Separate Storm Sewer System shall be implemented. This program shall include dry weather screening activities to locate portions of the Municipal Separate Storm Sewer System with suspected illicit discharges and improper disposal (described in Part II.A.11.a). Follow-up activities to eliminate illicit discharges and improper disposal may be prioritized on the basis of magnitude and nature of the suspected discharge; sensitivity of the receiving water; and/or other relevant factors. This program shall establish priorities and schedules for screening the entire Municipal Separate Storm Sewer System at least once during the permit term. Facility inspections may be carried out in conjunction with other municipal programs (e.g. pretreatment inspections of industrial users, health inspections, fire inspections, etc.), but must include random inspections for facilities not normally visited by the municipality.

f. Each permittee shall require the elimination of illicit discharges and improper disposal practices as expeditiously as reasonably possible. Where elimination of an illicit discharge within thirty (30) days is not possible, the permittee shall require an expeditious schedule for removal of the discharge. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the Municipal Separate Storm Sewer System.

g. The permittee(s) shall maintain, and update as necessary, a list of discharges to municipal separate storm sewers that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.

7. *Spill Prevention and Response:* A program to prevent, contain, and respond to spills that may discharge into the Municipal Separate Storm Sewer System shall be implemented. Where discharge of material resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage, the permittee(s) shall take, or insure the party responsible for the spill takes, all reasonable steps to minimize or prevent any adverse effects to human health or the environment. The spill response program may include a combination of spill response actions by the permittee(s) (and/or another public or private entity), and legal requirements for private entities within the permittee's municipal jurisdiction.

8. *Industrial & High Risk Runoff:* A program to identify and control pollutants in storm water discharges to the Municipal Separate Storm Sewer System from municipal landfills; other treatment, storage, or disposal facilities for municipal waste (e.g. transfer stations, incinerators, etc.); hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee(s) determines are contributing a substantial pollutant loading to the Municipal Separate Storm Sewer System shall be implemented. The program shall include:

a. priorities and procedures for inspections, monitoring (see also Part II.A.11.c.), and establishing and implementing control measures for such discharges; and

b. a list of industrial storm water sources discharging to the Municipal Separate Storm Sewer System, which shall be maintained and update as necessary.

9. *Construction Site Runoff:* A program to reduce the discharge of pollutants from construction sites shall be implemented. This program shall include:

a. requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants discharged to the Municipal Separate Storm Sewer System during the time construction is underway;

b. inspection of construction sites and enforcement of control measures (in accordance with priorities and procedures established in the Storm Water Management Program);

c. appropriate education and training measures for construction site operators; and

d. notification of appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

10. *Public Education:* A public education program with the following elements shall be implemented:

a. a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials, including floatables, into the Municipal Separate Storm Sewer System;

b. a program to promote, publicize, and facilitate the proper management and disposal of used motor vehicle fluids and household hazardous wastes.

c. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers by the public and commercial and private applicators and distributors.

11. *Monitoring Programs:* The following monitoring programs shall be implemented in addition to the monitoring required by Part V.:

a. The *Dry Weather Screening Program* shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the Municipal Separate Storm Sewer System. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. All areas of the Municipal Separate Storm Sewer System must be screened at least once during the permit term. Screening methodology may be modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D). Sample collection and analysis need not conform to the requirements of 40 CFR Part 136. However, samples taken to confirm (e.g. in support of possible legal action) a particular illicit connection or improper disposal practice should conform to the requirements of 40 CFR Part 136.

b. *Wet Weather Screening Program:* Each permittee shall identify, investigate, and address areas within its jurisdiction that may be contributing excessive levels of pollutants to the Municipal Separate Storm Sewer System. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. The wet weather screening program:

(1) shall screen the Municipal Separate Storm Sewer System, in accordance with the procedures specified in the Storm Water Management Program.

(2) shall specify the sampling and non-sampling techniques to be used for initial screening and follow-up purposes. Sample collection and analysis need not conform to the requirements of 40 CFR Part 136. However, samples taken to confirm (e.g. in support of possible legal action) a particular illicit connection or improper disposal practice should conform to the requirements of 40 CFR Part 136.

c. The *Industrial and High Risk Runoff Monitoring Program* shall monitor storm water discharges from Type 1 and 2 industrial facilities (described below) which discharge to the Municipal Separate Storm Sewer System. Analytical monitoring data collected by a facility to comply with, or apply for, a State or NPDES discharge permit (other than this permit) may be used, on a parameter-by-parameter basis, to avoid unnecessary cost and duplication of effort.

If a Type 1 or Type 2 industrial facility has two or more outfalls with substantially identical effluents, the MS4 may allow the facility to test only one outfall and to report that the quantitative data also apply to the substantially identical outfalls. The facilities must demonstrate that the storm water outfalls are substantially identical. The MS4 operator may allow the use of one or all of the following methods for such demonstration: (1) submission of a narrative description and a site map; (2) submission of matrices; or (3) submission of model matrices. Detailed guidance on each of the three options for demonstrating substantially identical outfalls is provided on pages 106 and 107 of the NPDES Storm Water Sampling Guidance Document (EPA 833-B-92-001), available on EPA's website at http://www.epa.gov/npdes/pubs/owm0093.pdf.

(1) Type 1 facilities are municipal landfills; hazardous waste treatment, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313; and industrial facilities the permittee(s) determines are contributing a substantial pollutant loading to the Municipal Separate Storm Sewer System. Analytical monitoring of the following parameters shall be conducted at Type 1 facilities which discharge to the Municipal Separate Storm Sewer System:

- any pollutants limited in an existing NPDES permit for a subject facility;
- oil and grease;
- chemical oxygen demand (COD);
- pH;
- biochemical oxygen demand, five-day (BOD_5);
- total suspended solids (TSS);

- total phosphorous;
- total Kjeldahl nitrogen (TKN);
- nitrate plus nitrite nitrogen;
- any discharge information required under 40 CFR 122.21(g)(7)(iii) and (iv);
- total cadmium;
- total chromium ;
- total copper;
- total lead;
- total nickel;
- total silver; and
- total zinc.

Frequency of monitoring shall be established by the permittee(s), but may not be less than once per year.

In lieu of the above parameter list, the permittee(s) may alter the monitoring requirement for any individual Type 1 facility:

(a) to coincide with the corresponding industrial sector-specific monitoring requirements of the Multi-Sector General Storm Water Permit (October 30, 2000, 65 FR 64801) or any applicable general permit issued after October 30, 2000. This exception is not contingent on whether a particular facility is actually covered by the general permit; or

(b) to coincide with the monitoring requirements of any individual permit for the storm water discharges from that facility.

The optional monitoring list must be supplemented by any pollutants of concern identified by the permittee(s) for that facility.

(2) Type 2 facilities are other municipal wastes treatment, storage, or disposal facilities (e.g., POTWs, transfer stations, incinerators) and industrial or commercial facilities the permittee(s) believe are contributing pollutants to the Municipal Separate Storm Sewer System. Appropriate monitoring (e.g., analytic, visual), as determined by the permittee(s), shall be conducted at Type 2 facilities which discharge to the Municipal Separate Storm Sewer System. The permittee(s) shall include in the Annual Report a list of parameters of concern and monitoring frequencies required for each type of facility.

(3) No Exposure Certification: In lieu of analytic monitoring, the permittee(s) may accept copy of certification from a facility made to EPA under 40 CFR 122.26(g).

B. Area-specific Storm Water Management Program Requirements. Permittees are required to develop and implement measures necessary to bring the discharge into compliance with the Middle Rio Grande Total

Maximum Daily Load (TMDL) for Fecal Coliform. Specific permit requirements to implement the TMDL are included in Part III, Table III.B.

The permittees shall conduct a five year monitoring study to collect samples and test storm water for its toxic effects on the fathead minnow (*Pimephales promalas*). Within 6 months from the effective date of the permit, the permittees shall develop a monitoring strategy for this study in coordination with the U.S. Fish and Wildlife Service, Albuquerque Ecological Field Services Office and EPA. The monitoring strategy must be consistent with EPA toxicity monitoring and testing protocols and may include the use of additional standard EPA freshwater toxicity test organisms, such as *Ceriodaphnia dubia*. The monitoring strategy must include a provision to notify the EPA immediately upon the detection of any toxicity. The completed monitoring strategy shall be implemented immediately and shall be added to the Storm Water Management Program in accordance with Part II.G.2.b. Implementation shall include monitoring of one storm event per year, at minimum, for the NPDES permit term. The permittee(s) shall provide EPA with status updates of the toxicity study, including monitoring data, in accordance with the annual reporting requirements in Part V.C. Before the expiration of the permit term (5 years), the permittee(s) shall compile a final report containing the monitoring data, the results of toxicity testing, an evaluation of the toxicants (if any), and the permittees' actions to eliminate that toxicity, including activities ongoing during the current permit term and any needed activities which would extend past the five year permit term.

C. **Deadlines for Program Implementation.** Except as provided in Part III, or in any implementation schedule in the Storm Water Management Program that is not in conflict with a Part III schedule, full implementation of the Storm Water Management Program shall begin within 90 days from the effective date of the permit.

D. **Roles and Responsibilities of Permittee(s).** The Storm Water Management Program, together with any attached interagency agreements, shall clearly identify the roles and responsibilities of each permittee.

E. **Legal Authority.** Each permittee shall ensure legal authority to control discharges to and from those portions of the Municipal Separate Storm Sewer System over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with permittees with existing legal authority to:

1. Control the contribution of pollutants to the Municipal Separate Storm Sewer System by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit illicit discharges to the Municipal Separate Storm Sewer System;

3. Control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the Municipal Separate Storm Sewer System;

4. Control through interagency or interjurisdictional agreements among permittees the contribution of pollutants from one portion of the Municipal Separate Storm Sewer System to another;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

F. **Storm Water Management Program Resources.** Each permittee shall provide adequate finances, staff, equipment, and support capabilities to implement their activities under the Storm Water Management Program.

G. **Storm Water Management Program Review and Update.**

1. *Storm Water Management Program Review:* Each permittee shall participate in an annual review of the current Storm Water Management Program in conjunction with preparation of the annual report required under Part V.C.

2. *Storm Water Management Program Update:* The permittee(s) may change the Storm Water Management Program during the life of the permit in accordance with the following procedures:

a. The approved Storm Water Management Program shall not be changed by the permittee(s) without the approval of the Director, unless in accordance with Parts II.G.2.b., c., or d.

b. Changes adding (but not subtracting or replacing) components, controls, or requirements to the Storm Water Management Program may be made by the permittee(s) at any time upon written notification to the Director.

c. Changes replacing an ineffective or unfeasible BMP specifically identified in the Storm Water Management Program with an alternate BMP may be requested at any time. Unless denied by the Director, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented by the permittee(s) 60 days from submittal of the request. If request is denied, the Director will send the permittees a written response giving a reason for the decision. Such requests shall include the following:

(1) an analysis of why the BMP is ineffective or infeasible (including cost prohibitive),

(2) expectations on the effectiveness of the replacement BMP, and

(3) an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

d. Changes resulting from schedules contained in Part III. may be requested following completion of an interim task or final deadline. Unless denied by the Director, proposed changes meeting

the criteria contained in the applicable Part III schedule shall be deemed approved and may be implemented by the permittee(s) 60 days from submittal date.

e. Change requests or notifications shall be made in writing, signed in accordance with Part VI.H. by all directly affected permittees, and include a certification that all permittees were given an opportunity to comment on proposed changes prior to submittal to the Director.

3. *Storm Water Management Program Updates Required by the Director:* The Director may require changes to the Storm Water Management Program as needed to:

a. address impacts on receiving water quality caused, or contributed to, by discharges from the Municipal Separate Storm Sewer System;

b. include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

c. include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Changes requested by the Director shall be made in writing, set forth the time schedule for the permittee(s) to develop the changes, and offer the permittee(s) the opportunity to propose alternative program changes to meet the objective of the requested modification. All changes required by the Director shall be made in accordance with 40 CFR 124.5, 40 CFR 122.62, or as appropriate 40 CFR 122.63.

4. *Transfer of Ownership, Operational Authority, or Responsibility for Storm Water Management Program Implementation:* The permittee(s) shall implement the Storm Water Management Program on all new areas added to their portion of the Municipal Separate Storm Sewer System (or for which they become responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

Within 90 days of a transfer of ownership, operational authority, or responsibility for storm water management program implementation, the permittee(s) shall have a plan for implementing the Storm Water Management Program on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the Storm Water Management Program shall be submitted in the annual report.

H. <u>Retention of Storm Water Management Program Records.</u> The permittee shall retain Storm Water Management Program records developed in accordance with Parts II. and III. for at least 5 years after coverage under this permit terminates.

PART III. SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE.

A. Implementation and Augmentation of Storm Water Management Program(s). The permittee(s) shall comply with the schedules contained in Tables III.A and III.B for Storm Water Management Program implementation and augmentation, and permit compliance. The Director shall have sixty (60) days from receipt of an update or augmentation made in compliance with Part III to provide comments or request revisions. The permittee(s) shall have thirty (30) days from receipt of the Director's comments or required revisions to submit a response.

B. Compliance with effluent limitations. Reserved.

C. Reporting compliance with schedules. No later than 14 days following a date for a specific action (interim milestone or final deadline) identified in the Part III schedule(s), the permittee(s) shall submit a written notice of compliance or noncompliance to the Director in accordance with Parts V.E.

D. Updating Storm Water Management Program. The permittee(s) shall update the Storm Water Management Program(s), as appropriate, in response to changes required by Part III.A. Such updates shall be made in accordance with Part II.G.2.

Table III.A - Implementation and Augmentation of Storm Water Management Program(s).

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
1. General	a. Develop and submit a program describing procedures to ensure that public participation is a component of the storm water management program. The program shall include procedures for ensuring that core items developed to comply with Table III.A schedules are available for public review, and that applicable State, Tribal, and local public notice requirements are complied with.	Albuquerque/AMAFCA NMSHTD UNM	June1, 2004
	b. Submit copies of new or revised ordinances adopted to implement the SWMP and other permit conditions.	Albuquerque/AMAFCA	December 1, 2005
2. SWMP Document	a. Submit copy of each permittee's SWMP revised as necessary to reflect final permit conditions and adjustment of time period-based (e.g. 18 months) schedule dates to reflect actual calendar dates based on the permit effective date. SWMP revisions shall follow the format in the City's SWMP and shall include:: 1) Incorporation of Part III compliance schedules 2) Incorporate measurable goals for each of the program elements included in Part II.A of the permit* 3) Months and years in which required actions will be taken, including interim milestones and the frequency of the actions	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	b. Revise SWMP document to include programs for all campuses in one document.	UNM	December 1, 2004

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
3. Structural Controls (Part II.A.1)	a. Revise SWMP to include a list of all storm water quality facilities by drainage basin, including location and description. List shall include record of maintenance and inspections.	Albuquerque/AMAFC A NMSHTD UNM	December 1, 2004
	b. Revise Inspection and Maintenance program to include a target number of structures per basin to be cleaned per quarter.	Albuquerque/AMAFC A NMSHTD UNM	December 1, 2004
4. Areas of New Development and Significant Redevelopment (Part II.A.2.a and b.)	a. Submit revisions to master planning, design review and approval procedures (SWMP Chapter 1, Section A.2) to incorporate requirements for post construction controls to minimize discharge of pollutants from areas of new development and significant redevelopment. At a minimum, the revised program shall include: 1.) Guidance document with required storm water management technical standards and design guidelines. The document shall contain requirements for all projects; must address all areas, with special requirements for environmentally sensitive areas; shall be developed for use during planning and design stages of projects; and shall contain requirements for structural and non-structural controls. In developing the optimum measures for environmentally sensitive areas, the permittees should consult with the entities involved as to what controls will be appropriate and acceptable. Environmentally sensitive areas are areas in critical watersheds, areas with endangered species concerns, and riparian areas. 2.) Appropriate criteria for defining projects required to undergo formal review of storm water pollutant impacts for use during review and approval process. 3.) Submit copies of revised administrative procedures and any necessary revisions to ordinances (City of Albuquerque).	Albuquerque/AMAFC A UNM	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Submit certification of the implementation of the revised master planning, formal adoption of guidance document and control requirements and incorporation of standards into master planning and plan review and approval process.	Albuquerque/AMAFCA UNM	December 1, 2006
	c. Develop and submit program describing criteria and procedures for determining requirements for structural and non structural **post-construction** storm water quality controls on new and significant reconstruction of roads and highways. The program shall include the following: 1.) Guidance manual for design and maintenance of structural and non structural controls to control pollutants in storm water runoff from highways. 2.) Detailed description of master planning and project planning procedures to reduce the discharge of pollutants from NMSHTD's MS4 within Albuquerque's corporate city limits. 3.) Identification of areas that are sensitive to the effects of urbanization and highway construction. 4.) Specific procedures for estimating the impacts to the water quality of the stream that would receive storm water runoff from new construction and significant reconstruction of highways. 5.) A process for evaluating and selecting alternative best management practices to mitigate the impacts on water quality. 6.) Special requirements for projects that may impact environmentally sensitive/unique areas. 7.) The criteria shall be implemented during project planning and design of new and reconstruction of projects.	NMSHTD	December 1, 2005
	d. Submit certification of the implementation of program described in item c. above for all new projects and for significant reconstruction of roads and highways by NMSHTD within the permit area.	NMSHTD	December 1, 2006

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
5. Roadways (Part II.A.3)	a.Develop and submit an operational manual for de-icing activities addressing alternate materials and methods to minimize impacts to storm water quality.	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	b. Develop and submit a program to control pollution in storm water runoff from equipment/vehicle maintenance yards and maintenance center operations.	Albuquerque/AMAFCA	June 1, 2005
	c. Revise street sweeping program with increased frequencies, taking into account leaf litter in the fall, de-icing operations in the winter and proximity to water bodies and conveyances.	Albuquerque/AMAFCA	June 1, 2005
	d. Submit certification of the implementation of the revised de-icing practices, BMPs to control pollution in storm water runoff from equipment/vehicle maintenance yards and maintenance center operations, and revised street sweeping program.	Albuquerque/AMAFCA	December 1, 2005
	e. Submit revisions to the SWMP describing maintenance practices for streets, roads and highways, to include: 1.) Specific practices to reduce to the Maximum Extent Practicable (MEP) pollutants from road and highway repair, equipment/vehicle yards and materials storage/ maintenance facilities. 2.) Roads and highways sweeping schedules and frequencies with priorities, taking into account leaf litter in the fall, de-icing operations in the winter and proximity to water bodies and conveyances. 3.) Description of criteria for litter control targets with priorities (e.g. proximity to receiving waters) within the permit area. 4.) Control measures to minimize the discharge of pollutants in storm water runoff related to deicing and sanding activities.	NMSHTD	December 1, 2004
	f. Submit certification of the implementation of the revised streets, roads and highways maintenance program.	NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	g. Develop and submit a permitting/certification program to ensure that entities applying for the use of Right of Way implement BMPs in their construction and maintenance procedures to minimize pollutants entering into NMSHTD's MS4.	NMSHTD	December 1, 2004
	h. Submit certification of the incorporation of BMP requirements into the of right of way permitting process.	NMSHTD	December 1, 2005
	i. Develop a litter source control program to include public awareness campaigns targeting the faculty and student bodies.	UNM	December 1, 2004
	j. Submit certification of implementation of the anti-litter educational/public awareness program.	UNM	December 1, 2005
6. Flood Control Projects and Structural Controls (Part II.A.4)	a. Develop and submit technical criteria guidance document and program for the assessment of water quality impacts and incorporation of water quality controls into future flood control projects. The criteria for future projects shall be implemented during the planning and design stages of projects. Impacts of new flood control projects on quality of receiving waters shall be assessed as part of the project approval process	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	b. Develop and submit criteria, procedures and schedule to evaluate existing flood control devices/structures/drainage ways to assess the feasibility of retrofitting to provide additional pollutant removal from storm water.	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	c. Submit a summary report of retrofit evaluations conducted on existing flood control devices/structures to benefit water quality. Update SWMP to include schedule (with priorities) for identified retrofit projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit certification of the implementation of program for water quality review of future flood control projects. Update SWMP to include schedule (with priorities) for identified retrofit projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2005
	e. Begin implementation of retrofit program for identified projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2006
7. Pesticide, Herbicide, and Fertilizer Application (Part II.A.5)	a. Submit revisions to the Pesticide, Herbicide and Fertilizer Program to include the following: 1.) Develop a public education program to advise the public on the proper use and application of pesticides, herbicides and fertilizers to minimize pollutants in storm water runoff. Program description to include schedules for specific activities and population targets. 2.) Develop and implement program to provide literature to the public on xeriscape landscaping for residential and commercial areas. 3.) Submit procedures and internal policies in place to ensure that the City's herbicide and pesticide applicators are properly trained and certified, and to ensure that the applicators use the least toxic products, and minimize use and application rates. 4.) Description of data monitoring system for all City departments utilizing pesticides, herbicides and fertilizers.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of implementation of revised Pesticide, Herbicide and Fertilizer Program..	Albuquerque/AMAFCA	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Submit certification of implementation of Pesticide, Herbicide and Fertilizer Management program proposed in the SWMP.	UNM	December 1, 2004
8. Illicit Discharges and Improper Disposal (Part II.A.6.a)	a. Revise program to describe local controls or conditions on discharges exempted from the prohibition on non-storm water. For each category the permittees described as exempt, submit an explanation as to why the discharges are not reasonably expected to be significant sources of pollutants.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	b. Define the term "not significantly chlorinated" in permittee's SWMP in terms of levels of chlorine	NMSHTD	December 1, 2004
9. Illicit Discharges and Improper Disposal - Overflows and Infiltration (Part II.A.6.b)	a. Revise program to prevent the discharge of pollutants from sanitary sewers into the MS4. The program shall include: 1.) Municipal controls used to address seepage from malfunctioning septic systems and on-site water systems into the storm sewer system. Program to include description of private sewage system regulations and procedures to reduce or prevent the possibility of illicit discharges from these systems, including seepage and infiltration into the MS4 system. 2.) Procedures to track and eliminate sanitary sewer overflow and exfiltration of wastewater into the MS4. 3.) Schedules and methods for sanitary sewer inspections, cleaning, maintenance and repairs, by basin. 4.) Procedures describing how findings from inspections are passed on to storm sewer maintenance personnel; how repairs of damaged sanitary lines are prioritized; and how sources are eliminated.	Albuquerque/AMAFCA	June 1, 2005
	b. Submit certification of implementation of revised program addressing prevention of sanitary overflows and limitation of sanitary seepage into the MS4.	Albuquerque/AMAFCA	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Develop and submit procedures to advise appropriate utility owner of infiltration or overflows if constituents common to sanitary sewage contamination are discovered in the MS4.	NMSHTD1	June 1, 2004
	d. Submit certification of implementation of notification procedures included in c. above.	NMSHTD	December 1, 2004
	e. Submit summary of results of sanitary sewer system survey and plan for rehabilitation	UNM	December 1, 2004
	f. Submit certification of implementation of plan to rehabilitate.	UNM	December 1, 2005
10. Illicit Discharges and Improper Disposal - Floatables (Part II.A.6.c)	a. Schedules for control of floatables are included under Roadways (Item 5) and Floatables (Item 17).	N/A	N/A
11. Illicit Discharges and Improper Disposal - Household Hazardous Wastes/Motor Vehicle Fluids (Part II.A.6.d)	a. Develop and submit a program including standard operating procedures for collection of used motor vehicle fluids (at a minimum oil and antifreeze) and toxics (including paint, solvents, pesticides, herbicides, and other hazardous materials) used in NMSHTD and UNM operations or discarded in the MS4, for recycle, reuse, or proper disposal.	NMSHTD	December 1, 2004
	b. Submit certification of implementation of used motor vehicle fluids and toxics program.	NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
12. Illicit Discharges and Improper Disposal - MS4 Inspections and Elimination of Illicit Discharges (Part II.A.6.e and f.)	a. Submit revisions to illicit discharge inspection and elimination program to include: 1.) Types of facilities/outfalls/sampling points subject to inspections. 2.) Inspection procedures, priorities and frequencies (e.g. commercial, residential, etc) 3.) Enforcement procedures for identified illicit dischargers and improper disposal practices. 4.)An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of implementation of revised illicit discharge inspection and elimination program.	Albuquerque/AMAFCA	December 1, 2005
	c. Develop and submit a program to locate and eliminate illicit discharges and improper disposal into the MS4. The program shall include: 1). Description of utility permitting process for storm drain connections to NMSHTD's MS4. 2). Inspections of drainage connections to NMSHTD's MS4, after project completion to ensure continued compliance with drainage connection permit requirements and to ensure that no illicit or non-permitted connections have been made. 3). Description of standard investigative procedures used to identify and report the source(s) of illicit connections or discharges. These procedures shall include notification to NMED and EPA of illicit connections. 4.) An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger. 5). Description of public education/outreach activities to promote, publicize, and facilitate public reporting of the presence of illicit discharges and improper disposal of materials into the MS4.	NMSHTD	December 1, 2004
	d. Submit certification of the implementation of the illicit discharge investigation/elimination program.	NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	e. Revise illicit discharge inspection/elimination program to include: 1.) Expedited time schedule for removal of illicit discharges, after discovery. 2.) An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.	UNM	December 1, 2004
	f. Submit certification of the implementation of the illicit discharge inspection/elimination program.	UNM	June 1, 2005
13. Spill Prevention and Response (Part II.A.7)	a. Submit a revised Spill Prevention and Response Program including Spill Response Plan and Interagency agreements. Program shall describe specific procedures to prevent, contain, mitigate and respond to potential pollutant discharges to the MS4, to surface waters, and to environmentally sensitive areas.	NMSHTD UNM	December 1, 2004
	b. Submit certification of the implementation of the revised Spill Prevention and Response program.	NMSHTD UNM	June 1, 2005
14. Industrial and High Risk Runoff (Part II.A.8) and Industrial and High Risk Runoff Monitoring (Part II.A.11.c)	a. Submit a revised Industrial and High Risk Program to include: 1.) A list of the facilities that the City will include in their industrial runoff control program, by category and by basin. 2.)Schedules and frequency of inspection for listed facilities. 3.) Priorities for inspections and description of procedures used during inspections (e.g. inspection checklist, review for NPDES permit coverage; review of storm water pollution prevention plan; etc.). 4.) Updated list of industrial storm water sources discharging to the MS4.	Albuquerque/AMAFCA	December 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Revise the Industrial and High Risk Program to include a monitoring program for storm water discharges from the facilities identified in the program included in item a. above, in accordance with Part II.A.11.c. Program to include: 1) Monitoring frequency 2) Parameters 3) Entity who will do monitoring and analyses (MS4 permittees or subject facility). The monitoring program may include a waiver of monitoring for parameters at individual facilities based on a "no-exposure" certification.	Albuquerque/AMAFCA	December 1, 2004
	c. Revise Industrial and High Risk runoff program to include a list of facilities that UNM will include in their industrial runoff control program, by category (e.g. research labs, maintenance yards, power plant, etc.). The program shall include: 1) Schedule and frequency of inspections for listed facilities. 2) Priorities and description of procedures used during inspections. 3.)A monitoring program for storm water discharges from the facilities identified above, in accordance with Part II.A.11.c.	UNM	December 1, 2004
	d. Submit certification of the implementation of the revised Industrial and High Risk Runoff and Monitoring Programs.	Albuquerque/AMAFCA UNM	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
15. Construction Site Runoff (Part II.A.9)	a. Submit revisions to Construction Runoff Program to include: 1.) Manual with technical criteria and specific sediment and erosion BMPs required to reduce discharge of pollutants to receiving waters from construction activities. The manual shall contain requirements and guidelines for construction and maintenance of BMPs. Criteria shall be developed for all construction sites and may allow for different requirements depending on project size. 2.) Detailed description of sediment and erosion plan review process and criteria used to evaluate proposed controls. 3.) Procedures for inspecting construction sites for sediment and erosion controls. Minimum frequency of inspections; and inspector's checklist. 4.) Enforcement mechanisms for violations and penalties to deter infractions. 5.) Corrective action follow-up procedures. 6.) Review for NPDES compliance as appropriate. 7.) Procedures to address citizen complaints of offsite sedimentation problems, if applicable.	Albuquerque/AMAFCA UNM	December 1, 2004
	b. Submit certification of implementation of operator education and training programs as described in the SWMP.	Albuquerque/AMAFCA UNM	December 1, 2004
	c. Submit certification of formal adoption and implementation of revised Construction Runoff program.	Albuquerque/AMAFCA UNM	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit revisions to Construction Runoff Program to include: 1.) Updated NPDES handbook to include latest revisions to EPA's General Permit for Storm Water Discharges from Construction Activities. 2.) Procedures for verification of construction permit coverage. 3.) Description of enforcement measures for contractors that are not in compliance with permit requirements. 4.) Description and frequencies of educational/training activities for construction personnel and contractors on the different aspects of the construction program.	NMSHTD	December 1, 2004
	e. Submit certification of implementation of revised Construction Runoff Program for all NMSHTD construction sites within the permit area.	NMSHTD	December 1, 2005
16. Public Education (Part II.a.10)	a. Submit revisions to the public education program to promote, publicize and facilitate public reporting of the presence of illicit discharges or improper disposal of materials to include detailed description of public education activities, target groups and schedule/frequencies of activities.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of the implementation of the public education program and inlet stenciling program.	Albuquerque/AMAFCA	December 1, 2005
	c. Develop and submit a public education program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4; and to promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes. The program shall include a detailed description of public education activities, target groups and schedule/frequencies of activities	NMSHTD	December 1, 2004

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit certification of the implementation of the public education programs required in item c. above.	NMSHTD	December 1, 2005
	e. Submit revisions to the public education program to include information on what constitutes an illicit discharge; steps to report illicit discharges; information on proper management of oil and toxics and opportunities to recycle motor vehicle fluids; and detailed description of public education activities, with frequencies.	UNM	December 1, 2004
	f. Submit certification of the implementation of the public awareness program, inlet stenciling program and hotline for reporting illicit discharges.	UNM	December 1, 2005
17. Floatables	a. Develop a program to reduce the discharge of floatables and trash from the North Diversion Floodway Channel to the maximum extent practicable. Submit results of a study conducted to determine the most effective structural or treatment control BMPs to reduce the levels of floatables discharged through this storm water conveyance.	Albuquerque/AMAFCA	December 1, 2004
	b. Begin installation of permanent BMPs to control the discharge of floatables and trash from the North Diversion Floodway Channel to the Maximum Extent Practicable, based on results of the study included in item a. above.	Albuquerque/AMAFCA	December 1, 2006

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Conduct evaluations of trash reduction needs from the entire MS4 and determine the most effective structural or treatment control BMPs to reduce the levels of floatables discharged through the MS4. The study should specifically address: 1) all conveyances discharging directly to the Rio Grande; 2) upstream contributing systems; 3) possible retrofits of detention basins for outlet structures to minimize the discharge of floatables; and 4) Source control requirements for floatables in commercial and industrial areas Results of the evaluation should be submitted in a report format and shall include recommendations and milestones for implementation.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	d. Complete installation and implementation of BMPs and retrofit structures to control floatables and trash based on the result of the evaluation included in item c. above.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2005
	e. Begin implementation of requirements for source control of floatables in industrial and commercial areas.	Albuquerque/AMAFCA	December 1, 2005
	f. Develop a floatables monitoring program, install a floatables monitoring location and commence monitoring (See Part V.B.).	NMSHTD UNM	December 1, 2004
	g. Develop a floatables monitoring program, install two floatables monitoring locations and commence monitoring (See Part V.B.).	Albuquerque/AMAFCA	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
18. Monitoring - Dry Weather Screening (Part II..A.11.a)	a. Submit a description of dry weather screening program for covering the entire MS4, but not necessarily each individual outfall. The purpose of this program is to identify problem areas and "hot spots" within the MS4 that may need further investigation. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. The program shall include: 1.) Priorities for screening 2.) Description of screening procedures 3.) Major system points to be screened 4.) Annual commitments and means of calculating percent of system screening (e.g. percent of land area, etc.) 5.) Sampling and non-sampling methods for initial screening, and follow-up procedures if potential problem areas or "hot spots" are located.	Albuquerque/AMAFCA NMSHTD UNM	September 1, 2004
	b. Complete dry weather screening of 50% of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	June 1, 2005
	c. Complete dry weather screening of 100% (cumulative) of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2006
19. Monitoring - Wet Weather Screening (Part II..A.11.b)	a. Develop and submit a wet weather screening program satisfying the requirements of Part II.A.11.b.The purpose of this program is to identify problem areas and "hot spots" within the MS4 that may need further investigation. All major outfalls discharging directly to the Rio Grande must be screened at least once per year.	Albuquerque/AMAFCA NMSHTD UNM	September 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Complete wet weather screening of 50% of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	June 1, 2005
	c. Complete wet weather screening of 100% (cumulative) of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2006
20. Supporting Permit Requirements	a. Submit updated description of the roles and responsibilities of co-permittees, including any interagency agreements developed for MS4 permitting purposes.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
21. Industrial High Risk Municipal Operations Note: Some of the requirements in this program are also developed under other program components. This item consolidate the pollution prevention/good	a. <u>Pollution Prevention/Good Housekeeping for Municipal Operations</u>. The permittee or MS4 operator, as applicable, shall: 1.) Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The permittee shall address the following topics in the program: a. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4; b. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
housekeeping BMPs for municipal operations. Compliance items for these requirements under other program components are to	storage locations and snow disposal areas; c. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris; d. Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices; 2.) Include the following information in the SWMP: a. A list of the municipal operations impacted by this operation and maintenance program;		
be consolidated and also submitted under this program item.	b. A list of industrial facilities (other than large construction activities defined as industrial activity) owned or operated by the permittee that ultimately discharge to the small MS4 and are subject to: i. The Multi-Sector General Permit (MSGP), or ii. Individual NPDES permit for discharges of storm water associated with industrial activity. c. A map showing the industrial facilities owned and operated by the MS4; d. The EPA permit authorization number or a MSGP NOI form for each facility; e. A description of the training program for municipal employees; f. A list of measurable goals for the municipal pollution prevention program; g. Dates by which the permittee will achieve specific measurable goals; and h. The name of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004

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Note: The "Certification of Implementation" is a letter from the permittee to EPA, stating that the program or permit condition has been implemented by the date due. The certification needs to be signed in accordance with Part VI.H Signatory Requirements of the permit.

* Guidance on measurable goals is found at

l.http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm.

The following requirements are included to implement the requirements in the Middle Rio Grande Total Maximum Daily Load (TMDL) for Fecal Coliform developed by the State of New Mexico.

TABLE III.B - Implementation of Fecal Coliform TMDL

Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
1.0 **Source Categories**. Develop and submit a list of potential categories of fecal coliform sources by watershed and watershed density (undeveloped, low, moderate, high), covering the entire permit area. 1.1 Legal Authority Evaluate adequacy of existing legal authority to implement the conditions included in this Table. Where existing ordinances are lacking, provide a schedule for obtaining the necessary legal authority. Ordinances shall be in place prior to the implementation of the programs.	Albuquerque/ AMAFCA NMSHTD UNM	1 month prior to compliance date	June 1, 2004
2.0 **Dry Weather Investigation.** Develop and submit a dry weather field investigation program, by watershed, to identify and isolate fecal coliform sources that occur during dry weather so that they can be reduced/eliminated. The program shall address the sources identified in item 1.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. 2.1 **Low Density Watersheds:** 2.1.1 Conduct dry weather channel survey 2.1.2 Conduct survey of septic systems (e.g. aerial, ground, etc.) 2.1.3 Conduct visual or tracer tests on suspected failing systems 2.1.4 Investigate recreational and seasonal sewage dischargers 2.1.5 Conduct ARA and study to determine whether fecal coliforms are of human or nonhuman origin 2.1.6 Test ditch or channel sediments to see if they are a bacteria source or reservoir 2.2 **Moderate/High Density Watersheds:** 2.2.1 Conduct dry weather channel survey 2.2.2 Test for Illicit connections 2.2.3 Check integrity of major trunk lines for cracks and leaks 2.2.4 Check for historic and unconnected septic systems 2.2.5 Conduct ARA and study to determine whether fecal coliforms are of human or nonhuman origin 2.2.6 Check ponds, lakes and impoundments for waterfowl concentrations	Albuquerque/ AMAFCA NMSHTD UNM	2 months prior to compliance date	September 1, 2004

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
3.0 **Wet Weather Investigation** Develop and submit a wet weather field investigation program, by watershed, to identify and isolate fecal coliform sources that occur during wet weather so that they can be reduced/eliminated. The program shall address the sources identified in item 1.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. 3.1 **Low Density Watersheds** 3.1.1 Inspect septic systems for wet-weather failure 3.1.2 Conduct comprehensive wet weather monitoring to isolate subwatershed hot spots 3.1.3 Submit results of the Antibiotic Resistance Analysis and the study to determine whether fecal coliforms are of human or nonhuman origin 3.1.4 Sample runoff from suspected source areas (e.g. hobby farms and livestock areas) 3.1.5 Test storm drain or channel sediments to see if they are a bacteria sink or source 3.2 **Moderate/High Density Watersheds**: 3.2.1 Check for chronic sanitary sewer overflows at specific manholes and /or pumping stations 3.2.2 Submit results of the Antibiotic Resistance Analysis and the study to determine whether fecal coliforms are of human or nonhuman origin 3.2.3 Conduct comprehensive wet weather monitoring to identify key source areas or subwatersheds	Albuquerque/ AMAFCA NMSHTD UNM	2 months prior to compliance date	September 1, 2004
4.0 Submit certification of the full implementation of the dry and wet weather field investigation programs.	Albuquerque/ AMAFCA NMSHTD UNM	N/A	June 1, 2005
5. 0 Fecal Coliform Reduction and Treatment Develop and submit a program for reducing or treating existing fecal coliform sources, by watershed and watershed density. The program shall address the sources identified in items 3.0 and 4.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. Where activities are to be performed by entities other than the permittee, describe enforcement mechanism to be used to ensure compliance. 5.1 Low Density Watersheds	Albuquerque/ AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2005

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
5.1.2 Rehabilitate failing septic systems 5.1.3 Connect failing septic systems to sewer 5.1.4 Increase septic system clean outs 5.1.5 Retrofit storm water ponds 5.1.6 Retrofit ditches as dry swales 5.1.7 Waterfowl management 5.1.8 Install recreational vehicle sewage pumpouts 5.1.9 Implement conservation plans at hobby farms 5.2 **Moderate/High Density Watersheds:** 5.2.2 Eliminate illicit connections to storm sewer 5.2.2 Rehabilitate existing sewer system to eliminate sanitary sewer overflows 5.2.3 Relocate storm outfalls 5.2.4 Disinfect at the end of pipe 5.2.5 Retrofit storm water ponds 5.2.6 Retrofit ditches as dry swales 5.2.7 Waterfowl harrasment 5.2.8 Enforce pet waste disposal 5.2.9 Implement conservation plans at hobby farms			
6.0 Submit certification of the full implementation of fecal coliform reduction and treatment program.	Albuquerque/ AMAFCA NMSHTD UNM	N/A	December 1, 2005
7.0. <u>Prevention of Future Fecal Discharges</u> Develop and submit a program for preventing future fecal coliform discharges, by watershed. The program shall address at a minimum, the measures included below, with detailed description of activities and frequencies. Where activities are to be performed by entities other than the permittee, describe enforcement mechanism to be used to ensure compliance. 7.1 **Low Density Watersheds** 7.1.1 Land use management 7.1.2 Stringent septic system requirements:	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2005

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
7.1.2.1 Feasibility criteria 7.1.2.2 Setbacks 7.1.2.3 Reserve field requirements 7.1.2.4 Minimum lot size 7.1.2.5 Technology criteria 7.1.2.6 Inspections 7.1.2.7 Maintenance requirements 7.1.3 Stream/ ditches buffers and access restrictions 7.1.4 Livestock fencing 7.1.5 Wildlife control 7.1.6 Land application criteria for biosolids 7.1.7 Storm water treatment for new development 7.1.8 Public education 7.1.9 Recreational vehicle and park sewage pump-out facilities 7.2 **Moderate/High Density Watersheds:** 7.2.1 New Sewer Testing 7.2.2 Inspection of new sewer hookups 7.2.3 SSO monitoring and prevention 7.2.4 Storm water treatment for new development 7.2.5 Optimal storm water outfall location 7.2.6 Engineered stream buffers 7.2.7 Pet Exclusion 7.2.8 Waterfowl control /management 7.2.9 Public education on pet waste 7.2.10 Transient sewage disposal 7.2.11 Septic system rehabilitation 7.2.12 Intensive sanitary sewer controls/faster spill response 7.2.13 Public education/Hotline reporting procedures 7.2.14 Livestock fencing			
8.0 Submit certification of the implementation of the program to prevent future fecal coliform sources.	Albuquerque /AMAFCA	N/A	December 1,

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
	NMSHTD UNM		2005
9.0 **Monitoring Program** Develop a monitoring program, in consultation with the State of New Mexico, to assess BMP effectiveness and compliance with Fecal Coliform TMDL at North Diversion Floodway Channel, San Jose Drain, South Diversion Channel and Tijeras Arroyo. Target values and equation for comparison of loadings are included in Table III.B.2 below. While developing this monitoring program, the permitees should take into account the frequency of storm events, and the variation in Fecal Coliform levels, within individual storm event. Collection and analysis of samples shall be conducted in accordance with Part V requirements. Results shall be submitted in Discharge Monitoring Report (DMR) forms.	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	December 1, 2005
10.0 Submit certification of the full implementation of the monitoring program to assess BMP effectiveness.	Albuquerque /AMAFCA NMSHTD UNM	N/A	December 1, 2006
11.0 **BMP Assessment** Submit BMP evaluations and assessment, and revisions to the programs above if deemed necessary, based on monitoring data obtained.	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2008
12. 0 **Annual TMDL Progress Reports** The permittees shall submit annual reports describing progress on the activities required in Table III.B. to comply with the Fecal Coliform TMDL. The reports shall follow the requirements included in Part V.C, items 1, 4, 6 and 7, but shall be submitted separately from the Annual Report covering all other items of the permit. Results of the monitoring program shall be summarized in the Annual TMDL Progress Report and shall include graphic representation of fecal coliform trends. The Annual TMDL Progress Report shall also include computations of annual percent reduction achieved from the baseline loads and comparisons with the target loads.	Albuquerque /AMAFCA NMSHTD UNM	N/A	Annually on December 1st.

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Table III.B.2
Numeric Target Values for Storm water Conveyances[1]

Conveyance	(30-day geometric mean)
North Diversion Floodway Channel	6.438×10^{11} cfu/day
San Jose Drain	1.068×10^{10} cfu/day
South Diversion Channel	1.444×10^{11} cfu/day
Tijeras Arroyo	1.199×10^{11} cfu/day

Formular to Compare Actual Loadings to Target Values

The resultant formular for Fecal Coliform TMDL should be used to address Fecal Coliform loadings:

C as cfu/100 ml * 1000 ml/1 L /0.264 gallons * Q = cfu/day

Where: C = 30-day geometric mean FC concentration
Q = event flow in million gallons/day

[1]Middle Rio Grande Total Maximum Daily Load for Fecal Coliform, NMED, 2001

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Conveyance	(30-day geometric mean)

PART IV. DISCHARGE LIMITATIONS.

1. Discharge Limitations. **Reserved**

PART V. MONITORING AND REPORTING REQUIREMENTS.

A. Storm Event Discharges.

1. *Representative Monitoring:* Monitoring shall be conducted on representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the Municipal Separate Storm Sewer System.

   a. Monitoring Requirements: Refer to Tables V.A.1.a.(1) and (2)

   b. Outfall Descriptions: Refer to Table V.A.1.b.

   c. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Director, use of an alternate monitoring location (except for outfalls with numeric effluent limitations) may commence 30 days from the date of the request. For outfalls where numeric effluent limitations have been established, the permit must be modified prior to substitution of alternate monitoring locations. Six samples shall be collected during the first year of monitoring at substitute outfalls.

2. *Representative Monitoring - Rapid Bioassessment Option:* The permittee(s) has the option of developing and implementing a rapid bioassessment monitoring program.

   a. The permittee(s) shall obtain all necessary aquatic wildlife collection permits from appropriate State and/or Federal agencies (e.g. State Fish and Game Commission).

   b. Permittee(s) utilizing the rapid bioassessment monitoring option shall conduct monitoring of the separate storm sewer system as described in Part V.A.1, except the monitoring for years 2, 3, and 5 for all parameters except fecal coliform, is no longer required. All other requirements of Part V.A.1., A.3., and A.4. (e.g.: samples types, parameters, etc.) remain unchanged.

   c. If the permittee(s) elects to develop and implement a rapid bioassessment monitoring program, the permittee(s) shall submit an approvable monitoring program to EPA no later than one year from the effective date of this permit. An approvable program must include:

      (1) monitoring of at least two locations in the Rio Grande receiving storm water discharges from the

municipal separate storm sewer system plus a reference site located within the same ecological region as the municipal separate storm sewer system;

(2) monitoring of each station at least twice per year, with monitoring conducted at essentially the same time periods each year; and

(3) concurrent (e.g. within a day or two) monitoring of the reference site each time a station located in the receiving waters of the municipal separate storm sewer system is monitored.

Unless disapproved by the Director within 60 days, a proposed rapid bioassessment monitoring plan meeting the criteria herein shall be deemed approved and the permittee(s) may implement the alternate rapid bioassessment program.

d. The permittee(s) shall notify the Director and State (addresses provided in Part V.E.), in writing, at least 14 days prior to commencing an alternate rapid bioassessment monitoring program.

3. *Storm Event Data:* For Part V.A.1. and any additional sampling conducted for Part V.A.5., quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. Records shall be maintained of all analytical results, the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

4. *Sample Type, Collection, and Analysis:* The following requirements apply only to storm event discharge samples collected for **Part V.A.1 and A.5.**

a. Composite Samples: Flow weighted composite samples shall be collected as follows:

(1) Composite Method - Flow-weighted composite samples may be collected manually or automatically. For both methods, equal volume aliquots may be collected at the time of sampling and then flow-proportioned and composited in the laboratory, or the aliquot volume may be collected based on the flow rate at the time of sample collection and composited in the field.

(2) Sampling Duration - Samples shall be collected for at least the first three (3) hours of discharge. Where the discharge lasts less than three (3) hours, the entire discharge must be sampled.

(3) Aliquot Collection - A minimum of three aliquots per hour, separated by at least fifteen (15) minutes, shall be collected. Where more than three aliquots per hour are collected, comparable intervals between aliquots shall be maintained (e.g. six aliquots per hour, at least seven (7) minute intervals).

b. Grab Samples: Grab samples shall be taken during the first two hours of discharge.

c. Representative Storm Events: Samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

The required 72 hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge. The required 72 hour storm event interval is also waived where the permittee(s) documents that less than a 72 hour interval is representative for local storm events during the season when sampling is being conducted.

d. Analytical Methods: Analysis and collection of samples shall be done in accordance the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used unless a particular method or criteria for method selection (such as sensitivity) has been specified in the permit.

5. *Seasonal Loadings and Event Mean Concentrations.* All necessary sampling data shall be collected to provide estimates for each major outfall (or appropriate sub-watershed) of seasonal pollutant loadings and event mean concentrations for a representative storm event for the parameters listed in **Table V.A.1.a.(1) - Representative Monitoring Annual Requirements**. This information may be estimated from the representative monitoring locations and shall take into consideration land uses and drainage areas for the outfall. The estimates of seasonal loadings and event mean concentrations shall be included in the Annual Report for year four of the permit.

A. **Floatables Monitoring.** The permittees shall establish locations for monitoring floatable material in discharges to or from their Municipal Separate Storm Sewer System, as follows: Albuquerque/AMAFCA - two stations; NMSHTD and UNM - one station each. Floatable material shall be monitored at least twice per year. The amount of material collected shall be estimated in cubic yards.

B. **Annual Report.** Each permittee shall contribute to the preparation of an annual system-wide report to be submitted by no later than **February 1st.** The report shall cover the previous year from **January 1st to December 31st** and include the following separate sections, with an overview for the entire Municipal Separate Storm Sewer System and subsections for each permittee:

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1. The status of implementing the storm water management program(s) (status of compliance with any schedules established under this permit shall be included in this section);

2. Proposed changes to the storm water management program(s) ;

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. A summary of the data, including monitoring data, that is accumulated throughout the year; actual values of representative monitoring results shall be included, if results are below minimum analytical level (MAL);

5. Annual expenditures for the reporting period, with a breakdown for the major elements of the storm water management program, and the budget for the year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

Preparation and submittal of a system-wide annual report shall be coordinated by the **City of Albuquerque**. The report shall indicate which, if any, permittee(s) have failed to provide the required information on the portions of the Municipal Separate Storm Sewer System for which they are responsible to the **City of Albuquerque.** Joint responsibility for report submission shall be limited to participation in preparation of the overview for the entire system and inclusion of the identity of any permittee who failed to provide input to the annual report. Each individual permittee shall be individually responsible for content of the report relating to the portions of the Municipal Separate Storm Sewer System for which they are responsible and for failure to provide information for the system-wide annual report in a timely manner. Each permittee shall sign and certify the annual report in accordance with Part VI.H. and include a statement or resolution that the permittee's governing body or agency (or delegated representative) has reviewed or been appraised of the content of the Annual Report. The first annual report shall be due **December 1, 2004,** and may be based on less than one year's information.

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D. **Certification and Signature of Reports.** All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with Part VI.H.

E. **Reporting: Where and When to Submit.**

1. Representative monitoring results (Part V.A.1) obtained during the reporting period running from **January 1st** to **December 31st** shall be submitted on Discharge Monitoring Report Form(s) along with the annual report required by Part V.C. A separate Discharge Monitoring Report Form is required for each monitoring period (season) specified in Part V.A.1.

2. Signed copies of discharge monitoring reports required under Part V., the Annual Report required by Part V.C., and all other reports required herein, shall be submitted to:

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U.S. EPA, Region 6
Compliance Assurance and Enforcement Division
Water Enforcement Branch (6EN-WC)
1445 Ross Avenue
Dallas, Texas 75202-2733

3. Requests for Storm Water Management Program updates, changes in monitoring locations, or application for an individual permit shall be submitted to:

U.S. EPA, Region 6
Water Quality Protection Division
Operations Support Office (6WQ-O)
1445 Ross Avenue
Dallas, Texas 75202-2733

Additional Notification. In addition, the permittee(s) shall provide copies of discharge monitoring reports, annual reports, requests for Storm Water Management Program updates, items for compliance with permit requirements for TMDL implementation (Table III.B), programs or changes in monitoring locations, and all other reports required herein, to:

New Mexico Environment Department
Surface Water Quality Bureau

1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

Pueblo of Sandia
Box 6008
Bernalillo, NM 87004
Attn: Water Quality Officer

Pueblo of Isleta
P.O. Box 1270
Isleta, NM 87022
Attn: Director, Pueblo Environment Department

Table V.A.1.a (1). - Representative Monitoring Annual Requirements: Outfalls 001 - 005 [3]

PARAMETERS [1]	REPORT FOR EACH MONITORING PERIOD (each sample type)			SAMPLE TYPE(S)		MONITORING FREQUENCY
	Minimum	Average	Maximum	Grab	Composite	
1. Biochemical Oxygen Demand (BOD_5) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
2. Chemical Oxygen Demand (COD) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
3. Total Suspended Solids (TSS) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
4. Total Dissolved Solids (TDS) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
5. Total Nitrogen (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
6. Total Kjeldahl Nitrogen (TKN) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
7. Total Phosphorus (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
8. Dissolved Phosphorus (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
9. Total Cadmium (ug/l) (*MAL 1 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
10. Dissolved Cadmium (ug/l) (*MAL 1 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
11. Total Copper (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
12. Dissolved Copper (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
13. Total Lead (ug/l) (*MAL 5 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
14. Dissolved Lead (ug/l) (*MAL 5 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
15. Total Zinc (ug/l) (*MAL 20 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
16. Dissolved Zinc (ug/l) (*MAL 20 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
17. Mercury (ug/l) (MAL 0.2 ug/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
18. Chromium III (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]

PARAMETERS [4]	REPORT FOR EACH MONITORING PERIOD (each sample type)			SAMPLE TYPE(S)		MONITORING FREQUENCY
	Minimum	Average	Maximum	Grab	Composite	
19. Chromium VI (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
20. Arsenic (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
21. Thallium (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
22. Chlorides (as Cl) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
23. Nitrate (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
24. pH (S.U.)	Yes		Yes	Yes		2 events/ wet season;1 event/ dry season[2]
25. Sulfates (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
26. Conductivity		Yes	Yes	Yes		2 events/ wet season;1 event/ dry season[2]
27. Fecal Coliform (colonies/100 ml)		Yes	Yes	Yes [6]		4 events/ wet season[2]; Minimum of 2 events/ quarter during dry season [5]
28. Oil and Grease (mg/l)		Yes	Yes	Yes		2 events/ wet season;1 event/ dry season[2]
29. Total Phenols		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
30. Hardness (as $CaCO_3$) (mg/l)	Yes	Yes	Yes	Yes		2events/ wet season; 1 event/ dry season[2]
31. Temperature (°C)	Yes	Yes	Yes	Yes		2events/ wet season;1 event/ dry season[2]

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[2] Seasonal monitoring periods are: Wet Season: June 1 through September 30; Dry Season: October 1 through May 31.

[3] Monitoring frequency for each year for Outfalls 001-005. Monitoring for Outfalls 001-005 to commence on the effective date of this permit.

[4] If any individual analytical test result is less than the minimum analytical level (MAL) listed for that parameter, then a value of zero (0) may be used for that test result for the discharge monitoring report (DMR) calculations and reporting requirements. The annual report shall include the actual value obtained, if test result is less than the MAL.

[5] Monitoring results for fecal coliform shall also be submitted with the **Annual TMDL Progress Report** required in **Table III.B.** Fecal Coliform Loadings for each outfall shall be estimated and reported in the **Annual TMDL Progress Report.**

[6] May consist of multiple grab weighted for an event mean concentration.

Table V.A.1.a (2) - Representative Monitoring Bi-Annual Requirements[6]: Outfalls 001 - 005

VOLATILE COMPOUNDS	REQUIRED MQL (µg/L)	EPA METHOD
Benzene	10	624
Bromoform	10	624
Carbon Tetrachloride	10	624
Chlorobenzene	10	624
Chlorodibromomethane		10 624

PESTICIDES	REQUIRED MQL (µg/L)	EPA METHOD
Aldrin		.05
608		
Alpha-BHC		.05
608		
Beta-BHC		.05

BASE/NEUTRAL COMPOUNDS	REQUIRED MQL (µg/L)	EPA METHOD
Bis(2-ethylhexyl) phthalate	10	625
4-Bromophenyl phenyl ether	10 625	
Butyl benzyl phthalate	10	625
2-Chloronapthalene	10	625
4-Chlorophenyl phenyl ether	10	625

Chloroethane	50	624
2-Chloroethyl vinyl ether	10	624
Chloroform	10	624
1,1-Dichloroethane	10	624
1,2-Dichloroethane	10	624
1,2-Dichloropropane	10	624
1,3-Dichloropropylene	10	624
Ethylbenzene	10	624
Methyl Bromide [Bromomethane]	50	624
Methyl Chloride [Chloromethane]	50	624
Methylene Chloride	20	624
1,1,2,2-Tetrachloroethane	10	624
Toluene	10	624

		608
Gamma-BHC (Lindane)	.05	
		608
Delta-BHC	.05	
		608
Chlordane	.2	
		60
		8
4,4'-DDT	.1	
		608
4,4'-DDE (p,p-DDX)	.1	
		608
4,4'-DDD (p,p-TDE)	.1	
		608
Dieldrin	.1	
		608
Alpha-endosulfan	.1	
		608
Beta-endosulfan	.1	
		608
Endosulfan sulfate	.1	
		608
Total PCBs	1.0	
		60
		8

BASE/NEUTRAL COMPOUNDS	(U)g/L)	EPA METHOD
Acenaphthene		10
		625
Acenaphthylene		10
		625
Anthracene		10
		625
Benzo(a)anthracene		10

Chrysene	10	625
Dibenzo (a,h) anthracene	20	625
1,2-Dichlorobenzene	10	625
1,3-Dichlorobenzene	10	625
1,4-Dichlorobenzene	10	625
3,3'-Dichlorobenzidine	50	625
Diethyl Phthalate	10	625
Dimethyl Phthalate	10	625
Di-n-Butyl Phthalate	10	625
2,4-Dinitrotoluene	10	625
2,6-Dinitrotoluene	10	625
Di-n-octyl Phthalate	10	625
Fluoranthene	10	625
Fluorene	10	625
Hexachlorobenzene	10	625
Hexachlorobutadiene	10	625
Hexachloroethane	20	625
Indeno (1,2,3-cd) pyrene (2,3-o-phenylene pyrene)	20	625
Isophorone	10	625
Naphthalene	10	625
Nitrobenzene	10	625
N-nitrosodi-n-propylamine	20	625
Phenanthrene	10	625
Pyrene	10	625
1,2,4-Trichlorobenzene	10	625

	625		
	Benzo(a)pyrene	10	
	625		
	3,4-Benzofluoranthene	10	
		625	
	Benzo(ghi)perylene	20	
	625		
	Benzo(k)fluoranthene	10	
	625		
	Bis(2-chloroethoxy) methane	10	
	625		
	Bis(2-chloroethyl) ether	10	
	625		
	Bis(2-chloroisopropyl) ether	10	
	625		

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[6] Parameters included in Table V.A.1.a (2) are to be monitored by Albuquerque/AMAFCA biannually (every other year). Seasonal monitoring periods are: Wet Season: June 1 through September 30; Dry Season: October 1 through May 31. Monitoring Frequency is to be 2 events/wet season and 1 event/dry season, using composite sampling. Average and maximum values are to be reported for each monitoring period. Monitoring to commence one year from the effective date of this permit and to continue every other year thereafter.
If any individual analytical test result is less than the minimum analytical level (MAL) listed for that parameter, then a value of zero (0) may be used for that test result for the discharge monitoring report (DMR) calculations and reporting requirements.

Table V.A.1.b - Representative Monitoring Outfall Descriptions

OUTFALL	SITE NO.	LOCATION	DESCRIPTION	RESPONSIBLE PERMITTEE
001	9900	North Floodway Channel near Alameda (USGS Station No. 08329900)	Station located on concrete lined channel. Drains approx. 92 sq.mi. Land use is: 41% residential; 36% agricultural; 15% commercial; 4% industrial; 4% open space	Albuquerque/ AMAFCA
002	200	South Diversion Channel above Tijeras Arroyo near Albuquerque (USGS Station No. 08330775)	Station located on natural unlined channel. Drains approx. 11 sq.mi. Land use is: 30% agricultural; 28% commercial 21% industrial; 13% residential; 8% open space	Albuquerque/ AMAFCA
003	500	San Jose Drain at Woodward Road at Albuquerque (USGS Station No. 08330200)	Station located on concrete lined channel. Drains approx. 2 sq.mi. Land use is: 41% residential; 30% commercial; 18% agricultural; 9% industrial; 2% open space	Albuquerque/ AMAFCA
004	400B	City of Albuquerque Lift Station #32 (Barelas) at Albuquerque (USGS Station No. 08330075)	Stations located at storm water pumping stations. Combined drainage of. 4 sq.mi. Land use is: 35% residential; 34% commercial; 12% open space; 10% industrial; 9% agricultural	Albuquerque/ AMAFCA
005	300A	Mariposa Diversion of San Antonio Arroyo at Albuquerque (USGS Station No. 083299375)	Station located on natural unlined channel. Drains approx. 31 sq.mi.. Land use is: 73% agricultural; 14% industrial; 11% residential; 1% commercial; 1% open space	Albuquerque/ AMAFCA

PART VI. STANDARD PERMIT CONDITIONS.

A. **Duty to Comply.** The permittee(s) must comply with all conditions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. **Penalties for Violations of Permit Conditions.** The Director will adjust the Civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: Dec. 31, 1996, Volume 61, No. 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, No. 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

1. *Criminal Penalties.*

   a. Negligent Violations: The Act provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

   b. Knowing Violations: The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

   c. Knowing Endangerment: The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

   d. False Statement: The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309(c)(4) of the Act).

1. *Civil Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. *Administrative Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

   a. Class I penalty: Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

   b. Class II penalty: Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

C. **Duty to Reapply.** If the permittee wishes to continue an activity regulated by this permit after the permit expiration date, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days prior to expiration of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR 122.6 and any subsequent amendments.

D. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

E. **Duty to Mitigate.** The permittee(s) shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. **Duty to Provide Information.** The permittee(s) shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee(s) shall also furnish to the Director upon request copies of records required to be kept by this permit.

G. **Other Information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Director, he or she shall promptly submit such facts or information.

H. **Signatory Requirements.** All Discharge Monitoring Reports, storm water management programs, reports, certifications or information either submitted to the Director or that this permit requires be maintained by the permittee(s), shall be signed by:

   1. for a municipality, State, or other public agency: by either a principal executive officer or ranking elected official; or

   2. a duly authorized representative of that person. A person is a duly authorized representative only if:

      a. The authorization is made in writing by a person described above and submitted to the Director.

      b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. A duly authorized

representative may thus be either a named individual or any individual occupying a named position.

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new written authorization satisfying the requirements of this paragraph must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

3. Certification: Any person signing documents under this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. **Penalties for Falsification of Monitoring Systems.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the Act.

J. **Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act or section 106 of CERCLA.

K. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. **Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. **Requiring a Separate Permit.**

1. The Director may require any co-permittee authorized by this permit to obtain a separate NPDES permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any co-permittee authorized to discharge under this permit to apply for a separate NPDES permit only if the co-permittee has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form (as necessary), a statement setting a deadline for the co-permittee to file the application, and a statement that on the effective date of the separate NPDES permit, coverage under this permit shall automatically terminate. Separate permit applications shall be submitted to the address shown in Part V.E. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner a separate NPDES permit application as

required by the Director, then the applicability of this permit to the co-permittee is automatically terminated at the end of the day specified for application submittal.

2. Any co-permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for a separate permit. The co-permittee shall submit a separate application as specified by 40 CFR 122.26(d) with reasons supporting the request to the Director. Separate permit applications shall be submitted to the address shown in Part V.E. The request may be granted by the issuance of a separate permit if the reasons cited by the co-permittee are adequate to support the request.

N. State/Environmental Laws.

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water management programs. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. Monitoring and Records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

Q. **Monitoring Methods.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

R. **Inspection and Entry.** The permittee shall allow the Director or an authorized representative of EPA, or the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substance or parameters at any location.

S. **Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

T. **Additional Monitoring by the Permittee.** If the permittee monitors more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

U. **Archeological and Historic Sites.** This permit does not authorize any storm water discharges nor require any BMPs to control storm water runoff which are not in compliance with any historic preservation laws.

1. If municipal excavation and/or construction projects implementing requirements of this permit will result in the disturbance of previously undisturbed land, and the project is not required to have a separate NPDES permit (e.g. general permit for discharge of storm water associated with construction activity), then the permittee may seek authorization for storm water discharges from such sites of disturbance by:

a. the permittee shall, thirty (30) days prior to commencing land disturbance, submit the following to the State Historic Preservation Officer (SHPO) for evaluation of possible effects on properties listed or eligible for listing on the National Register of Historic Places:

(1) a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground, and

(2) a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas.

The address of the SHPO is:

New Mexico Office of Cultural Affairs
Historic Preservation Division
Room 320, La Villa Rivera
228 East Palace Avenue
Santa Fe, New Mexico 87501

Pueblo of Sandia
Box 6008
Bernalillo, New Mexico 87004

If the permittee receives a request for an archeological survey or notice of adverse effects from the SHPO, the permittee shall delay such activity until:

(1) a determination of no adverse effect has been made, or

(2) measures to minimize harm to historic properties have been agreed upon.

If the permittee does not receive notification of adverse effects or a request for an archeological survey from the SHPO within thirty (30) days, the permittee may proceed with the activity.

b. Alternately, the permittee may obtain authorization for storm water discharges from such sites of disturbance by applying for a modification of this permit. The permittee may apply for a permit modification by submitting the following information to the Permitting Authority 180 days prior to commencing such discharges:

(1) A letter requesting a permit modification to include discharges from activities subject to this provision, in accordance with the signatory requirements in Part VI.H.

(2) a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground; County in which the facility will be constructed; type of facility to be constructed; size area (in acres) that the facility will encompass; expected date of construction; and whether the facility is located on land owned or controlled by any political subdivision of New Mexico; and

(3) a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas.

PART VII. PERMIT MODIFICATION.

A. **Modification of the Permit.** The permit may be reopened and modified during the life of the permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. add a new permittee who is the owner or operator of a portion of the Municipal Separate Storm Sewer System;

4. changes in portions of the Storm Water Management Program that are considered permit conditions;

5. construction activities implementing requirements of this permit that will result in the disturbance of previously undisturbed land and not required to have a separate NPDES permit; or

6. other modifications deemed necessary by the Director to meet the requirements of the Act.

All modification to the permit will be made in accordance with 40 CFR 122.62, 122.63, and 124.5.

B. **Termination of Coverage for a Single Permittee.** Permit coverage may be terminated, in accordance with the provisions of 40 CFR 122.64 and 124.5, for a single permittee without terminating coverage for other permittees.

C. **Modification of Storm Water Management Program(s).** Only those portions of the Storm Water Management Programs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s); replacement of an ineffective or infeasible BMP implementing a required component of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III shall be considered minor changes to the Storm Water Management Program and not modifications to the permit. (See also Part II.G.)

D. **Changes in Monitoring Outfalls.** Changes in monitoring outfalls, other than those with specific numeric effluent limitations (as described in Part V.A.1.c.), shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

PART VIII. DEFINITIONS.

All definition contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified, additional definitions of words or phrases used in this permit are as follows:

A. "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

B. "CWA" or "The Act" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

C. "Co-permittee" is defined at 40 CFR 122.26(b)(1).

"Core Municipality" means, for the purpose of this permit, the municipality whose corporate boundary (unincorporated area for counties and parishes) defines the municipal separate storm sewer system. (ex. City of Dallas for the Dallas Municipal Separate Storm Sewer System, Harris County for unincorporated Harris County).

E. "Director" means the Regional Administrator or an authorized representative.

F. "Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (Municipal Separate Storm Sewer System).

G. "Flood Control Projects" refer to major drainage projects developed to control water quantity rather than quality, including channelization and detention.

H. "Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

I. "Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

J. "Illicit discharge" is defined at 40 CFR 122.26(b)(2).

K. "Individual Residence" refers, for the purposes of this permit, to single or multi-family residences. (e.g. single family homes and duplexes, town homes, apartments, etc.)

L. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

M. "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

N. "Large or medium municipal separate storm sewer system" is defined at 40 CFR 122.26(b)(4) & (7).

O. "MEP" is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by CWA §402(p).

P. "MS4" is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a Large or Medium Municipal Separate Storm Sewer System (e.g. "the Dallas MS4").

Q. "Municipal Separate Storm Sewer" is defined at 40 CFR 122.26(b)(8).

R. "Part '#'" refers, unless otherwise indicated, to Part "#" of this permit (e.g. Part V.E.2.).

S. "Permittee" refers to any "person," as defined at 40 CFR 122.2, authorized by this NPDES permit to discharge to Waters of the United States.

T. "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

U. "Storm drainage projects" include storm water inlets, culverts, minor conveyances and a host of other structures or devices

V. "Storm sewer", unless otherwise indicated, refers to a municipal separate storm sewer.

W. "Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

X. "Storm Water Discharge Associated with Industrial Activity" is defined at 40 CFR 122.26(b)(14).

Y. "Storm Water Management Program" refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system. For the purposes of this permit, the Storm Water Management Program is considered a single document, but may actually consist of separate programs (e.g. "chapters") for each permittee.

Z. "SWMP" is an acronym for "Storm Water Management Program."

AA. "Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

BB. "Waters of the United States" is defined at 40 CFR 122.2.

District of Columbia

NPDES Permit No. DC0000221

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MUNICIPAL SEPARATE STORM WATER SYSTEM PERMIT NO. DC0000221

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 et seq.

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the District of Columbia to receiving waters named

Potomac River, Anacostia River,
and tributaries

in accordance with the upgraded Storm Water Management Program(s), effluent limitations, monitoring requirements and other conditions set forth in Parts I through X herein.

The effective issuance date of this permit is

This permit and the authorization to discharge shall expire at midnight, on

Signed this day of

_____

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III

PERMIT FOR THE DISTRICT OF COLUMBIA'S
MUNICIPAL SEPARATE STORM SEWER SYSTEM

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PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. Permit Area

This permit covers all areas within the corporate boundary of the District of Columbia served by, or otherwise contributing to discharges from, municipal separate storm sewers owned or operated by the District of Columbia.

B. Authorized Discharges

This permit authorizes all existing or new storm water point source discharges to waters of the United States from the municipal separate storm water sewer system of the District of Columbia. This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits.

Nothing in this permit prohibits the following sources when properly managed so that water quality is not impaired and that the requirements of the Clean Water Act and EPA regulations are met: clear water flows, roof drainage, water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation waters, springs, footing drains, lawn watering, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, fire fighting activities, and similar types of activities.

C. Limitations to Coverage

Section 402(p)(3)(B)(ii) of the Clean Water Act specifically prohibits non-storm water entering the MS-4. The Permit does not authorize the Permitee to discharge pollutants from the MS4 as described herein:

1. Non-Storm Water and Phase I and Phase II Storm Water

Discharges of non-storm water (other than those listed in Part I.B. of this permit) are prohibited except where such discharges are:

a. Regulated with a General NPDES permit for Phase I or Phase II storm water discharges, or

b. Regulated with a individual NPDES permit.

2. All other discharges of pollutants to the MS4 system that cause or contribute to the exceedance of the District of Columbia water quality standards are prohibited and not authorized by this Permit.

D. Effluent Limits

1. MEP Effluent Limit - The permittee shall implement the controls, Best Management Practices (BMP), and other activities necessary to reduce pollutants as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002. Unless and until modified consistent with Part VII.P (Reopener Clause for Permits) of this Permit, the Upgraded Storm Water Management Plan requirements expressed in the form of BMPs, represent the controls necessary to reduce the discharge of pollutants to the Maximum Extent Practicable in accordance with 40 CFR Part 122.44(k)(2).

2. WQBEL Effluent Limit - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002, and all other requirements of this Permit (including but not limited to the narrative prohibition on discharge of pollutants from the MS4 set forth in I.C. of this Permit). Unless and until modified consistent with Part VII.P (Reopener Clause for Permits) of this Permit, EPA has determined that these controls are sufficient to achieve compliance with applicable water quality standards in accordance with existing Federal rules and regulations.

3. Effluent Limits Consistent with TMDL WLA - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants as set forth

in the Upgraded Storm Water Management Plan dated October 19, 2002, and all other requirements of this Permit (including but not limited to the narrative prohibition on discharge of pollutants from the MS4 set forth in I.C. of this Permit). Based on limited information, and until and unless this Permit is modified in accordance with the Reopener Clause of Part VII.P of this Permit, EPA has determined that these controls are appropriate effluent limits consistent with the assumptions and requirements of the approved waste load allocations (WLAs) established in various total maximum daily loads specifically described and discussed in the MS4 Fact Sheet. Based on EPA review of the Permittee's submission of the Total Maximum Daily Loading (TMDL) Implementation Plan(s) as required by Part IX.B. of this Permit, EPA shall reconsider and determine whether these controls are consistent with applicable water quality standards and approved WLAs in accordance with existing Federal requirements. EPA specifically reserves the right to formally modify this Permit's effluent limit in accordance with Reopener Clause of Part VIII.P. of this Permit in the event that EPA determines further controls are necessary to address the WLAs and/or water quality standards.

Part II. SOURCE IDENTIFICATION

During the period beginning on the effective date and lasting through the expiration date of this permit:

The permittee shall continue to compile and submit pertinent information on pollution sources, including significant changes (see EPA's approved definition in First Annual Review dated April 19,2001) in the identification and mapping of storm sewer system (MS4) outfalls consisting of those identified as "major" and "others" in the upgraded SWMP dated October 19,2002, and changes affecting the District's separate storm system (MS4) due to: land use activities, population estimates, runoff characteristics, major structural controls, landfills, publicly owned lands, and industries. This information shall be submitted in each of the Annual Reports/Implementation Plans to EPA pursuant to the procedures in Part III of this permit. Analysis of data for these pollution sources shall be reported according to Part V for the Storm Water Model.

Part III. STORM WATER MANAGEMENT PROGRAM (SWMP)

A. <u>COMPLIANCE SCHEDULE</u>

Each year on the effective date of the Permit, the permittee shall provide EPA with a written Annual Report as required by 40 CFR 122.42(c) using the implemented upgraded and amended Storm Water Management Plan dated October 19, 2002 developed by the District as the basis for the Report. In addition to the Annual

Report, the permittee shall at the same time provide EPA with a Discharge Monitoring Report as described in Part IV of this Permit and an Implementation Plan as described in Part III.D of this Permit summarizing how each category of MS4 activities identified within this Permit was implemented during the previous year along with implementation plans for each activity in the following year. As described in Part IX.2 of this Permit, the permittee shall also submit Implementation Plan(s) for the Anacostia River Total Maximum Daily Loads (TMDLs) six months after the effective issuance date of the Permit and for the Rock Creek TMDLs twelve months after the effective issuance date of the Permit. Six months prior to the expiration date of the Permit, the permittee shall provide EPA an Upgraded Storm Water Management Plan (SWMP) as described in Part III.B and E of this Permit. All these efforts, which are identified in Table I below as "submittals", have deadlines and are subject to EPA approval as set forth below at Parts III.E and IX.2.

TABLE 1

Submittal	Deadline
Outfall Discharge Monitoring Report *	Each year on the effective date of the permit (EDOP) consistent with Paragraph IV.A.1.
Annual Report	Each year on the EDOP
Annual Implementation Plan	Each year on the EDOP
Anacostia River TMDL Implementation Plan(s)	6 months after the EDOP
Rock Creek TMDL Implementation Plan(s)	12 months after the EDOP
Upgraded SWMP and MS4 Permit Application	6 months prior to the permit expiration date.

* Samples shall be taken at least three times a year within the subwatershed being monitored for that particular year as provided in Tables 4 and 5 of Part IV.A.1 of the permit.

Deadlines may be adjusted by written agreement by both EPA and the permittee up to 120 days (see minor modification provision). However, this permit places no obligation on EPA to expand the above schedule. The Outfall Discharge Monitoring Report shall be submitted each year, incorporating the reporting requirements in Part VIII.E.(Reporting of Monitoring Results).

All the requirements in Table 2 in Part III.B of this permit are to be used in the development of the upgraded SWMP. The District's October 19, 2002(upgraded SWMP) is also incorporated by reference into this permit.

B. COMPONENTS OF STORM WATER MANAGEMENT PROGRAM (SWMP)

The SWMP shall be implemented in a manner consistent with the following guidelines provided for the 12 management plan components. In carrying out the SWMP, the permittee shall issue no exemption, waiver, or variance that would violate the Clean Water Act or EPA regulations. This Permit does not authorize any discharge based on such exemption, waiver, or variance. To the extent that this permit makes reference to or incorporates the District's Storm Water Management Plan (SWMP)(defined in Part X of this permit), that portion of the plan is hereafter incorporated into this permit by reference.

The permittee shall implement the controls, procedures, Best Management Practices (BMPs) set forth in the current Upgraded SWMP dated October 19, 2002 in order to reduce the pollutant load to the extent necessary to meet the requirements of 40 CFR 122.26 (d)(2)(iv) and the provisions of the Clean Water Act for all areas within the District according to Table 2 below. The controls described in the October 19, 2002, document are effluent limitations that EPA has determined are adequate to ensure that the discharges do not cause or contribute to exceedences of applicable water quality standards.

TABLE 2

Required Program Element	Regulatory References (40 CFR 122.26)
Adequate Legal Authority	(d)(2)(I)(C)-(F)
Characterization Data	(d)(2)(iii)(B)-(D),40 CFR 122.21(g)(7)
Application Requirements	(d)(2)(iv)(A)(1)
Assessment of Controls	(d)(2)(v)
Structural Controls	(d)(2)(iv)(A)(1)
Areas of new development and significant redevelopment	(d)(2)(iv)(A)(2)
Roadways	(d)(2)(iv)(A)(3)
Flood Control Projects	(d)(2)(iv)(A)(4)
Pesticides, Herbicides, and Fertilizers Application	(d)(2)(iv)(A)(6)
Illicit Discharges and Improper Disposal	(d)(2)(iv)(B)(1)-(5), (iv)(B)(7)
Industrial and High Risk Runoff	(d)(2)(iv)(C), (iv)(A)(5)
Identify Priority Industrial Facilities	122.26(d)(2)(iv)(C)(1)
Municipal Waste Sites	(d)(2)(iv)(A)(5)
Spills	(d)(2)(IV)(B)(4)
Infiltration of Seepage	122(d)(2)(iv)(B)(7)
Construction Site Runoff	(d)(2)(iv)(D)

Public Education	(d)(2)(iv)(A)(6), (iv)(B)(5), (iv)(B)(6)
Monitoring Program	(d)(2)(iv)(B)(2), (iii), iv(A), (iv)(C)(2)

Table 3's reporting requirements apply to each of the 12 components of the District's SWMP as defined in Part X of this permit.

TABLE 3

SWMP Component	Reporting Requirement (1)	Reporting Deadline
1. Management Plan for Commercial, Residential, and Government Areas	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
2.Management Plan for Industrial Facilities	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
3. Management Plan for Construction Sites	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
4. Flood Control Projects	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
5. Monitor and Control of Pollutants from Municipal Landfills or Other Municipal Waste Facilities	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
6. Monitor and Control Pollutants from Hazardous Waste Sites	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan

7. Pesticides, Herbicide, and Fertilizer Application	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
8. Deicing Activities	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
9. Snow Removal	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
10. Management Plan to Detect and Remove Illicit Discharges	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
11. Enforcement Plan	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
12. Public Education	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan

(1) These reporting requirements are governed by the schedules presented on Table 1.

1. Management Plan for Commercial, Residential, and Federal and District Government Areas

The District shall implement the SWMP (as described in the District's October 19, 2002,SWMP)to reduce the discharge of pollutants from commercial, Federal and District government owned/operated facilities, and residential areas into the District's storm sewer system (MS4). The permittee shall continue current practices of road, street, and highway maintenance as described in the SWMP and evaluate low impact development practices for inclusion with either new or retrofitted District and/or Federal highway construction projects. Applicable Federal

programs for this purpose include, but are not limited to provisions for funding under the Transportation and Enhancement Fund, the Transportation Equity Act for the 21st Century, or other authorized/appropriated funding from future National Transportation Bills.

Control for government, commercial, and residential storm water runoff shall consist of a mix of program activities addressing trash, debris and other storm water pollutants, including but not limited to:

- A shift in focus from just the minimum storm water controls required under local ordinances and guidelines to programs that encourage the use of functional landscape to enhance the aesthetic and habitat value at new parking lots and/or new developments;
- Low impact development practices such as improved tree boxes, reduced road length and width, use of infiltration trenches, porous pavements, grassy swales and filter strips where appropriate;
- A coordinated catch basin cleaning and street-sweeping strategy that optimizes reduction of storm water pollutants;
- Coordination with solid waste program to include leaf collections;
- Preventative maintenance inspections for all existing storm water management facilities;
- Development and implementation of a rain leader disconnection program;
- Development of a phased approach to storm water public education which includes collecting pet feces and environmentally-friendly fertilizing and landscaping techniques;
- Modeling of storm water impacts;
- Developing a simple method for measuring the performance of these activities; and
- Strengthening the erosion control program for new construction.

The permittee shall implement a program to control storm water discharges from Federal and District-government areas to the same extent as that for commercial, residential, and industrial areas. The status of this program shall be reported in

each Annual Report/Implementation Plan required by Part III.C. and D. of this permit. Information shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act. The implementation of a program to control discharges from Federal and District-government areas is dependent on the active cooperation of all federal agencies responsible for operating and maintaining facilities within the District. The District will continue to pursue partnerships with federal departments and agencies (e.g., National Park Service, Department of Agriculture, Department of Defense, and General Services Administration) responsible for facilities in the District designed to highlight the District's commitment to "lead by example" in managing storm water runoff.

The permittee shall maintain the authority to control all types of discharges into the waters of the District.

2. Management Plan for Industrial Facilities

The permittee shall implement a program to monitor and control pollutants in storm water discharged to the D.C. MS4 from Industrial Facilities, pursuant to the requirements in 40 CFR 122.26(d)(2)(iv)(C). These facilities shall include, but are not limited to:

- Private Solid Waste Transfer Stations
- Hazardous Waste Treatment, Disposal, and/or Recovery Plants
- Industrial Facilities subject to SARA or EPCRA Title III
- Industrial Facilities with NPDES Permits
- Industrial facilities with a discharge to the MS4

The permittee shall continue to maintain and update the industrial facilities database. The permittee shall continue to perform or provide on-site assistance/inspections and outreach focused on the development of storm water pollution prevention plans and NPDES permit compliance.

The permittee shall continue to refine and implement procedures to govern the investigation of facilities suspected of contributing pollutants to the MS4, including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. These procedures shall be submitted as part of each Annual Report/Implementation Plan required by Part III. C. and D. of this permit.

The wet weather screening described in Part IV. C. of this permit includes collecting data on the discharges from industrial

sites. This information shall be used by the permittee in identifying problem industrial categories to better target outreach.

The program to prevent, contain, and respond to spills that may discharge to the MS4 shall continue to be implemented, and a report on this implementation submitted in each Annual Report/Implementation Plan. The spill response program may include a combination of spill response actions by the permittees (and/or another public or private entity).

Progress in developing and carrying out industrial related programs shall be reported in each Annual Report/Implementation Plan required by Part III.C. and D. of this permit. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act.

The permittee shall continue to implement the prohibition against illicit discharges, control spills, and prohibit dumping.

3. Management Plan for Construction Sites

The permittee shall continue implementation of the Program that addresses the discharge of pollutants from construction sites. An evaluation shall be made and reported in the Annual Report/Implementation Plan to determine if the existing practice meets the requirements given in 40 CFR 122.26(d)(2)(iv)(A) and (D). The permittee shall continue the review and approval process of the sediment and erosion control plans under this program. The permittee shall submit its inspection and enforcement procedures to EPA in the Annual Report/Implementation Plan. The permittee shall continue with regular construction site inspections. When a violation of local erosion and sediment control ordinances occurs, the permittee shall follow existing enforcement procedures and practices. The permittee shall continue with educational measures for construction site operators (Part III.A.12 of this permit) that consist, at a minimum, of providing guidance manuals and technical publications.

Progress in developing and carrying out the above construction related programs shall be reported in each Annual Report/Implementation Plan required by Part III.D. and E. of this permit. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act. An explanation shall be provided as to how the implementation of these procedures, particularly with regard to District "waivers and exemptions", will meet the requirements of the Clean Water Act.

Public streets, roads, and highways shall be operated and maintained in a manner to reduce the discharge of pollutants in accordance with the SWMP requirements. Standard road repair practices shall include limiting the amount of soil disturbance to the immediate area under repair. Storm water conveyances which are denuded should be resodded or reseeded and mulched for rapid revegetation, and these areas should have effective erosion control until stabilized. The program shall establish procedures that address spill prevention, material management practices, and good housekeeping measures at all equipment and maintenance shops that support maintenance activities.

4. Flood Control Projects

Potential impacts on the water quality and the ability of the receiving water to support beneficial uses shall be assessed for all flood management projects. The feasibility of retrofitting existing flood control devices to provide additional pollutant removal from storm water shall be evaluated.

The above assessment, mapping program, and feasibility studies shall be reported in the Annual Report/Implementation Plan (Part III.C. and D.). The flood control measures necessary to meet the requirements of the Clean Water Act shall also be submitted with these Reports/Plans.

All development proposed in flood plains shall be reviewed by the District to ensure that the impacts on the water quality of receiving water bodies has been properly addressed. Information regarding impervious surface area located in the flood plains shall be used (in conjunction with other environmental indicators) as a planning tool. The District shall collect data on the percentage of impervious surface area located in flood plain boundaries for all proposed development after the effective date of this permit. The District shall collect similar data for existing development in flood plain areas, in accordance with the mapping program and other activities designed to improve water quality. Critical unmapped areas shall be prioritized by the District with an emphasis on developed and developing acreage. Reports of this work shall be summarized in the Annual Report/Implementation Plan. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act

5. Control of Pollutants from Municipal Landfills or Other Municipal Waste Facilities

The permittee shall implement a program to identify measures to evaluate, inspect, enforce, and monitor to reduce pollutants in storm water discharges from facilities that handle municipal waste, including sewage sludge, and report the results of this activity in each Annual Report/Implementation Plan. As part of this program, the permittee shall reduce pollutants in the storm water discharges from District-operated or owned solid waste transfer stations, maintenance and storage yards for waste transportation fleets and equipment, publicly owned treatment works, and sludge application and/or disposal sites which are not covered by an NPDES permit, and report the results of this effort in each Annual Report/Implementation Plan. The permittee shall provide an explanation as to how the implementation of these procedures will meet the requirements of the Clean Water Act for the above facilities.

6. Control Pollutants from Hazardous Waste Sites

The permittee shall implement procedures that provide for monitoring and controlling pollutants in storm water discharges to the MS4 from: hazardous waste recovery, treatment, storage, and disposal facilities; facilities subject to Section 313 of the Emergency Planning and Right-to-Know Act; and any other industrial facility that either the permittee or the Regional Administrator determines is contributing a substantial pollutant loading to the MS4. This work shall be reported in each Annual Report/Implementation Plan.

The permittee shall complete an identification of industrial and high risk runoff facilities and develop procedures to map and record details of the facilities. Procedures to identify, map, and record the high risk facilities shall be completed by the end of this permit term.

The permittee shall implement procedures to govern the investigation of the identified facilities suspected of contributing pollutants to the MS4,including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. Procedures governing the investigation of identified facilities and the method, schedule, and progress in implementing those procedures shall be submitted as part of each Annual Report/Implementation Plan. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act.

7. Pesticide, Herbicide, and Fertilizer Application

The permittee shall continue to control the application of pesticides, fertilizers, and the use of other toxic substances

according to current procedures and practices described in the October 19, 2002, SWMP and regulations. Such controls shall reduce the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied by employees or contractors, to public right of ways, parks, and other District property. The permittee shall implement programs to encourage the reduction of the discharge of pollutants related to the application and distribution of pesticides, herbicides, and fertilizers, pursuant to the SWMP dated October 19, 2002.

A report on the implementation of the above application procedures, a history of the improvements in the control of these materials, and an explanation on how these procedures will meet the requirements of the Clean Water Act shall be included in each Annual Report/Implementation Plan.

A screening characterization shall be completed to determine the sources of pesticides, herbicides, and fertilizers that contaminate the storm water runoff. This screening characterization shall be part of the outfall monitoring plan and performed according to that plan's schedule identified in Table 1. Levels of storm water pollution from this runoff at locations within the District shall be used to develop a priority system for control of these pollutants. Procedures for reducing these pollutants shall be developed, implemented, and reported in each Annual Report/Implementation Plan.

8. Deicing Activities

The permittee shall continue to evaluate the use, application and removal of chemical deicers, salt, sand, and/or sand/deicer mixtures in an effort to minimize the impact of these materials on water quality. Techniques available for reducing pollution from deicing salts in snowmelt runoff and runoff from salt storage facilities shall be investigated and implemented. This evaluation shall be made a part of an overall investigation of ways to meet the requirements of the Clean Water Act and reported in each Annual Report/Implementation Plan. In addition, an explanation shall be provided annually as to how the implementation of procedures resulting from this investigative effort will meet the requirements of the Clean Water Act.

9. Snow Removal

The permittee shall implement a program and operating plan to ensure excessive quantities of snow and ice control materials do not enter the District's waterbodies. Progress in implementing the program and plan shall be reported in each Annual Report/Implementation Plan. The District shall avoid snow dumping in areas adjacent to water bodies, wetlands, and areas near public or private drinking water wells which would ultimately

reenter the MS4 system except during a declared Snow Emergency when the foremost concern of snow removal activities is public health and safety.

10. Management Plan to Detect and Remove Illicit Discharges

The permittee shall implement an ongoing program to detect illicit discharges, pursuant to the SWMP dated October 19, 2002. and Part IV.B., of this permit, and prevent improper disposal into the storm sewer system, pursuant to 40 CFR 122.26(d)(2)(iv)(B)(1). The accomplishments of this program shall be reported in each Annual Report/Implementation Plan.

The permittee shall implement a program to prevent illicit discharges, as defined at 40 CFR 122.26(b)(2). However, those discharges listed at 40 CFR 122.26(d)(2)(iv)(B)(1) are to be addressed where such discharges are identified by the permittee as sources of pollutants to the waters of the United States.

The permittee shall ensure the implementation of a program to further reduce the discharge of floatables (e.g. litter and other human-generated solid refuse). The floatables program shall include source controls and, where necessary, structural controls.

The District shall continue to implement the prohibition against the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal waste into separate storm sewers. The permittee shall ensure the implementation of programs to collect used motor vehicle fluids (at a minimum oil and anti-freeze) for recycle, reuse, and proper disposal and to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis, pursuant to the Public Education Plan in this permit at Part III.B.12.

Detection and elimination of illicit discharges shall include, but not be limited to, the following mix of strategies:

- Implementation of an illicit connection detection and enforcement program to perform dry weather flow inspections in target areas;
- Visual inspections of targeted areas; and
- Issuance of fines, tracking and reporting illicit discharges, and reporting progress on stopping targeted illicit discharges, and in appropriate cases, chemical

testing immediately after discovery of an illicit discharge.

The District shall implement an enforcement plan for illicit discharges set forth in the following plan in paragraph 11, Enforcement Plan, of this part of the permit. A justification shall be provided for the control plan in the Annual Report/Implementation Plan in terms of meeting the requirements of the Clean Water Act.

The permittee shall carry out all necessary inspection, surveillance, and monitoring procedures to remedy and prevent illicit discharges. The District shall carry out the necessary monitoring activities with the goal of meeting the requirements of the Clean Water Act. The permittee shall submit an inspection plan, inspection criteria, and documentation regarding protocols and parameters of field screening as a part of each Annual Report/Implementation Plan. The inspection plan shall include a schedule and allocation of resources.

The permittee shall implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. The permittee shall provide for the training of appropriate personnel in spill prevention and response procedures. The implementation of this program shall be reported in each of the Annual Reports/Implementation Plans.

11. Enforcement Plan

The permittee shall implement an enforcement plan for carrying out the objectives of the SWMP dated October 19, 2002. A listing of all violations and enforcement actions shall be used to assess the effectiveness of the Enforcement Program in each Annual Report/Implementation Plan. Enforcement shall be maintained at its current level.

12. Public Education

The permittee shall implement a public education program. There are many components of a storm water public education program required by federal regulations at 40 CFR 122.26. The permittee will address all topics and related audiences including the following requirements:

A household hazardous waste educational and outreach program shall control illicit discharges to the MS-4 as required under Part III.B.10. This permit requires the permittee to implement programs and materials during the term of the permit to inform and educate the public on proper management and disposal of used oil, other automotive fluids, and household chemicals.

A residential and commercial pesticide and fertilizer educational and outreach program shall address the use and application of pesticides and fertilizer under Part III.A.7. This program shall promote the proper use of pesticides, herbicides, and fertilizers through the development and dissemination of either new or existing educational materials.

An industrial facility outreach program shall be implemented as a means of monitoring and controlling pollutants in storm water from industrial facilities as required under Part III.A.2. An industrial facility outreach program should focus on informing industries within the District's watersheds about storm water permitting and pollution prevention plans. This program should also inform industries of the requirement that they develop structural and non-structural control systems, pursuant to regulations at 40 CFR 122.26(d)(2)(iv)(C) and (iv)(A)(5).

A construction site operators education and outreach program shall provide construction site operators with technical guidance documents. The permittee shall continue providing these types of outreach and educational materials.

The permittee shall develop public educational materials in cooperation and coordination with other agencies and organizations in the District with similar responsibilities and goals. Public education materials shall be developed in an easy-to-understand format and at a technical level appropriate for the target audience. Progress reports on public education shall be included in the Annual Report/Implementation Plan. An explanation shall be provided as to how this effort will reduce pollution loadings to meet the requirements of the Clean Water Act.

The permittee shall submit copies of all records and reports to the Martin Luther King, Jr. Public Library, to be kept in a single location for public review. This requirement shall extend at a minimum to all pertinent records and reports required to be filed with EPA.

C. <u>Annual SWMP Reporting</u>

The permittee shall prepare an Annual Report to be submitted on the effective yearly date of the permit for the duration of the permitting cycle. The report shall include the following separate sections:

1. A review of the status of program implementation and compliance (or non-compliance) with all schedules of compliance contained in this permit;

2. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

3. An assessment of the effectiveness of controls established by the October 19, 2002,SWMP;

4. An assessment of the projected cost of the October 19, 2002, SWMP and a description of the permittee's budget for existing storm water programs, including an overview of the permittee's financial resources and budget, overall indebtedness and assets, and sources for funds for storm water programs.

5. A summary describing the number and nature of enforcement actions, inspections, and public education programs and installation of control systems;

6. Identification of water quality improvements or degradation through application of a measurable performance standard identified in the first paragraph of Part III.D (Annual SWMP Implementation Plan);

7. Results of storm and water quality modeling, and its use in planning installation of control systems and maintenance and other activities.

8. An assessment of any October 19, 2002,SWMP modifications needed to reduce the discharge of pollutants to meet the requirements given in 40 CFR 122.26(d)(2)(iv).

9. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (v).

10. A cost benefit and affordability analysis to determine the commitments for the next year;

11. Methodology to assess the effects of the October 19, 2002 Storm Water Management Program (SWMP) in reducing pollution and achieving the requirements of the Clean Water Act and the requirements of 40 CFR 122.26(D)(2)(iv),(v), and(vi);

12. Annual expenditures and budget for the year following each annual report;

13. A summary of commitments for the next year and evaluation of the commitments from the previous year;

14. A summary of the monitoring data for storm water and ambient sampling that is collected in the previous year and the plan, including identification of monitoring locations, to collect additional data for the next year;

The permittee shall sign and certify the Annual Report in accordance with Part VII.F. and include a statement or resolution that the permittee's governing body or agency (or delegated representative) has reviewed or been appraised of the content of the Annual Report. The permittee shall provide a description of the procedure used to meet the above requirement.

D. ANNUAL SWMP IMPLEMENTATION PLAN

The permittee shall submit, an Annual SWMP Implementation Plan, which is to be provided to EPA on the effective yearly date of the permit for the duration of the permitting cycle. The Implementation Plan is to analyze in detail the work to be done in each successive one year increment by identifying and evaluating the previous year's efforts based on a cost benefit and affordability analysis. The Plan shall include an established measurable performance standard for each of the MS4 program activities identified in Table 3 of this Permit which will be used for responding to Part III.C.6 of the Annual SWMP Reporting requirement. The basis for each of the performance standards which will be used as tools for evaluating environmental results and determining the success of each MS4 activity listed in the Plan shall be described incorporating, when practicable, an integrated program approach that considers all programs and projects which have a direct as well as an indirect affect on storm water management quantity and quality within the District. The Plan shall also provide an update of the fiscal analysis for each year of the permit as required by 40 CFR 122.26(d)(2)(vi).

Appropriate management officials within the Government of the District of Columbia shall develop and recommend to higher Authorities within the District the level of expenditures necessary for the Annual SWMP Reports and the SWMP Implementation Plans based on a cost benefit analysis and a partitioning of expenditures between the CSOs and storm sewers. If the recommended Report(s)/Plan(s) are not funded by the Mayor, the City Council, the Control Board, and/or Congress, then a written explanation will be provided to EPA and the D.C. Environmental Health Administration (EHA) within 30 days after a decision is reached by higher authorities. A written report on the above requests and decisions will also be incorporated into each Annual Report(s) and Implementation Plan(s). In each submittal, an explanation will indicate why the recommended funding was not approved. Once the SWMP Annual Implementation Plan and SWMP Annual Report are developed by this procedure, failure by the District to carry out the minimum requirements in the Reports or Plans would be a violation of this permit.

Based on the level of funding available and a cost benefit analysis, an evaluation shall be made in each Annual SWMP

Implementation Plan as to the benefit of implementing various types of structural and non-structural controls. The effect of the number and type of annual maintenance, inspections, and other program requirements will also be taken into account. Several alternatives will be considered in searching for the optimum approach. The alternatives will be evaluated in terms of a cost benefit analysis, taking into account the availability of funding and other environmental obligations of the District. Affordability cannot be used as a defense for noncompliance with conditions of this Permit.

Each Annual SWMP Report and SWMP Implementation Plan may be revised with written approval by EPA. The revised Report or Plan will become effective after its approval.

Failure to submit an Annual SWMP Report and/or Annual SWMP Implementation Plan, according to the signatory requirements in Part VII.F. and by the deadlines identified in Table 1, is a violation of this permit.

In reviewing any submittal identified in Table 1, EPA shall approve or disapprove each submittal. If EPA disapproves any submittal, EPA shall provide comments to the permittee. The permittee shall address such comments in writing within thirty (30) days of receipt of the disapproval from EPA. If EPA determines that the permittee has not adequately addressed the disapproval/comments, EPA may revise that submittal or portions of that submittal. Such revision by EPA is effective thirty (30) days from receipt by the permittee. Once approved by EPA, or in the event of EPA disapproval, as revised by EPA, each submittal shall be an enforceable element of this permit.

E. SWMP UPGRADE

The permittee shall develop an Upgraded SWMP based on the findings presented in each of the Annual SWMP Reports, and Annual SWMP Implementation Plans submitted during the permitting cycle. All the improvements and modifications to the District's existing SWMP dated October 19, 2002,shall be made in the Upgraded SWMP to be submitted six months prior to the expiration date of the permit. The Upgraded SWMP shall define the goals of the SWMP and provide an analysis to assure EPA that these goals will be achieved according to the schedule to be included in the Upgraded Plan. The Upgraded SWMP shall define what has to be done to meet the requirements of the Clean Water Act and a schedule for accomplishing these tasks.

One of the purposes of the Updated SWMP is to develop a master plan pursuant to 40 CFR 122.26(d)(2)(iv)(A) to determine

the structural and source measures to reduce pollutants from runoff. Such control systems shall include those given in the SWMP dated October 19, 2002.

F. LEGAL AUTHORITY AND RESOURCES

The permittee shall ensure legal authority exists to control discharges to and from the Municipal Separate Storm Sewer System (MS4). Any changes/deficiencies in Legal Authority shall be given in each Annual Report/Implementation Plan. The legal authority may be a combination of statute, ordinance, permit, certification, contract, order, or inter-jurisdictional agreements with existing legal authority to:

1. Prohibit illicit discharges to the municipal separate storm sewer;

2. Control the discharge of spills and the dumping or disposal of materials other than storm water into the MS4;

3. Require compliance with conditions in ordinances, permits, certifications, contracts, or orders;

4. Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance with NPDES permit conditions;

5. Carry out adequate enforcement actions, including fines, penalties, orders, and development of compliance schedules for storm water dischargers pursuant to 40 CFR 122.26(d)(2)(C).

6. Monitor and control pollutants in storm water discharges to municipal storm sewers from industrial facilities and other sources (pursuant to the above regulations) that the permittee determines are contributing a substantial pollutant loading to the municipal storm system.

7. Search out unpermitted discharges, require that they apply for NPDES permits, and take appropriate enforcement actions.

The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement the existing Storm Water Management Program (SWMP) dated October 19, 2002 and the Upgraded SWMP to be developed in accordance with the compliance schedule set forth in Table I.

PART IV. MONITORING AND REPORTING REQUIREMENTS

A. STORM EVENT DISCHARGES

The permittee shall implement a wet-weather monitoring program for the Municipal Separate Storm Sewer System (MS4) to provide data necessary to assess and report the effectiveness and adequacy of control measures implemented under the Storm Water Management Program (SWMP)dated October 19, 2002; estimate annual cumulative pollutant loadings from the MS4 subwatershed monitored for that particular year; estimate and report the event mean concentrations and seasonal pollutants in discharges from major outfalls; identify and prioritize portions of the MS4 requiring additional controls; and identify water quality improvements or degradation. The sampling plan being implemented by the permittee shall be consistent with the monitoring requirements at 40 CFR 122.26 (d)(2)(iii).

The permittee is responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the municipal separate storm sewer system. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this Part of the permit, plus any additional monitoring conducted by the permittee.

1. Representative Monitoring

The permittee shall monitor and provide an Outfall Discharge Monitoring Report(refer to the schedule in Table I, Part III.A)of representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the Municipal Separate Storm Sewer System (MS4). The sampling plan being implemented by the permittee shall be consistent with the monitoring requirements at 40 CFR 122.26 (d) (2) (iii). Table 4 shows the required parameters and their monitoring frequency.

TABLE 4
Monitoring Requirements

Parameter*	Monitoring Frequency *
pH	3/year
temperature	3/year
total ammonia nitrogen, organic nitrogen, and total nitrogen	3/year
volatile organic compounds	3/year
acid extractable compounds	3/year

base/neutral extractable compounds	3/year
pesticides/PCBs	3/year
metals, cyanide, and phenols	3/year
conventional pollutants	3/year
hardness	3/year

* Refer to Discharge Monitoring Report dated April 19, 2002 for a listing of parameters being monitored. Monitoring frequency shall be at least three times per year at a minimum.

TABLE 5 Representative Monitoring Outfall Locations
A. Anacostia River Sub Watershed Monitoring Sites
1. Stickfoot Sewer (Suitland Parkway)-2400 block of Martin Luther King, Jr. Ave., SE, near Metro bus entrance.
2. O St. Storm Water Pump Station - 125 O St., 125 O SE-just outside front gate at O St. Pump Station
3. Anacostia High School/Anacostia Recreation Center - corner of 17th St. and Minnesota Ave. SE
4. Gallatin & 14th St.,NE-across from the intersection of 14th St. and Gallatin St. in a large outfall
5. Varnum and 19th Place,NE-2100 Block of Varnum St.
6. Nash Run-intersection of Anacostia Drive and Polk St.,NE.
7. East Capitol St.-200 Block of Oklahoma Ave.,NE.
8. Ft. Lincoln-Newtown BMP-in the brush along the side of New York Ave. West (coming into city) after the bridge.
9. Hickey run-33rd and V Streets, NE.

B. Rock Creek Subwatershed Monitoring Sites
1. Walter Reed (Fort Stevens Drive)
2. Military Road and Beach Drive
3. Soapstone Creek (Connecticut Avenue and Ablemarle Street)
4. Melvin Hazen Valley Branch (Melvin Hazen Park and Quebec Street)
5. Klingle Valley Creek (Devonshire Place and 30th Street)
6. Normanstone Creek (Normanstone Drive and Normanstone Parkway)

C. Potomac River Subwatershed Monitoring Sites
1. Battery Kemble Creek-49th and Hawthorne Streets, NW.
2. Foundary Branch-at Van Ness and Upton Streets, NW in the park.
3. Dalecarlia Tributary-Van Ness Street and Dalecarlia Parkway.
4. Oxon Run-Mississippi Avenue and 15th Street, SE
5. Tidal Basin-17th Street and Constitution Avenue, NW
6. Washington Ship Channel-Washington Marina parking lot, SW
7. C and O Canal-Potomac Avenue and Foxhall Road, NW

One of the subwatersheds listed in Table 5 along with their associated MS4 monitoring stations shall be selected for yearly sampling in accordance with the District's current monitoring program and reassessed every third year utilizing the watershed approach recommended by the EPA. The current watershed based monitoring approach which is on-going for rotating the MS4 stations continues to be the Anacostia River in calendar years 2005 and 2008, Rock Creek in calendar year 2006, and the Potomac River in calendar years 2004 and 2007. All changes to the above MS4 monitoring stations and/or sites for any reason shall be considered a major modification to the permit subject to the reopener clause.

2. Storm Event Data

In addition to the parameters listed above, the permittee shall maintain records of the date and duration (in hours) of the storm events sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and a calculated flow estimate of the total volume (in gallons) and nature of the discharge sampled.

3. Sample Type, Collection, and Analysis

The following requirements apply only to samples collected for Part IV.A.1. - Representative Monitoring.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken for pH, temperature, cyanide, oil and grease, fecal coliform,

fecal streptococcus, total phenols, residual chlorine, and (at the permittee's option) volatile organics. For all other parameters, data shall be reported for weighted composite samples of the entire event of the discharge pursuant to 40 CFR 122.21(g)(7).

b. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge, with each aliquot being separated by a minimum period of fifteen minutes.

c. Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136.

4. Sampling Waiver

Grab samples taken during the first two hours of discharge shall be used for the analysis of pH, temperature, cyanide, oil and grease, fecal coliform, fecal streptococcus, total phenols, residual chlorine, and (at the permittee's option) volatile organics.

When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event.

Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

B. DRY WEATHER MONITORING

1. Dry Weather Screening Program

The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4 pursuant to the District SWMP dated October 19, 2002. All sewersheds (but not necessarily all outfalls in those sewersheds) of the MS4 must be screened at least once during the permit term. The screening shall be sufficient to estimate the frequency and volume of dry weather discharges and their environmental impact.

2. Screening Procedures

Screening may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D). A description of the protocol actually used shall be provided in each Annual Report with a justification for its use. The procedures described in the October 19, 2002 SWMP shall be used as guidance.

3. Follow-up on Dry Weather Screening Results

The permittee shall continue to implement a program to locate and eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities, and report the results of that implementation in each Annual Report.

Follow-up activities may be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

C. WET WEATHER SCREENING PROGRAM

The permittee shall implement a program to identify, investigate, and address areas within its jurisdiction that may be contributing excessive levels of pollutants to the MS4. The Wet Weather Outfall Monitoring Program in the District's October 19, 2002 SWMP shall include the above Wet Weather Screening Program.

As part of the Wet Weather Screening Program, the permittee shall:

a. screen the Municipal Separate Storm Sewer System, in accordance with existing procedures identified in the SWMP dated October 19, 2002 at least once during the permit term.

b. specify the sampling and non-sampling techniques (such as observations or quantitative methods), to be used for initial screening and follow-up purposes. For samples collected for screening purposes only, sample collection and analysis need not, pursuant to 40 CFR 122.26 (1)(d)(iv)(D), conform to the requirements of 40 CFR Part 136.

PART V. STORM WATER MODEL

The permittee shall report all progress made in developing a Storm Water Model and Geographical Information System (GIS) to EPA on an annual basis as an attachment to each

Annual Report/Implementation Plan in Part III.C. and D.

PART VI. HICKEY RUN

Monitoring for oil and grease at the Hickey Run MS4 site identified in Table 5.A of this Permit shall be performed on a rotating basis in the same year as the other Anacostia River MS4 locations identified in the Table are sampled using the procedures and methodology described and outlined in the Permit's Monitoring Program. To determine the effectiveness and performance of the planned Hickey Run BMP discussed below, the permittee shall provide in the Annual Report for EPA review and approval a detailed post construction BMP monitoring plan of sampling and protocol requirements. The results of the BMP monitoring and BMP performance in addressing the requirements of the Hickey Run TMDL shall be presented in the Annual Discharge Monitoring Report required by this Permit when the Anacostia River MS4 monitoring stations are sampled. In the event, monitoring station THRO1 downstream on Hickey Run shows violations for oil and grease (above water quality standard criterion of 10mg/l), the Hickey Run MS4 site and BMP shall be sampled in accordance with the Permit's Monitoring Program on an annual basis rather than every third year under the current watershed based monitoring program until monitoring shows remedial actions effective to achieve compliance with the TMDL.

The effluent limits applicable to the Hickey Run Outfalls consistent with the TMDL WLAs consist of the BMPs set forth in the Upgraded SWMP and the narrative effluent limits set forth above.

The permittee shall continue to use their best efforts to negotiate an agreement with all parties to construct a multi purpose BMP for ensuring compliance with the Hickey Run TMDL document to the maximum extent practicable at this location and have it operational and ready for monitoring its effectiveness during the permitting cycle. The permittee shall inform EPA of changes to the above through Annual Reports and Implementation Plans required by the Permit. The final Hickey Run BMP Compliance Plan and the sampling program component for monitoring the effectiveness and performance of the BMP shall be submitted to EPA for approval prior to the sampling of the BMP being initiated.

PART VII STANDARD PERMIT CONDITIONS FOR NPDES PERMITS

A. <u>DUTY TO COMPLY</u>

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and may result in an enforcement action; permit

termination, revocation and reissuance, or modification; and denial of a permit renewal application.

B. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS

The Clean Water Act provides any person who violates any permit condition or limitation implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, or any permit condition or limitation implementing of such section, and any person who violates any Order issued by EPA under Section 301(a) of the Act, shall be subject to a civil penalty not to exceed $32,500 per day for each violation, and to an action for appropriate relief including a permanent or temporary injunction.

Any person who negligently violates Section 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, any permit condition or limitation implementation any such section, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of such violation, or by imprisonment for not more than 3 years, or by both. Any person who knowingly violates any permit condition or limitation implementing Section 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000, or by imprisonment of not more than 15 years, or by both.

C. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

D. PERMIT ACTIONS

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

1. Violation of any terms or conditions of this permit;

2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;

4. Information newly acquired by the Agency, including but not limited to the results of the studies, planning, or monitoring described and/or required by this permit;

5. Material and substantial facility modifications, additions, and/or expansions;

6. Any anticipated change in the facility discharge, including any new significant industrial discharge or changes in the quantity or quality of existing industrial discharges that will result in new or increased discharges of pollutants; or

7. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

8. The effluent limitations are based on the District of Columbia's water quality standards in accordance with Clean Water Act. In the event of a revision of the District of Columbia's water quality standards this permit may be modified by EPA to reflect this revision.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. When a permit is modified, only conditions subject to modification are reopened.

E. CIVIL AND CRIMINAL LIABILITY

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

F. SIGNATORY REQUIREMENTS

All Discharge Monitoring Reports, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or that this permit requires be maintained by the permittee, shall be signed by:

1. For a municipality: State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

a. a duly authorized representative of that person. A person is a duly authorized representative only if:

b. The authorization is made in writing by a person described above and submitted to the Director.

c. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly

authorized representative may thus be either a named individual or any individual occupying a named position).

d. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice satisfying the requirements of this paragraph must be submitted to the Director prior or together with any reports, information, or applications to be signed by an authorized representative.

G. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

H. DISTRICT LAWS

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable District law or regulation identified in Chapter 2 of the SWMP dated October 19, 2002. In cases of "exemptions and waivers" under District law, Federal law and regulation shall be applicable.

I. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. SEVERABILITY

The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

K. TRANSFER OF PERMIT

In the event of any change in ownership or control of facilities from which the authorized discharge emanates, the permit may be transferred to another person if:

1. The current permittee notifies the EPA, in writing of the proposed transfer at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement, between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The EPA does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

L. CONSTRUCTION AUTHORIZATION

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

M. HISTORIC PRESERVATION

During the design stage of any project by the Government of the District of Columbia within the scope of this permit that may include ground disturbance, new construction, or demolition of a structure, the Government of the District of Columbia shall notify the Historic Preservation liaison and provide the liaison planning documents for the proposed undertaking. The documents shall include project location; scope of work or conditions; photograph of the area/areas to be impacted and the methods and techniques for accomplishing the undertaking. Depending on the complexity of the undertaking, sketches, plans and specifications shall also be submitted for review. The documentation will enable the liaison to assess the applicability of compliance procedures associated with Section 106 of the National Historic Preservation Act. Among the steps in the process are included:

a. The determination of the presence or absence of significant historic properties (architectural, historic or prehistoric). This can include the evaluation of standing structures and the determination of the need for an archaeological survey of the project area.

b. The evaluation of these properties in terms of their eligibility for nomination to the National Register of Historic Places.

c. The determination of the effect that the proposed undertaking will have on these properties.

d. The development of mitigating measures in conjunction with any anticipated effects.

All such evaluations and determinations will be presented to the Government of the District of Columbia for their concurrence.

If an alternate Historic Preservation procedure is approved by EPA in writing during the term of this permit, the alternate procedure will become effective after its approval.

N. ENDANGERED SPECIES

The U.S. Fish and Wildlife Service (FWS) has indicated that Hay's Spring Amphipod, a Federally listed endangered species, and the bald eagle, a Federally listed threatened species, occur at several locations near, or in, the District of Columbia. The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) has indicated that the endangered shortnose sturgeon occurs in the Potomac River drainage and may occur within the District of Columbia. The FWS and NOAA Fisheries indicate that at the present time there is no evidence that the ongoing storm water discharges covered by this permit are adversely affecting these Federally listed species. Storm water discharges, construction, or any other activity that adversely affects a Federally listed endangered or threatened species are not authorized under the terms and conditions of this permit.

The monitoring required by this permit will allow further evaluation of potential effects on these threatened and endangered species once monitoring data has been collected and analyzed. EPA requires that the permittee submit to NOAA Fisheries at the same time it submits to EPA each Annual Outfall Discharge Monitoring Report of the monitoring data which will be used by EPA and NOAA Fisheries to further assess effects on endangered or threatened species. If these data indicate it is appropriate, requirements of this NPDES permit may be modified to prevent adverse impacts on habitats of endangered and threatened species.

The above referenced annual Report of monitoring data is required under this permit to be sent on an annual basis to:

The United States Environmental Protection Agency
Region III (3WP13)
Water Protection Division
1650 Arch Streets
Philadelphia, Pennsylvania 19103-2029

National Marine Fisheries Service
Protected Resource Division
One Blackburn Drive
Gloucester, Massachusetts 01930-2298
Attn: Ms. Julie Crocker

O. TOXIC POLLUTANTS

If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, the permittee shall comply with such standard to the maximum extent practicable or prohibition even if the permit has not yet been modified to comply with the requirement.

The permittee shall comply with effluent standards or prohibitions established under section 307(a)of the Clean Water Act for toxic standards prohibitions, even if the permit has not yet been modified to incorporate the requirement.

P. Reopener Clause for Permits

The permit may be modified or revoked and reissued, to incorporate any applicable effluent standard or limitation issued or approved under Sections 301, 304, or 307 of the Clean Water Act, and any other applicable provision as provided by Chesapeake Bay Agreement of 2000 based on water quality considerations, and if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit: or

b. Controls any pollutant not limited in the permit. The permit, as modified or reissued under this paragraph, shall also contain any other requirements of the Act then applicable.

c. The permit may be modified, or revoked and reissued to incorporate additional controls that are necessary to ensure that the permit effluent limits are consistent with any applicable TMDL WLA allocated to the discharge of pollutants from the MS4.

This permit may also be reopened, modified, or revoked and reissued as specified in 40 C.F.R. Parts 122.44(c), 122.62, 122.63, 122.64, and 124.5.

Q. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in

advance but no longer than the permit expiration date. In the event that a timely and complete reapplication has been submitted and the Director is unable through no fault of he permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued and remain fully effective and enforceable.

PART VIII. MONITORING AND RECORDS

A. REPRESENTATIVE SAMPLING

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit. Monitoring points shall not be changed except through permit modification.

B. FLOW MEASUREMENTS

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device.

C. MONITORING PROCEDURES

1) Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedure have been specified in the permit.

2) PCBs have been identified in the contaminated sediments of the Anacostia River and in airborne particular matter deposited within the District of Columbia. The Permittee shall continue to use Method 608 for PCB monitoring. In the event that EPA approves a test method for compliance monitoring purposes of measuring PCB concentrations in storm water with a minimum level of less than 1.0 ug/L, EPA reserves the right to modify the Permit to require the Permittee to use such EPA approved test method in place of Method 608.

D. PENALTIES FOR TAMPERING

The Clean Water Act provides that any person who falsifies or knowingly renders inaccurate, any monitoring device, required device, or method required to be maintained under this permit shall

upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

E. REPORTING OF MONITORING RESULTS

Monitoring results must be reported annually on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). Monitoring results obtained during the previous year shall be summarized and reported on a DMR form postmarked no later than the effective date of the permit of the following year. Duplicate copies of DMR's signed and certified as required by Part VI.F., shall be submitted to the United States Environmental Protection Agency Region III, and the District of Columbia's Department of Health at the following addresses:

U.S. EPA Region III(3WP13)
Water Protection Division
NPDES DMRS
1650 Arch Street
Philadelphia, PA 19103-2029

District of Columbia Government
Department of Health
Environmental Health Administration
5th Floor/51 N. Street, N.E.
Washington, D.C. 20002

F. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors (for the purposes of this permit) any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual Discharge Monitoring Report (DMR) forms. Such frequency shall also be indicated.

G. RETENTION OF RECORDS

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5)years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

H. RECORD CONTENTS

Records of monitoring information shall include:

1. The date, exact place, time and methods of sampling or measurements:

2. The individual(s) who performed the sampling or measurements;

3. The date(s)analyses were performed;

4. The individual(s)who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

I. INSPECTION AND ENTRY

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises at reasonable times where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), processes, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

PART IX OTHER APPLICABLE PROVISIONS

A. Waivers and Exemptions

This permit does not authorize the discharge of any pollutant from the MS4 which arises from or is based on any of the various existing "waivers and exemptions" that may otherwise apply and are not consistent with the Federal Clean Water Act and other pertinent guidance, policies, and regulations. This narrative prohibition on the applicability of such waivers and exemptions extends to any activity that would otherwise be authorized under District law but which impedes the reduction or control of pollutants through the use of BMPs to the maximum extent practicable and/or prevents compliance with the narrative effluent limits of this Permit. Any such discharge not otherwise authorized may constitute a violation of this permit.

B. TMDL WLA Implementation Plans and Compliance Monitoring

In addition to the duty to comply with the narrative effluent limits in Part I.D.3 of this Permit, the permittee shall demonstrate compliance as described in this Part and in Part IV, Monitoring and Reporting Requirements. In accordance with the

schedule identified in Part III.A. Compliance Schedule and Table 1, Permittee shall further submit implementation plans to reduce discharges consistent with any applicable EPA-approved waste load allocation (WLA) component of any established Total Maximum Daily Loadings (TMDL). An applicable TMDL WLA for this Permit means any TMDL established on or before the effective date of this Permit for a receiving stream, segment of a stream, or other waterbody within the District of Columbia to which the MS4 system discharges, and for which the MS4 receives a WLA, for purposes of achieving compliance with applicable requirements under the Clean Water Act.

EPA has identified all applicable TMDL WLAs and the associated reductions from current estimated loadings as described in Appendix A to the Fact Sheet. EPA provides the following list for informational purposes only: Upper and Lower Anacostia River Biochemical Oxygen Demand TMDL (50 per cent reduction); the Upper and Lower Anacostia River Total Suspended Solids TMDL (77 per cent reduction); Upper and Lower Anacostia River, Watts Branch, Fort Dupont Creek, Fort Chaplin Tributary, Fort Davis Tributary, Fort Stanton Tributary, Hickey Run, Nash Run, Popes Branch, and Texas Avenue Tributary Fecal Coliform Bacteria TMDL (27-90)per cent reduction); and the Anacostia River, Fort Chaplin Tributary, Fort Davis Tributary, Fort Dupont Creek, Fort Stanton Tributary, Hickey Run, Nash Run, Popes Branch, Texas Avenue Tributary, and Watts Branch Organics and Metals TMDL (0-98 per cent reduction). The same implementation procedures will apply to the approved TMDL WLAs for Rock Creek which includes the Upper and Lower Rock Creek Metals (0-86 per cent reduction subject to adjustment for the margin of safety); Rock Creek Fecal Coliform Bacteria (95 per cent reduction); and Rock Creek Tributary Organics for Broad Branch, Dumbarton Oaks, Fenwick Branch, Klingle Valley, Luzon Branch, Melvin Hazen, Normanstone Creek, Pinehurst Branch, Piney Branch, Portal Branch, and Soapstone Creek (0-99.9 per cent reduction subject to adjustment for the margin of safety).

Demonstration of compliance (as specified in Parts IV and VIII of the Permit) will be calculated using the procedures (i.e., Simple Method) identified in the Upgraded SWMP dated October 19, 2002, unless specified otherwise by EPA, and will be reported by comparing the monitoring data for that pollutant to the approved pollutant specific WLAs and its associated storm water load reductions for the receiving waterbody as specified in the Fact Sheet.

The permittee shall report to EPA the results of this analysis in accordance with the compliance schedule in Part III.A and Table 1 of this permit. If the analysis concludes that the MS4 discharge monitored for that specific pollutant is causing or contributing to an exceedance of the criteria under the approved pollutant-specific WLAs, the permittee shall develop a TMDL implementation

Plan and schedule in accordance with the compliance schedule in Part III.A and Table 1 of this permit. The Plan shall consist of documenting all previous and on-going efforts at achieving the specific pollutant reductions identified in the TMDL WLA and further demonstrating additional controls sufficient to achieve those reductions through an established performance based benchmark. This benchmark shall be applied against annual projected performance standards for purposes of completing the final implementation plan when determining measurable progress to achieve adequate reduction. EPA reserves the right after a review and approval of each Plan to modify this permit for purposes of requiring additional numeric and/or narrative effluent controls on the discharge of pollutants from the MS4. EPA shall make the results of any such determination(s) in writing available to the Permittee and other interested persons including, but not limited to members of the District of Columbia MS4 Task Force. Upon approval by EPA, the TMDL implementation plan(s)shall be incorporated into the upgraded SWMP in accordance with the compliance schedule in Part III.A (Table I)and Part III.E (SWMP Upgrade) of this Permit.

The Permittee shall submit to EPA the applicable TMDL Implementation Plans for the Anacostia River TMDLs within six months and for the Rock Creek TMDLs twelve months after the effective issuance date of this Permit.

C. Compliance Monitoring with Water Quality-Based Effluent Limitations

The Permit is water quality based and as such is written to impose controls (in Part I of this Permit) sufficient to ensure compliance with applicable District of Columbia water quality standards. EPA reserves the right to modify the Permit as needed, when monitoring results (as set forth in Parts IV and VIII of the permit) show that the current BMP controls required by this permit are not sufficient to ensure compliance with the applicable water quality standards.

PART X. PERMIT DEFINITIONS

"Best Management Practices" ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the United States. BMP also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"CSMP" means Construction Site Management Plan

"CWA" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control

Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. (6-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

"Director" means the Regional Administrator or an authorized representative.

"Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4).

"Maximum Extent Practicable (MEP) Standard" means a technology based level of pollution reduction achieved through the use of a combination of non structural and/or structural best management practices (BMPs) for controlling the quantity as well as the quality of a particular pollutant or pollutants in storm water at their sources before entering the MS4 system.

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Goal" means the end results the permittee is to strive to achieve.

"Guidance" means assistance in achieving a goal.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from clear water flows, roof drainage, water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation waters, springs, footing drains, lawn watering, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, fire fighting activities, and similar types of activities.

"Internal Sampling Station" means a monitoring site which is located within the Municipal Separate Storm Sewer System (MS4) upstream of an outfall pipe which discharges storm water directly into a receiving waterbody.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"MS4" refers to either a Large or Medium Municipal Separate Storm Sewer System.

"Large or Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"Municipal Separate Storm Sewer" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

"Permittee" refers to the Government of the District of Columbia and all subordinate District and independent agencies directly accountable and responsible to the City Council and Mayor as authorized under the Storm Water Permit Compliance Amendment Act of 2000 and any subsequent amendments for administrating, coordinating, implementing, and managing storm water for MS4 activities within the boundaries of the District of Columbia.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch,

channel, substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Pollutant of concern" means a pollutant in an MS4 discharge that may cause or contribute to the violation of a water quality criterion for that pollutant downstream from the discharge.

"Significant spills" includes, but is not limited to: releases of tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"RSAT" is an acronym for Rapid Stream Assessment Techniques.

"SWMP" is an acronym for Storm Water Management Plan/Program. For purposes of this permit, the term includes all storm water activities described in the District's SWMP dated October 19, 2002,and all other documents and related correspondences embodied under the tier of the program document from the previous Permit and to be generated from this Permit.

"Section 313 water priority chemical" means a chemical or chemical categories which: 1) are listed at 40 CFR 372.65 pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986; 2) are present at or above threshold levels at a facility subject to SARA Title III, Section 313 reporting requirements; and 3) that meet at least one of the following criteria: i) are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous oil or hazardous substances in excess of reportable quantities under section 311 of the CWA(see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Total Maximum Daily Load (TMDL) Units" means for purposes of this Permit, the waste load allocations (WLAs) are expressed in pollutant pounds of a total average annual load unless specifically identified otherwise in an EPA approved TMDL report covered under the Permit.

"Time-weighted composite" means a composite consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Upgraded Storm Water Management Program (SWMP)" is a modified and improved SWMP based on the existing SWMP and on information in each of the Annual Reports/Implementation Plans/Discharge Monitoring Reports. The goal of the Upgraded SWMP is to describe the list of activities that need to be done to meet the requirements of the Clean Water Act, an explanation as to why these activities will meet the Clean Water Act requirements, and a schedule for those activities, taking into account the cost benefit and affordability analysis to be done in each of the Annual Implementation Plans.

"Waste pile" means any non-containerized accumulation of solid, nonflowing waste.

"Waters of the United States" is identified at 40 CFR 122.2.

DECLARATION OF JULIE QUINN, MESM

I, Julie Quinn, hereby declare:

1. I am a water quality and water resources professional with URS Corporation. I have a Bachelor of Science degree from University of California, Riverside, with a major in Environmental Science, and a Master of Environmental Science and Management from University of California, Santa Barbara.

2. I have personal knowledge of the matters set forth herein and, if called to testify, could and would testify competently thereto.

3. I was requested to perform a survey of Phase I National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer systems (MS4) permits issued by the United States Environmental Protection Agency (EPA). I was further asked to review those permits to determine whether they included any of the following: (1) a requirement to inspect industrial facilities that are covered under a NPDES general industrial stormwater permit; (2) a requirement to inspect restaurants, automotive service facilities, or retail gasoline outlets and automotive dealerships; and (3) a requirement to install trash receptacles at all transit stops within the MS4 permittee's jurisdiction.

4. Attached as Exhibit 1 is a letter report summarizing the results of this survey. This letter report sets forth the Phase I NPDES MS4 permits that I reviewed and the conclusions of the survey.

5. None of the Phase I NPDES MS4 permits issued by EPA required the inspection of commercial facilities or industrial facilities that are not required to be covered under a NPDES permit.

6. None of the Phase I NPDES MS4 permits issued by EPA included the extensive requirements for inspection of industrial facilities covered by NPDES general industrial permits that are included in the Phase I NPDES MS4 permit issued to the Los Angeles County permittees by the California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.

6. None of the Phase I NPDES MS4 permits issued by EPA required the installation of trash receptacles at transit stops.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of June, 2008 at Santa Ana, California.

Julie Quinn

Julie Quinn, MESM

URS

June 17, 2008

Mr. Howard Gest
Burhenn & Gest LLP
624 South Grand Avenue, Suite 2200
Los Angeles California
90017-3321

Subject: ***Phase I Municipal Separate Storm Sewer Systems (MS4) Permit Survey***

Dear Mr. Gest,

URS Corporation is pleased to submit this letter report describing the results of the National Pollution Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit survey. The survey involved obtaining copies of Phase I NPDES MS4 permits issued directly by the United States Environmental Protection Agency (USEPA). These Phase I NPDES MS4 Permits were obtained and reviewed to determine if they contained provisions similar to the two specific requirements of the Phase I NPDES MS4 permit issued to Los Angeles County on December 13, 2001 (NPDES Permit No. CAS004001) and as amended on September 14, 2006 and August 9, 2007 (hereafter referred to as the NPDES MS4 Permit issued to the Los Angeles County permittees).

Los Angeles County MS4 Permit Requirements

The two specific requirements of the NPDES MS4 Permit issued to the Los Angeles County permittees in question are:

- Installation of trash receptacles as specified in Part 4.F.5.c.3. This provision requires the installation and maintenance of trash receptacles at all transit stops within the permittees jurisdiction.
- Required commercial/industrial inspection programs as specified in Part 4.C. The Industrial/Commercial Facilities Control Program described in Part 4.C. requires permittees to establish ongoing programs to track, inspect, and ensure compliance at industrial and commercial facilities that are critical sources of storm water pollutants. Inspections include commercial facilities such as restaurants, automotive service stations, retail gasoline outlets, automotive dealerships, and Phase I Tier 1 and 2 facilities that have not been inspected by the Regional Water Quality Control Board.

The specific Los Angles County MS4 Permit requirements summarized above are provided in Attachment A.

Phase I NPDES MS4 Permits Regulated by USEPA

There are several states that are not designated to administer the Phase I NPDES MS4 Permit Program. Therefore, dischargers in those states are issued NPDES MS4 permits and regulated directly by the USEPA. In some instances the USEPA will review NPDES MS4 permits issued by delegated states and make findings regarding if the NPDES MS4 permits comply with the Clean Water Act and other federal regulations.

URS Corporation
2020 East First Street, Suite 400
Santa Ana, CA 92705
Tel: 714.835.6886
Fax: 714.667.7147

The following states and United States lands are non-designated states:

United States

- Massachusetts
- New Hampshire
- Idaho
- Alaska
- New Mexico

United States Lands

- Puerto Rico
- District of Columbia
- Pacific Islands
- Guam
- Indian Lands

Provisions of USEPA Issued Phase I NPDES MS4 Permits

The following table summarizes the results of a review of the Phase I NPDES MS4 permits issued by the USEPA to municipal entities in non-designated states as well as the Phase I NPDES MS4 permit issued to the District of Columbia. None of the Phase I NPDES MS4 permits issued in non-designated states had provisions similar to the Industrial/Commercial Facilities Control Program required by the NPDES MS4 Permit issued to the Los Angeles County permittees. These requirements are unique in requiring inspections for commercial facilities such as restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships. Additionally, the level of inspection requires the MS4 permittees to confirm that operators of Phase I industrial facilities have a current Waste Discharge Identification (WDID) number, Storm Water Pollution Prevention Plan (SWPPP), effective BMP implementation, and participation in enforcement actions for those commercial/industrial facilities not in compliance. Although the Phase I NPDES MS4 permits issued to the municipalities in the non-designated states did require permittees to develop inspection procedures, prioritize, monitor, and in some cases inspect those facilities specifically identified in the federal regulations, 40 CFR 122.26(d)(2)(iv)(C), sometimes referred to in the permits as "high risk", these requirements were distinctly different from the requirement to implement comprehensive inspections of all industrial and commercial facilities as specified in the NPDES MS4 Permit issued to the Los Angeles County permittees. Table 1 summarizes the sections of each Phase I NPDES MS4 permit where program elements addressing commercial/industrial activities are described.

Phase I NPDES MS4 Permits for the other lands of the U.S. (e.g. Guam, Indian Lands, Puerto Rico, & Pacific Islands) were not obtained in time to include in this survey. New Hampshire is a non-designated state but currently has no municipalities that have been issued a Phase I NPDES MS4 permit.

Permit Status

NPDES permits are issued for a period of five years. An application for renewal of the NPDES permits must be submitted prior to the expiration date. The status of the Phase I NPDES MS4 program in each non-designated state is described herein. Copies of the large and medium Phase I NPDES MS4 permits that were reviewed as part of this survey are provided in Attachment B.

Alaska

The state of Alaska has formally applied to the USEPA for authority to administer their NPDES program. Since they are applying to administer their own program, their two Phase I NPDES MS4 permits have not been renewed or re-issued. The Municipality of Anchorage Phase I NPDES MS4 permit that covers the Alaska Department of Transportation, City of Anchorage, Port of Anchorage, and University of Alaska at Anchorage expired in 2003 and has not been renewed.

Idaho

The Phase I NPDES MS4 permit covering the six co-permittees within Idaho (Ada County Highway District, City of Boise, Boise State University, Garden City, Idaho Department of Transportation, and Drainage District Number 3) expired in 2005. An application for renewal of the permit was submitted in 2004, but a revised permit has not been issued.

Massachusetts

There are two large Phase I municipalities within Massachusetts, Boston and Worcester. The City of Boston's Phase I NPDES MS4 permit was issued in 1999 and expired in 2004 and a draft revised permit is expected to be issued in late 2008. Worcester is the other large Phase I municipality within Massachusetts and a draft revised Phase I NPDES MS4 permit is expected in late June 2008.

New Hampshire

There have been no large or medium Phase I NPDES MS4 permits issued in New Hampshire.

New Mexico

The City of Albuquerque, Albuquerque Flood Control Authority, New Mexico Department of Transportation, and University of New Mexico at Albuquerque are co-permittees and are covered under a Phase I NPDES MS4 permit that expires on November 30, 2008. New Mexico has been pursuing primacy to administer a state regulated NPDES program but has not yet been designated to do so.

District of Columbia

Washington DC was issued a Phase I NPDES MS4 permit in 2000 that expired in 2005. In 2004 the USEPA issued a new Phase I NPDES MS4 permit that expires on August 18, 2009.

URS

Table 1. Summary of Phase I NI

Non-Designated State	USEPA Regulated MS4	Date of Issuance	Section of Permit References Commercial/Indus Inspections
Alaska	Alaska Department of Transportation City of Anchorage University of Alaska, Anchorage	10-28-98	Part II.A.3.
	Port of Anchorage	03-03-95	Part II. B.
Idaho	Ada County Highway District City of Boise Boise State University Garden City Idaho Department of Transportation Drainage District 3	11-29-00	Part II.A.9.b.
Massachusetts	City of Boston	09-29-99	Part I.B.2.i.
	City of Worcester	09-30-98	Pat I.B.2.j.
New Mexico	City of Albuquerque Albuquerque Flood Control Authority New Mexico Department of Transportation University of New Mexico at Albuquerque	11-30-03	Part II.A.8.
District of Columbia	Washington D.C.	09-18-04	Part III.B.2.
New Hampshire	No MS4 permit(s) currently issued.	N/A	N/A

Table Notes:
EPCRA = Emergency Planning and Community Right-to-Know Act
MS4 = Municipal Separate Storm Sewer System

Survey Conclusions

Upon reviewing the Phase I NPDES MS4 permits issued by USEPA, there were no provisions that called for the specific trash receptacles and commercial / industrial inspection programs as described in the NPDES MS4 Permit issued to the Los Angeles County permittees. The provisions in the permits describing monitoring and inspections required for "Industrial and High Risk" dischargers did not call for the detailed inspection program of commercial/industrial facilities as described in the Los Angeles NPDES MS4 Permit. Moreover, all of the Phase I NPDES MS4 permits issued by USEPA described "high risk" dischargers as facilities that treated, recovered, stored, or disposed of hazardous waste, facilities subject to EPCRA Title III, as well as landfills. The majority of the Phase I NPDES MS4 permits issued by USEPA called for prioritization and monitoring of these high risk facilities with inspection and monitoring results to be reported in the Annual Report.

The Phase I NPDES MS4 permits issued by EPA in the non-designated states contained requirements that were distinctly different from the inspection requirements for industrial facilities contained in the NPDES MS4 Permit issued to the Los Angeles County permittees. None of the EPA issued permits required inspection of restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. With the exception of the District of Columbia permit, none of the permits require inspection of all facilities that were issued general industrial stormwater permits.

Instead, all the EPA issued Phase I NPDES MS4 permits, except for the District of Columbia permit, require only a program to monitor and control pollutants from stormwater discharged from the facilities specifically identified in 40 C.F.R. 122.26(d)(2)(iv)(C). Those facilities are municipal landfills; hazardous waste treatment, disposal and recovery facilities subject to § 313 of the Emergency Planning and Community Right to Know Act; and industrial or commercial facilities that are determined to be contributing substantial pollutant loading to the MS4. Inspections are required only of these facilities. The District of Columbia Phase I NPDES MS4 permit does provide that the city's program to monitor and control pollutants from industrial facilities should include a program with respect to industrial facilities with NPDES Permits. However, that permit does not require compliance inspection of those sites to determine whether the facility is complying with the terms of its NPDES general industrial storm water permit, which is the case under the Phase I NPDES MS4 Permit issued to the Los Angeles permittees.

In contrast, the NPDES MS4 Permit issued to the Los Angeles County permittees requires a comprehensive Industrial/Commercial Facilities Control Program that includes the following unique requirements:

- Inspection of all commercial/industrial facilities regardless of whether they are contributing a substantial pollutant loading to the MS4;
- Inspection of commercial facilities such as restaurants, automotive service facilities, retail gasoline and automotive dealerships;
- Inspections to confirm that Phase I facilities have current WDID numbers, SWPPPs, and effective BMP implementation; and
- Participation in enforcement actions for commercial/industrial facilities not in compliance.

In summary, there were no provisions for installation of trash receptacles in any of the non-designated USEPA regulated states. Inspection of high risk commercial/industrial dischargers was present in the Phase I NPDES MS4 permits, but none required the establishment of an ongoing program to comprehensively inspect and enforce storm water compliance at all commercial and industrial facilities as specified in the NPDES MS4 Permit issued to the Los Angeles County permittees.

If you have any questions or comments regarding the results of this survey please do not hesitate to contact me at 714.648.2725.

Sincerely,
URS Corporation

Julie Quinn

Julie Quinn, MESM
Water Quality & Water Resources Professional

Attachment A

Los Angeles County Phase I NDPES MS4 Permit Provisions:

Trash Receptacles - Part 4.F.5.c.3.

&

Industrial/Commercial Facilities Control Program - Part 4.C.

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001
(Amended on September 14, 2006 by Order R4-2006-0074
and
on August 9, 2007 by Order R4-2007-0042)

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A: A minimum of three times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

	Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. Track Critical Sources

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities
- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]
- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:
- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. Inspect Critical Sources

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), CWC §

Attachment B

Phase I NDPES MS4 Permits

Alaska

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4 (the "Act"),

THE MUNICIPALITY OF ANCHORAGE and
THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
(hereinafter "Permittees")

are authorized to discharge from all municipal separate storm sewer system outfalls existing as of the effective date of this Permit, to receiving waters which include the Eklutna River, Edmonds Creek, Mirror Creek, Peters Creek, Fire Creek, Eagle River, Meadow Creek, South Fork Eagle River, Ship Creek, Chester Creek, North Fork Chester Creek, Middle Fork Chester Creek, South Fork Chester Creek, Fish Creek, Campbell Creek, North Fork Campbell Creek, South Fork Campbell Creek, Little Campbell Creek, Craig Creek, Furrow Creek, Hood Creek, Little Survival Creek, Rabbit Creek, Little Rabbit Creek, Potter Creek, Bird Creek, Mink Creek, Indian Creek, and Glacier Creek, their tributaries, associated lake systems, and wetlands located within the corporate limits of the Municipality of Anchorage in accordance with the conditions set forth herein.

This permit shall become effective

This permit and the authorazation to discharge shall expire at midnight,

Signed this day of

Director, Office of Water,Region 10
U.S.EnvironmentalProtectionAgency

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PART I -- APPLICABILITY

A. PERMIT AREA

This Permit covers all areas within the corporate boundary of the Municipality of Anchorage served by the municipal separate storm sewer system ("MS4") owned or operated by the Permittees.

B. DISCHARGES AUTHORIZED UNDER THIS PERMIT

This Permit authorizes the discharge of storm water to waters of the United States from: (1) all portions of the MS4 owned or operated by the Municipality of Anchorage; and (2) portions of the MS4 within State of Alaska highway rights-of-way located within the corporate boundaries of the Municipality of Anchorage that are owned or operated by the Alaska Department of Transportation and Public Facilities. This Permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, and storm water associated with industrial activity, provided that the commingled flows fall within at least one of the categories of covered non-storm water discharges set forth in Part I.D. of this Permit.

C. PERMITTEES' RESPONSIBILITIES

1. Each Permittee is individually responsible
2. or permit compliance:

    a. related to portions of the MS4 owned or operated solely by that Permittee; and

    b. where this Permit directs action or inaction by that named Permittee.

3. Each Permittee is jointly responsible for permit compliance:

    a. related to portions of the MS4 where operational or storm water management program implementation authority has been transferred from one Permittee to another in accordance with an interagency or inter-jurisdictional agreement;

    b. related to portions of the MS4 where Permittees jointly own or operate a portion of the MS4; and andassessments required
    c. related to the submission of plans, reports, strategies by Part II of this Permit.

D. LIMITATIONS ON PERMIT COVERAGE

1. Non-Storm Water. Discharges of non-storm water are not authorized by this Permit except where such discharges satisfy one of the following three conditions:

a. The non-storm water discharges are in compliance with a separate NPDES permit;

b. The non-storm water discharges result from a spill and:

(1) are the result of an Act of God where reasonable and prudent measures have been taken to minimize the impact of such discharge; or

(2) consist of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to minimize the impact of such discharges; or

c. The non-storm water discharges satisfy each of the following two conditions:

(1) The discharges consist of water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, or flows from emergency fire fighting activities; and

(2) The discharges are not sources of pollution to waters of the United States. A discharge will be considered a source of pollution to waters of the United States if it:

(a) causes excessive foam in the receiving waters or contains floating and/or settleable solids;

(b) contains oil or other substances in amounts sufficient to create a visible film or sheen on the receiving waters;

(c) contains substances that are in amounts sufficient to be unsightly or deleterious or which produce color, odor, or other conditions to such a degree as to create a nuisance;

(d) contains any substance, or combination of substances, in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants or humans;

(e) contains any substances or combination of substances in amounts that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly or otherwise impair the designated use;

(f) results in the discharge of sufficient quantities of pollutants that would cause a violation of water quality standards; or

(g) results in the degradation or loss of State-designated beneficial uses of receiving waters (unless authorized by the State in accordance with the State's Antidegradation policy).

2. Discharges Threatening Water Quality. This permit does not authorize storm water discharges that the Regional Administrator determines will cause, or have the reasonable potential to cause, violations of water quality standards.

PART II -- STORM WATER MANAGEMENT PROGRAM

Permittees shall develop and implement a Storm Water Management Program which shall include all controls necessary to reduce the discharge of pollutants from the MS4 to the maximum extent practicable ("MEP"). The Storm Water Management Program should employ best management practices ("BMPs"), control techniques, system design and engineering methods, and other appropriate provisions.

The Storm Water Management Program shall cover the term of this Permit and shall be updated as necessary, or as required by the Regional Administrator, to ensure compliance with Section 402(p)(3)(B) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B). Modifications to the Storm Water Management Program shall be made in accordance with Part IV.H. of this Permit. The Storm Water Management Program and all approved updates made in accordance with Part IV.J. of this Permit, are hereby incorporated by reference. All components, conditions and requirements of the Storm Water Management Program are enforceable as conditions of this Permit.

All plans requiring submittal for review and approval shall be submitted to the U.S. Environmental Protection Agency ("EPA") and the Alaska Department of Environmental Conservation ("ADEC") in accordance with the requirements identified in Part II.A. and the procedures identified in Part IV.K. of this Permit. EPA, in consultation with ADEC, shall have the right to disapprove, or require modifications for approval to plans, within sixty (60) days of receipt. If EPA does not disapprove such plans within sixty (60) days, they shall be deemed approved.

A. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS

1. Structural and Source Control Measures. The MS4 and any storm water structural and source controls shall be operated in a manner to reduce the discharge of pollutants to the MEP.

    a. Maintenance Activities and Maintenance Schedule. Permittees shall operate the existing structural control maintenance programs as detailed in Sections 3 and 5A of Part 1 of the Permit Application, which shall include the following:

        (1) Inspection and Maintenance Schedules. Permittees shall revise Sections 5.8.1.1 and 5.8.1.2 of Part 2 of the Permit Application to include definitive inspection and maintenance schedules for all Permittee-owned structural controls. Inspection schedules shall include the frequency of routine inspections for all categories of structural controls, including wetlands used as storm water

treatment, as well as a description of the inspection criteria and procedures. Maintenance programs shall establish guidelines and criteria for maintenance activities that are to be implemented for Permittee-owned structural controls, as well as a description of the maintenance activities required, such as "disposal of sediment or removal of debris." Permittees shall identify and submit the locations of all permittee-owned structural controls to the Regional Administrator with the first annual report due twelve (12) months from the effective date of this permit. The inspection and maintenance schedule shall be submitted to the Regional Administrator with the second annual report due twenty-four (24) months from the effective date of this Permit.

(2) Inspection and Maintenance Record-keeping. Each Permittee shall maintain an internal record-keeping system to track inspections and maintenance for those portions of the MS4 operated by that Permittee. Inspection and maintenance activities shall be recorded on standardized reporting forms and shall be submitted annually in conjunction with the annual reports beginning with the second annual report due twenty-four (24) months from the effective date of this permit.

(3) Inspection and Maintenance Evaluations. Permittees shall conduct annual evaluations to assess the appropriateness of the inspection and maintenance schedule to: (1) ensure that controls are operating in a manner that reduces pollutants to the MEP; and (2) assist in setting priorities for program development. Modifications to the inspection and maintenance schedule shall be submitted as part of the annual report required by Part IV.G. of this Permit.

(4) Structural and Source Controls Effectiveness Assessments and Analyses. Permittees shall continue to implement and refine the existing program to evaluate the effectiveness of structural and source controls. Information gathered and evaluated through this program shall be used in: estimating the effectiveness of controls; selecting, designing, and maintaining controls; and providing valuable information to management in land use planning and decision-making.

(a) During the five year term of this Permit, Permittees shall complete (at a minimum) the following structural and source control assessment projects which are further described in Appendix "A":

i) Oil and Grit Separator BMP Assessment

ii) Sedimentation Basin Assessment

iii) Storm Water Treatment in Wetlands Assessment

iv) Assessment of Non-Structural Source Controls to include increased use of Greenbelts and Pervious Surfaces

v) Fecal Coliform Bacteriological Impacts Assessment

vi) Stream Sediment - Characterization

(b) Schedule and Scope of Assessments. Permittees shall provide a proposed schedule and detailed overview of the scope of all assessments required in Part II.A.1.a.(4) for approval to the Regional Administrator within 90 days after the effective date of this Permit. This schedule shall be a topic for discussion during the first annual meeting as set forth in Part II.A.7. Assessments will be initiated according to the approved schedule and scope, with incorporation of modifications as set forth in writing by the Regional Administrator.

(c) Reporting Requirements. Permittees shall submit completed assessment reports to the Regional Administrator in accordance with the approved schedule required in Part II.A.1.a.(4)(b).

b. Areas of New Development and Significant Redevelopment. The Municipality of Anchorage shall limit to the MEP the discharge of pollutants in storm water resulting from new development and from redeveloped areas after construction is completed. The primary emphasis shall be on prevention, through planned development, and secondarily through storm water treatment via required implementation of BMPs. In accordance with this program area:

(1) As part of its revisions to the Anchorage Bowl Comprehensive Development Plan the Municipality of Anchorage shall evaluate new land use policies to reduce urban runoff pollution to the MEP. Policies to be evaluated shall include, but are not limited to:

(a) Establishment of incentive plans to encourage preservation of at least 25% (or a lesser percentage based on site limitations) of native vegetation on developing acreage to aid in on-site treatment of runoff water.

(b) Establishment of minimum nondisturbance and structural setback requirements from lakes for developing acreage together with incentive programs for existing property owners who voluntarily elect to dedicate nondisturbance easements adjacent to lakes.

(c) Establishment of an incentive plan to encourage dedicated setbacks from waterbodies of at least 50 feet in new subdivisions within the Municipality, unless otherwise specified as greater in the Anchorage Wetlands Management Plan. The Municipality of Anchorage shall also evaluate the establishment of an incentive plan to encourage existing property owners to dedicate setbacks from waterbodies or otherwise reduce adverse impacts of storm water to waterbodies.

(d) Requiring permitting and review of land-clearing activities to retain as much pervious surface area as possible.

(2) The Municipality of Anchorage shall establish an Open Space Plan for the purpose of guiding future growth and development in the Municipality while taking into consideration storm water impacts. The Open Space Plan shall be adopted and submitted to the Regional Administrator within twenty-four (24) months after the effective date of this Permit.

(3) The Municipality of Anchorage shall submit a general schedule and list of actions describing the procedures under which the elements set forth in Part II.A.1.b.(1) of this Permit will be considered during the Anchorage Bowl Comprehensive Development Plan revision process to the Regional Administrator no later than 90 days after the effective date of this Permit.

(4) The Municipality of Anchorage shall adopt a minimum of two of the elements set forth in Part II.A.1.b.(1), or equivalent incentive programs and shall report results to the Regional Administrator with the annual report in the year coinciding with completion of the Anchorage Bowl Comprehensive Plan revision. Extensions or modifications to this requirement can be requested in writing to the Regional Administrator in conjunction with the annual reports.

(5) The policies, development regulations and permitting requirements adopted and implemented by the Municipality of Anchorage shall be no less stringent than policies and management strategies of the Anchorage Wetlands Management Plan.

(6) The Municipality of Anchorage shall ensure that its local ordinances and design criteria are consistent with applicable State and Federal regulations, as well as with findings resulting from the assessments required in Part II.A.1.a.(4)(a).

(7) New Develoment and Significant Redevelopment Program Requirements. To satisfy the requirements of this program, the Municipality of Anchorage shall comply with the following elements for all new development and significant redevelopment within the Municipal boundaries defined by this permit.

(a) The MOA shall develop and submit project review and approval procedures, for new development and significant redevelopment, as part of the first annual report required by Part IV.G. of this Permit. The Municipality of Anchorage shall begin implementation of these project review and approval procedures for new development and significant redevelopment within twelve (12) months of the effective date of this Permit. Project review and approval procedures shall include:

i) procedures for incorporating and addressing post-construction storm water quality concerns as part of the permitting process for new development and significant redevelopment,

ii) a description of review standards (Permittees may review ADEC standards and modify in cooperation with ADEC, as appropriate) and a description of the site development review process, and

iii) minimum design criteria for all BMPs.

(b) The Municipality of Anchorage shall develop an inspection and enforcement strategy for new development and significant redevelopment (private and public) to ensure that all specified BMPs are implemented in accordance with the approved plan. The Municipality of Anchorage shall submit, for review and approval, an inspection and enforcement strategy and procedures as part of the first annual report due twelve (12) months after the effective date of this Permit. Implementation shall begin within sixty (60) days after approval. An annual summary of activities shall be submitted as part of the annual report beginning with the second annual report due twenty-four (24) months after the effective date of this permit.

(c) The MOA shall develop and provide staff training for personnel responsible for plan review and inspection of development sites. DOT&PF shall also develop and provide staff training for personnel responsible for plan review and inspection of DOT&PF development. Training shall include information on BMPs, their applications, and effectiveness. Training shall begin within two (2) years from the effective date of this permit. Summaries of the training (materials, dates, and attendees) shall be submitted as part of the annual reports beginning with the second annual report due twenty-four (24) months of the effective date of this permit.

(d) The MOA shall provide public education to developers, landowners, and other potentially affected parties. Public education shall also target existing property owners to increase awareness on basic land use regulations within the Municipality of Anchorage. Summaries of the training (materials, dates, and attendees) shall be submitted as part of the annual reports beginning with the second annual report due twenty-four (24) months of the effective date of this permit.

c. Roadways. Permittees shall operate and maintain public streets, roads, highways, and parking areas in a manner to reduce to the MEP the impact on receiving waters of discharges from the MS4. Permittees shall minimize to the MEP the discharge of pollutants, including those pollutants related to street sweeping, snow removal, deicing or sanding activities. Permittees shall continue their current practices of road, street, and highway maintenance, with improvements and modifications as required to reduce the pollutant load to the MEP. In addition, a program relating to the application of substances used in deicing operations, and the management of snow disposal areas shall be implemented. In accordance with this program area:

(1) Permittees shall examine, assess, and implement procedures of deicing to ensure that there are no adverse impacts on water quality. Permittees shall submit existing studies of alternative deicing agents to EPA and ADEC no later than 90 days from the effective date of this Permit. Permittees shall complete and submit to EPA and ADEC studies of deicing agents under consideration, as further described in Appendix "A," within twelve (12) months of the effective date of this Permit. Investigative results and a management and monitoring plan that addresses deicer application areas, application and dilution rates of sand and chemical deicers,

disposition of snow associated with removal efforts, recommended BMPs designed to reduce discharges to receiving waters to the MEP, and monitoring to determine BMP effectiveness shall be submitted to EPA for review and approval a minimum of thirty (30) days prior to further use of chemical deicers. This management and monitoring plan shall be adhered to by both MOA and DOT&PF and updated as information becomes available in subsequent monitoring efforts. Updates to the deicing management and monitoring plan shall be submitted to EPA with the annual reports as required in Part IV.G. of this Permit.

(2) Permittees shall examine, assess, and implement sanding procedures to ensure runoff is reduced to the MEP. Permittees shall establish a sand storage, application, and monitoring program to include volume balance and particulate analysis of material added to municipality streets. Permittees shall submit plans for street sanding and sweeping practices that reflect results of recent studies. Existing street sediment analysis shall be submitted to the Regional Administrator no later than 90 days from the effective date of this Permit. Permittees shall complete and submit to EPA and ADEC additional studies of street sediment impacts, further described in Appendix "A," within four (4) years of the effective date of this Permit. Program updates and enhancements shall be submitted with the annual reports as required in Part IV.G. of this Permit;

(3) By the end of the first year of the permit term, Permittees shall develop (or update) and implement a snow disposal policy that establishes requirements for all publicly-owned snow disposal sites. This snow disposal policy shall require the use of BMPs and an inspection and maintenance schedule and shall be part of Permittees' Storm Water Management Program.

(4) Permittees shall not establish any new snow disposal site prior to providing an opportunity for public review and submittal of plan for review and approval from ADEC. Any new snow disposal site plan shall include controls to address the migration of meltwater to reduce the discharge of pollutants to the MEP to surface waters for the purpose of this permit.

d. Floodplain Management. The Municipality of Anchorage shall ensure that construction activities and development located in floodplain areas, and flood control devices be designed to prevent violations of Alaska State Water Quality Standards to the MEP. To satisfy this program area, the MOA shall comply with the following elements:

(1) All development proposed within floodplains shall be assessed by the Municipality of Anchorage during the Flood Hazard Review process to ensure potential impacts on the water quality of receiving water bodies has been properly addressed. If a use, structure, or activity is proposed in a floodway or floodway fringe area, the MOA shall prohibit that proposal as stipulated in AMC Section 21.60.060.

(2) Information regarding impervious surface area located in the floodplain corridors should be used (in conjunction with other environmental indicators) as a planning tool. The Municipality of Anchorage shall collect data on the percentage of impervious surface area located in floodplain boundaries for all development proposed after the effective date of this Permit. The Municipality shall collect similar data for existing development in floodplain areas, in accordance with the mapping program and other activities designed to improve water quality, as detailed in Appendix "A."

(3) Critical unmapped areas shall be prioritized by the Municipality of Anchorage with an emphasis on developed and developing acreage and shall be submitted to the Federal Emergency Management Agency ("FEMA") for designation of flood hazard boundaries. Results shall be submitted to EPA with the second annual report required by Part IV.G. of this Permit.

(4) The Municipality of Anchorage shall determine the status of compliance with the mandatory (five years or less) review of existing flood hazard maps as required by Chapter 21.60.020(B) of the Anchorage Municipal Code.

e. Pesticide, Herbicide, and Fertilizer Application. Permittees shall implement the following program to control the discharge of pesticides, fertilizers, and herbicides to the MS4:

(1) Permittees shall develop a pesticide screening program which, at a minimum, shall incorporate the following elements:

(a) Permittees shall evaluate the use of pesticides, herbicides, and fertilizers in Anchorage by compiling readily available information from sources including, but not limited to, the Cooperative Extension Service, ADEC's pesticide program, primary retail and wholesale outlet sources, and commercial applicators. The end result of this effort shall be to determine the types of products recommended and used in the Anchorage area. The information gathered through this effort shall be provided to the Regional

Administrator and ADEC as part of the first annual report required by Part IV.G. of this Permit.

(b) Based on the above evaluation, Permittees shall develop and implement a field screening assessment design for pesticides detection and evaluation as per Appendix "A" of this Permit. Collected information shall be included in the annual reports required by Part IV.G. of this Permit.

(2) Based on the information collected in year one (1) of this Permit, Permittees shall begin implementation of an ongoing education program in year two (2) of this Permit for promoting the proper use of pesticides, herbicides, and fertilizers with the overall goal of reducing, to the MEP, the discharges of such to the MS4. Such a program may incorporate existing materials such as those developed by the University of Alaska Cooperative Extension Service and ADEC. Permittees shall submit copies of all materials distributed as part of the public education program with the second annual report required by Part IV.G. of this Permit. Additional materials distributed thereafter shall be included in the annual reports.

(3) Based on the results of the field screening assessment and the available local information, Permittees shall develop and implement a plan for the on-going control of pesticide, herbicide, and fertilizer use within one year of completion of the field screening assessment. The plan shall include re-evaluation of the public education program with appropriate revisions. Permittees shall identify areas for which additional testing may be warranted and shall take all steps necessary for timely testing and appropriate implementation. The plan shall include the measures to be used for assessing program results. Actions taken under this condition shall be submitted as part of the annual report required by Part IV.G. of this Permit.

2. Illicit Discharges. Permittees shall implement a program to detect and eliminate illicit discharges into the MS4. Details of the program are to be incorporated into the annual report required under Part IV.G. of this Permit. The program shall include the following program areas:

a. Prevention. Permittees shall implement an ongoing program to detect and remove (or require the discharger to the MS4 to obtain a separate NPDES permit for) illicit discharges into the MS4.

(1) Permittees shall effectively prohibit non-storm water discharges (except those identified in the following subsection), to the MS4,

including all used motor vehicle fluids and household chemical wastes, by enforcement of Municipal ordinances.

(2) Unless identified by either Permittees or the Regional Administrator as sources of pollutants to waters of the United States, the following non-storm water discharges need not be addressed by Permittees' Illicit Discharge and Illegal Disposal Program: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.

(3) Discharges and flows from emergency fire fighting activities shall not be addressed by Permittees' Illicit Discharge Program unless identified by either Permittees or the Regional Administrator as sources of pollutants to waters of the United States.

b. Ongoing field screening. Permittees shall maintain an ongoing program to screen the MS4 for illicit discharges, to include, at a minimum, the following program elements:

(1) Permittees shall conduct a visual inspection of all major outfalls during dry weather periods in years two (2) and five (5) of this Permit term. Permittees shall submit an inspection plan, listing the outfalls and inspections criteria, to the Regional Administrator for review and approval within 90 days of the effective date of this Permit. Permittees shall submit documentation regarding protocols and parameters of the field screening as part of the first annual report required by Part IV.G. of this Permit.

(2) Permittees shall conduct chemical analysis of the dry weather flow for those outfalls identified as likely to contribute pollutants to the storm drain system in accordance with the monitoring plan outlined in Appendix "A.". Chemical analysis shall be prioritized based on information obtained through visual inspections, citizen complaints, bioassessment monitoring, and/or previous monitoring results. Permittees shall submit results of this monitoring to the Regional Administrator and ADEC with the annual reports required in Part IV.G. of this Permit.

c. Investigation of suspected illicit discharges. Permittees shall implement

this program area to locate and eliminate suspected sources of illicit discharges to the MS4.

(1) Permittees shall use the results of existing and on-going dry-weather screening and citizen reports as the primary basis for locating illicit discharges.

(2) The Municipality of Anchorage shall evaluate and properly address all citizen and agency reports of illicit discharges , as well as other information made available to the Municipality.

(3) Permittees shall perform field testing to identify and isolate sources of suspected illicit dischargesin a timely manner.

(4) Permitttees shall issue a notice of violation, when appropriate, to any party found responsible for the illicit discharge, connection or disposal.

(5) Permittees shall require an expeditious compliance schedule for the elimination of any illicit discharge by any party responsible for the illicit discharge.

(6) Permittees shall submit a copy of their procedures for the investigation of suspected illicit discharges with the first annual report required by Part IV.G. of this Permit.

(7) Permittees shall investigate the 45 outfalls identified in Table 5-4 of Section 5.9.3.1 of Part II of the Permit Application by the end of the second year of the Permit term. Conclusions and follow-up action resulting from these investigations shall be submitted to the Regional Administrator with the annual report due at the end of year two of the Permit term.

d. Procedures to Prevent, Contain and Respond to Spills. Permittees shall finalize the Emergency Response Program identified in Section 5B of Part I of the Permit Application in order to formalize the spill response roles of state and municipal departments and to provide a coordinated response to spills that may discharge into the MS4. Final program plans shall be completed within twenty-four (24) months of the effective date of this Permit and shall be submitted with the second annual report required by Part IV.G. of this Permit.

e. Public Reporting of Illicit Discharges. Permittees shall promote and facilitate public reporting of the presence of illicit discharges to the MS4.

(1) Permittees shall establish and operate a central phone number (i.e.,

a hotline number) for public reporting of illicit dischargesas stated in Section 5.9.1.2 of Part 2 of the Permit Application. Permittees shall establish procedures that govern the appropriate follow-up response to calls received through the hotline. The establishment and operation of a central phone number (i.e., a hotline number) shall be completed within twelve (12) months from the effective date of this Permit. Permittees shall submit procedures governing the appropriate follow-up response to calls received through the hotline to the Regional Administrator with the first annual report required by Part IV.G. of this Permit.

(2) Permittees shall establish and maintain a log that contains of a list of all reports, date of report, follow-up action taken, and results. Reports shall include all suspected illicit discharges, public and otherwise, requiring investigation by Part II.A.2.(c). A copy of this log shall be submitted with the annual reports required by Part IV.G. of this Permit.

(3) Permittees shall promote public reporting of illicit discharges through brochures and other means. Permittees shall submit program plans for the promotion of public reporting of illicit discharges with the first annual report required by Part IV.G. of this Permit.

f. Educational and Public Information Activities. Permittees shall continue to implement and develop additional program elements where necessary to inform and educate the public on proper management and disposal of used oil, other automotive fluids, and household chemicals. Programs such as Free Dump Day are encouraged. Permittees shall develop a coordinated business and industry education program for implementation in the second year of this permit term, and continuing thereafter, to control illicit discharges as stated in Section 5.9.1.2 of Part 2 of the Permit Application.

3. Industrial and High Risk Runoff Program. Permittees shall implement a program to identify, monitor and control pollutants in storm water discharges to the MS4 from: municipal landfills (open and closed); hazardous waste recovery, treatment, storage, and disposal facilities; privately-owned snow disposal sites; facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11023; and any other industrial facility that either the Permittees or the Regional Administrator determines is contributing a substantial pollutant loading to the MS4. The program shall include the following program procedures:

a. Facility Identification: Permittees shall complete an identification of industrial and high risk runoff facilities and develop procedures to map and record details of the facilities. Procedures to identify, map, and record

the high risk facilities shall be completed, and implementation commenced, within three (3) years of the effective date of this Permit. Mapping of all identified facilities shall be completed by the end of this permit term.

b. Outreach. Permittees shall develop (or incorporate existing) educational and outreach materials concerning storm water runoff management at targeted industrial categories including, but not limited to: automotive repair shops, gas stations, snow disposal sites, nurseries and greenhouses, and floatplane and other transportation facilities. The development of educational materials (if necessary), and the distribution of such materials to the targeted industries shall be achieved within two years of the effective date of this Permit. All information developed and/or distributed shall be included in the annual report required by Part IV.G. of this Permit.

c. Investigation of Wrongful Discharge. Permittees shall develop procedures to govern the investigation of the identified facilities suspected of contributing pollutants to the MS4, including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. Procedures governing the investigation of identified facilities shall be submitted as part of the first and second annual reports required by Part IV.G. of this Permit.

Permittees shall work with such facilities to gain voluntary compliance in reducing pollutants to the MEP. Facilities that fail to cooperate and continue to contribute to the pollutant load or operate in violation of NPDES discharge permits shall be reported to the permitting agency for further action. Permittees shall make a good faith effort to track referrals to ensure appropriate measures are taken. Any activity arising from this program element shall be reported in the annual report required by Part IV.G. of this Permit for the year in which the activity took place.

4. Construction Site Runoff Program. Permittees shall implement a construction site runoff program to reduce, to the MEP, the discharge of pollutants from public and private construction sites. The program shall incorporate the following elements:

a. Storm Water Quality Pollution Prevention Plans. The Municipality of Anchorage shall require property owners and developers to prepare and submit for approval Storm Water Pollution Prevention Plans for construction within the boundaries of the Municipality of Anchorage as of the effective date of this permit. Permittees shall implement procedures for site plan review that incorporate consideration of potential water quality impacts from construction sites within the Municipality of Anchorage.

(1) Approved Storm Water Pollution Prevention Plans shall require appropriate BMPs to reduce runoff impacts to waterbodies to the MEP and shall contain provisions addressing erosion and sediment control, material containment, spill prevention, and other areas as applicable.

(2) Storm Water Pollution Prevention Plans for construction sites shall be subject to review and approval by the Municipality of Anchorage.

(3) The Municipality of Anchorage shall develop Storm Water Pollution Prevention Plan review and approval procedures and shall submit such procedures to the Regional Administrator as part of the first annual report required by Part IV.G. of this Permit. This submittal shall include:

(a) a description of the Storm Water Quality Pollution Prevention Plan review and approval process;

(b) written criteria and standards for plan approval; and

(c) a description of periodic staff training on control technologies and on the review and approval process.

b. Structural and Non-structural BMPs. Permittees shall maintain and update existing requirements for the selection, implementation, installation, and maintenance of construction BMPs in years four (4) and five (5) of this permit term. The criteria for BMP selection and design shall consider such factors as project type, size, duration, soil type, and proximity to waters of the United States. BMP requirements, and subsequent modifications, shall be submitted as part of the annual reports required in Part IV.G. of this Permit.

c. Procedures for Site Inspection and Enforcement. Permittees shall implement procedures for inspection and enforcement of control measures at construction sites.

(1) Permittees shall submit a description of the procedures and strategies for conducting site inspections and enforcement for review and approvalwith the first annual report required by Part IV.G. of this Permit. These procedures and strategies shall include:

(a) inspections to ensure BMPs are being installed and maintained according to the approved plan and that all pollution sources have been addressed;

(b) inspection strategy detailing frequency, prioritization, and follow-up;

(c) plans for training of inspection and enforcement staff; and
(d) enforcement provisions to insure compliance with requirements for operation and maintenance of BMPs.

(2) Permittees shall commence implementation of the site inspections and enforcement procedures within twenty-four (24) months of the effective date of this Permit.

d. Training and Education for Construction Site Operators. Permittees shall develop a training program for construction site operators and developers. Permittees shall submit a description of this training program with the first annual report required by Part IV.G. of this Permit. Implementation of the training program shall begin within twenty-four (24) months of the effective date of this Permit. Permittees shall ensure that:

(1) Such training is provided at a minimum of once per year; and

(2) Attendance at such training is encouraged through incentive programs or mandatory attendance requirements.

e. Permittees shall notify construction site owners operating sites greater than 5 acres in area of their additional responsibilities under the NPDES permitting program for construction site runoff.

5. Public Education Programs: Permittees shall employ educational and outreach opportunities to reduce, to the MEP, impacts to the MS4 from non-point source inputs caused by human activity.

a. Permittees shall maintain public education activities with regard to storm water pollution prevention as required by Parts II.A.1.b., II.A.1.e., II.A.2., II.A.3., and II.A.4. of this Permit.

b. All public education and outreach materials distributed pursuant to this permit shall contain easily understood graphics and narratives converted from technical information on Anchorage area water quality.

c. Permittees shall establish an ongoing, broad-based technical advisory board to assist with providing information to public forums on issues related to storm water pollution and the monitoring program. The technical advisory board shall be comprised of members representing local, state, and federal agencies, non-profit interests, local citizens, and

private experts and shall be established and submitted to the Regional Administrator within twelve (12) months of the effective date of this permit.

6. Monitoring Programs. Permittees shall establish a comprehensive monitoring program to: (1) assess and characterize aquatic resources, water quality problems and sources, (2) assist in problem prioritization and resource targeting, and (3) assist in evaluating the effectiveness of specific controls as well as the overall Storm Water Management Program. Permittees shall establish a set of environmental indicators that will require tracking and monitoring to address storm water impacts to the MS4 that are further described, with corresponding schedules, in Appendix "A" of this permit. Appendix "A" shall be submitted annually for review and approval and shall be included for discussion during the annual coordination meetings required in Part II.A.7 of this Permit. Appendix "A"shall, at a minimum, consist of the following:

   a. Structural and Source Control Assessments. Assessments to be completed during this Permit term are identified in Part II.A.1.a.(4)(a) of this Permit and Appendix "A."

   b. Watershed Mapping. Permittees shall map the Campbell, Chester, Rabbit, and Ship Creek watersheds during this Permit term. Details of the mapping program are contained in Appendix "A."

   c. Sand and Deicer Impacts. Permittees shall continue to investigate the impacts of street sanding by performing a mass balance of street sediment, analysis of the street sediment adsorbed pollutants, and an analysis of commercial lot impacts from sediment buildup and runoff as identified in Part II.A.1.c.(2) of this Permit and Appendix "A." Permittees shall perform an analysis of the potential impacts of deicing agents in accordance with Part II.A.1.c.(1) of this Permit and Appendix "A."

   d. Pesticides, Herbicides, and Fertilizers. Field screening and appropriate follow-up investigation shall take place as identified in Part II.A.1.e.(1) - (3) of this Permit and Appendix "A."

   e. Illicit Discharges. Permittees shall perform dry weather field screening and appropriate investigative monitoring of outfalls as required in Part II.A.2.b. and Part II.A.2.c. of this Permit and Appendix "A."

   f. Receiving Water Monitoring. Permittees shall conduct receiving water monitoring to obtain flow and event mean concentrations of fecal coliform, copper, lead, zinc, hardness, total suspended solids, turbidity, temperature, and pH in the Campbell, Chester, Rabbit, and Ship Creek watersheds. Permittees shall conduct a macroinvertebrate assessment in the Campbell, Chester, Rabbit, and Ship watersheds, and in at least three

(3) additional Anchorage streams for which significant future development is anticipated. Details of these monitoring plans are included in Appendix "A."

g. Dry Weather and Wet Weather Periods. Permittees shall review the nationally recognized definitions for dry and wet weather periods and submit geographically appropriate modifications to the Regional Administrator for review and approval within six (6) months after the effective date of this permit.

7. Programmatic Coordination. Permittees shall conduct an annual meeting to coordinate their implementation of the Storm Water Management Program within their respective agencies as well as with other municipal, state, and federal agencies and groups who undertake activities that may impact, contribute to, or in some way overlap Permittees' storm water management efforts. The agenda for these annual meetings shall be comprised of topics of interest to the Permittees and the Anchorage Office of the EPA. Meetings shall be held approximately two months following submission of each annual report. The first meeting shall serve as an orientation and planning effort and shall take place no later than 90 days after the effective date of this Permit. The logistics for this first meeting will be handled by EPA (Permittees shall be active participants); all subsequent meetings will be organized by the Permittees. Such elements that Permittees shall consider for coordination efforts include public education relating to storm water management, monitoring activities and results, the application of BMPs, data management using such techniques as GIS applications, staff and targeted training, enforcement, capital project support, and watershed planning. Permittees shall include a summary of the previous year's efforts and annual meeting in the annual report required by Part IV.G of this Permit. Information which Permittees shall consider for inclusion in the report of the annual meeting are the names and affiliations of those in attendance, the dates and times of meetings held to coordinate consistent approaches, and a comprehensive summary of the meetings.

B. DEADLINES FOR PROGRAM COMPLIANCE

Permittees shall implement the Storm Water Management Program in accordance with the compliance schedule detailed in Part III of this Permit.

C. LEGAL AUTHORITY

Each Permittee shall ensure that it retains legal authority to control discharges to and from those portions of the MS4 over which it has jurisdiction. This legal authority may be established by statute, ordinance, permit, contract, or order (or any combination thereof), and shall enable each Permittee to:

1. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity and the quality of storm water discharged from sites of industrial activity;

2. prohibit illicit discharges to the MS4;

3. control the discharge to the MS4 of spills, dumping or disposal of materials other than storm water;

4. control through an interagency agreement between Permittees the contribution of pollutants from one portion of the MS4 to other portions of the MS4;

5. require compliance with conditions in ordinances, permits, contracts, or orders; and

6. carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition on illicit discharges to the MS4.

D. STORM WATER MANAGEMENT PROGRAM RESOURCES

Permittees shall provide adequate finances, staff, equipment, and support capabilities to implement their activities under the Storm Water Management Program.

E. TRANSFER OF OWNERSHIP, OPERATIONAL AUTHORITY, OR RESPONSIBILITY FOR STORM WATER MANAGEMENT PROGRAM IMPLEMENTATION

Permittees shall implement the Storm Water Management Program on all new areas added to the MS4 as expeditiously as practicable, but not later than three years from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately. Prior to land annexation, Permittees shall include a schedule for extending the Storm Water Management Program to the annexed areas in the Storm Water Management Program. At least 30 days prior to transfer of operational authority or responsibility for Storm Water Management Program implementation, Permittees shall prepare a schedule for transfer of responsibility for Storm Water Management Program implementation on the effected portions of the MS4.

F. RETENTION OF STORM WATER MANAGEMENT PROGRAM RECORDS

Permittees shall retain the Storm Water Management Program developed in accordance with Parts II and III of this Permit for at least 3 years after coverage under this Permit terminates.

PART III -- SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE

Reports of compliance or noncompliance with interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement
Table III.A. Schedules for Implementation and Compliance

Storm Water Management Program Component Activity	Compliance Date
1. Structural and Source Control	
a. Maintenance Activities and Maintenance Schedule	
- Identify locations of structural controls	-12 months after effective permit date
- Revision of Application Sections 5.8.1.1. & 5.8.1.2, and program development	-24 months after effective permit date
- Submit Inspection and Maintenance records	-with annual reports
- Effectiveness Assessments of Structural and Source Controls	-per schedule in Appendix "A"
b. Areas of New Development and Significant Redevelopment	
- Comprehensive Master Planning Process	-90 days after effective permit date
- Resulting actions	-Concurrent with Final Comprehensive Plan
- Open Space Plan	-24 months after effective permit date
- Project Review and Approval Procedures	-12 months after effective permit date
- Implementation of Approved Procedures Post-Construction Inspection & Enforcememt Strategy	-12 months after effective permit date
- Submit Strategy for Review & Approval	-60 days after approval
- Implement Strategy	
- Submit Summaries of inspections &	
- enforcement	-annually
c. Roadways De-icing	
- Complete/Submit existing studies/management plan	-90 days after effective permit date -12 months after effective permit date (plan prior to chemical deicing)

- Submit New Assessments Street Sanding -90 days after effective permit date
- Complete/Submit existing studies -24 months after effective permit date
- Submit New Assessments Snow Disposal Policy -12 months after effective permit date

d. Flood Management
- Collect data on impervious surface area -begin after effective permit date according to schedule in Appendix "A"
- Identify critical unmapped areas/submit to FEMA & results to EPA -24 months after effective permit date

e. Pesticide, Herbicide, and Fertilizer Application
- Study of Use & Application -12 months after effective permit date
- Field Screening -contingent on Use Study per schedule in Appendix "A"
- Development and Implementation of Public Education Program -begin in year 2 of the permit term & continue throughout permit term
- Submit Long-term plan for on-going control of Pesticides -12 months after completion of field screening

2. Illicit Discharge Program

a. Prevention of illicit connections and discharges and improper disposal -Ongoing throughout the permit term

b. Ongoing field screening
- Protocols of Screening Process -90 days after effective permit date
- Visual Screening -in years 2 and 5 of permit term

c. Investigation of Suspected Illicit Discharges
- Procedures Submitted -12 months after effective permit date
- Investigate 45 outfalls identified in Permit Application -24 months after effective permit date

d. Procedures to Prevent, Contain and Respond to Spills
- Procedures Submitted -24 months after effective permit date

e. Public Reporting of Illicit Discharges, Illicit Connections, and Improper Disposal
- Establish Hotline & submit procedures for Follow-up -12 months after effective permit date
- Maintain & submit Log of Activity & Follow- up -submit with annual reports -beginning in year 2 & continuing thereafter

f. Develop/Implement Educational Program
- Ongoing throughout the permit term

3. Industrial and High Risk Runoff

a. Program Development
- Identify & Map Facilities — -Years 3, 4, & 5 of the permit term

b. Educational Material
-Develop Materials & Make Available — -24 months after effective permit date

c. Investigation of Suspected Discharge
- Develop & Submit Procedures — -Years 1 & 2 of permit term with annual reports

- Summarize Investigative Activities & Referral Follow-up — -Submit with annual reports throughout permit term

4. Construction Site Runoff

a. Program Development
- Project Review & Approval Procedures — -12 months after effective permit date (continue existing procedures - effective immediately)

b. BMP Selection Requirements
- Update BMP requirements — -Years 4 & 5 of permit term

c. Site Inspection and Enforcement Procedures
- Submittal of Strategy — -12 months after effective permit date
- Site Inspection Procedure Implementation — -24 months after effective permit date

d. Training and Education for Site Operators
- Procedures Submitted — -12 months after effective permit date
- Implementation — -24 months after effective permit date

5. Public Participation and Education

Continued Public Education Efforts — -thoughout permit term

c. Technical Advisory Board — -12 months after effective permit date

- 12 months after effective permit date

6. Monitoring

a. Structural & Source Control Assessments — -All monitoring shall take place in accordiance

	with schedules included in Appendix "A" which is to be submitted annually for review and approval
b. Watershed Mapping	
c. Roadway Sand & Deicer Analyses	
d. Pesticides, Herbicides, & Fertilizers	
e. Illicit Discharges	
f. Receiving Water Monitoring - Chemical monitoring in four priority watersheds to obtain event mean concentrations - Macroinvertebrate monitoring in four priority watersheds plus 3 watersheds incurring development pressure	
g. - Dry & Wet Weather Definitions	-six (6) months after effective date of permit
7. Programmatic Coordination Conduct annual meetings	-annually, beginning 90 days after effective permit date

PART IV -- ADDITIONAL PERMIT CONDITIONS

A. STANDARD PERMIT CONDITIONS

1. Duty to comply. Permittees must comply with all conditions of this Permit. Any Permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for Permit termination, revocation and reissuance, or modification; or denial of a Permit renewal application.

    a. Permittees shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the Permit has not yet been modified to incorporate the requirement.

    b. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $27,500 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or

imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Clean Water Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

c. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $27,500. Penalties for Class II violations are not to exceed $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $137,500.

2. Duty to reapply. If Permittees wish to continue an activity regulated by this Permit after the expiration date of this Permit, Permittees must apply for and obtain a new permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

4. Duty to mitigate. Permittees shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper operation and maintenance. Permittees shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Permittees to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by Permittees only when the operation is necessary to achieve compliance with the conditions of the Permit.

6. Permit actions. This Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by Permittees for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

7. Property rights. This Permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to provide information. Permittees shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit or to determine compliance with this Permit. Permittees shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this Permit.

9. Inspection and entry. Permittees shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

    a. Enter upon Permittees' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;

    b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;

    c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and

    d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

10. Monitoring and records.

    a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

    b. Except for records of monitoring information required by this Permit related to Permittees' sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), Permittees shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Permit, and records of all data used to complete the application for this Permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the Permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

11. Signatory requirement.

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See 40 CFR § 122.22)

b. The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

12. Reporting requirements.

a. Planned changes. Permittees shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or

additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the Permit, nor to notification requirements under 40 CFR § 122.42(a)(1).

(3) The alteration or addition results in a significant change in Permittees' sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

b. Anticipated noncompliance. Permittees shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. Transfers. This Permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the Permit to change the name of Permittees and incorporate such other requirements as may be necessary under the Clean Water Act. (See 40 CFR § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this Permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report ("DMR") or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If Permittees monitors any pollutant more frequently than required by the Permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the Permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional

Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the Permit.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 days following each schedule date.

f. Twenty-four hour reporting.

(1) Permittees shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time Permittees become aware of the circumstances. A written submission shall also be provided within 5 days of the time Permittees become aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the Permit.

(b) Any upset which exceeds any effluent limitation in the Permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the Permit to be reported within 24 hours. (See 40 CFR § 122.44(g)).

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph (IV)(A)(12)(f)(2) of this Permit if the oral report has been received within 24 hours.

g. Other noncompliance. Permittees shall report all instances of noncompliance not reported under paragraphs (IV)(A)(12)(d-f) of this Permit, at the time monitoring reports are submitted. The reports shall

contain the information listed in paragraph (IV)(A)(12)(f) of this Permit.

h. Other information. Where Permittees become aware that Permittees failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, Permittees shall promptly submit such facts or information.

13. Bypass--

a. Definitions.

(1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. Permittees may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (IV)(A)(13)(c) & (d) of this Permit.

c. Notice--

(1) Anticipated bypass. If Permittees know in advance of the need for a bypass, Permittees shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. Permittees shall submit notice of an unanticipated bypass as required in paragraph (IV)(A)(12)(f) of this Permit (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a Permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) Permittees submitted notices as required under paragraph (IV)(A)(13)(c) of this Permit.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph (IV)(A)(13)(d)(1) of this Permit.

14. Upset--

a. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of Permittees. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (IV)(A)(14)(c) of this Permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that Permittees can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) Permittees submitted notice of the upset as required in paragraph (IV)(A)(12)(f) of this Permit (24 hour notice); and

(4) Permittees complied with any remedial measures required under paragraph (IV)(A)(4) of this Permit.

d. Burden of proof. In any enforcement proceeding Permittees seeking to establish the occurrence of an upset has the burden of proof.

B. SEVERABILITY

The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit shall not be affected thereby.

C. STATE/ENVIRONMENTAL LAWS

1. Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve Permittees from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act, 33 U.S.C. § 1370.

2. Nothing in this Permit shall be construed to relieve Permittees of their obligation to comply in full with all state and federal environmental statutes and regulations.

D. ADDRESSES:

Submittals required by this Permit shall be made to the following addresses:

EPA REGIONAL OFFICE:	United States Environmental Protection Agency 222 W. 7th Ave., Box 19 Anchorage, Alaska 99513-7588 Attn: Jacqueline H. Poston
ADEC OFFICE:	Alaska Department of Environmental Conservation Watershed Management Section 555 Cordova St. Anchorage, AK 99501

E. ADDITIONAL MONITORING BY PERMITTEES

If Permittees monitor more frequently than required by this Permit, using test procedures approved under 40 CFR Part 136, or equivalent, or as specified in this Permit, the results of this monitoring shall be included with the data submitted as part of the annual report required by Part IV.G. of this Permit.

F. ARCHEOLOGICAL AND HISTORICAL SITES

1. Where municipal excavation and/or construction projects implementing requirements of this Permit will result in the disturbance of previously undisturbed land, Permittees shall, thirty (30) days prior to commencing land disturbance, submit the following to the State Historic Preservation Officer ("SHPO") for evaluation of possible effects on properties listed or eligible for listing on the National Register of Historic Places:

    a. a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground, and

b. a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas. The address of the SHPO is:

Ms. Judith E. Bittner
Chief, History and Archeology
Department of Natural Resources
Division of Parks and Outdoor Recreation
3601 "C" Street, Suite 1278
Anchorage, Alaska 99503-5921
(907) 269-8721

2. If Permittees receive requests for an archeological survey or notice of adverse effects from the SHPO, Permittees shall delay such activity until:

   a. a determination of no adverse effect has been made, or

   b. measures to minimize harm to historic properties have been agreed upon.

3. If Permittees do not receive notification of adverse effects or a request for an archeological survey from the SHPO within thirty (30) days, Permittees may proceed with the activity.

G. ANNUAL REPORTS

1. Within one (1) year of the effective date of this Permit, and annually thereafter, Permittees shall prepare and submit to EPA and ADEC an Annual Report. In addition, copies of all annual reports shall be available to the public through the municipal library system. The Annual Report shall be mailed to the addresses found at Part IV.D. of this Permit and shall include, at a minimum:

   a. A report on the status of implementing the components of the Storm Water Management Program that are established as Permit conditions;

   b. Proposed changes to the Storm Water Management Program required by this Permit. Such proposed changes shall be consistent with 40 CFR § 122.26(d)(2);

   c. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the Part 2 of the Permit Application;

   d. A summary of the data, including monitoring data, that Permittees accumulated throughout the reporting year;

   e. Annual expenditures and budget for the year following each annual report;

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs, including copies of all educational materials distributed in conjunction with efforts to reduce pollutant discharges to the MS4;

g. Identification of water quality improvements or degradation; and

h. All other information required by this Permit to be submitted with the Annual Report.

H. MODIFICATION OF THE PERMIT

All modifications to this Permit shall be made in accordance with 40 CFR §§ 122.62, 122.63, and 124.5. The Permit may be modified during the life of the Permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. adding a new Permittee who is the owner or operator of a portion of the MS4;

4. changes in portions of the Storm Water Management Program that are considered Permit conditions; or

5. other modifications deemed necessary by the Regional Administrator to meet the requirements of the Act.

I. TERMINATION OF COVERAGE FOR A SINGLE PERMITTEE

Permit coverage may be terminated, in accordance with the provisions of 40 CFR §§ 122.64 and 124.5, for a single Permittee without terminating coverage for other Permittees.

J. MODIFICATION OF STORM WATER MANAGEMENT PROGRAM

Only those portions of the Storm Water Management Program specifically required as permit conditions shall be subject to the modification requirements of 40 CFR §§ 122.62, 122.63 and 124.5. Addition of the following components, controls, or requirements by Permittees shall be considered minor changes to the Storm Water Management Program and not modifications to the Permit: replacement of an ineffective or infeasible BMP; implementing a requirement of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III of this Permit.

K. APPROVAL OF SUBMITTALS

1. The following approval procedures shall apply to:

   a. Schedule & Scope of Assessments (Part II.A.1.a.(4)(b));

   b. Roadway Deicing Management and Monitoring Plan (Part II.A.1.c.(1))

   c. Inspection and Enforcement Strategy for New Development and Significant Redevelopment (Part II.A.b.(6)(b));

   d. Site Inspection and Enforcement Strategy at Construction Sites (Part II.A.4.c.(1)); and

   e. Monitoring program (Part II.A.6. and Appendix "A");

   f. Definitions of Dry and Wet Weather (Part II.A.6.)

   This Part will refer to each of the foregoing six (6) reports as "submittals."

2. After reviewing any submittal or other item which is required to be submitted for review and approval pursuant to this Permit, EPA may:

   a. approve the submittal ("approval");

   b. approve the submittal with modifications ("modified approval");

   c. disapprove the submittal and direct Permittee(s) to revise the submittal in accordance with EPA's comments ("revision request"); or

   d. disapprove the submittal ("disapproval").

   Should EPA fail to issue its determination on a submittal timely submitted by Permittee(s), within 60 days of EPA's receipt that submittal shall be deemed to have received approval.

3. In the event of approval or modified approval by EPA, Permittees shall proceed to comply with any conditions imposed by the approved submittal, as approved or modified by EPA.

4. In the event of a revision request, Permittees shall, within five (5) days or such longer time as specified by EPA in its notice of request for revisions, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding any revision request, Permittees shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submittal.

5. If any submittal or resubmittal does not ultimately receive approval or modified approval by EPA, Permittees shall have failed to comply with the conditions and requirements of this Permit.

PART V -- DEFINITIONS

The following definitions apply to this Permit. Except as otherwise specifically provided, terms used in this Permit but not defined by this Part shall have the meaning ascribed to them by Section 502 of the Clean Water Act (33 U.S.C. § 1362), 40 CFR § 122.2, and 40 CFR § 122.26(b). These statutory and regulatory definitional sections are incorporated herein by reference.

1. "Discharge" refers to a discharge of storm water from the Municipal Separate Storm Sewer System (MS4).

2. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

3. "MEP" is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4. "MS4" is an acronym for "Municipal Separate Storm Sewer System" and is used in this Permit to refer to those portions of the Medium Municipal Separate Storm Sewer System within the corporate limits of the Municipality of Anchorage that are owned and operated by the Municipality of Anchorage or the Alaska Department of Transportation and Public Facilities.

5. "Permit Application" refers to the submissions required as part of the NPDES permit application process and includes Part One (May 1992), Part One Appendices (May 1992), Maps (May 1992), Part Two (May 1993), Part Two (May 1993), and the Response to Comments (December 1994).

6. "Permittee" refers to any "person," as defined at 40 CFR § 122.2, authorized by this NPDES Permit to discharge to Waters of the United States.

7. "Regional Administrator" means the Regional Administrator of Region 10 of the United States Environmental Protection Agency or an authorized representative of the Regional Administrator. The Regional Administrator may be contacted at the address set forth at Part IV.D. of this Permit.

8. "Storm Water Management Program" refers to the comprehensive program described in this permit to manage the quality of storm water discharged from the MS4. For the purposes of this Permit, the Storm Water Management Program is considered a single document, but may actually consist of separate programs (e.g., "chapters") for each Permittee.

COVER PAGE Permit No.: AKS052426

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

Port of Anchorage

is authorized to discharge from a **Municipal Separate Storm Sewer System** located **at Port of Anchorage, 2000 Anchorage Port Road, Anchorage, Alaska,**

to receiving waters named **Cook Inlet,**

in accordance with discharge point(s), an approved storm water management plan, monitoring requirements, and other conditions set forth herein.

This permit shall become effective March 3, 1995.

This permit and the authorization to discharge shall expire at midnight, March 3, 2000.

Signed this 1st day of February, 1995.

Director, Water Division, Region 10
U.S. Environmental Protection Agency

PCS/JC
2/1/95

NPDES PERMIT
MUNICIPAL SEPARATE STORM SEWER SYSTEM
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Part VIII. DEFINITIONS

PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. Permit Area

This permit covers all areas within the jurisdictional boundary of **the Port of Anchorage within the Municipality of Anchorage, Alaska,** served by, or otherwise contributing to discharges from, municipal separate storm sewers (MS4s) owned or operated by the permittee listed in Part I.C.

B. Authorized Discharges

This permit authorizes all existing or new storm water point source discharges to waters of the United States from the MS4. This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits. This permit will consider any and all activities conducted by lessees of the Port of Anchorage while within the jurisdictional boundaries of the Port, and which activity leads to a discharge either to or from the MS4s for which this permit is written, to be the activity of the Port and subject to the conditions of this permit.

C. Limitations on Coverage

The following discharges are not authorized by this permit:

1. *Non-storm Water:* storm water discharges that are mixed with non-storm water or storm water associated with industrial activity except where such discharges are:

   a. in compliance with a separate NPDES permit; or

   b. identified by and in compliance with Part II.B.7 of this permit.

2. *Endangered Species Protection:* storm water discharges whose direct, indirect, interrelated, interconnected, or interdependent impacts would jeopardize a listed endangered or threatened species or adversely modify designated critical habitat.

3. *Historic Preservation:* storm water discharges, or the permittee construction activities or implementation of storm water management controls, which adversely effect properties listed or eligible for listing in the National Register of Historic Places, unless the permittee is in compliance with requirements of the National Historic Preservation Act and has coordinated any necessary activities to avoid or minimize impacts with the appropriate State Historic Preservation Officer; and

4. *Coastal Zone Management:* storm water discharges not in compliance with any applicable requirements of a State's Coastal Zone Management Plan.

PART II. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to develop and implement a storm water pollution prevention and management program designed to limit, to the maximum extent practicable, the discharge of pollutants from the MS4. Either collectively, or separately, the permittee's storm water pollution prevention and management program shall satisfy the requirements of paragraphs A through I, below for all portions of the MS4 authorized to discharge under this permit.

A. POLLUTION PREVENTION REQUIREMENTS

The permittee shall develop and implement the following pollution prevention measures:

1. The permittee shall include requirements to consider water quality impacts of new and significant re-development in its comprehensive master planning process. The goal of such requirements shall be limiting, to the maximum extent practicable, the discharge of pollutants to pre-development levels.

2. The permittee shall ensure the establishment or availability of a program to collect used motor vehicle fluids (including oil and antifreeze) and batteries for recycle or reuse. Such program shall be readily available to all lessees. This program shall be publicized and promoted on a regular basis, but at least anually.

3. The permittee shall ensure the establishment or availability of a program to collect commonly-used hazardous materials (including paint, pesticides, herbicides, cleaners, solvents, and similar hazardous materials) for recycle, reuse, or safe disposal. The program shall be readily available to all lessees and include information on locations accepting such materials on a continuous basis. This program shall be publicized and promoted on a regular basis, but at least anually.

4. The permittee shall ensure the establishment of a program, including structural controls where necessary, to reduce the discharge of floatables (including solid wastes) to the maximum extent practicable.

B. SWMP SYSTEM-WIDE REQUIREMENTS

The permittee shall operate a Storm Water Management Program (SWMP) in accordance with Section 402(p)(3)(B) of the Clean Water Act, the storm water regulations (40 CFR Part 122.26) and the approved SWMP plan to be submitted to EPA by the permittee. SWMP controls and activities identified in the SWMP plan shall clearly identify areas of applicability on a system-wide basis, jurisdiction-wide basis, or specific-area basis. The SWMP, and all approved updates, are hereby incorporated into this permit by reference and shall be implemented in a manner consistent with the following requirements:

1. *Statutory Requirements*: SWMPs shall include controls necessary to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable (MEP). Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, Administrator or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet the statutory MEP standard. The SWMP shall be updated as necessary to ensure conformance with the statutory requirements of Clean Water Act §402(p)(3)(B)(ii) and (iii).

2. *Structural Controls:* The permittee shall operate and maintain any storm water structural controls over which it has jurisdiction, in a manner so as to reduce the discharge of pollutants (including floatables) to the MEP.

3. *Areas of New Development:* The Port of Anchorage shall utilize a comprehensive master planning process to develop, implement, and enforce controls to reduce, to the MEP, the discharge of pollutants from areas of new development and significant redevelopment after construction is completed.

4. *Roadways:* The permittee shall operate and maintain public streets, roads, highways, parking areas, and cargo storage/staging areas under its jurisdiction in a manner so as to reduce, to the MEP, discharge of pollutants (including those related to deicing or sanding activities).

5. *Flood Control Projects:* The permittee shall ensure any flood control project it undertakes assesses and minimize to the MEP the impacts on water quality of the receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water. If retro-fitting is found to be feasible, the permittee shall implement the retro-fitting of existing structural devices within 3 years of such determination of feasibility.

6. *Pesticide, Herbicide, and Fertilizer Application:* The permittee shall implement controls to reduce, to the MEP, the discharge of pollutants related to application of pesticides, herbicides, and fertilizers applied by Port employees, contractors, or lessees to public right of ways, parks, and all port lands and facilities.

7. *Illicit Discharges and Improper Disposal*: The permittee shall implement an ongoing program to detect and eliminate illicit discharges and improper disposal into the storm sewer. The permittee may chose to require the discharger to the MS4 to eliminate the illicit discharges or obtain a separate NPDES permit for such discharges.

a. The permittee shall effectively prohibit non-storm water discharges to the MS4.

b. Unless identified by either the permittee, the Administrator, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges need not be prohibited from entering the MS4, provided the necessity of such discharge(s) and appropriate control measures (if needed) to minimize the impacts of such sources, are developed under the SWMP:

(1) water line flushing;
(2) landscape irrigation;
(3) diverted stream flows;
(4) rising ground waters;
(5) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
(6) uncontaminated pumped ground water;
(7) discharges from potable water sources;
(8) uncontaminated foundation drains;
(9) air conditioning condensate;
(10) irrigation water;
(11) springs;
(12) uncontaminated water from crawl space pumps;
(13) uncontaminated footing drains;
(14) lawn watering;
(15) individual residential car washing;
(16) flows from riparian habitats and wetlands;
(17) dechlorinated swimming pool discharges;
(18) street wash waters;
(19) NPDES permitted non-contact cooling waters and remediated ground waters, provided appropriate management practices are implemented and the discharges are in accordance with the Municipality's storm water management program; and,
(20) discharges or flows from emergency fire fighting activities.

c. The permittee shall prevent discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall limit, to the maximum extent practicable, the infiltration of seepage from sanitary sewers into the MS4.

d. The permittee shall prohibit the discharge or disposal of all motor vehicle fluids and chemical wastes into separate storm sewers.

e. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. Where elimination of an illicit connection within seven (7) days is not possible, the Port of Anchorage shall require an expeditious

schedule for elimination of the discharge. In the interim, the Port of Anchorage shall require the operator of the illicit connection to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4. Elimination schedules should not exceed ninety (90) days, except for capital intensive projects which shall not exceed 455 days (one year ninety days).

8. *Spill Prevention and Response:* The permittee shall implement a program to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the permittee and its lessees.

9. *Industrial & High Risk Runoff:* The permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from: hazardous waste treatment, storage and disposal facilities that are subject to EPCRA Title III, Section 313; bulk storage facilities; and, any other industrial or commercial discharges the permittee determines are contributing a substantial pollutant loading to the MS4. The program shall include:

   a. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

   b. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

      (1) any pollutants limited in an existing NPDES permit for an identified facility;
      (2) oil and grease;
      (3) chemical oxygen demand (COD);
      (4) pH;
      (5) biochemical oxygen demand, five-day (BOD_5);
      (6) total suspended solids (TSS);
      (7) total phosphorous;
      (8) total Kjeldahl nitrogen (TKN);
      (9) nitrate plus nitrite nitrogen; and
      (10) any of the metals cadmium, copper, lead, and zinc which can be reasonably expected in storm water runoff from such industrial site; and,
      (11) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

10. *Construction Site Runoff:* The permittee shall implement a program to reduce, to the MEP, the discharge of pollutants from constructions sites, including:

   a. requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants

discharged to the MS4 upon commencement of, and during, the construction activities;

b. procedures for site planning which incorporate considerations for potential short and long term water quality impacts and minimizes, to the MEP, these impacts;

c. prioritized inspection of construction sites and enforcement of SWMP-required control measures;

d. appropriate education and training measures for construction site operators; and,

e. notification of all construction permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

11. *Public Education:* The permittee shall implement a public education program including:

a. a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4;

b. a program to promote, publicize, and facilitate the proper management and disposal of used oil and commonly-used hazardous materials.

c. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers by commercial and private applicators and distributors conducting such business within the Port of Anchorage jusrisdictional area.

C. **AREA-SPECIFIC STORM WATER MANAGEMENT PROGRAM REQUIREMENTS**

The following SWMP requirements apply only to the areas or discharges specified below. Management practices must also be developed in the SWMP for the following:

1. The Port of Anchorage (The Port) will provide an area for the washing of Port vehicles (that is, vehicles owned or operated by The Port) that will not result in the discharge of wash waters. The Port will encourage the use of detergent-free methods of vehicle washing and will require regular maintenance of the area to ensure wash waters, and resulting contaminants, will not be transported by storm water to waters of the U.S. This area is not required to be within Port jurisdictional boundaries, and does not have to be operated by the Port or Port personnel.

2. The Port may provide this area to its tenants solely for the purpose of vehicle washing. In such case, The Port accepts the responsibilty of proper operation and

maintenance of this area, and will ensure proper management practices are adhered to at all times.

3. All vehicle and equipment maintenance areas will be managed so as to control discharges from these areas to the maximum extent practicable. All hydrocarbon compounds used in these areas will be handled in a manner that will eliminate or minimize potential discharges to waters of the U.S.

D. DEADLINES FOR PROGRAM COMPLIANCE

1. Except as provided in PART III, compliance with the storm water management program shall be required within 120 days of the effective date of this permit.

2. Proposed modifications and updates to the SWMP, along with proposed schedules for implementation, shall be submitted with the Annual Report required under Part II.G. to EPA.

E. ROLES AND RESPONSIBILITIES OF PERMITTEE AND LESSEES

The SWMP plan shall clearly identify the roles and responsibilities of the permittee. Activities required of the lessees by the permittee must also be clearly identified.

F. LEGAL AUTHORITY

The permittee shall ensure legal authority exists to control discharges to and from those portions of the MS4 over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with entities having existing legal authority to:

1. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit illicit discharges to the municipal separate storm sewer;

3. Control the discharge of spills and the dumping or disposal of materials other than storm water into the MS4;

4. Control through interagency agreements among co-permittees the contribution of pollutants from one portion of the MS4 to another;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and,

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

G. **SWMP RESOURCES**

The permittee shall provide adequate finances, staff, equipment, and support capabilities to fully implement the storm water management program.

H. **SWMP REVIEW AND MODIFICATION**

1. *Program Review:* The permittee shall conduct an annual review of the current SWMP in conjunction with preparation of the annual system-wide report required under Part II.I. This annual review shall include:

   a. A review of the status of program implementation and compliance (or non-compliance) with all schedules of compliance contained in this permit;

   b. An assessment of the effectiveness of controls established by the SWMP;

   c. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings; and,

   d. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the MEP.

2. *Program Modification:* The approved SWMP, and its plan, shall not be modified by the permittee without the prior approval of the EPA, unless in accordance with items a. through c. below:

   a. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the permitting authority.

   b. Modifications replacing a failing Best Management Practice (BMP) identified in the SWMP with an alternate BMP may be requested in conjunction with the annual system-wide report required by Part II.I. below. Such requests must: 1) be made in writing; 2) provide an analysis of why the BMP is failing or ineffective (including cost prohibitive); 3) discuss the expectations of the effectiveness of the replacement BMP; and, 4) explain why the replacement BMP is expected to provide at least the same level of performance as originally expected of the BMP to be replaced.

   c. Modifications made under this paragraph shall not become enforceable permit conditions until such time as the modifications are approved by EPA.

   Modification requests and/or notifications shall be signed in accordance with Part VI.H.

3. *Modifications Required by the Permitting Authority:* The EPA may require the permittee to modify the SWMP as needed to:

   a. Address contributions by the MS4 discharges to impacts on receiving water quality;

   b. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or,

   c. Include such other conditions deemed necessary by the Administrator to comply with the goals and requirements of the Clean Water Act.

   Modifications requested by the Administrator shall be made in writing, set forth the time schedule for the permittee to develop the modification(s), and offer the permittee the opportunity to propose alternative program modifications to meet the objective of the requested modification.

I. **SYSTEM-WIDE REPORT**

The permittee shall prepare and submit a system-wide report no later than one year after the anniversary of the effective date of this permit (**March 3, 1995**), and continue to submit an updated system-wide report every year thereafter. The report shall include the following separate sections and an overview for the entire MS4:

1. The status of implementing the components of the SWMPs that are established as permit conditions (status of compliance with any schedules established under this permit shall be included in this section);

2. Proposed changes to the SWMPs that are established as permit conditions, including an update on areas added to the MS4 due to annexation or other legal means;

3. Revisions, if necessary, to the assessments of controls and management practices;

4. A summary of the data, including monitoring data, that is accumulated throughout the last reporting year;

5. Annual expenditures for the reporting period (i.e., the last year), and projected budget for the one year period comprising the next system-wide report;

6. A summary describing the number and nature of compliance actions, inspections, and public education programs; and,

7. Identification of water quality improvements or degradation, with a discussion of those management practices implemented or proposed for implementation to address identified water quality degradation.

PART III. SCHEDULES FOR COMPLIANCE

A. IMPLEMENTATION OF POLLUTION PREVENTION MEASURES

POLLUTION PREVENTION MEASURE	ACTIVITY DESCRIPTION	DATE DUE
Part II.A.1 - New Development & Re-Development	Implement construction-phase storm water runoff control program.	March 4, 1996
	Modify land use planning process within Port to require controls for storm water quality.	March 3, 1998
	Implement requirements for post-construction storm water quality controls for new and significant re-development.	July 30, 1998
Part II.A.2 - Vehicle Fluids	Implement public education program.	July 30, 1995
	Develop collection/recycling/safe disposal program.	March 4, 1996
	Implement collection/recycling/safe disposal program.	March 3, 1997
Part II.A.3 - Common Hazardous Waste	Implement public education program.	July 30, 1995
	Develop collection/recycling/safe disposal program.	March 4, 1996
	Implement collection/recycling/safe disposal program.	March 3, 1997
Part II.A.4 - Floatables	Implement public education program.	July 30, 1995
	Implement litter control program.	July 30, 1995
	Install floatables monitoring location (See Part V.A.2)	July 30, 1995
	Complete study for targeting of structural controls.	July 30, 1996
	Complete installation of structural controls on 100% of targeted storm sewer.	July 30, 1997

B. IMPLEMENTATION OF STORM WATER MANAGEMENT PLANS

SWMP ACTIVITY	ACTIVITY DESCRIPTION	DATE DUE
PART II.B - Storm Water Management Program (SWMP) plan development	Complete development of SWMP plan	June 5, 1995
Part II.B.7 - Illicit Discharges and Improper Disposal	Implement public education program.	July 30, 1995
	Complete screening of the MS4.	July 30, 1996
	Complete follow up investigations based on screening results.	July 30, 1999
Part II.I - System-wide Report	Episodic system and implementation status report	Annually: March 3

PART IV. SPECIAL PERMIT REQUIREMENTS

The following requirements are included in this permit as stipulations of water quality certification from the Alaska Department of Environmental Conservation (ADEC).

A. MONITORING

1. In Part II.B.9.b the parameter "Total Aqueous Hydrocarbons" will be substituted for the parameter "Oil and Grease" on the list of parameters to be monitored.

   The parameter "Total Aqueous Hydrocarbons" (TAqH) means those collective dissolved and water-accomodated monoaromatic and polynuclear aromatic petroleum hydrocarbons that are persistent in the water column; TAqH does not include floating surface oils and greases. TAqH is calculated by summing the values of the parameters Total Aromatic Hydrocarbons (TAH) and Total Polynuclear Hydrocarbons (PAH). The parameters TAqH, TAH, and PAH are all defined in the Adopted Draft Water Quality Standards, 18 AAC 70.020(b) Note #8, dated 9/13/94. The test methods to be used to determine the presence of these parameters are the EPA 602 method for TAH and the EPA 610 method for PAH. Equivalent methods may be substituted for EPA 610 that meet the performance standards, Minimum Detection Limits (MDLs), precision, and standard recoveries specified in method 610. The applicable criteria are contained in Note #8 (cited above).

2. Table V.A.1.a (Monitoring Frequency) shall be modified as follows:

   a) The monitoring frequency and the parameters listed for monitoring in years 2 and 3 shall be identical to that listed for year 4, such that the full list of parameters will be sampled in years 2, 3, and 4 at the frequency listed under YEAR 4.

   b) The parameter "Total Aqueous Hydrocarbons" will be substituted in the table for the parameter "Oil and Grease" (as discussed above).

   c) Delete "Other Water Quality Parameters" from the table.

B. **MISCELLANEOUS**

1. Copies of all reports required in the permit will be sent to the following ADEC offices:

   Alaska Department of Environmental Conservation
   Southcentral Regional Office
   3601 C Street, Suite 1334
   Anchorage, AK 99503
   (907) 563-6529

   Alaska Department of Environmental Conservation
   Anchorage Western District Office
   800 E. Dimond Blvd. #3-470
   Anchorage, Alaska 99515
   (907) 349-7755

2. In Part II.A.1., add the following statement: The permittee shall emphasize source reduction techniques as a means to reduce the discharge of pollutants. The permittee shall inform the lessees of the availability, through ADEC, of pollution prevention resources, technical assistance programs and other non-regulatory initiatives that will support the overall objective of eliminating the discharge of pollutants.

3. In Part II.B.11., add the following as paragraph (d): a program to promote, publicize and facilitate implementation of technologies and techniques to prevent pollution through source reduction and recycling.

PART V. MONITORING AND REPORTING REQUIREMENTS

A. Storm Event Monitoring

The permittee shall implement a wet-weather monitoring program for the MS4 to provide data necessary to: 1) assess the effectiveness and adequacy of control measures implemented under the SWMP; 2) estimate annual cumulative pollutant loadings from the MS4; 3) estimate event mean concentrations and seasonal pollutants in discharges from major outfalls; 4) identify and prioritize portions of the MS4 requiring additional controls; and, 5) identify water quality improvements or degradation.

1. *Representative Monitoring:*
   The permittee shall monitor representative outfalls and/or instream monitoring locations to characterize the quality of storm water discharges from the MS4.

   a. Monitoring Requirements: (See Table V.A.1.a).

   b. Outfall Descriptions: (See Table V.A.1.b)

2. *Wet Weather Screening Program:*
   The permittee shall implement a program to screen all areas contibuting storm water to the MS4 for the presence of excessive pollutants in discharges from the MS4. The wet weather screening program:

   a. Shall screen the entire MS4 at least once during the permit term.

   b. Shall specify the sampling and non-sampling techniques, parameters, collection techniques, and analytical methods to be used for initial screening purposes. For screening samples only, sample collection and analysis need not conform to the requirements of 40 CFR Part 136 and are not subject to the requirements of Paragraphs 3, 4, and 5 below.

Table V.A.1.a. - Monitoring Requirements for Outfalls 001, 002, and 003[1]

PARAMETER	MONITORING FREQUENCY				
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Biochemical Oxygen Demand (BOD_5) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Chemical Oxygen Demand (COD) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Suspended Solids (TSS) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Dissolved Solids (TDS) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Nitrogen (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Kjeldahl Nitrogen (TKN) (mg/l)	Once/year	Once/year	Once/year	Once/year	Once/year
Total Phosphorus (mg/l)	---	---	---	Once/year	---
Dissolved Phosphorus (mg/l)	---	---	---	Once/year	---
Oil & Grease (mg/l)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year
Total Cadmium (ug/l)	---	---	---	Once/year	---
Total Copper (ug/l)	---	Once/year	---	Once/year	---
Total Lead (ug/l)	---	---	---	Once/year	---
Total Zinc (ug/l)	---	Once/year	---	Once/year	---
Ph (S.U.)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year
Hardness (as $CaCO_3$) (mg/l)	---	---	---	Once/year	---
Temperature (°C)	Twice/year	Twice/year	Twice/year	Twice/year	Twice/year

[1] This table represents the baseline monitoring requirements for the discharges and outfalls described in this permit. Some specific parameters and monitoring frequencies have have been modified pursuant to the special requirements as discussed in Part IV of this permit.

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Table V.A.1.b - Representative Monitoring Outfall Descriptions

OUTFALL	LOCATION	DESCRIPTION
001	Transit Area B	Storm water drain for Transit Area B. This area is 52.0 total acres with 16.2 acres of impervious surface.
002	Transit Area D and Transit Area A	Storm water drain for Transit Area D and a portion of Transit Area A. Transit Area D is 43.4 total acres and has 7.8 acres of impervious surface. This portion of Transit Area A has 55 total acres with 15 acres covered by impervious surface. The total acreage of impervious surface draining to outfall 002 is 22.8 acres.
003	Transit Area 12-B	Storm water drain for Transit Area 12-B. Area 12-B is 36.7 total acres with 16.8 acres of impervious surface.

c. Shall establish three monitoring locations for removal of floatable material in discharges from the MS4. The amount of material collected shall be estimated in cubic yards. Floatable material shall be measured periodically as necessary for maintenance of the removal device.

d. Shall submit, along with the system-wide report required by Part II.I, the following information:

(1) An estimate of the amount of floatable material collected (cubic yards);

(2) A summary of results and actions taken or proposed based on the results of the wet weather screening program.

e. Any monitoring location that collects an annual average of less than 3 cubic yards of floatables over any consecutive 3 calendar-year period during the permit term will no longer be considered a mandatory monitoring location. The Port must maintain at least one monitoring location for floatables regardless of the amount of floatables collected.

3. *Storm Event Data:*
Quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters listed above, The Port shall maintain records on site of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

4. *Sample Type, Collection, and Analysis:*
a. For discharges from storm water holding ponds or other storm water impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples taken during the first two hours of discharge shall be used for the analysis (if required) of pH, temperature, cyanide, oil & grease, fecal coliform, fecal streptococcus, total phenols, residual chlorine, and volatile organics. For all other parameters, data shall be reported

for flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be done in accordance the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

5. *Sampling Waiver:*
When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period.

B. **Dry Weather Monitoring**

1. *Dry Weather Screening Program:*
The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4. All portions (but not necessarily all outfalls) of the MS4 must be screened at least once during the permit term, in accordance with the schedule set forth in PART III.A.

2. *Screening Procedures:*
Screening methodology may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D).

3. *Follow-up on Dry Weather Screening Results:*
The permittee shall implement a program to locate and

eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Follow-up activities may be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

C. **Certification and Signature of Reports**

1. All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with Parts VII.H. & VII.I. of the permit.

D. **Reporting: Where to Submit**

1. Monitoring results obtained during each anual reporting period shall be submitted on Discharge Monitoring Report Form(s) and included with the annual system-wide reprt. A separate Discharge Monitoring Report Form is required for each event monitored. The first report may include less than twelve months of information.

2. Signed copies of discharge monitoring reports required under Part V., the System-Wide Report required by Part II.G., SWMP modifications and modification requests, requests for changes in monitoring outfalls and all other reports required herein, shall be submitted to:

U.S. EPA, Region 10
Wastewater Management and Enforcement Branch
Municipal Storm Water Permits (WD-135)
1200 Sixth Avenue
Seattle, Washington 98101

E. **Additional Notification**

1. Copies of the discharge monitoring reports required under Part V., the System-Wide Report required by Part II.G., and other reports requested by the State shall be submitted to:

Alaska Department of Environmental Conservation
Southcentral Regional Office
3601 C Street, Suite 1334
Anchorage, AK 99503
(907) 563-6529

Alaska Department of Environmental Conservation
Anchorage Western District Office
800 E. Dimond Blvd. #3-470
Anchorage, Alaska 99515
(907) 349-7755

F. Retention of Records

1. The permittee shall retain at The Port the latest approved version of the storm water management program developed in accordance with Part II of this permit until at least three years after coverage under this permit terminates. The permittee shall retain at The Port all records of all monitoring information, copies of all reports required by this permit, and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit or extended by request of the Director at any time.

PART VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply

1. The permittee must comply with all conditions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 year, or both.

d. False Statement The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4

years, or by both. (See Section 309(c)(4) of the Clean Water Act).

2. Civil Penalties - The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties - The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

   a. Class I penalty Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

   b. Class II penalty Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

C. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the permit expiration date, the permittee(s) must apply for and obtain a new permit. The application shall be submitted at least 180 days prior to expiration of this permit. The Administrator may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR 122.6 and any subsequent amendments.

D. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

E. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. Duty to Provide Information

The permittee shall furnish to the Administrator, within a time specified by the Director, any information which the

Administrator may request to determine compliance with this permit. The permittee shall also furnish to the Administrator upon request copies of records required to be kept by this permit.

G. **Other Information**

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Director, he or she shall promptly submit such facts or information.

H. **Signatory Requirements**

All Discharge Monitoring Reports, storm water pollution prevention plans, reports, certifications or information either submitted to the Administrator or that this permit requires be maintained by the permittee, shall be signed by:

1. either a principal executive officer or ranking elected official.

2. a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director.

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

   c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice of intent satisfying the requirements of this paragraph must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

I. **Certification**

Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

J. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

K. Penalties for Falsification of Monitoring Systems

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the CWA.

L. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of CERCLA.

M. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

N. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision

of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

O. **Requiring an individual permit**

1. The Administrator may require the permittee authorized by this permit to obtain an individual NPDES permit. Any interested person may petition the Administrator to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form (as necessary), a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit, coverage under this permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part V.D. of this permit. The Administrator may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Administrator, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application as specified by 40 CFR 122.26(d) with reasons supporting the request to the Administrator. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part V.D. of this permit. The request may be granted by the issuance of a individual permit if the reasons cited by the owner or operator are adequate to support the request.

P. **State/Environmental Laws**

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

Q. **Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

R. **Monitoring and records**

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Administrator at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The time(s) analyses were initiated;

   e. The initials or name(s) of the individual(s) who performed the analyses;

   f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

S. **Monitoring Methods**

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

T. **Inspection and Entry**

The permittee shall allow the Administrator or an authorized representative of EPA, or the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and,

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

U. **Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

PART VII. PERMIT MODIFICATION

A. **Modification of the Permit**

The permit may be reopened and modified during the life of the permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. add a co-permittee who is the owner or operator of a portion of the MS4;

4. changes in portions of the storm water management program that are considered permit conditions; or

5. other modifications deemed necessary by the Administrator to meet the requirements of the Clean Water Act.

All modification to the permit will be made in accordance with 40 CFR 122.62, 122.63, and 124.5.

B. **Termination of Coverage for a Single Co-permittee**

Permit coverage may be terminated, in accordance with the provisions of 40 CFR 122.64 and 124.5, for a single co-permittee without terminating coverage for other co-permittees.

C. **Modification of Storm Water Management Program(s)**

Only those portions of the SWMPs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Replacement of a failing BMP implementing a required component of the SWMP with an alternate BMP expected to provide at least the same level of performance initially expected of the failing BMP, shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

D. **Changes in Monitoring Outfalls**

This permit is issued on a system-wide basis in accordance with CWA § 402(p)(3)(i) and authorizes discharges from all portions of the MS4. Since all outfalls are authorized, changes in monitoring outfalls, other than those with specific numeric effluent limitations, shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

PART VIII. DEFINITIONS

"Administrator" means the Regional Administrator.

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"CWA" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. (6-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

"Co-permittee" means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

"Director" means the Regional Administrator or an authorized representative.

"Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4).

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"MS4" is an acronym for "municipal separate storm sewer system" and is used to refer to either a Large or Medium Municipal Separate Storm Sewer System.

"Large or Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or

(ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or

(iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"Municipal Separate Storm Sewer" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Storm sewer", unless otherwise indicated, refers to a municipal separate storm sewer.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"SWMP" is an acronym for "Storm Water Management Program."

"Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

"Waters of the United States" means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(b) All interstate waters, including interstate "wetlands";
(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
(3) Which are used or could be used for industrial purposes by industries in interstate commerce;
(d) All impoundments of waters otherwise defined as waters of the United States under this definition;
(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
(f) The territorial sea; and
(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States.

CHANGES TO DRAFT PERMIT

The following changes to the draft permit have been made for this final permit:

1) The Port of Anchorage commented that the outfall previously labelled 001, Transit Area A, was discovered by its consulting engineers to no longer exist, and asked that it be deleted from the application.

   EPA has deleted this outfall and re-numbered the remaining three outfalls as 001, 002, and 003 (see Table V.A.1.b).

2) Special requirements stipulated as part of the State of Alaska water quality certification are contained in Part IV of the permit. These special requirements include changes in monitoring, analytical test methods, and reporting requirements. Specifically:

   - The monitoring parameter "Total Aqueous Hydrocarbons" has been substituted for the parameter "Oil and Grease" found in Part II.B.9.b.

   - The analytical test methods EPA 602 and EPA 610 will be used to determine the presence of "Total Aqueous Hydrocarbons".

   - Copies of all documents, reports, and requests, required in the permit will be sent to the state offices as stipulated.

   In addition, the following changes to the permit have been made pursuant to the water quality stipulations and comments from the State:

   - Part II.A.1 has been expanded to include a statement on emphasizing source reduction techniques as a means to reduce the discharge of pollutants.

   - In Part II.B.4 the permittee is now directed to operate and maintain parking and cargo storage/staging areas in a manner to reduce, to the Maximum Extent Practicable, discharge of pollutants.

   - In Part II.B.11 the following was added as paragraph (d): a program to promote, publicize and facilitate implementation of technologies and techniques to prevent pollution through source reduction and recycling.

   - In Part II.B.7.b the items numbered 8, 12, and 13 now specify that the water be uncontaminated as found in #6.

   - The term "co-permittees" in Part II.C has been deleted.

- In Part II.C.1 the term "port vehicles" has been clarified to mean those vehicles owned or operated by The Port.

- The citation in Part H.1 has been changed to correctly read Part II.I.

- The phrase "at the permittees option" in Part V.A.4.b has been deleted.

- The reference in Part V.B.1 has been changed to correctly read Part III.A.

Idaho

Permit No.: IDS-02756-1
Application No.: IDS-02756-1

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101
206/553-0523

AUTHORIZATION TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4 (the "CWA"),

THE CITY OF BOISE, THE ADA COUNTY HIGHWAY DISTRICT, BOISE STATE UNIVERSITY, THE IDAHO TRANSPORTATION DEPARTMENT DISTRICT 3, DRAINAGE DISTRICT #3, AND THE CITY OF GARDEN CITY
(hereinafter "co-permittees ")

are authorized to discharge from all municipal separate storm sewer system outfalls existing as of the effective date of this permit, to the Boise River and its tributaries in accordance with the conditions set forth herein.

This permit shall become effective November 29, 2000

This permit and the authorization to discharge shall expire at midnight, November 29, 2005

Signed this 30th day of October, 2000

Randall F. Smith, Director
Office of Water, Region 10
U.S. Environmental Protection Agency

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PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. **PERMIT AREA.** This permit covers all areas within the corporate boundaries of **Boise, Idaho and Garden City, Idaho** served by, or otherwise contributing to discharges from, municipal separate storm sewer systems (MS4) owned or operated by the co-permittees listed in Part I.C.

B. **AUTHORIZED DISCHARGES.** This permit authorizes all existing storm water discharges to waters of the United States from the MS4 subject to the limitations of this permit. This permit also authorizes the discharge of storm water which has commingled with other flows including process wastewater and storm water associated with industrial activity, provided each such other flow is authorized under a separate National Pollutant Discharge Elimination System (NPDES) permit.

C. **CO-PERMITTEES.**

CITY OF BOISE (Boise City)
CITY OF GARDEN CITY (Garden City)
ADA COUNTY HIGHWAY DISTRICT (ACHD)
BOISE STATE UNIVERSITY (BSU)
IDAHO TRANSPORTATION DEPARTMENT DISTRICT 3 (ITD)
DRAINAGE DISTRICT #3 (DD3)

1. Except as described in Part I.C.2., the co-permittees' obligations to comply with the terms and conditions of this permit shall be joint and several.

2. Each co-permittee shall be individually obligated (and the remaining co-permittees shall not be obligated) to comply with those terms or conditions of this permit which:

   a. relate exclusively to discharges from portions of the MS4 owned or operated solely by that co-permittee;
   b. are identified in this permit as being the obligation of a single, named co-permittee; or
   c. have been identified in Table III.A or the Cooperative Agreement approved by EPA under Part II.F. of this permit as being the responsibility of that co-permittee .

PART II. STORM WATER MANAGEMENT PROGRAM

Each co-permittee shall implement a Storm Water Management Program (SWMP) designed to limit, to the Maximum Extent Practicable (MEP), the discharge of pollutants to and from that portion of the MS4 owned, operated, or utilized by that co-permittee . Each co-permittee shall implement the SWMP in accordance with the schedule contained in Part II, and as summarized in Table III.A, of the permit.

A. COMPONENTS OF STORM WATER MANAGEMENT PROGRAM.

1. *Structural Controls:* Each co-permittee shall operate and maintain the storm water structural controls for which it is the owner or operator, in a manner so as to reduce the discharge of pollutants to the MEP.

   a. Design Manuals. Design Manuals. Co-permittees shall adopt design manuals that incorporate Best Management Practices (BMPs) and operation and maintenance criteria for all existing and future structural controls under the jurisdiction of the co-permittees. This requirement may be satisfied by adopting by reference all or elements of the design manuals and guidebooks developed by other co-permittees, including the *January 1997 Boise Storm Water Best Management Practices (BMP) Guidebook*, the *July 1994 ITD Catalog of Storm Water Best Management Practices (BMP's)*, the *June 1999 City of Boise Storm Water Management Design Manual*, and the *December 1999 ACHD Development Policy Manual*. Design practices shall be incorporated into co-permittees' design, maintenance, and operation of all existing and future controls. The design manuals shall be based on sound engineering practices and shall utilize methodologies to control the addition of pollutants to storm water runoff to the MEP. Co-permittees shall finalize and implement the design manuals **no later than two years from the effective date of the permit.**

   b. Operation and Maintenance Program. Co-permittees shall develop and implement an operation and maintenance program, to include the following:
      - Definitive inspection and maintenance schedules for all co-permittee-owned structural controls which include the frequency of routine inspections. Actual inspections shall also be tracked.
      - Guidelines and criteria for maintenance activities that are to be implemented for co-permittee-owned structural controls, as well as a description of the maintenance activities required such as "disposal of sediment" and "removal of debris."
      - A description of the inspection, operation, and maintenance of storm water retention facilities owned or operated by co-permittees .

      The program shall incorporate measures, such as the assessment of retention basin outfalls, to evaluate the effectiveness of the proposed operation and maintenance program. Such measures shall be selected by the co-permittees, and a justification included in the program as to why they were chosen. The program shall ensure that co-permittees maintain drainage controls and structures to ensure that they operate as designed, such that the reduction of pollutants (including floatables) is maintained. Such structures include, but are not limited to: grates, basins, irrigation boxes, sediment tanks, skimmer boxes, drains, and pipes. The entire program shall be developed, and its implementation begun, **no later than one year from effective date of the permit.**

   c. Inspection and Maintenance Record Keeping. Each co-permittee that owns or operates structural controls shall maintain an internal record-keeping system to track inspections and maintenance for those portions of the MS4 operated by the co-permittee. The record-keeping system shall be in place and operable **within one year from effective date of the permit.** A joint record-keeping system to track activity undertaken by two or more co-permittees is allowable under this Part of the permit.

d. Annual Report. Copies of the **design manuals** shall be included in the **second annual report** of this permit term. Any **revisions or additions to the manual** shall be reported to the address in Section IV.E, along with the reason why the manual was altered, in the **first annual report after such changes occurred.** Co-permittees shall include with the **first annual report** a copy of the **operations and maintenance program,** including a maintenance schedule, for all structural controls owned or operated by co-permittees. Each co-permittee that has carried out **inspections and maintenance activities** shall submit a **summary** of such activity with **each annual report.** The summary shall include information on the number of structures cleaned, the number of hours dedicated to such cleaning, etc. Co-permittees shall also provide a summary of any data collected as part of the evaluation of the retention facilities as described above.

2. *Floatables:* The co-permittees shall ensure the establishment of a program to reduce the discharge of floatables (e.g., litter and other human-generated solid refuse). The floatables control program shall include source controls and, where necessary, structural controls.

a. Awareness and local authority cooperation. The co-permittees shall incorporate into their public education program information designed to reduce the amount of floatables which can end up in the storm sewer system. The co-permittees shall work with other authorities charged with enforcing litter control, and incorporate information on the existence of fines, penalties etc., for violations of such ordinances into any distribution of public education materials (which can be undertaken in conjunction with II.A.1 1.a). Each co-permittee shall determine and utilize methods to reduce litter within their respective jurisdictions. There shall be methods in place to control litter on a daily basis, as well as control litter that may result from a major public event.

b. Highway cleanup. The co-permittees shall implement a program or programs, such as the Adopt-a-Highway program, to facilitate litter removal from selected highways two times a year or as needed.

c. Operation and Maintenance Program. The co-permittees shall ensure that the streets for which they have maintenance authority and responsibility are swept as needed to reduce the discharge of pollutants to the MEP. Co-permittees shall compile a report on the sweeping activity and shall assess the above levels of effort in each of the designated land use type areas with respect to the mitigation of contribution of pollutants from the highways and other public areas that are maintained. The report shall be completed **within 18 months of the effective date of the permit.**

d. Annual Report. Co-permittees shall include in the **annual reports** any **cooperative efforts** undertaken with other authorities charged with enforcing litter control. Co-permittees shall report on any **interim results from the evaluation of the road sweeping program** during the **first annual report.** Co-permittees shall record and present **statistics from highway cleanup program(s),** such as the Adopt-a-Highway program, that measure effectiveness and possible application on other co-permittee-maintained streets and roadways in **each annual report. Operation and Maintenance programs including reports of street sweeping** with the number of road miles that have been swept by land use type, shall be submitted with the **second annual report.**

3. *Areas of New Development and Significant Redevelopment:* Co-permittees shall adopt and utilize a comprehensive master planning process to develop, implement, and enforce controls to reduce the discharge of pollutants to the MEP from areas of new development and significant redevelopment.

   a. Design Practice Manuals. Each co-permittee shall develop and finalize a design manual incorporating BMPs or adopt for use the BMPs prepared by another approved source. Co-permittees shall ensure that adopted BMPs are utilized and followed by developers, contractors and others involved in land development activities, to ensure that minimum requirements, standards and procedures are applied before, during and after land development activities. In addition, co-permittees shall ensure that developers, contractors and others involved in land development activities have in place Operation and Maintenance plans at the time of permitting for storm water facilities on new development and redevelopment (including residential, commercial and industrial land uses). Manuals shall be developed and implemented within **two years of the effective date of the permit**.
   b. Project review. Project review and approval procedures shall be developed that include the ability to conduct inspections and follow-up after construction to ensure that approved Operation and Maintenance plans are being followed. Implementation of these procedures shall begin **within two years of the effective date of the permit**.
   c. Record keeping. Co-permittees shall develop and maintain an internal record keeping system to track all activity on project review and approval actions. This activity shall be completed and implemented within **two years from the effective date of the permit**.
   d. Annual Report. Co-permittees shall include copies of **design manuals** that include measures for areas of new development and significant redevelopment in the **second annual report**. The City of Boise shall include a copy of the City of Boise Storm Water Management Design Manual in its first annual report submission. **Project review and approval procedures** for new development and significant redevelopment shall also be submitted as part of the **second annual report**. A summary of each co-permittees previous year's **recordkeeping activity** shall be provided in each **annual report beginning the second year**.

4. *Roadways:* Each co-permittee shall operate and maintain public streets, roads, and highways under its jurisdiction and for which it has authority in a manner so as to reduce to the MEP the discharge of pollutants including those related to deicing or sanding activities.

   a. Management Practices. Co-permittees shall develop a management practices program. This program shall include those management practices identified during the inventory of co-permittee-owned storm water facilities and audit of site activities undertaken as part of the application for the MS4 Permit. The program shall also evaluate ways to reduce pollutant discharges associated with road maintenance and rehabilitation operations. The program shall be submitted and implemented **within two years of the effective date of the permit**.
   b. Snow and Ice Control and Removal Programs. Co-permittees shall monitor the application of chemicals and sand applied to roadways for snow and ice control. Co-

permittees shall implement programs for proper storage of de-icing materials to prevent materials from entering the storm sewer system (e.g., using covers or roofs for stockpiled materials), and research alternatives to salt for use in de-icing **within two years of the effective date of the permit.**

c. Annual Report. Co-permittees shall submit the **management practices program** that includes ways to reduce pollutants from road maintenance and rehabilitation in the **second annual report.** In addition, co-permittees shall report the **amount (in appropriate units) of chemicals** applied to roads as part of the snow and ice control program in **each annual report beginning with the second report.** The **alternatives to salt** for de-icing and a **statement indicting that de-icing materials are properly stored** shall be in the **second annual report.**

5. *Flood Management:* Each co-permittee shall ensure that any flood management projects it undertakes include an assessment of the impacts on receiving water quality. Co-permittees shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water.

   a. Inventory of Structural Flood Control Devices. **Within one year of the effective date of the permit,** co-permittees shall complete an inventory of all existing structural flood control devices (e.g., storm sewer inlets, detention basins, drainage channels) within their jurisdictions to determine the feasibility of retrofitting them to provide additional pollutant removal. Co-permittees shall consider retrofits such as installation of in-line sediment trap devices, detention facilities or wetlands/riparian vegetation. Such evaluation should be carried out in conjunction with the sediment analysis component of section IV. B. of this permit.
   b. Flood Management Projects. Co-permittees shall develop procedures **within one year of the effective date of the permit** to assure that flood management projects assess the impacts on the water quality of the receiving water.
   c. Annual Report. In the **first annual report,** co-permittees shall provide **procedures assessing water quality impacts from all flood management projects.** An **inventory of existing structural flood control devices** shall also be provided in the **first annual report** including information whether retrofit to provide additional pollutant removal is feasible.

6. *Pesticide, Herbicide, and Fertilizer Application:* Co-permittees shall implement controls to reduce to the MEP the discharge of pollutants related to the application of pesticides, herbicides, and fertilizers applied by the co-permittee's employees or contractors to public right of ways, parks, and other municipal facilities. Co-permittees with jurisdiction over lands not directly owned by that entity (e.g., private lands within an incorporated city) shall implement controls such as educational activities, permits, certifications, and other measures to reduce the discharge of pollutants related to application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators.

   a. Application Management. Co-permittees shall develop a list of regionally appropriate landscaping plants and turf with recommended fertilizer application rates. Co-permittees shall establish planting/landscape policies which encourage use of vegetation (either indigenous or imported) that is self sustainable without the need for

pesticides or fertilizers. This task shall be completed **within one year of the effective date of the permit.**

b. Distribution of Educational Materials. Co-permittees shall distribute educational materials to all contracted applicators. This task shall be completed **within 18 months of the effective date of the permit.**

c. Outreach Method Identification. Co-permittees shall identify and utilize outreach methods to educate homeowners and commercial businesses, such as greenhouses, nurseries, landscaping and yard-care businesses, on the impact of pesticides, herbicides, and fertilizers on aquatic resources and on the means to decrease their usage. Information should include the use of alternatives to commercial pesticides, as well as information on locally available methods for proper disposal of pesticides, herbicides and fertilizers after they have been used. Co-permittees may undertake this component of the storm water management plan as part of the overall public education component, identified in II.A.11.a.

d. Annual Report. Co-permittees shall include **the list of regionally appropriate landscape plants and turf and plant policies** with the **first annual report.** Co-permittees shall report on the **distribution of information** to contracted applicators in the **second annual report.** Information regarding what **outreach activities** have taken place on the effects of pesticides, herbicides, and fertilizers shall be in **each annual report.**

7. *Illicit Discharges and Improper Disposal*: Each co-permittee shall implement an ongoing program to detect and remove (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for) illicit discharges and improper disposal into the MS4. Each co-permittee shall effectively prohibit non-storm water discharges to the MS4, other than those authorized under a separate NPDES permit. Unless identified by any co-permittee, IDEQ, or the Water Office Director, as sources of pollutants to waters of the United States, the following non-storm water discharges need not be addressed by co-permittee's illicit discharge and improper disposal program:

- water line flushing;
- landscape irrigation;
- diverted stream flows;
- rising ground waters;
- uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- uncontaminated pumped ground water;
- discharges from potable water sources;
- foundation drains;
- air conditioning condensate;
- irrigation water;
- springs;
- water from crawl space pumps;
- footing drains;
- lawn watering;
- individual residential car washing;
- flows from riparian habitats and wetlands;
- de-chlorinated swimming pool discharges; or
- street wash waters.

Discharges and flows from emergency fire fighting activities need not be addressed by co-permittee's illicit discharge and improper disposal program unless such discharges and flows are determined by any co-permittee, IDEQ, or the Water Office Director, as significant sources of pollutants to waters of the United States. Each co-permittee shall prevent (or require the owner or operator of the sanitary sewer to eliminate) un-permitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. Each co-permittee shall limit the infiltration of seepage from sanitary sewers into the MS4. Each co-permittee shall provide education activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials (including antifreeze, paint, solvents, pesticides, and herbicides). Appropriate programs include the collection of used motor oil at curbside residences and the collection of hazardous waste at central locations. If conducted, these programs should be publicized on a regular basis.

a. Inspection and Enforcement. Co-permittees shall work together to implement a program to inspect and enforce against illicit connections. The program can be based on the *Boise City Stormwater Investigation Manual* and the *December 1998 ACHD Stormwater Investigation Manual*. Co-permittees shall use the results of existing and on-going dry-weather screening and citizen reports as the primary basis for locating illicit discharges. Co-permittees shall ensure that an appropriate number of personnel receive training in the detection of illicit connections. The program shall include a requirement to update the inventory, within **6 months of the effective date of the permit**, of all major outfalls within the jurisdictions of the co-permittees. Co-permittees shall ensure compliance with this program element by inspecting 20% or more of the major outfalls per permit year, totaling 100% of outfalls by the conclusion of the first permit term. If illicit connections are identified or detected, co-permittees shall require their disconnection.
b. Storm Water Management and Discharge Control Ordinance Enforcement. The City of Boise shall ensure enforcement of *Title 8, Chapter 15, The City of Boise Storm Water Management and Discharge Control Ordinance* (adopted May 2000). The City of Garden City shall ensure enforcement of *Garden City Code Title 4, Chapter 14, Ordinances for Stormwater Management and Discharge Control* (adopted on September 14, 1999). Each co-permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. Where elimination of an illicit connection within seven (7) days is not possible, the co-permittee shall require an expeditious schedule for removal of the discharge. In the interim, the co-permittee shall require the owner or operator of the illicit connection to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

c. Complaint Procedures. Co-permittees shall implement complaint investigation procedures (such as those outlined in the City of Boise and Ada County Stormwater Investigation Manuals) to guide staff through recording, investigating and following up on complaints regarding violations reported by the general public. Co-permittees shall publicize the availability of an approved complaint referral process and post notices informing the public of the existence of such resources. Co-permittees shall utilize appropriately trained staff in operating such a complaint response program. A program incorporating all such initiatives shall be in place and operational within **one year from the effective date of the permit.**

d. Annual Report. Co-permittees shall submit the **list of major outfalls** that was compiled in the **first annual report.** Co-permittees shall report the progress of the **inspection and enforcement program** to eliminate illicit connections to the storm sewer system in **each annual report.** The **annual reports** shall include summaries of activities carried out under this initiative, including the **number of outfalls/inspections** undertaken, **results of such inspections,** and **follow-up actions** taken. Copies of **complaint investigation procedures** shall be included in the **first annual report.**

8. *Spill Prevention and Response:* Co-permittees shall implement a program to prevent, contain, and respond to spills that may discharge into the MS4. The spill response program may include a combination of spill response actions by the co-permittee (and/or another public or private entity), and legal requirements for private entities within the co-permittee's municipal jurisdiction.

a. Spill Response Task Group. Co-permittees shall participate in an interagency spill response task group, such as the Boise City Fire Department Task Group, to ensure that a coordinated response to spills is achieved and that impacts upon aquatic resources from spilled pollutants are controlled to the MEP. As part of this activity, co-permittees shall provide educational materials and outreach to operators of industrial and commercial activity that have a potential to spill liquid and solid wastes during transportation of such materials. If participation does not already occur, co-permittees shall begin participation **within one year of the effective date of the permit.**

b. Annual Report. Co-permittees shall report on **activities undertaken** in conjunction with the interagency spill response task group, such as meetings attended, meeting notes, and copies of any cooperative agreements listing the responsibilities of relevant parties in **all annual reports.**

9. *Industrial & High Risk Runoff:* Co-permittees shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from the following sources:

- municipal landfills;
- hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA, 42 U.S.C. §11023); and
- any other industrial or commercial discharge the co-permittee determines is contributing a substantial pollutant loading to the MS4.

The program shall include:

- priorities and procedures for inspections and establishing and implementing control measures for such discharges; and
- a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents: Any pollutants limited in an existing NPDES permit for an identified facility; oil and grease; chemical oxygen demand (COD); pH; five-day biochemical oxygen demand (BOD_5); total suspended solids (TSS); total phosphorous; total Kjeldahl nitrogen (TKN); nitrate plus nitrite nitrogen; and any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv). Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. Co-permittees may require the industrial facility to conduct self-monitoring to satisfy this requirement.

a. Database of Facilities. Co-permittees shall develop and maintain a database of priority industrial sites based on the above criteria within **one year of the effective date of the permit**. The database shall contain information on the primary economic activity conducted at the site (characterized by Standard Industrial Classification (SIC) code), the location of the facility, and a summary of the facility's storm water management plan and permit requirements.

b. Inspection and Monitoring of High Risk Facilities. Co-permittees shall work together to inspect and monitor such facilities for compliance with the storm water ordinance and the NPDES industrial storm water general permit within **one year of the effective date of the permit**. Whenever possible, such inspections should be in conjunction with pretreatment inspections conducted by the City of Boise. The inspection program shall be developed utilizing state statutes, local ordinances, contracts, or joint powers agreements. The agreements shall be developed to ensure that the program is carried out as devised. The memorandum of understanding between the Ada County Highway District and the City of Boise shall apply upon the **effective date of the permit**. Other permittees should consider developing similar agreements. The inspection and monitoring program shall include provisions to record observations of a facility, report findings to the inspected facility, follow up with the facility if necessary, and exercise legal authority to issue notices of violations, fines, etc., as and when appropriate. All activity regarding the monitoring and inspection of such facilities shall be maintained in the centralized database described above.

c. Educational Materials. The *Storm Water Commercial and Industrial Best Management Practices Handbook*, developed by the City of Boise Public Works, shall be distributed with inspections as well as when requested.

d. Inspection Program. Co-permittees shall develop, formalize, and implement an inspection program of high risk industrial and other commercial facilities. The inspection program may be developed utilizing contract or joint powers agreements and shall be implemented within **one year of the effective date of the permit.**

e. Annual Report. Copies of the **inspection programs, including any agreements or MOUs**, shall be included in the **first annual report.** A **listing of any activities** taken place such as monitoring inspections, issuance of citations etc. shall be summarized from the industrial and commercial priority database and included in **each annual report.**

10. *Construction Site Runoff:* Co-permittees shall develop and implement a program to reduce to the MEP the discharge of pollutants from constructions sites, including:
- requirements for the use and maintenance of appropriate structural and nonstructural BMPs to reduce pollutants discharged to the MS4 during the time construction is underway;
- procedures for site planning which incorporate considerations for potential short and long term water quality impacts and which minimize these impacts;
- prioritized inspection of construction sites and enforcement of control measures;
- appropriate education and training measures for construction site operators; and
- notification of appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

a. Construction Site Discharge Control Program. Co-permittees shall implement a Construction Site Discharge Control Program **18 months from the effective date of the permit.** The program shall contain elements to control the contribution of pollutants from construction site activity to the MEP. The program shall require the owner or operator of the development site to prepare, and submit for approval, Erosion and Sediment Control (ESC) plans for construction within the boundaries of the co-permittee's jurisdiction. Co-permittees shall implement procedures for site plan review that incorporate consideration of potential water quality impacts from such construction sites. Approved ESC plans shall require BMPs and shall contain provisions addressing material containment, spill prevention, and other practices as applicable. Initiatives such as outreach and educational activities for construction site planners, developers, builders and operators shall be included in the implementation of the program. Such activities must extend to all construction activity within the municipality and all construction sites, regardless of size or ownership.

b. Inspection and Compliance. Co-permittees shall conduct inspections of construction sites to ensure compliance with the measures outlined in II.A.10(a) within **18 months of the effective date of the permit.** Co-permittees shall undertake enforcement measures against those operators of sites in violation of the measures in II.A.10(a), including the issuance of notices of violation and stop work orders.

c. Database and Record Keeping. Co-permittees shall develop and maintain a database of all active and completed construction sites permitted within their jurisdiction and completed during the term of this permit. Such a database shall contain basic information regarding the nature of the construction activity, size of land clearing and grading activities, and contact information on the contractor and/or developer and shall be utilized within **one year of the effective date of the permit.**

d. Annual Report. **Each annual report beginning with the second**, shall include the following: **the number of site plans that were reviewed, the number that passed review and the number that required revision prior to passing review; the number of inspections carried out summarized by month or other similar calendar-based total; the number of citations, notice-of-violations, or stop-work-orders issued by co-permittees; the type and number of educational materials distributed by co-permittees; the outreach events that representatives of co-permittees attended in order to disseminate information regarding the purpose of the program; and a summary of information compiled in the database of all active and completed construction activity.** Copies **construction site discharge programs** shall be included in the **second annual report.**

11. *Public Education:* Co-permittees shall implement a public education program as follows:

a. Public Education Program. The co-permittees shall implement a program to inform the public of the impact of pollutants in storm water on waters of the United States and how to avoid adding such pollutants to storm water runoff. This public education program shall include the following activities:

(1) The distribution of public education flyers, inserts or booklets to householders regarding appropriate methods for disposing of used motor oil and similar substances

(2) Programs and activities to promote awareness of locations where the drain discharges and promote importance of maintaining clean water resources. Examples of such activities and programs include a stenciling program and participation in educational forums such as Water Awareness Week

(3) Promoting the collection and/or composting of yard wastes from residential and commercial sites. Co-permittees shall promote the "Keep watershed clean" campaign and shall distribute copies of flyers previously developed, including but not limited to, the Storm Water Ordinance (developed by the City of Boise), RiverCare Tips to Protect Water Quality (developed by the City of Boise), and the Storm Water Trooper bookmark (developed by the City of Boise);

(4) Co-permittees shall distribute the *Storm Water Commercial and Industrial BMPs Handbook* to commercial and industrial facilities identified as priorities due to the nature of the industrial and commercial activities to be found at such sites. Co-permittees shall make available the *Storm Water Plant Materials - A Resource Guide* to other facilities and make developers and contractors aware of the existence of such information; and

(5) Co-permittees shall document the complaints received from the general public regarding violations to the storm water ordinance, and the co-permittees' response to complaints.

b. Annual Report. **Each annual report** shall include data on the following:

- **the number and type of flyers, inserts, or booklets distributed to householders regarding household hazardous waste ;**
- **the amount (in gallons) of used motor oil collected; the number of storm water inlets and drains stenciled during the year;**
- **the number of students and teachers attending "Water Awareness Week;"**
- **the amount (cubic yards) of yard wastes collected from residential and commercial sites;**
- **the number of flyers distributed including, but not limited to, the Storm Water Ordinance, RiverCare Tips, and the Storm Water Trooper bookmark;**
- **the number of Storm Water Commercial and Industrial BMPs handbooks distributed to commercial and industrial facilities;**
- **the number of Storm Water Plant Materials - A Resource Guide distributed to other facilities, and a list of developers and contractors receiving such information; and**
- **a list derived from a database, or similar record keeping procedure, that documents the complaints received regarding violations to the storm water ordinance, to include detail on what follow up was taken, and the resolution of the original complaint.**

The annual reports shall include a **description of who the target audience was** for the distribution of the educational flyers, booklets, etc., and why they were chosen.

B. DEADLINES FOR PROGRAM COMPLIANCE. Except as provided in Part II.A and Table III.A, compliance with the SWMP shall be required **30 days from the effective date** of the permit.

C. LEGAL AUTHORITY. Each co-permittee shall operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the co-permittee at a minimum to:

1. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit through ordinance, order or similar means, illicit discharges to the MS4;

3. Control through ordinance, order or similar means the discharge to the MS4 of spills, dumping or disposal of materials other than storm water;

4. Control through interagency agreements among co-permittees the contribution of pollutants from one portion of the MS4 to another portion of the MS4;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the MS4.

Co-permittees shall include with the **first annual report** a demonstration that each co-permittee possesses legal authority that satisfies the six criteria listed above. Co-permittees shall include with this demonstration copies of all statutes, ordinances, permits, contracts, orders or inter-jurisdictional agreements that they contend demonstrate the adequacy of their legal authority.

D. STORM WATER MANAGEMENT PROGRAM RESOURCES. Each co-permittee shall provide adequate finances, staff, equipment, and support capabilities to implement the SWMP as described in Part II.A and summarized in Table III.A.

E. STORM WATER MANAGEMENT PROGRAM MODIFICATION. Only those portions of the SWMP specifically required as permit conditions shall be subject to the modification requirements of 40 CFR §§ 122.62, 122.63 and 124.5. Addition of the following components, controls, or requirements by co-permittees shall be considered minor changes to the Storm Water Management Program and not require modifications to the Permit: replacement of an ineffective or infeasible BMP; implementing a requirement of the SWMP with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III of this Permit.

F. COOPERATIVE AGREEMENT. Co-permittees shall draft an enforceable Cooperative Agreement and submit it to EPA for approval **no later than one year from the effective date of this permit.** This Cooperative Agreement shall identify the roles and responsibilities of the co-permittees under this permit and shall be signed by all co-permittees and entered into within **one month** of written or verbal approval from EPA.

PART III. SCHEDULES FOR IMPLEMENTATION OF STORM WATER MANAGEMENT PROGRAM. The co-permittees shall implement the complete SWMP described in Parts II.A.1 through 11. Table III.A summarizes the SWMP, includes the dates by which specific components must be initiated, developed, implemented, or reported upon, and identifies the co-permittee(s) which have responsibility for each specific component. Modifications to the SWMP shall be consistent with Part II.E. of this permit.

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
STRUCTURAL CONTROLS (II.A. 1)		
(a) Design Manuals. Finalize and implement design manuals incorporating best management practices and operation and maintenance criteria or adopt for use design manuals prepared by other approved sources	— Within two years of the effective date of the permit.	(a) Each co-permittee is responsible for its own design manual
(b) Operation and Maintenance Program. Develop and implement an operation and maintenance program to include schedules of planned and actual inspection and maintenance activity on all structural controls owned or operated by co-permittees.	— Within one year of the effective date of the permit.	(b) Each co-permittee is responsible for developing its own program for its own respective system. ACHD will take the lead for developing a standard form.
(c) Inspection and Maintenance Record Keeping. Develop and utilize a record tracking system to record all inspection and maintenance activity with regard to the inspection and maintenance of structural controls carried out in compliance of II.A.1.(b).	— Within one year of the effective date of the permit.	(c) Each co-permittee is responsible for it own respective recordkeeping system.
FLOATABLES (II.A.2)		
(a) Awareness and local authority co-operation. Work with other non-permitted authorities charged with litter control and determine and utilize methods to reduce litter within respective jurisdictions.	— Upon the effective date of the permit	(a) Boise City, BSU, and Garden City (for respective jurisdiction)
(b) Highway Cleanup. Implement a program or programs, such as the Adopt-a-Highway program, to facilitate litter removal from selected highways two times a year or as needed.	— Upon the effective date of the permit.	(b) ACHD and ITD (for respective jurisdiction)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(c) Operation and maintenance program. Evaluate the effectiveness of the current level of road-sweeping activity on preventing pollutants from entering the storm sewer system.	— Within 18 months of the effective date of the permit.	(c) ACHD, Boise City, ITD, and BSU (for respective jurisdiction)
AREAS OF DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT (II.A.3)		
(a) Design Practice Manuals. Ensure that new development and significant re-development projects, designed by developers and contractors and others involved in land development activities, apply minimum requirements, standards, and procedures, as detailed in the respective design manuals, both during and after such land development activities.	— Two years from the effective date of the permit.	(a) ACHD, Boise City, and DD3 (with opportunity to adopt by reference part or all of Boise Storm Water Management Design Manual), Garden City
(b) Project review. Project review and approval process for new development and significant re-development shall be developed and adopted.	— Implemented within two years of the effective date of the permit.	(b) ACHD, Boise City, DD3, and Garden City
(c) Record Keeping. Develop and maintain an internal record keeping system to track all activity on project review and approval actions.	— System to be completed and in use two years from the effective date of the permit.	(c) ACHD, Boise City, DD3, and Garden City
ROADWAYS (II.A.4)		
(a) Management Practices. Evaluate ways to reduce pollutant discharges associated with road maintenance and rehabilitation operations. The program shall also include the management practices identified during the inventory of co-permittee-owned storm water facilities and audit of site activities listed in the permit application.	— Within two years of the effective date of the permit.	(a) ITD, ACHD, Boise City, and BSU (for respective systems)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(b) Snow and Ice Control and Removal Programs Monitor the application of chemicals and sand applied to roadways for snow and ice control. Implement programs for proper storage of de-icing materials to prevent materials from entering the storm sewer system (e.g., using covers or roofs for stockpiled materials). Research alternatives to salt for use in de-icing.	— Within two years of the effective date of the permit.	(b) ACHD, ITD, and BSU
FLOOD MANAGEMENT (II.A.5)		
(a) Inventory of Structural Flood Control Devices. Complete an inventory of all structural flood control devices within their jurisdiction to determine the feasibility of retrofitting such devices to provide additional pollutant removal.	— Within one year of the effective date of the permit.	(a) Each co-permittee is responsible for it own respective flood control facilities (except Garden City and ITD).
(b) Flood Management Projects. Develop procedures for flood management projects that assess the impacts to the water quality of the receiving water.	— Within one year of the effective date of the permit	(b) Each co-permittee is responsible for it own respective flood control facilities.
PESTICIDES, HERBICIDES, AND FERTILIZER APPLICATION (II.A.6)		
(a) Application Management. Develop a list of regionally appropriate landscaping plants and turf with information on appropriate application and timing of fertilizers.	— Within one year from the effective date of the permit.	(a) Boise City and Garden City (for respective jurisdictions)
(b) Distribution of Educational Materials. Distribute educational materials to applicators contracted by the co-permittee.	— This task shall be completed within 18 months of the effective date of the permit.	(b) Boise City and Garden City (for respective jurisdictions)
(c) Outreach Method Identification. Identify and utilize outreach methods to educate homeowners, and commercial businesses, on the impact of pesticides, herbicides, and fertilizers on aquatic resources, and means to decrease their usage.	— To be reported on annual report.	(c) Boise City and Garden City (for respective jurisdictions)

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
ILLICIT DISCHARGES AND IMPROPER DISPOSAL (II.A.7)		
(a) Inspection and Enforcement. Implement a program to inspect and enforce against illicit connections, including dry-weather screening, citizen reports, and employee training in the detection of illicit connections. If illicit connections are observed, co-permittees shall require their disconnection. The program shall inspect 20% or more of the known major outfalls per permit year, totaling 100% of outfalls by the conclusion of the first permit term.	— Upon the effective date of the permit.	(a) ACHD, Boise City, DD3, ITD, BSU, and Garden City (for respective systems)
Inventory all major outfalls within their jurisdiction.	— Within 6 months of the effective date of the permit.	
(b) Storm Water Management and Discharge Control Ordinance Enforcement. The City of Boise shall enforce Title 8, Chapter 15, The City of Boise Storm Water Management and Discharge Control Ordinance (adopted May 2000). The City of Garden City shall enforce the Garden City Code Title 4, Chapter 14, Ordinances for Storm Water Management and Discharge Control (adopted in September 1999).	— Upon the effective date of the permit.	(b) Boise City and Garden City for its respective ordinances
(d) Complaint Procedures. Implement a complaint manual to guide staff through recording, investigating and following up on complaints regarding violations reported by the general public. Publicize the availability of an approved complaint referral process and post notices informing the public of the existence of such resources. Utilize appropriately trained staff in operating such a complaint response program.	— Within one year from the effective date of the permit.	(d) Each permittee is responsible for developing a complaint manual for their respective system. Report forms shall be forwarded to the co-permittee with jurisdiction when appropriate.

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
SPILL PREVENTION AND RESPONSE (II.A.8)		
(a) Spill Response Task Group. Participate in an interagency spill response task group, to ensure that a coordinated response to spills is achieved, and impacts upon aquatic resources from spilled pollutants are controlled to the MEP.	— Upon the effective date of the permit or a maximum of one year from the effective date of the permit.	(a) Boise City, ACHD, DD3, ITD, Garden City, and BSU(reporting responsibility only)
INDUSTRIAL AND HIGH RISK RUNOFF (II.A.9)		
(a) Database of Facilities. Develop and maintain a database of priority industrial sites	— Within one year of the effective date of the permit.	(a) ACHD
(b) Inspection and Monitoring of High Risk Facilities. (i) Work together to inspect and monitor such facilities for compliance with the storm water ordinance and the NPDES industrial storm water general permit. (ii) Implement the MOU between the Ada County Highway District and the City of Boise.	— Inspection program to be developed and implementation begun within one year of the effective date of the permit. — Upon the effective date of the permit.	(b) (i) ACHD as lead agency Boise City and Garden City as participating agency within respective jurisdictions (ii) ACHD and City of Boise
(c) Educational Materials. Distribute the Storm water Commercial and Industrial Best Management Practices manual	— Upon the effective date of the permit.	(c) Garden City and Boise City (for respective jurisdiction)
(d) Shall develop, formalize, and implement an inspection program of high risk industrial and other commercial facilities. The inspection program may be developed utilizing state statutes, local ordinances, contracts, or joint powers agreements.	— Within a year of the effective date of the permit.	(d) ACHD and Garden City
CONSTRUCTION SITE RUNOFF (II.A.10)		
(a) Construction Site Discharge Control Program. Develop and implement a Construction Site Discharge Control Program.	— 18 months from the effective date of the permit.	(a) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)

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TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(b) Inspection and Compliance. Conduct inspections of construction sites.	— 18 months from the effective date of the permit.	(b) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)
(c) Database and Record Keeping. Maintain a database of all active and completed construction sites within their jurisdiction.	— within one year of the effective date of the permit.	(c) Boise City, Garden City, ACHD, and ITD (consistent with jurisdiction and authority)
PUBLIC EDUCATION (II.A.11)		
(a) Public Education Program. The plan shall include:	— Upon the effective date of the permit.	
(i) the distribution of public education flyers, inserts or booklets to householders regarding appropriate methods for disposing of used motor oil and similar substances,		(i) Boise City and Garden City in respective jurisdictions with participation by other co-permittees
(ii) programs and activities to promote awareness of locations where the drain discharges and promote importance of maintaining clean water resources. Examples of such activities and programs include a stenciling program and participation in educational forums such as "Water Awareness Week."		(ii) Boise City and Garden City in respective jurisdictions with participation by other co-permittees and ACHD and Boise City (as partners with statewide "Water Awareness Week" program)
(iii) promoting the collection and/or co composting of yard wastes from residential and commercial sites. Promoting the "Keep watershed clean" campaign, and distributing copies of flyers previously developed, including but not limited to, the Storm Water Ordinance, RiverCare Tips, and the Storm Water Trooper bookmark.	— Upon the effective date of the permit	(iii) Boise City

2900

TABLE III.A.
Storm Water Management Program — Schedules for Implementation and Compliance

STORM WATER MANAGEMENT PROGRAM COMPONENT	COMPLIANCE DATE	RESPONSIBILITY
(iv) Distribute the Storm Water Commercial and Industrial BMPs handbook to commercial and industrial facilities identified as priorities due to the nature of the industrial and commercial activities to be found at such sites. The city shall make the Storm Water Plant Materials - A Resource Guide available to other facilities, contractors, and developers.		(iv) Boise City
(v) Document complaints received from the general public regarding violations to the storm water ordinance, to follow up on such complaints, and detail actions taken.		(v) All co-permittees

PART IV. MONITORING AND REPORTING REQUIREMENTS

A. STORM EVENT DISCHARGES

1. Co-permittees shall implement a wet-weather monitoring program, or contract with another co-permittee to implement such a program, as described in the *Boise NPDES Municipal Storm Water Permit Monitoring Plan*, (Ada County Highway District, June 1998). This program shall provide data necessary to:
   - assess the effectiveness and adequacy of control measures implemented under the SWMP;
   - estimate annual cumulative pollutant loadings from the MS4;
   - estimate event mean concentrations and seasonal pollutants in discharges from major outfalls;
   - identify and prioritize portions of the MS4 requiring additional controls, and
   - identify water quality improvements or degradation.

   The co-permittees are responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the MS4. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this section, plus any additional monitoring conducted by the co-permittees.
2. A minimum of **three storm events per site per permit year** shall be analyzed for the parameters listed in Table IV.A. The samples shall be collected from five (5) sites located throughout the jurisdiction of the co-permittees. These sites are identified in Table IV.B. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the EPA in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Water Office Director, use of an alternate monitoring location may commence **thirty days from the date of the request.**

   a. *Sample Type, Collection, and Analysis:* The following requirements apply only to samples collected for Part IV.A.
      (1) For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.
      (2) Grab samples taken during the first two hours of discharge shall be analyzed separately for (if required) pH, temperature, oil & grease, E. coli, and volatile organics. For all other parameters, data shall be reported as flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.
      (3) All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

(4) Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, and other test procedures have not been specified, any available method may be used after approval from the EPA.

b. Quality Assurance Plan:

(1) Co-permittees shall develop a Quality Assurance Plan (QAP) for all monitoring requirements identified in the permit. The plan shall be completed and implemented within **120 days of the effective date of the permit.**

(2) At a minimum, the plan shall include the following:

- Protocols for sampling techniques (field blanks, replicates, duplicates, control samples, etc.),
- Sample preservation methods,
- Sample shipment procedures,
- Instrument calibration procedures and preventive maintenance (frequency, standard, spare parts),
- Qualification and training of personnel, and
- Analytical test methods with associated method detection limits (when not prescribed in Table IV.A) and quality control checks.

(3) Throughout all sample collection and analysis activities, co-permittees shall use the EPA approved quality assurance, quality control, and chain-of-custody procedures described in: *Requirements for Quality Assurance Project Plans*, EPA QA/R-5 and Guidance on *Quality Assurance Project Plans*, EPA QA/G-5. These documents are available on the EPA Region 10 website at: http://www.epa.gov/r10earth/offices/oea/r10qahome.htm or available by mail at:

Quality and Data Management Program
Office of Environmental Assessment
U.S. EPA, Region 10
1200 6th Avenue, OEA-095
Seattle, Washington 98101

(4) Co-permittees shall amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

(5) Copies of the QAP shall be kept on site and made available to EPA and/or Idaho Department of Environmental Quality (IDEQ) upon request.

c. *Sampling Waiver.* When a discharger is unable to collect samples required by Part IV.A. due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, blizzards, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

d. *Storm Event Data:* For Part IV.A, quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters listed above, the co-permittees shall maintain records of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the

end of the previous measurable (greater than 0.1 inch rainfall) storm event ; and an estimate of the total volume (in gallons) of the discharge sampled.

Table IV.A – Representative Monitoring Requirements

PARAMETER	SAMPLING FREQUENCY
Biochemical Oxygen Demand (BOD_5) (mg/l)	3 representative storm events/permit year
Chemical Oxygen Demand (COD) (mg/l)	3 representative storm events/permit year
Dissolved Oxygen (DO) (mg/l)	3 representative storm events/permit year
Total Suspended Solids (TSS) (mg/l)	3 representative storm events/permit year
Total Dissolved Solids (TDS) (mg/l)	3 representative storm events/permit year
Total Kjeldahl Nitrogen (TKN) (mg/l)	3 representative storm events/permit year
Total Phosphorus (mg/l)	3 representative storm events/permit year
Orthophosphate (mg/l)	3 representative storm events/permit year
Oil & Grease (mg/l)	3 representative storm events/permit year
Total Petroleum Hydrocarbons	3 representative storm events/permit year
Arsenic (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Cadmium (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Copper (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Lead (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Mercury (µg/l) — Total and Dissolved per EPA Method 200.8[1], 245.1 or 245.2	3 representative storm events/permit year
Nickel (µg/l) — Total and Dissolved per EPA Method 200.8[1]	3 representative storm events/permit year
Zinc (µg/l) — Total per EPA Method 200.8[1]	3 representative storm events/permit year
Organochlorine pesticides	3 representative storm events/permit year
Organphosphate pesticides per EPA Method 8141	3 representative storm events/permit year
E. coli, in col/100ml	3 representative storm events/permit year
pH (S.U.)	3 representative storm events/permit year
Discharge, Volume, in cubic feet	3 representative storm events/permit year
Hardness (as $CaCO_3$) (mg/l)	3 representative storm events/permit year
Temperature (• C)	3 representative storm events/permit year

Table IV.A – Representative Monitoring Requirements

PARAMETER	SAMPLING FREQUENCY
Volatile Organics as per EPA Method 8260	2/year, 2nd and 4th years of permit coverage
Base/Neutral Organics per EPA Method 8270	2/year, 2nd and 4th years of permit coverage
Acid Organics per EPA Method 8270	2/year, 2nd and 4th years of permit coverage
Pesticide Organics per EPA Method 8081 or Method 8270	2/year, 2nd and 4th years of permit coverage
Note: 1 Alternative Test Procedure approval is required of the lab or co-permittee prior to the submission of monitoring data using Method 200.8.	

Table IV.B – Representative Monitoring Outfall Descriptions

OUTFALL	LOCATION	RESPONSIBLE CO-PERMITTEE
001	51-N at Walnut Street	ACHD
002	Lucky Drive	ACHD
003	Koppel's	ACHD
004	Franklin Road	ACHD
005	Production Avenue	ACHD

B. SEDIMENT ANALYSIS

1. An analysis of sediments and decant water collected from storm water catch basins. The samples shall be collected by the lead sampling entity, as designated in the Cooperative Agreement, from a minimum of **three catch basins** representing residential, commercial, and industrial land uses within the permit area. The location and the rationale behind why the site was chosen shall be submitted to the address in Section IV.E **within six months of the effective date of the permit**. A minimum of **two samples per permit year** shall be collected and analyzed from the representative catch basins. Based upon the results obtained, co-permittees shall assess whether two samples per year can adequately characterize the wastes within the catch basin. Co-permittees shall report their findings in the annual reports following the years' activity. Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used. The following are to be sampled as part of this program:

total suspended solids,
total phosphorous,
ortho-phosphorous,
total petroleum hydrocarbons,
poly-aromatic hydrocarbons,
volatile organic compounds,
E. coli,
copper,
lead,
arsenic,
cadmium,
chromium,
nickel, and
zinc.

Co-permittees shall use the results from the analyses as part of an assessment of the BMPs employed as part of the storm water management program outlined in II.A.1 through 11. Co-permittees shall coordinate amongst themselves to ensure that results are disseminated and to ensure that personnel representing all of the departments and agencies having a role in the storm water management program are aware of the findings. In addition, co-permittees shall report all findings, and actions taken as a result of the findings, in the annual report.

C. FLOATABLES

1. *Floatable monitoring program*: Co-permittees shall establish a minimum of **two monitoring locations** within the permit area to be sampled by the lead sampling entity as designated in the Cooperative Agreement. Co-permittees shall remove floatable material in discharges to or from the MS4 at the frequency necessary for maintenance of the removal devices, but not less than twice per year. The amount of material collected shall be estimated in cubic yards.

2. *Annual Report*: Co-permittees shall submit, within the annual report required by Part IV.E, the following information:

   a. Percent of MS4 screened during the year and the cumulative percent of system screened;
   b. An estimate of the amount of floatable material collected (cubic yards);
   c. A summary of results and actions taken or proposed based on the results of the wet weather screening program.

D. DRY WEATHER DISCHARGES

1. *Dry Weather Screening Program:* Co-permittees shall implement a dry weather screening program, or contract with another co-permittee to implement such a program. The program shall detect the presence of illicit connections and improper discharges to the MS4. Co-permittees shall ensure compliance with the program element by inspecting (or contracting with another co-applicant to inspect) 20% or more of the major outfalls per permit year, totaling 100% of all major outfalls by the conclusion of the first permit term.

2. *Follow-up on Dry Weather Screening Results:* The dry weather program will also include the elimination of suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Each year's results shall be included in the corresponding annual report. Follow-up activities should be prioritized on the basis of:

   a. magnitude and nature of the suspected discharge;
   b. sensitivity of the receiving water; and
   c. other relevant factors.

E. ANNUAL REPORT

1. Within one **(1) year of the effective date of this permit**, and annually thereafter, Permittees shall prepare and submit to EPA and IDEQ an Annual Report postmarked by the 10th day of the following month. In addition, copies of all annual reports, including monitoring summaries, shall be available to the public through the municipal library system. The Annual Report shall include, at a minimum:

   a. The status of implementing the components of the Storm Water Management Program that are established as Permit conditions;
   b. Proposed changes to the Storm Water Management Program required by this Permit. Such proposed changes shall be consistent with 40 CFR § 122.26(d)(2);
   c. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the Part 2 of the Permit Application;
   d. A summary of the data that co-permittees accumulated throughout the reporting year;
   e. Annual expenditures and budget for the year following each annual report;
   f. A summary describing the number and nature of enforcement actions, inspections, and public education programs, including copies of all educational materials distributed in conjunction with efforts to reduce pollutant discharges to the MS4;
   g. Identification of water quality improvements or degradation;
   h. A summary of all storm event monitoring conducted throughout the year in a format that includes the requirements of Section I.A as well as a signature of the person responsible for data quality, parameter name, monitoring location, unit of measurement, sample type, method used, and date of sample collection; and
   i. All other information required by this Permit to be submitted with the Annual Report[1].

2. Preparation and submittal of a system-wide annual report shall be coordinated by **Ada County Highway District**. The report shall indicate which, if any, co-permittees have failed to provide required information on those portions of the MS4 for which they are responsible, by 45 days prior to the report due date. Joint responsibility for report submission shall be limited to participation in preparation of the overview for the entire system and inclusion of the identity of any co-permittee who failed to provide input to

[1] Please note that different sections of the permit contain requirements to submit different documents and programs in different annual reports.

the annual report. Each individual co-permittee shall be individually responsible for content of the report relating to the portions of the MS4 for which they are responsible and for failure to provide information for the system-wide annual report in a timely manner.

3. Signed copies of monitoring summaries, the annual report, requests for SWMP modification, requests for changes in monitoring locations, and all other reports required herein, shall be submitted to:

U.S. EPA, Region 10
Office of Water
NPDES Compliance Unit (OW-133)
1200 6th Avenue
Seattle, Washington 98101

Idaho Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 98706-1256

F. CERTIFICATION AND SIGNATURE OF REPORTS. All reports required by the permit and other information requested by the Water Office Director shall be signed and certified in accordance with Parts V.K. and V.L. of the permit.

PART V. STANDARD PERMIT CONDITIONS.

A. DUTY TO COMPLY. Except as provided in permit conditions in Part V.M Bypass of Treatment Facilities and Part V.N Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

1. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $27,500 per day for each violation).

2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §

3701 note) (currently $11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $27,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $137,500).

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

b. Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

c. Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

d. False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this

permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

B. DUTY TO REAPPLY. If co-permittees intend to continue an activity regulated by this permit after the expiration date of this permit, such entities must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the co-permittees must submit a new application at least **180 days before the expiration date** of the permit or in conjunction with the **fourth annual report.** The reapplication package shall contain the information required of 40 CFR 122.21(f) which includes: name and mailing address(es) of the permittee(s) that operate the MS4, and names and titles of the primary administrative and technical contacts for the municipal permittee(s). In addition, permittees shall identify any previously unidentified water bodies that receive discharges from the MS4, a summary of any known water quality impacts on the newly identified receiving waters, a description of any changes in co-applicants, and the identification number of the existing NPDES MS4 permit. The reapplication package may incorporate by reference the fourth annual report when the reapplication requirements can found within such report.

C. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE. It shall not be a defense for a co-permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. DUTY TO MITIGATE. Co-permittees shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. PROPER OPERATION AND MAINTENANCE. Each co-permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by co-permittees to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by co-permittees only when the operation is necessary to achieve compliance with the conditions of the permit.

F. PROPERTY RIGHTS. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.

G. TRANSFERS. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).

H. DUTY TO PROVIDE INFORMATION. Co-permittees shall furnish to the Water Office Director and IDEQ, within the time specified in the request, any information which the Water Office Director or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. Co-permittees shall also furnish to the Water Office Director or IDEQ, upon request, copies of records required to be kept by this permit.

I. OTHER INFORMATION. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director or IDEQ, it must promptly submit the omitted facts or corrected information.

J. INSPECTION AND ENTRY. Co-permittees shall allow the Water Office Director, IDEQ, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon co-permittees' premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

K. MONITORING AND RECORDS.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The co-permittees shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit,

whichever is longer. This period may be extended by request of the Director or IDEQ at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;
   b. The name(s) of the individual(s) who performed the sampling or measurements;
   c. The date(s) analyses were performed;
   d. The names of the individual(s) who performed the analyses;
   e. The analytical techniques or methods used; and
   f. The results of such analyses.

L. SIGNATORY REQUIREMENT. All applications, reports or information submitted to the Director and IDEQ shall be signed and certified.

1. All permit applications shall be signed as follows:

   a. For a corporation: by a responsible corporate officer.

   b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

   c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or IDEQ shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Director and IDEQ, and

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the organization.

3. Changes to authorization. If an authorization under Part V.J.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.J.2. must be submitted to the Regional Administrator and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

M. CERTIFICATION. Any person signing documents under this section shall make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

N. REPORTING REQUIREMENTS.

1. Planned changes. Co-permittees shall give notice to the Water Office Director and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

   a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
   b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR § 122.42(a)(1).

2. Anticipated noncompliance. Co-permittees shall give advance notice to the Water Office Director and IDEQ of any planned changes in the permitted facility or activity which may result in noncompliance with this permit.

3. Transfers. This permit may be automatically transferred to a new permittee if:

   a. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
   b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
   c. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit.

   If the notice described in paragraph c above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b above.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

   a. Monitoring results must be reported on a DMR or other form provided or specified by the Water Office Director for reporting results of monitoring of sludge use or disposal practices.

b. If co-permittees monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR specified by the Water Office Director.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Water Office Director in the permit.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour notice of noncompliance reporting.

a. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:

(i) any noncompliance that may endanger health or the environment;

(ii) any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");

(iii) any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or

(iv) any violation of a maximum daily discharge limitation for any of the pollutants

b. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:

(i) a description of the noncompliance and its cause;

(ii) the period of noncompliance, including exact dates and times;

(iii) the estimated time noncompliance is expected to continue if it has not been corrected; and

(iv) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.

d. Reports must be submitted to the addresses in Part IV.E ("Annual Report").

7. Other noncompliance reporting. The co-permittee(s) must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring

reports for Part IV.E are submitted. The reports must contain the information listed in Part V.L.6 of this permit.

O. BYPASS

1. Bypass not exceeding limitations. Co-permittees may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice

   a. Anticipated bypass. If co-permittees know in advance of the need for a bypass, co-permittees shall submit prior notice, if possible at least ten days before the date of the bypass.
   b. Unanticipated bypass. Co-permittees shall submit notice of an unanticipated bypass as required in Part V.L.6 ("24-hour notice of noncompliance reporting").

3. Prohibition of bypass.

   a. Bypass is prohibited, and the Water Office Director or IDEQ may take enforcement action against a co-permittee for bypass, unless:
      (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
      (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
      (3) Co-permittees submitted notices as required under paragraph 2 of this Part.
   b. The Water Office Director may approve an anticipated bypass, after considering its adverse effects, if the Water Office Director determines that it will meet the three conditions listed above in paragraph 3.a of this Part.

P. UPSET

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part V.N.3 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A co-permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a. An upset occurred and that co-permittees can identify the cause(s) of the upset;
   b. The permitted facility was at the time being properly operated;

c. Co-permittees submitted 24-hour notice of the upset as required in Part V.L.6 of this permit (24-hour notice of noncompliance reporting); and
d. Co-permittees complied with any remedial measures required under Part V.D ("Duty to mitigate") of this permit.

3. Burden of proof. In any enforcement proceeding co-permittees seeking to establish the occurrence of an upset has the burden of proof.

Q. SEVERABILITY. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

R. STATE AND ENVIRONMENTAL LAWS. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve co-permittees from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act, 33 U.S.C. § 1370.

S. ADDITIONAL MONITORING BY CO-PERMITTEES. If co-permittees monitor more frequently than required by this permit, using test procedures approved under 40 CFR Part 136, or equivalent, or as specified in this permit, the results of this monitoring shall be included with the data submitted as part of the annual report required by Part IV.E of this permit.

Upon request by the Director, the permittee must submit results of any other sampling, regardless of the test method used.

PART VI. PERMIT MODIFICATION

A. MODIFICATION OF THE PERMIT. The permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR §§122.62, 122.64 and 124.5. The filing of a request by co-permittees for a permit modification, revocation and re-issuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. TERMINATION OF COVERAGE FOR A SINGLE CO-PERMITTEE. Permit coverage may be terminated, in accordance with the provisions of 40 CFR §§122.64 and 124.5, for a single co-permittee without terminating coverage for other co-permittees.

PART VII. DEFINITIONS

The following definitions apply to this permit. Except as otherwise specifically provided, terms used in this permit but not defined by this Part shall have the meaning ascribed to them by Section 502 of the Clean Water Act (33 U.S.C. § 1362), 40 CFR § 122.2, and 40 CFR § 122.26(b). These statutory and regulatory definitions are incorporated herein by reference. Some of the statutory and regulatory term definitions are included here for convenience.

"Act" means the Clean Water Act.

"Administrator" means the Administrator of the EPA, or an authorized representative.

"Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"BMPs" is an acronym for Best Management Practices.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"CWA" means Clean Water Act (also referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

"Director" means the Director of the Office of Water, EPA, or an authorized representative.

"Discharge" means discharge from the Municipal Separate Storm Sewer System (MS4).

"DMR" means discharge monitoring report.

"EPA" means the United States Environmental Protection Agency.

"Flood management project" means a project that takes into account the effects on the water quality of the receiving water body(s) and whether or not the structural flood control device can be retrofitted to control water quality.

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Grab" sample means an individual sample collected over a period of time not exceeding 15 minutes.

"IDEQ" means the Idaho Department of Environmental Conservation.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Individual residence" means a single or multi-family residences (e.g., single family homes and duplexes, town homes, apartments, etc.).

"Major outfalls," means municipal separate storm sewer outfalls that discharge from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), outfalls that discharge from a single pipe with an inside diameter of 12 inches or more or its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

"Maximum Extent Practicable," is the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p).

"MEP," is an acronym for "Maximum Extent Practicable."

"Method detection limit (MDL)" mean the minimum concentration of a substance (analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and an acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed.

"MS4" is an acronym for "municipal separate storm sewer system."

"Municipal separate storm sewer system"means the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by the co-permittees; (ii) designed or used for collecting or conveying storm water; (iii) which is not part of a combined sewer; and (iv) which is not part of a Publically Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

"Permit year" means the year beginning from the day and month the permit becomes effective.

"QA/QC" means quality assurance/quality control

"Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural

resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Storm sewer," unless otherwise indicated, refers to a municipal separate storm sewer.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Management Program" means the SWMP required by Part II of the permit.

"Structural flood control device" means a device which has been designed and installed for the purpose of storm drainage during storm events.

"SWMP" is an acronym for "Storm Water Management Program."

"Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of co-permittees. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Water Office Director" means the Director of the Office of Water United States Environmental Protection Agency, Region 10, or an authorized representative of the Director.

"Waters of the United States" is defined at 40 CFR 122.2.

"24-hour composite" sample means a combination of at least 8 discrete sample aliquots of at least 100 milliliters, collected over periodic intervals from the same location, during the operating hours of a facility over a 24 hour period. The composite must be flow proportional. The sample aliquots must be collected and stored in accordance in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater*.

Massachusetts

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Clean Water Act, as amended, 33 U.S.C. §§1251 et seq., and the Massachusetts Clean Waters Act, as amended, Mass. Gen. Laws. ch. 21, §§26-53, the

Boston Water and Sewer Commission

is authorized to discharge from all of its new or existing separate storm sewers: **195 identified Separate Storm Sewer Outfalls and associated receiving waters are Listed in Attachment A** to receiving waters named: **Belle Island Inlet, Boston Harbor, Boston Inner Harbor, Brook Farm Brook, Bussey Brook, Canterbury Brook, Chandler's Pond, Charles River, Chelsea River, Cow Island Pond, Dorchester Bay, Fort Point Channel, Goldsmith Brook, Jamaica Pond, Little Mystic Channel, Mill Pond, Millers River, Mother Brook, Muddy River, Mystic River, Neponset River, Old Harbor, Patten's Cove, Reserved Channel, Sprague Pond, Stony Brook, Turtle Pond and unnamed wetlands, brooks and streams.**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective 30 days from date of signature.

This permit and the authorization to discharge expire at midnight, five years from the effective date.

This permit consists of **20** pages and **Attachment A** in Part I including monitoring requirements, etc., and 35 pages in Part II including General Conditions and Definitions.

Signed this 29 day of September, 1999

Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

Director, Division of
Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

PART I. MUNICIPAL SEPARATE STORM SEWER SYSTEM

A. DISCHARGES THROUGH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AUTHORIZED UNDER THIS PERMIT

1. Permit Area. This permit covers all areas within the corporate boundary of the City of Boston or otherwise contributing to new or existing separate storm sewers owned or operated by the Boston Water and Sewer Commission, the "permittee".

2. Authorized Discharges. This permit authorizes all storm water discharges to waters of the United States from all existing or new separate storm sewer outfalls owned or operated by the permittee (existing outfalls are identified in Attachment A). This permit also authorizes the discharge of storm water commingled with flows contributed by wastewater or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits and are in compliance with applicable Federal, State and Boston Water and Sewer Commission regulations (Regulations Regarding the Use of Sanitary and Combined Sewers and Storm Drains of the Boston Water and Sewer Commission). The permittee shall provide a notification to EPA and MA DEP of all new separate storm sewer outfalls as they are activated and of all existing outfalls which are de-activated. The annual report (Part I.E.) will reflect all of the changes to the number of outfalls throughout the year.

3. Limitations on Coverage. Discharges of non-storm water or storm water associated with industrial activity through outfalls listed at Attachment A are not authorized under this permit except where such discharges are:

   a. authorized by a separate NPDES permit; or

   b. identified by and in compliance with Part I.B.2.g.2 of this permit.

B. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to develop and implement a storm water pollution prevention and management program designed to reduce, to the maximum extent practicable the discharge of pollutants from the Municipal Separate Storm Sewer System. The permittee may implement Storm Water Management Program (SWMP) elements through participation with other public agencies or private entities in cooperative efforts satisfying the requirements of this permit in lieu of creating duplicate program elements. Either cumulatively, or separately, the permittee's storm water pollution prevention and management programs shall satisfy the requirements of Part I.B.1-7. below for all portions of the Municipal Separate Storm Sewer System (MS4) authorized to discharge under this permit and shall reduce the discharge of pollutants to the maximum extent practicable. The storm water pollution prevention and management program requirements of this Part shall be implemented through the SWMP submitted as part of the permit application and revised as necessary.

1. POLLUTION PREVENTION REQUIREMENTS The permittee shall develop and implement the following pollution prevention measures as they relate to discharges to the separate storm sewer:

a. Development The permittee shall assist and coordinate with the appropriate municipal agencies with jurisdiction over land use to ensure that municipal approval of all new development and significant redevelopment projects within the City of Boston which discharge to the MS4 is conditioned on due consideration of water quality impacts. The permittee shall cooperate with appropriate municipal agencies to ensure that development activities conform to applicable state and local regulations, guidance and policies relative to storm water discharges to separate storm sewers. Such requirements shall limit increases in the discharge of pollutants in storm water as a result of new development, and reduce the discharge of pollutants in storm water as a result of redevelopment.

b. Used Motor Vehicle Fluids The permittee shall coordinate with appropriate municipal agencies or private entities to assist in the implementation of a program to collect used motor vehicle fluids (including, at a minimum, oil and antifreeze) for recycle, reuse, or proper disposal. Such program shall be readily available to all residents of the City of Boston and publicized and promoted at least annually.

c. Household Hazardous Waste (HHW) The permittee shall coordinate with appropriate municipal agencies or private entities to assist in the implementation of a program to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal and promote proper handling and disposal. Such program shall be readily available to all private residents. This program shall be publicized and promoted at least annually.

2. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS: The permittee shall continue to implement the Storm Water Management Program (SWMP) which it described in its May 17, 1993 storm water permit application and updated June 1995 and June 1998 in accordance with Section 402(p)(3)(B) of the Clean Water Act (CWA or "the Act"). This SWMP outlined in the permit application, including all updates, is approvable upon issuance of this permit.

In accordance with Part I.E. Annual Report, no later than **March 1, 2000** the permittee shall describe all the updates which it has conducted and all additional measures it will take to satisfy the requirements of this permit and the goals of the storm water management program. The Controls and activities identified in the SWMP shall clearly identify goals, a description of the controls or activities, and a description of the roles and responsibilities of other entities' areas of applicability on a system, jurisdiction, or specific area basis. The permittee will specifically address its roles and activities as they relate to portions of the SWMP which are not under its direct control (e.g. street sweeping, HHW collection, development, redevelopment). The permit may be modified to designate the agencies that administer these programs as co-permittees or require a separate permit. These entities would then be responsible for applicable permit conditions and requirements. The SWMP, and all approved updates, are hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

a. Statutory Requirements: The SWMP shall include controls necessary to reduce the discharge of pollutants from the Municipal Separate Storm Sewer System to the Maximum Extent Practicable (MEP). Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, Director or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet this standard. The SWMP shall be updated as necessary to ensure conformance with the requirements of CWA § 402(p)(3)(B). The permittee shall select measures or controls to satisfy the following water quality prohibitions:

No discharge of toxics in toxic amounts.

No discharge of pollutants in quantities that would cause a violation of State water quality standards.

No discharge of either a visible oil sheen, foam, or floating solids, in other than trace amounts.

b. Structural Controls: The permittee shall operate and maintain all storm water structural controls which it owns or operates in a manner so as to reduce the discharge of pollutants to the MEP.

c. Areas of New Development and Significant Redevelopment: The permittee shall continue to implement its site plan review process and ensure compliance with its existing regulations. The permittee shall also coordinate with appropriate municipal agencies to assist in the development, implementation, and enforcement of controls to minimize the discharge of pollutants to the separate storm sewer system from areas of new development and significant re-development during and after construction. The permittee shall assist appropriate municipal agencies to ensure that development activities conform to applicable state and local regulations, guidance and policies relative to storm water discharges to separate storm sewers.

d. Roadways: The permittee shall coordinate with appropriate agencies to assist in the implementation of measures to ensure that roadways and highways are operated and maintained in a manner so as to minimize the discharge of pollutants to the separate storm sewer system (including those related to deicing or sanding activities).

e. Flood Control Projects: The permittee shall ensure that any flood management projects within its direct control are completed after consideration of impacts on the water quality of receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices it owns or operates to provide additional pollutant removal from storm water.

f. Pesticide, Herbicide, and Fertilizer Application: The permittee shall cooperate with appropriate municipal agencies to evaluate existing measures to reduce the discharge of pollutants related to the application of pesticides, herbicides, and fertilizers applied by municipal or public agency employees or contractors to public right of ways, parks, and other municipal facilities. The permittee shall evaluate the necessity to implement controls to reduce discharge of pollutants related to the application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators. The permittee shall require controls, within its authority, as necessary.

g. Illicit Discharges and Improper Disposal: The permittee shall continue to implement its program to detect and remove illicit discharges (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for the discharge) and improper disposal into the separate storm sewer.

1. The permittee shall effectively prohibit non-storm water discharges to the Municipal Separate Storm Sewer System, other than those authorized under this permit or a separate NPDES permit.

2. Unless identified by either the permittee, the Director, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges are authorized to enter the MS4. As necessary, the permittee may incorporate appropriate control measures in the SWMP to ensure these discharges are not significant sources of pollutants to waters of the United States.

(a) water line flushing;
(b) landscape irrigation;
(c) diverted stream flows;
(d) rising ground waters;
(e) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;

(f) uncontaminated pumped ground water;
(g) discharges from potable water sources;
(h) foundation drains;
(i) uncontaminated air conditioning or compressor condensate;
(j) irrigation water;
(k) uncontaminated springs;
(l) water from crawl space pumps;
(m) footing drains;
(n) lawn watering;
(o) non-commercial car washing;
(p) flows from riparian habitats and wetlands;
(q) swimming pool discharges which have been dechlorinated;
(r) street wash waters;
(s) discharges or flows from emergency fire fighting activities;
(t) fire hydrant flushing; and
(u) building washdown water which does not contain detergents.

3. The permittee shall prevent unpermitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall implement a program to identify and limit the infiltration of seepage from sanitary sewers into the MS4.

4. The permittee shall prohibit the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal wastes into separate storm sewers. The permittee must demonstrate that the prohibition is publicized at least annually, and that the information is available for non-English speaking residents of the City.

5. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. The permittee shall describe its procedure for identification and elimination of illicit discharges. This information shall be included in the annual report required under Part I.E. below. Where elimination of an illicit connection within sixty (60) days is not possible, the permittee shall establish a schedule for the expeditious removal of the discharge. In the interim, the permittee shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

h. Spill Prevention and Response: The permittee shall cooperate with appropriate federal, state, and municipal agencies in the development and implementation of a program to prevent, contain, and respond to spills that may discharge into or through the MS4. The spill response program may include a combination of spill response actions by the permittee (and/or other public or private entities), and requirements for private entities through the permittee's sewer use regulations. Except as explicitly authorized, materials from spills may not be discharged to Waters of the United States.

i. Industrial & High Risk Runoff: In cooperation with the DEP and EPA, the permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from municipal landfills; hazardous waste treatment, storage, disposal and recovery facilities and facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee determines is contributing a substantial pollutant loading to the MS4. The program shall include:

1. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

2. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

(a) any pollutants for which the discharger may monitor or which are limited in an existing NPDES permit for an identified facility;

(b) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv);

(c) any pollutant the permittee has a reasonable expectation is discharged in substantial quantity from the facility to the separate storm sewer system.

Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. The permittee may require the industrial facility to conduct self-monitoring to satisfy this requirement.

j. Construction Site Runoff: The permittee shall continue to implement its site plan review process and ensure compliance with its existing regulations. The permittee shall also cooperate with appropriate municipal agencies in the development and implementation of a program to reduce the discharge of pollutants from construction sites to the MS4, including:

1. requirements for the use and maintenance of appropriate structural and non-structural best management practices to reduce pollutants discharged to the MS4 during the time construction is underway;

2. procedures for site planning which incorporate considerations for potential short term and long term water quality impacts and measures to minimize these impacts;

3. prioritized inspection of construction sites and enforcement of control measures as required by the permittee;

4. providing assistance to appropriate municipal agencies in the development of education and training measures for construction site operators; and

5. providing assistance to appropriate municipal agencies in the development of a notification to appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

k. Public Education: The permittee, in coordination with other appropriate municipal agencies, shall implement a public education program including, but not limited to:

1. A program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4 (e.g. curb inlet stenciling, citizen "streamwatch" groups, "hotlines" for reporting dumping, outreach materials included in billings, advertising on public access/government cable channels, etc.);

2. a program to promote, publicize, and facilitate the proper management and disposal of used oil, vehicle fluids and lubricants, and household hazardous wastes;

3. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers;

4. where applicable and feasible, the permittee should publicize those best management practices (including but not limited to the use of reformulated or redesigned products, substitution of less toxic materials, and improvements in housekeeping) developed by municipal agencies or environmental organizations that facilitate better use, application, and/or disposal of materials identified in k.1 - k.3 of this section.

3. DEADLINES FOR PROGRAM COMPLIANCE: Except as provided in PART II, and Part I.B.7. the permittee shall continue to implement its Storm Water Management Program.

4. ROLES AND RESPONSIBILITIES OF PERMITTEE: The Storm Water Management Program shall clearly identify the roles and responsibilities of the permittee and appropriate municipal agencies impacting its efforts to comply with this permit.

5. LEGAL AUTHORITY: The permittee has demonstrated and shall maintain legal authority to control discharges to and from those portions of the MS4 which it owns or operates. This legal authority may be a combination of statute, regulation, permit, contract, or an order to:

a. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit illicit discharges to the MS4;

c. As necessary, control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;

d. Control through interagency or inter-jurisdictional agreements the contribution of pollutants from one portion of the MS4 to another;

e. Require compliance with conditions in regulations, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

6. STORM WATER MANAGEMENT PROGRAM RESOURCES The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement its SWMP.

7. STORM WATER MANAGEMENT PROGRAM REVIEW AND MODIFICATION

a. Demonstration Project: Within 180 days of the effective date of the permit, the permittee shall submit a plan to assess the effectiveness of existing non-structural BMPs. This plan shall identify a drainage area or sub-area which has undergone an investigation for illicit connections and is believed to be reasonably free of sanitary sewer influence. The plan shall clearly specify activities to be conducted, responsible parties and method of assessment. The project shall commence within one year of the effective date of the permit and continue for at least one year. Within 90 days of project completion the permittee shall submit a report which identifies measures undertaken and effectiveness of those measures.

b. Program Review: The permittee shall participate in an annual review of its current SWMP in conjunction with preparation of the annual report required under Part I.E. This annual review shall include:

1. A review of the status of program implementation and compliance with program elements and other permit conditions as necessary;

2. An assessment of the effectiveness of controls established by the SWMP;

3. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

4. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the maximum extent practicable (MEP).

5. An assessment of staff and funding levels adequate to comply with the permit conditions.

c. Program Modification: The permittee may modify the SWMP in accordance with the following procedures:

1. The approved SWMP shall not be modified by the permittee(s) without the prior approval of the Director, unless in accordance with items c.2. or c.3. below.

2. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the Director.

3. Modifications replacing or eliminating an ineffective or infeasible BMP specifically identified in the SWMP with an alternative BMP may be requested at any time. Unless the Director comments on or denies the request within 60 days from submittal, the permittee shall implement the modification and proposed schedule. Such requests must include the following:

(a) an analysis of why the BMP is ineffective or infeasible (including cost considerations),

(b) expectations on the effectiveness of the replacement BMP and proposed schedule for implementation, and

(c) an analysis of why the replacement of the BMP is expected to achieve the goals of the BMP to be replaced,

(d) in the case of an elimination of the BMP, an analysis of why the elimination is not expected to cause or contribute to a water quality impact.

4. Modification requests and/or notifications must be made in writing and signed in accordance with Part II.D.2.

d. Modifications required by the Permitting Authority: The Director or the State may require the permittee to modify the SWMP as needed to:

1. Address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;

2. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

3. Include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Modifications required by the Director shall be made in writing and set forth a time schedule for the permittee to develop the modification(s).

C. WET WEATHER MONITORING AND REPORTING REQUIREMENTS

1. Storm Event Discharges. The permittee shall implement a wet-weather monitoring program for the MS4 to provide data necessary to assess the effectiveness and adequacy of control measures implemented under the SWMP; estimate annual cumulative pollutant loadings from the MS4; estimate event mean concentrations and seasonal pollutants in discharges from all outfalls; identify and prioritize portions of the MS4 requiring additional controls, and identify water quality improvements or degradation. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this section, along with any additional pertinent information. There have been no numeric effluent limits established for this permit. Further monitoring or effluent limits may be established to ensure compliance with the goals of the Clean Water Act, appropriate Water Quality Standards, or applicable technology based requirements.

a. Representative Monitoring: Within 90 days after the effective date of this permit, the permittee shall submit a proposed sampling plan. The permittee shall monitor a minimum of five (5) representative drainage areas to characterize the quality of storm water discharges from the MS4. The proposed sampling plan shall consider monitoring each site three (3) times a year for a period of at least two years. All five sites shall be completed within the five year permit term and may be done partially or consecutively. The permittee shall choose locations representing the different land uses or is representative of drainage areas served by the MS4. The permittee may submit an alternative plan for sampling frequency only subject to the approval of EPA and DEP. At a minimum, the monitoring program shall analyze for the following parameters: pH, Temperature, Dissolved Oxygen, Total Suspended Solids, BOD5, COD, Fecal Coliform, Total Nitrogen, Nitrate/Nitrite, Ammonia (as N), Total Phosphorous, Ortho-Phosphate, Oil and Grease, Total Petroleum Hydrocarbons, Surfactants, Fluoride, Copper, and Zinc. Unless commented on or denied by the Director within 60 days after its submittal, the proposed sampling plan shall be deemed approved. This monitoring program shall commence no later than 180 days from the effective date of the permit unless otherwise specified by EPA and DEP. Subsequent monitoring locations and parameters for the remainder of the permit term shall be determined based upon the results of these sampling locations and other water quality information available to EPA, DEP and the permittee.

b. Receiving Water Quality Monitoring. The permittee shall monitor a minimum of four (4) receiving waters three (3) times a year throughout the permit term to characterize the water quality impacts of storm water discharges from the MS4. Sampling shall be conducted during a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (0.1 inch) storm event. Within 90 days after the effective date of this permit, the permittee shall submit its proposed sampling plan. At a minimum, the monitoring program shall analyze for the following parameters: pH, Temperature, Dissolved Oxygen, Total Suspended Solids, BOD5, COD, Fecal Coliform, Total Nitrogen, Nitrate/Nitrite, Ammonia (as N), Total Phosphorous, Ortho-Phosphate, Oil and Grease, Total Petroleum Hydrocarbons, Surfactants, Fluoride, Copper, and Zinc. Unless commented on or denied by the Director within 60 days after its submittal, the proposed sampling plan shall be deemed approved. This monitoring program shall commence no later than six months after the effective date of the permit.

c. Alternate Representative Monitoring: Monitoring locations may be substituted for just cause during the term of the permit. Requests for alternate monitoring locations by the permittee shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless commented on or denied by the Director, use of an alternate monitoring location may commence sixty (60) days from the date of the request.

2. Storm Event Data: For Part I.C.1.a Data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. The permittee shall maintain records of the date and duration (hours) of the storm event sampled; rainfall measurements or estimates (inches) of the storm event which generated the sampled runoff; the duration (hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and the total estimated volume (in gallons) of the discharge sampled. If manual sampling is employed, the permittee shall record physical observations of the discharge such as color and smell; and visible water quality impacts such as floatables, oil sheen, or evidence of sedimentation in the vicinity of the outfall (e.g. sandbars).

3. Sample Type, Collection, and Analysis: The following requirements apply to samples collected pursuant to Part I.C.1.a.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples shall be used for the analysis of pH, temperature, cyanide; total phenols, residual chlorine, oil & grease, fecal coliform, and fecal streptococcus. For all other parameters, data shall be reported for flow weighted composite samples of the entire event or, at a minimum, the first three hours of discharge.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be conducted in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

4. Sampling Waiver. When the permittee is unable to collect samples required by Part I.C.1.a due to adverse climatic conditions, the discharger must submit, in lieu of sampling data, a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

5. Sampling Results. The permittee shall record the results of sampling and assessment of the data in a report and submit results with its Annual Report.

6. Wet Weather Screening: The permittee shall develop and implement a program to identify, investigate, and address areas within their jurisdiction that may be contributing excessive levels of pollutants to the MS4 as a result of rainfall or snow melt. Screening shall be conducted at anytime precipitation causes a flow from the storm sewer. At a minimum the wet weather screening program:

a. shall screen all major outfalls at least once during the permit term;

b. shall record the structural integrity of the outfall (if visible); physical observations of the discharge (if visible) such as color and smell; and visible water quality impacts such as floatables, oil sheen, or evidence of sedimentation in the vicinity of the outfall (e.g. sandbars).

c. shall summarize the results of the program in its Annual Report.

d. The permittee may submit an alternate wet weather screening pilot program on a watershed or sub-watershed basis. The pilot project concept must be submitted to EPA and DEP within 90 days of the effective date of the permit. The permittee shall identify reasons it believes that a system wide screening program would not be effective. The pilot project may be conducted in conjunction with Receiving Water Quality Monitoring (C.1.b.), but not Representative Monitoring(C.1.a.)

D. DRY WEATHER DISCHARGES

1. Dry Weather Screening Program: At least once during the permit term, the permittee shall inspect all major outfalls, or nearest upstream location not subject to tidal influence or backflow, during dry weather to identify those outfalls with dry weather flow. Dry weather screening shall be conducted when there has been no greater than 0.10 inches of precipitation in the 72 hours prior to screening. The permittee shall record the structural integrity of the outfall (if visible). If flow is observed, the permittee shall record physical observations such as color, visible sheen, turbidity, floatables, smell, and an estimate of flow. If sewage is suspected, the permittee shall develop a schedule for follow-up activities to eliminate the source as soon as is practicable. The permittee shall summarize the results in its Annual Report

2. Screening Procedures: Screening methodology need not conform to the protocol at 40 CFR §122.26(d)(1)(iv)(D) or sample and collection methods of 40 CFR §136.

3. Follow-up on Dry Weather Screening Results: Follow-up activities shall be prioritized on the basis of:

   a. magnitude and nature of the suspected discharge;

   b. sensitivity of the receiving water; and

   c. other factors the permittee deems appropriate.

4. The permittee shall summarize the results of dry weather screening and submit with its Annual Report.

E. ANNUAL REPORT:

The permittee shall prepare and submit an annual report to be submitted by no later than **March 1, 2000** and annually thereafter. The report shall include the following separate sections, with an overview for the entire MS4:

1. The status of implementing the storm water management program(s);

2. Proposed changes to the storm water management program(s);

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. A summary of the data, including monitoring or screening data, that is accumulated throughout the reporting year;

5. A revised list of all current separate storm sewer outfalls and their locations, reflecting changes of the previous year.

6. Annual expenditures for the reporting period, with a breakdown of the major elements of the storm water management program, and the budget for the year following each annual report as well as an assessment of adequacy of staffing and equipment;

7. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

8. Identification of water quality improvements or degradation attributable to the permittee;

9. An analysis of the effectiveness and removal efficiencies of structural controls owned or operated by the permittee (such as the off-line particle separator in Fenwood Road); and,

10. An update on the illicit connection program to include the total number of identified connections with an estimate of flow for each, total number of connections found in the reporting period to include how they were found (i.e. citizen complaint, routine inspection), number of connections corrected in the reporting period to include total estimated flow, and the costs of such repairs to include how the repairs were financed (i.e. by the permittee, costs provided to the permittee by the responsible party, repairs effected and financed by the responsible party). As an attachment to the report, the permittee should submit any existing tracking system information.

F. CERTIFICATION AND SIGNATURE OF REPORTS

All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with the General Conditions-Part II of this permit.

G. REPORT SUBMISSION

1. Original signed copies of all notifications and reports required herein, shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
NPDES PROGRAMS (SPA)
P.O. Box 8127
Boston, MA 02114

2. Signed copies of all notifications and reports shall be submitted to the State at:

Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108
Attn: Mr. Steve Lipman

and

Massachusetts Department of Environmental Protection
Metro Boston/Northeast Regional Office
205A Lowell Street
Wilmington, MA 01887
Attn: Mr. Sabin Lord

H. RETENTION OF RECORDS

The permittee shall retain all records of all monitoring information, copies of all reports required by this permit and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be modified by alternative provisions of this permit or extended by request of the Director at any time. The permittee shall retain the latest approved version of the SWMP developed in accordance with Part I of this permit until at least three years after coverage under this permit terminates.

I. STATE PERMIT CONDITIONS

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the Massachusetts DEP pursuant to M.G.L. Chap. 21, §43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Clean Water Act, as amended, 33 U.S.C. §§1251 et seq., and the Massachusetts Clean Waters Act, as amended, Mass. Gen. Laws. ch. 21, §§26-53, the

City of Worcester
Department of Public Works

and is authorized to discharge from all new or existing separate storm sewers: **existing Separate Storm Sewer Outfalls which are listed in Attachment A (93 major outfalls) and all other known outfalls (170 minor outfalls)**

to receiving waters (in the BLACKSTONE RIVER BASIN) named: **Beaver Brook, Blackstone River, Broad Meadow Brook, Coal Mine Brook, Coes Pond, Curtis Pond, Fitzgerald Brook, Indian Lake, Kendrick Brook, Kettle Brook, Lake Quinsigamond, Leesville Pond, Middle River, Mill Brook, Mill Brook Tributary, Tatnuck Brook, Patch Reservoir, Poor Farm Brook, Smiths Pond, Weasel Brook and Williams Millpond** in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective thirty (30) days after the date of signature. - effective 10/30/98

This permit and the authorization to discharge expire at midnight, five years from the effective date.

This permit consists of **21** pages and **Attachment A** in Part I including wet and dry weather monitoring requirements, etc., and 35 pages in Part II including General Conditions and Definitions.

Signed this 30 day of September, 1998

Director
Office of Ecosystem Protection
Environmental Protection Agency
Region I
Boston, MA

Director, Division of
Watershed Management
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

PART I. MUNICIPAL SEPARATE STORM SEWER SYSTEM

A. DISCHARGES THROUGH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AUTHORIZED UNDER THIS PERMIT

1. Permit Area. This permit covers all areas within the corporate boundary of the City of Worcester served by, or otherwise contributing to discharges from new or existing separate storm sewers owned or operated by the Department of Public Works, the "permittee".

2. Authorized Discharges. This permit authorizes all storm water discharges to waters of the United States from all existing or new outfalls owned or operated by the permittee (existing outfalls are identified in Attachment A). This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits and in compliance with applicable Federal, State and local regulations.

   Storm water discharges related to industrial activity which are not under the jurisdiction of the storm water program are authorized. The permittee shall provide in the annual report (Part I.E.) to EPA and MA DEP a review of all new separate storm sewer outfalls that are activated and of all existing outfalls which are de-activated.

3. Limitations on Coverage. The following discharges are not authorized by this permit:

   a. Discharges of non-storm water or storm water associated with industrial activity through outfalls listed in Attachment A are not authorized under this permit except where such discharges are:

      I. authorized by a separate NPDES permit; or

      ii. identified by and in compliance with Part B.2.g of this permit.

B. STORM WATER POLLUTION PREVENTION & MANAGEMENT PROGRAMS

The permittee is required to continue to develop, implement and revise as necessary, a storm water pollution prevention and management program designed to reduce, to the maximum extent practicable, the discharge of pollutants from the Municipal Separate Storm Sewer System (MS4). The permittee may implement Storm Water Management Program (SWMP) elements through participation with other public agencies or private entities in cooperative efforts satisfying the requirements of this permit in lieu of creating duplicate program elements. Either cumulatively, or separately, the permittee's storm water pollution prevention and management programs shall satisfy the requirements of Part I.B.1-7. below for all portions of the MS4.

1. POLLUTION PREVENTION REQUIREMENTS The permittee shall develop and implement the following pollution prevention measures:

a. Development The permittee, in cooperation with the agency with jurisdiction over land use, shall include requirements to consider water quality impacts of new development and significant re-development. The permittee shall ensure that development activities conform to applicable state and local regulations, guidance and policies relative to the discharge of storm water into the MS4. The goals of these requirements shall be to limit increases in the discharge of pollutants into the MS4 from new development and to reduce the discharge of pollutants into the MS4 from existing sources due to re-development.

b. Used Motor Vehicle Fluids The permittee shall describe educational activities, public information activities and other appropriate activities to facilitate the proper management, including recycling, reuse and disposal, of used motor vehicle fluids. The permittee shall coordinate with appropriate public agencies or private agencies where necessary. Such activities shall be readily available to all private residents and be publicized and promoted on a regular basis (at least annually).

c. Household Hazardous Waste (HHW) The permittee shall coordinate with the appropriate public agency or private entities to ensure the implementation of a program to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such program shall be readily

available to all private residents and be publicized and promoted on a regular basis (at least annually).

2. STORM WATER MANAGEMENT PROGRAM REQUIREMENTS: The permittee shall continue to implement the current elements of its' Storm Water Management Program (SWMP) which was described in the May 11, 1993 Part II application in accordance with Section 402(p)(3)(B) of the Clean Water Act (CWA or "the Act"), including any updates.

The current SWMP does not adequately address all the required elements described on Pages 5-11 below. The EPA sent a letter to the City of Worcester on June 6, 1997 specifying which portions of the current SWMP needed more description, effort, or clarification. The items included were the illicit connection program, a discussion of the City's indebtedness and funding for storm water programs, geographic mapping, reevaluation of wet weather sampling locations, construction area oversight, and public education. The City submitted a letter addressing these concerns on March 25, 1998. Although most issues were discussed, there is still some detail and proposed effort that is insufficient.

In particular, the sampling plan proposes grab samples at five different outfalls, three times per year. In order to get a sense of any trend and how parameter concentrations change over time during storm events, the permittee must conduct composite sampling or a series of grab samples for the summer sampling event at each of the five outfalls, as described later. In Section C. below, this permit includes minimum expectations for outfall monitoring and instream monitoring during wet weather. Instream monitoring could provide information on both the pollutant concentration peaks as well as the pollutant loading increases that occur as a result of storm events.

More detail and effort is needed for the catch basin cleaning and inspection program, as shown on Page 6. This last issue was not raised in the letter of June 6, 1997, but this program was found to be deficient upon further review.

Within **120** days after the effective date of this permit, the permittee shall submit a written description of all additional measures it will take, relative to items mentioned above, to satisfy the requirements of this permit and the goals of the proposed SWMP. **This submittal will include the entire SWMP effort, including all the original items as included in Worcester's Part II application.** This

shall be submitted to the EPA the MA DEP at the addresses in Section G. Unless disapproved by EPA or the MA DEP within 60 days after its submittal, the SWMP shall be deemed approved. The permittee shall respond to all written comments by EPA and the MA DEP and shall make all changes to the SWMP required for its approval. As noted later, compliance with the SWMP shall occur no later than 180 days after the effective date of the permit or no later than EPA and DEP's approval of the SWMP. This SWMP shall be displayed at a convenient location accessible to the public.

The Controls and activities identified in the SWMP shall clearly identify goals, a description of the controls or activities, and a description of the roles and responsibilities of other entities' areas of applicability on a system, jurisdiction, or specific area basis.

The permittee will specifically address how it will have input on any portions of the SWMP which may not be under its direct control (i.e. Mass Highway Department's maintenance of interstate highway) and how it will cooperate with such entities to achieve the goals of the SWMP.

If, during the life of this permit, EPA and the DEP determine that the permittee cannot substantively operate these programs to effectively reduce pollutants to the MS4, then the permit may be modified to designate one or more agencies that administer these programs as co-permittees. These entities would then be responsible for applicable permit conditions and requirements. Alternatively, one or more entities may be required to apply for and obtain an individual storm water permit for their discharges. The SWMP, and all approved updates, are hereby incorporated by reference and shall be implemented in a manner consistent with the following requirements:

a. Statutory Requirements: SWMPs shall include controls necessary to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable,"MEP". Controls may consist of a combination of best management practices, control techniques, system design and engineering methods, and such other provisions as the permittee, the Director or the State determines appropriate. The various components of the SWMP, taken as a whole (rather than individually), shall be sufficient to meet this "MEP" standard. The SWMPs shall be updated as necessary to ensure conformance with the requirements of CWA § 402(p)(3)(B). In implementing the SWMP, the permittee

is required to select measures or activities intended to meet these requirements:

No discharge of toxics in toxic amounts.

No discharge of pollutants in quantities that would cause a violation of State water quality standards.

No discharge of either a visible oil sheen, foam, or floating solids, in other than trace amounts, at any time.

No discharge of suspended or settleable solids in concentrations or combinations that would impair the uses of the class of receiving waters.

b. Structural Controls: The permittee shall operate and maintain any storm water structural controls, for which it is the owner or operator, in a manner so as to reduce the discharge of pollutants to the MEP. Each catch basin shall be cleaned at least every other year as described in the SWMP.

The cleaning program must include the recording and inputting of all activities in an automated database for all catch basins, including the date of cleaning, the location of each catch basin, and an estimate of how full the catch basin was when it was cleaned. For those catch basins which are found to be more than approximately 50% full, a follow up inspection will be conducted within 3 - 6 months and cleaning schedules modified as appropriate.

During the life of this permit, the permittee shall conduct a structural control demonstration. Within 180 days after the effective date of the permit, the permittee shall submit a demonstration proposal and schedule to the EPA and MA DEP. Unless disapproved by the EPA or the MA DEP within 30 days after its submittal, the proposed demonstration project shall be deemed approved.

The permittee can reference the MA DEP document titled, Stormwater Management, Volume 1: Stormwater Policy Handbook and Stormwater Management, Volume II: Stormwater BMP Handbook. This provides an overview of storm water controls, including ranges of removal for typical storm water pollutants. This proposal shall measure the removal efficiency of a particular structural control in the MS4 area for several pollutants with influent and effluent sampling during the life of this permit.

c. Areas of New Development and Significant Redevelopment: The permittee and/or cooperating agencies shall develop, implement, and enforce controls to minimize the discharge of pollutants to the separate storm sewer system from areas of new development and significant re-development during and after construction. The permittee and/or cooperating agencies shall ensure development activities conform to applicable state and local regulations, guidance and policies. The permittee and/or cooperating agencies shall consider water quantity and water quality impacts related to development and significant redevelopment. The permittee and/or cooperating agencies shall conform to the policy of the MA DEP titled **Performance Standards and Guidelines for Stormwater Management in Massachusetts.**

d. Roadways: The permittee shall coordinate with appropriate agencies to implement measures to ensure that roadways and highways are operated and maintained in a manner so as to minimize the discharge of pollutants to the separate storm sewer system (including discharges related to deicing and sanding activities and snow removal and disposal).

The permittee shall conduct an investigation of the drainage from roadways that are owned or operated by other entities, primarily the Massachusetts Highway Department. Within 180 days after the effective date of the permit, **the permittee shall report to the EPA and the MA DEP, which of these roadway drainage systems are connected to the MS4.** The SWMP will also include a description of how the permittee will coordinate with such entities to assure that discharges to the MS4 through such drainage meets the requirements of the permit.

e. Flood Control Projects: The permittee shall ensure any flood management projects consider impacts on the water quality of receiving waters. The permittee shall also evaluate the feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water.

f. Pesticide, Herbicide, and Fertilizer Application: The permittee shall implement measures to reduce the discharge of pollutants to the MS4 related to the application and storage of pesticides, herbicides, and fertilizers applied by municipal or public agency employees or contractors to public right of ways, parks, and other municipal facilities. The permittee, in cooperation with the entity with jurisdiction over land use (e.g. Parks Department), shall implement

controls to reduce discharge of pollutants to the MS4 related to the application and distribution of pesticides, herbicides, and fertilizers by commercial and wholesale distributors and applicators and its own employees.

g. Authorized Non-Storm Water Discharges: Unless identified by either the permittee, the EPA, or the State as significant sources of pollutants to waters of the United States, the following non-storm water discharges are authorized to enter the MS4. As necessary, the permittee shall incorporate appropriate control measures in the SWMP to insure that these discharges are not significant sources of pollutants to waters of the United States.

(a) water line flushing;
(b) landscape irrigation;
(c) diverted stream flows;
(d) rising ground waters;
(e) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
(f) uncontaminated pumped ground water;
(g) discharges from potable water sources;
(h) foundation drains;
(I) uncontaminated air conditioning or compressor condensate;
(j) irrigation water;
(k) uncontaminated springs;
(l) water from crawl space pumps;
(m) footing drains;
(n) lawn watering;
(o) non-commercial car washing;
(p) flows from riparian habitats and wetlands;
(q) swimming pool discharges which have been dechlorinated;
(r) street wash waters; and
(s) discharges or flows from emergency fire fighting activities.
(t) fire hydrant flushing
(u) building washdown water which does not contain detergents

h. Illicit Discharges and Improper Disposal: The permittee shall continue to implement its ongoing program to detect and remove (or require the discharger to the MS4 to remove or obtain a separate NPDES permit for) illicit discharges and improper disposal into the separate storm sewer.

1. The permittee shall effectively prohibit unpermitted, industrial storm water discharges which are required to have a federal storm water permit, to the MS4.

2. The permittee shall prohibit unpermitted discharges of dry and wet weather overflows from sanitary sewers into the MS4. The permittee shall identify and limit the infiltration of seepage from sanitary sewers into the MS4.

3. The permittee shall prohibit the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal wastes into separate storm sewers. Public education programs for proper disposal of these materials shall be included in the SWMP and publicized at least annually and shall include material for non-English speaking residents.

4. The permittee shall require the elimination of illicit connections as expeditiously as possible and the immediate cessation of improper disposal practices upon identification of responsible parties. The permittee shall describe its procedure for the identification, costing and elimination of illicit discharges. This information shall be included in the annual report required under Part I.E. below. Where elimination of an illicit connection within thirty (30) days is not possible, the permittee shall establish a schedule for the expeditious removal of the discharge. In the interim, the permittee shall take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.

i. Spill Prevention and Response: The permittee shall implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. The spill response procedures may include a combination of spill response actions by the permittee (and/or other public or private entities), and requirements for private entities through the permittee's sewer use ordinances. The discharges of materials resulting from spills is prohibited.

j. Industrial & High Risk Runoff: The permittee shall implement a program to identify, monitor, and control pollutants in storm water discharges to the MS4 from municipal landfills; hazardous waste treatment,

storage, disposal and recovery facilities and facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee determines is contributing a substantial pollutant loading to the MS4. A list of these facilities which discharge to the MS4 shall be

maintained and updated as necessary. This shall include industrial activities which are listed at 40 CFR §122.26(b)(14), which are required to obtain federal storm water permit coverage. The program shall include:

1. priorities and procedures for inspections and establishing and implementing control measures for such discharges;

2. a monitoring (or self-monitoring) program for facilities identified under this section, including the collection of quantitative data on the following constituents:

(a) any pollutants which the discharger may monitor for or are limited to in an existing NPDES permit for an identified facility;

(b) any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

(c) any pollutant the permittee has a reasonable expectation is discharged in substantial quantity from the facility to the separate storm sewer system

Data collected by the industrial facility to satisfy the monitoring requirements of an NPDES or State discharge permit may be used to satisfy this requirement. The permittee may require the industrial facility to conduct self-monitoring to satisfy this requirement.

3. Alternative Certification: In lieu of monitoring, the permittee may accept a certification from a facility stating that raw and waste materials, final and intermediate products, by-products, material handling equipment or activities, and/or loading/unloading operations are not expected to be exposed to storm water for the certification period. The permittee shall still reserve the right to conduct and shall consider conducting site inspections for these facilities during the life of this permit.

k. Construction Site Runoff: The permittee shall implement a program to reduce the discharge of pollutants from construction sites into the MS4, including:

1. requirements for the use and maintenance of appropriate structural and non-structural best management practices to reduce pollutants discharged to the MS4 during the time construction is underway;

2. procedures for site planning which incorporate considerations for potential short term and long term water quality impacts to the MS4 and minimizes these impacts;

3. prioritized inspections of construction sites and enforcement of control measures;

4. appropriate education and training measures for construction site operators;

5. notification to appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

l. Public Education: The permittee shall implement a public education program including, but not limited to the following items. Cooperation should be sought with city and state agencies where necessary. This program shall also include material for non-English speaking residents.

1. A program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials (e.g. floatables, industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4 (e.g. curb inlet stenciling, citizen "streamwatch" groups, "hotlines" for reporting dumping, outreach materials included in billings, public access/government cable channels, etc.);

2. a program to promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes;

3. a program to promote, publicize, and facilitate the proper use, application, and disposal of

pesticides, herbicides, and fertilizers by the public and commercial and private applicators and distributors;

4. where applicable and feasible, the permittee should publicize those best management practices (including but not limited to the use of reformulated or redesigned products, substitution of less toxic materials, and improvements in housekeeping) used by the permittee that facilitate better use, application, and/or disposal of materials identified in 1.1 and 1.2 above.

2. Deadlines for Program Compliance. Except as provided in PART II. and Part I.B.7. compliance with the storm water management program shall be required within **180** days from the effective date of the permit.

3. Roles and Responsibilities of Permittee: The Storm Water Management Program shall clearly identify the roles and responsibilities of the permittee and any party impacting its efforts to comply with this permit.

4. Legal Authority: The permittee and/or cooperating agencies shall ensure that they have and maintain legal authority to control discharges to and from those portions of the MS4 which it owns or operates. This legal authority may be a combination of statute, ordinance, permit, contract, or an order to:

a. Control the contribution of pollutants to the MS4 by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit illicit discharges to the MS4;

c. Control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the MS4;

d. Control through interagency or inter-jurisdictional agreements the contribution of pollutants from one portion of the MS4 to another;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

5. Storm Water Management Program Resources The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement its SWMP.

6. Storm Water Management Program Review and Modification

a. Program Review: The permittee shall participate in an annual review of its current or modified SWMP in conjunction with preparation of the annual report required under Part I.E. This annual review shall include:

1. A review of the status of program implementation and compliance with program elements and other permit conditions as necessary;

2. An assessment of the effectiveness of controls established by the SWMP;

3. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

4. An assessment of any SWMP modifications needed to comply with the CWA §402(p)(3)(B)(iii) requirement to reduce the discharge of pollutants to the maximum extent practicable (MEP).

5. An annual public informational meeting held within two months of submittal of the Annual report.

b. Program Modification: The permittee may modify the SWMP in accordance with the following procedures:

1. The approved SWMP shall not be modified by the permittee(s) without the prior approval of the Director, unless in accordance with items 2. or 3. below.

2. Modifications adding (but not subtracting or replacing) components, controls, or requirements to the approved SWMP may be made by the permittee at any time upon written notification to the Director.

3. Modifications replacing an ineffective or unfeasible BMP specifically identified in the SWMP with an alternative BMP may be requested at any time. Unless denied by the Director, the modification shall be deemed approved and shall be implemented by the permittee 60 days from submittal of the request. Such requests must include the following:

(a) an analysis of why the BMP is ineffective or infeasible (including cost prohibitive),

(b) expectations on the effectiveness of the replacement BMP, and

(c) an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

4. Modification requests and/or notifications must be made in writing and signed in accordance with Part I.F.

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c. Modifications required by the Permitting Authority: The permitting authority may require the permittee to modify the SWMP as needed to:

1. Address impacts on receiving water quality caused or contributed to by discharges from the MS4;

2. Include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

3. Include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Modifications requested by the Director shall be made in writing and set forth a time schedule for the permittee to develop the modification(s).

C. WET WEATHER MONITORING AND REPORTING REQUIREMENTS

1. Storm Event Discharges. The permittee shall implement a wet weather monitoring program for the MS4 to provide data necessary to assess the effectiveness and adequacy of control measures implemented under the SWMP; estimate annual cumulative pollutant loadings from the MS4; estimate event mean concentrations and seasonal pollutants in discharges from all major outfalls; identify and prioritize portions of the MS4 requiring additional controls, and identify water quality improvements or degradation.

The permittee is responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the MS4. Improvement in the quality of discharges from the MS4 will be assessed based on the

necessary monitoring information required by this section, along with any additional monitoring which is made available. There have been no effluent limits established for this draft permit. Numeric effluent limits may be established in the next permit to control impacts on water quality, to improve aesthetics, or for other reasons as necessary.

a. Representative Monitoring: The permittee shall monitor representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the MS4. Within **90** days after the effective date of this permit, the permittee will submit its proposed sampling plan to the EPA and MA DEP for review. The permittee shall choose locations representing different land uses, with a focus on what it considers priority areas, such as an outfall in the vicinity of a public beach. The plan shall outline the parameters to be sampled, the frequency of sampling and reporting of results. This submittal shall also include any related monitoring which the permittee has done since its MS4 permit application was originally submitted. Unless disapproved by the EPA or MA DEP within **30** days after its submittal, the proposed sampling plan shall be deemed approved.

The sampling locations which the permittee submitted in its letter of March 25, 1998 to EPA appear to be adequate. These locations shall be monitored at least three times per year (spring, summer and fall) for all the parameters suggested, including cadmium and replacing oil & grease with Total Petroleum Hydrocarbons (TPH). The summer sampling event shall consist of composite samples, which shall be composed of, at a minimum, samples taken at hours 0 (pre-runoff), 4, 8, 12, 16 and 20. These samples shall be flow composited.

Instream sampling: This sampling is required as a supplement to the outfall monitoring as follows:

1) The mouth of the Mill Brook Conduit shall be grab sampled for fecal coliform during the spring and summer sampling seasons;

2) the high zinc load that was found during the Blackstone River Initiative (BRI) sampling from the Mill Brook conduit shall be investigated. Findings shall be reported in the annual report;

3) the two instream locations to be sampled are:

a. Sampling station 00 from the BRI study; and

b. A station downstream of where Beaver Brook and Tatnuck Brook completely mix, but above the Kettle Brook confluence

These two stations will be monitored during the spring and summer sampling events. The sampling parameters will be identical to those of the outfall sampling, with the addition of flow at station 00. Similar to the outfall monitoring, the summer sampling event shall be conducted with composite samples. At station 00, flow can be determined from measuring the distance from a fixed point on the bridge to the water surface. The EPA will provide information on the relationship between this stage measurement and stream flows. The second sampling station can be flow composited using flow data derived from Station 00. For all instream sampling events, sampling shall be conducted during wet weather.

b. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Director, use of an alternate monitoring location may commence thirty (30) days from the date of the request.

2. Storm Event Data: For Part I.C.1.a - Representative Monitoring only - quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. In addition to the parameters which are to be sampled for in the sampling plan to be submitted, the permittee shall maintain records of the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the total volume (in gallons) of the discharge sampled and a description of the presence and extent of floatable debris, oils, scum, foam, solids or grease in any storm water discharges or in the receiving waters.

3. Sample Type, Collection, and Analysis: The following requirements apply only to samples collected for Part C.1.a - Representative Monitoring.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water

discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken.

b. Grab samples taken during the first two hours of discharge shall be used for the analysis of pH, temperature, Total Petroleum Hydrocarbons (TPH), fecal coliform and residual chlorine. For all other parameters, data shall be reported for flow weighted composite samples as described on Page 15.

c. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.25 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

d. Analysis and collection of samples shall be conducted in accordance with the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used.

4. Sampling Waiver. When a discharger is unable to collect samples required by Part I.C.1.a (Representative Monitoring) due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse climatic conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms,etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

5. Wet Weather Screening Program: The permittee shall implement a program to identify, investigate, and address areas within their jurisdiction that may be contributing excessive levels of pollutants to the MS4. The wet weather screening program:

a. Shall screen the MS4, in accordance with the procedures specified in the SWMP, at least once during the permit term.

b. Shall specify the sampling and non-sampling techniques (such as observations or quantitative methods), to be used for initial screening and follow-up purposes. For samples collected for screening purposes only, sample collection and analysis need not conform to the requirements of 40 CFR Part 136 and are not subject to the requirements of Paragraphs 1, 2, and 3 above.

D. DRY WEATHER DISCHARGES

1. Dry Weather Screening Program: The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4. All major outfalls identified in the Part I application and all other areas (but not necessarily all outfalls) of the MS4 must be screened at least once during the permit term. A schedule of inspections shall be identified to support activities undertaken in accordance with Part I.B.2.g. and may be in conjunction with any activities undertaken in accordance with Part I.C.. The schedule of inspections shall be included in the annual report Part I.E.

2. Screening Procedures: Screening methodology may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR §122.26(d)(1)(iv)(D).

3. Follow-up on Dry Weather Screening Results: The permittee shall implement a program to locate and eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities. Follow-up activities shall be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

E. ANNUAL REPORT:

The permittee shall prepare an annual system-wide report to be submitted no later than April 1, 2000 and annually thereafter. The report shall include the following separate sections, with an overview for the entire MS4:

1. The status of implementing the storm water management program(s) (status of compliance with any schedules established under this permit shall be included in this section);

2. ~~Proposed changes to the storm water management~~ program(s);

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. An evaluation of all the authorized non-storm water discharges at Part I.B.2.g. and whether it was determined that any controls or restrictions are necessary for any of these and descriptions of such;

5. A summary of the data, including monitoring data, that is accumulated throughout the reporting year; a portion of this data shall be compared to National Urban Runoff Program (NURP) values, as was done in the Part II application and to ambient water quality criteria.

6. A revised list of all current separate storm sewer outfalls and their locations, reflecting changes of the previous year and justification for any new outfalls.

7. Annual expenditures for the reporting period, with a breakdown of the major elements of the storm water management program, and the budget for the year following each annual report;

8. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

9. Identification of water quality improvements or degradation; and,

10. Update on the illicit connection program to include the total number of identified connections with an estimate of flow for each, total number of connections found in the reporting period to include how they were found (i.e. citizen complaint, routine inspection), number of connections corrected in the reporting period to include total estimated flow, and the financing required for such to include how the repairs were financed (i.e. by the permittee, costs provided to the permittee by the responsible party, repairs effected and financed by the responsible party). As an attachment to the report, the permittee should submit any existing tracking system information. Also include updates to schedules and a summary of activities conducted under Parts I.C. and I.D.

F. CERTIFICATION AND SIGNATURE OF REPORTS

All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with the General Conditions - Part II of this permit.

G. REPORT SUBMISSION

1. All original, signed notifications and reports required herein, shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
Water Technical Unit (SEW)
P.O. Box 8127
Boston, MA 02114
Attn: George Papadopoulos, Permit Writer

2. Signed copies of all other notifications and reports shall be submitted to the State at:

Massachusetts Department of Environmental Protection
Division of Watershed Management
Watershed Planning and Permitting Section
627 Main Street
Worcester, Massachusetts 01608

H. RETENTION OF RECORDS

The permittee shall retain all records of all monitoring information, copies of all reports required by this permit and records of all other data required by or used to demonstrate compliance with this permit, until at least three years after coverage under this permit terminates. This period may be modified by alternative provisions of this permit or extended by request of the Director at any time. The permittee shall retain the latest approved version of the SWMP developed in accordance with Part I of this permit until at least three years after coverage under this permit terminates.

I. STATE PERMIT CONDITIONS

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Commissioner of the Massachusetts DEP pursuant to M.G.L. Chap. 21, §43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

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ATTACHMENT A

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
2	5F	MOUNTAIN ST WEST	48 inch storm drain	KENDRICK BROOK
6	6F	ARARAT ST	48 inch storm drain	UNNAMED BROOK TO KENDRICK BROOK
7	7F	BROOKS ST	24 inch storm drain	KENDRICK BROOK
8	6D	GROVE ST	36 inch storm drain	UNNAMED BROOK TO INDIAN LAKE
10	8F	W BOYLSTON DR/HWY	15 inch storm drain	MILL BROOK
11	7F	NEW BOND ST	24 inch storm drain	MILL BROOK TRIB
12	7E	INDIAN HILL RD NEAR NASHOBA PL	18 inch storm drain	INDIAN LAKE
16	7E	INDIAN LAKE RD	36 inch storm drain	INDIAN LAKE
17	7E	SHOREHAM RD	42 inch storm drain	INDIAN LAKE
27	10B	EDWIDGE ST	48 inch storm drain	UNNAMED BROOK TO TATNUCK BROOK
32	10C	MOWER ST	42 inch storm drain	TATNUCK BROOK
38	10C	MAPLE LEAF RD	48 inch storm drain	TATNUCK BROOK
39	11D	CHANDLER ST	42 inch storm drain	OVERLAND TO PATCH RESERVOIR
40	12D	BEAV BK PLAYGROUND	42 inch storm drain	BEAVER BROOK
45	13D	BEAVER BROOK PKWY	60 inch storm drain	BEAVER BROOK
46	12E	BEAVBK PLG/CHANDLER	48 inch storm drain	BEAVER BROOK
56	12E	BEAVBK PLG/CHANDLER	15 inch storm drain	BEAVER BROOK
58	13E	MID BEAV BK PLG	33 X 48 inch storm drain	BEAVER BROOK
62	14D	LAKESIDE AVE	21 inch storm drain	COES POND
65	15D	STAFFORD ST	48 inch storm drain	CURTIS POND
68	14D	MILL/PARK/MAIN	21 inch storm drain	BEAVER BROOK
69	14D	MILL/PARK/MAIN	12 inch storm drain	BEAVER BROOK
70	14D	MAIN ST	24 inch storm drain	BEAVER BROOK
72	13D	OLIVER ST/PARK AVE	24 X 36 inch storm drain	BEAVER BROOK
74	14D	WEBSTER ST	18 inch storm drain	MIDDLE RIVER
75	15D	CAMBRIDGE ST	24 inch storm drain	MIDDLE RIVER
77	15D	LYMAN ST	24 inch storm drain	CURTIS POND
78	15C	MAIN ST/TOWN LINE	12 inch storm drain	UNNAMED POND TO SMITHS POND
80	16C	STAFFORD ST	39 inch storm drain	KETTLE BROOK
81	16C	JAMES ST	36 inch storm drain	KETTLE BROOK
84	16E	SOUTHBRIDGE ST	54 inch storm drain	OVERLAND FLOW TO MIDDLE RIVER
85	15D	HWY/RR/S OF RIVER	36 inch storm drain	MIDDLE RIVER

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
86	16E	SOUTHBRIDGE ST	24 inch storm drain	OVERLAND FLOW TO MIDDLE RIVER
87	15E	CAMP ST	24 X 36 inch storm drain	MIDDLE RIVER
88	15E	SOUTHBRIDGE ST/I1WY	18 inch storm drain	BLACKSTONE RIVER
90	16F	FALMOUTH ST NEAR RR	24 inch storm drain	BLACKSTONE RIVER
91	17F	WISER AVE NEAR RR	30 inch storm drain	OVERLAND FLOW TO BLACKSTONE RIVER
92	17F	AGRAND ST/WARMLAND	36 inch storm drain	OVERLAND FLOW TO BLACKSTONE RIVER
93	18F	SEWAGE TMT PLANT	36 inch storm drain	WORCESTER SEWAGE TREATMENT PLANT
94	16G	MILLBURY ST	42 inch storm drain	BLACKSTONE RIVER
95	17G	MILLBURY ST	21 inch storm drain	BLACKSTONE RIVER
108	14H	JOLMA ROAD	12 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
109	14H	BRANDY LANE	36 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
110	12H	AYRSHIRE/COBURN	60 inch storm drain	UNNAMED BROOK TO QUINSIGAMOND LAKE
114	11H	BELMONT/LAKE	36 inch storm drain	QUINSIGAMOND LAKE
115	11H	SHERBROOK/LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
119	9H	PLANT ST	36 inch storm drain	COAL MINE BROOK
124	7F	W BOYLSTON ST/BOURNE ST	36 inch storm drain	MILL BROOK
125	7F	W BOYLSTON ST/SUMMERHILL ST	36 inch storm drain	MILL BROOK TRIB
128	7G	CONSTITUTION AVE	42 inch storm drain	POOR FARM BROOK
129	7H	PLANT/W BOYLSTON	30 inch storm drain	POOR FARM BROOK
130	7F	BROOKS ST	30 inch storm drain	KENDRICK BROOK
131	6G	CLARK ST	36 inch storm drain	POOR FARM BROOK
134	6F	W BOYLSTON ST	36 inch storm drain	KENDRICK BROOK
135	6F	EAMES ST	24 inch storm drain	KENDRICK BROOK
138	5F	HIGGINS ST	30 inch storm drain	KENDRICK BROOK
139	8F	NEPONSET/W BOYLSTON	12 inch storm drain	MILL BROOK
140	9F	W BOYLSTON TER/GOLD STAR	18 inch storm drain	MILL BROOK
141	9F	W BOYLSTON TER/GOLD STAR	24 inch storm drain	MILL BROOK
142	9F	GENNIE ST/DIST CTR	36 inch storm drain	MILL BROOK
143	9F	GENNIE ST/DIST CTR	66 inch storm drain	MILL BROOK
144	9F	GENNIE ST	15 inch storm drain	MILL BROOK
192	15F	PERRY/MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
194	15F	MAXWELL/MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER

CITY OF WORCESTER
OUTFALL INFORMATION

OUTFALL ID	GRID	LOCATION	OUTFALL SIZE	RECEIVING WATER
202	8D	SALISBURY ST	36 inch storm drain	UNNAMED BROOK TO FLAGG ST SCHOOL
1007	13C	WILLIAMSBURG DR	60 inch storm drain	UNNAMED BROOK TO WILLIAMS MILLPOND
1008	15D	JACQUES ST	15 inch storm drain	MIDDLE RIVER
1012	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1013	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1014	18G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1015	18G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1016	16E	HOPE AVE/I1WY	24 inch storm drain	LEESVILLE POND
1019	15E	MIDDLE RIV/I1WY	12 inch storm drain	MIDDLE RIVER
1020	15E	MIDDLE RIV/I1WY	12 inch storm drain	MIDDLE RIVER
1021	15E	MIDDLE RIV/I1WY	48 inch storm drain	MIDDLE RIVER
1022	15E	MIDDLE RIV/I1WY	48 inch storm drain	MIDDLE RIVER
1039	7F	STORES ST/SHORE RD	24 inch storm drain	DITCH TO MILL BROOK TRIB
1040	7F	STORES ST/SHORE DR	24 inch storm drain	DITCH TO MILL BROOK TRIB
1043	17H	ROUTE 20	12 inch storm drain	BROAD MEADOW BROOK
1045	8H	LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
1046	9H	LAKE AVE	36 inch storm drain	QUINSIGAMOND LAKE
1048	15D	STAFFORD ST	30 inch storm drain	CURTIS POND
1049	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1050	17G	MILLBURY ST	12 inch storm drain	BLACKSTONE RIVER
1051	8F	RT 190/WEST OF KENWOOD AVE	18 inch storm drain	MILL BROOK
1052	6F	HIGGINS ST	12 inch storm drain	KENDRICK BROOK
2003	16C	STAFFORD ST	30 inch storm drain	KETTLE BROOK
2004	16C	JAMES ST	12 inch storm drain	KETTLE BROOK
2006	17G	MILLBURY ST	30 inch storm drain	BLACKSTONE RIVER
3000	15G	DUNKIRK AND HAMPTON	60 inch storm drain	BROAD MEADOW BROOK
3001	5F	MOUNTAIN ST WEST	3.5 X 4 inch storm drain	KENDRICK BROOK
3002	10B	BAILEY ST AT AIRPORT DR	36 inch storm drain	UNNAMED BROOK TO TATNUCK BROOK
3003	6F	ARARAT ST	18 inch storm drain	UNNAMED BROOK TO KENDRICK BROOK

New Mexico

NPDES PERMIT NO. NMS000101
ALBUQUERQUE MUNICIPAL SEPARATE STORM SEWER SYSTEM
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STORM WATER MANAGEMENT PROGRAM ATTACHMENT

Chapter 1: City of Albuquerque/Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
Chapter 2: New Mexico State Highway and Transportation Department
Chapter 3: University of New Mexico

Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

NPDES Permit No. NMS000101

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the "Act"),

City of Albuquerque
Public Works Department
P.O. Box 1293
Albuquerque, NM 87103

Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
2600 Prospect NE
Albuquerque, NM 87107

New Mexico State Highway and Transportation Department
District III
P.O.Box 91750
Albuquerque, NM 87199-1750

University of New Mexico
Department of Safety, Health and Environmental Affairs
1801 Tucker Street N.E.
Albuquerque, NM 87131

are authorized to discharge from all portions of the Albuquerque Municipal Separate Storm Sewer System (MS4) owned or operated by any permittee listed above, to waters of the United States,

in accordance with the Storm Water Management Program(s), effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, IV, V, VI, VII, and VIII herein.

This is the first NPDES permit issued for these portions of the municipal separate storm sewer system.

This permit shall become effective on

This permit and the authorization to discharge shall expire at midnight,

Issued on

Miguel I. Flores
Director
Water Quality Protection Division (6WQ)

Prepared by

Claudia V. Hosch & Maria Okpala
Environmental Engineers
Permitting Section (6WQ-PP)

PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT.

A. Permit Area. This permit covers all areas, except agricultural lands, within the corporate boundary of the City of Albuquerque, New Mexico served by, or otherwise contributing to discharges from municipal separate storm sewers owned or operated by the permittees listed above.

B. Discharges.

1. **Authorized Discharges:** This permit authorizes the permittee(s) to discharge to waters of the United States from those portions of the Municipal Separate Storm Sewer System owned or operated by the Permittees:

   a. storm water and

   b. storm water mixed with those categories of non-storm water that are identified in the permittee's Storm Water Management Program in accordance with Part II.A.6.a.

2. **Unauthorized Discharges:** This permit does not authorize:

   a. discharge of storm water associated with industrial activity;

   b. discharge of storm water or non-storm water that is required to be authorized under a separate NPDES permit; and

   c. any storm water or non storm water discharge (either into or from the Municipal Separate Storm Sewer System), by any person other than the Permittees. This permit does not transfer liability for the act of discharging without (or in violation of) an NPDES permit from the operator of the discharge to the permittee(s).

   d. Spills: discharges of material resulting from a spill, except where such discharges are:

      1. the result of an Act of God where reasonable and prudent measures have been taken to minimize the impact of the discharge, or

      2. necessary to prevent loss of life, personal injury, or severe property damage. (See also Parts II.A.7 and VI.E).

C. Permittee Responsibilities.

1. Each permittee is responsible for:

   a. Compliance with permit conditions relating to discharges from portions of the Municipal Separate Storm Sewer System where the permittee is the operator;

b. Storm Water Management Program implementation on portions of the Municipal Separate Storm Sewer System where the permittee is the operator;

c. Compliance with annual reporting requirements as specified in Part V.C.;

d. Collection of representative wet weather monitoring data required by Part V.A., according to such agreements as may be established between permittees; and

e. A plan of action to assume responsibility for implementation of storm water management and monitoring programs on their portions of the Municipal Separate Storm Sewer System should interjurisdictional agreements allocating responsibility between permittees be dissolved or in default.

2. Permittees are jointly responsible for permit compliance on portions of the Municipal Separate Storm Sewer System where operational or Storm Water Management Program implementation authority over portions of the Municipal Separate Storm Sewer System is shared or has been transferred from one permittee to another in accordance with legally binding agreements. Each permittee remains ultimately responsible for those portions, and only those portions of the MS4, within its operational control.

PART II. STORM WATER POLLUTION PREVENTION AND MANAGEMENT PROGRAM(S).

Each permittee shall contribute to the development, revision and implementation of a comprehensive Storm Water Management Program including pollution prevention measures, treatment or removal techniques, storm water monitoring, use of legal authority, and other appropriate means to control the quality of storm water discharged from the Municipal Separate Storm Sewer System. The Storm Water Management Program shall be implemented in accordance with Section 402(p)(3)(B) of the Act, and the Storm Water Regulations (40 CFR Part 122.26).

Controls and activities in the Storm Water Management Program shall identify areas of permittee responsibility on a jurisdiction, applicability, or specific area basis. The Storm Water Management Program shall include controls necessary to effectively prohibit the discharge of non-storm water into municipal separate storm sewers and reduce the discharge of pollutants from the Municipal Separate Storm Sewer System to the Maximum Extent Practicable (MEP). The permittees shall control pollutants in storm water discharges to the Maximum Extent Practicable by implementing the Storm Water Management Program in its entirety.

The Storm Water Management Program shall cover the term of the permit and shall be updated as necessary, or as required by the Director, to ensure compliance with the statutory requirements of Section 402(p)(3)(B) of the Act. Modifications to the Storm Water Management Program shall be made in accordance with Parts II.G., and III. Compliance with the Storm Water Management Program and any schedules in Part III. shall be deemed compliance with Parts II.A, and II.B. The Storm Water Management Program, and all updates made in accordance with Part II.G., are hereby incorporated by reference.

Implementation of the Storm Water Management Program may be achieved through participation with other permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II. in lieu of creating duplicate program elements for each individual permittee. The Storm Water Management Program, taken as a whole, shall achieve the "effective prohibition on the discharge of non-storm water" and "MEP" standards from Section 402(p)(3)(B) of the Act.

A. Storm Water Management Program Requirements.

1. *Structural Controls and Storm Water Collection System Operation:* The Municipal Separate Storm Sewer System and any storm water structural controls shall be operated in a manner to reduce the discharge of pollutants to the Maximum Extent Practicable.

2. *Areas of New Development and Significant Redevelopment:* A comprehensive master planning process (or equivalent) to develop, implement, and enforce controls to minimize the discharge of pollutants from areas of new development and significant re-development after construction is completed shall be implemented. The goals of such controls shall be:

   a. New development - limiting increases in the discharge of pollutants in storm water as a result of development, and

   b. Re-development - reducing the discharge of pollutants in storm water.

3. *Roadways:* Public streets, roads, and highways shall be operated and maintained in a manner to minimize discharge of pollutants, including those pollutants related to deicing or sanding activities.

4. *Flood Control Projects:* Impacts on receiving water quality shall be assessed for all flood management projects. The feasibility of retro-fitting existing structural flood control devices to provide additional pollutant removal from storm water shall be evaluated.

5. *Pesticide, Herbicide, and Fertilizer Application:* Each permittee shall implement controls to reduce the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied, by the permittee's employees or contractors, to public right of ways, parks, and other municipal property. Permittee(s) with jurisdiction over lands not directly owned by that entity (e.g. incorporated city) shall implement programs to reduce the discharge of pollutants related to commercial application and distribution of pesticides, herbicides, and fertilizers.

6. *Illicit Discharges and Improper Disposal:* Non-storm water discharges to the Municipal Separate Storm Sewer System shall be effectively prohibited. For the purpose of this permit, the following discharges need not be addressed as illicit discharges by the permittees nor prohibited from entering the Municipal Separate Storm Sewer System: discharges regulated by a separate NPDES permit; discharges for which an NPDES permit application has been submitted; and non-storm water discharges identified by the permittee as specified in item a. below.

   a. Permittees shall identify in the Storm Water Management Program any categories of non-storm water that are not prohibited from being discharged into the Municipal Separate Storm Sewer System, in accordance with conditions described in items (1) and (2) below.

      (1) Categories of non-storm water discharges that the permittees may exempt from the prohibition on non-storm water entering the Municipal Separate Storm Sewer System include those either:

         (a) listed in 40 CFR 122.26(d)(2)(iv)(B)(1); or

         (b) other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.).

      (2) Categories of non-storm water discharges exempted from the prohibition on non-storm water must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the Municipal Separate Storm Sewer System, because of either:

         (a) the nature of the discharges; or

         (b) conditions placed on the discharges by the permittees.

The Storm Water Management Program shall describe any local controls or conditions placed on discharges exempted from the prohibition on non-storm water. Permittees shall prohibit any individual non-storm water discharge otherwise exempted under this paragraph from the prohibition on non-storm water that is determined to be contributing significant amounts of pollutants to the Municipal Separate Storm Sewer System.

b. Each permittee shall implement the following programs to address the discharge of pollutants from sanitary sewers into the Municipal Separate Storm Sewer System:

(1) an ongoing program for prevention of unpermitted chronic dry and wet weather overflows from the sanitary sewer system (e.g. overflows caused by deteriorated or undersize lines, excessive inflow and infiltration, improper maintenance, etc.);

(2) a program for responding to and eliminating, as soon as practicable, unforseen episodic overflows from the sanitary sewer system (e.g. overflows caused by power outage, line breakage or blockage, vandalism, etc.); and

(3) an ongoing program to limit seepage from sanitary sewers into the MS4 (e.g. seepage due to minor cracks in lines, line joints separating due to land subsidence, etc.).

These programs may be implemented either directly or in conjunction with other permittees and/or the sanitary sewer system operator. Remediation schedules, not to exceed any compliance schedule placed on the sanitary sewer system operator by the State or EPA, may be developed to prioritize capital projects or repair and maintenance efforts. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the Municipal Separate Storm Sewer System.

c. The permittee(s) shall ensure the implementation of a program to reduce the discharge of floatables (e.g. litter and other human-generated solid refuse). The floatables control program shall include source controls and, where necessary, structural controls.

d. The discharge or disposal of used motor vehicle fluids, household hazardous wastes; and the intentional disposal of collected quantities of grass clippings, leaf litter, and animal wastes into separate storm sewers shall be prohibited. The permittee(s) shall ensure the implementation of programs to collect used motor vehicle fluids (at a minimum, oil and antifreeze) for recycle, reuse, or proper disposal and to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis.

e. A program to locate and eliminate illicit discharges and improper disposal into the Municipal Separate Storm Sewer System shall be implemented. This program shall include dry weather screening activities to locate portions of the Municipal Separate Storm Sewer System with suspected illicit discharges and improper disposal (described in Part II.A.11.a). Follow-up activities to eliminate illicit discharges and improper disposal may be prioritized on the basis of magnitude and nature of the suspected discharge; sensitivity of the receiving water; and/or other relevant factors. This program shall establish priorities and schedules for screening the entire Municipal Separate Storm Sewer System at least once during the permit term. Facility inspections may be carried out in conjunction with other municipal programs (e.g. pretreatment inspections of industrial users, health inspections, fire inspections, etc.), but must include random inspections for facilities not normally visited by the municipality.

f. Each permittee shall require the elimination of illicit discharges and improper disposal practices as expeditiously as reasonably possible. Where elimination of an illicit discharge within thirty (30) days is not possible, the permittee shall require an expeditious schedule for removal of the discharge. In the interim, the permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the Municipal Separate Storm Sewer System.

g. The permittee(s) shall maintain, and update as necessary, a list of discharges to municipal separate storm sewers that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.

7. *Spill Prevention and Response:* A program to prevent, contain, and respond to spills that may discharge into the Municipal Separate Storm Sewer System shall be implemented. Where discharge of material resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage, the permittee(s) shall take, or insure the party responsible for the spill takes, all reasonable steps to minimize or prevent any adverse effects to human health or the environment. The spill response program may include a combination of spill response actions by the permittee(s) (and/or another public or private entity), and legal requirements for private entities within the permittee's municipal jurisdiction.

8. *Industrial & High Risk Runoff:* A program to identify and control pollutants in storm water discharges to the Municipal Separate Storm Sewer System from municipal landfills; other treatment, storage, or disposal facilities for municipal waste (e.g. transfer stations, incinerators, etc.); hazardous waste treatment, storage, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313; and any other industrial or commercial discharge the permittee(s) determines are contributing a substantial pollutant loading to the Municipal Separate Storm Sewer System shall be implemented. The program shall include:

a. priorities and procedures for inspections, monitoring (see also Part II.A.11.c.), and establishing and implementing control measures for such discharges; and

b. a list of industrial storm water sources discharging to the Municipal Separate Storm Sewer System, which shall be maintained and update as necessary.

9. *Construction Site Runoff:* A program to reduce the discharge of pollutants from construction sites shall be implemented. This program shall include:

a. requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutants discharged to the Municipal Separate Storm Sewer System during the time construction is underway;

b. inspection of construction sites and enforcement of control measures (in accordance with priorities and procedures established in the Storm Water Management Program);

c. appropriate education and training measures for construction site operators; and

d. notification of appropriate building permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

10. *Public Education:* A public education program with the following elements shall be implemented:

a. a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials, including floatables, into the Municipal Separate Storm Sewer System;

b. a program to promote, publicize, and facilitate the proper management and disposal of used motor vehicle fluids and household hazardous wastes.

c. a program to promote, publicize, and facilitate the proper use, application, and disposal of pesticides, herbicides, and fertilizers by the public and commercial and private applicators and distributors.

11. *Monitoring Programs:* The following monitoring programs shall be implemented in addition to the monitoring required by Part V.:

a. The *Dry Weather Screening Program* shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the Municipal Separate Storm Sewer System. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. All areas of the Municipal Separate Storm Sewer System must be screened at least once during the permit term. Screening methodology may be modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D). Sample collection and analysis need not conform to the requirements of 40 CFR Part 136. However, samples taken to confirm (e.g. in support of possible legal action) a particular illicit connection or improper disposal practice should conform to the requirements of 40 CFR Part 136.

b. *Wet Weather Screening Program:* Each permittee shall identify, investigate, and address areas within its jurisdiction that may be contributing excessive levels of pollutants to the Municipal Separate Storm Sewer System. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. The wet weather screening program:

(1) shall screen the Municipal Separate Storm Sewer System, in accordance with the procedures specified in the Storm Water Management Program.

(2) shall specify the sampling and non-sampling techniques to be used for initial screening and follow-up purposes. Sample collection and analysis need not conform to the requirements of 40 CFR Part 136. However, samples taken to confirm (e.g. in support of possible legal action) a particular illicit connection or improper disposal practice should conform to the requirements of 40 CFR Part 136.

c. The *Industrial and High Risk Runoff Monitoring Program* shall monitor storm water discharges from Type 1 and 2 industrial facilities (described below) which discharge to the Municipal Separate Storm Sewer System. Analytical monitoring data collected by a facility to comply with, or apply for, a State or NPDES discharge permit (other than this permit) may be used, on a parameter-by-parameter basis, to avoid unnecessary cost and duplication of effort.

If a Type 1 or Type 2 industrial facility has two or more outfalls with substantially identical effluents, the MS4 may allow the facility to test only one outfall and to report that the quantitative data also apply to the substantially identical outfalls. The facilities must demonstrate that the storm water outfalls are substantially identical. The MS4 operator may allow the use of one or all of the following methods for such demonstration: (1) submission of a narrative description and a site map; (2) submission of matrices; or (3) submission of model matrices. Detailed guidance on each of the three options for demonstrating substantially identical outfalls is provided on pages 106 and 107 of the NPDES Storm Water Sampling Guidance Document (EPA 833-B-92-001), available on EPA's website at http://www.epa.gov/npdes/pubs/owm0093.pdf.

(1) Type 1 facilities are municipal landfills; hazardous waste treatment, disposal and recovery facilities; facilities that are subject to EPCRA Title III, Section 313; and industrial facilities the permittee(s) determines are contributing a substantial pollutant loading to the Municipal Separate Storm Sewer System. Analytical monitoring of the following parameters shall be conducted at Type 1 facilities which discharge to the Municipal Separate Storm Sewer System:

- any pollutants limited in an existing NPDES permit for a subject facility;
- oil and grease;
- chemical oxygen demand (COD);
- pH;
- biochemical oxygen demand, five-day (BOD_5);
- total suspended solids (TSS);

- total phosphorous;
- total Kjeldahl nitrogen (TKN);
- nitrate plus nitrite nitrogen;
- any discharge information required under 40 CFR 122.21(g)(7)(iii) and (iv);
- total cadmium;
- total chromium ;
- total copper;
- total lead;
- total nickel;
- total silver; and
- total zinc.

Frequency of monitoring shall be established by the permittee(s), but may not be less than once per year.

In lieu of the above parameter list, the permittee(s) may alter the monitoring requirement for any individual Type 1 facility:

(a) to coincide with the corresponding industrial sector-specific monitoring requirements of the Multi-Sector General Storm Water Permit (October 30, 2000, 65 FR 64801) or any applicable general permit issued after October 30, 2000. This exception is not contingent on whether a particular facility is actually covered by the general permit; or

(b) to coincide with the monitoring requirements of any individual permit for the storm water discharges from that facility.

The optional monitoring list must be supplemented by any pollutants of concern identified by the permittee(s) for that facility.

(2) Type 2 facilities are other municipal wastes treatment, storage, or disposal facilities (e.g., POTWs, transfer stations, incinerators) and industrial or commercial facilities the permittee(s) believe are contributing pollutants to the Municipal Separate Storm Sewer System. Appropriate monitoring (e.g., analytic, visual), as determined by the permittee(s), shall be conducted at Type 2 facilities which discharge to the Municipal Separate Storm Sewer System. The permittee(s) shall include in the Annual Report a list of parameters of concern and monitoring frequencies required for each type of facility.

(3) No Exposure Certification: In lieu of analytic monitoring, the permittee(s) may accept copy of certification from a facility made to EPA under 40 CFR 122.26(g).

B. Area-specific Storm Water Management Program Requirements. Permittees are required to develop and implement measures necessary to bring the discharge into compliance with the Middle Rio Grande Total

Maximum Daily Load (TMDL) for Fecal Coliform. Specific permit requirements to implement the TMDL are included in Part III, Table III.B.

The permittees shall conduct a five year monitoring study to collect samples and test storm water for its toxic effects on the fathead minnow (*Pimephales promalas*). Within 6 months from the effective date of the permit, the permittees shall develop a monitoring strategy for this study in coordination with the U.S. Fish and Wildlife Service, Albuquerque Ecological Field Services Office and EPA. The monitoring strategy must be consistent with EPA toxicity monitoring and testing protocols and may include the use of additional standard EPA freshwater toxicity test organisms, such as *Ceriodaphnia dubia*. The monitoring strategy must include a provision to notify the EPA immediately upon the detection of any toxicity. The completed monitoring strategy shall be implemented immediately and shall be added to the Storm Water Management Program in accordance with Part II.G.2.b. Implementation shall include monitoring of one storm event per year, at minimum, for the NPDES permit term. The permittee(s) shall provide EPA with status updates of the toxicity study, including monitoring data, in accordance with the annual reporting requirements in Part V.C. Before the expiration of the permit term (5 years), the permittee(s) shall compile a final report containing the monitoring data, the results of toxicity testing, an evaluation of the toxicants (if any), and the permittees' actions to eliminate that toxicity, including activities ongoing during the current permit term and any needed activities which would extend past the five year permit term.

C. **Deadlines for Program Implementation.** Except as provided in Part III, or in any implementation schedule in the Storm Water Management Program that is not in conflict with a Part III schedule, full implementation of the Storm Water Management Program shall begin within 90 days from the effective date of the permit.

D. **Roles and Responsibilities of Permittee(s).** The Storm Water Management Program, together with any attached interagency agreements, shall clearly identify the roles and responsibilities of each permittee.

E. **Legal Authority.** Each permittee shall ensure legal authority to control discharges to and from those portions of the Municipal Separate Storm Sewer System over which it has jurisdiction. This legal authority may be a combination of statute, ordinance, permit, contract, order or inter-jurisdictional agreements with permittees with existing legal authority to:

1. Control the contribution of pollutants to the Municipal Separate Storm Sewer System by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

2. Prohibit illicit discharges to the Municipal Separate Storm Sewer System;

3. Control the discharge of spills and the dumping or disposal of materials other than storm water (e.g. industrial and commercial wastes, trash, used motor vehicle fluids, leaf litter, grass clippings, animal wastes, etc.) into the Municipal Separate Storm Sewer System;

4. Control through interagency or interjurisdictional agreements among permittees the contribution of pollutants from one portion of the Municipal Separate Storm Sewer System to another;

5. Require compliance with conditions in ordinances, permits, contracts or orders; and

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance with permit conditions.

F. **Storm Water Management Program Resources.** Each permittee shall provide adequate finances, staff, equipment, and support capabilities to implement their activities under the Storm Water Management Program.

G. **Storm Water Management Program Review and Update.**

1. *Storm Water Management Program Review:* Each permittee shall participate in an annual review of the current Storm Water Management Program in conjunction with preparation of the annual report required under Part V.C.

2. *Storm Water Management Program Update:* The permittee(s) may change the Storm Water Management Program during the life of the permit in accordance with the following procedures:

a. The approved Storm Water Management Program shall not be changed by the permittee(s) without the approval of the Director, unless in accordance with Parts II.G.2.b., c., or d.

b. Changes adding (but not subtracting or replacing) components, controls, or requirements to the Storm Water Management Program may be made by the permittee(s) at any time upon written notification to the Director.

c. Changes replacing an ineffective or unfeasible BMP specifically identified in the Storm Water Management Program with an alternate BMP may be requested at any time. Unless denied by the Director, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented by the permittee(s) 60 days from submittal of the request. If request is denied, the Director will send the permittees a written response giving a reason for the decision. Such requests shall include the following:

(1) an analysis of why the BMP is ineffective or infeasible (including cost prohibitive),

(2) expectations on the effectiveness of the replacement BMP, and

(3) an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

d. Changes resulting from schedules contained in Part III. may be requested following completion of an interim task or final deadline. Unless denied by the Director, proposed changes meeting

the criteria contained in the applicable Part III schedule shall be deemed approved and may be implemented by the permittee(s) 60 days from submittal date.

e. Change requests or notifications shall be made in writing, signed in accordance with Part VI.H. by all directly affected permittees, and include a certification that all permittees were given an opportunity to comment on proposed changes prior to submittal to the Director.

3. *Storm Water Management Program Updates Required by the Director:* The Director may require changes to the Storm Water Management Program as needed to:

a. address impacts on receiving water quality caused, or contributed to, by discharges from the Municipal Separate Storm Sewer System;

b. include more stringent requirements necessary to comply with new State or Federal statutory or regulatory requirements; or

c. include such other conditions deemed necessary by the Director to comply with the goals and requirements of the Clean Water Act.

Changes requested by the Director shall be made in writing, set forth the time schedule for the permittee(s) to develop the changes, and offer the permittee(s) the opportunity to propose alternative program changes to meet the objective of the requested modification. All changes required by the Director shall be made in accordance with 40 CFR 124.5, 40 CFR 122.62, or as appropriate 40 CFR 122.63.

4. *Transfer of Ownership, Operational Authority, or Responsibility for Storm Water Management Program Implementation:* The permittee(s) shall implement the Storm Water Management Program on all new areas added to their portion of the Municipal Separate Storm Sewer System (or for which they become responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

Within 90 days of a transfer of ownership, operational authority, or responsibility for storm water management program implementation, the permittee(s) shall have a plan for implementing the Storm Water Management Program on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the Storm Water Management Program shall be submitted in the annual report.

H. Retention of Storm Water Management Program Records. The permittee shall retain Storm Water Management Program records developed in accordance with Parts II. and III. for at least 5 years after coverage under this permit terminates.

PART III. SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE.

A. Implementation and Augmentation of Storm Water Management Program(s). The permittee(s) shall comply with the schedules contained in Tables III.A and III.B for Storm Water Management Program implementation and augmentation, and permit compliance. The Director shall have sixty (60) days from receipt of an update or augmentation made in compliance with Part III to provide comments or request revisions. The permittee(s) shall have thirty (30) days from receipt of the Director's comments or required revisions to submit a response.

B. Compliance with effluent limitations. Reserved.

C. Reporting compliance with schedules. No later than 14 days following a date for a specific action (interim milestone or final deadline) identified in the Part III schedule(s), the permittee(s) shall submit a written notice of compliance or noncompliance to the Director in accordance with Parts V.E.

D. Updating Storm Water Management Program. The permittee(s) shall update the Storm Water Management Program(s), as appropriate, in response to changes required by Part III.A. Such updates shall be made in accordance with Part II.G.2.

Table III.A - Implementation and Augmentation of Storm Water Management Program(s).

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
1. General	a. Develop and submit a program describing procedures to ensure that public participation is a component of the storm water management program. The program shall include procedures for ensuring that core items developed to comply with Table III.A schedules are available for public review, and that applicable State, Tribal, and local public notice requirements are complied with.	Albuquerque/AMAFCA NMSHTD UNM	June1, 2004
	b. Submit copies of new or revised ordinances adopted to implement the SWMP and other permit conditions.	Albuquerque/AMAFCA	December 1, 2005
2. SWMP Document	a. Submit copy of each permittee's SWMP revised as necessary to reflect final permit conditions and adjustment of time period-based (e.g. 18 months) schedule dates to reflect actual calendar dates based on the permit effective date. SWMP revisions shall follow the format in the City's SWMP and shall include:: 1) Incorporation of Part III compliance schedules 2) Incorporate measurable goals for each of the program elements included in Part II.A of the permit* 3) Months and years in which required actions will be taken, including interim milestones and the frequency of the actions	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	b. Revise SWMP document to include programs for all campuses in one document.	UNM	December 1, 2004

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
3. Structural Controls (Part II.A.1)	a. Revise SWMP to include a list of all storm water quality facilities by drainage basin, including location and description. List shall include record of maintenance and inspections.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	b. Revise Inspection and Maintenance program to include a target number of structures per basin to be cleaned per quarter.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
4. Areas of New Development and Significant Redevelopment (Part II.A.2.a and b.)	a. Submit revisions to master planning, design review and approval procedures (SWMP Chapter 1, Section A.2) to incorporate requirements for post construction controls to minimize discharge of pollutants from areas of new development and significant redevelopment. At a minimum, the revised program shall include: 1.) Guidance document with required storm water management technical standards and design guidelines. The document shall contain requirements for all projects; must address all areas, with special requirements for environmentally sensitive areas; shall be developed for use during planning and design stages of projects; and shall contain requirements for structural and non-structural controls. In developing the optimum measures for environmentally sensitive areas, the permittees should consult with the entities involved as to what controls will be appropriate and acceptable. Environmentally sensitive areas are areas in critical watersheds, areas with endangered species concerns, and riparian areas. 2.) Appropriate criteria for defining projects required to undergo formal review of storm water pollutant impacts for use during review and approval process. 3.) Submit copies of revised administrative procedures and any necessary revisions to ordinances (City of Albuquerque).	Albuquerque/AMAFCA UNM	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Submit certification of the implementation of the revised master planning, formal adoption of guidance document and control requirements and incorporation of standards into master planning and plan review and approval process.	Albuquerque/AMAFCA UNM	December 1, 2006
	c. Develop and submit program describing criteria and procedures for determining requirements for structural and non structural **post-construction** storm water quality controls on new and significant reconstruction of roads and highways. The program shall include the following: 1.) Guidance manual for design and maintenance of structural and non structural controls to control pollutants in storm water runoff from highways. 2.) Detailed description of master planning and project planning procedures to reduce the discharge of pollutants from NMSHTD's MS4 within Albuquerque's corporate city limits. 3.) Identification of areas that are sensitive to the effects of urbanization and highway construction. 4.) Specific procedures for estimating the impacts to the water quality of the stream that would receive storm water runoff from new construction and significant reconstruction of highways. 5.) A process for evaluating and selecting alternative best management practices to mitigate the impacts on water quality. 6.) Special requirements for projects that may impact environmentally sensitive/unique areas. 7.) The criteria shall be implemented during project planning and design of new and reconstruction of projects.	NMSHTD	December 1, 2005
	d. Submit certification of the implementation of program described in item c. above for all new projects and for significant reconstruction of roads and highways by NMSHTD within the permit area.	NMSHTD	December 1, 2006

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
5. Roadways (Part II.A.3)	a.Develop and submit an operational manual for de-icing activities addressing alternate materials and methods to minimize impacts to storm water quality.	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	b. Develop and submit a program to control pollution in storm water runoff from equipment/vehicle maintenance yards and maintenance center operations.	Albuquerque/AMAFCA	June 1, 2005
	c. Revise street sweeping program with increased frequencies, taking into account leaf litter in the fall, de-icing operations in the winter and proximity to water bodies and conveyances.	Albuquerque/AMAFCA	June 1, 2005
	d. Submit certification of the implementation of the revised de-icing practices, BMPs to control pollution in storm water runoff from equipment/vehicle maintenance yards and maintenance center operations, and revised street sweeping program.	Albuquerque/AMAFCA	December 1, 2005
	e. Submit revisions to the SWMP describing maintenance practices for streets, roads and highways, to include: 1.) Specific practices to reduce to the Maximum Extent Practicable (MEP) pollutants from road and highway repair, equipment/vehicle yards and materials storage/ maintenance facilities. 2.) Roads and highways sweeping schedules and frequencies with priorities, taking into account leaf litter in the fall, de-icing operations in the winter and proximity to water bodies and conveyances. 3.) Description of criteria for litter control targets with priorities (e.g. proximity to receiving waters) within the permit area. 4.) Control measures to minimize the discharge of pollutants in storm water runoff related to deicing and sanding activities.	NMSHTD	December 1, 2004
	f. Submit certification of the implementation of the revised streets, roads and highways maintenance program.	NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	g. Develop and submit a permitting/certification program to ensure that entities applying for the use of Right of Way implement BMPs in their construction and maintenance procedures to minimize pollutants entering into NMSHTD's MS4.	NMSHTD	December 1, 2004
	h. Submit certification of the incorporation of BMP requirements into the of right of way permitting process.	NMSHTD	December 1, 2005
	i. Develop a litter source control program to include public awareness campaigns targeting the faculty and student bodies.	UNM	December 1, 2004
	j. Submit certification of implementation of the anti-litter educational/public awareness program.	UNM	December 1, 2005
6. Flood Control Projects and Structural Controls (Part II.A.4)	a. Develop and submit technical criteria guidance document and program for the assessment of water quality impacts and incorporation of water quality controls into future flood control projects. The criteria for future projects shall be implemented during the planning and design stages of projects. Impacts of new flood control projects on quality of receiving waters shall be assessed as part of the project approval process	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	b. Develop and submit criteria, procedures and schedule to evaluate existing flood control devices/structures/drainage ways to assess the feasibility of retrofitting to provide additional pollutant removal from storm water.	Albuquerque/AMAFCA NMSHTD	June 1, 2005
	c. Submit a summary report of retrofit evaluations conducted on existing flood control devices/structures to benefit water quality. Update SWMP to include schedule (with priorities) for identified retrofit projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit certification of the implementation of program for water quality review of future flood control projects. Update SWMP to include schedule (with priorities) for identified retrofit projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2005
	e. Begin implementation of retrofit program for identified projects.	Albuquerque/AMAFCA NMSHTD	December 1, 2006
7. Pesticide, Herbicide, and Fertilizer Application (Part II.A.5)	a. Submit revisions to the Pesticide, Herbicide and Fertilizer Program to include the following: 1.) Develop a public education program to advise the public on the proper use and application of pesticides, herbicides and fertilizers to minimize pollutants in storm water runoff. Program description to include schedules for specific activities and population targets. 2.) Develop and implement program to provide literature to the public on xeriscape landscaping for residential and commercial areas. 3.) Submit procedures and internal policies in place to ensure that the City's herbicide and pesticide applicators are properly trained and certified, and to ensure that the applicators use the least toxic products, and minimize use and application rates. 4.) Description of data monitoring system for all City departments utilizing pesticides, herbicides and fertilizers.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of implementation of revised Pesticide, Herbicide and Fertilizer Program..	Albuquerque/AMAFCA	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Submit certification of implementation of Pesticide, Herbicide and Fertilizer Management program proposed in the SWMP.	UNM	December 1, 2004
8. Illicit Discharges and Improper Disposal (Part II.A.6.a)	a. Revise program to describe local controls or conditions on discharges exempted from the prohibition on non-storm water. For each category the permittees described as exempt, submit an explanation as to why the discharges are not reasonably expected to be significant sources of pollutants.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	b. Define the term "not significantly chlorinated" in permittee's SWMP in terms of levels of chlorine	NMSHTD	December 1, 2004
9. Illicit Discharges and Improper Disposal - Overflows and Infiltration (Part II.A.6.b)	a. Revise program to prevent the discharge of pollutants from sanitary sewers into the MS4. The program shall include: 1.) Municipal controls used to address seepage from malfunctioning septic systems and on-site water systems into the storm sewer system. Program to include description of private sewage system regulations and procedures to reduce or prevent the possibility of illicit discharges from these systems, including seepage and infiltration into the MS4 system. 2.) Procedures to track and eliminate sanitary sewer overflow and exfiltration of wastewater into the MS4. 3.) Schedules and methods for sanitary sewer inspections, cleaning, maintenance and repairs, by basin. 4.) Procedures describing how findings from inspections are passed on to storm sewer maintenance personnel; how repairs of damaged sanitary lines are prioritized; and how sources are eliminated.	Albuquerque/AMAFCA	June 1, 2005
	b. Submit certification of implementation of revised program addressing prevention of sanitary overflows and limitation of sanitary seepage into the MS4.	Albuquerque/AMAFCA	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Develop and submit procedures to advise appropriate utility owner of infiltration or overflows if constituents common to sanitary sewage contamination are discovered in the MS4.	NMSHTD1	June 1, 2004
	d. Submit certification of implementation of notification procedures included in c. above.	NMSHTD	December 1, 2004
	e. Submit summary of results of sanitary sewer system survey and plan for rehabilitation	UNM	December 1, 2004
	f. Submit certification of implementation of plan to rehabilitate.	UNM	December 1, 2005
10. Illicit Discharges and Improper Disposal - Floatables (Part II.A.6.c)	a. Schedules for control of floatables are included under Roadways (Item 5) and Floatables (Item 17).	N/A	N/A
11. Illicit Discharges and Improper Disposal - Household Hazardous Wastes/Motor Vehicle Fluids (Part II.A.6.d)	a. Develop and submit a program including standard operating procedures for collection of used motor vehicle fluids (at a minimum oil and antifreeze) and toxics (including paint, solvents, pesticides, herbicides, and other hazardous materials) used in NMSHTD and UNM operations or discarded in the MS4, for recycle, reuse, or proper disposal.	NMSHTD	December 1, 2004
	b. Submit certification of implementation of used motor vehicle fluids and toxics program.	NMSHTD	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
12. Illicit Discharges and Improper Disposal - MS4 Inspections and Elimination of Illicit Discharges (Part II.A.6.e and f.)	a. Submit revisions to illicit discharge inspection and elimination program to include: 1.) Types of facilities/outfalls/sampling points subject to inspections. 2.) Inspection procedures, priorities and frequencies (e.g. commercial, residential, etc) 3.) Enforcement procedures for identified illicit dischargers and improper disposal practices. 4.)An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of implementation of revised illicit discharge inspection and elimination program.	Albuquerque/AMAFCA	December 1, 2005
	c. Develop and submit a program to locate and eliminate illicit discharges and improper disposal into the MS4. The program shall include: 1). Description of utility permitting process for storm drain connections to NMSHTD's MS4. 2). Inspections of drainage connections to NMSHTD's MS4, after project completion to ensure continued compliance with drainage connection permit requirements and to ensure that no illicit or non-permitted connections have been made. 3). Description of standard investigative procedures used to identify and report the source(s) of illicit connections or discharges. These procedures shall include notification to NMED and EPA of illicit connections. 4.) An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger. 5). Description of public education/outreach activities to promote, publicize, and facilitate public reporting of the presence of illicit discharges and improper disposal of materials into the MS4.	NMSHTD	December 1, 2004
	d. Submit certification of the implementation of the illicit discharge investigation/elimination program.	NMSHTD	December 1, 2005

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	e. Revise illicit discharge inspection/elimination program to include: 1.) Expedited time schedule for removal of illicit discharges, after discovery. 2.) An updated list of dischargers to the MS4 that has been issued a NPDES permit. The list shall include the name, location and NPDES permit number of the discharger.	UNM	December 1, 2004
	f. Submit certification of the implementation of the illicit discharge inspection/elimination program.	UNM	June 1, 2005
13. Spill Prevention and Response (Part II.A.7)	a. Submit a revised Spill Prevention and Response Program including Spill Response Plan and Interagency agreements. Program shall describe specific procedures to prevent, contain, mitigate and respond to potential pollutant discharges to the MS4, to surface waters, and to environmentally sensitive areas.	NMSHTD UNM	December 1, 2004
	b. Submit certification of the implementation of the revised Spill Prevention and Response program.	NMSHTD UNM	June 1, 2005
14. Industrial and High Risk Runoff (Part II.A.8) and Industrial and High Risk Runoff Monitoring (Part II.A.11.c)	a. Submit a revised Industrial and High Risk Program to include: 1.) A list of the facilities that the City will include in their industrial runoff control program, by category and by basin. 2.)Schedules and frequency of inspection for listed facilities. 3.) Priorities for inspections and description of procedures used during inspections (e.g. inspection checklist, review for NPDES permit coverage; review of storm water pollution prevention plan; etc.). 4.) Updated list of industrial storm water sources discharging to the MS4.	Albuquerque/AMAFCA	December 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Revise the Industrial and High Risk Program to include a monitoring program for storm water discharges from the facilities identified in the program included in item a. above, in accordance with Part II.A.11.c. Program to include: 1) Monitoring frequency 2) Parameters 3) Entity who will do monitoring and analyses (MS4 permittees or subject facility). The monitoring program may include a waiver of monitoring for parameters at individual facilities based on a "no-exposure" certification.	Albuquerque/AMAFCA	December 1, 2004
	c. Revise Industrial and High Risk runoff program to include a list of facilities that UNM will include in their industrial runoff control program, by category (e.g. research labs, maintenance yards, power plant, etc.). The program shall include: 1) Schedule and frequency of inspections for listed facilities. 2) Priorities and description of procedures used during inspections. 3.)A monitoring program for storm water discharges from the facilities identified above, in accordance with Part II.A.11.c.	UNM	December 1, 2004
	d. Submit certification of the implementation of the revised Industrial and High Risk Runoff and Monitoring Programs.	Albuquerque/AMAFCA UNM	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
15. Construction Site Runoff (Part II.A.9)	a. Submit revisions to Construction Runoff Program to include: 1.) Manual with technical criteria and specific sediment and erosion BMPs required to reduce discharge of pollutants to receiving waters from construction activities. The manual shall contain requirements and guidelines for construction and maintenance of BMPs. Criteria shall be developed for all construction sites and may allow for different requirements depending on project size. 2.) Detailed description of sediment and erosion plan review process and criteria used to evaluate proposed controls. 3.) Procedures for inspecting construction sites for sediment and erosion controls. Minimum frequency of inspections; and inspector's checklist. 4.) Enforcement mechanisms for violations and penalties to deter infractions. 5.) Corrective action follow-up procedures. 6.) Review for NPDES compliance as appropriate. 7.) Procedures to address citizen complaints of offsite sedimentation problems, if applicable.	Albuquerque/AMAFCA UNM	December 1, 2004
	b. Submit certification of implementation of operator education and training programs as described in the SWMP.	Albuquerque/AMAFCA UNM	December 1, 2004
	c. Submit certification of formal adoption and implementation of revised Construction Runoff program.	Albuquerque/AMAFCA UNM	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit revisions to Construction Runoff Program to include: 1.) Updated NPDES handbook to include latest revisions to EPA's General Permit for Storm Water Discharges from Construction Activities. 2.) Procedures for verification of construction permit coverage. 3.) Description of enforcement measures for contractors that are not in compliance with permit requirements. 4.) Description and frequencies of educational/training activities for construction personnel and contractors on the different aspects of the construction program.	NMSHTD	December 1, 2004
	e. Submit certification of implementation of revised Construction Runoff Program for all NMSHTD construction sites within the permit area.	NMSHTD	December 1, 2005
16. Public Education (Part II.a.10)	a. Submit revisions to the public education program to promote, publicize and facilitate public reporting of the presence of illicit discharges or improper disposal of materials to include detailed description of public education activities, target groups and schedule/frequencies of activities.	Albuquerque/AMAFCA	December 1, 2004
	b. Submit certification of the implementation of the public education program and inlet stenciling program.	Albuquerque/AMAFCA	December 1, 2005
	c. Develop and submit a public education program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or improper disposal of materials into the MS4; and to promote, publicize, and facilitate the proper management and disposal of used oil and household hazardous wastes. The program shall include a detailed description of public education activities, target groups and schedule/frequencies of activities	NMSHTD	December 1, 2004

STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	d. Submit certification of the implementation of the public education programs required in item c. above.	NMSHTD	December 1, 2005
	e. Submit revisions to the public education program to include information on what constitutes an illicit discharge; steps to report illicit discharges; information on proper management of oil and toxics and opportunities to recycle motor vehicle fluids; and detailed description of public education activities, with frequencies.	UNM	December 1, 2004
	f. Submit certification of the implementation of the public awareness program, inlet stenciling program and hotline for reporting illicit discharges.	UNM	December 1, 2005
17. Floatables	a. Develop a program to reduce the discharge of floatables and trash from the North Diversion Floodway Channel to the maximum extent practicable. Submit results of a study conducted to determine the most effective structural or treatment control BMPs to reduce the levels of floatables discharged through this storm water conveyance.	Albuquerque/AMAFCA	December 1, 2004
	b. Begin installation of permanent BMPs to control the discharge of floatables and trash from the North Diversion Floodway Channel to the Maximum Extent Practicable, based on results of the study included in item a. above.	Albuquerque/AMAFCA	December 1, 2006

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	c. Conduct evaluations of trash reduction needs from the entire MS4 and determine the most effective structural or treatment control BMPs to reduce the levels of floatables discharged through the MS4. The study should specifically address: 1) all conveyances discharging directly to the Rio Grande; 2) upstream contributing systems; 3) possible retrofits of detention basins for outlet structures to minimize the discharge of floatables; and 4) Source control requirements for floatables in commercial and industrial areas Results of the evaluation should be submitted in a report format and shall include recommendations and milestones for implementation.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
	d. Complete installation and implementation of BMPs and retrofit structures to control floatables and trash based on the result of the evaluation included in item c. above.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2005
	e. Begin implementation of requirements for source control of floatables in industrial and commercial areas.	Albuquerque/AMAFCA	December 1, 2005
	f. Develop a floatables monitoring program, install a floatables monitoring location and commence monitoring (See Part V.B.).	NMSHTD UNM	December 1, 2004
	g. Develop a floatables monitoring program, install two floatables monitoring locations and commence monitoring (See Part V.B.).	Albuquerque/AMAFCA	December 1, 2005

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
18. Monitoring - Dry Weather Screening (Part II..A.11.a)	a. Submit a description of dry weather screening program for covering the entire MS4, but not necessarily each individual outfall. The purpose of this program is to identify problem areas and "hot spots" within the MS4 that may need further investigation. All major outfalls discharging directly to the Rio Grande must be screened at least once per year. The program shall include: 1.) Priorities for screening 2.) Description of screening procedures 3.) Major system points to be screened 4.) Annual commitments and means of calculating percent of system screening (e.g. percent of land area, etc.) 5.) Sampling and non-sampling methods for initial screening, and follow-up procedures if potential problem areas or "hot spots" are located.	Albuquerque/AMAFCA NMSHTD UNM	September 1, 2004
	b. Complete dry weather screening of 50% of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	June 1, 2005
	c. Complete dry weather screening of 100% (cumulative) of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2006
19. Monitoring - Wet Weather Screening (Part II..A.11.b)	a. Develop and submit a wet weather screening program satisfying the requirements of Part II.A.11.b.The purpose of this program is to identify problem areas and "hot spots" within the MS4 that may need further investigation. All major outfalls discharging directly to the Rio Grande must be screened at least once per year.	Albuquerque/AMAFCA NMSHTD UNM	September 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
	b. Complete wet weather screening of 50% of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	June 1, 2005
	c. Complete wet weather screening of 100% (cumulative) of the MS4.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2006
20. Supporting Permit Requirements	a. Submit updated description of the roles and responsibilities of co-permittees, including any interagency agreements developed for MS4 permitting purposes.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004
21. Industrial High Risk Municipal Operations Note: Some of the requirements in this program are also developed under other program components. This item consolidate the pollution prevention/good	a. <u>Pollution Prevention/Good Housekeeping for Municipal Operations</u>. The permittee or MS4 operator, as applicable, shall: 1.) Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The permittee shall address the following topics in the program: a. Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4; b. Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004

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STORM WATER MANAGEMENT PROGRAM COMPONENT	ACTIVITY	RESPONSIBLE PERMITTEE(S)	DATE DUE (from effective date of permit)
housekeeping BMPs for municipal operations. Compliance items for these requirements under other program components are to	storage locations and snow disposal areas; c. Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris; d. Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices; 2.) Include the following information in the SWMP: a. A list of the municipal operations impacted by this operation and maintenance program;		
be consolidated and also submitted under this program item.	b. A list of industrial facilities (other than large construction activities defined as industrial activity) owned or operated by the permittee that ultimately discharge to the small MS4 and are subject to: i. The Multi-Sector General Permit (MSGP), or ii. Individual NPDES permit for discharges of storm water associated with industrial activity. c. A map showing the industrial facilities owned and operated by the MS4; d. The EPA permit authorization number or a MSGP NOI form for each facility; e. A description of the training program for municipal employees; f. A list of measurable goals for the municipal pollution prevention program; g. Dates by which the permittee will achieve specific measurable goals; and h. The name of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.	Albuquerque/AMAFCA NMSHTD UNM	December 1, 2004

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Note: The "Certification of Implementation" is a letter from the permittee to EPA, stating that the program or permit condition has been implemented by the date due. The certification needs to be signed in accordance with Part VI.H Signatory Requirements of the permit.

* Guidance on measurable goals is found at

http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm.

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The following requirements are included to implement the requirements in the Middle Rio Grande Total Maximum Daily Load (TMDL) for Fecal Coliform developed by the State of New Mexico.

TABLE III.B - Implementation of Fecal Coliform TMDL

Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
1.0 **Source Categories**. Develop and submit a list of potential categories of fecal coliform sources by watershed and watershed density (undeveloped, low, moderate, high), covering the entire permit area. 1.1 Legal Authority Evaluate adequacy of existing legal authority to implement the conditions included in this Table. Where existing ordinances are lacking, provide a schedule for obtaining the necessary legal authority. Ordinances shall be in place prior to the implementation of the programs.	Albuquerque/ AMAFCA NMSHTD UNM	1 month prior to compliance date	June 1, 2004
2.0 **Dry Weather Investigation.** Develop and submit a dry weather field investigation program, by watershed, to identify and isolate fecal coliform sources that occur during dry weather so that they can be reduced/eliminated. The program shall address the sources identified in item 1.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. 2.1 **Low Density Watersheds**: 2.1.1 Conduct dry weather channel survey 2.1.2 Conduct survey of septic systems (e.g. aerial, ground, etc.) 2.1.3 Conduct visual or tracer tests on suspected failing systems 2.1.4 Investigate recreational and seasonal sewage dischargers 2.1.5 Conduct ARA and study to determine whether fecal coliforms are of human or nonhuman origin 2.1.6 Test ditch or channel sediments to see if they are a bacteria source or reservoir 2.2 **Moderate/High Density Watersheds**: 2.2.1 Conduct dry weather channel survey 2.2.2 Test for Illicit connections 2.2.3 Check integrity of major trunk lines for cracks and leaks 2.2.4 Check for historic and unconnected septic systems 2.2.5 Conduct ARA and study to determine whether fecal coliforms are of human or nonhuman origin 2.2.6 Check ponds, lakes and impoundments for waterfowl concentrations	Albuquerque/ AMAFCA NMSHTD UNM	2 months prior to compliance date	September 1, 2004

Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
3.0 **Wet Weather Investigation** Develop and submit a wet weather field investigation program, by watershed, to identify and isolate fecal coliform sources that occur during wet weather so that they can be reduced/eliminated. The program shall address the sources identified in item 1.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. 3.1 **Low Density Watersheds** 3.1.1 Inspect septic systems for wet-weather failure 3.1.2 Conduct comprehensive wet weather monitoring to isolate subwatershed hot spots 3.1.3 Submit results of the Antibiotic Resistance Analysis and the study to determine whether fecal coliforms are of human or nonhuman origin 3.1.4 Sample runoff from suspected source areas (e.g. hobby farms and livestock areas) 3.1.5 Test storm drain or channel sediments to see if they are a bacteria sink or source 3.2 **Moderate/High Density Watersheds**: 3.2.1 Check for chronic sanitary sewer overflows at specific manholes and /or pumping stations 3.2.2 Submit results of the Antibiotic Resistance Analysis and the study to determine whether fecal coliforms are of human or nonhuman origin 3.2.3 Conduct comprehensive wet weather monitoring to identify key source areas or subwatersheds	Albuquerque/ AMAFCA NMSHTD UNM	2 months prior to compliance date	September 1, 2004
4.0 Submit certification of the full implementation of the dry and wet weather field investigation programs.	Albuquerque/ AMAFCA NMSHTD UNM	N/A	June 1, 2005
5. 0 Fecal Coliform Reduction and Treatment Develop and submit a program for reducing or treating existing fecal coliform sources, by watershed and watershed density. The program shall address the sources identified in items 3.0 and 4.0 above. The program shall address the suitability of each of the following measures and shall include detailed description of activities and frequencies. Where activities are to be performed by entities other than the permittee, describe enforcement mechanism to be used to ensure compliance. 5.1 Low Density Watersheds	Albuquerque/ AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2005

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
5.1.2 Rehabilitate failing septic systems 5.1.3 Connect failing septic systems to sewer 5.1.4 Increase septic system clean outs 5.1.5 Retrofit storm water ponds 5.1.6 Retrofit ditches as dry swales 5.1.7 Waterfowl management 5.1.8 Install recreational vehicle sewage pumpouts 5.1.9 Implement conservation plans at hobby farms 5.2 Moderate/High Density Watersheds: 5.2.2 Eliminate illicit connections to storm sewer 5.2.2 Rehabilitate existing sewer system to eliminate sanitary sewer overflows 5.2.3 Relocate storm outfalls 5.2.4 Disinfect at the end of pipe 5.2.5 Retrofit storm water ponds 5.2.6 Retrofit ditches as dry swales 5.2.7 Waterfowl harrasment 5.2.8 Enforce pet waste disposal 5.2.9 Implement conservation plans at hobby farms			
6.0 Submit certification of the full implementation of fecal coliform reduction and treatment program.	Albuquerque/ AMAFCA NMSHTD UNM	N/A	December 1, 2005
7.0. <u>Prevention of Future Fecal Discharges</u> Develop and submit a program for preventing future fecal coliform discharges, by watershed. The program shall address at a minimum, the measures included below, with detailed description of activities and frequencies. Where activities are to be performed by entities other than the permittee, describe enforcement mechanism to be used to ensure compliance. 7.1 **Low Density Watersheds** 7.1.1 Land use management 7.1.2 Stringent septic system requirements:	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2005

3004

Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
7.1.2.1 Feasibility criteria 7.1.2.2 Setbacks 7.1.2.3 Reserve field requirements 7.1.2.4 Minimum lot size 7.1.2.5 Technology criteria 7.1.2.6 Inspections 7.1.2.7 Maintenance requirements 7.1.3 Stream/ ditches buffers and access restrictions 7.1.4 Livestock fencing 7.1.5 Wildlife control 7.1.6 Land application criteria for biosolids 7.1.7 Storm water treatment for new development 7.1.8 Public education 7.1.9 Recreational vehicle and park sewage pump-out facilities 7.2 **Moderate/High Density Watersheds**: 7.2.1 New Sewer Testing 7.2.2 Inspection of new sewer hookups 7.2.3 SSO monitoring and prevention 7.2.4 Storm water treatment for new development 7.2.5 Optimal storm water outfall location 7.2.6 Engineered stream buffers 7.2.7 Pet Exclusion 7.2.8 Waterfowl control /management 7.2.9 Public education on pet waste 7.2.10 Transient sewage disposal 7.2.11 Septic system rehabilitation 7.2.12 Intensive sanitary sewer controls/faster spill response 7.2.13 Public education/Hotline reporting procedures 7.2.14 Livestock fencing			
8.0 Submit certification of the implementation of the program to prevent future fecal coliform sources.	Albuquerque /AMAFCA	N/A	December 1,

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Activity	Responsible Permittee	Draft Available for public review and comment	Compliance Date (from the effective date of the permit)
	NMSHTD UNM		2005
9.0 **Monitoring Program** Develop a monitoring program, in consultation with the State of New Mexico, to assess BMP effectiveness and compliance with Fecal Coliform TMDL at North Diversion Floodway Channel, San Jose Drain, South Diversion Channel and Tijeras Arroyo. Target values and equation for comparison of loadings are included in Table III.B.2 below. While developing this monitoring program, the permitees should take into account the frequency of storm events, and the variation in Fecal Coliform levels, within individual storm event. Collection and analysis of samples shall be conducted in accordance with Part V requirements. Results shall be submitted in Discharge Monitoring Report (DMR) forms.	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	December 1, 2005
10.0 Submit certification of the full implementation of the monitoring program to assess BMP effectiveness.	Albuquerque /AMAFCA NMSHTD UNM	N/A	December 1, 2006
11.0 **BMP Assessment** Submit BMP evaluations and assessment, and revisions to the programs above if deemed necessary, based on monitoring data obtained.	Albuquerque /AMAFCA NMSHTD UNM	6 months prior to compliance date	June 1, 2008
12. 0 **Annual TMDL Progress Reports** The permittees shall submit annual reports describing progress on the activities required in Table III.B. to comply with the Fecal Coliform TMDL. The reports shall follow the requirements included in Part V.C, items 1, 4, 6 and 7, but shall be submitted separately from the Annual Report covering all other items of the permit. Results of the monitoring program shall be summarized in the Annual TMDL Progress Report and shall include graphic representation of fecal coliform trends. The Annual TMDL Progress Report shall also include computations of annual percent reduction achieved from the baseline loads and comparisons with the target loads.	Albuquerque /AMAFCA NMSHTD UNM	N/A	Annually on December 1st.

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Table III.B.2
Numeric Target Values for Storm water Conveyances[1]

Conveyance	(30-day geometric mean)
North Diversion Floodway Channel	6.438×10^{11} cfu/day
San Jose Drain	1.068×10^{10} cfu/day
South Diversion Channel	1.444×10^{11} cfu/day
Tijeras Arroyo	1.199×10^{11} cfu/day

Formular to Compare Actual Loadings to Target Values

The resultant formular for Fecal Coliform TMDL should be used to address Fecal Coliform loadings:

C as cfu/100 ml * 1000 ml/1 L /0.264 gallons * Q = cfu/day

Where: C = 30-day geometric mean FC concentration
Q = event flow in million gallons/day

[1]Middle Rio Grande Total Maximum Daily Load for Fecal Coliform, NMED, 2001

Conveyance	(30-day geometric mean)

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PART IV. DISCHARGE LIMITATIONS.

1. Discharge Limitations. **Reserved**

PART V. MONITORING AND REPORTING REQUIREMENTS.

A. Storm Event Discharges.

1. *Representative Monitoring:* Monitoring shall be conducted on representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the Municipal Separate Storm Sewer System.

   a. Monitoring Requirements: Refer to Tables V.A.1.a.(1) and (2)

   b. Outfall Descriptions: Refer to Table V.A.1.b.

   c. Alternate representative monitoring locations may be substituted for just cause during the term of the permit. Requests for approval of alternate monitoring locations shall be made to the Director in writing and include the rationale for the requested monitoring station relocation. Unless disapproved by the Director, use of an alternate monitoring location (except for outfalls with numeric effluent limitations) may commence 30 days from the date of the request. For outfalls where numeric effluent limitations have been established, the permit must be modified prior to substitution of alternate monitoring locations. Six samples shall be collected during the first year of monitoring at substitute outfalls.

2. *Representative Monitoring - Rapid Bioassessment Option:* The permittee(s) has the option of developing and implementing a rapid bioassessment monitoring program.

   a. The permittee(s) shall obtain all necessary aquatic wildlife collection permits from appropriate State and/or Federal agencies (e.g. State Fish and Game Commission).

   b. Permittee(s) utilizing the rapid bioassessment monitoring option shall conduct monitoring of the separate storm sewer system as described in Part V.A.1, except the monitoring for years 2, 3, and 5 for all parameters except fecal coliform, is no longer required. All other requirements of Part V.A.1., A.3., and A.4. (e.g.: samples types, parameters, etc.) remain unchanged.

   c. If the permittee(s) elects to develop and implement a rapid bioassessment monitoring program, the permittee(s) shall submit an approvable monitoring program to EPA no later than one year from the effective date of this permit. An approvable program must include:

      (1) monitoring of at least two locations in the Rio Grande receiving storm water discharges from the

municipal separate storm sewer system plus a reference site located within the same ecological region as the municipal separate storm sewer system;

(2) monitoring of each station at least twice per year, with monitoring conducted at essentially the same time periods each year; and

(3) concurrent (e.g. within a day or two) monitoring of the reference site each time a station located in the receiving waters of the municipal separate storm sewer system is monitored.

Unless disapproved by the Director within 60 days, a proposed rapid bioassessment monitoring plan meeting the criteria herein shall be deemed approved and the permittee(s) may implement the alternate rapid bioassessment program.

d. The permittee(s) shall notify the Director and State (addresses provided in Part V.E.), in writing, at least 14 days prior to commencing an alternate rapid bioassessment monitoring program.

3. *Storm Event Data:* For Part V.A.1. and any additional sampling conducted for Part V.A.5., quantitative data shall be collected to estimate pollutant loadings and event mean concentrations for each parameter sampled. Records shall be maintained of all analytical results, the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

4. *Sample Type, Collection, and Analysis:* The following requirements apply only to storm event discharge samples collected for **Part V.A.1 and A.5.**

a. Composite Samples: Flow weighted composite samples shall be collected as follows:

(1) Composite Method - Flow-weighted composite samples may be collected manually or automatically. For both methods, equal volume aliquots may be collected at the time of sampling and then flow-proportioned and composited in the laboratory, or the aliquot volume may be collected based on the flow rate at the time of sample collection and composited in the field.

(2) Sampling Duration - Samples shall be collected for at least the first three (3) hours of discharge. Where the discharge lasts less than three (3) hours, the entire discharge must be sampled.

(3) Aliquot Collection - A minimum of three aliquots per hour, separated by at least fifteen (15) minutes, shall be collected. Where more than three aliquots per hour are collected, comparable intervals between aliquots shall be maintained (e.g. six aliquots per hour, at least seven (7) minute intervals).

b. Grab Samples: Grab samples shall be taken during the first two hours of discharge.

c. Representative Storm Events: Samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

The required 72 hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge. The required 72 hour storm event interval is also waived where the permittee(s) documents that less than a 72 hour interval is representative for local storm events during the season when sampling is being conducted.

d. Analytical Methods: Analysis and collection of samples shall be done in accordance the methods specified at 40 CFR Part 136. Where an approved Part 136 method does not exist, any available method may be used unless a particular method or criteria for method selection (such as sensitivity) has been specified in the permit.

5. *Seasonal Loadings and Event Mean Concentrations.* All necessary sampling data shall be collected to provide estimates for each major outfall (or appropriate sub-watershed) of seasonal pollutant loadings and event mean concentrations for a representative storm event for the parameters listed in **Table V.A.1.a.(1) - Representative Monitoring Annual Requirements**. This information may be estimated from the representative monitoring locations and shall take into consideration land uses and drainage areas for the outfall. The estimates of seasonal loadings and event mean concentrations shall be included in the Annual Report for year four of the permit.

A. **Floatables Monitoring.** The permittees shall establish locations for monitoring floatable material in discharges to or from their Municipal Separate Storm Sewer System, as follows: Albuquerque/AMAFCA - two stations; NMSHTD and UNM - one station each. Floatable material shall be monitored at least twice per year. The amount of material collected shall be estimated in cubic yards.

B. **Annual Report.** Each permittee shall contribute to the preparation of an annual system-wide report to be submitted by no later than **February 1st.** The report shall cover the previous year from **January 1st to December 31st** and include the following separate sections, with an overview for the entire Municipal Separate Storm Sewer System and subsections for each permittee:

3013

1. The status of implementing the storm water management program(s) (status of compliance with any schedules established under this permit shall be included in this section);

2. Proposed changes to the storm water management program(s) ;

3. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);

4. A summary of the data, including monitoring data, that is accumulated throughout the year; actual values of representative monitoring results shall be included, if results are below minimum analytical level (MAL);

5. Annual expenditures for the reporting period, with a breakdown for the major elements of the storm water management program, and the budget for the year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

Preparation and submittal of a system-wide annual report shall be coordinated by the **City of Albuquerque**. The report shall indicate which, if any, permittee(s) have failed to provide the required information on the portions of the Municipal Separate Storm Sewer System for which they are responsible to the **City of Albuquerque.** Joint responsibility for report submission shall be limited to participation in preparation of the overview for the entire system and inclusion of the identity of any permittee who failed to provide input to the annual report. Each individual permittee shall be individually responsible for content of the report relating to the portions of the Municipal Separate Storm Sewer System for which they are responsible and for failure to provide information for the system-wide annual report in a timely manner. Each permittee shall sign and certify the annual report in accordance with Part VI.H. and include a statement or resolution that the permittee's governing body or agency (or delegated representative) has reviewed or been appraised of the content of the Annual Report. The first annual report shall be due **December 1, 2004,** and may be based on less than one year's information.

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D. **Certification and Signature of Reports.** All reports required by the permit and other information requested by the Director shall be signed and certified in accordance with Part VI.H.

E. **Reporting: Where and When to Submit.**

1. Representative monitoring results (Part V.A.1) obtained during the reporting period running from **January 1st** to **December 31st** shall be submitted on Discharge Monitoring Report Form(s) along with the annual report required by Part V.C. A separate Discharge Monitoring Report Form is required for each monitoring period (season) specified in Part V.A.1.

2. Signed copies of discharge monitoring reports required under Part V., the Annual Report required by Part V.C., and all other reports required herein, shall be submitted to:

3015

U.S. EPA, Region 6
Compliance Assurance and Enforcement Division
Water Enforcement Branch (6EN-WC)
1445 Ross Avenue
Dallas, Texas 75202-2733

3. Requests for Storm Water Management Program updates, changes in monitoring locations, or application for an individual permit shall be submitted to:

U.S. EPA, Region 6
Water Quality Protection Division
Operations Support Office (6WQ-O)
1445 Ross Avenue
Dallas, Texas 75202-2733

Additional Notification. In addition, the permittee(s) shall provide copies of discharge monitoring reports, annual reports, requests for Storm Water Management Program updates, items for compliance with permit requirements for TMDL implementation (Table III.B), programs or changes in monitoring locations, and all other reports required herein, to:

New Mexico Environment Department
Surface Water Quality Bureau

1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

Pueblo of Sandia
Box 6008
Bernalillo, NM 87004
Attn: Water Quality Officer

Pueblo of Isleta
P.O. Box 1270
Isleta, NM 87022
Attn: Director, Pueblo Environment Department

Table V.A.1.a (1). - Representative Monitoring Annual Requirements: Outfalls 001 - 005 [3]

PARAMETERS [4]	REPORT FOR EACH MONITORING PERIOD (each sample type)			SAMPLE TYPE(S)		MONITORING FREQUENCY
	Minimum	Average	Maximum	Grab	Composite	
1. Biochemical Oxygen Demand (BOD_5) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
2. Chemical Oxygen Demand (COD) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
3. Total Suspended Solids (TSS) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
4. Toral Dissolved Solids (TDS) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
5. Total Nitrogen (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
6. Total Kjeldahl Nitrogen (TKN) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
7. Total Phosphorus (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
8. Dissolved Phosphorus (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
9. Total Cadmium (ug/l) (*MAL 1 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
10. Dissolved Cadmium (ug/l) (*MAL 1 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
11. Total Copper (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
12. Dissolved Copper (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
13. Total Lead (ug/l) (*MAL 5 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
14. Dissolved Lead (ug/l) (*MAL 5 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
15. Total Zinc (ug/l) (*MAL 20 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
16. Dissolved Zinc (ug/l) (*MAL 20 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
17. Mercury (ug/l) (*MAL 0.2 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
18. Chromium III (ug/l) (*MAL 10 ug/l*)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]

PARAMETERS [1]	REPORT FOR EACH MONITORING PERIOD (each sample type)			SAMPLE TYPE(S)		MONITORING FREQUENCY
	Minimum	Average	Maximum	Grab	Composite	
19. Chromium VI (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
20. Arsenic (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
21. Thallium (ug/l) *(MAL 10 ug/l)*		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
22. Chlorides (as Cl) (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
23. Nitrate (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
24. pH (S.U.)	Yes		Yes	Yes		2 events/ wet season;1 event/ dry season[2]
25. Sulfates (mg/l)		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
26. Conductivity		Yes	Yes	Yes		2 events/ wet season;1 event/ dry season[2]
27. Fecal Coliform (colonies/100 ml)		Yes	Yes	Yes [6]		4 events/ wet season[2]; Minimum of 2 events/ quarter during dry season [5]
28. Oil and Grease (mg/l)		Yes	Yes	Yes		2 events/ wet season;1 event/ dry season[2]
29. Total Phenols		Yes	Yes		Yes	2 events/ wet season;1 event/ dry season[2]
30. Hardness (as $CaCO_3$) (mg/l)	Yes	Yes	Yes	Yes		2events/ wet season; 1 event/ dry season[2]
31. Temperature (°C)	Yes	Yes	Yes	Yes		2events/ wet season;1 event/ dry season[2]

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[2] Seasonal monitoring periods are: Wet Season: June 1 through September 30; Dry Season: October 1 through May 31.

[5] Monitoring frequency for each year for Outfalls 001-005. Monitoring for Outfalls 001-005 to commence on the effective date of this permit.

[4] If any individual analytical test result is less than the minimum analytical level (MAL) listed for that parameter, then a value of zero (0) may be used for that test result for the discharge monitoring report (DMR) calculations and reporting requirements. The annual report shall include the actual value obtained, if test result is less than the MAL.

[5] Monitoring results for fecal coliform shall also be submitted with the **Annual TMDL Progress Report** required in **Table III.B.** Fecal Coliform Loadings for each outfall shall be estimated and reported in the **Annual TMDL Progress Report.**

[6] May consist of multiple grab weighted for an event mean concentration.

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Table V.A.1.a (2) - Representative Monitoring Bi-Annual Requirements[6]: Outfalls 001 - 005

VOLATILE COMPOUNDS	REQUIRED MQL (µg/L)	EPA METHOD
Benzene	10	624
Bromoform	10	624
Carbon Tetrachloride	10	624
Chlorobenzene	10	624
Chlorodibromomethane		10 624

PESTICIDES	REQUIRED MQL (µg/L)	EPA METHOD
Aldrin		.05
608		
Alpha-BHC		.05
608		
Beta-BHC		.05

BASE/NEUTRAL COMPOUNDS	REQUIRED MQL (µg/L)	EPA METHOD
Bis(2-ethylhexyl) phthalate	10	o25
4-Bromophenyl phenyl ether	10 ó25	
Butyl benzyl phthalate	10	ó25
2-Chloronapthalene	10	ó25
4-Chlorophenyl phenyl ether	10	ó25

Chloroethane	50	624
2-Chloroethyl vinyl ether	10	624
Chloroform	10	624
1,1-Dichloroethane	10	624
1,2-Dichloroethane	10	624
1,2-Dichloropropane	10	624
1,3-Dichloropropylene	10	624
Ethylbenzene	10	624
Methyl Bromide [Bromomethane]	50	624
Methyl Chloride [Chloromethane]	50	624
Methylene Chloride	20	624
1,1,2,2-Tetrachloroethane	10	624
Toluene	10	624

		608
Gamma-BHC (Lindane)	.05	
		608
Delta-BHC	.05	
		608
Chlordane	.2	
		60
		8
4,4'-DDT	.1	
		608
4,4'-DDE (p,p-DDX)	.1	
		608
4,4'-DDD (p,p-TDE)	.1	
		608
Dieldrin	.1	
		608
Alpha-endosulfan	.1	
		608
Beta-endosulfan	.1	
		608
Endosulfan sulfate	.1	
		608
Total PCBs	1.0	
		60
		8

BASE/NEUTRAL COMPOUNDS	(ug/L)	EPA METHOD
Acenaphthene	10	
		625
Acenaphthylene	10	
		625
Anthracene	10	
		625
Benzo(a)anthracene	10	

Chrysene	10	625
Dibenzo (a,h) anthracene	20	625
1,2-Dichlorobenzene	10	625
1,3-Dichlorobenzene	10	625
1,4-Dichlorobenzene	10	625
3,3'-Dichlorobenzidine	50	625
Diethyl Phthalate	10	625
Dimethyl Phthalate	10	625
Di-n-Butyl Phthalate	10	625
2,4-Dinitrotoluene	10	625
2,6-Dinitrotoluene	10	625
Di-n-octyl Phthalate	10	625
Fluoranthene	10	625
Fluorene	10	625
Hexachlorobenzene	10	625
Hexachlorobutadiene	10	625
Hexachloroethane	20	625
Indeno (1,2,3-cd) pyrene (2,3-o-phenylene pyrene)	20	625
Isophorone	10	625
Naphthalene	10	625
Nitrobenzene	10	625
N-nitrosodi-n-propylamine	20	625
Phenanthrene	10	625
Pyrene	10	625
1,2,4-Trichlorobenzene	10	625

	625		
	Benzo(a)pyrene	10	
	625		
	3,4-Benzofluoranthene	10	
		625	
	Benzo(ghi)perylene	20	
	625		
	Benzo(k)fluoranthene	10	
	625		
	Bis(2-chloroethoxy) methane	10	
	625		
	Bis(2-chloroethyl) ether	10	
	625		
	Bis(2-chloroisopropyl) ether	10	
	625		

[6] Parameters included in Table **V.A.1.a** (2) are to be monitored by Albuquerque/AMAFCA biannually (every other year). Seasonal monitoring periods are: Wet Season: June 1 through September 30; Dry Season: October 1 through May 31. Monitoring Frequency is to be 2 events/wet season and 1 event/dry season, using composite sampling. Average and maximum values are to be reported for each monitoring period. Monitoring to commence one year from the effective date of this permit and to continue every other year thereafter.
If any individual analytical test result is less than the minimum analytical level (MAL) listed for that parameter, then a value of zero (0) may be used for that test result for the discharge monitoring report (DMR) calculations and reporting requirements.

Table V.A.1.b - Representative Monitoring Outfall Descriptions

OUTFALL	SITE NO.	LOCATION	DESCRIPTION	RESPONSIBLE PERMITTEE
001	9900	North Floodway Channel near Alameda (USGS Station No. 08329900)	Station located on concrete lined channel. Drains approx. 92 sq.mi. Land use is: 41% residential; 36% agricultural; 15% commercial; 4% industrial; 4% open space	Albuquerque/ AMAFCA
002	200	South Diversion Channel above Tijeras Arroyo near Albuquerque (USGS Station No. 08330775)	Station located on natural unlined channel. Drains approx. 11 sq.mi. Land use is: 30% agricultural; 28% commercial 21% industrial; 13% residential; 8% open space	Albuquerque/ AMAFCA
003	500	San Jose Drain at Woodward Road at Albuquerque (USGS Station No. 08330200)	Station located on concrete lined channel. Drains approx. 2 sq.mi. Land use is: 41% residential; 30% commercial; 18% agricultural; 9% industrial; 2% open space	Albuquerque/ AMAFCA
004	400B	City of Albuquerque Lift Station #32 (Barelas) at Albuquerque (USGS Station No. 08330075)	Stations located at storm water pumping stations. Combined drainage of. 4 sq.mi. Land use is: 35% residential; 34% commercial; 12% open space; 10% industrial; 9% agricultural	Albuquerque/ AMAFCA
005	300A	Mariposa Diversion of San Antonio Arroyo at Albuquerque (USGS Station No. 083299375)	Station located on natural unlined channel. Drains approx. 31 sq.mi.. Land use is: 73% agricultural; 14% industrial; 11% residential; 1% commercial; 1% open space	Albuquerque/ AMAFCA

PART VI. STANDARD PERMIT CONDITIONS.

A. **Duty to Comply.** The permittee(s) must comply with all conditions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. **Penalties for Violations of Permit Conditions.** The Director will adjust the Civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: Dec. 31, 1996, Volume 61, No. 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, No. 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

1. *Criminal Penalties.*

   a. Negligent Violations: The Act provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

   b. Knowing Violations: The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

   c. Knowing Endangerment: The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

   d. False Statement: The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309(c)(4) of the Act).

1. *Civil Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. *Administrative Penalties.* The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

   a. Class I penalty: Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

   b. Class II penalty: Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

C. **Duty to Reapply.** If the permittee wishes to continue an activity regulated by this permit after the permit expiration date, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days prior to expiration of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR 122.6 and any subsequent amendments.

D. **Need to Halt or Reduce Activity Not a Defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

E. **Duty to Mitigate.** The permittee(s) shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. **Duty to Provide Information.** The permittee(s) shall furnish to the Director, within a time specified by the Director, any information which the Director may request to determine compliance with this permit. The permittee(s) shall also furnish to the Director upon request copies of records required to be kept by this permit.

G. **Other Information.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Director, he or she shall promptly submit such facts or information.

H. **Signatory Requirements.** All Discharge Monitoring Reports, storm water management programs, reports, certifications or information either submitted to the Director or that this permit requires be maintained by the permittee(s), shall be signed by:

   1. for a municipality, State, or other public agency: by either a principal executive officer or ranking elected official; or

   2. a duly authorized representative of that person. A person is a duly authorized representative only if:

      a. The authorization is made in writing by a person described above and submitted to the Director.

      b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. A duly authorized

representative may thus be either a named individual or any individual occupying a named position.

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new written authorization satisfying the requirements of this paragraph must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

3. Certification: Any person signing documents under this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. **Penalties for Falsification of Monitoring Systems.** The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the Act.

J. **Oil and Hazardous Substance Liability.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act or section 106 of CERCLA.

K. **Property Rights.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. **Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. **Requiring a Separate Permit.**

1. The Director may require any co-permittee authorized by this permit to obtain a separate NPDES permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any co-permittee authorized to discharge under this permit to apply for a separate NPDES permit only if the co-permittee has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form (as necessary), a statement setting a deadline for the co-permittee to file the application, and a statement that on the effective date of the separate NPDES permit, coverage under this permit shall automatically terminate. Separate permit applications shall be submitted to the address shown in Part V.E. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner a separate NPDES permit application as

required by the Director, then the applicability of this permit to the co-permittee is automatically terminated at the end of the day specified for application submittal.

2. Any co-permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for a separate permit. The co-permittee shall submit a separate application as specified by 40 CFR 122.26(d) with reasons supporting the request to the Director. Separate permit applications shall be submitted to the address shown in Part V.E. The request may be granted by the issuance of a separate permit if the reasons cited by the co-permittee are adequate to support the request.

N. State/Environmental Laws.

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water management programs. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. Monitoring and Records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3. Records of monitoring information shall include:

   a. The date, exact place, and time of sampling or measurements;

   b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

   c. The date(s) analyses were performed;

   d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

Q. **Monitoring Methods.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

R. **Inspection and Entry.** The permittee shall allow the Director or an authorized representative of EPA, or the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substance or parameters at any location.

S. **Permit Actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

T. **Additional Monitoring by the Permittee.** If the permittee monitors more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

U. **Archeological and Historic Sites.** This permit does not authorize any storm water discharges nor require any BMPs to control storm water runoff which are not in compliance with any historic preservation laws.

1. If municipal excavation and/or construction projects implementing requirements of this permit will result in the disturbance of previously undisturbed land, and the project is not required to have a separate NPDES permit (e.g. general permit for discharge of storm water associated with construction activity), then the permittee may seek authorization for storm water discharges from such sites of disturbance by:

a. the permittee shall, thirty (30) days prior to commencing land disturbance, submit the following to the State Historic Preservation Officer (SHPO) for evaluation of possible effects on properties listed or eligible for listing on the National Register of Historic Places:

(1) a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground, and

(2) a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas.

The address of the SHPO is:

New Mexico Office of Cultural Affairs
Historic Preservation Division
Room 320, La Villa Rivera
228 East Palace Avenue
Santa Fe, New Mexico 87501

Pueblo of Sandia
Box 6008
Bernalillo, New Mexico 87004

If the permittee receives a request for an archeological survey or notice of adverse effects from the SHPO, the permittee shall delay such activity until:

(1) a determination of no adverse effect has been made, or

(2) measures to minimize harm to historic properties have been agreed upon.

If the permittee does not receive notification of adverse effects or a request for an archeological survey from the SHPO within thirty (30) days, the permittee may proceed with the activity.

b. Alternately, the permittee may obtain authorization for storm water discharges from such sites of disturbance by applying for a modification of this permit. The permittee may apply for a permit modification by submitting the following information to the Permitting Authority 180 days prior to commencing such discharges:

(1) A letter requesting a permit modification to include discharges from activities subject to this provision, in accordance with the signatory requirements in Part VI.H.

(2) a description of the construction or land disturbing activity and the potential impact that this activity may have upon the ground; County in which the facility will be constructed; type of facility to be constructed; size area (in acres) that the facility will encompass; expected date of construction; and whether the facility is located on land owned or controlled by any political subdivision of New Mexico; and

(3) a copy of a USGS topographic map outlining the location of the project and other ancillary impact areas.

PART VII. PERMIT MODIFICATION.

A. **Modification of the Permit.** The permit may be reopened and modified during the life of the permit to address:

1. changes in the State's Water Quality Management Plan, including Water Quality Standards;

2. changes in State or Federal statutes or regulations;

3. add a new permittee who is the owner or operator of a portion of the Municipal Separate Storm Sewer System;

4. changes in portions of the Storm Water Management Program that are considered permit conditions;

5. construction activities implementing requirements of this permit that will result in the disturbance of previously undisturbed land and not required to have a separate NPDES permit; or

6. other modifications deemed necessary by the Director to meet the requirements of the Act.

All modification to the permit will be made in accordance with 40 CFR 122.62, 122.63, and 124.5.

B. **Termination of Coverage for a Single Permittee.** Permit coverage may be terminated, in accordance with the provisions of 40 CFR 122.64 and 124.5, for a single permittee without terminating coverage for other permittees.

C. **Modification of Storm Water Management Program(s).** Only those portions of the Storm Water Management Programs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s); replacement of an ineffective or infeasible BMP implementing a required component of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP; and changes required as a result of schedules contained in Part III shall be considered minor changes to the Storm Water Management Program and not modifications to the permit. (See also Part II.G.)

D. **Changes in Monitoring Outfalls.** Changes in monitoring outfalls, other than those with specific numeric effluent limitations (as described in Part V.A.1.c.), shall be considered minor modifications to the permit and will be made in accordance with the procedures at 40 CFR 122.63.

PART VIII. DEFINITIONS.

All definition contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified, additional definitions of words or phrases used in this permit are as follows:

A. "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

B. "CWA" or "The Act" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

C. "Co-permittee" is defined at 40 CFR 122.26(b)(1).

D. "Core Municipality" means, for the purpose of this permit, the municipality whose corporate boundary (unincorporated area for counties and parishes) defines the municipal separate storm sewer system. (ex. City of Dallas for the Dallas Municipal Separate Storm Sewer System, Harris County for unincorporated Harris County).

E. "Director" means the Regional Administrator or an authorized representative.

F. "Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (Municipal Separate Storm Sewer System).

G. "Flood Control Projects" refer to major drainage projects developed to control water quantity rather than quality, including channelization and detention.

H. "Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

I. "Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

J. "Illicit discharge" is defined at 40 CFR 122.26(b)(2).

K. "Individual Residence" refers, for the purposes of this permit, to single or multi-family residences. (e.g. single family homes and duplexes, town homes, apartments, etc.)

L. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

M. "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

N. "Large or medium municipal separate storm sewer system" is defined at 40 CFR 122.26(b)(4) & (7).

O. "MEP" is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by CWA §402(p).

P. "MS4" is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a Large or Medium Municipal Separate Storm Sewer System (e.g. "the Dallas MS4").

Q. "Municipal Separate Storm Sewer" is defined at 40 CFR 122.26(b)(8).

R. "Part '#'" refers, unless otherwise indicated, to Part "#" of this permit (e.g. Part V.E.2.).

S. "Permittee" refers to any "person," as defined at 40 CFR 122.2, authorized by this NPDES permit to discharge to Waters of the United States.

T. "Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

U. "Storm drainage projects" include storm water inlets, culverts, minor conveyances and a host of other structures or devices

V. "Storm sewer", unless otherwise indicated, refers to a municipal separate storm sewer.

W. "Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

X. "Storm Water Discharge Associated with Industrial Activity" is defined at 40 CFR 122.26(b)(14).

Y. "Storm Water Management Program" refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system. For the purposes of this permit, the Storm Water Management Program is considered a single document, but may actually consist of separate programs (e.g. "chapters") for each permittee.

Z. "SWMP" is an acronym for "Storm Water Management Program."

AA. "Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

BB. "Waters of the United States" is defined at 40 CFR 122.2.

District of Columbia

NPDES Permit No. DC0000221

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MUNICIPAL SEPARATE STORM WATER SYSTEM PERMIT NO. DC0000221

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 et seq.

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the District of Columbia to receiving waters named

Potomac River, Anacostia River,
and tributaries

in accordance with the upgraded Storm Water Management Program(s), effluent limitations, monitoring requirements and other conditions set forth in Parts I through X herein.

The effective issuance date of this permit is

This permit and the authorization to discharge shall expire at midnight, on

Signed this day of

_____

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III

PERMIT FOR THE DISTRICT OF COLUMBIA'S
MUNICIPAL SEPARATE STORM SEWER SYSTEM

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PART I. DISCHARGES AUTHORIZED UNDER THIS PERMIT

A. Permit Area

This permit covers all areas within the corporate boundary of the District of Columbia served by, or otherwise contributing to discharges from, municipal separate storm sewers owned or operated by the District of Columbia.

B. Authorized Discharges

This permit authorizes all existing or new storm water point source discharges to waters of the United States from the municipal separate storm water sewer system of the District of Columbia. This permit also authorizes the discharge of storm water commingled with flows contributed by process wastewater, non-process wastewater, or storm water associated with industrial activity provided such discharges are authorized under separate NPDES permits.

Nothing in this permit prohibits the following sources when properly managed so that water quality is not impaired and that the requirements of the Clean Water Act and EPA regulations are met: clear water flows, roof drainage, water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation waters, springs, footing drains, lawn watering, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, fire fighting activities, and similar types of activities.

C. Limitations to Coverage

Section 402(p)(3)(B)(ii) of the Clean Water Act specifically prohibits non-storm water entering the MS-4. The Permit does not authorize the Permitee to discharge pollutants from the MS4 as described herein:

1. Non-Storm Water and Phase I and Phase II Storm Water

Discharges of non-storm water (other than those listed in Part I.B. of this permit) are prohibited except where such discharges are:

a. Regulated with a General NPDES permit for Phase I or Phase II storm water discharges, or

b. Regulated with a individual NPDES permit.

2. All other discharges of pollutants to the MS4 system that cause or contribute to the exceedance of the District of Columbia water quality standards are prohibited and not authorized by this Permit.

D. Effluent Limits

1. MEP Effluent Limit - The permittee shall implement the controls, Best Management Practices (BMP), and other activities necessary to reduce pollutants as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002. Unless and until modified consistent with Part VII.P (Reopener Clause for Permits) of this Permit, the Upgraded Storm Water Management Plan requirements expressed in the form of BMPs, represent the controls necessary to reduce the discharge of pollutants to the Maximum Extent Practicable in accordance with 40 CFR Part 122.44(k)(2).

2. WQBEL Effluent Limit - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants as set forth in the Upgraded Storm Water Management Plan dated October 19, 2002, and all other requirements of this Permit (including but not limited to the narrative prohibition on discharge of pollutants from the MS4 set forth in I.C. of this Permit). Unless and until modified consistent with Part VII.P (Reopener Clause for Permits) of this Permit, EPA has determined that these controls are sufficient to achieve compliance with applicable water quality standards in accordance with existing Federal rules and regulations.

3. Effluent Limits Consistent with TMDL WLA - The permittee shall implement the controls, Best Management Practices (BMPs), and other activities necessary to reduce pollutants as set forth

in the Upgraded Storm Water Management Plan dated October 19, 2002, and all other requirements of this Permit (including but not limited to the narrative prohibition on discharge of pollutants from the MS4 set forth in I.C. of this Permit). Based on limited information, and until and unless this Permit is modified in accordance with the Reopener Clause of Part VII.P of this Permit, EPA has determined that these controls are appropriate effluent limits consistent with the assumptions and requirements of the approved waste load allocations (WLAs) established in various total maximum daily loads specifically described and discussed in the MS4 Fact Sheet. Based on EPA review of the Permittee's submission of the Total Maximum Daily Loading (TMDL)Implementation Plan(s) as required by Part IX.B. of this Permit, EPA shall reconsider and determine whether these controls are consistent with applicable water quality standards and approved WLAs in accordance with existing Federal requirements. EPA specifically reserves the right to formally modify this Permit's effluent limit in accordance with Reopener Clause of Part VIII.P. of this Permit in the event that EPA determines further controls are necessary to address the WLAs and/or water quality standards.

Part II. SOURCE IDENTIFICATION

During the period beginning on the effective date and lasting through the expiration date of this permit:

The permittee shall continue to compile and submit pertinent information on pollution sources, including significant changes(see EPA's approved definition in First Annual Review dated April 19,2001)in the identification and mapping of storm sewer system (MS4) outfalls consisting of those identified as "major" and "others" in the upgraded SWMP dated October 19,2002, and changes affecting the District's separate storm system (MS4) due to: land use activities, population estimates, runoff characteristics, major structural controls, landfills, publicly owned lands, and industries. This information shall be submitted in each of the Annual Reports/Implementation Plans to EPA pursuant to the procedures in Part III of this permit. Analysis of data for these pollution sources shall be reported according to Part V for the Storm Water Model.

Part III. STORM WATER MANAGEMENT PROGRAM (SWMP)

A. <u>COMPLIANCE SCHEDULE</u>

Each year on the effective date of the Permit, the permittee shall provide EPA with a written Annual Report as required by 40 CFR 122.42(c)using the implemented upgraded and amended Storm Water Management Plan dated October 19, 2002 developed by the District as the basis for the Report. In addition to the Annual

Report, the permittee shall at the same time provide EPA with a Discharge Monitoring Report as described in Part IV of this Permit and an Implementation Plan as described in Part III.D of this Permit summarizing how each category of MS4 activities identified within this Permit was implemented during the previous year along with implementation plans for each activity in the following year. As described in Part IX.2 of this Permit, the permittee shall also submit Implementation Plan(s) for the Anacostia River Total Maximum Daily Loads (TMDLs) six months after the effective issuance date of the Permit and for the Rock Creek TMDLs twelve months after the effective issuance date of the Permit. Six months prior to the expiration date of the Permit, the permittee shall provide EPA an Upgraded Storm Water Management Plan (SWMP) as described in Part III.B and E of this Permit. All these efforts, which are identified in Table I below as "submittals", have deadlines and are subject to EPA approval as set forth below at Parts III.E and IX.2.

TABLE 1

Submittal	Deadline
Outfall Discharge Monitoring Report *	Each year on the effective date of the permit (EDOP) consistent with Paragraph IV.A.1.
Annual Report	Each year on the EDOP
Annual Implementation Plan	Each year on the EDOP
Anacostia River TMDL Implementation Plan(s)	6 months after the EDOP
Rock Creek TMDL Implementation Plan(s)	12 months after the EDOP
Upgraded SWMP and MS4 Permit Application	6 months prior to the permit expiration date.

* Samples shall be taken at least three times a year within the subwatershed being monitored for that particular year as provided in Tables 4 and 5 of Part IV.A.1 of the permit.

Deadlines may be adjusted by written agreement by both EPA and the permittee up to 120 days (see minor modification provision). However, this permit places no obligation on EPA to expand the above schedule. The Outfall Discharge Monitoring Report shall be submitted each year, incorporating the reporting requirements in Part VIII.E.(Reporting of Monitoring Results).

All the requirements in Table 2 in Part III.B of this permit are to be used in the development of the upgraded SWMP. The District's October 19, 2002(upgraded SWMP) is also incorporated by reference into this permit.

B. COMPONENTS OF STORM WATER MANAGEMENT PROGRAM (SWMP)

The SWMP shall be implemented in a manner consistent with the following guidelines provided for the 12 management plan components. In carrying out the SWMP, the permittee shall issue no exemption, waiver, or variance that would violate the Clean Water Act or EPA regulations. This Permit does not authorize any discharge based on such exemption, waiver, or variance. To the extent that this permit makes reference to or incorporates the District's Storm Water Management Plan (SWMP)(defined in Part X of this permit), that portion of the plan is hereafter incorporated into this permit by reference.

The permittee shall implement the controls, procedures, Best Management Practices (BMPs) set forth in the current Upgraded SWMP dated October 19, 2002 in order to reduce the pollutant load to the extent necessary to meet the requirements of 40 CFR 122.26 (d)(2)(iv) and the provisions of the Clean Water Act for all areas within the District according to Table 2 below. The controls described in the October 19, 2002, document are effluent limitations that EPA has determined are adequate to ensure that the discharges do not cause or contribute to exceedences of applicable water quality standards.

TABLE 2

Required Program Element	Regulatory References (40 CFR 122.26)
Adequate Legal Authority	(d)(2)(I)(C)-(F)
Characterization Data	(d)(2)(iii)(B)-(D),40 CFR 122.21(g)(7)
Application Requirements	(d)(2)(iv)(A)(1)
Assessment of Controls	(d)(2)(v)
Structural Controls	(d)(2)(iv)(A)(1)
Areas of new development and significant redevelopment	(d)(2)(iv)(A)(2)
Roadways	(d)(2)(iv)(A)(3)
Flood Control Projects	(d)(2)(iv)(A)(4)
Pesticides, Herbicides, and Fertilizers Application	(d)(2)(iv)(A)(6)
Illicit Discharges and Improper Disposal	(d)(2)(iv)(B)(1)-(5), (iv)(B)(7)
Industrial and High Risk Runoff	(d)(2)(iv)(C), (iv)(A)(5)
Identify Priority Industrial Facilities	122.26(d)(2)(iv)(C)(1)
Municipal Waste Sites	(d)(2)(iv)(A)(5)
Spills	(d)(2)(IV)(B)(4)
Infiltration of Seepage	122(d)(2)(iv)(B)(7)
Construction Site Runoff	(d)(2)(iv)(D)

Public Education	(d)(2)(iv)(A)(6), (iv)(B)(5), (iv)(B)(6)
Monitoring Program	(d)(2)(iv)(B)(2), (iii), iv(A), (iv)(C)(2)

Table 3's reporting requirements apply to each of the 12 components of the District's SWMP as defined in Part X of this permit.

TABLE 3

SWMP Component	Reporting Requirement (1)	Reporting Deadline
1. Management Plan for Commercial, Residential, and Government Areas	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
2.Management Plan for Industrial Facilities	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
3. Management Plan for Construction Sites	implement and update in accordance with the October 19, 2002, SWMP	AnnualReport/ Implementation Plan
4. Flood Control Projects	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
5. Monitor and Control of Pollutants from Municipal Landfills or Other Municipal Waste Facilities	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
6. Monitor and Control Pollutants from Hazardous Waste Sites	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan

7. Pesticides, Herbicide, and Fertilizer Application	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
8. Deicing Activities	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
9. Snow Removal	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
10. Management Plan to Detect and Remove Illicit Discharges	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
11. Enforcement Plan	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan
12. Public Education	implement and update in accordance with the October 19, 2002 SWMP	Annual Report/ Implementation Plan

(1) These reporting requirements are governed by the schedules presented on Table 1.

1. Management Plan for Commercial, Residential, and Federal and District Government Areas

The District shall implement the SWMP (as described in the District's October 19, 2002,SWMP)to reduce the discharge of pollutants from commercial, Federal and District government owned/operated facilities, and residential areas into the District's storm sewer system (MS4). The permittee shall continue current practices of road, street, and highway maintenance as described in the SWMP and evaluate low impact development practices for inclusion with either new or retrofitted District and/or Federal highway construction projects. Applicable Federal

programs for this purpose include, but are not limited to provisions for funding under the Transportation and Enhancement Fund, the Transportation Equity Act for the 21st Century, or other authorized/appropriated funding from future National Transportation Bills.

Control for government, commercial, and residential storm water runoff shall consist of a mix of program activities addressing trash, debris and other storm water pollutants, including but not limited to:

- A shift in focus from just the minimum storm water controls required under local ordinances and guidelines to programs that encourage the use of functional landscape to enhance the aesthetic and habitat value at new parking lots and/or new developments;
- Low impact development practices such as improved tree boxes, reduced road length and width, use of infiltration trenches, porous pavements, grassy swales and filter strips where appropriate;
- A coordinated catch basin cleaning and street-sweeping strategy that optimizes reduction of storm water pollutants;
- Coordination with solid waste program to include leaf collections;
- Preventative maintenance inspections for all existing storm water management facilities;
- Development and implementation of a rain leader disconnection program;
- Development of a phased approach to storm water public education which includes collecting pet feces and environmentally-friendly fertilizing and landscaping techniques;
- Modeling of storm water impacts;
- Developing a simple method for measuring the performance of these activities; and
- Strengthening the erosion control program for new construction.

The permittee shall implement a program to control storm water discharges from Federal and District-government areas to the same extent as that for commercial, residential, and industrial areas. The status of this program shall be reported in

each Annual Report/Implementation Plan required by Part III.C. and D. of this permit. Information shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act. The implementation of a program to control discharges from Federal and District-government areas is dependent on the active cooperation of all federal agencies responsible for operating and maintaining facilities within the District. The District will continue to pursue partnerships with federal departments and agencies (e.g., National Park Service, Department of Agriculture, Department of Defense, and General Services Administration) responsible for facilities in the District designed to highlight the District's commitment to "lead by example" in managing storm water runoff.

The permittee shall maintain the authority to control all types of discharges into the waters of the District.

2. Management Plan for Industrial Facilities

The permittee shall implement a program to monitor and control pollutants in storm water discharged to the D.C. MS4 from Industrial Facilities, pursuant to the requirements in 40 CFR 122.26(d)(2)(iv)(C). These facilities shall include, but are not limited to:

- Private Solid Waste Transfer Stations
- Hazardous Waste Treatment, Disposal, and/or Recovery Plants
- Industrial Facilities subject to SARA or EPCRA Title III
- Industrial Facilities with NPDES Permits
- Industrial facilities with a discharge to the MS4

The permittee shall continue to maintain and update the industrial facilities database. The permittee shall continue to perform or provide on-site assistance/inspections and outreach focused on the development of storm water pollution prevention plans and NPDES permit compliance.

The permittee shall continue to refine and implement procedures to govern the investigation of facilities suspected of contributing pollutants to the MS4, including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. These procedures shall be submitted as part of each Annual Report/Implementation Plan required by Part III. C. and D. of this permit.

The wet weather screening described in Part IV. C. of this permit includes collecting data on the discharges from industrial

sites. This information shall be used by the permittee in identifying problem industrial categories to better target outreach.

The program to prevent, contain, and respond to spills that may discharge to the MS4 shall continue to be implemented, and a report on this implementation submitted in each Annual Report/Implementation Plan. The spill response program may include a combination of spill response actions by the permittees (and/or another public or private entity).

Progress in developing and carrying out industrial related programs shall be reported in each Annual Report/Implementation Plan required by Part III.C. and D. of this permit. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act.

The permittee shall continue to implement the prohibition against illicit discharges, control spills, and prohibit dumping.

3. Management Plan for Construction Sites

The permittee shall continue implementation of the Program that addresses the discharge of pollutants from construction sites. An evaluation shall be made and reported in the Annual Report/Implementation Plan to determine if the existing practice meets the requirements given in 40 CFR 122.26(d)(2)(iv)(A) and (D). The permittee shall continue the review and approval process of the sediment and erosion control plans under this program. The permittee shall submit its inspection and enforcement procedures to EPA in the Annual Report/Implementation Plan. The permittee shall continue with regular construction site inspections. When a violation of local erosion and sediment control ordinances occurs, the permittee shall follow existing enforcement procedures and practices. The permittee shall continue with educational measures for construction site operators (Part III.A.12 of this permit) that consist, at a minimum, of providing guidance manuals and technical publications.

Progress in developing and carrying out the above construction related programs shall be reported in each Annual Report/Implementation Plan required by Part III.D. and E. of this permit. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act. An explanation shall be provided as to how the implementation of these procedures, particularly with regard to District "waivers and exemptions", will meet the requirements of the Clean Water Act.

Public streets, roads, and highways shall be operated and maintained in a manner to reduce the discharge of pollutants in accordance with the SWMP requirements. Standard road repair practices shall include limiting the amount of soil disturbance to the immediate area under repair. Storm water conveyances which are denuded should be resodded or reseeded and mulched for rapid revegetation, and these areas should have effective erosion control until stabilized. The program shall establish procedures that address spill prevention, material management practices, and good housekeeping measures at all equipment and maintenance shops that support maintenance activities.

4. Flood Control Projects

Potential impacts on the water quality and the ability of the receiving water to support beneficial uses shall be assessed for all flood management projects. The feasibility of retrofitting existing flood control devices to provide additional pollutant removal from storm water shall be evaluated.

The above assessment, mapping program, and feasibility studies shall be reported in the Annual Report/Implementation Plan (Part III.C. and D.). The flood control measures necessary to meet the requirements of the Clean Water Act shall also be submitted with these Reports/Plans.

All development proposed in flood plains shall be reviewed by the District to ensure that the impacts on the water quality of receiving water bodies has been properly addressed. Information regarding impervious surface area located in the flood plains shall be used (in conjunction with other environmental indicators) as a planning tool. The District shall collect data on the percentage of impervious surface area located in flood plain boundaries for all proposed development after the effective date of this permit. The District shall collect similar data for existing development in flood plain areas, in accordance with the mapping program and other activities designed to improve water quality. Critical unmapped areas shall be prioritized by the District with an emphasis on developed and developing acreage. Reports of this work shall be summarized in the Annual Report/Implementation Plan. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act

5. Control of Pollutants from Municipal Landfills or Other Municipal Waste Facilities

The permittee shall implement a program to identify measures to evaluate, inspect, enforce, and monitor to reduce pollutants in storm water discharges from facilities that handle municipal waste, including sewage sludge, and report the results of this activity in each Annual Report/Implementation Plan. As part of this program, the permittee shall reduce pollutants in the storm water discharges from District-operated or owned solid waste transfer stations, maintenance and storage yards for waste transportation fleets and equipment, publicly owned treatment works, and sludge application and/or disposal sites which are not covered by an NPDES permit, and report the results of this effort in each Annual Report/Implementation Plan. The permittee shall provide an explanation as to how the implementation of these procedures will meet the requirements of the Clean Water Act for the above facilities.

6. Control Pollutants from Hazardous Waste Sites

The permittee shall implement procedures that provide for monitoring and controlling pollutants in storm water discharges to the MS4 from: hazardous waste recovery, treatment, storage, and disposal facilities; facilities subject to Section 313 of the Emergency Planning and Right-to-Know Act; and any other industrial facility that either the permittee or the Regional Administrator determines is contributing a substantial pollutant loading to the MS4. This work shall be reported in each Annual Report/Implementation Plan.

The permittee shall complete an identification of industrial and high risk runoff facilities and develop procedures to map and record details of the facilities. Procedures to identify, map, and record the high risk facilities shall be completed by the end of this permit term.

The permittee shall implement procedures to govern the investigation of the identified facilities suspected of contributing pollutants to the MS4,including a review, if applicable, of monitoring data collected by the facility pursuant to its NPDES permit. Procedures governing the investigation of identified facilities and the method, schedule, and progress in implementing those procedures shall be submitted as part of each Annual Report/Implementation Plan. An explanation shall be provided as to how the implementation of these procedures will meet the requirements of the Clean Water Act.

7. Pesticide, Herbicide, and Fertilizer Application

The permittee shall continue to control the application of pesticides, fertilizers, and the use of other toxic substances

according to current procedures and practices described in the October 19, 2002, SWMP and regulations. Such controls shall reduce the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers applied by employees or contractors, to public right of ways, parks, and other District property. The permittee shall implement programs to encourage the reduction of the discharge of pollutants related to the application and distribution of pesticides, herbicides, and fertilizers, pursuant to the SWMP dated October 19, 2002.

A report on the implementation of the above application procedures, a history of the improvements in the control of these materials, and an explanation on how these procedures will meet the requirements of the Clean Water Act shall be included in each Annual Report/Implementation Plan.

A screening characterization shall be completed to determine the sources of pesticides, herbicides, and fertilizers that contaminate the storm water runoff. This screening characterization shall be part of the outfall monitoring plan and performed according to that plan's schedule identified in Table 1. Levels of storm water pollution from this runoff at locations within the District shall be used to develop a priority system for control of these pollutants. Procedures for reducing these pollutants shall be developed, implemented, and reported in each Annual Report/Implementation Plan.

8. Deicing Activities

The permittee shall continue to evaluate the use, application and removal of chemical deicers, salt, sand, and/or sand/deicer mixtures in an effort to minimize the impact of these materials on water quality. Techniques available for reducing pollution from deicing salts in snowmelt runoff and runoff from salt storage facilities shall be investigated and implemented. This evaluation shall be made a part of an overall investigation of ways to meet the requirements of the Clean Water Act and reported in each Annual Report/Implementation Plan. In addition, an explanation shall be provided annually as to how the implementation of procedures resulting from this investigative effort will meet the requirements of the Clean Water Act.

9. Snow Removal

The permittee shall implement a program and operating plan to ensure excessive quantities of snow and ice control materials do not enter the District's waterbodies. Progress in implementing the program and plan shall be reported in each Annual Report/Implementation Plan. The District shall avoid snow dumping in areas adjacent to water bodies, wetlands, and areas near public or private drinking water wells which would ultimately

reenter the MS4 system except during a declared Snow Emergency when the foremost concern of snow removal activities is public health and safety.

10. Management Plan to Detect and Remove Illicit Discharges

The permittee shall implement an ongoing program to detect illicit discharges, pursuant to the SWMP dated October 19, 2002. and Part IV.B., of this permit, and prevent improper disposal into the storm sewer system, pursuant to 40 CFR 122.26(d)(2)(iv)(B)(1). The accomplishments of this program shall be reported in each Annual Report/Implementation Plan.

The permittee shall implement a program to prevent illicit discharges, as defined at 40 CFR 122.26(b)(2). However, those discharges listed at 40 CFR 122.26(d)(2)(iv)(B)(1) are to be addressed where such discharges are identified by the permittee as sources of pollutants to the waters of the United States.

The permittee shall ensure the implementation of a program to further reduce the discharge of floatables (e.g. litter and other human-generated solid refuse). The floatables program shall include source controls and, where necessary, structural controls.

The District shall continue to implement the prohibition against the discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and animal waste into separate storm sewers. The permittee shall ensure the implementation of programs to collect used motor vehicle fluids (at a minimum oil and anti-freeze) for recycle, reuse, and proper disposal and to collect household hazardous waste materials (including paint, solvents, pesticides, herbicides, and other hazardous materials) for recycle, reuse, or proper disposal. Such programs shall be readily available to all private residents and shall be publicized and promoted on a regular basis, pursuant to the Public Education Plan in this permit at Part III.B.12.

Detection and elimination of illicit discharges shall include, but not be limited to, the following mix of strategies:

- Implementation of an illicit connection detection and enforcement program to perform dry weather flow inspections in target areas;
- Visual inspections of targeted areas; and
- Issuance of fines, tracking and reporting illicit discharges, and reporting progress on stopping targeted illicit discharges, and in appropriate cases, chemical

testing immediately after discovery of an illicit discharge.

The District shall implement an enforcement plan for illicit discharges set forth in the following plan in paragraph 11, Enforcement Plan, of this part of the permit. A justification shall be provided for the control plan in the Annual Report/Implementation Plan in terms of meeting the requirements of the Clean Water Act.

The permittee shall carry out all necessary inspection, surveillance, and monitoring procedures to remedy and prevent illicit discharges. The District shall carry out the necessary monitoring activities with the goal of meeting the requirements of the Clean Water Act. The permittee shall submit an inspection plan, inspection criteria, and documentation regarding protocols and parameters of field screening as a part of each Annual Report/Implementation Plan. The inspection plan shall include a schedule and allocation of resources.

The permittee shall implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. The permittee shall provide for the training of appropriate personnel in spill prevention and response procedures. The implementation of this program shall be reported in each of the Annual Reports/Implementation Plans.

11. Enforcement Plan

The permittee shall implement an enforcement plan for carrying out the objectives of the SWMP dated October 19, 2002. A listing of all violations and enforcement actions shall be used to assess the effectiveness of the Enforcement Program in each Annual Report/Implementation Plan. Enforcement shall be maintained at its current level.

12. Public Education

The permittee shall implement a public education program. There are many components of a storm water public education program required by federal regulations at 40 CFR 122.26. The permittee will address all topics and related audiences including the following requirements:

A household hazardous waste educational and outreach program shall control illicit discharges to the MS-4 as required under Part III.B.10. This permit requires the permittee to implement programs and materials during the term of the permit to inform and educate the public on proper management and disposal of used oil, other automotive fluids, and household chemicals.

A residential and commercial pesticide and fertilizer educational and outreach program shall address the use and application of pesticides and fertilizer under Part III.A.7. This program shall promote the proper use of pesticides, herbicides, and fertilizers through the development and dissemination of either new or existing educational materials.

An industrial facility outreach program shall be implemented as a means of monitoring and controlling pollutants in storm water from industrial facilities as required under Part III.A.2. An industrial facility outreach program should focus on informing industries within the District's watersheds about storm water permitting and pollution prevention plans. This program should also inform industries of the requirement that they develop structural and non-structural control systems, pursuant to regulations at 40 CFR 122.26(d)(2)(iv)(C) and (iv)(A)(5).

A construction site operators education and outreach program shall provide construction site operators with technical guidance documents. The permittee shall continue providing these types of outreach and educational materials.

The permittee shall develop public educational materials in cooperation and coordination with other agencies and organizations in the District with similar responsibilities and goals. Public education materials shall be developed in an easy-to-understand format and at a technical level appropriate for the target audience. Progress reports on public education shall be included in the Annual Report/Implementation Plan. An explanation shall be provided as to how this effort will reduce pollution loadings to meet the requirements of the Clean Water Act.

The permittee shall submit copies of all records and reports to the Martin Luther King, Jr. Public Library, to be kept in a single location for public review. This requirement shall extend at a minimum to all pertinent records and reports required to be filed with EPA.

C. <u>Annual SWMP Reporting</u>

The permittee shall prepare an Annual Report to be submitted on the effective yearly date of the permit for the duration of the permitting cycle. The report shall include the following separate sections:

1. A review of the status of program implementation and compliance (or non-compliance) with all schedules of compliance contained in this permit;

2. A review of monitoring data and any trends in estimated cumulative annual pollutant loadings;

3. An assessment of the effectiveness of controls established by the October 19, 2002,SWMP;

4. An assessment of the projected cost of the October 19, 2002, SWMP and a description of the permittee's budget for existing storm water programs, including an overview of the permittee's financial resources and budget, overall indebtedness and assets, and sources for funds for storm water programs.

5. A summary describing the number and nature of enforcement actions, inspections, and public education programs and installation of control systems;

6. Identification of water quality improvements or degradation through application of a measurable performance standard identified in the first paragraph of Part III.D (Annual SWMP Implementation Plan);

7. Results of storm and water quality modeling, and its use in planning installation of control systems and maintenance and other activities.

8. An assessment of any October 19, 2002,SWMP modifications needed to reduce the discharge of pollutants to meet the requirements given in 40 CFR 122.26(d)(2)(iv).

9. Revisions, if necessary, to the assessments of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (v).

10. A cost benefit and affordability analysis to determine the commitments for the next year;

11. Methodology to assess the effects of the October 19, 2002 Storm Water Management Program (SWMP) in reducing pollution and achieving the requirements of the Clean Water Act and the requirements of 40 CFR 122.26(D)(2)(iv),(v), and(vi);

12. Annual expenditures and budget for the year following each annual report;

13. A summary of commitments for the next year and evaluation of the commitments from the previous year;

14. A summary of the monitoring data for storm water and ambient sampling that is collected in the previous year and the plan, including identification of monitoring locations, to collect additional data for the next year;

The permittee shall sign and certify the Annual Report in accordance with Part VII.F. and include a statement or resolution that the permittee's governing body or agency (or delegated representative) has reviewed or been appraised of the content of the Annual Report. The permittee shall provide a description of the procedure used to meet the above requirement.

D. ANNUAL SWMP IMPLEMENTATION PLAN

The permittee shall submit, an Annual SWMP Implementation Plan, which is to be provided to EPA on the effective yearly date of the permit for the duration of the permitting cycle. The Implementation Plan is to analyze in detail the work to be done in each successive one year increment by identifying and evaluating the previous year's efforts based on a cost benefit and affordability analysis. The Plan shall include an established measurable performance standard for each of the MS4 program activities identified in Table 3 of this Permit which will be used for responding to Part III.C.6 of the Annual SWMP Reporting requirement. The basis for each of the performance standards which will be used as tools for evaluating environmental results and determining the success of each MS4 activity listed in the Plan shall be described incorporating, when practicable, an integrated program approach that considers all programs and projects which have a direct as well as an indirect affect on storm water management quantity and quality within the District. The Plan shall also provide an update of the fiscal analysis for each year of the permit as required by 40 CFR 122.26(d)(2)(vi).

Appropriate management officials within the Government of the District of Columbia shall develop and recommend to higher Authorities within the District the level of expenditures necessary for the Annual SWMP Reports and the SWMP Implementation Plans based on a cost benefit analysis and a partitioning of expenditures between the CSOs and storm sewers. If the recommended Report(s)/Plan(s) are not funded by the Mayor, the City Council, the Control Board, and/or Congress, then a written explanation will be provided to EPA and the D.C. Environmental Health Administration (EHA) within 30 days after a decision is reached by higher authorities. A written report on the above requests and decisions will also be incorporated into each Annual Report(s) and Implementation Plan(s). In each submittal, an explanation will indicate why the recommended funding was not approved. Once the SWMP Annual Implementation Plan and SWMP Annual Report are developed by this procedure, failure by the District to carry out the minimum requirements in the Reports or Plans would be a violation of this permit.

Based on the level of funding available and a cost benefit analysis, an evaluation shall be made in each Annual SWMP

Implementation Plan as to the benefit of implementing various types of structural and non-structural controls. The effect of the number and type of annual maintenance, inspections, and other program requirements will also be taken into account. Several alternatives will be considered in searching for the optimum approach. The alternatives will be evaluated in terms of a cost benefit analysis, taking into account the availability of funding and other environmental obligations of the District. Affordability cannot be used as a defense for noncompliance with conditions of this Permit.

Each Annual SWMP Report and SWMP Implementation Plan may be revised with written approval by EPA. The revised Report or Plan will become effective after its approval.

Failure to submit an Annual SWMP Report and/or Annual SWMP Implementation Plan, according to the signatory requirements in Part VII.F. and by the deadlines identified in Table 1, is a violation of this permit.

In reviewing any submittal identified in Table 1, EPA shall approve or disapprove each submittal. If EPA disapproves any submittal, EPA shall provide comments to the permittee. The permittee shall address such comments in writing within thirty (30) days of receipt of the disapproval from EPA. If EPA determines that the permittee has not adequately addressed the disapproval/comments, EPA may revise that submittal or portions of that submittal. Such revision by EPA is effective thirty (30) days from receipt by the permittee. Once approved by EPA, or in the event of EPA disapproval, as revised by EPA, each submittal shall be an enforceable element of this permit.

E. SWMP UPGRADE

The permittee shall develop an Upgraded SWMP based on the findings presented in each of the Annual SWMP Reports, and Annual SWMP Implementation Plans submitted during the permitting cycle. All the improvements and modifications to the District's existing SWMP dated October 19, 2002,shall be made in the Upgraded SWMP to be submitted six months prior to the expiration date of the permit. The Upgraded SWMP shall define the goals of the SWMP and provide an analysis to assure EPA that these goals will be achieved according to the schedule to be included in the Upgraded Plan. The Upgraded SWMP shall define what has to be done to meet the requirements of the Clean Water Act and a schedule for accomplishing these tasks.

One of the purposes of the Updated SWMP is to develop a master plan pursuant to 40 CFR 122.26(d)(2)(iv)(A) to determine

the structural and source measures to reduce pollutants from runoff. Such control systems shall include those given in the SWMP dated October 19, 2002.

F. LEGAL AUTHORITY AND RESOURCES

The permittee shall ensure legal authority exists to control discharges to and from the Municipal Separate Storm Sewer System (MS4). Any changes/deficiencies in Legal Authority shall be given in each Annual Report/Implementation Plan. The legal authority may be a combination of statute, ordinance, permit, certification, contract, order, or inter-jurisdictional agreements with existing legal authority to:

1. Prohibit illicit discharges to the municipal separate storm sewer;

2. Control the discharge of spills and the dumping or disposal of materials other than storm water into the MS4;

3. Require compliance with conditions in ordinances, permits, certifications, contracts, or orders;

4. Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance with NPDES permit conditions;

5. Carry out adequate enforcement actions, including fines, penalties, orders, and development of compliance schedules for storm water dischargers pursuant to 40 CFR 122.26(d)(2)(C).

6. Monitor and control pollutants in storm water discharges to municipal storm sewers from industrial facilities and other sources (pursuant to the above regulations) that the permittee determines are contributing a substantial pollutant loading to the municipal storm system.

7. Search out unpermitted discharges, require that they apply for NPDES permits, and take appropriate enforcement actions.

The permittee shall provide adequate finances, staff, equipment, and support capabilities to implement the existing Storm Water Management Program (SWMP) dated October 19, 2002 and the Upgraded SWMP to be developed in accordance with the compliance schedule set forth in Table I.

PART IV. MONITORING AND REPORTING REQUIREMENTS

A. STORM EVENT DISCHARGES

The permittee shall implement a wet-weather monitoring program for the Municipal Separate Storm Sewer System (MS4) to provide data necessary to assess and report the effectiveness and adequacy of control measures implemented under the Storm Water Management Program (SWMP) dated October 19, 2002; estimate annual cumulative pollutant loadings from the MS4 subwatershed monitored for that particular year; estimate and report the event mean concentrations and seasonal pollutants in discharges from major outfalls; identify and prioritize portions of the MS4 requiring additional controls; and identify water quality improvements or degradation. The sampling plan being implemented by the permittee shall be consistent with the monitoring requirements at 40 CFR 122.26 (d)(2)(iii).

The permittee is responsible for conducting any additional monitoring necessary to accurately characterize the quality and quantity of pollutants discharged from the municipal separate storm sewer system. Improvement in the quality of discharges from the MS4 will be assessed based on the monitoring information required by this Part of the permit, plus any additional monitoring conducted by the permittee.

1. Representative Monitoring

The permittee shall monitor and provide an Outfall Discharge Monitoring Report (refer to the schedule in Table I, Part III.A) of representative outfalls, internal sampling stations, and/or instream monitoring locations to characterize the quality of storm water discharges from the Municipal Separate Storm Sewer System (MS4). The sampling plan being implemented by the permittee shall be consistent with the monitoring requirements at 40 CFR 122.26 (d) (2) (iii). Table 4 shows the required parameters and their monitoring frequency.

TABLE 4
Monitoring Requirements

Parameter*	Monitoring Frequency *
pH	3/year
temperature	3/year
total ammonia nitrogen, organic nitrogen, and total nitrogen	3/year
volatile organic compounds	3/year
acid extractable compounds	3/year

base/neutral extractable compounds	3/year
pesticides/PCBs	3/year
metals, cyanide, and phenols	3/year
conventional pollutants	3/year
hardness	3/year

* Refer to Discharge Monitoring Report dated April 19, 2002 for a listing of parameters being monitored. Monitoring frequency shall be at least three times per year at a minimum.

TABLE 5 Representative Monitoring Outfall Locations
A. Anacostia River Sub Watershed Monitoring Sites
1. Stickfoot Sewer (Suitland Parkway)-2400 block of Martin Luther King, Jr. Ave., SE, near Metro bus entrance.
2. O St. Storm Water Pump Station - 125 O St., 125 O SE-just outside front gate at O St. Pump Station
3. Anacostia High School/Anacostia Recreation Center - corner of 17th St. and Minnesota Ave. SE
4. Gallatin & 14th St.,NE-across from the intersection of 14th St. and Gallatin St. in a large outfall
5. Varnum and 19th Place,NE-2100 Block of Varnum St.
6. Nash Run-intersection of Anacostia Drive and Polk St.,NE.
7. East Capitol St.-200 Block of Oklahoma Ave.,NE.
8. Ft. Lincoln-Newtown BMP-in the brush along the side of New York Ave. West (coming into city) after the bridge.
9. Hickey run-33rd and V Streets, NE.

B. Rock Creek Subwatershed Monitoring Sites
1. Walter Reed (Fort Stevens Drive)
2. Military Road and Beach Drive
3. Soapstone Creek (Connecticut Avenue and Ablemarle Street)
4. Melvin Hazen Valley Branch (Melvin Hazen Park and Quebec Street)
5. Klingle Valley Creek (Devonshire Place and 30th Street)
6. Normanstone Creek (Normanstone Drive and Normanstone Parkway)

C. Potomac River Subwatershed Monitoring Sites
1. Battery Kemble Creek-49th and Hawthorne Streets, NW.
2. Foundary Branch-at Van Ness and Upton Streets, NW in the park.
3. Dalecarlia Tributary-Van Ness Street and Dalecarlia Parkway.
4. Oxon Run-Mississippi Avenue and 15th Street, SE
5. Tidal Basin-17th Street and Constitution Avenue, NW
6. Washington Ship Channel-Washington Marina parking lot, SW
7. C and O Canal-Potomac Avenue and Foxhall Road, NW

One of the subwatersheds listed in Table 5 along with their associated MS4 monitoring stations shall be selected for yearly sampling in accordance with the District's current monitoring program and reassessed every third year utilizing the watershed approach recommended by the EPA. The current watershed based monitoring approach which is on-going for rotating the MS4 stations continues to be the Anacostia River in calendar years 2005 and 2008, Rock Creek in calendar year 2006, and the Potomac River in calendar years 2004 and 2007. All changes to the above MS4 monitoring stations and/or sites for any reason shall be considered a major modification to the permit subject to the reopener clause.

2. Storm Event Data

In addition to the parameters listed above, the permittee shall maintain records of the date and duration (in hours) of the storm events sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and a calculated flow estimate of the total volume (in gallons) and nature of the discharge sampled.

3. Sample Type, Collection, and Analysis

The following requirements apply only to samples collected for Part IV.A.1. - Representative Monitoring.

a. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken for pH, temperature, cyanide, oil and grease, fecal coliform,

fecal streptococcus, total phenols, residual chlorine, and (at the permittee's option) volatile organics. For all other parameters, data shall be reported for weighted composite samples of the entire event of the discharge pursuant to 40 CFR 122.21(g)(7).

b. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge, with each aliquot being separated by a minimum period of fifteen minutes.

c. Analysis and collection of samples shall be done in accordance with the methods specified at 40 CFR Part 136.

4. Sampling Waiver

Grab samples taken during the first two hours of discharge shall be used for the analysis of pH, temperature, cyanide, oil and grease, fecal coliform, fecal streptococcus, total phenols, residual chlorine, and (at the permittee's option) volatile organics.

When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event.

Adverse climatic conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

B. DRY WEATHER MONITORING

1. Dry Weather Screening Program

The permittee shall continue ongoing efforts to detect the presence of illicit connections and improper discharges to the MS4 pursuant to the District SWMP dated October 19, 2002. All sewersheds (but not necessarily all outfalls in those sewersheds) of the MS4 must be screened at least once during the permit term. The screening shall be sufficient to estimate the frequency and volume of dry weather discharges and their environmental impact.

2. Screening Procedures

Screening may be developed and/or modified based on experience gained during actual field screening activities and need not conform to the protocol at 40 CFR 122.26(d)(1)(iv)(D). A description of the protocol actually used shall be provided in each Annual Report with a justification for its use. The procedures described in the October 19, 2002 SWMP shall be used as guidance.

3. Follow-up on Dry Weather Screening Results

The permittee shall continue to implement a program to locate and eliminate suspected sources of illicit connections and improper disposal identified during dry weather screening activities, and report the results of that implementation in each Annual Report.

Follow-up activities may be prioritized on the basis of:

a. magnitude and nature of the suspected discharge;

b. sensitivity of the receiving water; and

c. other relevant factors.

C. WET WEATHER SCREENING PROGRAM

The permittee shall implement a program to identify, investigate, and address areas within its jurisdiction that may be contributing excessive levels of pollutants to the MS4. The Wet Weather Outfall Monitoring Program in the District's October 19, 2002 SWMP shall include the above Wet Weather Screening Program.

As part of the Wet Weather Screening Program, the permittee shall:

a. screen the Municipal Separate Storm Sewer System, in accordance with existing procedures identified in the SWMP dated October 19, 2002 at least once during the permit term.

b. specify the sampling and non-sampling techniques (such as observations or quantitative methods), to be used for initial screening and follow-up purposes. For samples collected for screening purposes only, sample collection and analysis need not, pursuant to 40 CFR 122.26 (1)(d)(iv)(D), conform to the requirements of 40 CFR Part 136.

PART V. STORM WATER MODEL

The permittee shall report all progress made in developing a Storm Water Model and Geographical Information System (GIS) to EPA on an annual basis as an attachment to each

Annual Report/Implementation Plan in Part III.C. and D.

PART VI. HICKEY RUN

Monitoring for oil and grease at the Hickey Run MS4 site identified in Table 5.A of this Permit shall be performed on a rotating basis in the same year as the other Anacostia River MS4 locations identified in the Table are sampled using the procedures and methodology described and outlined in the Permit's Monitoring Program. To determine the effectiveness and performance of the planned Hickey Run BMP discussed below, the permittee shall provide in the Annual Report for EPA review and approval a detailed post construction BMP monitoring plan of sampling and protocol requirements. The results of the BMP monitoring and BMP performance in addressing the requirements of the Hickey Run TMDL shall be presented in the Annual Discharge Monitoring Report required by this Permit when the Anacostia River MS4 monitoring stations are sampled. In the event, monitoring station THRO1 downstream on Hickey Run shows violations for oil and grease (above water quality standard criterion of 10mg/l), the Hickey Run MS4 site and BMP shall be sampled in accordance with the Permit's Monitoring Program on an annual basis rather than every third year under the current watershed based monitoring program until monitoring shows remedial actions effective to achieve compliance with the TMDL.

The effluent limits applicable to the Hickey Run Outfalls consistent with the TMDL WLAs consist of the BMPs set forth in the Upgraded SWMP and the narrative effluent limits set forth above.

The permittee shall continue to use their best efforts to negotiate an agreement with all parties to construct a multi purpose BMP for ensuring compliance with the Hickey Run TMDL document to the maximum extent practicable at this location and have it operational and ready for monitoring its effectiveness during the permitting cycle. The permittee shall inform EPA of changes to the above through Annual Reports and Implementation Plans required by the Permit. The final Hickey Run BMP Compliance Plan and the sampling program component for monitoring the effectiveness and performance of the BMP shall be submitted to EPA for approval prior to the sampling of the BMP being initiated.

PART VII STANDARD PERMIT CONDITIONS FOR NPDES PERMITS

A. <u>DUTY TO COMPLY</u>

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and may result in an enforcement action; permit

termination, revocation and reissuance, or modification; and denial of a permit renewal application.

B. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS

The Clean Water Act provides any person who violates any permit condition or limitation implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, or any permit condition or limitation implementing of such section, and any person who violates any Order issued by EPA under Section 301(a) of the Act, shall be subject to a civil penalty not to exceed $32,500 per day for each violation, and to an action for appropriate relief including a permanent or temporary injunction.

Any person who negligently violates Section 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, any permit condition or limitation implementation any such section, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of such violation, or by imprisonment for not more than 3 years, or by both. Any person who knowingly violates any permit condition or limitation implementing Section 301, 302, 305, 307, 308, 318, or 405 of the Clean Water Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000, or by imprisonment of not more than 15 years, or by both.

C. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

D. PERMIT ACTIONS

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

1. Violation of any terms or conditions of this permit;

2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;

4. Information newly acquired by the Agency, including but not limited to the results of the studies, planning, or monitoring described and/or required by this permit;

5. Material and substantial facility modifications, additions, and/or expansions;

6. Any anticipated change in the facility discharge, including any new significant industrial discharge or changes in the quantity or quality of existing industrial discharges that will result in new or increased discharges of pollutants; or

7. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

8. The effluent limitations are based on the District of Columbia's water quality standards in accordance with Clean Water Act. In the event of a revision of the District of Columbia's water quality standards this permit may be modified by EPA to reflect this revision.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. When a permit is modified, only conditions subject to modification are reopened.

E. CIVIL AND CRIMINAL LIABILITY

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

F. SIGNATORY REQUIREMENTS

All Discharge Monitoring Reports, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or that this permit requires be maintained by the permittee, shall be signed by:

1. For a municipality: State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

a. a duly authorized representative of that person. A person is a duly authorized representative only if:

b. The authorization is made in writing by a person described above and submitted to the Director.

c. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly

authorized representative may thus be either a named individual or any individual occupying a named position).

d. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new notice satisfying the requirements of this paragraph must be submitted to the Director prior or together with any reports, information, or applications to be signed by an authorized representative.

G. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

H. DISTRICT LAWS

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable District law or regulation identified in Chapter 2 of the SWMP dated October 19, 2002. In cases of "exemptions and waivers" under District law, Federal law and regulation shall be applicable.

I. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. SEVERABILITY

The provisions of this permit are severable, and if any provisions of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

K. TRANSFER OF PERMIT

In the event of any change in ownership or control of facilities from which the authorized discharge emanates, the permit may be transferred to another person if:

1. The current permittee notifies the EPA, in writing of the proposed transfer at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement, between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The EPA does not notify the current permittee and the new permittee of intent to modify, revoke and reissue, or terminate the permit and require that a new application be submitted.

L. CONSTRUCTION AUTHORIZATION

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

M. HISTORIC PRESERVATION

During the design stage of any project by the Government of the District of Columbia within the scope of this permit that may include ground disturbance, new construction, or demolition of a structure, the Government of the District of Columbia shall notify the Historic Preservation liaison and provide the liaison planning documents for the proposed undertaking. The documents shall include project location; scope of work or conditions; photograph of the area/areas to be impacted and the methods and techniques for accomplishing the undertaking. Depending on the complexity of the undertaking, sketches, plans and specifications shall also be submitted for review. The documentation will enable the liaison to assess the applicability of compliance procedures associated with Section 106 of the National Historic Preservation Act. Among the steps in the process are included:

a. The determination of the presence or absence of significant historic properties (architectural, historic or prehistoric). This can include the evaluation of standing structures and the determination of the need for an archaeological survey of the project area.

b. The evaluation of these properties in terms of their eligibility for nomination to the National Register of Historic Places.

c. The determination of the effect that the proposed undertaking will have on these properties.

d. The development of mitigating measures in conjunction with any anticipated effects.

All such evaluations and determinations will be presented to the Government of the District of Columbia for their concurrence.

If an alternate Historic Preservation procedure is approved by EPA in writing during the term of this permit, the alternate procedure will become effective after its approval.

N. ENDANGERED SPECIES

The U.S. Fish and Wildlife Service (FWS) has indicated that Hay's Spring Amphipod, a Federally listed endangered species, and the bald eagle, a Federally listed threatened species, occur at several locations near, or in, the District of Columbia. The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) has indicated that the endangered shortnose sturgeon occurs in the Potomac River drainage and may occur within the District of Columbia. The FWS and NOAA Fisheries indicate that at the present time there is no evidence that the ongoing storm water discharges covered by this permit are adversely affecting these Federally listed species. Storm water discharges, construction, or any other activity that adversely affects a Federally listed endangered or threatened species are not authorized under the terms and conditions of this permit.

The monitoring required by this permit will allow further evaluation of potential effects on these threatened and endangered species once monitoring data has been collected and analyzed. EPA requires that the permittee submit to NOAA Fisheries at the same time it submits to EPA each Annual Outfall Discharge Monitoring Report of the monitoring data which will be used by EPA and NOAA Fisheries to further assess effects on endangered or threatened species. If these data indicate it is appropriate, requirements of this NPDES permit may be modified to prevent adverse impacts on habitats of endangered and threatened species.

The above referenced annual Report of monitoring data is required under this permit to be sent on an annual basis to:

The United States Environmental Protection Agency
Region III (3WP13)
Water Protection Division
1650 Arch Streets
Philadelphia, Pennsylvania 19103-2029

National Marine Fisheries Service
Protected Resource Division
One Blackburn Drive
Gloucester, Massachusetts 01930-2298
Attn: Ms. Julie Crocker

O. TOXIC POLLUTANTS

If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, the permittee shall comply with such standard to the maximum extent practicable or prohibition even if the permit has not yet been modified to comply with the requirement.

The permittee shall comply with effluent standards or prohibitions established under section 307(a)of the Clean Water Act for toxic standards prohibitions, even if the permit has not yet been modified to incorporate the requirement.

P. Reopener Clause for Permits

The permit may be modified or revoked and reissued, to incorporate any applicable effluent standard or limitation issued or approved under Sections 301, 304, or 307 of the Clean Water Act, and any other applicable provision as provided by Chesapeake Bay Agreement of 2000 based on water quality considerations, and if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit: or

b. Controls any pollutant not limited in the permit. The permit, as modified or reissued under this paragraph, shall also contain any other requirements of the Act then applicable.

c. The permit may be modified, or revoked and reissued to incorporate additional controls that are necessary to ensure that the permit effluent limits are consistent with any applicable TMDL WLA allocated to the discharge of pollutants from the MS4.

This permit may also be reopened, modified, or revoked and reissued as specified in 40 C.F.R. Parts 122.44(c), 122.62, 122.63, 122.64, and 124.5.

Q. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in

advance but no longer than the permit expiration date. In the event that a timely and complete reapplication has been submitted and the Director is unable through no fault of he permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are automatically continued and remain fully effective and enforceable.

PART VIII. MONITORING AND RECORDS

A. REPRESENTATIVE SAMPLING

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit. Monitoring points shall not be changed except through permit modification.

B. FLOW MEASUREMENTS

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device.

C. MONITORING PROCEDURES

1) Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedure have been specified in the permit.

2) PCBs have been identified in the contaminated sediments of the Anacostia River and in airborne particular matter deposited within the District of Columbia. The Permittee shall continue to use Method 608 for PCB monitoring. In the event that EPA approves a test method for compliance monitoring purposes of measuring PCB concentrations in storm water with a minimum level of less than 1.0 ug/L, EPA reserves the right to modify the Permit to require the Permittee to use such EPA approved test method in place of Method 608.

D. PENALTIES FOR TAMPERING

The Clean Water Act provides that any person who falsifies or knowingly renders inaccurate, any monitoring device, required device, or method required to be maintained under this permit shall

upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

E. REPORTING OF MONITORING RESULTS

Monitoring results must be reported annually on a Discharge Monitoring Report (DMR) form (EPA No. 3320-1). Monitoring results obtained during the previous year shall be summarized and reported on a DMR form postmarked no later than the effective date of the permit of the following year. Duplicate copies of DMR's signed and certified as required by Part VI.F., shall be submitted to the United States Environmental Protection Agency Region III, and the District of Columbia's Department of Health at the following addresses:

U.S. EPA Region III(3WP13)
Water Protection Division
NPDES DMRS
1650 Arch Street
Philadelphia, PA 19103-2029

District of Columbia Government
Department of Health
Environmental Health Administration
5th Floor/51 N. Street, N.E.
Washington, D.C. 20002

F. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors (for the purposes of this permit) any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual Discharge Monitoring Report (DMR) forms. Such frequency shall also be indicated.

G. RETENTION OF RECORDS

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5)years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

H. RECORD CONTENTS

Records of monitoring information shall include:

1. The date, exact place, time and methods of sampling or measurements:

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

I. INSPECTION AND ENTRY

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises at reasonable times where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), processes, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

PART IX OTHER APPLICABLE PROVISIONS

A. Waivers and Exemptions

This permit does not authorize the discharge of any pollutant from the MS4 which arises from or is based on any of the various existing "waivers and exemptions" that may otherwise apply and are not consistent with the Federal Clean Water Act and other pertinent guidance, policies, and regulations. This narrative prohibition on the applicability of such waivers and exemptions extends to any activity that would otherwise be authorized under District law but which impedes the reduction or control of pollutants through the use of BMPs to the maximum extent practicable and/or prevents compliance with the narrative effluent limits of this Permit. Any such discharge not otherwise authorized may constitute a violation of this permit.

B. TMDL WLA Implementation Plans and Compliance Monitoring

In addition to the duty to comply with the narrative effluent limits in Part I.D.3 of this Permit, the permittee shall demonstrate compliance as described in this Part and in Part IV, Monitoring and Reporting Requirements. In accordance with the

schedule identified in Part III.A. Compliance Schedule and Table 1, Permittee shall further submit implementation plans to reduce discharges consistent with any applicable EPA-approved waste load allocation (WLA) component of any established Total Maximum Daily Loadings (TMDL). An applicable TMDL WLA for this Permit means any TMDL established on or before the effective date of this Permit for a receiving stream, segment of a stream, or other waterbody within the District of Columbia to which the MS4 system discharges, and for which the MS4 receives a WLA, for purposes of achieving compliance with applicable requirements under the Clean Water Act.

EPA has identified all applicable TMDL WLAs and the associated reductions from current estimated loadings as described in Appendix A to the Fact Sheet. EPA provides the following list for informational purposes only: Upper and Lower Anacostia River Biochemical Oxygen Demand TMDL (50 per cent reduction); the Upper and Lower Anacostia River Total Suspended Solids TMDL (77 per cent reduction); Upper and Lower Anacostia River, Watts Branch, Fort Dupont Creek, Fort Chaplin Tributary, Fort Davis Tributary, Fort Stanton Tributary, Hickey Run, Nash Run, Popes Branch, and Texas Avenue Tributary Fecal Coliform Bacteria TMDL (27-90)per cent reduction); and the Anacostia River, Fort Chaplin Tributary, Fort Davis Tributary, Fort Dupont Creek, Fort Stanton Tributary, Hickey Run, Nash Run, Popes Branch, Texas Avenue Tributary, and Watts Branch Organics and Metals TMDL (0-98 per cent reduction). The same implementation procedures will apply to the approved TMDL WLAs for Rock Creek which includes the Upper and Lower Rock Creek Metals (0-86 per cent reduction subject to adjustment for the margin of safety); Rock Creek Fecal Coliform Bacteria (95 per cent reduction); and Rock Creek Tributary Organics for Broad Branch, Dumbarton Oaks, Fenwick Branch, Klingle Valley, Luzon Branch, Melvin Hazen, Normanstone Creek, Pinehurst Branch, Piney Branch, Portal Branch, and Soapstone Creek (0-99.9 per cent reduction subject to adjustment for the margin of safety).

Demonstration of compliance (as specified in Parts IV and VIII of the Permit) will be calculated using the procedures (i.e., Simple Method) identified in the Upgraded SWMP dated October 19, 2002, unless specified otherwise by EPA, and will be reported by comparing the monitoring data for that pollutant to the approved pollutant specific WLAs and its associated storm water load reductions for the receiving waterbody as specified in the Fact Sheet.

The permittee shall report to EPA the results of this analysis in accordance with the compliance schedule in Part III.A and Table 1 of this permit. If the analysis concludes that the MS4 discharge monitored for that specific pollutant is causing or contributing to an exceedance of the criteria under the approved pollutant-specific WLAs, the permittee shall develop a TMDL implementation

Plan and schedule in accordance with the compliance schedule in Part III.A and Table 1 of this permit. The Plan shall consist of documenting all previous and on-going efforts at achieving the specific pollutant reductions identified in the TMDL WLA and further demonstrating additional controls sufficient to achieve those reductions through an established performance based benchmark. This benchmark shall be applied against annual projected performance standards for purposes of completing the final implementation plan when determining measurable progress to achieve adequate reduction. EPA reserves the right after a review and approval of each Plan to modify this permit for purposes of requiring additional numeric and/or narrative effluent controls on the discharge of pollutants from the MS4. EPA shall make the results of any such determination(s) in writing available to the Permittee and other interested persons including, but not limited to members of the District of Columbia MS4 Task Force. Upon approval by EPA, the TMDL implementation plan(s)shall be incorporated into the upgraded SWMP in accordance with the compliance schedule in Part III.A (Table I)and Part III.E (SWMP Upgrade) of this Permit.

The Permittee shall submit to EPA the applicable TMDL Implementation Plans for the Anacostia River TMDLs within six months and for the Rock Creek TMDLs twelve months after the effective issuance date of this Permit.

C. Compliance Monitoring with Water Quality-Based Effluent Limitations

The Permit is water quality based and as such is written to impose controls (in Part I of this Permit) sufficient to ensure compliance with applicable District of Columbia water quality standards. EPA reserves the right to modify the Permit as needed, when monitoring results (as set forth in Parts IV and VIII of the permit) show that the current BMP controls required by this permit are not sufficient to ensure compliance with the applicable water quality standards.

PART X. PERMIT DEFINITIONS

"Best Management Practices" ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the United States. BMP also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"CSMP" means Construction Site Management Plan

"CWA" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control

Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. (6-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

"Director" means the Regional Administrator or an authorized representative.

"Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges from the Municipal Separate Storm Sewer System (MS4).

"Maximum Extent Practicable (MEP) Standard" means a technology based level of pollution reduction achieved through the use of a combination of non structural and/or structural best management practices (BMPs) for controlling the quantity as well as the quality of a particular pollutant or pollutants in storm water at their sources before entering the MS4 system.

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Goal" means the end results the permittee is to strive to achieve.

"Guidance" means assistance in achieving a goal.

"Illicit connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from clear water flows, roof drainage, water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation waters, springs, footing drains, lawn watering, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, fire fighting activities, and similar types of activities.

"Internal Sampling Station" means a monitoring site which is located within the Municipal Separate Storm Sewer System (MS4) upstream of an outfall pipe which discharges storm water directly into a receiving waterbody.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"MS4" refers to either a Large or Medium Municipal Separate Storm Sewer System.

"Large or Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"Municipal Separate Storm Sewer" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

"Permittee" refers to the Government of the District of Columbia and all subordinate District and independent agencies directly accountable and responsible to the City Council and Mayor as authorized under the Storm Water Permit Compliance Amendment Act of 2000 and any subsequent amendments for administrating, coordinating, implementing, and managing storm water for MS4 activities within the boundaries of the District of Columbia.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch,

channel, substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Pollutant of concern" means a pollutant in an MS4 discharge that may cause or contribute to the violation of a water quality criterion for that pollutant downstream from the discharge.

"Significant spills" includes, but is not limited to: releases of tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"RSAT" is an acronym for Rapid Stream Assessment Techniques.

"SWMP" is an acronym for Storm Water Management Plan/Program. For purposes of this permit, the term includes all storm water activities described in the District's SWMP dated October 19, 2002,and all other documents and related correspondences embodied under the tier of the program document from the previous Permit and to be generated from this Permit.

"Section 313 water priority chemical" means a chemical or chemical categories which: 1) are listed at 40 CFR 372.65 pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986; 2) are present at or above threshold levels at a facility subject to SARA Title III, Section 313 reporting requirements; and 3) that meet at least one of the following criteria: i) are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous oil or hazardous substances in excess of reportable quantities under section 311 of the CWA(see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Total Maximum Daily Load (TMDL) Units" means for purposes of this Permit, the waste load allocations (WLAs) are expressed in pollutant pounds of a total average annual load unless specifically identified otherwise in an EPA approved TMDL report covered under the Permit.

"Time-weighted composite" means a composite consisting of a mixture of equal volume aliquots collected at a constant time interval.

"Upgraded Storm Water Management Program (SWMP)" is a modified and improved SWMP based on the existing SWMP and on information in each of the Annual Reports/Implementation Plans/Discharge Monitoring Reports. The goal of the Upgraded SWMP is to describe the list of activities that need to be done to meet the requirements of the Clean Water Act, an explanation as to why these activities will meet the Clean Water Act requirements, and a schedule for those activities, taking into account the cost benefit and affordability analysis to be done in each of the Annual Implementation Plans.

"Waste pile" means any non-containerized accumulation of solid, nonflowing waste.

"Waters of the United States" is identified at 40 CFR 122.2.

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES, Defendant and Respondent.
No. S082645.

Supreme Court of California
Jan. 8, 2001.

SUMMARY

A city council, seeking to establish and fund a program to remedy substandard housing conditions, adopted an ordinance that required the owners of all residential rental properties subject to inspection under the program to pay a fee. An apartment association and other groups with similar interests brought an action for declaratory and injunctive relief against the city, alleging that the fee ordinance was unconstitutional and therefore void as a charge upon real property under Prop. 218 (Cal. Const., art. XIII D). The trial court sustained the city's demurrer without leave to amend, finding that the fee was not subject to the constitutional requirements, and entered judgment for the city. (Superior Court of Los Angeles County, No. BC195216, Charles W. McCoy, Jr., Judge.) The Court of Appeal, Second Dist., Div. One, No. B130243, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that this ordinance did not fall within the scope of Cal. Const., art. XIII D, which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to fees imposed on an incident of property ownership, but rather to fees imposed on a parcel or a person as an incident of property ownership; this distinction was crucial to this case. According to its plain meaning, Cal. Const., art. XIII D applies only to exactions levied solely by virtue of property ownership. This inspection fee was imposed because the property was being rented; it ceased along with the business operation, whether or not ownership remained in the same hands. (Opinion by Mosk, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Dissenting opinion by Brown, J., with Baxter, J., concurring (see p. 845).)

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 145--Scope of Review--Questions of Law and Fact-- Interpretation of Constitutional Provision.
The interpretation of a constitutional provision, passed by voter initiative, is a question of law for the appellate courts to decide on independent review of the facts.

(2a, 2b, 2c) Property Taxes § 7.6--Real Property Tax Limitation-- Proposition 218--Construction--In Context of Proposition 13.
Prop. 218, which added Cal. Const., art. XIII C and art. XIII D, can best be understood against its historical background, which began in 1978 with the adoption of Prop. 13, the purpose of which was to cut local property taxes. Prop. 218 buttressed the limitations in Prop. 13 on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges. Prop. 218 must be construed in the context of Prop. 13. Prop. 218 focuses on exactions, whether they be called taxes, fees, or charges, that are directly associated with property ownership.

(3a, 3b, 3c, 3d, 3e) Property Taxes § 7.6--Real Property Tax Limitation--Proposition 218:Municipalities § 54--Ordinances--Fee Imposed on Owners of Residential Rental Properties--Validity.
A city ordinance that required payment of a fee by the owners of all residential rental properties subject to inspection under a program designed to remedy substandard housing conditions did not fall within the scope of Prop. 218 (Cal. Const., art. XIII D), which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to

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fees imposed on an incident of property ownership, but rather to fees imposed on a parcel or a person as an incident of property ownership. That distinction was crucial to this case. According to its plain meaning, Cal. Const., art. XIII D applies only to exactions levied solely by virtue of property ownership. This inspection fee was imposed because the property was being rented; it ceased along with the business operation, whether or not ownership remained in the same hands.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 110A, 110B.]
(4) Real Property § 4--Incidents of Ownership--Right of Alienation.
Ownership of property in fee simple absolute is the greatest possible estate. Among the panoply of lesser estates are such nonfreehold chattels real as leases for a specific term and periodic tenancies-in common parlance, rentals or leases of limited duration. Among the incidents of estates in land are the so-called bundle of rights that flow from such tenure. Among them is the fundamental right to alienate one's property held in fee simple. That incident, or right, has been called inseparable, indispensable, and necessary. The power to alienate property or a property right is not limited to the right to sell or assign it. It means generally the power to transfer or convey it to another. The conveyance need not be of the whole fee. The right of alienation applies when fee holders seek to convey lesser estates. The power or right of alienation incident to the ownership of an estate in fee simple includes the power or right to dispose of property held in fee by lease, mortgage, or other mode of conveyance.

(5) Taxation § 3--Construction--Distinguished from Regulatory Fees.
Regulatory fees are those charged in connection with regulatory activities, which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged, and which are not levied for unrelated revenue purposes.

(6) Statutes § 27--Construction--Liberality:Constitutional Law § 11-- Construction--Liberality.
As a rule, a command that a constitutional provision or a statute be liberally construed does not license either enlargement or restriction of the evident meaning of the provision.

COUNSEL

California Apartment Law Information Foundation, Trevor Grimm and Craig Mordoh for Plaintiffs and Appellants.

Sharon L. Browne and Stephen R. McCutcheon, Jr., for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiffs and Appellants.

James K. Hahn, City Attorney, Pedro B. Echeverria, Chief Assistant City Attorney, Ronald Tuller, Assistant City Attorney, and Miguel A. Dager, Deputy City Attorney, for Defendant and Respondent.

Hart, King & Coldren, Robert S. Coldren and C. William Dahlin for Western Manufactured Housing Communities Association as Amicus Curiae on behalf of Defendant and Respondent. ***833**

Gibson, Dunn & Crutcher, James P. Clark, Joel M. Tantalo; Western Center on Law & Poverty, Richard Rothschild; Bet Tzedek Legal Services and Lauren Saunders for the Los Angeles Blue Ribbon Citizens' Committee on Slum Housing, Bet Tzedek Legal Services, the Inner City Law Center, Los Angeles Center for Law and Justice, Legal Aid Foundation of Los Angeles, Legal Services of Northern California, Los Angeles Housing Law Project, Public Counsel, San Fernando Valley Neighborhood Legal Services, Western Center on Law and Poverty, Esperanza Community Housing Corporation, Southern California Association of Non-Profit Housing, Southern California Mutual Housing Association, the Coalition for Economic Survival, Inquilinos Unidos, the St. Francis Center, the Fair Housing Congress of Southern California and SEIU Local 347 as Amici Curiae on behalf of Defendant and Respondent.

Richard Doyle, City Attorney (San Jose), George Rios, Assistant City Attorney, and Robert Fabela, Deputy City Attorney, for the City of San Jose, 89 Additional California Cities, the California State Association of Counties and the California Association of Sanitation Agencies as Amici Curiae on behalf of Defendant and Respondent.

MOSK, J.

We granted review to decide whether a city ordi-

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nance imposing an inspection fee on private landlords violates article XIII D of the California Constitution (article XIII D), added by initiative measure, Proposition 218, in 1996. We conclude that it does not.

In July 1998, the City of Los Angeles put into effect the Los Angeles Housing Code. It is codified as article 1 of chapter XVI of the Los Angeles Municipal Code (§ 161.101 et seq.). Later that month, plaintiffs sued the city for declaratory and injunctive relief, alleging that Los Angeles Municipal Code section 161.352, imposing an inspection fee on private landlords, is unenforceable because it was enacted without complying with section 6 of article XIII D. The city demurred. The trial court sustained the demurrer without leave to amend, finding that the fee was not subject to the constitutional requirements. It entered judgment for the city.

In its statement of decision, the trial court recognized that the inspection fee "appears arguably to fall within the wide range of assessments which Proposition 218 was apparently written to encompass." But it added, "In *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, ***834** 721 P.2d 1111], the California Supreme Court held that a fee charged to cover the costs of operating San Jose's rent control ordinances, and not used to raise general revenue, is not subject to Article XIII A of the California Constitution. The City's ordinance here fits squarely within both the reason and rule of *Pennell*.The ordinance levies only property used for residential apartment rentals, and the money is used only to pay for regulat[ing such] rentals to insure, among other things, that they do not degenerate into what is commonly called 'slum conditions.' The assessment is not imposed on all property owners-only a subset of owners who rent apartments."

The Court of Appeal reversed, holding that the state constitutional provision invalidated the city ordinance. The court wrote: "There is nothing in Proposition 218 that exempts regulatory fees imposed on residential rental properties. It thus adds nothing to say, as does the City, that the fees are not 'imposed upon property owners in general, but only those who voluntarily engage in the business of renting, generate the risks of slum housing, and specially benefit from regular inspections as they contribute to the overall reputability and safety of the housing provided.' Quite plainly, Proposition 218 applies to any 'fee' or 'charge,' both of which are defined to mean 'any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service.' (Art. XIII D, § 2, subd. (e) ....) However well intentioned the City's program to abolish slum housing may be, we find it impossible to say that a fee imposed upon the owners of rental units so the City can locate and eradicate substandard housing is anything other than a user fee or charge for a property-related service." (Italics and fn. omitted.)

I.

A.

Section 161.102 of the Los Angeles Municipal Code states the reason for enacting the Los Angeles Housing Code: "It is found and declared that there exist in the City of Los Angeles substandard and unsanitary residential buildings and dwelling units the physical conditions and characteristics of which render them unfit or unsafe for human occupancy and habitation, and which conditions and characteristics are such as to be detrimental to or jeopardize the health, safety and welfare of their occupants and of the public.

"It is further found and declared that the existence of such substandard buildings as dwelling units threatens the physical, social and economic stability of sound residential buildings and areas, and of their supporting ***835** neighborhood facilities and institutions; necessitates disproportionate expenditures of public funds for remedial action; impairs the efficient and economical exercise of governmental powers and functions; and destroys the amenity of residential areas and neighborhoods and of the community as a whole."

Los Angeles Municipal Code section 161.301, entitled Scope, declares that the Los Angeles Housing Code applies to "all residential rental properties with two or more dwelling units on the same lot, the land, buildings and structures appurtenant thereto," but not to owner-occupied units, on-campus dormitory housing, hotels, motels, or certain other types of housing also specifically exempted.

Division 3.5 of the Los Angeles Housing Code (§ 161.351 et seq.) is entitled Housing Inspection Fees.

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Section 161.351 limits the scope of division 3.5 to "residential rental properties with two or more dwellings subject to the provisions of this Code." Those properties "will be subject to regular inspection by the General Manager or an authorized representative. Inspections may also be complaint-based." (*Ibid.*)

Section 161.352 of the Los Angeles Municipal Code, at issue here, sets forth the inspection fee schedule. It provides, in its entirety: "Owners of all buildings subject to inspection shall pay a service fee of $12.00 per unit per year. The fee will be used to finance the cost of inspection and enforcement by the Housing Department. Should the owner fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law. This fee shall be known as the 'Systematic Code Enforcement Program Fee.' " (*Ibid.*, boldface omitted.)

B.

In November 1996 the voters approved Proposition 218, the Right to Vote on Taxes Act. (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 1, p. 108; reprinted as Historical Notes, 2A West's Ann. Cal. Const. (2001 supp.) foll. art. XIII C, § 1, p. 33.) The proposition amended the California Constitution, adding article XIII D. Section 3, subdivision (a)(3) of article XIII D provides that, with certain exceptions not relevant here, "No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except: [¶] ... [¶] ... as provided by this article." An agency is a local or regional governmental entity. (*Id.*, § 2, subd. (a); Cal. Const., art. XIII C, § 1, subd. (b).) ***836**

Section 1 of article XIII D provides that it applies to "all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority." Fees and charges are defined in subdivision (e) of section 2 thereof. " 'Fee' or 'charge' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (*Ibid.*)

"Property-related service" is further defined. It "means a public service having a direct relationship to property ownership." (Art. XIII D, § 2, subd. (h).)

Thus, and in summary, article XIII D applies, with certain exceptions not relevant here, to "any levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (Art. XIII D, § 2, subd. (e).) As will appear, the outcome of this case turns on the meaning of this language.

C.

(1) Before us is "a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874 [64 Cal.Rptr.2d 447, 937 P.2d 1350].) Though our reasoning turns on the language of the constitutional stricture, it may be helpful to explain, as did the Court of Appeal in *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679 [86 Cal.Rptr.2d 592](*Howard Jarvis*), the reasons that led to placing Proposition 218 on the ballot.

(2a) "Proposition 218 can best be understood against its historical background, which begins in 1978 with the adoption of Proposition 13. 'The purpose of Proposition 13 was to cut local property taxes. [Citation.]' [Citation.] Its principal provisions limited ad valorem property taxes to 1 percent of a property's assessed valuation and limited increases in the assessed valuation to 2 percent per year unless and until the property changed hands. (Cal. Const., art. XIII A, §§ 1, 2.)

"To prevent local governments from subverting its limitations, Proposition 13 also prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. (Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 6-7 [2 Cal.Rptr.2d 490, 820 P.2d 1000].) It has been held, however, that a special assessment is not a special tax within the meaning of Proposition 13. (*Knox v. City of *837 Orland* (1992) 4 Cal.4th 132, 141 [14 Cal.Rptr.2d 159, 841 P.2d 144], and cases cited.) Accordingly, a special assessment could be imposed without a two-thirds vote.

"In November 1996, in part to change this rule, the

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electorate adopted Proposition 218, which added articles XIII C and XIII D to the California Constitution. Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge. (Cal. Const., art. XIII D, § 3, subd. (a)(1)-(4); see also [*id.*],§ 2, subd. (a).) It buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges." (*Howard Jarvis, supra*,73 Cal.App.4th 679, 681-682.)

D.

(3a) The Court of Appeal explained the parties' differing views of the effect of article XIII D on the city ordinance. "As viewed by [plaintiffs], the fee is imposed 'upon a parcel or upon a person as an incident of property ownership' and is, therefore, subject to the procedural requirements of Proposition 218. As viewed by the City, the fee is imposed upon a business activity (the rental of residential dwellings), separate and apart from property ownership, and purely for regulatory purposes, and it is therefore not subject to Proposition 218." (Italics omitted.)

Adhering before us to their point of view, plaintiffs contend that "nothing in Proposition 218 ... support[s] the contention that [it] was not meant to affect the ability of local governments to impose and collect business 'regulatory fees.' " The city also adheres to its position, devoting much of its briefing to an argument that because its inspection fee is a regulatory fee on business operations, it falls outside the purview of article XIII D. Examining the ballot arguments for and against Proposition 218 and the Legislative Analyst's analysis of the measure, the city also contends that article XIII D was intended only to restrict fees imposed directly on property owners in their capacity as such. A regulatory fee imposed on residential rental businesses, the city argues, necessarily falls outside article XIII D's ambit, even if the fee bears some relation to ownership of real property. FN1

FN1 We have also received several amicus curiae briefs. Along with one of them is a request to judicially notice three purported local mobilehome park rent control ordinances and two other documents regarding that topic. The request is denied. The five documents have no bearing on the question before us.

Amici curiae also include a printed discussion issued by the Legislative Analyst in December 1996 and entitled Understanding Proposition 218. This document contains material relevant to the question at bench, and we grant the request for judicial notice regarding it. (Evid. Code, §§ 452, subd. (c), 459, subd. (a).)

As will appear, neither party is entirely correct. The relevant language of article XIII D does not compel a conclusion in plaintiffs' favor; rather, it ***838** compels the opposite. The city also misses the mark when it contends (or at least implies) that a regulatory fee or a levy on the operation of a business necessarily falls outside the scope of article XIII D.

But both parties are partly correct. Plaintiffs accurately state that the constitutional provision does not speak of regulatory fees or levies on business operations. Hence, the mere fact that a levy is regulatory (as this inspection fee clearly is) or touches on business activities (as it clearly does) is not enough, by itself, to remove it from article XIII D's scope. But the city is correct that article XIII D only restricts fees imposed directly on property owners in their capacity as such. The inspection fee is not imposed solely because a person owns property. Rather, it is imposed because the property is being rented. It ceases along with the business operation, whether or not ownership remains in the same hands. For that reason, the city must prevail.

II.

Section 2 of Proposition 218 stated the measure's purpose. "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Ballot Pamp., Gen.

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Elec., *supra*, text of Prop. 218, § 2, p. 108; reprinted as Historical Notes, 2A West's Ann. Cal. Const., *supra*, foll. art. XIII C, § 1, p. 33.)

The repeated references to taxes and taxpayers suggest an intent to prohibit unratified exactions imposed on property owners as such, rather than on the business of renting or leasing apartments-i.e., "residential rental properties with two or more dwellings" (L.A. Mun. Code, § 161.351).

(2b) As explained in *Howard Jarvis*, *supra*,73 Cal.App.4th 679, Proposition 218 is Proposition 13's progeny. Accordingly, it must be construed in that context. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th ***839** 294, 301 [58 Cal.Rptr.2d 855, 926 P.2d 1042].) Specifically, because Proposition 218 was designed to close government-devised loopholes in Proposition 13, the intent and purpose of the latter informs our interpretation of the former. Proposition 13 was directed at taxes imposed on property owners, in particular homeowners. The text of Proposition 218, the ballot arguments (both in favor and against), the Legislative Analyst's analysis, and the annotations of the Howard Jarvis Taxpayers Association, which drafted Proposition 218, all focus on exactions, whether they are called taxes, fees, or charges, that are directly associated with property ownership.

(3b) The Legislative Analyst's analysis, printed in the November 1996 ballot pamphlet, is illustrative. It explained that Proposition 218 "would constrain local governments' ability to impose fees, assessments, and taxes," meaning "property-related" fees, including fees for water, sewer and refuse collection, but excluding gas and electricity charges (see Cal. Const., art. XIII D, § 3, subd. (b)) and development fees (see *id.*,§ 1, subd. (b)). (Ballot Pamp., Gen. Elec., *supra*, Legis. Analyst's analysis, p. 73.) It did not refer to levies linked more indirectly to property ownership.

(2c) The ballot arguments for Proposition 218 are also illustrative. "Proposition 218 guarantees your right to vote on local tax increases-even when they are called something else, like 'assessments' or 'fees' and imposed on homeowners." (Ballot Pamp., Gen. Elec., *supra*, argument in favor of Prop. 218, p. 76.) "After voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees.' " (*Ibid.*) "There are now over 5,000 local districts which can impose fees and assessments without the consent of local voters. Special districts have increased assessments by over 2400% over 15 years. Likewise, cities have increased utility taxes 415% and raised benefit assessments 976%, a tenfold increase." (*Ibid.*) "To confirm the impact of fees and assessments on you, look at your property tax bill. You will see a growing list of assessments imposed without voter approval. The list will grow even longer unless Proposition 218 passes." (*Ibid.*)

(3c) The ballot arguments identify what was perhaps the drafter's main concern: tax increases disguised via euphemistic relabeling as "fees," "charges," or "assessments." But in fairness to plaintiffs, it cannot be denied that the text of article XIII D does not limit its scope to taxes and taxpayers. We turn to the definitive language: restrictions on *any* levy imposed "upon a parcel or upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).)

The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it ***840** meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.

The contrary reasoning of the Court of Appeal, and of plaintiffs, stems from a reliance on the word "incident," leaving aside that the constitutional provision does not refer to fees imposed *on* an incident of property ownership, but on a parcel or a person *as* an incident of property ownership. As amicus curiae for the city persuasively argue, the distinction is crucial.

Were the principal words *parcel* and *person* missing, and were *as* replaced with *on*, so that article XIII D restricted the city's ability to impose fees "on an incident of property ownership," plaintiffs' argument might have merit. (4) For among the incidents [FN2] of estates in land are the so-called bundle of rights that flow from such tenure. (31 C.J.S. (1996) Estates § 12, pp. 28-30; *id.*, § 14, pp. 32, 34; *id.*, § 31, p. 58.) Among them is the fundamental right to alienate

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one's property held in fee simple. (E.g., *id.*, § 12, p. 30; *Holien v. Trydahl* (N.D. 1965) 134 N.W.2d 851, 856; *Davis v. Geyer* (1942) 151 Fla. 362, 369 [9 So.2d 727, 728]; *Hardy v. Galloway**841 (1892) 111 N.C. 519, 523 [15 S.E. 890]; see also *Yee v. City of Escondido* (1992) 503 U.S. 519, 528 [112 S.Ct. 1522, 1528-1529, 118 L.Ed.2d 153].) That incident, or right, has been called "inseparable" (*Holien*, *supra*, 134 N.W.2d at p. 856; *Hardy*, *supra*, 15 S.E. at p. 890), "indispensable" (*Dukes v. Crumpton* (1958) 233 Miss. 611, 620 [103 So.2d 385, 388]), and "necessary" (*Re Collier* (Nfld. 1966) 60 D.L.R.2d 70, 75 [52 M.P.R. 211, 216] (per Puddester, J.)).

FN2 Over time, "incident" has meant many things. As a noun, the meanings include the burden of the risk of a diminution of the value of real property during condemnation proceedings (*Agins v. City of Tiburon* (1980) 447 U.S. 255, 263, fn. 9 [100 S.Ct. 2138, 2143, 65 L.Ed.2d 106]), the " 'burdens and disabilities' " of slavery prohibited by the Thirteenth Amendment to the United States Constitution (*Jones v. Mayer Co.* (1968) 392 U.S. 409, 441 [88 S.Ct. 2186, 2204, 20 L.Ed.2d 1189]), or, in earlier times, the monetary obligations imposed by the king or a mesne lord (McPherson, *Revisiting the Manor of East Greenwich* (1998) 42 Am. J. Legal Hist. 35, 39; see also 2 Coke (1641) Institutes of the Lawes of England (Butler & Hargrave's Notes ed.) 69a, § 95, fn. 7). And, in a more general sense, the meanings of "incident" include benefits or duties that appertain to some greater right or interest, i.e., the principal. (Civ. Code, §§ 662, 1084, 3540; *Owsley v. Hamner* (1951) 36 Cal.2d 710, 716-717 [227 P.2d 263, 24 A.L.R.2d 112]; *Fender v. Waller* (1941) 139 Neb. 612, 616 [298 N.W. 349, 351]; *Harris v. Elliott* (1836) 35 U.S. (10 Pet.) 25, 54 [9 L.Ed. 333].) In its fourth edition (1897), Bouvier's Law Dictionary defined "incident" as a term "used both substantively and adjectively of a thing which, either usually or naturally and inseparably depends upon, appertains to, or follows another that is more worthy. For example, ... the right of alienation is necessarily incident to a fee-simple at common law ...." (*Id.* at p. 1006, col. 1.) Many cases have followed the Bouvier's Law Dictionary definition, or ones similar to it. (E.g., *Watts v. Copeland* (1933) 170 S.C. 449, 452 [170 S.E. 780]; *Moccasin State Bank v. Waldron* (1928) 81 Mont. 579, 586 [264 P. 940].) "Thus, timber trees are incident to the freehold, and so is a right of way." (*In re Estate of Bellesheim* (N.Y. Surr. 1888) 1 N.Y.S. 276, 278 [dictum]; accord, *Harris v. Elliott*, *supra*, 35 U.S. (10 Pet.) at p. 54 [9 L.Ed. at p. 344] [easements]; Black's Law Dict. (7th ed. 1999) p. 765, col. 1 ["the utility easement is incident to the ownership of the tract"].)

The power to alienate property or a property right is not limited to the right to sell or assign it. It means generally the power "to transfer or convey [it] to another." (Black's Law Dict., *supra*, p. 73, col. 1.) The conveyance need not be the whole fee. The right of alienation applies when fee holders seek to convey lesser estates. [FN3] " '[T]he power or right of alienation' " " 'incident to the ownership of an estate in fee-simple' " " 'include[s] the power or right to dispose of property held in fee ... by *lease*, mortgage, or other mode of conveyance ....' " (*Porter v. Barrett* (1925) 233 Mich. 373, 379-380 [206 N.W. 532, 535], quoting *Manierre v. Welling* (1911) 32 R.I. 104, 140 [78 A. 507, 522], italics added here.)

FN3 It is, of course, axiomatic in Anglo-American law that ownership of real property in fee simple absolute is the greatest possible estate (1 Coke (1628) Institutes of the Lawes of England (Butler & Hargrave's Notes ed.) 18a, § 11), and among the panoply of lesser estates are such nonfreehold chattels real as leases for a specific term and periodic tenancies (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162 [2 Cal.Rptr.2d 536, 820 P.2d 1046])-in common parlance, rentals or leases of limited duration. (1 Tiffany, The Law of Real Property (3d ed. 1939) § 76, pp. 112-113; *Wilgus v. Commonwealth* (1873) 72 Ky. (9 Bush.) 556, 557 [1873 WL 6660], citing 2 Blackstone, Commentaries 143 [" 'An estate for years in land is regarded in law as inferior to an estate for life or an inheritance' "]; *Brydges v. Millionair Club* (1942) 15 Wash.2d 714, 719 [132 P.2d 188, 190]; see also *Williams v. R. R.* (1921) 182 N.C. 267, 272 [108 S.E. 915, 918].)

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(3d) Accordingly, *if* article XIII D restricted the city's ability to impose a "tax, assessment, fee, or charge on an incident of property ownership" (cf. *id.*,§§ 2, subd. (e), 3), plaintiffs' argument might be persuasive. The business of renting apartments is an incident of owning them, an activity necessarily dependent on that ownership but not vice versa. One can own apartments without renting them, but no one can rent them without owning them. (See fn. 2, *ante*, at p. 840.) [FN4]

> FN4 In *Acme Freight Lines v. City of Vidalia* (1942) 193 Ga. 334 [18 S.E.2d 540](*Acme Freight*), similar statutory language favored an analogous argument-that a tax on an incident of the trucking business was a tax on a trucking company's ancillary delivery business.
>
> In *Acme Freight*, a trucking company sought an injunction against a city's practice of imposing a business tax on those ancillary operations. The firm relied on this law: " 'No subdivision of this State ... shall levy any excise, license, or occupation tax of any nature *on* ... *any incidents* of said motor carrier business, or on a motor common carrier.' " (*Acme Freight, supra*, 193 Ga. 334, 335 [18 S.E.2d 540, 541], italics added.)
>
> The city, Vidalia, acknowledged "its lack of authority to levy any tax against the plaintiff in reference to its transportation of freight as a motor common carrier .... Justification for the tax is founded upon the fact that, in addition to the operation of trucks for the transportation of freight ..., the plaintiff carries on ... a 'pick-up and delivery service' in and around the city. The trial judge ruled that this 'is not a *necessary* incident to the operation of a common carrier,' and that as to it 'the plaintiff is not a motor common carrier, but is engaged in a special and distinct business in the City of Vidalia, and is taxable as such.' This formula interpolates before the word 'incidents,' used in the statute, the word 'necessary' so as to require, as a condition of tax immunity, that the operation be a necessary incident of the business of a motor common carrier. This appears to us to be erroneous. [Rather,] ... an incident of the business of a motor common carrier of freight would be something naturally associated as pertinent to such transportation and necessarily dependent upon it, but without which the business of transportation might nevertheless be carried on. In other words, the incidental operation would be necessarily dependent upon the transportation, but the business of transportation would not be necessarily dependent upon the incidental operation.... As we understand the evidence adduced in this case, the plaintiff's operations against which the tax is said to be levied is of the above-described character; and accordingly we conclude that the tax is illegal, and should have been enjoined." (*Acme Freight, supra*, 193 Ga. 334, 335-336 [18 S.E.2d 540, 541].)

But the language of article XIII D is materially dissimilar. As stated, article XIII D, section 3 provides that "[n]o tax, assessment, fee, or charge ***842** shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except ... [¶] ... [¶] ... as provided by this article." (See also *id.*,§ 2, subd. (e).) In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners*. The ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords. [FN5] What plaintiffs ask us to do is to alter the foregoing language-changing "as an incident of property ownership" to "on an incident of property ownership." But to do so would be to ignore its plain meaning-namely, that it applies only to exactions levied solely by virtue of property ownership. We may not interpret article XIII D as if it had been rewritten. (Accord, *People ex rel. Lungren v. Superior Court, supra*,14 Cal.4th 294, 301.)

> FN5 We acknowledge that landlords may rent because they wish to keep the property occupied in their absence, for philanthropic reasons, or to a family member for a nominal charge. Such arrangements are not rare, and may lie within the province of the ordinance, which refers to "residential rental properties." But even nonprofit or charitable purposes are business purposes under broad constructions of the term, and we believe

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> that as long as the property is being rented for consideration, it is being conveyed for a business purpose. (Cf. *Marin Municipal Water Dist. v. Chenu* (1922) 188 Cal. 734, 738 [207 P. 251] [" 'business' " has "a narrower meaning applicable to occupation or employment for livelihood or gain, and to mercantile or commercial enterprises or transactions"].)

The language of article XIII D, sections 2, subdivision (e), and 3, shows that it applies to levies imposed on a person or on property strictly as an incident of property ownership. Had the law included levies imposed on incidents of the ownership or use of residential real property (as relevant ***843** here, the exercise of the right to rent one's property), its text would have said so. But it did not. And although the plain language of the relevant constitutional provisions requires us not to consider extrinsic evidence of the voters' intent, we reiterate, purely as an aside, that neither the ballot arguments nor the Legislative Analyst's analysis suggested that article XIII D was intended to encompass fees of the type at issue here.

The subordinate clause in section 2, subdivision (e), of article XIII D, as clarified in section 2, subdivision (h), supports our conclusion. It may be recalled that among the fees or charges covered by article XIII D, section 2, subdivision (e), is "a user fee or charge for a property-related service." Such a service "means a public service having a direct relationship to property ownership." (*Id.*,§ 2, subd. (h).) In this case, the relationship between the city's inspection fee and property ownership is indirect-it is overlain by the requirement that the landowner be a landlord.

As stated, the foregoing clause is subordinate. It does not include all possible fees and charges that fall within the ambit of article XIII D. (5)**(See fn. 6.)** But it does provide additional evidence of the scope of the constitutional provision. [FN6]

> FN6 We turn to discuss briefly the authorities on which the city chiefly relies. They consist of two cases: *Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866; and *Pennell v. City of San Jose* (1986) 42 Cal.3d 365 [228 Cal.Rptr. 726, 721 P.2d 1111] (affd. *sub nom.Pennell v. San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1]). They are inapposite.
>
> In *Sinclair* we held that an exaction on sources of lead contamination to remediate the effects of lead poisoning was a fee, not a tax. In *Pennell*, we held that a $3.75 charge on each residential rental unit, imposed by a rent control ordinance to fund its hearing process, also was a fee, not a tax. In *Sinclair* and *Pennell*, we defined such fees, which are similar to the city's inspection charge, as regulatory in nature. Regulatory fees are those " ' "charged in connection with regulatory activities[,] which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866, 876, quoting *Pennell v. City of San Jose*, *supra*,42 Cal.3d 365, 375, in turn quoting *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660 [166 Cal.Rptr. 674], bracketed material added here.)
>
> We have stated that the city's inspection fee is a regulatory fee. And we have concluded that it does not fall within article XIII D's ambit. But *Sinclair* and *Pennell* do not concern themselves with the issue we confront here. Indeed, in *Sinclair* we cautioned that "We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments." (*Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866, 873, fn. 2.) In *Pennell v. City of San Jose*, *supra*,42 Cal.3d 365, we could not have written a similar caveat, for article XIII D did not exist at the time. But it applies just as well.

(3e) At oral argument, plaintiffs emphasized article XIII D's exemptions for existing development fees and all charges to provide gas and electrical ***844** service. (Art. XIII D, §§ 1, subd. (b), 3, subd. (b).) They assert that a developer fee is a fee on an incident of property-the right to improve it-and that there

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would have been no need to exempt such fees if other fees imposed on incidents of property did not fall within article XIII D's scope. Similarly, they argue that one can own property without having utility service, and that if article XIII D applied strictly to levies that are imposed solely on the basis of property ownership, there would have been no need to exempt such utility charges in the constitutional provision.

We note, however, that the provision regarding development fees refers only to those existing at the time of article XIII D's enactment. Moreover, it is unclear to us whether a fee to provide gas or electricity service is the same as a fee imposed on the consumption of electricity or gas. In any event, we believe that the aforementioned exemptions may have been included in an abundance of caution in case court interpretations of article XIII D similar to the Court of Appeal's should prevail. Finally, we do not believe that any incongruity can trump the plain language we have discussed herein. In short, we are unpersuaded.

Similarly unpersuasive is plaintiffs' contention, also emphasized at oral argument, that the city's ability to enforce payment of the inspection fee by imposing a lien on the property shows that the fee is property-related, not business-related. The fact is that the city is simply availing itself of all possible means to collect the fee. Property liens may be precipitated by at least one cause unconnected to land ownership (except ownership of the land on which the lien is imposed): the cost of removing graffiti. (Gov. Code, § 38772.)A lien may be imposed on parents' land to defray the cost of removing graffiti their child has scrawled on that belonging to another. (*Id.*, subd. (b).)

Plaintiffs also advert to section 5 of Proposition 218, which requires that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., Gen. Elec., *supra*, text of Prop. 218, § 5, p. 109; reprinted as Historical Notes, 2A West's Ann. Cal. Const., *supra*, foll. art. XIII C, p. 33.) But "[l]iberal construction cannot overcome the plain language of Proposition 218 limiting [its] scope ... to [levies] based on real property." (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (1999) 72 Cal.App.4th 230, 237-238 [84 Cal.Rptr.2d 804].) (6) As a rule, a command that a constitutional provision or a statute be liberally construed "does not license either enlargement or restriction of its evident meaning" (*People v. Cruz* (1974) 12 Cal.3d 562, 566 [116 Cal.Rptr. 242, 526 P.2d 250]). Thus, ***845** given that article XIII D's scope is, as we have explained, unambiguously limited to burdens on landowners as such, " 'no resort to this command [of liberal construction] is required' " (*Howard Jarvis*, *supra*,73 Cal.App.4th 679, 687, quoting *Buhlert Trucking v. Workers' Comp. Appeals Bd.* (1988) 199 Cal.App.3d 1530, 1533, fn. 4 [247 Cal.Rptr. 190]) or even permitted.

III.

The Court of Appeal's judgment is reversed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred.

BROWN, J.

I respectfully dissent.

Under the provisions of Proposition 218, affected property owners must approve the imposition of any new or increased fee, which is "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (Cal. Const., art. XIII D, § 2, subd. (e) (article XIII D).) The dispositive determination in this case is whether a rental inspection fee is imposed "upon a person as an incident of property ownership." (*Ibid.*) To find that it is not, the majority concludes the Court of Appeal erroneously substituted "on" for "as." It is the majority that errs, however, in assuming "incident" denotes "the so-called bundle of rights that flow from [estates in land]." (Maj. opn., *ante*, at p. 840; see maj. opn., *ante*, at pp. 840-841.) In my view, the voters did not intend the courts to look any further than a standard dictionary in applying the terms of article XIII D.

"A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words. [Citation.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302 [58 Cal.Rptr.2d 855, 926 P.2d 1042].) Nothing in the ballot arguments in favor of or

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against Proposition 218 or in the Legislative Analyst's analysis implies that a different rule should obtain with respect to "incident," or that the voters intended it to have other than a plain meaning. The dictionary defines an "incident" as "something incident to something else," that is, "dependent upon or involved in something else." (Webster's New World Dict. (3d college ed. 1988) p. 682; see also Black's Law Dict. (4th ed. 1968) p. 904, col. 2 ["Used as a noun, [incident] denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing .... Also, less strictly, it denotes anything which is usually ***846** connected with another, or connected for some purposes, though not inseparably"].) In other words, if the imposition of a fee depends upon one's ownership of property, it comes within the purview of article XIII D unless otherwise excepted.

The fee at issue here plainly meets this definition. Pursuant to its police powers, the City of Los Angeles (City) enacted a Housing Code (L.A. Mun. Code, § 161.101 et seq.), which provides that residential rental properties are subject to regular inspection for substandard and unsanitary conditions. Under the Housing Code, funding for these inspections devolves to a particular class of property owners, the landlords of the rental units, who must pay a $12 fee for every unit owned. (*Id.*, § 161.352.) [FN1] As the majority acknowledges, "no one can rent [apartments] without owning them." (Maj. opn., *ante*, at p. 841; see also *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, 105 [207 Cal.Rptr. 285, 688 P.2d 894].) And no one is subject to the rental inspection fee without owning them. This exaction is thus imposed "as an incident of property ownership" (art. XIII D, § 2, subd. (e)); that is, it is dependent upon such ownership. (Cf. Off. of Legis. Analyst, Understanding Proposition 218 (Dec. 1996) p. 30 ["Generally, we think these fees would be considered property-related if there were no practical way that the owner could avoid the fee, short of selling the property or fundamentally changing its use"].) Moreover, "[s]hould the owner fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law." (L.A. Mun. Code, § 161.352.) The use of tax lien procedures is a typical enforcement mechanism for delinquent levies imposed against property.

FN1 Los Angeles Municipal Code section 161.352 provides: "*Owners* of all buildings subject to inspection shall pay a service fee of $12.00 per unit per year. The fee will be used to finance the cost of inspection and enforcement by the Housing Department. Should the *owner* fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law. This fee shall be known as the 'Systematic Code Enforcement Program Fee.' " (Italics added.)

The majority avoids this result in part by finding the City "imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords." (Maj. opn., *ante*, at p. 842.) The last portion of this statement proves too much: Landlords are property owners. Imposition of the fee is an incident of, i.e., depends upon, that status and thereby runs afoul of article XIII D. As for the first portion of the statement, it ignores or disregards what the majority elsewhere concedes, that the business at issue is inseparable from property ownership. No amount of parsing can change that ineluctable fact. ***847**

The majority also concludes "neither the ballot arguments nor the Legislative Analyst's analysis suggested that article XIII D was intended to encompass fees of the type at issue here." (Maj. opn., *ante*, at p. 843.) Ultimately, the terms of the measure as enacted control our interpretation (see *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 673 [47 Cal.Rptr.2d 108, 905 P.2d 1248] (conc. opn. of Mosk, J.)); and their plain meaning does not support the majority's reasoning. But the ballot materials also belie the majority's conclusion. While those materials do not specifically mention rental inspection fees, such an intention is readily discernable from any fair reading. The Legislative Analyst warned generally that "[t]his measure would constrain local governments' ability to impose fees" and "[r]educe the amount of fees ... businesses pay." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996), analysis of Prop. 218 by the Legis. Analyst, p. 73 (Ballot Pamphlet).) More particularly, the Legislative Analyst's list of "most likely fees and assessments affected by these provisions" (*id.* at p. 74) easily encompasses this type of

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exaction: "park and recreation programs, fire protection, lighting, ambulance, business improvement programs, library, and water service." (*Ibid.*) The argument in favor of Proposition 218 reminded the electorate that "[a]fter voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees.' " (Ballot Pamp., *supra*, argument in favor of Prop. 218, p. 76.) "Proposition 218 guarantees your right to vote on local tax increases-even when they are called something else, like 'assessments' or 'fees' ...." (*Ibid.*) The argument did not limit the type of "fee" that would be subject to a vote under article XIII D but instead promised, "Proposition 218 ... stops politicians' end-runs around Proposition 13." (Ballot Pamp., *supra*, rebuttal to argument against Prop. 218, p. 77.) Particularly in light of its timing, the City's rental inspection fee appears to be just the kind of evasive maneuver at which proponents aimed Proposition 218. (See generally *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 105 [211 Cal.Rptr. 133, 695 P.2d 220] [purpose, in part, of Prop. 13 was "to prevent the government from recouping its losses from decreased property taxes by imposing or increasing other taxes"].)

In this regard, the majority also fails to accord any significance to two important provisions of Proposition 218. In any action challenging imposition of a new or increased fee or charge, the initiative assigns to the agency "the burden ... to demonstrate compliance with this article" (art. XIII D, § 6, subd. (b)(5)), thereby reversing the usual deference accorded governmental action in such matters and making it more difficult to defend its legitimacy. (See Ballot Pamp., *supra*, analysis of Prop. 218 by the Legis. ***848** Analyst, p. 74; see also art. XIII D, § 4, subd. (f) [imposing same burden for assessments].) The voters also expressly provided that Proposition 218 "shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., *supra*, text of Prop. 218, § 5, p. 109, also reprinted as Historical Notes, 2A West's Ann. Cal. Const. (2000 supp.) foll. art. XIII C, § 1, p. 25.) The majority's construction frustrates both these goals.

The City argues that conditioning imposition of its rental inspection fee on compliance with the procedures set forth in article XIII D would allow landlords to defeat regulation of their businesses. This argument misses two critical points: First and generally, since the City has decided its rental inspections are necessary to eradicate "substandard and unsanitary residential buildings and dwelling units the physical conditions and characteristics of which ... are such as to be detrimental to or jeopardize the health, safety and welfare of their occupants and of the public" (L.A. Mun. Code, § 161.102), it can reasonably expect the public to pay for the program.

Second and specifically, the Los Angeles Municipal Code already provides substantial enforcement authority to prosecute landlords who violate the City's Housing Code. If a property owner fails to correct violations, the City may recover its administrative as well as abatement costs (L.A. Mun. Code, § 161.206.2), may seek criminal penalties including fines and imprisonment (*id.*, § 161.206.3), and may pursue civil remedies as provided in the Health and Safety Code (L.A. Mun. Code, § 161.206.4).

When the voters passed Proposition 13 in 1978, they sought to restrict the ability of government to impose taxes and other charges on property owners without their approval. For almost two decades, however, they witnessed politicians evade this constitutional limitation. The message of Proposition 218 is that they meant what they said. With the majority turning a deaf ear to that message, we may well expect a future effort to "stop[] politicians' end-runs around Proposition 13." (Ballot Pamp., *supra*, rebuttal to argument against Prop. 218, p. 77.)

Baxter, J., concurred. ***849**

Cal. 2001.
Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles
24 Cal.4th 830, 14 P.3d 930, 102 Cal.Rptr.2d 719, 01 Cal. Daily Op. Serv. 209, 2001 Daily Journal D.A.R. 237

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CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS et al., Plaintiffs and Respondents,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Respondents; ALBERT W. MILLS et al., Interveners and Appellants.
ALBERT W. MILLS, Plaintiff and Appellant,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Appellants.
No. C023075., No. C023184.

Court of Appeal, Third District, California.
Apr. 10, 2000.

[Opinion certified for partial publication. FN*]

FN* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part I.

SUMMARY

An individual filed a declaratory relief action challenging the constitutionality of a flat fee imposed by the Legislature pursuant to Fish & G. Code, § 711.4, on those submitting project proposals to the Department of Fish and Game for environmental review. Plaintiff alleged the fee constituted a tax that was not passed by a two-thirds majority as required under Cal. Const., art. XIII A (Prop. 13). The trial court found that although the statute was not unconstitutional on its face, it was unconstitutional as applied to plaintiff. Before entry of judgment, however, the parties settled the matter, with the department agreeing to refund plaintiff's fees and to stop collecting the fees statewide. Employees of the department then filed a petition for a writ of mandate to compel the department to resume collection of the fees and to pursue retroactive collection. The writ proceeding and the declaratory relief action were consolidated. The trial court again ruled that the statute was unconstitutional as applied, but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to the individual plaintiff. The trial court ordered the department to reinstate enforcement and to retroactively collect the fees, and the settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. (Superior Court of Sacramento County, Nos. 95CS02523 and CV529928, Jeffrey L. Gunther, Judge.)

The Court of Appeal affirmed in part and reversed in part the judgment entered in the declaratory relief action, and, since the court concluded that the statute was a valid regulatory fee, and was therefore constitutionally enacted, plaintiff's appeal from the judgment entered in the writ proceedings was dismissed as moot. The court held that the Legislature did not violate the supermajority requirement of Cal. Const., art. XIII A, by imposing the flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals. The court further held that there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. (Opinion by Raye, J., with Sims, Acting P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Property Taxes § 7.6--Constitutional Provisions-- Proposition 13--Assessments as Fees or Taxes--Flat Fee for Environmental Review by Department of Fish and Game:Taxation § 3--

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Construction of Legislation.
The Legislature did not violate the super-majority requirement of Cal. Const., art. XIII A (Prop. 13) by imposing a flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, on those who submit project proposals to the Department of Fish and Game for the environmental review necessary to protect fish and wildlife, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 107 et seq.]
(2) Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction of Legislation.
The determination under Prop. 13 (Cal. Const., art. XIII A, §§ 3, 4) whether impositions are taxes or fees is a question of law for the appellate courts to decide on independent review of the facts. Ordinarily, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted, and most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.

(3a, 3b) Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Regulatory Fees--Special Taxes.
Fees charged for the costs of regulatory activities are not special taxes under a Cal. Const., art. XIII A, § 4 (Prop. 13) analysis if the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and they are not levied for unrelated revenue purposes. A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. The regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. Legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the fee. The government bears the burden of proof. It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. The record need only demonstrate a reasonable relationship between the fees to be charged and the estimated cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs.

(4) Fish and Game § 3--Regulation--Fee for Environmental Review with Department of Fish and Game--Validity of Higher Fee for Review of Negative Declaration.
In proceedings to challenge the validity of a flat fee (Fish & G. Code, § 711.4) on those submitting project proposals to the Department of Fish and Game for environmental review, there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. A senior environmental specialist supervisor for the department testified at trial that the standard for a negative declaration is that a project must have no adverse impact on the environment. Thus, the department must ensure that the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and the department staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spent more time on the review of a negative declaration than the review of an equivalent size project with environmental impact report documentation. Hence, due to project information collection costs and the time spent negotiating mitigation measures, the department's costs were generally higher for negative declarations.

COUNSEL

McNeill & Belton and Walter P. O'Neill for Plaintiff

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and Appellant and for Interveners and Appellants.

Robin L. Rivett, Sharon L. Browne and Anne M. Hawkins for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiff and Appellant.

Daniel E. Lungren and Bill Lockyer, Attorneys General, Roderick E. Walston, Chief Assistant Attorney General, Charles W. Getz IV and Marian E. Moe, Deputy Attorneys General, for Defendants and Appellants and for Defendants and Respondents.

Dennis F. Moss for Plaintiffs and Respondents.

RAYE, J.

In this appeal we consider whether the Legislature ran afoul of the supermajority requirement of article XIII A of the California Constitution when it imposed a flat fee per environmental review by the Department ***939** of Fish and Game (Fish and Game). More precisely, we must determine whether the exactions imposed by section 711.4 of the Fish and Game Code [FN1] constitute a regulatory fee or a tax.

FN1 Further statutory references to sections of an undesignated code are to this code.

Determining whether an exaction is a fee or a tax has been a recurring chore since 1978 when the voters in California enacted comprehensive and constitutional tax reform. (Cal. Const., art. XIII A (the Jarvis-Gann Property Tax Initiative or Proposition 13).) An act to increase state taxes must be passed by two-thirds of the members of the Legislature and an increase in local taxes must be passed by a two-thirds vote of the qualified electors. (Cal. Const., art. XIII A, §§ 3 & 4.) Fees, by contrast, are not subject to the supermajority limitation of article XIII A. Albert Mills, an appellant in both cases, insists the environmental review fees charged by Fish and Game pursuant to section 711.4 constitute a tax and, therefore, are unconstitutional because the statute was passed by slightly less than a two-thirds majority.

It is well established that the amount of fees collected must not surpass the cost of the regulatory services or programs they are designed to support. We must decide whether there must be a direct correlation between the amount of a fee imposed on a specific payor and the benefits received or burdens imposed by the payor's activity. More to the point, is a flat regulatory fee in legal effect a tax subject to the supermajority requirement of California Constitution, article XIII A?

We conclude that as long as the cumulative amount of the fees does not surpass the cost of the regulatory program or service and the record discloses a reasonable basis to justify distributing the cost among payors, a fee does not become a tax simply because each payor is required to pay a predetermined fixed amount. Flat fees are not in legal effect taxes. Based on the evidentiary record before us, we find that the Legislature did not violate California Constitution, article XIII A by imposing a flat regulatory fee on those who submit project proposals to Fish and Game for the environmental review necessary to protect fish and wildlife. The consequences of our ruling to the multiple parties in these consolidated cases are explained below.

Procedural Background

Section 711.4, enacted by the Legislature in 1990, set a fee schedule to defray a portion of the costs incurred by Fish and Game in meeting its environmental review obligations under the California Environmental Quality Act and the Z'Berg-Nejedly Forest Practice Act of 1973. (§ 711.4, ***940** subds. (a), (b), (c) & (d); Pub. Resources Code, §§ 4511, 21000 et seq.) Section 711.4 states in relevant part: "(a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act ..., consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act. [ ] (b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified." For projects for which a negative declaration has been prepared, the filing fee set by the Legislature is $1,250 and for projects for

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which an environmental impact report has been prepared, the filing fee is $850. (§ 711.4, subd. (d)(3) & (4).) "The county clerk may charge a documentary handling fee of twenty-five dollars ($25) per filing in addition to the filing fee specified in subdivision (d)." (§ 711.4, subd. (e).)

Albert W. Mills challenged the constitutionality of section 711.4 in a declaratory relief action he filed in July 1991. He sought declaratory and injunctive relief in a first cause of action and a refund of his fees in a second cause of action. A demurrer was sustained without leave to amend to the second cause of action. Fish and Game sought a writ of mandate to compel the trial court to dismiss the entire complaint because Mills had not filed a claim for a tax refund. We summarily denied the petition for the writ. The trial court denied a subsequent motion for judgment on the pleadings on the same ground asserted in the writ petition.

In 1992 the Legislature amended the statute to expand the exemptions for projects for which no fees were required. The amendment passed by a two-thirds majority vote.

The case was tried in the summer of 1994 and the following spring the trial court issued a statement of decision. The court found that although the statute was not unconstitutional on its face, on the evidence received by the court, it was unconstitutionally applied. Before the statement of decision was filed and a judgment was entered, the parties settled the lawsuit. Fish and Game agreed to refund Mills's fees, to pay his attorney fees, and to cease collection of the fees statewide.

Employees of Fish and Game, however, filed a petition for a writ of mandate to compel Fish and Game to resume collection of the fees and to ***941** pursue retroactive collection. Mills intervened in the writ proceedings, which were then consolidated with the declaratory relief action.

The trial court again ruled that section 711.4 was unconstitutional as applied but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to Mills. (Cal. Const., art. III, § 3.5.)The court ordered Fish and Game to reinstate enforcement and to retroactively collect the fees. The settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. The settlement order provides in pertinent part that section 711.4 is not unconstitutional on its face but is unconstitutional as applied to Mills; Fish and Game is enjoined from collecting fees from Mills but is not otherwise prohibited from collecting fees.

Mills appeals both judgments. On appeal from the judgment in the declaratory relief action, he maintains section 711.4 is unconstitutional on its face and, consequently, Fish and Game must be enjoined from collecting all fees. Fish and Game urges us to dismiss the appeal on multiple grounds: Mills lacks standing because, under the terms of the settlement, he is not aggrieved; the constitutionality of section 711.4 is moot because it was amended by a two-thirds majority; and the trial court lacked jurisdiction because Mills failed to exhaust his administrative remedies by filing a claim for a tax refund. Fish and Game also appeals. We granted the Pacific Legal Foundation's request to file an amicus curiae brief echoing Mills's constitutional attack on the statute.

For the reasons discussed herein, we affirm in part and reverse in part the judgment entered in the declaratory relief action. Because we have concluded that section 711.4 is a valid regulatory fee, and was therefore constitutionally enacted, Mills's appeal from the judgment entered in the writ proceedings is moot. That appeal is dismissed.

Discussion

I [FN*]

FN* See footnote, *ante*, page 935.

. . . . . .

II

Before we apply the ever-growing body of case law involving post-Proposition 13 fees and taxes, it is essential to understand the statutory world ***942** in which Fish and Game lives and section 711.4 was born. The language of these statutes resolves some of the issues raised by Mills and provides the necessary background to analyze others.

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(1a) Mills argues that Fish and Game does not operate a regulatory program and, therefore, the fee is not regulatory in nature. We disagree. Fish and Game is only one small part of a huge regulatory system in place in this state to protect and sustain the environment, but it plays a vital regulatory role under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) CEQA guidelines specifically list Fish and Game as a trustee agency, a status which imposes certain obligations. Fish and Game must be consulted before a determination is made as to whether a negative declaration or an environmental impact report is required for a particular project. (Pub. Resources Code, § 21080.3, subd. (a).) If an environmental impact report is required, Fish and Game must comment as to the scope and contents of this document. (Pub. Resources Code, § 21080.4, subd. (a).) Later in the process, Fish and Game may be required to submit a proposed program to monitor the mitigation measures. (Pub. Resources Code, § 21081.6.)The same obligations are imposed by documents which function as environmental assessment documents such as timber harvest plans. (*Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal.App.3d 604, 626[216 Cal.Rptr. 5022].)Fish and Game Code section 1802 also requires Fish and Game to consult with lead and responsible agencies.*

Fish and Game also has comparable obligations under the Forest Practice Act. (Pub. Resources Code, § 4511 et seq.) Like the responsibility conferred on it under CEQA, Fish and Game must review the impact of a timber harvest plan on fish and wildlife. The Department of Forestry and Fire Protection cannot approve a timber harvest plan until it has consulted with Fish and Game. (Pub. Resources Code, § 4582.6.)

Under both CEQA and the Forest Practice Act, Fish and Game is an essential link in a comprehensive attempt to safeguard the environment. The fact that Fish and Game does not operate an independent regulatory program with a correlative accounting system does not detract from its regulatory role. The law is not so narrowly drawn. In a similar vein, the court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 [64 Cal.Rptr.2d 447, 937 P.2d 1350] observed: "From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less 'regulatory' in nature than the initial ***943** permit or licensing programs that allowed them to operate. Moreover, imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products." (*Id.* at p. 877.)

Having charged Fish and Game with the responsibility to manage and protect fish and wildlife through the environmental review process, the Legislature enacted a fee statute to fund Fish and Game's review functions. There are two parts of section 711.4 which are germane to the constitutional question before us.

The Legislature expressly addressed proportionality. Section 711.4, subdivision (b) states: "The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified."

Although the Legislature mandated a flat fee financing mechanism, it also provided an exemption for those projects with a de minimis impact on fish and wildlife. Section 711.4, subdivision (d)(1) provides: "For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act." In fact, 68 percent of the projects are found to be de minimis and a fee is not required.

In sum, the Legislature has given Fish and Game a critical regulatory role in the complex regulatory structure created to safeguard precious environmental resources. At the same time, the Legislature created a flat fee system to finance Fish and Game's environmental review. That system, by statute, must be proportional to the overall cost of environmental review, but only those who propose development projects which have more than a de minimis impact upon fish and wildlife are required to bear the cost of review. We must determine whether the Legislature violated the Constitution by establishing such a fee system

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with less than a two-thirds vote.

III

In 1991 the Legislature enacted the Childhood Lead Poisoning Prevention Act to provide evaluation, screening, and follow-up services for children who were at risk of suffering lead poisoning. The program of screening and treatment under the act was to be paid entirely by fees paid by those who ***944** contributed to lead contamination. In *Sinclair Paint Co.v.State Bd. ofEqualization, supra,*15 Cal.4th 866, the Supreme Court concluded the act imposed bona fide regulatory fees, not taxes.

Sinclair is the first published case in the post-Proposition 13 era to consider whether a state, rather than a local, fee is in legal effect a tax. "Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: 'From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal.4th at pp. 872-873.)By contrast, there have been an abundance of cases in which courts have struggled to characterize a local exaction as a fee or a "special tax" under California Constitution, article XIII A, section 4. In *Sinclair*, the Supreme Court announced that "[b]ecause of the close, 'interlocking' relationship between the various sections of article XIII A" the section 4 cases "may be helpful, though not conclusive" in deciding cases under section 3. (15 Cal.4th at p. 873.)

(2) The court also reiterated the fundamental principle that "whether impositions are 'taxes' or 'fees' is a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal.4th at p. 874.)Ordinarily, "taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted" and "[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." (*Id.* at pp. 873-874.)

Sinclair was particularly helpful in identifying three very different kinds of fees or assessments, viz. special assessments, development fees and regulatory fees. (See also *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 596 [77 Cal.Rptr.2d 752].) As the court pointed out, special assessments are based on the value of benefits conferred on property, and development fees are exacted in return for permits or other government privileges. Regulatory fees, enacted under the police power, are an entirely different animal. The parties have failed to distinguish between these types of fees and, consequently, have extracted general principles from cases involving one type of fee and applied them to cases involving a completely different type of fee. We have focused our research on those cases, like *Sinclair*, involving regulatory fees. ***945**

(3a) General principles have emerged. Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A, section 4 analysis if the " ' "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal.4th at p. 876; *Townzen v. County of El Dorado* (1998) 64 Cal.App.4th 1350, 1359 [76 Cal.Rptr.2d 281].) "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." (*San Diego Gas &Electric Co.v.San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1146, fn. 18 [250 Cal.Rptr. 420].) "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." (*United Business-Com.v.City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263].) Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Pennellv.City of SanJose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111], affd. on other grounds *sub nom. Pennell v. City of San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1].) Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee." (*United Business Com.v.City ofSan Diego, supra,*91

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Cal.App.3d at p. 166.)

The government bears the burden of proof. (*Beaumont Investorsv.Beaumont-CherryValley Water Dist.* (1985) 165 Cal.App.3d 227, 235 [211 Cal.Rptr. 567].) It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*Id.* at pp. 234-235.)"Courts [look] to a variety of evidence in determining whether the agency has satisfied that burden, not all of it prepared before the adoption of the ordinance." (*City of Dublinv.County of Alameda* (1993) 14 Cal.App.4th 264, 282 [17 Cal.Rptr.2d 845].)

*City of Dublinv.County of Alameda, supra,*14 Cal.App.4th 264, provides guidance on the quantum of proof necessary to establish the requisite fee-cost ratio. By initiative, the voters in Alameda County enacted a comprehensive recycling plan. Under the law, the plan was to be funded from a recycling fund created by a $6 per ton surcharge on materials dumped in the county landfills. The issue presented was whether the evidence before the trial court established that the surcharge would not exceed the reasonably ***946** necessary costs of the programs it would fund. The Court of Appeal considered both the estimated costs of the programs and the basis for determining the apportionment of those costs.

The court wrote: "The trial court concluded that the requisite fee-cost relationship was not established because Measure D's programs are not yet developed and their costs cannot presently be calculated with certainty, but such specificity is not required. Instead, the record need only demonstrate a reasonable relationship between the fees to be charged and the *estimated* cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs." (*City of Dublin v. County of Alameda, supra,*14 Cal.App.4th at p. 283, original italics.)

In a similar case, the Court of Appeal addressed the quantum of proof and proportionality. "Plaintiffs fault the report for failing to include 'site-specific' data showing a 'close connection' between new development and the fees to be imposed. However, their citation to 'taking' cases shows that they are blurring legal principles. [Citation.] The fee at issue here is a general one applied to all new residential development and valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed." (*Garrick Development Co.v.Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 333-334 [4 Cal.Rptr.2d 897].)

(1b) Fish and Game met its burden of showing that the amount of fees generated by section 711.4 was far less than the cost of the environmental reviews provided. There was evidence that $11 million had been collected in fees, but the cost of the reviews was in excess of $20 million. Thus, the fees were not revenue raising in that they did not generate income which surpassed the cost of the services provided.

The more difficult issue is determining what latitude the Legislature has in establishing the amount of a fee imposed on an individual payor. Fish and Game argues the fees have no indicia of a tax. Since there is sufficient evidence to demonstrate that collectively the amount of the fees do not exceed the cost of the regulatory program they are collected to support, they urge us to uphold the constitutionality of section 711.4. Mills, on the other hand, insists Fish and Game failed to prove the more specific requirement that the fees are proportionate to the service provided or the burden imposed. He insists the flat fee is a tax because there is no individual correlation between the amount of the fee and the cost of the benefit or burden. Whether the Legislature retains the flexibility to mandate a flat fee by a simple majority vote is the crux of this case. ***947**

Sinclair is noteworthy for its expansive legitimation of regulatory fees. Under the formula approved by the Supreme Court, paint manufacturers are assessed fees based on their market share or their past and present responsibility for environmental lead contamination. (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal.4th at p. 872.)Market share is a novel methodology for assessing fees. Nevertheless, the court permitted present fees to be determined on the basis of past conduct when not only were fees nonexistent, but the dangers of lead-based paint were unknown.

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As broad as the implications of *Sinclair* are, the Supreme Court did not have to reach the troublesome issue of proportionality, because paint manufacturers were assessed fees in proportion to their share of the market. Moreover, Sinclair, in moving for summary judgment, did not seek to establish that the amount of the fees bore no reasonable relationship to the social or economic burdens its operations generated. The court noted that Sinclair would have the opportunity at trial "to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic 'burdens' its operations generated." (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal. 4th at p. 881.)

Close to 20 years ago, we articulated the same rule to Mills in his earlier constitutional challenge to fees charged for processing land use applications. In *Millsv.County of Trinity* (1980) 108 Cal.App.3d 656 [166 Cal.Rptr. 674], we stated: " '[T]he special tax' referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." (*Id.* at pp. 659-660.)In *Mills* as in *Sinclair*, however, the case was remanded "for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities." (*Mills*, at p. 660.)

Flat regulatory fees were upheld in *Pennellv.City of SanJose, supra,*42 Cal.3d 365.In *Pennell*, a rent control ordinance imposed a flat annual fee on each rental unit. It was "designed to defray the costs of providing and administering the hearing process prescribed in the ordinance, not to pay general revenue to the local government." (*Id.* at p. 375.)The court concluded: "It is well settled that a municipality under the police power may impose a regulatory fee when, as here, the fee constitutes an amount necessary to carry out the purpose and provisions of the regulation." (*Id.* at p. 375, fn. 11.)***948**

The court in *Pennell* appeared satisfied that the cumulative amount of the fee would support the administration and implementation of the hearing process without an examination of the benefits to be derived by individual lessees. Many lessors would never avail themselves of the hearing process at all and yet under the rent control ordinance, they, like the lessees who would petition for hearing, were required to pay the fee. *Pennell* does not require the government to prove proportionality on an individual basis. Under *Pennell,* the significant inquiry is whether the amount of the fees collected under the ordinance exceed the cost of the regulatory program they are collected to support. Proportionality is measured collectively to assure that the fee is indeed regulatory and not revenue raising.

While Mills cites many cases for the general proposition that fees must be apportioned according to some formula for ascertaining the benefits received or the burdens imposed by the payor's activity, he fails to cite a single regulatory fee case in which a fee was found to be a tax because the government failed to sustain its burden of proving a reasonable apportionment. On this pivotal point, the cases require close examination for what they require and for what they do not.

Two cases involve regulatory fees; like those before us, enacted to defray the costs of programs to mitigate damage to the environment. In *San Diego Gas & Electric Co.v.San Diego CountyAir Pollution Control Dist., supra,*203 Cal.App.3d 1132(*San Diego Gas & Electric Co.*), and *Brydonv.East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178 [29 Cal.Rptr.2d 128], the Courts of Appeal upheld fee structures against challenges they constituted special taxes. Both cases discuss the apportionment issue at some length.

In *San Diego Gas & Electric Co., supra*, a utility company challenged an air pollution district's method of apportioning the costs of its permit programs by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. The emissions-based formula allowed the district to charge additional renewal permit fees based on the average pollution generated by a facility within a specific industry. The court wrote: "SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs .... There is no reason to require the district to show precisely how more emissions generate more costs to justify the emission-based apportionment formula. The purpose

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for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allocate costs based on a premise that the more emissions generated by a ***949** pollution source, the greater the regulatory job of the district." (203 Cal.App.3d at pp. 1147-1148, fn. omitted.)

In rejecting *San Diego Gas & Electric Co.*'s argument that the emissions-based formula eroded the intent of the voters in enacting California Constitution, article XIII A, the court explained that "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to [Health and Safety Code] section 42311 and the emissions-based fee schedule." (*San Diego Gas & Electric Co., supra*,203 Cal.App.3d at pp. 1148-1149.)

In *Brydon,* water customers challenged a new rate structure as a special tax. The inclined rate structure increased price per cubic foot for increased usage. The Court of Appeal found *San Diego Gas & Electric Co.* "a sustainable analogy." "Just as the regulatory scheme set forth by the [air pollution control district] was designed to achieve a legislatively mandated ecological objective, so is the inclined block rate structure of the District a response to state-mandated water-resource conservation requirements." (*Brydonv.East BayMun. Utility Dist., supra*,24 Cal.App.4th at p. 192.)The court emphasized the latitude necessary to set the amount of fees to meet the regulatory objectives. "In pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity. [Citation.] [ ] ... [ ] ... In short, California Constitution, article XIII A does not apply to every regulatory fee simply because, as applied to one or another of the payor class, the fee is disproportionate to the service rendered." (*Id.* at pp. 193-194.)

Hence, both cases narrow the breadth of California Constitution, article XIII A as applied to regulatory fees. Both suggest a flexible assessment of proportionality within a broad range of reasonableness in setting fees. In *San Diego Gas & Electric Co.,* the use of a formula to distribute indirect costs was sustained, while in *Brydon* an inclined block rate schedule allowed the water district to discourage water consumption. Neither relied on the kind of exact apportionment calculation urged by Mills.

Still, *San Diego Gas & Electric Co.* and *Brydon,* unlike *Pennell,* did not involve flat fees. While the formula or rate structure may not have been exact, each bore some relationship to the benefit reaped or the burden ***950** imposed by the payor. Put another way, the payors had some control over the amount of the regulatory fee they were compelled to pay by the degree to which their respective activities impacted the environment. The more they polluted the air and consumed the water, the more they paid.

We acknowledge that in this case Mills had no comparable control over the amount of the fees he was charged to review his timber harvest plan. The amount of the fees is expressly set forth in section 711.4. (3b) Nevertheless, we hold that a regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public. The legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes. An inherent component of reasonableness in this context is flexibility. We agree with the notion that shifting the costs of environmental protection to those who seek to impact our natural resources does not subvert the objectives embodied in Proposition 13. Hence, a regulatory fee does not violate California Constitution, article XIII A when the fees collected do not surpass the costs of the regulatory programs they support and the cost allocations to individual payors have a reasonable basis in the record.

IV

(1c) The record before us is a vivid illustration of the need for flexibility in establishing the amount of regulatory fees. Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity

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of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations; the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations; the intermingled functions of various departments as well as intermingled funding sources; and expansive accounting systems which are not designed to track specific tasks.

Mills asserts that these problems preclude a finding of a fee. He points out that Fish and Game did not conduct the kind of study now accepted within the expert field of user fee analysis to ascertain with precision the justifiable amount of a proposed fee based on the costs involved in providing the service. He criticizes the change in accounting systems in July 1991 which obfuscates the data necessary to make credible calculations, and he bemoans ***951** the incomprehensibility of the new CALSTARS accounting system as it relates to a user fee analysis. He insists that depositing the fees into Fish and Game's preservation fund is tantamount to a tax since the preservation fund operates as a general fund for Fish and Game. And he provides many examples of how disproportionate the fees are as to certain payors. Although most projects only receive a cursory review, there is a substantial variance in the amount of time spent on more in-depth reviews, varying from a few minutes to a few weeks, with the burden falling most heavily on small timberland owners.

This evidence is undisputed. There is no question that a flat fee will seldom represent the exact cost of providing a service. Fish and Game does not pretend such a correlation exists. Since we have determined that state regulatory fees are different from other user fees, the question presented is whether the evidence in this record is sufficient to sustain the legislative determination that a flat fee system is a reasonable means to allocate the costs of environmental review. FN3

> FN3 Evidence of the legislative history of section 711.4 was admitted at trial. Legislative history can be relevant to a determination whether an exaction is a fee or a tax. (*CentexReal Estate Corp.v.City of Vallejo* (1993) 19 Cal.App.4th 1358, 1362 [24 Cal.Rptr.2d 48].) Here, the trial court found the costs of environmental review exceeded the amount of the fees, but it found imposition of a flat fee arbitrary. Without the benefit of the Supreme Court's holding in *Sinclair* and the broad analysis of regulatory fees, the trial court narrowly construed section 711.4 as a user fee requiring the amount of the fees to reflect the cost of the service provided the payor. Because we have decided that a flat fee may be a reasonable allocation of the costs of a regulatory fee and the trial court found Fish and Game had met its burden of proof on this issue, the legislative history cited by the trial court is unnecessary.

Mills fails to appreciate the difference between regulatory fees and more typical user fees. At trial, he offered an expert from the new cottage industry of analysts and advisers to local governments on how to legitimize their fees in the litigious climate spawned by Proposition 13. That expert's testimony reflects his misguided assumption that all fees are created equal and that, to survive constitutional attack, they must be supported by exhaustive studies, unassailable time keeping, and a precise cost-fee analysis.

He insisted that a cost analysis study was not only advisable, but necessary. "So that is why I am saying it is possible for Fish and Game to do a kind of cost analysis study. My question then would be, secondly, do they now have that in place? Have they kept track? Have they required their staff to fill in reports? I mean, they might be able to do it starting now. But have they done it? Nothing has been submitted to me showing a tracking process of the steps taken and breaking down the specific tasks and functions.

"I recall this being referenced to the fact the administrative or bookkeeping costs were too high to do that. Frankly, my judgment is that becomes a ***952** cop-out. It is not too difficult. You can organize and set up, especially in today's computerized world with P.C.'s on half the staff desks.

"Attorneys have to bill by the minutes. They have to keep track of their time.

"It is perfectly possible to keep track of time. And I think, frankly, my judgment might be that if it is difficult, if your staff are not now doing those things systematically, it needs a whole retraining and re-

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gearing."

He opined that absent retraining, regearing, studies, and analysis, a fee could not survive a constitutional challenge. He went on to suggest a rather unique correlation between the time spent and the benefits achieved. Having testified he could not find a direct relationship between payment of a fee and providing any service, he stated: "There is no discussion of what happens as a result of the reviews. You know, do more spotted owls get saved? More fish saved? Or what. There is no functional relationship." Again he opined that in order to sustain the constitutionality of the fee, Fish and Game must document how a forest was saved or how many spotted owls were saved by the staff.

Fish and Game urges us to dismiss his opinion for several reasons: He had never reviewed the data supporting imposition of a state fee, he did not conduct any study to determine whether the section 711.4 flat fees were reasonable or proportional, and he had no familiarity with CEQA or the regulatory landscape in which Fish and Game must operate, not to mention that his proffered opinion constituted an inadmissible conclusion of law.

We need not address these specific deficiencies because we believe his testimony serves to highlight the fundamental distinction between a user fee and a regulatory fee. His testimony is predicated on many faulty assumptions based on user fees when there is an obvious correlation between cost and benefit. Moreover, in many cases, a statute demands that the amount of a fee be commensurate with the value of a service provided or the cost of a burden imposed. (See, e.g., Gov. Code, §§ 50076, 66001.) No comparable statutes apply to this state-imposed regulatory fee.

From the vantage point of one who earns a living studying user fees and counseling local governments on how to insulate their fees from constitutional attack, it is not surprising he would overlook the vast discrepancy between a fee imposed or a privilege accorded an individual and a fee that apportions and distributes the collective costs of a regulation. In the latter case, the many factors this expert described as deficiencies become the ***953** reasonable justification for imposing a flat fee. That is, the Legislature may have determined that the administrative cost and burden of a statewide fee, including expensive studies and accounting, was too high when a simpler, flat fee could be imposed. Moreover, often, as here, measuring the benefits is amorphous. The Legislature could reasonably eschew a graduated fee structure based on an accounting of owls that were spared and forests that survived. He failed to understand that a legislative body in determining the amount of a regulatory fee is legitimately hampered by the many factors he describes as necessary to support a user fee.

The Legislature determined that the fee must be paid when a notice of determination is entered. Mills argues the timing of the exaction is unfair and unreasonable because many payors pay for reviews they never receive and others receive a bargain price for an extensive and time-consuming study. It is not our role to assess the wisdom of legislation from either a public policy or public relations perspective. We are asked only to determine whether section 711.4 imposes a fee or a tax. The record discloses several reasonable justifications for imposing a flat fee.

Fish and Game offered testimony that the imposition of an hourly fee for any environmental review would discourage early consultation. Often developers contact Fish and Game to discuss potential adverse impacts of a proposed project before any plans are submitted. Fish and Game then has the opportunity to engage in a collaborative process to eliminate or mitigate impacts on fish and wildlife before resources have been committed to a particular development plan.

The record also discloses that the environmental review process for a CEQA project or a timber harvest plan can involve various biologists at the regional level, consultation with biologists at headquarters and review of various data bases. Moreover, the biologists often work on several projects simultaneously and perform work which benefits all the projects. Consequently, the evidence suggests it would be cumbersome and expensive to account for multiple biologists' time, from multiple regions, working multiple projects.

The evidentiary thrust to Fish and Game's argument is that the cost of performing its duties under CEQA and the Forest Practice Act far exceeds the revenue generated under section 711.4. (*City ofDublinv.County of Alameda, supra,*14 Cal.App.4th at p.

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282.)Under the accounting system dismantled in 1991, Fish and Game employees recorded their time and charged the time to various codes. Before changing to a new system, the ***954** employees' time sheets were surveyed and analyzed. A new coding system was predicated on these surveys and analyses. Mills complains that the new system camouflages and inflates the true costs of environmental review.

The trial court found Fish and Game met its burden of proving the cost of its environmental review programs. The court wrote, "While Plaintiff attacks the Department's method of converting its costs under its old accounting system to the new accounting program, the authorities do not require absolute precision. Rather, as long as the estimate of costs is a reasonable one, it will be upheld."

We need not perform an appellate audit of Fish and Game's accounting systems. Having reviewed the entire record, we are satisfied there is sufficient evidence to support the trial court's finding that the cost of comprehensive environmental review far surpasses the amount of fees generated under section 711.4. " '[W]e would be demanding the impossible by insisting on rigorously supported findings.' [Citation.] All that our review requires is that we are able to determine that the [Legislature] acted after finding a reasonable relationship between the fee and the need to which the development contributes." (*Shapell Industries, Inc.v.Governing Board* (1991) 1 Cal.App.4th 218, 247 [1 Cal.Rptr.2d 818].) Mills squabbles about the costs associated with the review of Fish and Game's own projects, the preparation of resource databases, and a few other relatively small items. His argument, like his expert's testimony, proves the point. Complex regulatory programs involve complex accounting methodologies which render a more conventional "user fee" assessment impractical or expensive.

There is also evidence that the administrative costs to implement an extensive and comprehensive time-reporting system would be high. The evidence shows that biologists often simultaneously perform the preliminary work establishing resource data for several projects and consult and research issues relating to many different projects. It is reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eases the administrative burden of collection and provides certainty to those who submit project proposals.

Fish and Game provides an apt analogy to demonstrate the reasonableness of flat fees. The Legislature has adopted a flat filing fee for filing an action in superior court whether the matter is a simple case requiring little time and attention or a complex case requiring intensive judicial resources from pretrial motions through a lengthy trial. By statute, statewide judicial fees ***955** cannot be increased or decreased by counties to provide any kind of graduated structure. (Gov. Code, § 54985, subd. (c)(1).) The fees imposed by section 711.4 are quite similar. Like a civil action, the environmental review may be time and staff intensive or it may be summarily handled. In neither case does the fee operate as a tax just because a prescribed amount is charged to all who avail themselves of the opportunity to obtain discretionary government services.

(4) Finally, plaintiff also challenges the Legislature's decision to charge a higher fee for the filing of a negative declaration than for other environmental documents. As explained by a Fish and Game senior environmental specialist supervisor at trial, the standard for a negative declaration is that a project have no adverse impact on the environment. Thus, Fish and Game has the responsibility to make sure the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and Fish and Game staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spends more time on the review of a negative declaration than for the review of an equivalent size project with EIR (environmental impact report) documentation. Hence, because of project information collection cost and the time spent negotiating mitigation measures, Fish and Game's costs are generally higher for negative declarations. There is a sufficient reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report.

V

We need not address the many other issues raised by

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the parties in these consolidated cases rendered moot by our finding that section 711.4 does constitute a regulatory fee. Moreover, we dismiss Mills's second appeal because it too is rendered moot by our finding. In the underlying case, the California Association of Professional Scientists sought to enjoin the settlement entered into by Mills and Fish and Game in the original action. The crux of the appeal is whether the trial court properly restricted its constitutional ruling to Mills alone. Since we have upheld the constitutionality of section 711.4, we need not decide whether the trial court erred by invoking article III, section 3.5 of the California Constitution to limit the scope of its constitutional ruling.

Many of the arguments raised by Mills, and echoed by his expert at trial, are rooted in the perception that a flat fee is unfair. They object vociferously ***956** to the disparity between the amount of the fee and the services provided for different projects. This may be so. The scope of our inquiry, however, is not whether the fee is fair but whether the fee is, in legal effect, a tax. This case is not a challenge to the legislative power to enact a fee, nor is it a substantive constitutional challenge to the fee. We were asked to make the legal determination as to whether it is a fee exclusively for the purpose of determining whether it was properly enacted by a majority vote. Constrained by the limited scope of appellate review, we have concluded the Legislature did not violate California Constitution, article XIII A by enacting the section 711.4 fees by a simple majority vote. Any further challenge to the equity of a flat fee structure must be presented to the Legislature for the issue is political, not constitutional.

Disposition

The appeal in case No. C023075 is dismissed. The judgment in case No. C023184 is affirmed in part and reversed in part as explained above. In both cases, Mills shall pay the costs on appeal.

Sims, Acting P. J., and Nicholson, J., concurred.
The petition of appellant Albert W. Mills for review by the Supreme Court was denied July 12, 2000. ***957**

Cal.App.3.Dist.
California Assn. of Professional Scientists v. Department of Fish & Game

79 Cal.App.4th 935, 94 Cal.Rptr.2d 535, 00 Cal. Daily Op. Serv. 2760, 2000 Daily Journal D.A.R. 3719

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H

Supreme Court of California
CITY OF BURBANK, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.
City of Los Angeles, Plaintiff and Respondent,
v.
State Water Resources Control Board et al., Defendants and Appellants.
Nos. S119248, B151175, B152562.

April 4, 2005.
Rehearing Denied June 29, 2005.[FN*]

FN* Brown, J., did not participate therein.

Background: Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960,Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and
(2) when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

West Headnotes

[1] Environmental Law 149E 165

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek165 k. Purpose. Most Cited Cases
Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

States 360 18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. U.S.C.A. Const. Art. 6, cl. 2; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 301(a), (b)(1)(B, C), 402(a)(1, 3), as amended, 33 U.S.C.A. §§ 1251 et seq., 1311(a), (b)(1)(B, C), 1342(a)(1, 3); West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.
See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69; 8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 23:54; Cal. Jur. 3d, Pollution and Conservation Laws, § 126.

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[3] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases

Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases
When construing any statute, the court's task is to determine the Legislature's intent when it enacted the statute so as to adopt the construction that best effectuates the purpose of the law.

[4] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or Conforming Laws or Regulations. Most Cited Cases
Under the federal Constitution's supremacy clause, a state law that conflicts with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(b), 510, as amended, 33 U.S.C.A. §§ 1251 et seq., 1251(b), 1370; West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

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KENNARD, J.

***618** **864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic **865 factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

*619 I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

A. California Law

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) [FN1] Its goal is "to attain the highest water ***307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."(§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality."(§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).[FN2]

FN1. Further undesignated statutory references are to the Water Code.

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> FN2. The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."(§ 13200, subd. (d).)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be consistent with "state policy for water quality control."(§ 13240.)

B. Federal Law

[1] In 1972, Congress enacted amendments (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean ***620** Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' "(*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter-Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act."(§ 13372.)

****866** Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Toward *****308** this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.[FN3] See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See § 1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

> FN3. A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

***621** "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia,* that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate

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water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles-Glendale Water Reclamation Plant (Los Angeles-Glendale Plant), which processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles-Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Burbank,***309** serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

*622 All three plants, which together process hundreds of millions of gallons of sewage **867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.[FN4] The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: "All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.[FN5]

> FN4. This opinion uses the terms "narrative criteria" or descriptions, and "numeric criteria" or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, "no toxic pollutants in toxic amounts" would be a narrative description. This contrasts with numeric criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.

> FN5. For example, the permits for the Tillman and Los Angeles-Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be

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too costly when considered in light of the potential benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter-Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional ***623** board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed $50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over $9 million annually, a nearly 100 percent increase above its $9.7 million annual budget for wastewater treatment.

*****310** The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter-Cologne Act required a regional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings ****868** to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases.[FN6]

> FN6. Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

***624 III. DISCUSSION**

A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter-Cologne Act. (See 26 Cal.Rptr.3d pp. 306-307, 108 P.3d p. 865,*ante.*) Section 13263 provides in relevant part: "*The regional board,* after any necessary hearing, *shall prescribe requirements as to the nature of any proposed discharge* [of wastewater]. *The requirements* shall implement any relevant water quality control plans that have been adopted, and *shall take into consideration* the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and *the provisions of Section 13241.*"(§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall es-

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tablish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

***311** "(a) Past, present, and probable future beneficial uses of water.

"(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

"(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

"(d) *Economic considerations.*

"(e) The need for developing housing within the region.

"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

[2] ***625** Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge ***869** permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

B. Statutory Construction

[3] When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra,* at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter-Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter-Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 ***312** Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. But unlike the former two statutes, section 13377 was ***626** not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive

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water quality policy for the nation.

[4] Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.[FN7] Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's ****870** declaration in section 13377 that all discharged wastewater must satisfy federal standards.[FN8] This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is " 'without effect.' " (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this ***627** state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations *****313** that would exceed the mandates of federal law.

> FN7. The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions *that meet the clean water standards in more cost-effective and economically efficient ways.*" (Conc. Opn. of Brown, J., *post,* 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's *clean water standards, regardless of cost* (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)
>
> FN8. As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." We do not here decide how this provision would affect the cost-consideration requirements of sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account "economic considerations," such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

C. Other Contentions

The Cities argue that requiring a regional board at the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is con-

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sistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal "*wherever attainable,*" an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters' "*use and value* for navigation" when revising or adopting a "water quality standard." (Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

[5] At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent* " than the federal standard (*id.*§ 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit ***628** a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a "navigable water" of the ****871** United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 ["The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."].) It is unclear when the Cities first raised this issue. The Court of Appeal did not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See Cal. Rules of Court, rule *****314** 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles-Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that exceeded the federal requirements. This is an issue of fact to be resolved by the trial court.

DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this ***629** matter to the trial court to decide whether any numeric limitations, as described in the permits, are "more stringent" than required under federal law and thus should have been subject to "economic considera-

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tions" by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because "the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require." (Maj. opn., *ante,* 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law-which purports to be an example of cooperative federalism-would decree such a result. I do not think the majority's reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

*****315 **872 I. Federal Law**

"In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA 'prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]' ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California's. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA's NPDES permit program, the states are required to develop *water quality standards.* [Citations.] A water quality standard 'establish[es] the desired condition of a waterway.' [Citation.] A water quality standard for any ***630** given waterway, or 'water body,' has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water quality criteria can be either *narrative* or *numeric.* [Citation.]" (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, "a polluter must comply with *effluent limitations.* The CWA defines an effluent limitation as 'any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.' [Citation.] 'Effluent limitations are a means of *achieving* water quality standards.' [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA's NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations,* which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL's) where applicable. In the CWA, Congress 'supplemented the "technology-based" effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd., supra,* 109 Cal.App.4th at pp. 1093-

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1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Commrs. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.)"Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork."***316** (*American Paper Institute, Inc. v. U.S. Envtl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349(*American Paper*).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if ***631** necessary, revise those initial standards at least once every three years." (*American Paper,* at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper,* at p. 350.) Accordingly, it appears that in most instances, ****873** state water quality standards are identical to the federal requirements for NPDES permits.

II. State Law

In California, pursuant to the Porter-Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter-Cologne Act), the regional water quality control boards establish water quality standards-and therefore federal requirements for NPDES permits-through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors-including economic factors-set forth in Water Code section 13241.

In addition, as one court observed: "The Porter-Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter-Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)[¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter-Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides that '[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act].' [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

***632** Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)-the body responsible to enforce the statutory framework-failed to comply with its statutory mandate.

****317** For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to

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do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, "[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years-a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they 'protect the public health or welfare, enhance the quality of water and serve the purposes' of the Act. [Citation.] Additionally, the CWA **874 directs states to consider a variety of competing policy concerns during these reviews, including a waterway's 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.'"(*American Paper, supra,* 996 F.2d at p. 349.)

According to the Cities, "[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994." The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion-including economic considerations-at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

*633 Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante,* 26 Cal.Rptr.3d at pp. 311-312, 108 P.3d at pp. 869-870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits***318 designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[FN1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.[FN2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

FN1. (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95-4, Sept. 21, 1995) 1995 WL 576920.)

FN2. Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today

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appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

***634** Accordingly, I cannot conclude that the majority's decision is wrong. The analysis ****875** may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands," [FN3] I write separately to set forth my concerns and concur in the judgment-*dubitante*.[FN4]

FN3. Marvin Gaye (1971) "Inner City Blues."

FN4. I am indebted to Judge Berzon for this useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

Cal.,2005.
City of Burbank v. State Water Resources Control Bd.
35 Cal.4th 613, 108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Envtl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

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HCITY OF OAKLAND et al., Petitioners,
v.
THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; CALIFORNIA BEVERAGE RETAILER COALITION et al., Real Parties in Interest.
No. A068638.

Court of Appeal, First District, Division 4, California.
May 20, 1996.

SUMMARY

Following a city's enactment of an ordinance regulating nuisances associated with alcoholic beverage establishments, an organization of liquor retailers filed an action against the city, seeking a declaratory judgment that the ordinance was invalid, an injunction precluding its enforcement, and monetary damages. The trial court granted summary adjudication on two of six causes of action, concluding that the city ordinance illegally regulated holders of earlier-granted alcoholic beverages licenses (Bus. & Prof. Code, § 23790) and taxed these licensees in violation of state law (Cal. Const., art. XX, § 22). (Superior Court of Alameda County, No. 726329-3, James R. Lambden, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its order and to enter a new order denying the summary adjudication motion and granting summary adjudication on the two causes of action in favor of the city. The court held that Bus. & Prof. Code, § 23790, which permits alcoholic beverage licensees operating in an area before the enactment of restrictive zoning ordinances to remain in business, did not preempt or otherwise preclude enforcement of the city's ordinance addressing nuisance problems associated with alcoholic beverage sale establishments. A city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. The court also held that the ordinance was not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. It further held that the fee was not a tax imposed to pay general revenue to the local governmental entity, but was a valid regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. The court held that the Legislature did not intend that a person licensed to sell alcoholic beverages be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Thus, since the ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with the state's authority to regulate alcoholic beverage sales. (Opinion by Reardon, J., with Anderson, P. J., and Poché, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Mandamus and Prohibition § 40--Mandamus--To Courts--Summary Judgment.
A summary adjudication ruling that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law (Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 23790), was an appropriate matter to be considered on a petition for a writ of mandate. An order granting partial summary judgment or summary adjudication is not an appealable order, and mandate may be granted to review an order granting summary adjudication. Although there was not a final judgment in the case, as the trial court ruled on only two of six causes of action, the issues in the case presented significant legal questions of constitutional and statutory interpretation. The public interest supported an immediate review of the trial court's ruling, since, when the validity of a public agency's action was at issue, the public interest in a speedy determination of the matter may have made an appeal inadequate. Also, the issues presented were questions of law, making

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their immediate resolution on a petition for a writ of mandate appropriate. Mandate will lie if the trial court has a clear, present, and usually ministerial duty and the petitioner has a clear, present and beneficial right of performance of that duty. If the trial court erred, the appellate court could exercise its discretion to entertain the writ in order to avoid unnecessary trial court proceedings.
[See 8 **Witkin,** Cal. Procedure (3d ed. 1985) Extraordinary Writs, § 98.]
(2) Mandamus and Prohibition § 37--Mandamus--To Courts--Interim Order.
In most cases, a trial court's interim order must await review on appeal from the final judgment. However, in cases of significant legal impact, appellate courts may consider a petition for an extraordinary writ. The adequacy of an appellate remedy depends on the circumstances of the case, vesting a large measure of discretion in the appellate court to grant or deny a writ petition.

(3a, 3b, 3c) Alcoholic Beverages § 31--Regulation by Municipalities-- Control of Nuisances and Criminal Activities--State Preemption.
Bus. & Prof. Code, § 23790, which permits alcoholic beverage licensees operating in an area before the enactment of restrictive zoning ordinances to remain in business, did not preempt or otherwise preclude enforcement of a city's ordinance addressing nuisance problems associated with alcoholic beverage sale establishments. A city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. The ordinance did not create any new authority empowering the city to halt operation of an alcoholic beverage sales establishment. It merely created an administrative mechanism that might have resulted in a third party taking action against the alcoholic beverage seller-abatement by a court or license revocation by the State Department of Alcoholic Beverage Control. The conduct that is regulated by the ordinance, the control and abatement of nuisances and criminal activities, did not fall within the ambit of § 23790.

(4) Summary Judgment § 26--Appellate Review--Scope--Statutory Construction.
On review of a summary adjudication ruling that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law, the standard of review was one of de novo review. The construction of statutes and the ascertainment of legislative intent are questions of law. The reviewing court is not limited by the trial court's interpretation, nor by the evidence presented on the issue in the trial court.

(5) Evidence § 42--Hearsay--Exceptions--Admissions--By Conduct--Arguments in Favor of Amendment of Statute.
A city's role in the legislative history of Bus. & Prof. Code, § 23790, did not constitute an admission in a subsequent action that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments impermissibly regulated grandfathered alcoholic beverage sales establishments. The city's proposed amendment to § 23790 would have provided for the expiration of grandfather rights when continuous use ended, which did not shed any light on the issue presented in the subsequent case, whether the new administrative mechanism in the ordinance may properly be applied to alcoholic beverage sales establishments that have been in continuous operation since before the ordinance was enacted.

(6) Statutes § 22--Construction--Reasonableness.
A statute must be construed in a reasonable, commonsense manner consistent with the Legislature's apparent purpose and intent, the application of which will promote wise policy, not absurdity.

(7) Alcoholic Beverages § 34--Regulation by Municipalities--Licensing and Permits--Fees to Implement Nuisance Control Ordinance.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, were not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. That the ultimate result of a failure to pay the city's required fee might be abatement or revocation of the state liquor license did not transform the regulatory fee into a prohibited license tax.

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(8a, 8b) Municipalities § 30--Police Power--Regulation of Business-- Liquor Retailers--Fees For Enforcement of Nuisance Ordinance.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, was not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. City documents showed that the annual operating budget for the program would be recovered in fees charged to alcoholic beverage retail establishments pursuant to the ordinance. Reinspection fees would be charged only to establishments that were found not to be in compliance with the terms of the ordinance. The estimated revenues derived from the fees matched the program's proposed budget, and the ordinance's revenue was intended to pay the administrative costs of its programs. The ordinance's primary purpose was regulatory, to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed pursuant to the ordinance was not a tax imposed to pay general revenue to the local governmental entity, but a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance.

(9) Municipalities § 30--Police Power--Regulation of Business--Liquor Retailers.
Cal. Const., art. XX, § 22, grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales, and a local tax on alcoholic beverage sales is preempted by state law. However, alcoholic beverages retailers may properly be required to pay their fair share of the cost of government. If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers, but may not impose a tax on alcoholic beverage retailers under the guise of a fee.

(10) Municipalities § 30--Police Power--Regulation of Business--Fee or Tax.
To determine whether the purpose of a local ordinance imposing a fee on a business is regulatory or revenue-generating, the court looks to the substantive provisions of the ordinance, not merely its title and form. If revenue is the primary purpose of the ordinance and regulation is merely incidental, then the imposition is a tax. If regulation is the primary purpose, the mere fact that incidental revenue is also obtained does not make the imposition a tax. Generally, when a fee is imposed for a regulatory purpose and the ordinance requires compliance with conditions in addition to the payment of the prescribed sum, the imposed sum is a not a tax, but is a fee properly imposed pursuant to the local entity's police power. When the sum is exacted solely for a revenue purpose and its payment gives the right to carry on the business without any further condition, it is a tax. Fees charged in connection with regulatory activities that do not exceed the reasonable costs of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes do not constitute a tax. Generally, a regulatory fee cannot exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought. These costs include all those incident to the issuance of the permit, investigation, inspection, and administration. The municipality need only apply sound judgment and consider probabilities according to the best honest view of informed officials in setting the amount of the regulatory fee.

(11) Municipalities § 30--Police Power--Regulation of Business--Fee or Tax.
To establish that a fee is a regulatory fee and not a tax, the local entity should show the estimated costs of the regulatory activity and the basis for determining the manner in which the costs are apportioned, so that the charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. It is not necessary that the payor perceive the regulation to be a benefit. A regulatory fee may be imposed pursuant to the local governmental entity's police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation.

(12a, 12b) Municipalities § 30--Police Power--Regulation of Business-- Liquor Retailers--Regulatory Fees--Validity.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, derived solely from the city's police power under Cal. Const., art. XI, § 7, and the fees were therefore valid. A city's police powers are as broad as the police power that may be exercised by

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the Legislature itself. However, in its proper exercise of its police powers, the city could not also violate Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales. Generally, the constitutional provision will not preempt a local ordinance when the ordinance does not directly affect the licensee's ability to sell alcoholic beverage to a willing purchaser. The Legislature did not intend that a person licensed to sell alcoholic beverages be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Thus, since the ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with the state's authority to regulate alcoholic beverage sales.
[See 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 795.]
(13) Municipalities § 28--Police Power--Public Safety, Health, and Morals-- State Law.
Local governments have a legitimate need to address problems generated by business involvement in activities that may be inimical to the health, welfare, and safety of the community. State requirements may be inadequate to meet the demands of densely populated cities. Thus, it becomes proper and necessary to add tostate regulations those provisions adapted to a city's special requirements. For this reason, a local entity may properly determine that a particular business fosters, profits from, and provides an environment for activities proscribed by state law. Thus, an ordinance is not transformed into a statute prohibiting crime simply because the city uses its police powers to discourage illegal activities associated with certain businesses.

(14) Alcoholic Beverages § 3--Police Power--Local Ordinance--Federal Regulation.
A city ordinance imposing a fee on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, did not violate U.S. Const., Amend. XXI, which grants the state authority to tax and regulate liquor licensing. The ordinance imposed a regulatory fee, not a tax, and as the state Constitution did not prohibit the ordinance's regulatory fees, the state having impliedly delegated to municipalities the power to impose such fees.

COUNSEL

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John L. Fellows III, City Attorney, as Amicus Curiae on behalf of Petitioners.

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Pillsbury, Madison & Sutro, James M. Seff, Kevin M. Fong and J. Daniel Davis as Amici Curiae on behalf of Real Parties in Interest.

REARDON, J.

Many California cities must grapple with nuisances associated with alcoholic beverage sale establishments. Some local entities have ***747** adopted ordinances to identify those activities associated with alcoholic beverage sales that constitute nuisances and to eliminate their attendant threat to the public health and welfare by means of an administrative process. The proprietors of alcoholic beverage sale establishments challenge these ordinances, arguing that they trod on the state's exclusive right to regulate and tax alcoholic beverage sales. We hold that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments does not improperly regulate preexisting grandfathered [FN1] licensees or tax licensees for regulatory purposes.

> FN1 "Grandfathered" businesses are nonconforming uses that are not required to seek permits under local zoning ordinances enacted after they were in business. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 397 [28 Cal.Rptr.2d 530].)

In this case, petitioner City of Oakland (city) enacted

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an ordinance regulating nuisances associated with alcoholic beverage establishments. Real parties in interest California Beverage Retailer Coalition and Village Market filed an action against the city, seeking a declaratory judgment that the ordinance was invalid, an injunction precluding its enforcement, and monetary damages. The trial court granted summary adjudication on two of six causes of action, concluding that the city ordinance illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law. (See Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 23790.) [FN2]The city and others petitioned for a writ of mandate and prohibition, seeking to compel the trial court to vacate its summary adjudication order and enter an order denying the motion for summary adjudication. We issued an alternative writ and now grant the city's petition.

FN2 All statutory references are to the Business and Professions Code unless otherwise indicated.

I. Facts

In July 1993, petitioner city enacted an ordinance as a one-year pilot program to address public nuisance problems associated with certain alcoholic beverage sale establishments in specified areas of the city. (See Oakland Planning Code, §§ 15000-15530 [Ord. No. 11624].) Under the ordinance, the sale of alcoholic beverages in the city is deemed to be an approved commercial activity as long as the merchant complies with the city's "Deemed Approved Performance Standards." [FN3]Each merchant must post a notice of these standards. (*Id.*, § 15320.) If the city receives a ***748** complaint that these standards have been violated, an administrative hearing must be conducted to review the complaint. (*Id.* § 15340.) The hearing officer must determine if the merchant has conformed to the performance standards and, if the merchant has not, may impose conditions on the use of the property to ensure compliance. (*Ibid.*) If the merchant fails to comply with these conditions, the deemed approved status may be revoked. (*Id.* § 15350.) Once administrative appeals to the planning commission and city council are exhausted, the city may seek to have the activity abated as a nuisance. (*Id.* §§ 15360-15370, 15510(c).) The city may also refer the matter to the Department of Alcoholic Beverage Control for revocation of the merchant's liquor license. (See Bus. & Prof. Code, §§ 24200-24211.) To support the pilot project, most alcoholic beverage sale licensees within the city will be assessed a $600 fee. An additional $200 reinspection fee may be imposed on an estimated 10 percent of the alcoholic beverage establishments covered by the ordinance. [FN4] (Oakland Planning Code, §§ 15400, 15510(f).)

FN3 "An Activity shall retain its Deemed Approved Status only if it conforms with all of the following Deemed Approved Performance Standards: [¶] (a) That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area. [¶] (b) That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area. [¶] (c) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests. [¶] (d) That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute. [¶] (e) That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood." (Oakland Planning Code, § 15210.)

FN4 Full service restaurants, except those located on East 14th Street, Foothill Boulevard, MacArthur Boulevard, West MacArthur Boulevard, San Pablo Avenue north of 16th Street, and Edes Avenue between Clara Street and Bergedo Avenue, are exempt from the ordinance and are not required to pay the fee.

In November 1993, real parties in interest California

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Beverage Retailer Coalition and Village Market and others [FN5] filed a complaint against the city, seeking declaratory and injunctive relief and damages. The complaint alleged that the ordinance was preempted by state law, violated due process and equal protection, and infringed civil rights. It also sought a preliminary injunction to preclude enforcement of the ordinance pending trial on the merits of the complaint. In December 1993, petitioner Coalition on Alcohol *749 Outlet Issues [FN6] was granted leave to intervene and filed a complaint in intervention in this matter. At the hearing on the motion for preliminary injunction, the trial court found that the ordinance was preempted by state law and that the restrictions and conditions imposed by the ordinance were impermissibly retroactive. The trial court granted the preliminary injunction later that month, barring enforcement of the ordinance. The city and CAOI appealed. In September 1994, we reversed the order granting the preliminary injunction, finding that there was no clear and imminent danger of irreparable harm. (See *California Beverage Retailer Coalition v. City of Oakland* (Sept. 20, 1994) A064898 [nonpub. opn.].) [FN7]

FN5 The California Beverage Retailer Coalition is a nonprofit organization of alcoholic beverage retailers. Village Market is a retail grocery doing business in Oakland and operates under a valid off-sale liquor license issued by the State of California before the September 1, 1993, operative date of the Oakland ordinance. The third plaintiff in the original complaint-Clem Daniels, Inc.-is not a plaintiff in the second amended complaint and is not a real party in interest on appeal. For convenience, this opinion refers to the California Beverage Retailer Coalition and Village Market as "CBRC."

FN6 The Coalition on Alcohol Outlet Issues consists of the California chapter of the National Black Alcoholism Council, the California Latino Alcohol and Other Drug Coalition, the Narcotics Education League, Jubilee West Inc., Interfaith Prevention Program, Inc., and Alcohol Policy Network. This group supports the city's ordinance. For convenience, all these groups will be referred to as "CAOI."

FN7 The city asks us to take judicial notice of the record in *California Beverage Retailer Coalition v. City of Oakland, supra*, A064898.We have done so. (See Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).)

In November 1994, CBRC filed its second amended complaint. It alleged six causes of action-preemption by article XX of the California Constitution, violation of section 23790, unlawful taxation in violation of article XX of the California Constitution, and violations of due process, equal protection and civil rights. CBRC also moved for summary adjudication on the second and third causes of action alleging improper regulation in violation of section 23790 and unlawful taxation in violation of the state Constitution. The city and CAOI opposed the motion, but it was granted by the trial court.

In January 1995, the trial court filed its order granting summary adjudication on these two causes of action. It found no triable issue of fact existed on these causes of action and ruled in CBRC's favor on the law. It concluded that the ordinance was preempted by section 23790 because it regulates previously existing licensees. It also found that the fees required by the ordinance were illegal because the power to regulate and tax alcoholic beverages belongs exclusively to the state. Its order anticipated trial on the unresolved matters in this case.

The city petitioned this court for a writ of mandate or prohibition. The city argues that the trial court erred as a matter of law in concluding that the ordinance was preempted by state law. It seeks either a peremptory writ of mandate directing the trial court to vacate and set aside its order granting summary adjudication and entering a denial order instead, or an alternative writ directing the trial court to show cause why it should not be so directed. In January 1996, we issued an alternative writ. *750

II. Mandate [FN8]

(1a) First, we must determine whether we may review the order granting summary adjudication on a petition for writ of mandate. A writ of mandate may be issued by any court to an inferior tribunal to compel the admission of a party to the use or enjoyment of a right to which it is entitled and from which it is unlawfully precluded by the inferior tribunal. (Code

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Civ. Proc., § 1085.)Typically, the writ will not issue if there is a plain, speedy and adequate remedy in the ordinary course of law. (*Id.* § 1086.)

> FN8 The issue of the absence of an adequate remedy in the ordinary course of law has already been determined by the granting of an alternative writ. (*Brown v. Superior Court* (1971) 5 Cal.3d 509, 515 [96 Cal.Rptr. 584, 487 P.2d 1224].) We include this part to explain our reason for granting the alternative writ.

An order granting partial summary judgment-or summary adjudication-is not an appealable order. Mandate may be granted to review an order granting summary adjudication. (See *Field Research Corp. v. Superior Court* (1969) 71 Cal.2d 110, 111 [77 Cal.Rptr. 243, 453 P.2d 747]; *Mason v. Superior Court* (1985) 163 Cal.App.3d 989, 994 [210 Cal.Rptr. 63]; see 8 Witkin, Cal. Procedure (3d ed. 1985) Extraordinary Writs, § 98, pp. 737-738.)

There is not yet a final judgment in this case, as the trial court has ruled on only two of six causes of action. (2) In most cases, an interim order must await review on appeal from the final judgment. However, in cases of significant legal impact, appellate courts may consider a petition for an extraordinary writ. The adequacy of an appellate remedy depends on the circumstances of the case, vesting a large measure of discretion in the appellate court to grant or deny a writ. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 770 [192 Cal.Rptr. 415].)

(1b) Several factors cause us to exercise our discretion and consider the merits of the petition at this time. First, the issues in this case present significant legal questions of constitutional and statutory interpretation. If the court permits CBRC to go to trial based on erroneous rulings of law, substantial trial expenses will be needlessly imposed on the city and the public. (See, e.g., *San Diego Unified Port Dist. v. Superior Court* (1977) 67 Cal.App.3d 361, 364-365 [136 Cal.Rptr. 557].) This factor tends to make later review on appeal an inadequate remedy. (*City of Glendale v. Superior Court* (1993) 18 Cal.App.4th 1768, 1776-1777 [23 Cal.Rptr.2d 305]; see *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 657 [242 P.2d 1] [prohibition]; *Bricklayers & Masons Union No. 1 v. Superior Court* (1963) 216 Cal.App.2d 578, 582 [31 Cal.Rptr. 115] [prohibition]; see also 8 Witkin, ***751** Cal. Procedure, *supra*, Extraordinary Writs, §§ 101, 116, at pp. 739-740, 751-753.)

Second, the public interest supports an immediate review of the trial court's ruling. When the validity of a public agency's action is at issue, the public interest in a speedy determination of the matter may also make an appeal inadequate. (See *Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1496-1497 [261 Cal.Rptr. 409].) A number of municipalities have ordinances similar to the one challenged by CBRC or are interested in adopting one. The issues presented in this action are of significance to other California communities struggling with similar nuisances and criminal activity centering on establishments that sell alcoholic beverages. [FN9] (See, e.g., *City of Glendale v. Superior Court*, *supra*, 18 Cal.App.4th at p. 1777.) The fact that it is in the public interest to resolve this controversy as expeditiously as possible tends to weigh in favor of the exercise of our discretion to consider the petition for writ of mandate, rather than requiring the city to await a later appeal. (See *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 339-340 [144 Cal.Rptr. 236] [error in liability portion affects scheduled damage trial].)

> FN9 The cities and towns joining as amici curiae in support of the city are the Cities of Alameda, Anaheim, Bakersfield, Carlsbad, Chico, Cypress, Fresno, Glendale, Lemon Grove, Lodi, Los Altos, Monterey, Redlands, Sacramento, San Jose, Santa Cruz, Santee, Torrance and Walnut Creek and the Town of Los Gatos.

Third, the issues presented are questions of law, making their immediate resolution on a petition for writ of mandate appropriate. Mandate will lie if the trial court has a clear, present and usually ministerial duty and the city has a clear, present and beneficial right of performance of that duty. However, the city may not invoke mandamus to control a trial court's exercise of discretion. (See *Residents for Adequate Water v. Redwood Valley County Water Dist.* (1995) 34 Cal.App.4th 1801, 1806 [41 Cal.Rptr.2d 123]; see *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 771.) On a motion for summary adjudication, the trial court has no discretion to exercise. If a triable issue of material fact exists as to the

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challenged causes of action, the motion must be denied. If there is no triable issue of fact, the motion must be granted. (Code Civ. Proc., § 437c, subd. (f).) If the trial court errs, it has made an error of law, which automatically constitutes an abuse of discretion. Under these circumstances, obtaining relief by means of mandate may be proper. If it appears that the trial court erred, the appellate court may exercise its discretion to entertain the writ in order to avoid unnecessary trial court proceedings. (*Whitney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 266 [83 Cal.Rptr. 237].)***752**

If the significant legal issues of statewide interest are resolved in favor of the validity of the city's ordinance, to await a later appeal in order to make this determination would cause needless expense to the city, the CBRC and the public. Thus, we conclude that this is an appropriate matter to be considered on a petition for writ of mandate.

III. Statutory Claim

A. *Section 23790*

(3a) The trial court concluded that the Oakland ordinance was preempted by section 23790 because it regulates previously existing licensees. Thus, it granted CBRC summary adjudication on its second cause of action for declaratory and injunctive relief based on its allegation that the Oakland ordinance violated section 23790. In its petition for writ of mandate, the city contends that the trial court erred in granting summary adjudication on this cause of action because it wrongly concluded that the ordinance was preempted. It argues that the trial court based its decision on cases that did not address the specific issue presented in this case. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th 376; see also *Boccato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 [35 Cal.Rptr.2d 282].)

The city frames the issue in this manner-does section 23790 preclude it from enforcing an ordinance setting up a new mechanism to control nuisance and criminal activities that were regulated *before* enactment of this ordinance, if the new mechanism applies to an alcoholic beverage sales establishment in operation before the ordinance was enacted? [FN10] The ordinance imposes no new regulation on alcoholic beverage sales establishments, it reasons-it simply collects various, scattered nuisance and criminal regulations that exist in other laws and creates a new means of enforcing them. Thus, the city reasons, its ordinance is not preempted by section 23790. Amici curiae California cities and towns have filed an amicus curiae brief in support of the city's position. (See fn. 9, *ante*.)For its part, CBRC contends that the issue is not whether the ordinance is preempted by section 23790, but simply whether this statute precludes a retroactive land use ordinance which interferes with the sale of alcoholic beverages by a licensee. Amici curiae Beer Institute of California, California Beer and Wine Wholesalers ***753** Association, Inc., and Wine Institute have filed an amicus curiae brief in support of CBRC's opposition to the petition for writ of mandate. [FN11]

FN10 Although neither party addresses this specific point, CBRC does not contend that the alcoholic beverage sales establishments were in operation before the city began regulating nuisances and criminal activities.

FN11 The Legislative Counsel of California rendered an opinion in 1993 concluding that a court reviewing the Oakland ordinance would find that it was preempted by article XX, section 22 of the California Constitution and section 23790. However, the same report also noted that a contrary argument could be made that the ordinance "regulates a nuisance aspect of the liquor business, effects of consumption, that is not covered by state law either expressly or by implication."

The pertinent part of section 23790 provides that "[n]o retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. *Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions*: [¶] (a) The premises retain the same type of retail liquor license within a license classification. [¶] (b) The licensed premises are operated continuously without substantial change in mode or character of operation...." (Italics added.) This statute was originally enacted in 1935. (*Town of Los Gatos v. State Bd. of*

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Equal.(1956) 141 Cal.App.2d 344, 346-347 [296 P.2d 909]; see Stats. 1935, ch. 330, § 15, p. 1130.) It prohibits the issuance of alcoholic beverage retail licenses for any premises located in a zone where the exercise of the rights conferred by that license would violate a valid local zoning ordinance, unless the premises had been used in the exercise of such rights before the effective date of the ordinance. (*Board of Trustees v. Munro* (1958) 163 Cal.App.2d 440, 447 [329 P.2d 765].)

(4) When reviewing the Oakland ordinance and section 23790, we must interpret both. Thus, the standard of review is one of de novo review. The construction of statutes and the ascertainment of legislative intent are questions of law. We are not limited by the trial court's interpretation, nor by the evidence presented on the issue in the trial court. (See *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 391-392 [20 Cal.Rptr.2d 164].)

B. *Grandfathered Rights*

1. *Legislative Argument*

(5) Preliminarily, CBRC contends that Oakland's role in the legislative history of section 23790 constitutes an admission that the city ordinance ***754** impermissibly regulates grandfathered alcoholic beverage sales establishments. [FN12] In 1982, the city proposed an amendment to section 23790 providing for the expiration of grandfather rights under certain circumstances. The proposed amendment would have provided for the expiration of grandfather rights when continuous use ended. It would also have distinguished between types of alcoholic beverage licenses when applications were submitted to the Department of Alcoholic Beverage Control to reopen discontinued alcoholic beverage sales establishments. The city's intent was to prevent beer-and-wine-only establishments from being upgraded to full scale liquor stores and retaining the prior owner's grandfather rights. Under the proposed amendment, the premises used in the exercise of an alcoholic beverage license before the enactment of a local zoning ordinance would continue in that operation only if the same type of retail license were used continuously at the same location. In that legislative session, the Legislature enacted a provision defining what constituted a break in the continuous operation of an alcoholic beverage sales establishment. (See § 23790, subd. (b) [now subd. (b)(1)], as amended by Stats. 1982, ch. 474, § 1, p. 2076.)

> FN12 Although, for convenience, we state this issue in terms of CBRC's objections to the ordinance, we do not mean to suggest that we believe that CBRC has the burden of proof on this or any other issue presented in the petition. As the moving party, the city has the obligation to prove that the ordinance passes muster.

Oakland officials explained that the purpose of the city's proposed amendment was "an attempt to adjust existing state law to allow the city to control the location of alcoholic beverage sales activities in a more logical and successful manner." In its letter urging the Legislature to amend section 23790, the city's legislative advocate stated that this statute provided that an establishment licensed before the effective date of a zoning ordinance would be unaffected by that zoning ordinance because of the establishment's grandfather rights. The letter added that "the state preempts local jurisdictions in the field of licensing alcoholic beverage establishments." CBRC contends that these 1982 arguments urging amendment of section 23790 contradict the city's claim that this statute does not preclude the application of the Oakland ordinance to grandfathered alcoholic beverage licensees. (See, e.g., *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 30-31 [46 Cal.Rptr.2d 44] [Judicial Council's earlier requests for legislative authority to enact rules counters present argument that no legislative authority is now needed].)

Having reviewed this matter carefully, we are satisfied that the issues are sufficiently distinct such that the city's previous position does not contradict its contentions in the present case. In 1982, the city advocated a ***755** general change in the language of section 23790 defining more clearly what constituted "continuous use" for purposes of determining whether the city had authority to regulate more alcoholic beverage sales establishments. Much of the "argument" that CBRC cites is the city's summary of the then existing law-little more than a paraphrase of the text of section 23790. The city and CBRC do not dispute what section 23790*says*, but what its language *means*-whether it applies at all in the context presented by this case.

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More importantly, the issues presented by the proposed legislation and the case at bar are significantly different. In 1982, the city sought a legislative amendment that would have allowed it more authority to limit the number and location of alcoholic beverage *licenses* issued within certain zones in the city. In the ordinance now before us, the city attempts to create an *administrative mechanism* to regulate nuisance and criminal activities that occur near alcoholic beverage sales establishments. This ordinance does not affect alcoholic beverage licenses or attempt to limit or restrict them. (See pt. IV. B.-D., *post.*) The city's recitation of the text of a statute in the context of a request for legislative clarification that some alcoholic beverage establishments should no longer be entitled to the protection of grandfather status does not shed any light on the issue presented in our case-whether the new administrative mechanism may properly be applied to alcoholic beverage sales establishments that have been in continuous operation since before the ordinance was enacted. Thus, we conclude that the city's earlier statements on an unrelated issue do not preclude it from making the arguments that it now does in favor of its interpretation of section 23790.

2. *Nuisance and Criminal Activities Control*

(3b) The city contends that the ordinance merely creates an administrative mechanism for enforcing nuisance and criminal laws that are applicable to all alcoholic beverage establishments, even those in operation before the ordinance's effective date. CBRC couches the issue somewhat differently-it argues that the Oakland ordinance creates a mechanism in the form of a retroactive land use ordinance that may result in the denial of the right to sell alcoholic beverages. As we have already concluded, the purpose of this ordinance is to control and abate nuisances and criminal activities occurring near alcoholic beverage sales establishments. (See *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 389 [no invasion of state power to regulate alcohol sales]; see pt. IV. D., *post.*) Thus, we begin our legal analysis of the applicability of section 23790 by considering this purpose.

By ordinance, a city council may declare what constitutes a nuisance. (Gov. Code, § 38771.)A city may bring an action to abate a public nuisance.*756 (Code Civ. Proc., § 731.)The California Supreme Court permits the abatement of even a grandfathered business if it constitutes a nuisance. In one case, the high court reasoned that zoning laws do not customarily interfere with existing conditions, but regulate future use of land. However, if a business constitutes a nuisance, it can still be abated in a proper exercise of the police power. (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 311 [295 P. 14].) In another, it reaffirmed that the right to continue a previously existing lawful business may be revoked if the business is found to be a nuisance. The abatement of such an existing business would be a lawful exercise of the police power, the court ruled. (*Livingston Rock etc. Co. v. County of L. A.* (1954) 43 Cal.2d 121, 128 [272 P.2d 4].) In a third case, the Supreme Court ruled that a city may determine what constitutes a nuisance and may take action to abate such a nuisance, despite the fact that the safety standards that had been incorporated in a building code sought to be enforced was enacted after construction of the building. (See *City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 96, 100 [48 Cal.Rptr. 889, 410 P.2d 393],cert. den.384 U.S. 988 [16 L.Ed.2d 1005, 86 S.Ct. 1890].)

These cases support the conclusion that a city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. (See *Livingston Rock etc. Co. v. County of L. A.*, *supra*, 43 Cal.2d at p. 128;*Jones v. City of Los Angeles*, *supra*, 211 Cal. at p. 311; see also *City of Bakersfield v. Miller*, *supra*, 64 Cal.2d at pp. 96, 100;*Suzuki v. City of Los Angeles* (1996) 44 Cal.App.4th 263, 277-281 [51 Cal.Rptr.2d 880].) If a city may abate a public nuisance despite grandfather rights, then a fortiori a municipality may enforce criminal laws in the face of such a claim of prior existing lawful operation.

CBRC counters that while these cases may support the city's authority to abate a public nuisance or control criminal activities, they did not arise in a context of a zoning ordinance enacted in violation of section 23790. It contends that section 23790 overrides the city's police powers. We disagree. Construing section 23790, it appears to us that the Legislature intended that this provision protect the vested rights of the proprietors of premises engaged in the lawful, licensed sale of alcoholic beverages. Such a business

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has acquired by the passage of time a vested right to continue in operation to lawfully dispense alcoholic beverages. However, for CBRC's challenge to the ordinance to succeed, we must also read this provision to mean that the Legislature intended that a licensed alcoholic beverage establishment retains a vested right to conduct its operation in a manner that encourages nuisance or criminal activities to occur on or near its premises. ***757**

Such a conclusion defies logic. (6) We must construe the statute in a reasonable, commonsense manner consistent with the Legislature's apparent purpose and intent, the application of which will promote wise policy, not absurdity. (See *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722]; see also 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 94, pp. 146-148.) (3c) To interpret the concept of grandfather rights so far as to allow long-time businesses the freedom to conduct their operations in a manner that promotes nuisances and criminal activities would be absurd. A limited view of grandfather rights is also consistent with wise policy. As another court held when reviewing the applicability of grandfather rights under section 23790 in a different context, it makes sense for the number and type of events allowing nonconforming uses to avoid compliance with updated codes to be narrow and limited. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 397.)

Nevertheless, CBRC urges us to find that section 23790 invalidates the ordinance because its enforcement may ultimately lead to a loss of a state-issued license to sell alcoholic beverages. However, the city ordinance does not halt operation of a licensed alcoholic beverage establishment. If an alcoholic beverage sales establishment fails to comply with the requirements of the ordinance after numerous administrative attempts to obtain compliance, the ordinance authorizes the city to seek a court order to abate a nuisance or to ask the Department of Alcohol Beverage Control to revoke the license. The city already has *this* authority-independent of this ordinance-which it may use in appropriate cases in the proper exercise of its police power. The ordinance does not create any *new* authority empowering the city to halt operation of an alcoholic beverage sales establishment premises. It merely creates an administrative mechanism that may result in a third party taking action against the alcoholic beverage seller-abatement by a court or license revocation by the Department of Alcoholic Beverage Control.

In sum, we find that the conduct that is regulated by the ordinance-the control and abatement of nuisances and criminal activities-does not fall within the ambit of section 23790. A municipality retains the right to abate nuisances and enforce its criminal laws even in the face of grandfather rights. No business-not even an alcoholic beverage sales establishment regulated by state law-has a vested right to conduct its business in a ***758** manner that attracts public nuisances and encourages criminal activities near its premises. [FN13]

> FN13 We are aware that other courts have analyzed the question of violation of section 23790 as a preemption question. (See *Suzuki v. City of Los Angeles*, *supra*, 44 Cal.App.4th at pp. 266, 281;*Boccato v. City of Hermosa Beach*, *supra*, 29 Cal.App.4th at p. 1807;*Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 394.) However, our conclusion that the city's authority to control and abate nuisances and criminal activities exists despite any grandfather rights makes it unnecessary for us to also consider whether the ordinance is preempted by section 23790. Clearly, if the statute does not preclude the city's use of its authority to control and abate nuisances and criminal activities, the state statute would not preempt this ordinance.

C. *Conclusion*

The trial court erred in concluding that CBRC was entitled to a summary adjudication on the second cause of action for declaratory and injunctive relief based on its claim of illegal regulation in violation of section 23790. As the ordinance does not violate this statute, the city is entitled to summary adjudication on the second cause of action.

IV. Constitutional Claim

A. *Article XX, Section 22*

The city also contends that the trial court erred in

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granting CBRC summary adjudication on its third cause of action because it wrongly concluded that the ordinance's fees constitute an unlawful taxation. The third cause of action sought declaratory and injunctive relief, alleging unlawful taxation in violation of section 22 of article XX of the California Constitution. The trial court held that the fees imposed pursuant to the ordinance violated article XX, section 22 of the California Constitution. In its response to the city's petition for writ of mandate, CBRC contends that the $600 annual fee and the subsequent fees constitute unlawful license fees. Amici curiae Beer Institute of California, California Beer and Wine Wholesalers Association, Inc., and Wine Institute filed an amicus curiae brief in support of CBRC.

The Constitution provides that "[t]he State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the ... sale ... of alcoholic beverages within the State .... [¶] ... [¶] The Department of Alcoholic Beverage Control shall have the exclusive power ... to license the ... sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof...." (Cal. Const., art. XX, § 22; see *Board of Trustees v. Munro*, *supra*, 163 Cal.App.2d at p. 445.) This provision of the ***759** state Constitution took effect in 1933 when the Twenty-first Amendment to the United States Constitution took effect. (*City of Rancho Cucamonga v. Warner Consulting Services, Ltd.* (1989) 213 Cal.App.3d 1338, 1343 [262 Cal.Rptr. 349].) While it originally granted municipalities the right to license the manufacture, disposition or sale of alcoholic beverages, article XX, section 22 was amended in 1934 to delete this authority. (*L. A. Brewing Co. v. Los Angeles* (1935) 8 Cal.App.2d 391, 394 [48 P.2d 71].)

B. *License Tax*

The trial court concluded that the state Constitution precluded all city taxation applying solely to alcoholic beverage licensees. Specifically, it found that "there is no precedent in the area of alcoholic beverage law to allow for a municipality to impose a fee solely on sellers of alcoholic beverages because of the nature of their business." (7) On the petition for mandamus relief, the city first contends that the fees imposed by its ordinance do not constitute a license tax. It argues that the ordinance's fees are not imposed as a condition to the issuance of a license, but are required to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments.

The California Constitution grants the state Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. (Cal. Const., art. XX, § 22.)Liquor licenses are not subject to local license or occupation taxes. (*Roehm v. County of Orange* (1948) 32 Cal.2d 280, 290-291 [196 P.2d 550].) The Oakland ordinance does not require the payment of a fee on the issuance of a license. It grants deemed approved status to existing alcoholic beverage retailers and requires them to pay a fee to administer the enforcement of the ordinance's requirements. (Oakland Planning Code, §§ 15400, 15510(f).)

Courts distinguish between municipal revenue taxes that may be preempted by state law and fees properly imposed by a city pursuant to its regulatory authority to control and supervise a business that imposes an unusual burden on the local entity for services. For example, in one case, a city imposed a permit fee on house movers. State law specifically prohibits any municipal *license fee* to be imposed on intercity transportation. Despite this statute, the appellate court upheld the ordinance requiring the fee. The court found that purpose of the fee was to pay city inspection and administrative costs associated with house moving. The amount of the fee was based on reasonably anticipated costs of inspection and administration of the permitted house moving activities. Thus, the court concluded that the ordinance was a regulatory one and that the fee imposed was not preempted by ***760** the prohibition on license fees. (*Housemoving Contractors Assn. v. City of Glendale* (1981) 123 Cal.App.3d 673, 675 [176 Cal.Rptr. 751]; see Pub. Util. Code, §§ 4303, 4304.)

We find this precedent persuasive in our own case. CBRC's criticism of this case on the ground that the license tax prohibition in *Housemoving Contractors Assn. v. City of Glendale*, *supra*, 123 Cal.App.3d 673 was statutory rather than constitutional strikes us as a distinction without a difference. A state statute, like a state constitutional provision, would prevail over a local ordinance if a conflict occurred. (See *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290 [219 Cal.Rptr. 467, 707 P.2d 840] [local legislation in con-

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flict with general law is void]; *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 384.) Both state laws specifically prohibit municipal license taxes. If the house moving fee does not constitute a license tax, neither does the fee imposed pursuant to Oakland's ordinance.

Nevertheless, CBRC and its amici curiae urge us to conclude that because the failure to pay the required fee may result in summary abatement and loss of the privilege of engaging in business, the fee constitutes a license tax. Neither abatement nor loss of the privilege of doing business will occur unless a court orders abatement or the Department of Alcoholic Beverage Control revokes the business's state-issued liquor license. (See §§ 24200-24211; Civ. Code, §§ 3490-3496; Oakland Planning Code, § 15510(c).) That the ultimate result of a failure to pay the city's required fee might be abatement or revocation of the state liquor license does not transform a regulatory fee to a license tax. Thus, we find that the ordinance's fees do not constitute an impermissible license tax.

C. *Tax or Fee*

(8a) The trial court impliedly concluded that the ordinance's fees constituted a tax on alcoholic beverage retailers. In its next claim in support of its petition for mandate, the city contends that the fees imposed pursuant to the ordinance are not taxes at all, but proper regulatory fees imposed without violating article XX, section 22 of the California Constitution. CBRC counters by arguing that the fee is a impermissible revenue-generating measure-that is, a tax disguised as a fee.

(9) The state Constitution grants the state Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales. (Cal. Const., art. XX, § 22; see *Board of Trustees v. Munro*, *supra*, 163 Cal.App.2d at p. 445.) A local tax on alcoholic beverage sales is preempted by state law. ***761** (*A.B.C. Distributing Co. v. City and County of San Francisco* (1975) 15 Cal.3d 566, 575 [125 Cal.Rptr. 465, 542 P.2d 625]; see *Century Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 626 [87 Cal.Rptr. 166] [5 percent local excise tax on alcoholic beverage sales held illegal].) However, alcoholic beverages retailers may properly be required to pay their fair share of the cost of government. (*Id.* at p. 626.)If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers. (See, e.g., *Housemoving Contractors Assn. v. City of Glendale*, *supra*, 123 Cal.App.3d at p. 675;*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165-166 [154 Cal.Rptr. 263].) A local entity may not impose a tax on alcoholic beverage retailers under the guise of a fee. (See Cal. Const., art. XX, § 22.) Thus, we must determine whether the Oakland ordinance's fees are regulatory or are hidden taxes intended to generate unrelated revenue for the city.

The determination of whether the actual purpose of an ordinance is regulatory or revenue raising is a question of fact. (*United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165.) In the trial court, the parties posed no factual issues to be resolved, only legal questions. In its order granting summary adjudication, the trial court recited that the parties did not dispute that the fees generated revenue to fund the ordinance's programs. As the meaning of this recitation is somewhat ambiguous on this issue, we will consider how courts factually distinguish a fee from a tax.

(10) To determine whether the purpose of the ordinance is regulatory or revenue generating, the court looks to the substantive provisions of the ordinance, not merely its title and form. If revenue is the primary purpose of the ordinance and regulation is merely incidental, then the imposition is a tax. If regulation is the primary purpose, the mere fact that incidental revenue is also obtained does not make the imposition a tax. Generally, when a fee is imposed for a regulatory purpose and the ordinance requires compliance with conditions in addition to the payment of the prescribed sum, the imposed sum is a not a tax, but is a fee properly imposed pursuant to the local entity's police power. When the sum is exacted solely for a revenue purpose and its payment gives the right to carry on the business without any further condition, it is a tax. (See *United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165; see also *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 473 [211 P.2d 564] [regardless of formal title, character of tax determined by its incidents and from natural and legal effect of zoning ordinance language].)

Fees charged in connection with regulatory activities that do not exceed the reasonable costs of providing

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services necessary to the activity for which *762 the fee is charged and which are not levied for unrelated revenue purposes do not constitute a tax. (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111]; *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1146 [250 Cal.Rptr. 420].) Generally, a regulatory fee cannot exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought. These costs include all those incident to the issuance of the permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement. (*United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165.) The municipality need only apply sound judgment and consider probabilities according to the best honest view of informed officials in setting the amount of the regulatory fee. (*Id.* at p. 166.)

(11) To establish that a fee is a regulatory fee and not a tax, the local entity should prove the estimated costs of the regulatory activity and the basis for determining the manner in which the costs are apportioned, so that the charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.*, *supra*, 203 Cal.App.3d at p. 1146.) It is not necessary that the payor perceive the regulation to be a benefit. A regulatory fee may be imposed pursuant to the local governmental entity's police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. (*Id.* at p. 1146 fn. 18.)

(8b) In our case, city documents show that the annual operating budget for the program would be recovered in fees charged to alcoholic beverage retail establishments pursuant to the ordinance. Reinspection fees would be charged only to establishments that were found not to be in compliance with the terms of the ordinance. The estimated revenues derived from the fees match the program's proposed budget. The Oakland ordinance's revenue is intended to pay the administrative costs of its programs. [FN14] The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed pursuant to the ordinance is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. (See, e.g., *Pennell v. City of San Jose*, *supra*, 42 Cal.3d at p. 375.) *763

FN14 At trial, the parties agreed that the fees generated revenue to fund the ordinance's programs.

D. *Regulatory Fee Applied Solely to Alcoholic Beverage Retailers*

(12a) The trial court concluded that there was no precedent to allow a city to impose a fee on alcoholic beverage retailers because of the nature of their business. It impliedly agreed with CBRC's argument that the ordinance improperly singled out alcoholic beverage retailers. It its petition for writ of mandate, the city argues that the trial court erroneously concluded that the state Constitution prohibits a municipality from imposing a fee on alcoholic beverage establishments. CBRC counters that the trial court's ruling was correct because the fee was levied only against alcoholic beverage licensees. The city argues that a regulatory fee may be lawfully imposed on alcoholic beverage sales establishments.

As CBRC contends in its opposition to the petition for writ of mandate, a tax that singles out alcoholic beverage retailers is suspect. (*A.B.C. Distributing Co. v. City and County of San Francisco*, *supra*, 15 Cal.3d at p. 575.) However, we have already concluded that the ordinance requires the payment of a regulatory fee, not a tax of any kind. (See pt. III. B., C., *ante*.)To the extent that this suspect character also applies to regulatory fees, we note that to label a fee as "suspect" does not compel the finding that the fee is prohibited. As with other businesses, alcoholic beverage establishments may properly be required to pay their fair share of the cost of government. (See *Century Plaza Hotel Co. v. City of Los Angeles*, *supra*, 7 Cal.App.3d at p. 626.) That the fee will probably be paid from revenue derived at least in part from the sale of alcoholic beverages creates only an indirect burden on an alcoholic beverage retailer-one that is insufficient to nullify the otherwise proper imposition of a regulatory fee. (See *A.B.C. Distributing Co. v. City and County of San Francisco*,*supra*, at p. 575 [tax case].)

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CBRC does not dispute that the city may properly regulate nuisance and criminal activities through its exercise of its police power, but it argues that these police powers are overridden by article XX, section 22 of the California Constitution, when the regulation involves alcoholic beverages. Thus, the issue is whether a local entity's authority to regulate alcoholic beverage sellers properly derives from the city's police power under article XI, section 7 of the California Constitution. (See *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d 1338, 1345.) A local entity's authority to regulate state-licensed alcoholic beverage retailers derives solely from its general police powers. (*Id.* at pp. 1343, 1345.)A city's police powers are as broad as the police power that may be exercised by the Legislature itself. However, in its proper exercise of its police powers, the city may not also violate article XX, section 22. (213 Cal.App.3d at pp. 1344-1345.)
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Article XX, section 22 of the California Constitution gives the state Department of Alcohol Beverage Control exclusive jurisdiction to regulate alcohol. (*Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 385.) If the purpose and effect of the city ordinance is to regulate the manufacture, sale, purchase, possession or transportation of alcoholic beverages, the legislation is expressly preempted by the state Constitution. (*Ibid.*;*Floresta, Inc. v. City Council* (1961) 190 Cal.App.2d 599, 606-607 [12 Cal.Rptr. 182].) For example, an express prohibition of the sale of alcoholic beverages at automobile service stations conflicts with article XX, section 22. (*Mussalli v. City of Glendale* (1988) 205 Cal.App.3d 524, 528 [252 Cal.Rptr. 299]; see § 23790.5 [by legislative enactment, local entities may now regulate alcoholic beverage sales at service stations].) Despite this constitutional prohibition, the state Legislature has expressed its intent that local entities-not the state-control local matters. (*Jon-Mar Co. v. City of Anaheim* (1962) 201 Cal.App.2d 832, 837 [20 Cal.Rptr. 350].) The resolution of the issue before us turns on whether the Oakland ordinance trods on the state's regulatory power or falls within local authority.

Courts have recognized that local regulation of alcoholic beverage retailers may be properly within the local entity's police powers without violating section 22 of article XX of the California Constitution. Generally, this constitutional provision will not preempt a local ordinance when the ordinance does not directly affect the licensee's ability to sell alcoholic beverage to a willing purchaser. (*California Restaurant Assn. v. City of Los Angeles* (1987) 192 Cal.App.3d 405, 411 [237 Cal.Rptr. 415] [local ordinance requiring posting of notice warning of alcohol effects on pregnant women was not preempted by Constitution]; see *Daniel v. Board of Police Commissioners* (1961) 190 Cal.App.2d 566, 570-571 [12 Cal.Rptr. 226],overruled on other grounds in *Burton v. MunicipalCourt* (1968) 68 Cal.2d 684, 693 [68 Cal.Rptr. 721, 441 P.2d 281] [prohibition of live entertainment at alcoholic beverage establishment does not interfere with licensee's right to sell alcoholic beverages].) The Legislature did not intend that a person licensed to sell alcoholic beverages should be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. (*Id.* at p. 570.)

For example, the California Supreme Court has held that local ordinances may properly regulate live entertainment in taverns while leaving intact the state's jurisdiction to license the sale of alcoholic beverages. The two types of regulations were held to be independent and distinct. Thus, ordinances relating to live entertainment do not conflict with the state's powers over the ***765** sale of alcoholic beverages. (*Crownover v. Musick* (1973) 9 Cal.3d 405, 417-418 [107 Cal.Rptr. 681, 509 P.2d 497], cert. den. *subnom.Reynolds v. City of Sacramento,* 415 U.S. 931 [39 L.Ed.2d 489, 94 S.Ct. 1443]; *Owen v. Musick,* 415 U.S. 931 [39 L.Ed.2d 489, 94 S.Ct. 1443],disapproved on another point in *Morris v. Municipal Court* (1982) 32 Cal.3d 553, 564-565 [186 Cal.Rptr. 494, 652 P.2d 51].) In another case, an appellate court concluded that a municipality retains the constitutional right to enforce a zoning ordinance that does not permit a cocktail lounge in a shopping center without a use permit. This prerogative was held not to have been preempted by the state's generalized regulation of alcohol sales. (See *Floresta, Inc. v. City Council*, *supra*, 190 Cal.App.2d at pp. 612-613.) In a third case, another appellate court upheld a local ordinance prohibiting persons possessing, using, consuming or under the influence of alcohol from entering or remaining in a modeling studio adjacent to an alcoholic beverage retail establishment. The court found that the ordinance did not attempt to invade the exclusive power given to the state pursuant to article

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XX, section 22 of the state Constitution to license, regulate or prohibit the sale of alcoholic beverages. (See *Cristmat, Inc. v. County of Los Angeles* (1971) 15 Cal.App.3d 590, 594-598 [93 Cal.Rptr. 325]; see also *Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.) Courts upheld these ordinances because their purpose was properly related to the police powers, distinct from the direct regulation of alcoholic beverage licensees.

CBRC characterizes the Oakland ordinance as a regulation of alcoholic beverage retailer sellers. However, the purpose of the ordinance determines the issue before us. (See *Daniel v. Board of Police Commissioners*, *supra*, 190 Cal.App.2d at p. 571 [purpose of ordinance was to regulate live entertainment furnished in restaurants and cocktail lounges; local ordinance did not violate Cal. Const., art. XX, § 22].) To paraphrase one of these cases, the city may regulate nuisances and criminal activity pursuant to its police power. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of the city's police power. The regulation is not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities. (See *Cristmat, Inc. v. County of Los Angeles*, *supra*, 15 Cal.App.3d at pp. 595-596 [under art. XX, § 22, ordinance may regulate floor shows in places of public entertainment where alcoholic beverages are served]; see also *Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.) We are satisfied that the ordinance's purpose is the regulation of nuisance and criminal activity-a subject independent and distinct from the regulation of alcoholic beverage sales. Thus, the ordinance does not conflict with the state's authority to regulate alcoholic beverage sales. (See ***766** *Crownover v. Musick*, *supra*, 9 Cal.3d at pp. 417-418; see also *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d at pp. 1343-1344;*Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.)

Our conclusion is consistent with a recent decision of the Second Appellate District holding that the revocation requirements of a similar ordinance did not invade the state's exclusive power to regulate alcohol sales pursuant to article XX, section 22 of the California Constitution. In *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th 376, the city required a conditional use permit for all establishments selling alcoholic beverages. Uses in existence before the operative date of the specific plan requiring a conditional use permit were deemed to be approved conditional use permits. (*Id.* at p. 382.)After fire destroyed businesses in South Central Los Angeles, alcoholic beverage establishments seeking to rebuild were required to comply with the specific plan. Typically, the conditions imposed before rebuilding would be permitted were for the owner to agree to remove graffiti promptly, provide adequate lighting, remove trash, provide a security guard and limit hours of operation. (*Id.* at pp. 382-383.)In addition, the city instituted revocation hearings to revoke or condition an owner's deemed approved status or use permit if the business threatened to become, or became, a nuisance or a law enforcement problem. (*Id.* at p. 383.)

The appellate court found that the Los Angeles ordinance at issue in that case constituted a valid exercise of the city's police powers to control and abate nuisances under article XI, section 7 of the state Constitution. (*Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 389.) It ruled that the city was not preempted by article XX, section 22 from exercising land use control over businesses licensed to sell alcoholic beverages. (23 Cal.App.4th at pp. 384, 389-390.) Although it acknowledged the state's exclusive jurisdiction to regulate alcoholic beverage sales, the court concluded that the ordinance did not directly regulate alcoholic beverage licensees. (*Id.* at p. 388.)It found that the ordinance was not expressly preempted by the state Constitution, that it did not duplicate or contradict state law, and that the statutory scheme codified in the Alcoholic Beverage Control Act did not evidence an intent to occupy the field by implication. (*Id.* at pp. 390-394; see §§ 23000-25762.) *Korean American*'s preemption analysis differs somewhat from ours, but our conclusion is the same-that a city in the exercise of its police powers may undertake to control nuisances occurring near alcoholic beverage sales establishments, without violating the state's exclusive power to regulate the sale of alcoholic beverages. (See 23 Cal.App.4th at pp. 384-394.) ***767**

The policy reason for the distinction between a city's improper direct regulation of alcoholic beverage sales and its appropriate use of its police powers applying to alcoholic beverage sales establishments is well established. (13) As the California Supreme Court

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has ruled, local governments have a legitimate need to address problems generated by business involvement in activities that may be inimical to the health, welfare and safety of the community. (*Cohen v. Board of Supervisors*, *supra*, 40 Cal.3d at p. 298.) State requirements may be inadequate to meet the demands of densely populated cities. Thus, it becomes proper and necessary to add to state regulations those provisions adapted to the city's special requirements.(*Ibid.*;*Daniel v. Board of Police Commissioners*, *supra*, 190 Cal.App.2d at p. 571; see *Bravo Vending v. City of Rancho Mirage*, *supra*, 16 Cal.App.4th at p. 411.) For this reason, a local entity may properly determine that a particular business fosters, profits from and provides an environment for activities proscribed by state law. For example, an ordinance is not transformed into a statute prohibiting crime simply because the city uses its police powers to discourage illegal activities associated with certain businesses. Many regulatory ordinances have a direct impact on the enforcement of state laws that have been enacted to preserve the health, safety and welfare of state and local citizens. This fact does not deprive a local entity of the power to enact them. (See *Cohen v. Board of Supervisors*,*supra*, at pp. 298-299 [licensing ordinance case].) (12b) The legislative history of the ordinance shows that there are substantial geographic, economic or other distinctions that persuade us of the need for local control. (See *id.* at p. 300.) [FN15]

FN15 The record reveals that the application of this ordinance to alcoholic beverage retailers alone was not unreasonable, given the high level of nuisance and criminal activity occurring near these establishments. Oakland's deputy chief of police testified about the proliferation of complaints about nuisance and criminal activities occurring around alcoholic beverage retail sales establishments. He opined that these activities constituted a blight on the neighborhoods where these alcoholic beverage establishments were located and served as a magnet for crime and neighborhood decay. He also stated that the number of police responses around alcoholic beverage establishments was disproportionately high when compared to police activity around adult entertainment facilities, gun dealer outlets, fast food restaurants or gas stations. Nuisance problems associated with alcoholic beverage retailers had risen over several years before the ordinance's enactment and the deputy chief opined that the program established by the ordinance would "... 'significantly mitigate the negative impacts that many of these establishments have on the community.' "

E. *Federal Bar*

(14) For its part, CBRC challenges the city's authority under the Twenty-first Amendment to the United States Constitution to tax sellers of alcoholic beverages. (U.S. Const., Amend. XXI.)The trial court found only ***768** that the ordinance violated the state Constitution; it did not rule on whether the ordinance also violated the federal Constitution. The Twenty-first Amendment grants the state authority to tax and regulate liquor licensing, although the state may delegate that authority to local entities. (*City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d at pp. 1342-1343). We have concluded that the ordinance imposes a regulatory fee, not a tax. (See pt. IV. B.-D., *ante*.)As the state Constitution does not prohibit the ordinance's regulatory fees, the state has impliedly delegated to municipalities the power to impose such fees. Thus, we are satisfied that the ordinance does not violate the Twenty-first Amendment.

F. *Conclusion*

The trial court erred in concluding that CBRC was entitled to a summary adjudication on the third cause of action for declaratory and injunctive relief, based on its claim of unlawful taxation in violation of section 22 of article XX of the California Constitution. As the ordinance does not violate this provision of the state Constitution, the city is entitled to summary adjudication on the third cause of action.

V. Remittitur

Let a peremptory writ of mandate issue directing the Superior Court of Alameda County to vacate its order of January 5, 1995, granting CBRC summary adjudication on the second and third causes of action, and to enter a new order denying CBRC's motion and granting summary adjudication on these two causes of action in favor of the city.

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Anderson, P. J., and Poché, J., concurred.

A petition for a rehearing was denied June 17, 1996, and the petition of real parties in interest for review by the Supreme Court was denied August 14, 1996. ***769**

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H

Court of Appeal, Fourth District, Division 2, California.
CITY OF RANCHO CUCAMONGA, Plaintiff and Appellant,
v.
REGIONAL WATER QUALITY CONTROL BOARD-SANTA ANA REGION et al., Defendants and Respondents;
County of San Bernardino et al., Real Parties in Interest and Respondents.
No. E037079.

Jan. 26, 2006.
As Modified Feb. 27, 2006.

Background: Cities filed petitions for writs of mandate to challenge the procedure by which municipal storm sewer permit was issued by regional water quality control board, the conditions imposed by permit, and the expense of permit requirements. The Superior Court, San Bernardino County, No. RCV 071613, Shahla Sabet, J., sustained without leave to amend the demurrer of State Water Resources Control Board to entire action, sustained demurrer as to four causes of action and granted motion to strike of the regional board, and denied petition for writ of mandate. City appealed.

Holdings: The Court of Appeal, Gaut, J., held that:
(1) State Water Resources Control Board was not a proper party in lawsuit;
(2) regional water quality control board could move to strike less than all causes of action;
(3) substantial evidence supported regional water quality control board's findings in issuing permit; and
(4) permit requirements were not overly prescriptive.

Affirmed.

West Headnotes

[1] Environmental Law 149E 657

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases

State Water Resources Control Board (State Board) was not a proper party in lawsuit filed by two cities against State Board and Regional Water Quality Control Board, challenging the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements; permit was issued by regional board rather than state board, allegations failed to articulate any improper State Board conduct, and, challenge was barred by statute of limitations. West's Ann.Cal.Gov.Code § 11350; West's Ann.Cal.Water Code § 13330.

[2] Mandamus 250 168(2)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k168 Evidence
250k168(2) k. Presumptions and Burden of Proof. Most Cited Cases
In exercising its independent judgment in deciding a petition for writ of mandate, a trial court must afford a strong presumption of correctness concerning administrative findings; since the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings.

[3] Mandamus 250 187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases
On appeal from the trial court's decision on a petition for writ of mandate, the reviewing court determines whether substantial evidence supports the trial court's factual determinations.

[4] Mandamus 250 187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review

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250k187.9(1) k. Scope and Extent in General. Most Cited Cases
On appeal from the trial court's decision on a petition for writ of mandate, the trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations.

[5] Environmental Law 149E 666

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek666 k. Preservation of Error in Administrative Proceeding. Most Cited Cases
In city's challenge to procedure by which municipal storm sewer permit was adopted, to conditions imposed by permit, and to expense of permit requirements, city waived its objections to the administrative record, and to specific pieces of evidence, by not making such objections before or at the time of the administrative hearing; city was given notice that the hearing on the permit would proceed as an informal administrative adjudication, and it could not claim that it was relieved of the obligation to object to the administrative record at the time of the hearing. West's Ann.Cal.Gov.Code § 11445.10 et seq.

[6] Administrative Law and Procedure 15A 108

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak103 Status and Character
15Ak108 k. Quasi-Judicial. Most Cited Cases
The exercise of discretion to grant or deny a license, permit, or other type of application is a quasi-judicial function.

[7] Environmental Law 149E 673

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek673 k. Pleading, Petition, or Application. Most Cited Cases
Defendant regional water quality control board could move to strike less than all causes of action filed in suit cities to challenge the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements, inasmuch as trial court had authority to strike only part of pleading. West's Ann.Cal.C.C.P. §§ 431.10, 436.

[8] Environmental Law 149E 230

149E Environmental Law
149EV Water Pollution
149Ek227 Evidence
149Ek230 k. Weight and Sufficiency. Most Cited Cases
Substantial evidence supported regional water quality control board's findings in issuing municipal storm sewer permit; board adopted recommendations of its staff, which were based on previous permits and other reports, and which established that board did not simply copy similar permit for other counties.

[9] Administrative Law and Procedure 15A 489.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak489 Decision
15Ak489.1 k. In General. Most Cited Cases

Administrative Law and Procedure 15A 791

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 k. Substantial Evidence. Most Cited Cases
An agency may rely upon the opinion of its staff in reaching decisions, and the opinion of staff may constitute substantial evidence.

[10] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

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Municipal storm sewer permit issued by regional water quality control board did not violate Clean Water Act by failing to include "safe harbor" provisions providing that, if permittee was in full compliance with permit conditions, it could not be found in violation of Clean Water Act; there was no statutory right to a "safe harbor" provision to be included as a term of the permit, and, in any event, such protection was already included in the Act. Clean Water Act, § 402(k), 33 U.S.C.A. § 1342(k).

[11] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

Requirements contained in municipal storm sewer permit issued by regional water quality control board were not overly prescriptive and did not illegally dictate the manner of compliance; the federal Clean Water Act authorized imposition of permit conditions, and the permitting agency had discretion to decide what practices, techniques, methods, and other provisions were appropriate and necessary to control the discharge of pollutants. Clean Water Act, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 892-896; Cal. Jur. 3d, Pollution and Conservation Laws, § 124 et seq.

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Bill Lockyer, Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Richard Magasin, Supervising Deputy Attorney General, and Jennifer F. Novak, Deputy Attorney General, for Defendants and Respondents.

***1379** OPINION

GAUT, J.

1. *Introduction*

This case involves environmental regulation of municipal storm sewers that carry excess water runoff to the Santa Ana River as it passes through San Bernardino County on its way to the Pacific Ocean. Federal and state laws impose regulatory controls on storm sewer discharges. Municipalities are required to obtain and comply with a federal regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems.

In this instance, the Regional Water Quality Control Board for the Santa Ana Region (the Regional Board) conducted public hearings and then issued a comprehensive 66-page municipal storm sewer permit governing 18 local ***1380** public entities. Two permittees, the City of Rancho Cucamonga and the City of Upland, among others, filed an administrative appeal with the State Water Resources Control Board (the State Board.) The State Board summarily dismissed the appeal. The Cities of Rancho Cucamonga and Upland [FN1] then filed a petition for writ of mandate and complaint against the State Board and the Regional Board.

FN1. Upland is not a party to this appeal.

The trial court sustained without leave to amend the demurrer of the State Board to the entire action. It sustained the demurrer as to four causes of action and granted the motion to strike of the Regional Board. After a hearing, the trial court denied the petition for writ of mandate.

Both procedurally and substantively, the City of Rancho Cucamonga challenges the conditions imposed by the NPDES [FN2] Permit and Waste Discharge Requirements (the 2002 permit). It contends the procedure by which the 2002 permit was adopted was not legal, that the 2002 permit's conditions are not appropriate for the area, and that the permit's requirements are too expensive. Because we conclude the permit was properly adopted and its conditions and requirements are appropriate, we reject these contentions.

FN2. The National Pollutant Discharge Elimination System.

2. *The National Pollutant Discharge Elimination System*

California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer

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discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862(*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128(*Building Industry*); *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76(*Communities*); *WaterKeepers Northern California v. State Water Resources Control Board* (2002) 102 ****453** Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389(*WaterKeepers*)).

For purposes of this case, the important point is described by the California Supreme Court in *Burbank:* "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* [(1992) 503 U.S. ***1381** 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.]) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)" (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)

As discussed more fully in part 6 below, the state-issued NPDES permits are subject to the informal hearing procedures set forth for administrative adjudications. (Gov.Code, § 11445.10 et seq.; Cal.Code Regs., tit. 23, § 647 et seq.) The issuance of permits is specifically excluded from the procedures for administrative regulations and rulemaking. (Gov.Code, §§ 11340 et seq., 11352.)

3. *Factual and Procedural Background*

The Regional Board issued the first NPDES permit for San Bernardino County in 1990. The principal permittee was the San Bernardino Flood Control District (the District). The 1990 permit required the permittees to develop and implement pollution control measures, using "best management practices" and monitoring programs, to eliminate illegal discharges and connections, and to obtain any necessary legal authority to do so. The management programs could be existing or new.

In 1993, the District developed the NPDES Drain Area Management Program (DAMP).

The second NPDES permit was issued in 1996 and was based on the Report of Waste Discharge (ROWD) prepared by the principal permittee and co-permittees, including Rancho Cucamonga. The 1996 permit proposed extending the existing program, which included inspections of industrial and commercial sources; policies for development and redevelopment; better public education; and implementation of a monitoring program. It offered a commitment to reduce pollutants to the "maximum extent practicable."

In 2000, the permittees submitted another ROWD to renew their NPDES permit. The 2000 ROWD proposed continuing to implement and develop water quality management and monitoring programs.

***1382** Based on the 2000 ROWD, the Regional Board staff created five successive drafts of the 2002 permit, incorporating written comments by Rancho Cucamonga and others and comments made during two public workshops. Some of the comments addressed the economic considerations of anticipated prohibitive compliance costs.

The notice of the public hearing to consider adoption of the 2002 permit hearing ****454** announced: "relevant Regional Board files are incorporated into the record;" the governing procedures were those for an informal hearing procedure as set forth in "Title 23, California Code of Regulations, Section 647 et seq.;" and "Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq.," the alternative formal hearing procedure for administrative adjudication. The notice was

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mailed to all permittees. The accompanying "fact sheet," which was publicly circulated, offered further information about the conduct and nature of the hearing and the legal and factual grounds for the Regional Board's recommendation to adopt the 2002 permit.

The informal public hearing was conducted on April 26, 2002. Neither Rancho Cucamonga nor any of the permittees objected to the form or substance of the hearing. Ultimately, after a staff presentation and testimony, including a statement from Rancho Cucamonga's counsel, the Regional Board adopted the 2002 permit. After the State Board dismissed their administrative appeal, Rancho Cucamonga and Upland filed the instant action.

The operative pleading is the second amended petition for writ of mandate and complaint. The petition alleges that the State Board and the Regional Board acted illegally and in excess of their jurisdiction in developing, adopting and implementing the 2002 permit. Based on 26 pages of general allegations, the petition asserts eight causes of action, alleging the State Board and the Regional Board violated sections 13241, 13263, and 13360 of the Water Code (the Porter-Cologne Act); the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.); the California Administrative Procedure Act (Gov.Code, §§ 11340-11529); the California Constitution; and the Federal Clean Water Act; and seeking declaratory and injunctive relief.

The State Board successfully opposed the action on demurrer. The Regional Board eliminated four causes of action, the fourth, fifth, seventh, and eighth by demurrer and motion to strike. On the remaining four causes of action, the trial court found in favor of the Regional Board.

***1383** 4. *State Board's Demurrer*

[1] Rancho Cucamonga maintains the trial court should not have sustained the demurrer of the State Board without leave to amend because the State Board is the ultimate authority on state-issued NPDES permits, and, therefore, was properly joined as a party: "Because the State Board has for all intents and purposes adopted the rules and policies of general application upon which the Permit is based, it is clearly a proper party to this action."

The difficulty with Rancho Cucamonga's theory of liability against the State Board is, to quote Gertrude Stein about the City of Oakland, "There is no there there." (Gertrude Stein, *Everybody's Autobiography.*) In other words, Rancho Cucamonga's allegations against the State Board lack any substance. Instead, Rancho Cucamonga launches an unspecific attack on the State Board without identifying any particular problems. The petition makes the unexceptional allegation that the State Board formulates general water control policy which it implements and enforces through regional boards. It also alleges the State Board has not complied with the Administrative Procedure Act but it does not identify any objectionable policies or how there is no compliance. Instead the petition complains about a State Board letter directing that all NPDES permits follow consistent principles regarding Standard Urban Storm Water Mitigation ****455** Plans. Additionally, the petition maintains the 2002 permit included new reporting requirements and increased costs of compliance.

But the foregoing allegations did not articulate any improper State Board conduct. The 2002 permit, issued by the Regional Board and not by the State Board, is not subject to formal rule-making procedures. (Gov.Code, § 11352, subd. (b).) The State Board's letter, explaining a precedential decision concerning mitigation plans, is not an example of formal rule-making. (Gov.Code, § 11425.60, subd. (b).) By dismissing Rancho Cucamonga's administrative appeal concerning the 2002 permit, the State Board declined to become involved and the Regional Board's decision to issue the permit became final and subject to judicial review. (*People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.) But the State Board was not made a proper party by reason of its dismissal of the administrative appeal.

Furthermore, even if Rancho Cucamonga had identified any cognizable claim against the State Board, it would have been barred by the 30-day statute of limitations for challenging an improperly adopted State Board regulation or order. (Wat.Code, § 13330; Gov.Code, § 11350.)

***1384** We hold the trial court properly sustained without leave to amend the State Board's demurrer to the second amended petition for writ of mandate and complaint.

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5. Standard of Review for Petition for Writ of Mandate

[2] In deciding a petition for writ of mandate, the trial court exercises its independent judgment. (Code Civ. Proc., § 1094.5, subd. (c); Wat.Code, § 13330, subd. (d); *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) But, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, ... Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817-818, 85 Cal.Rptr.2d 696, 977 P.2d 693(*Fukuda*).)

[3][4] On appeal, the reviewing court determines whether substantial evidence supports the trial court's factual determinations. (*Fukuda, supra,* 20 Cal.4th at p. 824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) The trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations. (*Building Industry, supra,* at p. 879, 22 Cal.Rptr.3d 128; *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482, 22 Cal.Rptr.3d 772.)

6. Rancho Cucamonga's Objections to the Administrative Record and Lack of Notice

[5] The notice of the administrative hearing for adoption of the 2002 permit included the statement that the Regional Board's files would be incorporated as part of the record. Before trial on the writ petition, Rancho Cucamonga attempted to raise an omnibus objection to the entire administrative record and a specific objection to four documents, three studies about marine pollution and one economic study. The trial court ruled the objections had been waived by not making them before or at the time of the hearing. Applying the presumption of administrative regularity, we affirm the trial court's evidentiary ruling. (*Mason v. Office of Administrative* ***456** *Hearings* (2001) 89 Cal.App.4th 1119, 1131, 108 Cal.Rptr.2d 102.)

The reasons given by Rancho Cucamonga as to why the trial court should have sustained its objections to all or part of the administrative record are that it did not waive its objections to the record because Rancho Cucamonga did not know the hearing was adjudicative; the Regional Board did not provide ***1385** notice of an informal hearing (Gov.Code, § 11445.30); and Rancho Cucamonga never had an opportunity to object to the administrative record.

[6] As noted previously, Government Code section 11352, subdivision (b), makes the issuance of an NPDES permit exempt from the rulemaking procedures of the Administrative Procedure Act. Permit issuance is a quasi-judicial, not a quasi-legislative, rule-making proceeding: "The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function." (*Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320, 67 Cal.Rptr.2d 51; *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 718, 279 Cal.Rptr. 22.)

Instead, the Regional Board correctly followed the administrative adjudication procedures (Gov.Code, § 11445.10 et seq.) and the companion regulations at California Code of Regulations, Title 23, sections 647-648.8 for informal adjudicative public hearings. These procedures were announced in the notice of hearing which also stated that Government Code section 11500 et seq., governing formal administrative adjudication hearings, would not apply, thus satisfying Government Code section 11445.30 requiring notice of an informal hearing procedure. At the time of the hearing, Rancho Cucamonga did not object to the informal procedure. Rancho Cucamonga's effort to argue that federal notice requirements (40 C.F.R. § 124.8, subd. (b)(6)(ii) (2005)) should also have been followed fails because this involved a state-issued NPDES permit adopted according to California procedures.

Because Rancho Cucamonga was given notice that the hearing on the permit would proceed as an informal administrative adjudication, it cannot successfully argue it was relieved of the obligation to object to the administrative record at the time of the hearing. An informal administrative adjudication contemplates liberality in the introduction of evidence. (Cal. Code Regs., tit. 23, §§ 648, subd. (d) and 648.5.1.) If Rancho Cucamonga wished to object to the informal hearing procedures, including the liberal introduction

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of evidence, it should have raised its objections as provided by statute and regulation before or at the time of the hearing (Gov.Code, §§ 11445.30, 11445.40, and 11445.50; Cal. Code Regs., tit. 23, § 648.7), not a year later in the subsequent civil proceeding.

7. *Economic Considerations for Issuance of NPDES Permit*

Rancho Cucamonga's next assignment of error is that the Regional Board failed to consider the economic impact of the requirements of the 2002 permit by not conducting a cost-benefit analysis. Rancho Cucamonga relies on the California Supreme Court's *Burbank* opinion, in which the court held: "When ... a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law ***1386** requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance." (*Burbank, supra,* 35 Cal.4th at p. 618, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Rancho Cucamonga contends that the 2002 permit exceeds federal requirements and that, therefore, this case should be remanded for a consideration of ****457** economic factors. (See *ibid.;* Wat.Code, § 13241, subd. (d).)

The two problems with this argument are the trial court found there was no evidence that the 2002 permit exceeded federal requirements and Rancho Cucamonga does not explain now how it does so. There was also evidence that the 2002 permit was based on a fiscal analysis and a cost-benefit analysis. In the absence of the foundational predicate and in view of evidence that cost was considered, Rancho Cucamonga's contention on this point fails.

[7] We also reject Rancho Cucamonga's related procedural argument that the Regional Board's motion to strike was impermissible as piecemeal adjudication. (*Regan Roofing v. Superior Court* (1994) 24 Cal.App.4th 425, 432-436, 29 Cal.Rptr.2d 413,*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1851-1855, 16 Cal.Rptr.2d 458.) It is well recognized a court may strike all or part of a pleading as it did in this instance. (Code Civ. Proc., §§ 431.10 and 436; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

8. *Substantial Evidence*

[8] Rancho Cucamonga also challenges the trial court's independent factual determination that sufficient evidence supports the findings of the Regional Board. Rancho Cucamonga's main contention is that the 2002 permit was not distinctively crafted for San Bernardino County but, instead, copied a similar permit for other counties without identifying any particular water quality impairment in San Bernardino County caused by the permittees. In other words, no evidence in the record supports issuance of the 2002 permit and the trial court did not identify any such evidence in its statement of decision.

One problem with Rancho Cucamonga's foregoing argument is that the Clean Water Act requires an NPDES permit to be issued for *any* storm sewer discharge, whether there is any actual impairment in a particular region. (33 U.S.C. § 1342; *Communities, supra,* 109 Cal.App.4th at pp. 1092-1093, 1 Cal.Rptr.3d 76.) Therefore, Rancho Cucamonga's contention that the permit fails to identify impaired water bodies in the region is beside the point.

In its statement of decision, the trial court discussed the inadequacy of the arguments and evidence cited by Rancho Cucamonga and concluded: "The San Bernardino Permit is based in part on the Basin Plan for this region. It is ***1387** also based on the permittees' own reports and monitoring within this region.... It incorporates the permittees' management program, which is unique to these cities and county." The trial court included a citation to the 1993 DAMP report's "Geographic Description of the Drainage Area," which discusses the specific conditions present in San Bernardino County.

On appeal, Rancho Cucamonga faults the trial court for not presenting a more detailed description of the evidence supporting the issuance of the permit. We do not think the trial court, or this court, must bear that burden.

[9] First, "[a]n agency may ... rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence. (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 535-536, 127 Cal.Rptr. 775.)"

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(*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866, 226 Cal.Rptr. 575.) Here the Regional Board adopted the recommendation of its staff in issuing the permit. And, as the record shows, the staff's recommendation was based on the previous 1990 and 1996 permits, the 1993 DAMP **458 report and the 2000 ROWD, the permittees' application for renewal of the 1996 permit, as well as more general water quality factors. The evidence contradicts Rancho Cucamonga's assertion, that "the Regional Board simply copied verbatim the NPDES Permit for North Orange County, a coastal region with markedly different water quality conditions and problems."

As part of the trial court's consideration of the petition for writ of mandate, Rancho Cucamonga and the Regional Board directed the court to review specific items of evidence contained in the administrative record. In its opposing brief, the Regional Board offered a detailed account of the evidence supporting the issuance of the permit. The trial court indicated it had reviewed the parties' submissions before ruling. It discussed the evidence at the hearing on the petition and referred to it in its statement of decision. (*Lala v. Maiorana* (1959) 166 Cal.App.2d 724, 731, 333 P.2d 862.) Rancho Cucamonga had the burden of showing the Board abused its discretion or its findings were not supported by the facts. (*Building Industry, supra,* 124 Cal.App.4th at pp. 887-888, 22 Cal.Rptr.3d 128.) To the extent it attempted to do so at the trial court level, it was not successful.

This court has independently reviewed the record with particular attention to the evidence as emphasized by the parties. We do not, however, find it incumbent upon us or the trial court to review the many thousands of pages submitted on appeal and identify the particular evidence that constitutes substantial evidence. Instead, we deem the trial court's findings sufficient and not affording any grounds for reversal. (*Building Industry, supra,* 124 Cal.App.4th at p. 888, 22 Cal.Rptr.3d 128; see *Weisz Trucking Co., Inc. v. Emil R. Wohl* *1388 *Construction* (1970) 13 Cal.App.3d 256, 264, 91 Cal.Rptr. 489, citing *Perry v. Jacobsen* (1960) 184 Cal.App.2d 43, 50, 7 Cal.Rptr. 177.)

9. *Safe Harbor Provision*

[10] As it did repeatedly below, Rancho Cucamonga maintains the 2002 permit violates section 402(k) of the Clean Water Act (33 U.S.C. § 1342, subd. (k)), because the permit does not include "safe harbor" language, providing that, if a permittee is in full compliance with the terms and conditions of its permit, it cannot be found in violation of the Clean Water Act. (*United States Public Interest Research Group v. Atlantic Salmon of Maine, LLC* (1st Cir.2003) 339 F.3d 23, 26; *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 205, 96 S.Ct. 2022, 48 L.Ed.2d 578.) The trial court found there was no statutory right to a "safe harbor" provision to be included as the term of the permit. We agree.

This seems like much ado about nothing because 33 U.S.C. § 1342, subdivision (k), already affords Rancho Cucamonga the protection it seeks: "Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health." Rancho Cucamonga does not cite any persuasive authority as to why this statutory protection had to be duplicated as a provision in the 2002 permit.

Furthermore, the 2002 permit complied with the State Board's Water Quality Order No. 99-05, a precedential decision requiring NPDES permits to omit "safe harbor" language used in earlier permits. A permit without "safe harbor" language was upheld in *Building Industry, supra,* 124 **459 Cal.App.4th at p. 877, 22 Cal.Rptr.3d 128. The trial court did not err.

10. *Maximum Extent Practicable*

Rancho Cucamonga protests that the 2002 permit's discharge limitations/prohibitions exceed the federal requirement that storm water dischargers should "reduce the discharge of pollutants to the maximum extent practicable." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The trial court, however, found there was no evidence presented that the 2002 permit exceeded federal requirements. Because there is no evidence, the issue presented is hypothetical and, therefore, premature. (*Building Industry, supra,* 124 Cal.App.4th at p. 890, 22 Cal.Rptr.3d 128.)

Additionally, as Rancho Cucamonga recognizes,

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Building Industry rejected the contention that a "regulatory permit violates federal law because it allows the Water Boards to impose municipal storm sewer control measures more ***1389** stringent than a federal standard known as 'maximum extent practicable.' [Citation.] [Fn. omitted.] [W]e ... conclude the Water Boards had the authority to include a permit provision requiring compliance with state water quality standards." (*Building Industry, supra,* 124 Cal.App.4th at p. 871, 22 Cal.Rptr.3d 128.) The *Burbank* case, allowing for consideration of economic factors when federal standards are exceeded, does not alter the analysis in this case where there was no showing that federal standards were exceeded and where there was evidence that economic factors were considered. Furthermore, like the permit in *Building Industry*, the 2002 permit contemplates controlling discharge of pollutants to the maximum extent practicable through a "cooperative iterative process where the Regional Water Board and Municipality work together to identify violations of water quality standards." (*Building, supra,* at p. 889, 22 Cal.Rptr.3d 128.) The 2002 permit does not exceed the maximum extent practicable standard.

11. *The Requirements of the 2002 Permit*

[11] Rancho Cucamonga lastly complains the requirements of the 2002 permit are "overly prescriptive," illegally dictating the manner of compliance and improperly delegating to the permittees the inspection duties of the State Board and the Regional Board. Rancho Cucamonga's arguments contradict the meaning and spirit of the Clean Water Act.

In creating a permit system for dischargers from municipal storm sewers, Congress intended to implement actual programs. (*Natural Resources Defense Council, Inc. v. Costle* (D.C.Cir.1977) 568 F.2d 1369, 1375.) The Clean Water Act authorizes the imposition of permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator of the State determines appropriate for the control of such pollutants." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The Act authorizes states to issue permits with conditions necessary to carry out its provisions. (33 U.S.C. § 1342, subd. (a)(1).) The permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants. (*NRDC v. EPA* (9th Cir.1992) 966 F.2d 1292, 1308.) That is what the Regional Board has created in the 2002 permit.

Rancho Cucamonga's reliance on Water Code section 13360 is misplaced because that code section involves enforcement and implementation of state water quality law, (Wat.Code, § 13300 et seq.) not compliance with the Clean Water Act (Wat.Code, § 13370 et seq.) The federal law ****460** preempts the state law. (*Burbank, supra,* 35 Cal.4th at p. 626, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits.

***1390** Furthermore, the 2002 permit does afford the permittees discretion in the manner of compliance. It is the permittees who design programs for compliance, implementing best management practices selected by the permittees in the DAMP report and approved by the Regional Board. Throughout the permit, the permittees are granted considerable autonomy and responsibility in maintaining and enforcing the appropriate legal authority; inspecting and maintaining their storm drain systems according to criteria they develop; establishing the priorities for their own inspection requirements; and establishing programs for new development. The development and implementation of programs to control the discharge of pollutants is left largely to the permittees.

More particularly, we agree with the Regional Board that the permit properly allocated some inspection duties to the permittees. As part of their ROWD application for a permit, the permittees proposed to "Conduct Inspection, Surveillance, and Monitoring. Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal storm drain system." The ROWD also discussed continuing existing inspection programs.

Water Code section 13383 provides that as part of compliance with the Clean Water Act, the Regional Board may establish inspection requirements for any pollutant discharger. Federal law, either expressly or by implication, requires NPDES permittees to perform inspections for illicit discharge prevention and detection; landfills and other waste facilities; industrial facilities; construction sites; certifications of no

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discharge; non-stormwater discharges; permit compliance; and local ordinance compliance. (40 C.F.R. 122.26, subds. (d), (g); 33 U.S.C. § 1342, subd. (p)(3)(B)(ii).) Permittees must report annually on their inspection activities. (40 C.F.R. § 122.42, subd. (c)(6) (2005).)

Rancho Cucamonga claims it is being required to conduct inspections for facilities covered by other state-issued general permits. Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

***1391** 12. *Disposition*

Rancho Cucamonga is the only of the original 18 permittees still objecting to the 2002 NPDES permit. It has not successfully demonstrated that substantial evidence does not support the trial court's factual determinations or the trial court erred in its interpretation and application of state and federal law.

We affirm the judgment and order the prevailing parties to recover their costs on appeal.

HOLLENHORST, Acting P.J., and RICHLI, J., concur.
Cal.App. 4 Dist.,2006.
City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region
135 Cal.App.4th 1377, 38 Cal.Rptr.3d 450, 36 Envtl. L. Rep. 20,026, 06 Cal. Daily Op. Serv. 845, 06 Cal. Daily Op. Serv. 1699, 2006 Daily Journal D.A.R. 1126

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Court of Appeal, Second District, Division 5, California.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents.
No. B184034.

Oct. 5, 2006.
Certified for Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Part IV(G)-(L).

As Modified on Denial of Rehearing Nov. 6, 2006.
Rehearing Denied Dec. 6, 2006.
Review Denied Feb. 14, 2007.

Background: Multiple cities, county, county flood control district, and other interested parties challenged order of the California Regional Water Quality Control Board adopting National Pollutant Discharge Elimination System permit. The Superior Court, Los Angeles County, No. BS080792, Victoria G. Chaney, J., entered judgment for regional board. Plaintiffs appealed.

Holdings: The Court of Appeal, Turner, P.J., held that:
(1) regional board had jurisdiction to issue permit;
(2) declaratory relief was not available to plaintiffs;
(3) regional board did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review; and
(4) CEQA review was not required.

Affirmed.

West Headnotes

[1] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, it is presumed the regional board considered the documents before it. West's Ann.Cal.Water Code § 13330.

[2] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, all reasonable doubts are resolved in favor of upholding the regional board's decision. West's Ann.Cal.Water Code § 13330.

[3] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases

Environmental Law 149E 708

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek704 Further Review of Administrative Decision
149Ek708 k. Scope of Review. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, the appellate and trial courts examine the regional board's interpretation of legal matters utilizing a de novo standard of

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review, but the courts defer to the regional board's expertise in construing language which is not clearly defined in statutes. West's Ann.Cal.Water Code § 13330.

[4] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
California Regional Water Quality Control Board had statewide jurisdiction within meaning of federal regulation, notwithstanding its organization into nine regional boards, and thus had jurisdiction to issue National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174, 13100, 13200, 13225; 40 C.F.R. § 123.1(f).

[5] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Under the de facto officer doctrine, governmental and private parties objecting to National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board could not challenge permit by attacking regional board's authority. West's Ann.Cal.Water Code § 174 et seq.

[6] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Even though California Regional Water Quality Control Board was not an elected body, it was authorized to make the financial decisions of the scope entailed by a National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174 et seq., 13201.

[7] Environmental Law 149E 657

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases
In absence of specific allegations, by parties challenging the California Regional Water Quality Control Board issuance of National Pollutant Discharge Elimination System permit, to hold the State Water Resources Control Board liable as engaging in independent activity, the State Water Resources Control Board was not properly joined as a party to challenging parties' action.

[8] Declaratory Judgment 118A 44

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases
In light of statute providing that order of the California Regional Water Quality Control Board may be reviewed by administrative mandate petition, declaratory relief was not available to governmental and private parties challenging regional board's issuance of National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code § 13330(b).

[9] Declaratory Judgment 118A 44

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases
When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable.

[10] Environmental Law 149E 171

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

Environmental Law 149E 196

149E Environmental Law

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149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

States 360 ⚿18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
California Regional Water Quality Control Board, by issuing National Pollutant Discharge Elimination System permit, did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review, since regional board was part of joint state and federal process to enforce the Clean Water Act, which superseded conflicting state and local pollution laws. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Pub.Res.Code § 21000 et seq.; West's Ann.Cal.Water Code § 13001; 40 C.F.R. § 122.26(d)(2)(iv)(A)(2).

[11] Environmental Law 149E ⚿171

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

States 360 ⚿18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
California Regional Water Quality Control Board's issuance of National Pollutant Discharge Elimination System permit was not subject to review under California Environmental Quality Act (CEQA); although statute governing compliance with federal Clean Water Act exempted issuance process only from specified portion of CEQA, amendments to CEQA did not indicate Legislature's intent to impose duty on regional boards to prepare environmental impact reports, require regional boards to engage in any other form of environmental review specified in CEQA, or to otherwise modify statute governing compliance with Clean Water Act. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Water Code § 13389; West's Ann.Cal.Pub.Res.Code §§ 21080, 21100.
*See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 831 et seq.; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.***621** Raymond G. Fortner, Jr., Los Angeles County Counsel, Judith A. Fries, Principal Deputy County Counsel, and Burhenn & Gest, Howard Gest, Los Angeles, and David W. Burhenn for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

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dents Natural Resources Defense Council, Santa Monica Baykeeper, and Heal the Bay.

TURNER, P.J.

*989 I. INTRODUCTION

Plaintiffs, 33 cities,[FN1] the County of Los Angeles (the county), the Los Angeles County Flood Control District (the flood control district), the Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality, appeal from a March 24, 2005 judgment in **622 favor of defendants, California Regional Water Quality Control Board, Los Angeles Region (the regional board) and the State Water Resources Control Board (the state board) and intervenors, Natural Resources Defense Council, Inc., Santa Monica Baykeeper, and Heal the Bay. Plaintiffs challenge the legality of the regional board's issuance of Order No. 01-182 adopting the National Pollutant Discharge Elimination System Permit No. CAS004001 (the permit) which is *990 entitled, "Municipal Storm Water And Urban Runoff Discharges Within The County Of Los Angeles, And The Incorporated Cities Therein, Except The City Of Long Beach." The December 13, 2001 permit was issued to the county, the flood control district, and 84 incorporated cities in Los Angeles County. We affirm the judgment in its entirety.

FN1. The following cities have appealed Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier.

II. THE PERMIT

A. Overview

The permit was issued pursuant to the obligations imposed by the Clean Water Act which will be discussed in greater detail later in this opinion. The Clean Water Act was originally entitled the Federal Water Pollution Control Act. (62 Stat. 1115; 1948 U.S.Code Cong. & Admin. News at pp. 2215-2220.) For purposes of clarity and consistency, the federal applicable water pollution statutes will collectively be referred to as the Clean Water Act. The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees. The findings and permit are as follows.

B. Findings

The permit found that the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems). These discharges were the subject of permits issued by the regional board in 1990 and 1996. The 1996 order served as the National Pollutant Discharge Elimination System permit for the discharge of municipal storm water.

The regional board found that storm drain systems in the county discharged cyanide, indicator bacteria, total dissolved solids, total suspended solids, turbidity, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons, diazinon, and chlorpyrifos. According to the regional board, there were certain pollutants present in urban runoff which resulted from sources over which the permittees had no control. Among the runoff sources over which the permittees have no control are polycyclic aromatic hydrocarbons *991 which are the products of internal combustion engines or copper from brake pad wear. Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region.

The regional board concluded that urbanization increased the velocity, volume, and duration of water runoff; increased erosion; and adversely affected natural drainages. The regional board found: "The [county] has identified as the seven highest priority

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industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive**623 repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; [and] (vii) primary metal products." Also, the regional board concluded, "auto repair facilities" contribute "significant concentrations of heavy metals" to storm waters. Moreover, paved surfaces such as those outside fast food establishments or parking lots "are potential sources of pollutants" in storm water runoff. Further, storm water runoff from retail gas establishments "have concentrations" of heavy metals and hydrocarbons.

The regional board further made findings concerning the background of the permit and its coverage area. The essential components of a Storm Water Management Program are: adequate legal authority; fiscal resources; the actual Storm Water Quality Management Program itself; and a monitoring program. A Storm Water Quality Management Program consists of: a Public Information and Participation Program; an Industrial/Commercial Facilities Program: a Development Planning Program; a Development Construction Program; a Public Agency Activities Program; and an Illicit Connection and Illicit Discharges Elimination Program. The permittees filed a Report of Waste Discharge dated January 31, 2001, which contained a proposed Storm Water Quality Management Program.

C. Prohibited and Allowable Discharges

In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-storm water discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-storm water emission; natural springs and rising ground water; *992 flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; "uncontaminated ground water infiltrations" as defined by 40 Code of Federal Regulations, part 35.2005(b)(20) (1990); and waters from emergency fire-fighting flows. Another category of permissible discharges were flows incidental to urban activities consisting of: reclaimed and potable landscape irrigation runoff; potable drinking water discharges which comply with the American Water Works Association guidelines for dechlorination and "suspended solids reduction practices"; drains for foundations, footings, and crawl spaces; air conditioning condensate; "dechlorinated/debrominated" swimming pool discharges; dewatering of lakes and decorative fountains; non-commercial car washing by residents or nonprofit organizations; and sidewalk rinsing.

The regional board's executive officer was granted authority to add or remove categories of non-storm water discharges. If one of the foregoing categories was determined to be "a source of pollutants" by the regional board's executive officer, the discharge was to be no longer exempt. The executive officer retained the authority to impose conditions on the city or county to ensure that the discharge was "not a source of pollutants." Also, the executive director was given the authority to impose additional "prohibitions on non-storm water discharges" after considering either of two factors. The first factor the regional board's executive officer could consider is anti-degradation policies. The second factor the regional board's executive officer could consider is the total maximum load an impaired water body can receive and still meet applicable water quality standards and protect beneficial uses. (33 U.S.C. § 1313(d)(1).)

**624 D. Receiving Water Limitations

Receiving waters are defined thusly, " 'Receiving waters' means all surface water bodies...." Discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans were prohibited. Storm or non-storm water discharges from storm sewer systems which constitute a nuisance were also prohibited. The term nuisance is defined, " 'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." In *993 order to comply with the receiving water limitations, the per-

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mittees were required to implement control measures in accordance with the permit. If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee was required to immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that described the best management practices that were currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes the foregoing changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board.

E. Storm Water Quality Management Program

The permittees were to implement the Storm Water Quality Management Program which meet the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduce the pollutants in storm waters to the maximum extent possible with the use of best management practices. Further, the permittees were required to revise the Storm Water Quality Management Program to comply with specified total daily maximum load allocations. If a permittee modified the countywide Storm Water Quality Management Program, it was required to implement a local management program. Each permittee was required by November 1, 2002, to adopt a storm water and urban runoff ordinance. By December 2, 2002, each permittee was required to certify that it had the requisite legal authority to comply with the permit through adoption of ordinances or municipal code modifications.

The county was designated as the "Principal Permittee" and was given coordination responsibilities for the Storm Water Quality Management Program. Among other things, the county was to convene watershed management committees which were to meet at least four times per year. Each permittee was entitled to have a voting representative on the committees. The committees were to coordinate and monitor implementation of the Storm Water Quality Management Program. Each permittee was required to designate a technically knowledgeable representative to the appropriate watershed management committees. Each permittee was required to prepare a budget summary of moneys spent on the Storm Water Quality Management Program.

****625 *994** The permit granted each permittee the "necessary legal authority" to prohibit non-storm water discharges into the storm drain system. That authority extended to prohibiting discharges from: illicit connections of all kinds; wash waters from gas stations and automotive service facilities; runoff from mobile cleaning businesses; areas where oil, fluid, or antifreeze was dripping from machinery; storage areas containing hazardous substances; swimming pool waters; washing of toxic materials; and washing impervious surfaces in industrial and commercial areas. The authority also extended to the discharge of concrete and cement-laden wash waters and prohibition of dumping of materials into storm drain systems. The legal authority extended to: requiring persons to comply with permittees' ordinances; holding dischargers to storm drain systems accountable; controlling pollutants and their potential contributors; inspecting, watching, and monitoring procedures to ensure compliance with the permit including prohibition of illicit discharges into storm drain systems; and requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible.

F. Special Provisions

The regional board's executive officer had the power to alter a best management practice under specified circumstances. The county, as the principal permittee, was required to implement a public information and participation program. The program included: marking all storm drains with " 'no dumping' " signs; instituting a county-wide hotline to report illicit discharges and other environmental hazards; public education; every year, requiring 50 percent of all school children to be educated on storm water pollution; assessments of education; and other outreach programs.

***995** Each permittee was required to maintain a database of entities that are "critical sources" of storm water pollution. Each permittee was required to inspect under specified circumstances critical facilities including: restaurants; automotive service businesses; retail gasoline outlets; and automotive dealerships.

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Further, each permittee was to evaluate best management practices and increase their severity if appropriate. Violations of the Storm Water Quality Management Program were to be investigated within specified time periods. By August 1, 2002, the permittees were to amend their ordinances or municipal codes to implement the standard urban storm water mitigation plans contained in the permit. Special requirements were imposed when discharges occur in environmentally sensitive areas.

Each permittee was required to consider storm water quality impacts as part of their California Environmental Quality Act assessments. Each permittee was required to update its general plan to include "considerations and policies" of watershed and storm water quality and quantity management. The permittees were required to educate employees involved in development planning regarding the permit's requirements.

G. Development Construction Program

The permittees were required to implement programs to "control" runoff from construction sites. Runoff from construction sites was prohibited. Non-storm water runoff from equipment washing on construction sites was to be contained on-site. Special requirements were imposed on construction sites of one acre or greater in area. Additional requirements were imposed on developments which were five acres or larger including securing a general construction activity storm water permit.**626 The permit imposed "Numerical Design Criteria" which required that post-construction best-management practices incorporate "either a volumetric or flow based treatment control design standard, or both" under specified circumstances. If there is a violation of a general construction activity storm water permit, the permittee may refer the violator to the state board.

H. Public Agency Activities Program

The permittees were required to minimize storm water pollution impacts. The requirements extended to: sewer systems; public construction; vehicle related facilities; landscape and recreational facilities; storm drain management; and street maintenance. The permittees were also required to participate in a study concerning possible dry weather discharges and the use of alternative treatment control best management practices.

I. Illicit Discharges And Connections

The permit states, "Permittees shall eliminate all illicit connections and ... discharges to the storm drain system, and shall document, track, report all such cases...." The elimination and reporting of such discharges required: development of an implementation program; by February 3, 2003, the municipalities provide the county with a list of all approved connections in the storm drain system; the county to conduct an annual evaluation of illicit ***996** discharges; and training of personnel in the identification and investigation of such discharges. The permittees were to complete the screening of illicit connections as follows: open channels, no later than February 3, 2003; underground pipes by February 1, 2005; and underground pipes with a diameter of 36 inches or greater by December 12, 2006. By December 12, 2006, the permittees were to complete a review of all "permitted connections" to the storm drain system to ensure eliminating illicit discharges. Upon receipt of a report an illicit connection, an investigation was to be initiated within 21 days to determine the source and the responsible party. Within 180 days, the permittees were required to "ensure termination of the connection" using appropriate enforcement authority. As to illicit discharges, a permittee was required within one business day to respond to a report and clean up a discharge. Illicit discharges were to be investigated as soon as possible and appropriate enforcement action was to be pursued.

III. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, PROCEDURAL HISTORY, AND STANDARDS OF REVIEW

The present appeal arises from the issuance of the permit. The legal genesis of the National Pollutant Discharge Elimination System permits for the discharge of municipal storm water has previously been described in some detail in other decisions. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In *City of Rancho Cucamonga,* our colleagues in the Division Two of the Fourth Appellate District sum-

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marized the complex federal and state relationship: " 'Part of the Federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.) The NPDES sets out the conditions under ****627** which the federal [Environmental Protection Agency] or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)' (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)[¶] California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat. ***997** Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342[ ](b)(1)(B).)" (*City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.)

After the board issued the aforementioned December 13, 2001 permit, on January 17, 2003, a series of legal challenges, consisting of the filing administrative mandate and mandate petitions and complaints, were instituted by plaintiffs. Judgments in favor of the regional and state boards were entered on March 24, 2005. After the judgments were entered, notices of appeal were filed on June 21 and 22, 2005. The parties stipulated to the maximum extensions of time to brief the matter as allowed by California Rules of Court, rule 15(b)(1). This court had no authority to deny the stipulated to extensions of time to file briefs. (Cal. Rules of Court, rule 15(b) ["The reviewing court may not shorten a stipulated extension"].) No extension of time request was ever granted by any member of this court. The final reply brief was filed on August 1, 2006. Oral argument was held on September 6, 2006.

[1][2][3] There are varying standards of review. Many of the challenges to the content of the permit involve review of the denial of Code of Civil Procedure section 1094.5 administrative mandate petitions filed pursuant to Water Code section 13330, subdivision (b). We review the trial court's factual findings for substantial evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 86, 87 P.2d 848.) Further, it is presumed the regional board considered the documents before it. (*City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 393-394, 142 Cal.Rptr. 873.) All reasonable doubts are resolved in favor of upholding the regional board's decision. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674, 125 Cal.Rptr.2d 745.) We (and trial courts) examine the regional board's interpretation of legal matters utilizing a de novo standard of review. But we defer to the regional board's expertise in construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450.) Finally, the trial court's denials of plaintiffs' new trial and to enter a new judgment motions ***998** and declaratory relief requests are reviewed for an abuse of discretion. (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, ****628** 616, 278 Cal.Rptr. 900 [new trial motion]; *Bess v. Park* (1955) 132 Cal.App.2d 49, 52, 281 P.2d 556 [declaratory relief].)

IV. DISCUSSION

A. The Jurisdiction of the Regional Board To Issue The Permit

[4] Plaintiffs contend the regional board did not have jurisdiction to issue the permit. Plaintiffs rely on language appearing in the Code of Federal Regulations. For example, the permittees cite to 40 Code of Federal Regulations part 123.1(g)(1) (1998) which states, "NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges." [FN2] Further the permittees refer to the following language in 40 Code of Federal Regulations part

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123.22(b) (1998), "If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities." [FN3] Moreover, 40 Code of Federal Regulations part 123.1(f) (1998) states, "Any State ***999** program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part."

> FN2. 40 Code of Federal Regulations part 123.1(g)(1) (1998) states in its entirety: "(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of [Clean Water Act]. [National Pollutant Discharge Elimination System] authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before [the Environmental Protection Agency] will begin formal review. [¶] (2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the [Clean Water Act]."

> FN3. 40 Code of Federal Regulations part 123.22(b) (1998) states in its entirety: "A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a 'lead agency' to facilitate communications between [the Environmental Protection Agency] and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program. [¶] (1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program. [¶] (2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. [¶] (3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding."

Plaintiffs reason that under state law, the regional board does not have statewide jurisdiction. Water Code section 13100 states that the state and regional boards are part of the California Environmental Protection Agency. Water Code section 13200 identifies the scope of jurisdiction of ****629** the nine regional boards. The regional board's limited jurisdiction is defined in Water Code section 13200, subdivision (d).[FN4] The powers of the regional boards are set forth in Water Code section 13225 with the caveat that the powers exist "with respect to its region." [FN5] Because the regional board is not a statewide agency, plaintiffs argue the permit is void.

> FN4. Water Code section 13200, subdivision (d) states: "The state is divided, for the purpose of this division, into nine regions: [¶] Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the

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watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."

FN5. Water Code section 13225 states in its entirety: "Each regional board, with respect to its region, shall: [¶] (a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance. [¶] (b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged. [¶] (c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. [¶] (d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws. [¶] (e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board. [¶] (f) Report to the state board and appropriate local health officer any case of suspected contamination in its region. [¶] (g) File with the state board, at its request, copies of the record of any official action. [¶] (h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state. [¶] (i) Encourage regional planning and action for water quality control."

This argument has no merit. Effective September 22, 1989, the authority to issue National Pollutant Discharge Elimination System permits was vested by the federal Environmental Protection Agency in the state board. (54 Fed.Reg. 40664, 40665 (Oct. 3, 1989); see *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 ***1000** Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.) The state board is organized into nine regional boards which are part of the California Environmental Protection Agency. (Wat.Code, §§ 174 et seq.13100; see *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1405, 38 Cal.Rptr.3d 373.) The nine regional boards are authorized under this state's laws to issue National Pollutant Discharge Elimination System permits. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd., supra,* 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128; Wat.Code, § 13374.) The federal Environmental Protection Agency memorandum of agreement with the state board complies with the statewide jurisdiction requirements imposed by the federal regulations. The fact the state board is organized into nine regional boards is legally irrelevant. The state board has statewide jurisdiction.

[5] Further, we agree with the Attorney General that plaintiffs may not challenge the regional board's authority to issue a National Pollutant Elimination System permit in this proceeding. Such ***630** an indirect challenge to the board's authority is barred by the de facto officer doctrine. The Supreme Court has described the de facto officer doctrine, which bars a challenge to an agency's action based on a purported lack of legal authority to act, thusly: "[W]e conclude that under the 'de facto officer' doctrine prior actions of the Commission cannot be set aside on the ground that the appointment of the commissioners who participated in the decision may be vulnerable to constitutional challenge. As this court explained in *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 41-42 [37 Cal.Rptr. 74, 389 P.2d 538]: 'The de facto doctrine in sustaining official acts is well established. [Given the existence of] a de jure office, "[p]ersons claiming to be public officers while in possession of an office, ostensibly exercising their function lawfully and with the acquiescence of the public, are *de facto* officers.... The lawful acts of an officer *de facto,* so far as the rights of third persons are concerned, are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it." [Cita-

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tions.]' (See also *Pickens v. Johnson* (1954) 42 Cal.2d 399, 410 [267 P.2d 801] ['There is no question but that ... the status of a judge de facto attached to his action. The office to which he was assigned was a de jure office. By acting under regular assignment under a statute authorizing it he was acting under color of authority as provided by law. His conduct in trying the cases and rendering judgment therein cannot here be questioned.'].)"(*Marine Forests Soc. v. California Coastal Com.* (2005) 36 Cal.4th 1, 54, 30 Cal.Rptr.3d 30, 113 P.3d 1062; original italics.) Here, plaintiffs are challenging the permit by attacking the regional board's authority. Under these circumstances, this they may not do in what amounts to a licensing proceeding. (*Ibid.; In re Redevelopment Plan for Bunker Hill, supra,* 61 Cal.2d at pp. 41-42, 37 Cal.Rptr. 74, 389 P.2d 538.)

[6] ***1001** Finally there is no merit to the contention that because the regional board is not an elected body, it cannot make the financial decisions of the scope entailed by the permit. The board's powers exist because of: the Clean Water Act which was adopted and amended by elected members of Congress and signed into law by elected presidents; provisions of the Water Code which were enacted by elected legislators and approved by elected governors; and the members, who must have special competence, are appointed by an elected governor and confirmed by the elected State Senate. (Wat.Code, § 13201, subds.(a)-(b).) The democratic processes of government control every aspect of the creation of the board, its legal authority, and the selection of its members. Further, the decisions of regulatory institutions such as the regional board, are entitled by law to a presumption of competence and propriety. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104, 1 Cal.Rptr.3d 76.)

B. The Motions To Strike

Plaintiffs argue that the trial court erroneously granted the regional board's motions to strike portions of the petition. Plaintiffs contend: the motions to strike were in fact disguised summary adjudication motions; the orders granting the motions to strike did not resolve entire causes of action; and hence, the orders violated Code of Civil Procedure section 437c, subdivision****631** (f)(1). This contention has no merit. Code of Civil Procedure section 436 allows a court to strike portions of a cause of action. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1386, 38 Cal.Rptr.3d 450; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

C. The State Board's Demurrer

[7] Plaintiffs argue that the trial court erroneously sustained the state board's demurrer to the petitions. The state board contended it was not properly joined as a party to the litigation. A group of plaintiffs alleged the state board required the regional boards to adopt terms and conditions on National Pollutant Discharge Elimination System permits without complying with Government Code sections 11340.5, subdivision (a) [FN6] and 11352, ***1002** subdivision (b) which are part of the Administrative Procedure Act. Plaintiffs had a duty to specifically allege every fact that would give rise to liability by the state board. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790, 11 Cal.Rptr.3d 222, 86 P.3d 290; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795, 221 Cal.Rptr. 840, 710 P.2d 907.) The state board refused to assume jurisdiction over this case. There were thus no specific allegations as to the state board to hold it liable as it engaged in no independent activity. Hence, this contention has no merit and the demurrer was properly sustained. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1383, 38 Cal.Rptr.3d 450; *People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.)

FN6. Government Code sections 11340.5, subdivision (a) states, "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

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D. The Declaratory Relief Claims

[8] The trial court sustained the regional board's demurrers to the declaratory relief claims. Plaintiffs argue they were entitled to declaratory relief as to whether the permittees were required to "go beyond the [maximum extent practicable]" standard to comply with part 2 of the permit which relates to receiving water limitations; part 2 contained a "safe harbor" if the permittees were acting in good faith in implementing best management practices to control excessive discharge of pollutants and nuisance conditions; the requirement in part 4 of the permit that each permittee's general plan and California Environmental Quality Act review take into account storm water runoff is lawful; the regional board was required to consider the economic impact of the proposed permit and its effect on housing; and the regional board was required to perform a "cost/benefit analysis" of the monitoring and reporting program.

[9] When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249, 115 Cal.Rptr. 497, 524 P.2d 1281; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 546, 99 Cal.Rptr. 745, 492 P.2d 1137.) Water Code section 13330, subdivision (b) provides that a regional board order may be reviewed by a Code of Civil Procedure section 1094.5 administrative mandate petition****632** filed within 30 days after the state board denies review. Therefore, the demurrer was correctly sustained to the declaratory relief claims. (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 287, 98 Cal.Rptr. 785, 491 P.2d 369; *Hostetter v. Alderson* (1952) 38 Cal.2d 499, 500, 241 P.2d 230.)

***1003** E. The Regional Board Has Not Unlawfully Interfered In Local General Plans And California Environmental Quality Act Review

[10] The permit requires the permittees to update their general plans to include watershed and storm water runoff as considerations in land use, housing, conservation, and open space planning. Further, the permittees were required to amend their California Environmental Quality Act process to ensure review of the effect of commercial and residential development on storm water runoff. Plaintiffs argue these aspects of the permit violate the separation of powers doctrine. This contention has no merit. As noted, the regional boards are part of a joint state and federal process to enforce the Clean Water Act.(*City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at pp. 619-620, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.) The general plan powers and duties of cities and counties are limited by statewide law. (Cal. Const., art. XI, § 7; Gov.Code, § 65030.1; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 907-908, 4 Cal.Rptr.3d 325; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1118, 67 Cal.Rptr.2d 420.) Further, the Clean Water Act supersedes all conflicting state and local pollution laws. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239; *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The state and regional boards are vested with the primary responsibility of controlling water quality. (Wat.Code, § 13001; see *Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046; *Hampson v. Superior Court* (1977) 67 Cal.App.3d 472, 484, 136 Cal.Rptr. 722.) Regional boards are explicitly granted the authority to issue orders for purposes of enforcing the federal Clean Water Act. (Wat.Code, § 13377.) Federal law requires that permits include controls to reduce pollutant discharge in areas of new development and significant redevelopment-the very area where regional board review occurs. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2) (2006).) So long as the regional boards' decisions carry out federal and state water quality mandates resulting from express legislative action as the challenged orders in this case in fact do, no separation of powers issue is present. (*Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-377, 71 Cal.Rptr. 687, 445 P.2d 303; *Salmon Trollers Marketing Assn. v. Fullerton* (1981) 124 Cal.App.3d 291, 300, 177 Cal.Rptr. 362.) Given the foregoing, we need not address the waiver, laches, and estoppel contentions of the regional and state boards and the intervenors.

F. Failure To Comply With the California Environmental Quality Act

[11] Plaintiffs argue that the permit issuance process violates provisions of the California Environmental Quality Act. Plaintiffs rely on Water Code section ***1004** 13389 which provides that chapter 3 of the

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California Environmental Quality Act does not apply to National Pollutant Discharge Elimination Systems permit proceedings: "Neither the state board nor the regional boards shall be required to comply**633 with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto." California Code of Regulations, title 23, section 3733 also states, "Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7 of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply to the policy provisions of Chapter 1 of CEQA."Plaintiffs argue that the California Environmental Quality Act applies to: the receiving water limitations; the revision of the Storm Water Quality Management Program; and the development planning program. (See *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pp. 1420-1426, 38 Cal.Rptr.3d 373; *Committee for Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 862, 237 Cal.Rptr. 723.)

Chapter 3 of the California Environmental Quality Act was originally adopted in 1970. (Stats.1970, ch. 1433, § 1, pp. 2781-2782.) The original chapter 3 of the California Environmental Quality Act required all state agencies, boards, and commissions that proposed a project which would have a significant effect on the environment to prepare a "detailed statement" setting forth the environmental effect of the contemplated undertaking.[FN7] (See *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158, 166, 118 Cal.Rptr. 490; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 246, 112 Cal.Rptr. 379.) Water Code section 13389 was adopted as urgency legislation to comply with certain provisions of the Clean Water Act provisions establishing the National Pollution Discharge Elimination System. (Stats.1972, ch. 1256, § 3, p. 2490.) Expressly for that purpose, the California Legislature enacted chapter 5.5, the "Water Quality" division, *1005 which includes Water Code section 13389. (Wat.Code, § 13370 [FN8]; *City of Brentwood v. ***634 Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 723, 20 Cal.Rptr.3d 322; *Sierra Club v. Union Oil Co. of California* (9th Cir.1987) 813 F.2d 1480, 1483.) When Water Code section 13389 became effective on December 19, 1972, chapter 2.6 of the California Environmental Quality Act had just been enacted, also as urgency legislation, and it consisted of Public Resources Code sections 21080 through 21090. The new chapter 2.6 of the California Environmental Quality Act became effective on December 5, 1972. (Stats.1972, ch. 1154, § 19, p. 2280.) Chapter 3 of the California Environmental Quality Act was also amended effective December 5, 1972, and it which applied to all environmental assessments by state agencies, boards, and commissions. Former Public Resources Code section 21100, the core provision of the 1972 version of the California Environmental Quality Act as it related to state agencies, boards, and commissions, stated: "All state agencies, boards, and commissions shall prepare, or cause to be prepared ... and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment." (Stats.1972, ch. 1154, § 2.5, p. 2274; see *Desert Environment Conservation Assn. v. Public Utilities Com.* (1973) 8 Cal.3d 739, 742, 106 Cal.Rptr. 31, 505 P.2d 223; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594, fn. 8, 122 Cal.Rptr. 100.)Beyond question, the Legislature intended that chapter 3 of the California Environmental Quality Act not apply to National Pollution Discharge Elimination System permits-in that respect Water Code section 13389 is entirely clear.

FN7. Public Resources Code section 21100 as enacted in 1970 stated: "All state agencies, boards, and commissions shall include in any report on any project they propose to carry out which could have a significant effect on the environment of the state, a detailed statement by the responsible state official setting forth the following: [¶] (a) The environmental impact of the proposed action.[¶] (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented. [¶] (c) Mitigation measures proposed to minimize the impact. [¶] (d) Alternatives to the proposed action. [¶] (e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. [¶] (f) Any irreversible envi-

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ronmental changes which would be involved in the proposed action should it be implemented." (Stats.1970, ch. 1433, § 1, pp. 2781-2782.)

FN8. Water Code section 13370 states: "The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge. [¶] (b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act. [¶] (c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program."

But on December 19, 1972, when Water Code section 13389 was enacted, chapter 2.6 of the California Environmental Quality Act, which contains generalized requirements for the preparation of environmental impact reports for discretionary projects, had just been adopted effective December 5, 1972. Chapter 2.6 of the California ***1006** Environmental Quality Act applies to discretionary projects proposed by public agencies. (Former Pub. Resources Code, § 21080.) Pursuant to new chapter 2.6 of the California Environmental Quality Act, all public agencies were required to adopt by ordinance, resolution, or the like procedures for preparation of environmental impact reports. (Former Pub. Resources Code, § 21082.) The Office of Planning and Research was directed to adopt proposed guidelines for the preparation of environmental impact reports including a listing of projects determined not to have a significant impact on the environment. (Former Pub. Resources Code, §§ 21083-21088.) Finally, chapter 2.6, as adopted in 1972, allowed a public agency to charge fees for the preparation of environmental impact report and defined public and private developments pursuant to a redevelopment plan as a single project. (Former Pub. Resources Code, §§ 21089-21090.)

It can be argued that even though chapter 3 with its environmental impact preparation requirement for state agencies, boards, and commissions was not to apply to National Pollution Discharge Elimination System permits, the discretionary projects requirements in chapter 2.6 of the California Environmental Quality Act mandated environmental review. Hence, the argument would be that the Legislature in enacting Water Code section 13389 did not intend to obviate the duty pursuant to ****635** chapter 2.6 of the California Environmental Quality Act to prepare an environmental impact report. We are unpersuaded by this analysis. Former Public Resources Code section 20180, subdivision (a), the core provision relating to discretionary projects, stated: "(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166)." (Stats.1972, ch. 1154, § 2.3, p. 2272; see *People v. County of Kern* (1974) 39 Cal.App.3d 830, 839, 115 Cal.Rptr. 67; *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 510, 113 Cal.Rptr. 539.) As can be noted, Public Resources Code section 21080, subdivision (a) established that a discretionary project was subject to the environmental impact requirement. But the requirement that a state agency, board, and commission prepare an environmental report was found in Public Resources Code section 21110 which was, and is now, located in chapter 3 of the California Environmental Quality Act. The obligation imposed on a state agency, board, and commission to prepare an environmental impact report existed in chapter 3 before the adoption of Water Code section 13389 and it remained there after the 1972 amendments to the California Environmental Quality Act. No doubt, since 1972 when the Legislature adopted Water Code section 13389 and the then new chapter 2.6, ***1007** the California Environmental Quality Act has been repeatedly amended. But de-

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fendants cite no evidence the Legislature ever intended to: impose a duty on regional boards to prepare environmental impact reports; require regional boards to engage in any other form of environmental review specified in the California Environmental Quality Act; or to otherwise modify Water Code section 13389.

Defendants rely on the analysis of our colleague Presiding Justice Judith D. McConnell of Division One of the Fourth Appellate District in *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pages 1420-1430, 38 Cal.Rptr.3d 373 that regional board basin plans are subject to limited California Environmental Quality Act review. The *City of Arcadia* decision does not involve the issuance of a National Pollution Discharge Elimination System permit. Rather, it involves the development of a basin plan. (*Ibid.*). We agree with the Attorney General that a basin plan is subject to limited environmental review pursuant to Public Resources Code section 21080.5. Public Resources Code section 21080.5, subdivision (a) vests the Secretary of the Resources Agency with the authority to require limited environmental review: "(a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section." The secretary's authority extends to requiring limited environmental review when an agency adopts "standards, rules, regulations, or plans for use" in a regulatory program. (Pub. Resources Code, § 21080.5, subd. (b)(2).) The secretary has certified the regional boards' basin plan program as requiring limited environmental review. (*City of Arcadia v. State Water Resources* ***636 Control Bd., supra,* 135 Cal.App.4th at p. 1422, 38 Cal.Rptr.3d 373; Cal.Code Regs., tit. 14, § 15251, subd. (g).[FN9]) The resources secretary has never identified the National Pollution Discharge Elimination System permit system as a Public Resources Code section 21080.5 certified program. Thus, *City of Arcadia* does not require California Environmental Quality Act review prior to the issuance of a National Pollution Discharge Elimination System permit.

FN9. California Code of Regulations, title 14, section 15251, subdivision (g) states: "The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5: [¶] ... (g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards."

***1008** G.-L.[FN**]

FN** See footnote *, *ante*.

V. DISPOSITION

The judgment is affirmed. Defendants, California Regional Water Quality Control Board, Los Angeles Region and the State Water Resources Board, are to recover their costs incurred on appeal jointly and severally from plaintiffs, the Cities of Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier, and the County of Los Angeles, Los Angeles County Flood Control District, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality.

We concur: ARMSTRONG and KRIEGLER, JJ.

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H

Court of Appeal, First District, Division 3, California.
DIABLO VALLEY COLLEGE FACULTY SENATE, Plaintiff and Appellant,
v.
CONTRA COSTA COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.
No. A108713.

March 21, 2007.
Rehearing Denied April 6, 2007.
Review Denied June 27, 2007.

Background: Faculty senate of community college filed petition for a writ of mandate against community college district, and a complaint for declaratory relief against Chancellor. Faculty senate alleged that district was required to engage in collegial consultation with senate before effecting an administrative reorganization. The Superior Court, Contra Costa County, No. N03-0005,Steven K. Austin, J., denied relief, and faculty senate appealed.

Holding: The Court of Appeal, McGuiness, P.J., held that community college district was not required to engage in collegial consultation with faculty senate before effecting an administrative reorganization.

Affirmed.

West Headnotes

[1] Declaratory Judgment 118A 393

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak393 k. Scope and Extent of Review in General. Most Cited Cases

Mandamus 250 187.9(6)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(6) k. Questions of Fact. Most Cited Cases
In mandate and declaratory relief proceedings, the appellate court defers to the trial court's findings of fact if they are supported by substantial evidence.

[2] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
Where the material facts are undisputed, the trial court's interpretation of a statute is subject to de novo review.

[3] Colleges and Universities 81 7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Community college district was not required by applicable regulations to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization, which consisted of hiring professional deans for managerial positions previously filled on a part-time basis by faculty members; district's administrative organization could not be construed as a "district or college governance structure" within the meaning of regulation, and, moreover, the management system was not "related to faculty roles." 5 CCR § 53200(c)(6).

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construc-

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tion. Most Cited Cases

Statutes 361 ⚷219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement.
See 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 111 et seq.; Cal. Jur. 3d, Administrative Law, § 147 et seq.

[5] Administrative Law and Procedure 15A ⚷751

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak751 k. Limitation of Scope of Review in General. Most Cited Cases
Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum.

[6] Colleges and Universities 81 ⚷7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Court of Appeals would accord some weight to the Chancellor's interpretation of state regulations requiring collegial consultation for policies relating to academic and professional matters; Chancellor's careful consideration of the issue was evinced by his having issued four legal opinions, and Chancellor had consistently interpreted the regulation so as not to require collegial consultation for management reorganizations. 5 CCR § 53200(c)(6).

[7] Administrative Law and Procedure 15A ⚷796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Two broad categories of factors are relevant to a court's assessment of the weight due an agency's interpretation of a legal text: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct.

[8] Administrative Law and Procedure 15A ⚷796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.

[9] Administrative Law and Procedure 15A ⚷413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.

[10] Administrative Law and Procedure 15A ⚷413

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15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
With respect to whether an agency's decision is probably correct, factors suggesting such correctness include: (1) indications that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time.

[11] Administrative Law and Procedure 15A 796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Whatever the force of administrative construction, final responsibility for the interpretation of the law rests with the courts; at most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.

[12] Administrative Law and Procedure 15A 412.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases
Rules governing the interpretation of statutes also apply to interpretation of regulations.

[13] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage.

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McGUINESS, P.J.

***1027** This case concerns whether the Education Code or applicable regulations required a community college district to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization. In September 2001, the President of Diablo Valley College (DVC) announced that, as part of a district-wide reorganization, professional deans would be hired for managerial positions previously filled on a part-time basis by faculty members. The Diablo Valley College ***1028** Faculty Senate (Faculty Senate) complained this change could not be undertaken without its consent, based on regulations requiring collegial consultation for policies relating to "academic and professional matters." (Cal.Code Regs., tit. 5, §§ 53200, 53203, subd. (a).) [FN1] After several unsuccessful complaints to the Chancellor of the California Community Colleges (Chancellor), which resulted in a series of legal opinions from the Chancellor concluding the reor-

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ganization did not impose a duty of collegial consultation, the Faculty Senate filed a petition for writ of mandate against the Contra Costa Community College District (District) and its governing board (Board) and a complaint for declaratory relief against the Chancellor. The trial court agreed that the regulations did not require collegial consultation and denied relief. As the third neutral entity to evaluate the question, we reach the same conclusion and affirm the judgment.

FN1. All unspecified section references are to Title 5 of the California Code of Regulations.

BACKGROUND

I. History of DVC Division Chairs and the Change to Professional Deans

With an annual enrollment of approximately 35,000 students, DVC is one of the largest community colleges in northern California, and it is one of three colleges managed by the District. Beginning in approximately 1968, DVC employed faculty "division chairs" to manage the various academic divisions within the college.[FN2] Division chairs were nominated by a majority vote of full-time faculty members within each division and then appointed to the position by the university president. Selected faculty members served up to two consecutive three-year terms as division chair and continued to teach part-time during this period. At the end of his or her service, a division chair generally resumed full-time teaching responsibilities. Division chairs acted as first-line managers for their divisions. They facilitated communications between faculty and administrators and managed most aspects of the faculty's involvement in college administration.

FN2. "Division" refers to an aggregate of related academic disciplines.

The division chair management system at DVC was first memorialized in writing in June 1977, when it was added to the District's Administrative Procedures Manual as AP 4111.07. The District moved this provision into different manuals over ****297** the years, but the description of division chair selection procedures and responsibilities remained substantively unchanged. The parties dispute whether any of these acts were accompanied by collegial consultation and whether the Board ever formally adopted AP 4111.07 or its successors.

In addition, in 1982 or 1983, a description of the procedure for selecting division chairs was added to the collective bargaining agreement (CBA) between the District and United Faculty, the union representing faculty ***1029** members in District colleges. The CBA identifies division chairs as "management positions." The significance of this description's appearance in the CBA is another subject of dispute between the parties.

In the spring of 2001, the chancellor of the District (Charles Spence) determined it would be advantageous for colleges in the District to switch from the division chair system, which all three were using, to full-time management by professional administrators. In accordance with this decision, on September 14, 2001, DVC president Mark Edelstein sent a memorandum to all faculty and staff advising them of the upcoming change. Because of the school's high enrollment and almost year-round instructional calendar, Edelstein explained it had become increasingly difficult for the college to manage its affairs effectively using part-time faculty division chairs, who worked for only nine months of the year and served relatively brief terms.

II. Opinions of the State Chancellor and Legal Proceedings

Although the change from division chairs to professional deans was accepted at other colleges in the District, it was controversial at DVC. On September 28, 2001, the Faculty Senate filed a formal complaint with statewide Chancellor Thomas J. Nussbaum arguing state regulations required the District to consult collegially with DVC faculty before implementing the proposed reorganization.[FN3] Specifically, the Faculty Senate maintained that the reorganization was an "academic or professional matter[ ]" requiring consultation (§ 53203, subd. (a)) because it would alter faculty roles in governance (§ 53200, subd. (c)(6)). For such matters, Board policy required the District to reach "mutual agreement" with faculty before they could legally make the change.

FN3. Mr. Nussbaum served as Chancellor of the California Community Colleges from

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> May 1996 to January 17, 2004. The current statewide Chancellor is Marshall Drummond.

The Chancellor has statutory responsibility for establishing "minimum conditions" and ensuring these conditions are met at state community colleges as a prerequisite of their receipt of state funding. (Ed.Code, § 70901, subd. (b)(6).) One "minimum condition" is the requirement of collegial consultation with academic senates under certain defined circumstances. (§§ 51023, 53200, 53203.) The Chancellor treated the Faculty Senate's September 2001 letter (and subsequent letters) as a minimum conditions complaint triggering the office's duty to investigate, and on October 23, 2001, he issued the first of several legal opinions addressing the proposal to replace division chairs with full-time deans.

Legal opinion L 01-26 reported that the Board had tabled the proposed change for 90 days to allow for continuing informal discussions between the ***1030** DVC faculty and administration. Because the Board had taken no action to implement the reorganization, the Chancellor observed a formal complaint about the lack of collegial consultation was "technically premature." Nevertheless, in order to provide guidance, the Chancellor identified specific changes ****298** that might require collegial consultation if they were implicated by the District's actions, but he also repeated the general rule-set forth in his September 1997 advisory opinion on shared governance (legal opinion M 97-20)-that mere changes to a District's administrative organization do not require collegial consultation. The Chancellor issued a second opinion almost a month later. Legal opinion L 01-31 (November 15, 2001) repeated the prior opinion's conclusion that changes in the District's management structure "might" require collegial consultation if they could be construed as affecting faculty roles in governance. However, consultation would not be required if the change was merely to a past practice rather than to a policy. In addition, because the division chair practice was outlined in the CBA with United Faculty, the Chancellor believed collegial consultation would be inconsistent with a regulation exempting the provisions of collective bargaining agreements from such consultation obligations (§ 53204).

The Board formally approved the replacement of DVC's division chairs with full-time deans in December 2001, and the Faculty Senate renewed its complaint with Chancellor Nussbaum. On July 22, 2002, the Chancellor issued an exhaustive opinion (legal opinion O 02-19) reviewing all aspects of the District's reorganization, including the change from division chairs to deans. He concluded the regulations require collegial consultation only for "matters that go to the heart of faculty expertise," based on "their expertise as teachers and subject matter specialists and their professional status." Consistent with this understanding, the Chancellor's office had developed a general rule that management reorganizations do not require collegial consultation, and the Chancellor discerned no reason to depart from this rule with regard to the District's reorganization. Specifically, because the reorganization concerned only management of the colleges, it did not affect "governance structures ... related to faculty roles" (§ 53200, subd. (c)(6)). The Chancellor also found that the faculty's role in selecting division chairs was established through the collective bargaining process, and collegial consultation on the matter was therefore precluded.

On January 8, 2003, the Faculty Senate filed a petition for writ of mandate (Code Civ. Proc., § 1085) against the District and the Board and a complaint for declaratory relief against the Chancellor. Later in January 2003, counsel for the Faculty Senate sent a letter to Chancellor Nussbaum advising him that the Senate had just discovered the existence of a District policy for the selection of division chairs. This policy, which counsel represented had been in effect for many years, was contained in the District's Curriculum and Instruction Procedure Manual. The Chancellor responded with a fourth ***1031** opinion. In legal opinion O 03-13 (May 2, 2003), the Chancellor observed that, just like AP 4111.07, there was no evidence the provision in question was ever adopted by the Board.[FN4] The Chancellor therefore continued to maintain collegial consultation was not required, and he reiterated his additional conclusions that the division chair procedure was not an "academic or professional matter" requiring consultation (§ 53200, subd. (c)) and that the parties' CBA precluded such consultation.

> FN4. Indeed, the Curriculum and Instruction provision was simply one of several successive versions of the procedure originally described in AP 4111.07.

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After a hearing, on October 13, 2004, the trial court entered an order denying the petition for writ of mandate and denying "all relief requested in the complaint for declaratory relief." The court rejected the ****299** respondents' arguments about the absence of a Board policy, interpreting the collegial consultation regulations as "applying to established practices, as well as to formally approved policies." Further, the court found the District and Board were estopped from denying that the division chair structure was an approved policy by their knowledge and approval of this job description over the years, through various policy and procedure manuals. The court also rejected the respondents' assertion that the CBA precluded collegial consultation, based on a finding that neither side intended the CBA to be binding on the subject of the division chair management structure.[FN5] However, the trial court agreed with the respondents that the regulations did not require collegial consultation because the switch from division chairs to deans did not implicate "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6).) The court interpreted the regulations as requiring collegial consultation only when a change in a college's governing structure diminishes the faculty's ability to perform their unique "faculty roles," as opposed to roles they might serve in management.

> FN5. The court also observed this provision could not have been a negotiable term in the CBA because modification of a management structure was exclusively a management prerogative.

DISCUSSION

[1][2] In mandate and declaratory relief proceedings, we defer to the trial court's findings of fact if they are supported by substantial evidence. (*Franzosi v. Santa Monica Community College Dist.* (2004) 118 Cal.App.4th 442, 447, 13 Cal.Rptr.3d 25; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974, 97 Cal.Rptr.2d 280.) Where, as here, the material facts are undisputed, the trial court's interpretation of the Education Code is subject to de novo review. (*Franzosi v. Santa Monica Community College Dist., supra,* 118 Cal.App.4th at p. 447, 13 Cal.Rptr.3d 25.)

[3] The District and the Chancellor, respondents herein, both adopt the trial court's interpretation of the applicable regulations. In addition, both liken ***1032** the Chancellor's office to a state agency and argue the Chancellor's interpretation of the regulations must be accorded deference unless it is clearly erroneous. The District repeats several alternative arguments that the trial court rejected (concerning the Faculty Senate's standing, lack of a Board-approved policy, and the provision regarding division chairs in the CBA) and adds a new claim that the collegial consultation regulations are invalid because they exceed the shared governance authority granted to academic senates by the Legislature. We do not address these alternative arguments because we agree with the trial court's conclusion that the regulations did not require collegial consultation for the specific management reorganization implemented at DVC.

I. Legislative and Regulatory Framework

In 1988, the Legislature enacted Assembly Bill No. 1725 (AB 1725), which provided for substantial changes in the administration and governance of the state's community colleges.[FN6] (Stats.1988, ch. 973, §§ 1-72, pp. 3087-3144.) AB ****300** 1725 established a statewide board of governors and charged this body with establishing minimum standards to govern academic matters, hiring, administration and governance. (Stats.1988, ch. 973, § 8, pp. 3102-3105.) Among several other additions and amendments to the Education Code, newly added Education Code section 70901, subdivision (b)(1)(E) required the statewide board of governors to establish: "Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards." (Stats.1988, ch. 973, § 8, p. 3103.)

> FN6. We grant the Chancellor's request for judicial notice of legislative history concerning AB 1725. Other requests for judicial notice, filed by the Faculty Senate and amicus curiae Academic Senate for California

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> Community Colleges, are denied because they concern arguments not addressed in this opinion.

With input from the statewide academic senate, the state Chancellor's office and others, the statewide board of governors promulgated regulations to implement this "minimum standards" directive for shared governance. The regulations direct the governing boards of local community college districts to adopt policies for delegating authority to academic senates. Such a policy must provide, at a minimum, "that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters."(§ 53203, subd. (a).) ***1033** "Academic and professional matters" are defined exclusively as: "(1) curriculum, including establishing prerequisites and placing courses within disciplines; [¶] (2) degree and certificate requirements; [¶] (3) grading policies; [¶] (4) educational program development; [¶] (5) standards or policies regarding student preparation and success; [¶] (6) district and college governance structures, as related to faculty roles; [¶] (7) faculty roles and involvement in accreditation processes, including self-study and annual reports; [¶] (8) policies for faculty professional development activities; [¶] (9) processes for program review; [¶] [and] (10) processes for institutional planning and budget development ...." (§ 53200, subd. (c).) Beyond these 10 subjects, collegial consultation may also be required for "other academic and professional matters ... mutually agreed upon between the governing board and the academic senate."(§ 53200, subd. (c)(11).)

Collegial consultation may take either of two forms, as decided by each local district. With respect to a particular subject, the district may decide to "rely primarily upon the advice and judgment of the academic senate," in which case, absent exceptional circumstances, "the recommendations of the senate will normally be accepted."(§ 53203, subd. (d)(1).) Or, the district may elect to require "mutual agreement" with the academic senate for certain subjects. In such cases, when an agreement is not reached, "existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship."(§ 53203, subd. (d)(2).)

In accordance with these regulations, the District's Governing Board adopted Board Policy 1009, which stated that the Governing Board would consult collegially with the District's academic senate "when adopting policies and procedures on academic and professional matters as defined in Title 5, Section 53200(c)." Board Policy 1009 sets forth the same categories of "academic and professional matters" defined in section 53200, subdivision (c), and it provides that the Board will "rely primarily upon the advice and judgment" of ****301** the academic senate with respect to curriculum, degree requirements and grading, and will "reach mutual agreement" with the academic senate with respect to all other categories.

II. Collegial Consultation Not Required for Administrative Reorganization

As discussed, local community college districts must consult collegially with faculty senates only with regard to specific "academic and professional matters." (§ 53203.) No one has suggested the parties here had a preexisting agreement to consult collegially about the administrative reorganization that occurred at DVC; thus, the question comes down to whether the reorganization comes within one of the categories enumerated in section 53200, subdivision (c). The only potentially relevant category in section 53200, as all ***1034** parties recognize, is subdivision (c)(6), which identifies "district and college governance structures, as related to faculty roles," as an academic and professional matter requiring collegial consultation.

A. Weight to be Accorded the Chancellor's Opinions

[4][5] Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 756-757, 151 P.2d 233; *Spanish Speaking Citizens' Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1214, 103 Cal.Rptr.2d 75 (*Spanish Speaking Citizens*).) " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-

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legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

[6] The parties dispute how much weight, if any, we should accord the Chancellor's interpretation of section 53200, subdivision (c)(6). When he was general counsel for the statewide board of governors, Chancellor Nussbaum personally participated in drafting the regulations at issue in this case. Then, as Chancellor of the California Community Colleges, he assumed responsibility for enforcing these regulations, including the statutory requirement that colleges satisfy certain "minimum conditions" as a condition of receiving state aid.[FN7] Respondents analogize the Chancellor's office to an administrative agency and cite case law holding an agency's interpretation of its own regulations is controlling unless it is plainly erroneous or unauthorized. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 613, 52 Cal.Rptr.2d 846; *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 645, 2 Cal.Rptr.2d 297.) While no precedent directly addresses this situation, a rule affording such great deference to legal opinions issued by the Chancellor's office appears to be precluded by *Yamaha Corp. of America v. State Bd. of Equalization***302* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031(*Yamaha*).

> FN7. This authority was delegated to the Chancellor by the statewide board of governors pursuant to Education Code section 70901, subdivision (d).

[7] In *Yamaha,* the Supreme Court distinguished between the level of judicial deference to be accorded to quasi-legislative acts, in which an agency ***1035** exercises its delegated lawmaking power, as compared with interpretive acts, in which an agency interprets the meaning or legal effect of a statute or regulation. (*Yamaha, supra,* 19 Cal.4th at pp. 7, 10-11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Whereas courts are bound by an agency's rulemaking, so long as it is authorized by the enabling legislation, "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)Here, we are considering the Chancellor's interpretation of a regulation, as opposed to his quasi-legislative act in drafting the regulation itself. "The level of deference due to an agency's regulatory interpretation turns on a legally informed, commonsense assessment of its merit in the context presented. [Citation.]" (*State Farm Mutual Automobile Ins. Co. v. Quackenbush* (1999) 77 Cal.App.4th 65, 71, 91 Cal.Rptr.2d 381.) More specifically, the Supreme Court has proffered "two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' [Citations.]" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Both of these factors weigh in favor of according the Chancellor's decision some deference.

[8][9] An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, " 'especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.'" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Although the specific regulations at issue are not highly technical, they are part of a complex regulatory system of shared governance that is very familiar to the Chancellor's office but essentially foreign to the courts. " 'A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.]" (*Ibid.*)As is apparent from declarations and other opinions in the record, the Chancellor's office routinely issues opinions advising colleges and academic senates about whether collegial consultation is required for specific changes in policy or procedure. Because the Chancellor is thus " 'immersed in administering' " the collegial consultation regulations, he can be expected to have " 'an intimate knowledge of the problems dealt with in the [regulations] and the various administrative consequences arising from particular interpretations. In contrast, a generalist court that visits a particular regulatory stat-

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ute only infrequently lacks the advantage arising out of specialization.'" (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75, quoting Asimow, *The Scope of Judicial Review of Decisions of Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1195-1196.)

[10] ***1036** With respect to whether an agency's decision is "probably correct" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031), factors suggesting such correctness include: (1) indications****303** that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time. (*Id.* at pp. 12-13, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75.) The Chancellor issued four legal opinions addressing the issues in this case. These opinions, especially the final two, contain exhaustive analyses of the Faculty Senate's complaints, and they were drafted by the Chancellor's chief legal counsel. It is hard to envision evidence of a more careful consideration than occurred here.

The record also demonstrates that the Chancellor has maintained a consistent interpretation of the phrase "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6)). In 1997, the Chancellor issued an advisory opinion addressing several questions about the shared governance regulations. One question asked, "Must the district consult collegially on the administrative organization chart of the college?" The Chancellor answered, "No. Neither the governing board nor its designee(s) are required to 'consult collegially' with the academic senate regarding organization of the district administration, but the board would certainly have the discretion to do so if it wished." [FN8] The following year, the Chancellor applied this interpretation to a specific set of facts when he addressed a reorganization proposed by the Los Angeles Community College District. In response to the Los Angeles district's claim that collegial consultation was not required, the Chancellor's July 2, 1998 opinion explained: "A particular change in the administrative organization of a district may or may not affect academic and professional matters; but if it does, the governing board would have an obligation to consult with the academic senate before approving the change in administrative structure. In other words, a district is free to revise its administrative organization chart without consulting the academic senate, but if the changes in administrative structure also implicate academic and professional matters then there is an obligation to consult collegially before the policy is adopted." The Chancellor concluded the Los Angeles reorganization went "well beyond merely changing the administrative organization" of the district. In addition to changing fiscal planning and budgeting processes, the reorganization affected "faculty roles in governance" because it altered the local district's procedures for determining curriculum. Here, because the ***1037** District's switch from division chairs to deans is a much narrower reorganization and does not affect curriculum or other academic matters, the Chancellor's current interpretation of section 53200, subdivision (c)(6) is consistent with his opinion in the Los Angeles case that collegial consultation is required only when an administrative reorganization affects academic and professional matters.

> FN8. The Chancellor added that, although collegial consultation was not required, it would "probably be a good practice" for the district to inform faculty, staff and students and solicit their views before finalizing a reorganization. The record indicates the District took part in extended informal discussions with DVC faculty before it implemented the reorganization.

[11] Accordingly, we conclude some weight should be afforded to the Chancellor's consistent interpretation that section 53200, subdivision (c)(6) does not require collegial consultation for management reorganizations, and to his carefully considered opinion that the District was not required to consult collegially before implementing the reorganization ****304** at issue in this case. However, this conclusion does not relieve us of the obligation to interpret the meaning of the regulation ourselves. "Whatever the force of administrative construction, however, final responsibility for the interpretation of the law rests with the courts. 'At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.... While we are of course bound to weigh seriously such rulings, they are never conclusive.' [Citation.]" (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra,* 24 Cal.2d at p. 757, 151 P.2d 233.)

B. De Novo Review Supports Chancellor's Inter-

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pretation

[12][13] Rules governing the interpretation of statutes also apply to interpretation of regulations. (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75.) "In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage. [Citation.]" (*Modern Paint & Body Supply, Inc. v. State Bd. of Equalization* (2001) 87 Cal.App.4th 703, 708, 104 Cal.Rptr.2d 784.)

The Chancellor determined the reorganization at issue in this case did not require collegial consultation because the District's administrative organization could not be construed as a "district or college governance structure" (§ 53200, subd. (c)(6)). Unlike curriculum committees or budget committees, which clearly function in college governance, the Chancellor concluded the process of choosing managers of various college divisions is administrative in nature. This conclusion is reasonable, and it is consistent with the preexisting rule that collegial consultation is not required for administrative reorganizations that do not impact academic matters, such as curriculum.

Moreover, without regard to whether management by division chairs or deans constitutes a "district or college governance structure," it seems ***1038** clear that this management system is not "related to faculty roles." As the trial court observed, the phrase "as related to faculty roles" in section 53200, subdivision (c)(6) acts as a limitation imposed on the general subject of "district and college governance structures." Thus, only when a district seeks to change aspects of such governance structures that are related to "faculty roles"-such as, for example, curriculum or faculty hiring committees-must it consult collegially with the faculty. The regulations do not define "faculty roles." However, all other "academic and professional matters" defined in section 53200, subdivision (c) concern subjects that are within the unique expertise of faculty members, as opposed to administrators or any other specialists. These matters concern the development of academic programs and curriculum (§ 53200, subds. (c)(1), (2), (4), (9)), assessment of students and their progress toward degrees (§ 53200, subds. (c)(2), (3), (5)), professional development for faculty (§ 53200, subd. (c)(8)), and institutional development with respect to accreditation, review of existing academic programs, future planning and budgeting (§ 53200, subds. (c)(7), (9), (10)). Consistent with these other defined "academic and professional matters," we construe the term "faculty roles" in subdivision (c)(6) as referring to the traditionally understood roles faculty members play in a college. Faculty members are uniquely qualified to instruct students and assess their work, to design and implement curriculum, to develop the college's educational offerings, and to address broader institutional issues such as ****305** accreditation and budgeting to the extent these issues depend upon or impact student instruction. No evidence in the record, however, suggests faculty members at DVC are uniquely qualified to manage their peers or to decide which management structure the college should use.

The Faculty Senate advances two arguments against this construction. First, the Senate argues the District's management structure is related to faculty roles because DVC faculty members previously had a "role"-i.e., a function they performed-in selecting their managers and occasionally serving as managers themselves. In other words, because, through longstanding practice, the DVC faculty once played a role in college management, no change in management affecting this role could be accomplished without collegial consultation. This interpretation renders the definition of "faculty roles" in section 53200, subdivision (c)(6) entirely contextual, dependent in any given case on the faculty's history of involvement in a particular area. Such a broad construction would undermine the independent statutory authority of local governing boards to manage the colleges in their districts. (Ed.Code, § 70902.) In addition, it could prove unworkable in practice if districts were required to engage in the formal process of collegial consultation for every administrative practice that marginally involved faculty. (See *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75 [court should consider consequences that might flow from a particular construction ***1039** in interpreting a statute or regulation].) In short, the faculty's past participation does not convert the District's reorganization of purely managerial positions into an "academic or professional matter" requiring collegial consultation.

Second, reaching back to legislative history, the Fac-

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ulty Senate argues section 53200 must be interpreted broadly consistent with the purpose of AB 1725, which was to expand the role of faculty in shared governance. However, the Senate's characterization of AB 1725 is far too narrow. This bill enacted comprehensive reforms of all aspects of the state's community college system, and we find no indication in the legislative history to support the Senate's view that a primary purpose of the statute was to increase faculty's ability to participate in purely administrative decisions concerning their colleges. On the contrary, among numerous other declarations, AB 1725 stated: "It is the intent of the Legislature that the California Community Colleges be governed under an efficient and flexible system.... The Legislature recognizes that the California Community Colleges is a statewide system with common standards and practices governing local initiative and control. The Legislature therefore finds and declares that clarifying and strengthening the respective roles of the Board of Governors and the Chancellor of the California Community Colleges will enhance the efficiency and flexibility of the system." (Stats.1988, ch. 973, § 3, p. 3093.) Thus, the Legislature envisioned clearly defined and enhanced powers for these administrators. With respect to shared governance, AB 1725 stated: "It is a general purpose of this act to improve *academic quality,* and to that end the Legislature specifically intends to authorize more responsibility for faculty members in duties that are *incidental to their primary professional duties.*" (Stats.1988, ch. 973, § 4(n), p. 3096, italics added.) This purpose of enhancing faculty responsibility "incidental to their primary professional duties" is consistent with the interpretation of section 53200, subdivision (c)(6) we reach here-i.e., districts must consult collegially with faculty for changes in college governance when such changes ****306** are related to the faculty's acknowledged areas of expertise. Although the Legislature clearly intended to expand the participation of faculty (and students) in college governance, the language of AB 1725 does not indicate a legislative intent to encourage faculty involvement in purely administrative matters.[FN9]

FN9. In its reply brief and at oral argument, the Faculty Senate urged us to rely on *Irvine Valley College Academic Senate v. South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 29 Cal.Rptr.3d 336(*Irvine Valley*) as a "mirror image" of this case. The *Irvine Valley* decision construed a specific statute, Education Code section 87360, which expressly requires a governing board to reach joint agreement with the academic senate in developing faculty hiring procedures. Based on this statute's language and legislative history, *Irvine Valley* concluded the Legislature intended academic senates to have a role in developing hiring procedures. (*Irvine Valley, supra,* 129 Cal.App.4th at pp. 1491-1492, 29 Cal.Rptr.3d 336.) The court never considered the regulation before us, or whether, for purposes of this regulation, faculty have an acknowledged "role" in choosing their managers. *Irvine Valley* is also notable for its rejection of the community college district's argument that requiring a joint agreement with faculty would give academic senates an unfair "veto" in the process of creating hiring policies. (*Id.* at p. 1492, 29 Cal.Rptr.3d 336.) Because we do not reach the District's argument that the collegial consultation regulations here give greater power to academic senates than is statutorily permitted, we have no occasion to consider the validity of *Irvine Valley's* observations on this point.

***1040 DISPOSITION**

The judgment is affirmed. Appellant shall bear costs on appeal.

PARRILLI and POLLAK, JJ., concur.
Cal.App. 1 Dist.,2007.
Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.
148 Cal.App.4th 1023, 56 Cal.Rptr.3d 294, 217 Ed. Law Rep. 877, 07 Cal. Daily Op. Serv. 2998, 2007 Daily Journal D.A.R. 3801

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DOUGLAS H. FREEMAN et al., Plaintiffs and Appellants,
v.
CONTRA COSTA COUNTY WATER DISTRICT, Defendant and Respondent
Civ. No. 28717.

Court of Appeal, First District, Division 4, California.
June 24, 1971.

SUMMARY

Homeowners with wells on their property challenged the validity of a regulation of their county water district requiring that unless they installed on their water meter boxes, at their own expense ($35, plus 25 cents per month maintenance) a double check valve assembly to prevent water from their auxiliary supply from backing up into, and contaminating, the public water system, their public water service would be terminated. Judgment was entered for the district. (Superior Court of Contra Costa County, No. 113193, S. C. Masterson, Judge.)

The Court of Appeal affirmed. Pointing out that the prevention of water pollution is a proper exercise of the police power to which the eminent domain guaranty of compensation is inapplicable, the court held that the district regulation was justified by the potential hazard of cross- connections, accidental or otherwise, between the homeowners' well systems and the public water supply, and that there was no necessity to wait until contamination had actually occurred. Furthermore, the regulation was statutorily authorized and was not void for vagueness. Other contentions by plaintiffs were held to be without merit. (Opinion by Christian, J., with Devine, P.J., and Rattigan, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Constitutional Law § 97--Police Power--Right to Damages.
The constitutional guaranty of just compensation that attaches to an exercise of the power of eminent domain does not extend to the state's exercise of its police power, and injury resulting from a proper exercise of the police power is *damnum absque injuria.* Thus, the eminent domain guaranty was inapplicable to the requirement by a water district that homeowners with wells on their property should install at their own expense, if they chose to make use of the public water supply, a $35 double check valve assembly on their public water meter box to prevent auxiliary water from backing up into, and contaminating, the public system, and it was immaterial that the general public, and not the homeowners, would receive the benefit of the protective device.
[See **Cal.Jur.2d, Rev.,** Eminent Domain, § 3; **Am.Jur.2d,** Constitutional Law, §§ 264, 301.]
(2) Constitutional Law § 107--Police Power--Legislative Discretion and Court Review.
A governmental regulation will be upheld as a valid exercise of the police power if it is reasonably necessary to protect the order, safety, health, morals, and general welfare of society.

(3) Administrative Law § 144--Judicial Review and Control--Burden of Proof.
A governmental regulation is presumed to be valid; therefore, one who challenges its validity has the burden of proving unreasonableness.

(4) Waters § 278--Interference of Third Parties--Pollution--Police Power.
Prevention of water pollution is a legitimate governmental objective in furtherance of which the police power may be exercised.

(5) Waters § 285(1)--Pollution--Remedies:Constitutional Law § 104--Police Power--Preventing Contamination to Water Supply.
The state need not wait until the public safety has actually suffered injury, and may take reasonable steps to protect a public water supply from potential cross-connections that may create a substantial hazard of contamination. Thus, in the case of homeowners with wells on their property, the potential hazard from cross-connections, accidental or otherwise, between their well-water and their public water supply justified the water district's requirement that the homeowners install, at their own expense, a device on their water meter box to eliminate the hazard, de-

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spite their claims that no such cross-connections presently existed.

(6) Waters § 483--Districts--Validity of Acts--Anti-contamination Regulation.
A regulation requiring that a protective device be installed on any premises receiving water from the public water system and containing an auxiliary water supply regardless of whether the auxiliary water supply were connected to the public water system was not unconstitutionally vague as leaving the determination of what constitutes an "auxiliary water supply" to the water district's unfettered discretion, where a state regulation defined "auxiliary water supply" as "any water supply on or available to the premises other than the public water supply."

(7) Waters § 483--Districts--Validity of Acts--Anti-contamination Regulation.
The requirement by a water district that homeowners with wells on their property should install, at their own expense, a protective device on their public water meter box to prevent auxiliary water from backing up into, and contaminating, the public water supply, was statutorily authorized, not only under Wat. Code, § 31024, authorizing a water district to establish regulations for the distribution and use of water, but also under a combination of Wat. Code, § 30060, providing that County Water District Law does not modify any other law relating to water, and Health & Saf. Code, §§ 203, 208, authorizing regulations that included the requirement that the responsibility for installing the protective device be placed on the water user.

(8) Administrative Law § 43--Validity of Administrative Action: Waters § 480--Districts--Due Process.
Due process does not require that new notice and hearing be given in each individual case before an agency can enforce a valid statute or regulation. Thus, homeowners with wells on their property were not required to be given notice and a hearing before their water district could demand either that their water service be discontinued or that they install, at their own expense, a device on their water meter boxes to prevent water from their well systems from backing up into, and contaminating, the public water supply, where, in making the demand, the district was merely enforcing a lawful state regulation.

COUNSEL

James H. Disney for Plaintiffs and Appellants.

Bold & Polisner and Jeffrey D. Polisner for Defendant and Respondent.

Evelle J. Younger, Attorney General, Sanford N. Gruskin, Assistant Attorney General, Roderick Walston and Charlton G. Holland, Deputy Attorneys General, as Amici Curiae on behalf of Defendant and Respondent. ***407**

CHRISTIAN, J.

Appellants are the owners of residences in the City of Concord served by the water system of respondent Contra Costa County Water District. Each of the appellants maintains on his property a well from which water is drawn for such purposes as gardening and car-washing. Although appellants had not connected their well water systems to the pipes of the district's public system, the district threatens to terminate service until the affected householders agree to have installed, at their own expense, a "double check valve assembly," designed to prevent water from the auxiliary supply from "backing up" into and contaminating the public water supply. Appellants sought from the court protection against the district's threat; judgment was for the district, and the present appeal followed. We affirm the judgment.

The record shows without contradiction that contamination of a water system can occur if there is a physical connection between the public system and auxiliary water supply, such as where the two systems are connected by pipes, or where the auxiliary water is "impounded" (e.g., in a swimming pool or fish pond) and an ordinary garden hose from the public water supply is allowed to lie in water from the auxiliary system. In the latter situation a temporary loss of pressure can result in contaminated water being drawn into the public system.

Protection against this risk can be provided by installing in the consumer's water meter box a device which prevents a backward flow of water. The directors of respondent district have established an installation charge of $35, and a $.25 per month maintenance charge, for such devices, based on the cost thereof to the district. Appellants receive no special benefit

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from the device other than that which they receive as members of the general public.

It will be useful to outline the statutory framework under which respondent is requiring the installation of the back flow prevention device. Health and Safety Code section 203 provides that the State Department of Public Health "shall examine and may prevent the pollution of sources of public domestic water ... supply." The department may "adopt and enforce rules and regulations" for this purpose. (Health & Saf. Code, § 208.)Pursuant to these statutes, the department adopted administrative regulations designed to prevent contamination or pollution of any public water supply as a result of "actual *or* potential cross-connections" with auxiliary water supplies. (Cal.Admin.Code, tit. 17, § 7583, italics added.) An auxiliary water supply is defined as "any water supply on or available to the premises other than the public water supply." (Cal.Admin.Code, tit.***408** 17, § 7590.)A protective device is required to be installed on any premises receiving water from the public water system and containing an auxiliary water supply, regardless of whether the auxiliary water supply is connected to the public water system. (Cal.Admin.Code, tit. 17, § 7603.)The regulations specify various types of protective devices, depending on the "degree of hazard" involved; where the auxiliary and public water supplies are not connected, the protective device required is a "double check valve assembly," which is what respondent desires appellants to install. (Cal.Admin.Code, tit. 17, § 7604, subd. 1.) Responsibility for installing the protective device is placed on the water user. (Cal.Admin.Code, tit. 17, § 7603.)Pursuant to the foregoing state regulations, respondent adopted its own regulations providing for discontinuance of water service to any consumer who failed to install the required device.

(1a) Appellants contend that the requirement that they install a protective device constitutes a taking of property which must be compensated. They argue that they have the right to take water from their wells and that respondent's demand infringes on their right to use their property as they wish. This contention confuses an exercise of the police power with an exercise of the power of eminent domain; "the constitutional guarantee of just compensation attached to an exercise of the power of eminent domain does not extend to the state's exercise of its police power, and damage resulting from a proper exercise of the police power is simply *damnum absque injuria*" (*Lees v. Bay Area Air, etc. Control Dist.* (1965) 238 Cal.App.2d 850, 856 [48 Cal.Rptr. 295]; see also *Goldblatt* v. *Town of Hempstead* (1962) 369 U.S. 590, 593 [8 L.Ed.2d 130, 133, 82 S.Ct. 987]; *Beverly Oil Co.* v. *City of Los Angeles* (1953) 40 Cal.2d 552, 557 [254 P.2d 865]). (2) A governmental regulation will be upheld as a valid exercise of the police power if it is reasonably necessary to "protect the order, safety, health, morals and general welfare of society." (*Lees v. Bay Area Air, etc. Control Dist., supra*, at p. 857, citing *In re Rameriz* (1924) 193 Cal. 633, 649, 650 [226 P. 914, 34 A.L.R. 51].) (3) A regulation is presumed to be valid; therefore, appellants have the burden of proving unreasonableness. (*Goldblatt v. Town of Hempstead, supra*, at p. 596 [8 L.Ed.2d at p. 135].) (4) It cannot be denied that prevention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised. (5) Appellants argue, however, that it is unreasonable to require them to install a protective device when their water well is not connected to the domestic water supply. Therefore, it is argued, there is no possibility of contamination and the danger that respondent seeks to protect is "imagined and speculative." But the state need not wait until the public safety has actually suffered injury; it may take reasonable steps to protect a public water supply from potential cross-connections ***409** that may create a substantial hazard of contamination. Otherwise respondent, or the Department of Public Health, would have the burdensome job of continuous inspection of all premises which possessed auxiliary water supplies to insure that no cross-connections had been made, accidently or otherwise. It is not unreasonable or oppressive to require appellants to install a $35 device to protect against a potential danger of water contamination.

(1b) Appellants also argue that it is unreasonable to require them to pay for the cost of installation and maintenance as their property receives no special benefit from the prevention device. It is argued that, since the device is for the benefit of the public, the public should pay for it. A similar contention was made in *Atchison, Topeka & S. F. R. Co. v. Public Util. Com.* (1953) 346 U.S. 346 [98 L.Ed. 51, 74 S.Ct. 92]. In that case the California Public Utilities Commission had ordered improvement of railroad underpasses to promote public safety and had assessed half the cost of the improvements to the rail-

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roads. The railroads argued that, since they would receive little or no benefit from the construction, the allocation of costs constituted a taking of their property without due process of law. In rejecting this contention, the United States Supreme Court stated, "The railroad tracks are in the streets not as a matter of right but by permission from the State or its subdivisions. The presence of these tracks in the streets creates the burden of constructing grade separations in the interest of public safety and convenience. Having brought about the problem, the railroads are in no position to complain because their share in the cost of alleviating it is not based solely on the special benefits accruing to them from the improvements." (346 U.S. at p. 353 [98 L.Ed. at p. 60].) Similarly appellants, by maintaining water wells on their premises, have created the potential hazard which requires special measures of protection; they have no reasonable grounds for complaint at being required to pay the cost of such protection. Appellants are not being forced to subscribe to respondent's water service; they have the option of relying solely on their water well for their water needs. While they are entitled to use both the public water supply and their own water well, they have no right to do so in a manner which may endanger the public water supply.

(6) Appellants next contend that the term "auxiliary water supply" used in the regulation is unconstitutionally vague, as it leaves the determination of what constitutes an auxiliary water supply to respondent's unfettered discretion. Title 17, section 7590, of the California Administrative Code defines "auxiliary water supply" as "any water supply on or available to the premises other than the public water supply." This definition is not so vague and ambiguous as to be unenforceable. ***410**

(7) Appellants argue that the district is without statutory authority to charge them for installation and maintenance of the protective device, as the County Water District Law (Wat. Code, § 30000 et seq.) provides the sole means by which respondent may finance public improvements. Respondent has not attempted to raise funds for installation of protective devices by any of the methods specified in the County Water District Act. (See Wat. Code, §§ 31501, 31502, 31503.) But section 31024 authorizes a water district to "establish rules and regulations for the sale, distribution, and use of water ..." The protective device is not a public improvement but a condition for appellants' use of the public water supply, a condition which respondent is authorized to impose under section 31024. Moreover, Water Code section 30060 provides that the County Water District Law shall not "be so construed as repealing or in anywise modifying any other law relating to water or the supply of water ...." The Department of Public Health regulations, authorized under Health and Safety Code sections 203 and 208, require that responsibility for installing the protective device be placed on the water user. Therefore the statutes do authorize respondent to require appellants to pay for the cost of installing and inspecting the protective device.

(8) Appellants contend that due process entitled them to notice and a hearing before respondent could demand that they either install the device or have their water service discontinued. But respondent was merely enforcing a lawful state regulation in making the demand. State law requires that before the regulations could be adopted there must be notice and a hearing at which any interested person could appear to oppose the proposed regulations. (Gov. Code, § 11420 et seq.) There is no requirement that a new notice and hearing be given in each individual case before an agency can enforce a valid statute or regulation.

The judgment is affirmed.

Devine, P. J., and Rattigan, J., concurred. ***411**

Cal.App.1.Dist.
Freeman v. Contra Costa County Water Dist.
18 Cal.App.3d 404, 95 Cal.Rptr. 852

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United States Court of Appeals,
Ninth Circuit.
ENVIRONMENTAL DEFENSE CENTER, INC., Petitioner,
Natural Resources Defense Council, Inc., Petitioner-Intervenor,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.
American Forest & Paper Association; National Association of Home Builders, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Applicant-Intervenor.
Texas Cities Coalition on Stormwater; Texas Counties Storm Water Coalition, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Respondent-Intervenor.
Nos. 00-70014, 00-70734, 00-70822.

Argued and Submitted Dec. 3, 2001.
Filed Sept. 15, 2003.

Environmental, municipal, and industry groups brought petitions for review of Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements. On denial of rehearing, the Court of Appeals, James R. Browning, Circuit Judge, held that: (1) EPA had authority to impose rule; (2) rule did not violate the Tenth Amendment; (3) rule improperly failed to provide for review of notices of intent and public participation in NPDES permitting process; (4) EPA's failure to designate industrial sources of storm water pollution for permitting requirements was not arbitrary and capricious; (5) challenge to rule's exclusion of forest roads was not time-barred; (6) forestry trade association lacked standing to challenge rule; (7) EPA properly consulted with state and local officials; (8) sites subject to rule were properly designated; and (9) EPA properly retained authority to designate future sources of storm water pollution for regulation.

Petitions for review granted in part and denied in part.

Tallman, Circuit Judge, filed opinion concurring in part and dissenting in part, and would have granted petition for rehearing.

Opinion, 319 F.3d 398, vacated.

West Headnotes

[1] Environmental Law 149E 176

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek176 k. Sewage and Sewers. Most Cited Cases

Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Storm sewers are established "point sources" subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
Diffuse runoff, such as rainwater that is not channeled through point source, is considered "nonpoint

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source" pollution and is not subject to federal regulation under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[3] Constitutional Law 92 ⚿976

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k976 k. Resolution of Non-Constitutional Questions Before Constitutional Questions. Most Cited Cases
(Formerly 92k46(1))
Court of Appeals avoids considering constitutionality of a rule if an issue may be resolved on narrower grounds.

[4] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) interpretation of rule promulgated under Clean Water Act (CWA), whereby EPA would require that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, was reasonable, and thus EPA acted within its statutory mandate in formulating permit program under rule; even though permitting was not included on statutory list of elements for EPA's comprehensive program to regulate small sewer systems, list was non-exclusive, and statutory language requiring imposition of permits for "municipal storm sewers" was reasonably interpreted to extend to small systems. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6).

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
Minimum measures set forth by rule as conditions for issuance of stormwater discharge permit to operator of small municipal storm sewers did not exceed authority of Environmental Protection Agency (EPA) under Clean Water Act (CWA), as statute's list of elements for regulatory program was nonexclusive, and rule included at least one alternative to minimum measures. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6); 40 C.F.R. §§ 122.26(d), 122.26, 122.33(b)(1), 122.34(b), (d)(1)(i).

[6] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs. U.S.C.A. Const.Amend. 10.

[7] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the federal government may not force the States to regulate third parties in furtherance of a federal program. U.S.C.A. Const.Amend. 10.

[8] States 360 ⚿4.16(1)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(1) k. In General. Most Cited Cases

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Protections of Tenth Amendment, whereby federal government may not compel States to implement federal regulatory programs by legislation or executive action, nor force the States to regulate third parties in furtherance of a federal program, extend to municipalities. U.S.C.A. Const.Amend. 10.

[9] United States 393 ⚿82(2)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
While federal government may not compel them to do so, it may encourage States and municipalities to implement federal regulatory programs; for example, the federal government may make certain federal funds available only to those States or municipalities that enact a given regulatory regime. U.S.C.A. Const.Amend. 10.

[10] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
The crucial proscribed element under the Tenth Amendment, as to federal government's ability to have states implement federal programs, is coercion; the residents of the State or municipality must retain the ultimate decision as to whether or not the State or municipality will comply with the federal regulatory program, but as long as the alternative to implementing a federal regulatory program does not offend the Constitution's guarantees of federalism, the fact that the alternative is difficult, expensive, or otherwise unappealing is insufficient to establish a Tenth Amendment violation. U.S.C.A. Const.Amend. 10.

[11] Environmental Law 149E ⚿166

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek166 k. Validity. Most Cited Cases

States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Environmental Protection Agency (EPA) rule promulgated under Clean Water Act (CWA), whereby discharges from small municipal storm sewers and construction sites were subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, did not wrongfully compel municipalities to regulate third parties under federal law as condition of receiving permit to operate, as would contravene Tenth Amendment; although one means of obtaining permit would require municipality to adopt various enforcement procedures, permit applicants retained option of applying for Alternative Permit. U.S.C.A. Const.Amend. 10; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(d), 122.34.

[12] Constitutional Law 92 ⚿1681

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1681 k. Political Speech, Beliefs, or Activity in General. Most Cited Cases
(Formerly 92k90.1(4))

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) adoption of "Public Education" and "Illicit Discharge" Minimum Measures within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to Na-

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tional Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), did not wrongfully compel municipalities to deliver EPA's political messages, and thus did not violate municipalities' free speech rights under First Amendment; requiring providers of storm sewers that discharged into national waters to educate public about impacts of storm water discharge, and to inform affected parties, including public, about hazards of improper waste disposal fell short of compelling political speech, since they did not dictate specific ideological message. U.S.C.A. Const.Amend. 1; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[13] Administrative Law and Procedure 15A 395

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak392 Proceedings for Adoption
15Ak395 k. Notice and Comment, Sufficiency. Most Cited Cases
In determining whether notice to interested parties was adequate under informal rulemaking strictures of Administrative Procedure Act (APA) when final regulation has varied from proposal, court must consider whether new round of notice and comment would have provided first opportunity for interested parties to offer comments that could have persuaded agency to modify its ruling. 5 U.S.C.A. § 553.

[14] Environmental Law 149E 218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) adoption of Alternative Permit option within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), properly complied with minimum notice and comment procedures required in informal rulemaking under Administrative Procedure Act (APA), since Alternative Permit option was logical outgrowth of comments received by EPA in response to proposed rule, and option contained no elements that were not part of proposed rule, even though it was configured differently. 5 U.S.C.A. § 553; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[15] Environmental Law 149E 662

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek662 k. Ripeness. Most Cited Cases
Challenge to Environmental Protection Agency (EPA) rule allowing operators of small municipal storm sewers to pursue general permit option to meet National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA) was ripe for review, as issue did not involve merits of any specific permit but was purely one of statutory interpretation that would not benefit from further factual development; issue specifically was whether EPA accomplished the substantive controls for municipal stormwater that Congress mandated in the CWA. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[16] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
General permitting scheme of Environmental Protection Agency (EPA) rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA), improperly allowed sewer system operators to design storm water pollution control programs without adequate regulatory and public oversight, and thus contravened CWA, since permitting scheme did not require EPA to review content of dischargers' notices of intent, and did not contain express requirements for public participation in NPDES permitting process. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3), 33 U.S.C.A. §

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1342(p)(3); 40 C.F.R. § 122.34.

[17] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases

Administrative Law and Procedure 15A 753

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak753 k. Theory and Grounds of Administrative Decision. Most Cited Cases
Court of Appeals normally defers to an agency's interpretations of its own regulations, but it may decline to defer to the post hoc rationalizations of appellate counsel.

[18] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Failure of Environmental Protection Agency (EPA) to designate industrial sources of storm water pollution for discharge permit program, whereby such discharges would become subject to National Pollutant Discharge Elimination System (NPDES) requirements, was not arbitrary and capricious, and thus did not violate Clean Water Act (CWA); rather than designating industrial discharge sources on nationwide basis under NPDES program, EPA sought to establish local and regional designation authority for such sources. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[19] Environmental Law 149E 671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
Petitioners' challenge to failure of Environmental Protection Agency (EPA) to regulate stormwater drainage from forest roads did not have to be raised either when EPA initially promulgated silviculture regulations excluding certain silvicultural activities from National Pollutant Discharge Elimination System (NPDES) permitting requirements, or when EPA considered amending such regulations but chose not to do so, and challenge was thus not time-barred, to extent that present challenge was made to EPA's decision not to address forest roads under later-enacted portion of Clean Water Act (CWA) directed to municipal and industrial stormwater discharges. Federal Water Pollution Control Act Amendments of 1972, §§ 402(p), 509(b)(1), 33 U.S.C.A. §§ 11342(p), 1369(b)(1); 40 C.F.R. § 122.27(b)(1).

[20] Environmental Law 149E 641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
Petitioners' comments during rulemaking process in connection with Environmental Protection Agency (EPA) rule governing municipal and industrial stormwater discharges pursuant to Clean Water Act (CWA) were not so inadequate as to preclude appellate court jurisdiction to hear petitioners' subsequent challenge to rule's failure to address stormwater drainage from forest roads; comments comprised two paragraphs, with footnotes, stating objections and providing support, EPA was aware of forest road sedimentation problem at time of rulemaking, and EPA responded to comments without disputing that problem was serious. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[21] Environmental Law 149E 652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing

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149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases
Forestry and paper association lacked sufficient standing to challenge Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), since association's interest in avoiding future regulation of forest roads was not actually or imminently affected by rule at issue. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[22] Environmental Law 149E 220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, properly consulted with state and local officials, and thus did not violate Clean Water Act (CWA); draft of first report pertaining to proposed rule was circulated to states and municipalities, EPA regional offices, professional associations and other stakeholders, and rule was revised based upon comments received. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[23] Environmental Law 149E 652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases

Environmental Law 149E 654

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek654 k. Government Entities, Agencies, and Officials. Most Cited Cases
Home builders' association and municipalities possessed sufficient standing to challenge designation by Environmental Protection Agency (EPA) of municipal storm sewers and construction sites for regulation under Clean Water Act (CWA), whereby National Pollutant Discharge Elimination System (NPDES) permits would be required for discharges by such entities, since association and municipalities were able to allege procedural harm from purported lack of notice or from effects of regulation itself. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[24] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Designation by Environmental Protection Agency (EPA) of municipal storm sewers to be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, according to areas defined by Census Bureau as "urbanized," was not arbitrary and capricious, as would violate Clean Water Act (CWA), since EPA articulated reasoned basis for its conclusion that Census Bureau's designation was correlated to actual levels of pollution runoff in storm water; record evidence demonstrated compelling and widespread relationship between urban storm water runoff and deleterious impacts on water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[25] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Decision by Environmental Protection Agency (EPA) to subject construction sites disturbing between one and five acres of land to National Pollutant Discharge Elimination System (NPDES) permitting requirements was not arbitrary and capricious, as would

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violate Clean Water Act (CWA); record evidence included numerous studies of sedimentation from construction sites, which EPA specifically reviewed in promulgating challenged regulation, and EPA's extrapolation of data from studies involving larger sites had reasonable basis. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[26] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Allowance by Environmental Protection Agency (EPA) of regulatory waivers for small construction sites not likely to cause adverse water quality impacts, as would exempt such sites from National Pollutant Discharge Elimination System (NPDES) permit requirements, was not arbitrary and capricious, as would violate Clean Water Act (CWA); EPA's waiver approach promoted fairness and efficiency in permitting process, and did not create presumption applicable to evidentiary hearing. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[27] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Decision by Environmental Protection Agency (EPA) to subject small construction sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements was consistent with its decisions to exempt other potential storm water runoff sources from such requirements, notwithstanding alleged lack of quantifiable data regarding runoff, and thus was not arbitrary and capricious, as would violate Clean Water Act (CWA); record evidence demonstrated that construction sites of all sizes had greater erosion rates than almost any other land use, and thus were not similarly situated to potential polluters that EPA chose not to regulate. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[28] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
Language in Clean Water Act (CWA) conferring authority to Environmental Protection Agency (EPA) to regulate "a discharge" determined to threaten water quality does not preclude EPA from designating entire categories of discharge sources for regulation. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[29] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system was not ultra vires as to Clean Water Act (CWA); applicable statutory sections authorized designation of class of discharges to be identified on case-by-case, location-specific bases by NPDES permitting authority, consistent with comprehensive program to protect water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[30] Constitutional Law 92 2419

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2410 To Executive, Particular Issues and Applications
92k2419 k. Environment and Natural Resources. Most Cited Cases
(Formerly 92k62(10))

Environmental Law 149E 196

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149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA) did not effect unconstitutional delegation of legislative power, since such authority manifested statutory directive to restore and maintain chemical, physical and biological integrity of national waters. U.S.C.A. Const. Art. 1, § 1; Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[31] Environmental Law 149E 218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) provided proper notice and comment for rule allowing agency to retain residual designation authority subjecting categories of storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA), even though proposed rule would have only allowed such designation on case-by-case basis, since final rule was logical outgrowth of comments received by EPA; elements in proposed rule explicitly envisioned categorical designation of sources at watershed level. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[32] Administrative Law and Procedure 15A 405.5

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak404 Form
15Ak405.5 k. Economic or Social Impact Statement. Most Cited Cases
Under Regulatory Flexibility Act (RFA), federal agency must prepare regulatory flexibility analysis and assessment of economic impact of proposed rule on small business entities, unless agency certifies that proposed rule will not have significant economic impact on a substantial number of small entities, and provides a factual basis for that certification. 5 U.S.C.A. § 604.

[33] Environmental Law 149E 220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule subjecting categories of storm water discharge sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), reasonably certified that rule would not have significant economic impact on small business entities, as required under Regulatory Flexibility Act (RFA); EPA convened small business advocacy review panel before publishing notice of proposed rule, and included provisions in rule designed to minimize impacts on such entities. 5 U.S.C.A. § 604; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.
***839** Victoria Clark, Environmental Defense Center, Santa Barbara, CA, for petitioner Environmental Defense Center, Inc.

Andrew G. Frank and Arlene Yang, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, and Nancy K. Stoner, Natural Resources Defense Council, Washington, DC, for intervenor National Resources Defense Council, Inc.

R. Timothy McCrum, Ellen B. Steen, and Donald J. Kochan, Crowell & Moring, Washington, DC, for petitioners American Forest & Paper Association and National Association of Home Builders.

Steven P. Quarles and J. Michael Klise, Crowell & Moring, Washington, DC, and William R. Murray, American Forest & Paper Association, Washington, DC, for petitioner American Forest & Paper Association.

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Jim Mathews and Clarence Joe Freeland, Mathews & Freeland, Austin, TX, for petitioner Texas Cities Coalition on Stormwater.

Sydney W. Falk, Jr. and William D. Dugat III, Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, Austin, TX, for petitioner Texas Counties Storm Water Coalition.

John C. Cruden, Daniel M. Flores and Kent E. Hanson, United States Department of Justice, Washington, DC, and Stephen J. Sweeny, United States Environmental Protection Agency, Washington, DC, for respondent United States Environmental Protection Agency.

On Petition for Review of an Order of the Environmental Protection Agency. EPA No. Clean Water 40 CFR.

Before BROWNING, REINHARDT, and TALLMAN, Circuit Judges.

Opinion by Judge JAMES R. BROWNING; Partial Concurrence and Partial Dissent by Judge TALLMAN.

ORDER AND OPINION

ORDER

The opinion and dissent filed in this case on January 14, 2003, and published at 319 F.3d 398 are vacated. They are replaced by the Opinion and Dissent filed today.

With the filing of the new Opinion and Dissent, the panel has voted to deny the petitions for rehearing and the petition for rehearing en banc. (Judge Tallman would grant the petition for rehearing filed by ***840** the Environmental Protection Agency.) The full court has been advised of the new Opinion, new Dissent, and petition for rehearing en banc. No judge has requested a vote on the petition for rehearing en banc. Fed. R.App. P. 35.

The petitions for rehearing and the petition for rehearing en banc are DENIED. The clerk is instructed not to accept for filing any new petitions for rehearing or petitions for rehearing en banc in this case.

Each party shall bear its own costs in this appeal.

OPINION

JAMES R. BROWNING, Circuit Judge.

Petitioners challenge a rule issued by the United States Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§ 1251-1387, to control pollutants introduced into the nation's waters by storm sewers.

Storm sewers drain rainwater and melted snow from developed areas into water bodies that can handle the excess flow. Draining stormwater picks up a variety of contaminants as it filters through soil and over pavement on its way to sewers. Sewers are also used on occasion as an easy (if illicit) means for the direct discharge of unwanted contaminants. Since storm sewer systems generally channel collected runoff into federally protected water bodies, they are subject to the controls of the Clean Water Act.

In October of 1999, after thirteen years in process, the Environmental Protection Agency ("EPA") promulgated a final administrative rule (the "Phase II Rule"[FN1] or "the Rule") under § 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), mandating that discharges from small municipal separate storm sewer systems and from construction sites between one and five acres in size be subject to the permitting requirements of the National Pollutant Discharge Elimination System ("NPDES"), 33 U.S.C. §§ 1311(a), 1342. EPA preserved authority to regulate other harmful stormwater discharges in the future.

> FN1. The "Phase II Rule" reviewed here is the product of the second stage of EPA's two-phase stormwater rulemaking effort. The "Phase I Rule," governing larger-scale stormwater discharges, was issued in 1990 and reviewed by this court in *Natural Res. Def. Council v. EPA*, 966 F.2d 1292 (9th Cir.1992).

In the three cases consolidated here, petitioners and intervenors challenge the Phase II Rule on twenty-two constitutional, statutory, and procedural grounds.

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We remand three aspects of the Rule concerning the issuance of notices of intent under the Rule's general permitting scheme, and a fourth aspect concerning the regulation of forest roads. We affirm the Rule against all other challenges.

I.

BACKGROUND

A. The Problem of Stormwater Runoff

Stormwater runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources."[FN2] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, ***841** and estuaries across the United States.[FN3] In 1985, three-quarters of the States cited urban stormwater runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment.[FN4] Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters.[FN5] Among the sources of stormwater contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[FN6]

FN2. Richard G. Cohn-Lee and Diane M. Cameron, *Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation,* THE ENVIRONMENTAL PROFESSIONAL, Vol. 14, p. 10, at 10 (1992); *see also Natural Res. Def. Council,* 966 F.2d at 1295 (citing a study by the Nationwide Urban Runoff Program).

FN3. Regulation for Revision of the Water Pollution Control Program Addressing Storm Water, 64 Fed. Reg. 68,722, 68,724, 68,727 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

FN4. *Id.* at 68,726.

FN5. *Id.*

FN6. *Id.* at 68,725-31.

B. Stormwater and the Clean Water Act

Congress enacted the Clean Water Act in 1948 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (originally codified as the Federal Water Pollution Control Act, 62 Stat. 1155). The Clean Water Act prohibits the discharge of pollutants from a "point source"[FN7] into the waters of the United States without a permit issued under the terms of the National Pollutant Discharge Elimination System, 33 U.S.C. §§ 1311(a), 1342, which requires dischargers to comply with technology-based pollution limitations (generally according to the "best available technology economically achievable," or "BAT" standard). 33 U.S.C. § 1311(b)(2)(A). NPDES permits are issued by EPA or by States that have been authorized by EPA to act as NPDES permitting authorities. 33 U.S.C. § 1342(a)-(b). The permitting authority must make copies of all NPDES permits and permit applications available to the public, 33 U.S.C. §§ 1342(j), 1342(b)(3); state permitting authorities must provide EPA notice of each permit application, 33 U.S.C. § 1342(b)(4); and a permitting authority must provide an opportunity for a public hearing before issuing any permit, 33 U.S.C. §§ 1342(a)(1), 1342(b)(3); *cf.* 33 U.S.C. § 1251(e) (requiring public participation).

FN7. A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[1][2] Storm sewers are established point sources subject to NPDES permitting requirements. *Natural Res. Def. Council v. Costle,* 568 F.2d 1369, 1379 (D.C.Cir.1977) (holding unlawful EPA's exemption of stormwater discharges from NPDES permitting requirements); *Natural Res. Def. Council v. EPA,* 966 F.2d 1292, 1295 (9th Cir.1992).[FN8] In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Storm-

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water Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a ***842** two-phase overall program of stormwater regulation. *Id.* at § 1342(p)(2)-(4); *Natural Res. Def. Council,* 966 F.2d at 1296. In 1990, pursuant to § 402(p)(4), EPA issued the Phase I Rule regulating large discharge sources.[FN9]

FN8. Diffuse runoff, such as rainwater that is not channeled through a point source, is considered nonpoint source pollution and is not subject to federal regulation. *Oregon Natural Desert Ass'n v. Dombeck,* 172 F.3d 1092, 1095 (9th Cir.1998).

FN9. National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges, 55 Fed. Reg. 47,990 (Nov. 16, 1990) (codified at 40 C.F.R. pt. 122-124). The Phase I rule was challenged in this court in *Natural Res. Def. Council,* 966 F.2d at 1292. We held, *inter alia,* that EPA must impose deadlines for permit approvals, *id.* at 1300, that EPA's decision to regulate construction sites only over five acres in size was arbitrary and capricious, *id.* at 1306, and that EPA did not act capriciously in defining "municipal," *id.* at 1304, or in placing differently-sized municipalities on different permitting schedules, *id.* at 1301.

C. The Phase II Stormwater Rule

In Clean Water Act § 402(p), Congress also directed a second stage of stormwater regulation by ordering EPA to identify and address sources of pollution not covered by the Phase I Rule. Section 402(p)(1) placed a temporary moratorium (expiring in 1994) on the permitting of other stormwater discharges pending the results of studies mandated in § 402(p)(5) to identify the sources and pollutant content of such discharges and to establish procedures and methods to control them as "necessary to mitigate impacts on water quality." 33 U.S.C. § 1342(p)(5). Section 402(p)(6) required that EPA establish "a comprehensive program to regulate" these stormwater discharges "to protect water quality," following the studies mandated in § 402(p)(5) and consultation with state and local officials. *Id.* at § 1342(p)(6).

EPA proposed the Phase II Rule in January of 1998.[FN10] In October, 1999, Congress passed legislation precluding EPA from promulgating the new Rule until EPA submitted an additional report to Congress supporting certain anticipated aspects of the Rule.[FN11] EPA was also required to publish its report in the Federal Register for public comment. Pub. L. No. 106-74, § 431(c), 113 Stat. at 1097. Later that month, EPA submitted the required ("Appropriations Act") study and promulgated the Rule.[FN12]

FN10. Proposed Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 63 Fed. Reg. 1536 (proposed Jan. 9, 1998).

FN11. Pub. L. No. 106-74, § 431(a), 113 Stat. 1047, 1096 (1999) ("Appropriations, 2000-Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies").

FN12. Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68,722 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

Under the Phase II Rule, NPDES permits are required for discharges from small municipal separate storm sewer systems ("small MS4s") and stormwater discharges from construction activity disturbing between one and five acres ("small construction sites"). 40 C.F.R. §§ 122.26(a)(9)(i)(A)-(B). Small MS4s may seek permission to discharge by submitting an individualized set of best-management plans in six specified categories, *id.* at § 122.34, either in the form of an individual permit application, or in the form of a notice of intent to comply with a general permit. *Id.* at § 122.33(b). Small MS4s may also seek permission to discharge through an alternative process, under which a permit may be sought without requiring the operator to regulate third parties, *id.* at §§ 122.33(b)(2)(ii), 122.26(d).[FN13] Small construction sites may ***843** apply for individual NPDES permits or seek coverage under a promulgated general permit. *Id.* at § 122.26(c). EPA also preserved authority to

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regulate other categories of harmful stormwater discharges on a regional, as-needed basis. *Id.* at § 122.26(a)(9)(i)(C)-(D).

> FN13. The Rule also allows a small MS4 to be regulated under an individual NPDES permit covering a nearby large or medium MS4, with provisions adapted to address the small MS4. 40 C.F.R. § 122.33(b)(3).

D. Facial Challenges to the Phase II Rule

The Rule was challenged in the Fifth, Ninth, and D.C. Circuits in three separate actions ultimately consolidated before the Ninth Circuit.

The Texas Cities Coalition on Stormwater and the Texas Counties Stormwater Coalition (collectively, "the Municipal Petitioners") assert that EPA lacked authority to require permitting, that its promulgation of the Rule was procedurally defective, that the Rule establishes categories that are arbitrary and capricious, and that the Rule impermissibly requires municipalities to regulate their own citizens in contravention of the Tenth Amendment and to communicate a federally mandated message in contravention of the First Amendment. The Natural Resources Defense Council ("NRDC") intervened on behalf of EPA.

Environmental Defense Center, joined by petitioner-intervenor NRDC ("the Environmental Petitioners"), asserts that the regulations fail to meet minimum Clean Water Act statutory requirements because they constitute a program of impermissible self-regulation, fail to provide required avenues of public participation, and neglect to address stormwater runoff associated with forest roads and other significant sources of runoff pollution.

The American Forest & Paper Association ("AF&PA") and the National Association of Home Builders ("the Industrial Petitioners") assert that promulgation of the Rule was procedurally defective and violated the Regulatory Flexibility Act, that EPA's retention of authority to regulate future sources of runoff pollution is *ultra vires,* and that the decision to regulate discharge from construction sites one to five acres in size is arbitrary and capricious. NRDC again intervened on behalf of EPA.

We have jurisdiction pursuant to section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1) (assigning review of EPA effluent and permitting regulations to the Federal Courts of Appeals).

II.

DISCUSSION

A. The Permit Requirements

[3] The Municipal Petitioners' primary contention is that the Phase II Rule compels small MS4s to regulate citizens as a condition of receiving a permit to operate, and that EPA lacks both statutory and constitutional authority to impose such a requirement. Because we avoid considering constitutionality if an issue may be resolved on narrower grounds, *Greater New Orleans Broadcasting Ass'n v. United States,* 527 U.S. 173, 184, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999), we first ask whether the Phase II Rule is supported by statutory authority.

1. Statutory Authority

[4] The Municipal Petitioners assert that the statutory command in Clean Water Act § 402(p)(6) that EPA develop a "comprehensive program to regulate" small MS4s did not authorize a program based on NPDES permits. Petitioners argue that because § 402(p)(6) explicitly indicates elements that the program may ***844** contain (performance standards, guidelines, etc.) without mentioning "permits," Congress must have intended that the program exclude permitting.[FN14]

> FN14. The text of that section reads: "Not later than October 1, 1993, [EPA], in consultation with state and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater manage-

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CGILLETT-HARRIS-DURANCEAU & ASSOCIATES, INC., Plaintiff and Appellant,
v.
ROBERT C. KEMPLE et al., Defendants and Respondents.
Civ. No. 40857.

Court of Appeal, First District, Division 2, California.
July 27, 1978.

SUMMARY

An engineering, land surveying, and architectural services firm brought an action for defamation against individual members of a grand jury. In its report on its investigations of local government affairs (Pen. Code, §§ 925-931), the jury had charged that the firm had been negligent, incompetent, and wrong in the performance of its duties. The firm alleged that the statement in the report was untrue. No indictment was returned against the firm, any of its employees, or against any elected or appointed officials mentioned in the report. The trial court ruled that, though Pen. Code, § 930, attempted to remove civil immunity from grand jury functions, the statute was unconstitutional because the grand jury was a judicial body entitled to be protected in its functions in the same way as courts and the statute constituted an impermissible invasion of the jury's judicial prerogatives. (Superior Court of Lake County, No. 13430, Frank S. Petersen, Judge. [FN*])

The Court of Appeal reversed, holding that, while the grand jury's criminal indictment function was clearly judicial in nature and provided for in the state Constitution, its function in investigating and reporting on local government was a task imposed solely by statute. The court noted that the procedural safeguards available to a defendant in a criminal proceeding were not available to individuals mentioned in the jury's reports on civil matters and held that, under those circumstances, the removal of civil immunity of jury members was justified and not in conflict with the state Constitution.

FN* Assigned by the Chairperson of the Judicial Council.(Opinion by Rouse, J., with Taylor, P. J., and Kane, J., concurring.) *215

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 29--Language--Legislative Intent--Literal Meaning.
Though courts cannot add to, alter, or insert qualifying provisions to a statute when its language is clear, the intent of the law will prevail over the literal meaning when a strict interpretation of statutory language is contrary to the legislative objective.

(2a, 2b) Grand Jury § 3--Powers and Jurisdiction--Distinctions-- Authority to Investigate Local Government--Civil Immunity of Jury Members.
A grand jury's authority to indict (Cal. Const., art. I, § 14) is separate from its authority to investigate and report on matters pertaining to local government (Pen. Code, §§ 925-931). The latter function is a unique creature of the Legislature and is subject to its limitations. Thus, the statutory removal of civil immunity from members of the jury for comments upon any person or official not indicted contained within a report on local government (Pen. Code, § 930) is not conflict with the state Constitution.
[See **Cal.Jur.3d**, Criminal Law, § 406; **Am.Jur.2d**, Grand Jury, § 29.]
(3) Statutes § 51--Construction--Codes--Conflicting Provisions--Reconciling Specific and General Statutes.
A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject.

(4) Grand Jury § 3--Powers and Jurisdiction--Distinctions Between Criminal and Investigative Powers--Procedural Safeguards.
A grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Criminal indictments are subject to public trial and judicial review, but the power of a court to review a grand jury's investigation and report on local government is limited because procedural safeguards such as a means for challenging the sufficiency of evidence and rules of evidence controlling

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the type of information that can be presented to a grand jury in its investigative function are not available.

COUNSEL

Littlejohn & Westfall, Donald W. Littlejohn, Gerald W. Nash and Crump, Bruchler & Crump for Plaintiff and Appellant.

Spridgen, Barrett, Achor, Luckhardt, Anderson & James, William G. Luckhardt and Harry A. Allen for Defendants and Respondents.

ROUSE, J.

Plaintiff, Gillett-Harris-Duranceau & Associates, Inc., appeals from a judgment of dismissal entered after a demurrer to its second amended complaint was sustained without leave to amend.

Plaintiff's second amended complaint named, as defendants, 19 individuals who served on the Lake County Grand Jury during the fiscal year 1974-1975. It was alleged therein that plaintiff was a firm which provided engineering, land surveying and architectural services, and that in 1970, it began contracting to furnish such services to the County of Lake and to certain special districts within said county. Plaintiff alleged that on August 8, 1975, defendants had filed a public report entitled 'Final Report of the Grand Jury-1975,' with the Lake County Clerk, and that said report contained the statement that plaintiff had been negligent, incompetent and wrong in the performance of its duties. Allegedly, such statement was untrue, was known by defendants to be untrue, was made with the intent to convey defamatory meaning, and did, in fact, bring plaintiff into public disgrace and disrepute and injure plaintiff in its profession. Plaintiff's complaint alleged that the grand jury had returned no indictment against plaintiff or any of its employees or agents or against any elected or appointed officers of the County of Lake. Plaintiff sought to recover compensatory damages for defamation and interference with prospective business advantage. Exemplary damages were also sought on the theory that defendants had acted maliciously in making the defamatory statement concerning plaintiff.

In sustaining the demurrer without leave to amend, the trial court concluded that a grand jury was a judicial body which was entitled to be as fully protected in the exercise of its powers and functions as the courts themselves and that, like the courts, the grand jury was therefore entitled ***217** to full immunity from liability based upon statements made in the performance of its duties. The court further concluded that to the extent that section 930 of the Penal Code constituted an attempt to remove civil immunity from the grand jury's functions, such statute was an unconstitutional invasion of judicial prerogatives.

Plaintiff's appeal presents two issues: (1) whether section 930 of the Penal Code is applicable in this instance, and (2) whether said statute, if applicable, is constitutional.

Section 930 of the Penal Code [FN1] is based upon former section 928, as amended in 1897. That statute specified the affairs of county government upon which the grand jury was required to make its annual report, and included the following caveat: '*provided*, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged.' (Stats. 1897, ch. 142, § 2, p. 205.)

> FN1 Unless otherwise specified, all subsequent statutory references are to the Penal Code.

Former section 928 was later amended, on various occasions, [FN2] until 1959, when it was repealed and its provisions were reenacted as seven separate statutes, namely, sections 925 through 931. (Stats. 1959, ch. 501, art. 2, pp. 2449-2450.) Sections 925 and 926 were based upon the first paragraph of former section 928, sections 927 and 928 upon the second paragraph of said statute, section 929 upon the third paragraph, section 930 upon the fourth paragraph, and section 931 upon the fifth paragraph. ***218**

> FN2 In 1957, that section read as follows: 'It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records and accounts of all the officers of the county, of all hospital districts which were organized in the county, and especially those pertaining to the revenue, and report as to the facts they have found, with

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such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, to be first approved by the court; and if, in their judgment, the services of assistants to such expert are required, they shall have power to employ such, at a compensation to be agreed upon and approved by the court.

'It shall be the duty of every grand jury first impaneled in even-numbered years to investigate, upon request to grant personal interviews to the officials concerned, and to report upon the needs for increase or decrease in salaries of the county supervisors, the district attorney and the auditor, and it shall cause a copy of such report to be transmitted to each Member of the Legislature representing the county in which it has been impaneled before the commencement of the regular session of the Legislature in odd-numbered years. It shall also be the duty of every grand jury to investigate and report upon the needs of all county officers in its county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices, and it shall cause a copy of such report to be transmitted to each member of the board of supervisors in its county.

'It shall be the duty of the grand jury, when making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, to include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district created by or under the laws of the State of California, in their respective counties.

'The judge, on impanelment of the grand jury, shall charge them especially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury the said comments shall not be deemed to be privileged.

'Any and all expenses incurred under this section, and also the per diem and mileage where allowed by law, of the grand jurors, shall be paid by the treasurer of the county out of the general fund of said county upon warrants drawn by the county auditor upon the written order of the judge of the superior court in said county.' (Stats. 1957, ch. 1364, § 1, p. 2699.)

In 1961, the Legislature enacted a new statute, section 933.5, which authorized the grand jury to examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county. (Stats. 1961, ch. 1461, § 2, p. 3313.) The statute was amended in 1969 to add language to the effect that the grand jury could investigate and report upon the method or system of performing the duties of such districts. (Stats. 1969, ch. 931, § 1, p. 1870.)

At the time of the grand jury report here in issue, section 930 read as follows: 'If any grand jury shall, *in the report above mentioned*, comment upon any person or official who has not been indicted by such grand jury such comments shall not be deemed to be privileged.' (Italics added.)

Section 930 was immediately preceded by section 929, [FN3] which provided that 'When making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, the grand jury shall include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district in the county, created pursuant to state law.'

FN3 Section 929.1, which dealt with the employment by the grand jury of expert auditors or appraisers to assist in the examination of the county assessor's records, was repealed in 1974. (Stats. 1974, ch. 1396, § 2, p. 3054.)

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The alleged defamatory statement upon which the action is based was contained in a report rendered by the 'Special Districts Committee' of ***219** the grand jury. Defendants point out that, when the provision eliminating the grand jury's privilege was originally added to former section 928 in 1897, that statute dealt solely with the examination of the books, records and accounts of county officers and made no mention of special-purpose assessing or taxing districts. They assert that the Legislature could not have had special districts in mind when it originally added the provision eliminating the grand jury's privilege, since it was not until the 1961 enactment of section 933.5 that the grand jury was authorized to examine the books and records of such special districts. In 1975, when the grand jury rendered the report here in issue, section 930 provided that there should be no privilege in connection with 'the report above mentioned.' Reports on special districts are not mentioned in any of the statutes preceding section 930, but only in the subsequent statute, section 933.5. According to defendants, it follows that a special district report cannot be deemed 'the report above mentioned,' within the meaning of section 930. They contend that the statute was intended to eliminate immunity on the part of the grand jury only in connection with the previously mentioned reports on county officers.

Plaintiff asserts that there is no logical reason why the Legislature would have intended that a grand jury report on county officers not be privileged, while a report on special districts would be privileged. They point out that, as a matter of practice, grand juries do not separate special districts reports from reports on county officials; rather, that the normal practice, which was followed in this case, is to render a single report dealing with both subjects. Plaintiff argues that since the Legislature has imposed no requirement that grand juries separate special district reports from reports on county officers, it may be presumed that the Legislature approved of the preparation of a single report and that the reference to 'the report above mentioned' in section 930 should be interpreted as referring to a report by the grand jury on the subject of special districts as well as county officers.

(1)Juridical construction of a statute is possible only when uncertainty is found. 'Clear statutory language no more needs to be interpreted than pure water needs to be strained.' (*Holder v. Superior Court* (1969) 269 Cal.App.2d 314, 317 [74 Cal.Rptr. 853].) A court may not rewrite a statute by inserting thoughts that have been omitted or by omitting thoughts that have been inserted. (*Richardson v. City of San Diego* (1961) 193 Cal.App.2d 648, 650 [14 Cal.Rptr. 494].) Where the words of a statute are clear, the courts cannot add to them or alter them or insert qualifying ***220** provisions to conform to an assumed intent or accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314 [53 Cal.Rptr. 88].)

On the other hand, there is abundant authority for the proposition that the literal construction of a statute will not prevail if it is opposed to legislative objective. (*Pacific Gas & Elec. Co. v. Morse* (1970) 6 Cal.App.3d 707, 712 [86 Cal.Rptr. 7].) The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law, and every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Cannon v. American Hydrocarbon Corp.* (1970) 4 Cal.App.3d 639, 648 [84 Cal.Rptr. 575].) Words will not be given their literal meaning when to do so would make the provisions of a statute apply to transactions never contemplated by the Legislature, and to this end, the intent of a law must be held to prevail over the letter. (*La-Borde v. McKesson & Robbins, Inc.* (1968) 264 Cal.App.2d 363, 370 [70 Cal.Rptr. 726].)

Here, the language of section 930 renders it applicable only to 'the report above mentioned.' The statutes preceding section 930 make no mention of reports concerning special districts; they refer only to reports on county officers. We agree, however, with plaintiff's assertion that it is difficult to conceive of any valid legislative objective which would be furthered by eliminating the grand jury's privilege in connection with reports concerning county officers while preserving such privilege as to reports which concern special districts within the county. We conclude that the provisions of section 930 apply both to grand jury reports on county officers and reports on special districts.

The question remaining is whether the provisions of section 930 constitute an unconstitutional impairment of the judicial privilege. Defendants remind us that article III, section 3, of the California Constitution

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divides the state government into legislative, executive and judicial departments, and that it has long been settled that the Legislature cannot exercise or place limitations upon judicial powers. Thus, in *Oppenheimer v. Ashburn* (1959) 173 Cal.App.2d 624 [343 P.2d 931], the appellate court held invalid a section of the Penal Code which provided for the imposition of a fine upon a judge who refused to grant a writ of habeas corpus after a proper application therefor had been made. In so holding, the court observed that the decisions of this state uniformly and ***221** consistently grant immunity to judges in the exercise of their judicial functions. The court then referred to an early California case which applied such rule to grand jurors, pointing out that 'The clear line of California decisions begins with the early case of *Turpen v. Booth* (1880), 56 Cal. 65[38 Am.Rep. 48], which held that since a grand juror served in a quasi-judicial status he was not civilly responsible, no matter how erroneous his findings or how malicious his motive, for his action on the grand jury.' (P. 629.)

Defendants also rely upon section 47, subdivision 2, of the Civil Code, which provides that a privileged publication or broadcast is one made in any judicial proceeding. They note that in *Irwin v. Murphy* (1933) 129 Cal.App. 713 [19 P.2d 292], it was held that a grand jury is a judicial body and grand jurors are officers of the court (p. 716), and that statements impugning the integrity of the plaintiff as a boxing referee were privileged where pertinent to the matters or persons under investigation (p. 718).

Plaintiff points out that the only reference to the grand jury in the California Constitution concerns the indicting function of that body and provides for the annual summoning of grand jurors. (Cal. Const., art. I, §§ 14, 23.)

In *Fitts v. Superior Court* (1936) 6 Cal.2d 230, 241 [57 P.2d 510], the California Supreme Court held that, by failing to make any further provision regarding the grand jury, the constitutional convention of 1879 left to the Legislature all questions affecting the grand jury not expressly covered by the Constitution.

(2a)Thus, as plaintiff suggests, an important distinction must be made between a grand jury's authority to indict and its authority to exercise a 'watchdog' function in matters of local government. The latter activity is a unique creature of the California Legislature, which has a long and well respected heritage. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430, 436 [119 Cal.Rptr. 193, 531 P.2d 761].) Since the grand jury's power to investigate and report on matters pertaining to local government is a creature of statute, the Legislature is at liberty to impose reasonable limitations upon the exercise of this watchdog function. Section 930 imposes such a limitation.

The cases relied upon by defendants, namely, *Turpen v. Booth, supra.*, 56 Cal. 65, and *Irwin v. Murphy, supra.*, 129 Cal.App. 713, are readily ***222** distinguishable from the situation before us. Each of those cases upheld a claim of privilege in connection with statements made by grand juries as a part of investigations which were conducted in order to determine whether their constitutional authority to indict should be exercised. Also, we believe that defendants' reliance upon section 47, subdivision 2, of the Civil Code, is misplaced. (3)It is well settled that a special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. (*In re Williamson* (1954) 43 Cal.2d 651, 654 [276 P.2d 593]*Burum v. State Compensation Ins. Fund* (1947) 30 Cal.2d 575, 586 [184 P.2d 505].) Therefore, where the Legislature has enacted a statute which exempts statements made in certain reports rendered by the grand jury from the status of privileged communications, that statute takes precedence over another statute which deals generally with the subject of privilege in judicial proceedings.

(2b)Defendants have not established, nor have we been able to discern, any conflict between the provisions of section 930 and those of our state Constitution which deal with grand juries. The simple truth is that the latter document does not deal with the grand jury's authority to act as a watchdog and prepare reports on local government. Since the watchdog function of the grand jury was created by statute, there is no reason why its exercise cannot be limited by statute.

(4)We agree with plaintiff that the grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Further, we find merit in plaintiff's contention that there is sufficient basis for distinguishing the grand

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jury's watchdog role from its role as an indicting body: indictment proceedings are secret and their disclosure is a misdemeanor (§ 924.1); the sufficiency of the evidence presented to the grand jury may be challenged pursuant to section 995; the accused, if indicted, is afforded a public trial and the opportunity to defend against the charges. By contrast, when the grand jury renders its watchdog report, the trial court's power to review such report is limited: it may refuse to file an illegal report which is beyond the grand jury's jurisdiction to render. (*People v. Superior Court (1973 Grand Jury)*, *supra.*, 13 Cal.3d at p. 440.) There is no statutory provision similar to section 995 for challenging the sufficiency of the evidence; there are no rules of evidence controlling the type of information which can be presented to the grand jury for its report; and there is no forum in which an individual who has been unfavorably mentioned by the grand jury may present his version of the facts. In our opinion, these considerations furnish ample justification for the Legislature's decision to enact section 930 and thereby ***223** eliminate the claim of privilege in connection with the grand jury's report on local government. [FN4]We conclude that, in so doing, the Legislature acted well within its power and that the restrictions thus imposed do not violate the California Constitution.

> FN4 It is of interest to note that when the grand jurors in this case were impaneled and sworn, the court advised them of their lack of immunity in certain instances, stating, 'as to any comments in your reports upon a person or public official not indicted, such comments are not privileged and could, if libelous, be the basis for a charge of civil or criminal libel.'

The judgment of dismissal is reversed.

Taylor, P. J., and Kane, J., concurred.
Respondents' petition for a hearing by the Supreme Court was denied October 12, 1978. ***224**

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CALBERT MILLS, Plaintiff and Respondent,
v.
COUNTY OF TRINITY et al., Defendants and Appellants.
Civ. No. 18866.

Court of Appeal, Third District, California.
Jul 28, 1980.

SUMMARY

In an action against Trinity County and its board of supervisors brought by a taxpayer in that county challenging a resolution by the county's board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors required for a "special tax" within the meaning of Cal. Const., art. XIIIA, § 4, the court granted summary judgment for plaintiff and issued a writ of mandamus barring enforcement of the resolution's provisions. (Superior Court of Trinity County, No. 7030, Clyde H. Small, Judge. [FN*])

The Court of Appeal reversed and remanded with directions for further proceedings consistent with its holdings. The court held that special initiatives should be liberally interpreted to give full effect to the framers' objectives, but that the trial court erred in construing "tax" to include, within the contemplation of the "special tax" referred to in Cal. Const., art. XIIIA, § 4, all charges however labeled, to exact money for the support of government or for public purposes. The court further held that the "special tax" does not embrace fees charged in connection with regulatory activities that do not exceed the reasonable cost of providing services necessary to the activity for which the fees are charged, that the new and increased fees in Trinity County were not, therefore, unconstitutional as a matter of law, and that whether or not those fees were invalid would depend on a factual determination on remand as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed,

FN* Deleted on direction of Supreme Court by order dated October 1, 1980. (Opinion by Puglia, P. J., with Reynoso, J., and DeCristoforo, J., [FN†]]] concurring.) ***657**

FN† Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers.
The "special tax" referred to in Cal. Const., art. XIIIA, § 4, as being incapable of being legally imposed in a taxing district without a two-thirds vote of the qualified electors of the taxing district, does not embrace, under the established rules of construction applicable to the interpretation of constitutional provisions, fees charged in connection with regulatory activities, where the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged, and that are not levied for unrelated revenue purposes.
[See **Cal.Jur.3d,** Constitutional Law, § 167; **Am.Jur.2d,** State and Local Taxation, § 93.]
(2) Words, Phrases and Maxims--Tax--Definition--Construction Within Context and Purpose in Which Used.
"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is created. In its broadest sense, a tax includes all charges on persons or property for the support of government or for public purposes. In narrower contexts, the word may be construed to exclude charges to particular individuals that do not exceed the value of the governmental benefit conferred on or the service rendered to the individuals, and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities.

(3) Initiative and Referendum § 6--State Elections--Initiative Measures-- Construction.

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Initiative measures should, like other constitutional provisions, be interpreted liberally to give full effect to the framers' objective and the growing needs of the people.

(4) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers--Regulatory Fees Within Ambit of Special Tax Proscription.
In an action challenging the constitutionality of a resolution by a county board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications, the trial court erred in determining that the resolution violated prohibitions of Cal. Const., art. XIIIA, § 4, against a "special tax." In reaching its decision the trial court erred in construing the term, "tax", as used in Cal. Const., art. XIIIA, § 4, to include all charges, however labeled, to exact money for the support of government or for public purposes, and in ruling that the special fees imposed by the county resolution thus constituted, a "special tax" within the prohibitions of Cal. Const., art. XIIIA, § 4. The "special tax" referred to in Cal. Const., art. XIIIA, does not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Whether or not the fees imposed under the resolution were invalid would depend on a factual determination on remand to the trial court as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed.

COUNSEL

Ronald Barbatoe, District Attorney, for Defendants and Appellants.

Wells, Wingate & Small, W. Leonard Wingate and Edward A. Shuttle as Amici Curiae on behalf of Defendants and Appellants.

David R. Hammer for Plaintiff and Respondent.

Ronald A. Zumbrun, John H. Findley, Thomas E. Hookano and James L. Meyer as Amici Curiae on behalf of Plaintiff and Respondent.

PUGLIA, P. J.

Following enactment of article XIII A of the California Constitution (Prop. 13 on the June 6, 1978, ballot, commonly known as the Jarvis-Gann initiative), the Trinity County Board of Supervisors adopted resolution No. 73-78 providing both increased and new fees for county services in processing subdivision, zoning, and other ***659** land-use applications. Plaintiff Mills then brought this action in the superior court against the county and its board challenging the constitutionality of the resolution and seeking to bar its enforcement through mandate and declaratory and injunctive relief. The trial court sustained plaintiff's claim that as a matter of law the new and increased fees under resolution No. 73-78 constitute a "special tax" within the meaning of article XIII A and thus cannot be imposed without a two-thirds affirmative vote of the electors of Trinity County. Since the board of supervisors had adopted the resolution without submitting it to the county electorate for approval, the court ordered summary judgment in plaintiff's favor and issued a peremptory writ of mandate. The writ ordered defendants to "desist and refrain from enforcing the provisions of Resolution Number 73-78" and further directed defendants to refund any and all monies received pursuant to the provisions of the resolution which exceeded amounts in effect under prior fee schedules.

Defendants appealed and filed an accompanying petition for a writ of supersedeas. We issued the writ, restraining enforcement of the judgment pending disposition of this appeal. (*Mills v. County of Trinity* (1979) 98 Cal.App.3d 859 [159 Cal.Rptr. 679].)

Although in its generality, article XIII A is not fatally vague, "in a number of particulars [it] is imprecise and ambiguous" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]) "and over a period of time will require judicial, legislative and administrative construction" (*id.*, at p. 244). We are now called upon in this appeal to determine whether the new and increased fees exacted by resolution No. 73-78 constitute a "special tax" within the meaning of section 4 of article XIII A. That provision states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a

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transaction tax or sales tax on the sale of real property within such City, County or special district."

(1)Utilizing the established rules of construction applicable to the interpretation of constitutional provisions (see *Amador Valley*, *supra.*, 22 Cal.3d at pp. 245-246), we conclude that the "special tax" referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.***660** Accordingly, we shall reverse and remand for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities.

(2)"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is to be used. (See *Crawford v. Herringer* (1978) 85 Cal.App.3d 544, 548-551 [149 Cal.Rptr. 578]; *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99-100 [308 P.2d 1].) In its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes. (*City of Madera v. Black* (1919) 181 Cal. 306, 310-311 [184 P. 397]; Webster's New Internat. Dict. (3d ed. 1971) p. 2345.) In narrower contexts, the word has been construed to exclude charges to particular individuals which do not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals (*County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 984 [156 Cal.Rptr. 777]; *Crawford v. Herringer*, *supra.*, 85 Cal.App.3d at p. 550), and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities (*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263]).

(3)Initiative measures as well as other general constitutional provisions should be interpreted liberally to give full effect to the framers' objective and the growing needs of the people. (*Amador Valley*, *supra.*, 22 Cal.3d at pp. 244-245.) Animated by the foregoing principle, the trial court construed "tax" in its broadest meaning holding that, as used in section 4 of article XIII A, it "includes all charges, however labeled, which are to exact money for the support of government or for public purposes." (4) However, were we to accept the trial court's broad definition, the initiative measure as so construed would prohibit any increase in fees for governmental activities conferring a direct benefit on the specific individual who is charged for such benefit without the prior approval of two-thirds of the electors. In other words, a county would be powerless to raise charges for proprietary functions such as hospital services, public transportation, and garbage collection without the two-thirds stamp of approval. We do not believe the state electors intended to put local government in such a fiscal straightjacket.

Conceding that such a draconian result was probably never intended by the electorate, plaintiff asserts the interpretation adopted by the trial ***661** court would exclude from the meaning of "special tax" fees charged for governmental activities *primarily* for the benefit of individuals and only incidentally for the benefit of the public. The minor premise of plaintiff's argument is that land-use charges imposed on the developer pursuant to the government's police power are primarily for the benefit of the public at large. Plaintiff thus concludes that such charges constitute taxes within the meaning of section 4 of article XIII A. Defendants, while not disputing the applicability of the "primary purpose" test, contend that it is the developer who is the primary beneficiary of an approval for land subdivision since the value of the land increases; the public, defendants assert, is merely the indirect beneficiary.

We eschew the public versus individual primary purpose test as a solvent of the instant litigation. The trial court also recognized the difficulty of embarking on such "spongy terrain" since all governmental activities by definition serve a public purpose. Under such a test, every charge imposed in connection with land-use activities as well as all other regulatory activities undertaken pursuant to the police power might well be categorized as a "special tax" since the police power is constitutional only if adopted to promote the health, safety, and welfare of the public as a whole. (*Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365, 387 [71 L.Ed. 303, 310, 47 S.Ct. 114, 54 A.L.R. 1016]; *Associated Homebuilders etc. Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].)

We rely instead on statutory and judicial precedent

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(see *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 850 [59 Cal.Rptr. 609, 428 P.2d 593]) and contemporaneous legislative construction (*Amador Valley, supra.*, 22 Cal.3d at p. 245) in determining that the state electorate did not intend to include within the meaning of "special tax" reasonable costs for processing land-use permits and applications.

Traditionally, courts have determined whether a local governmental charge denominated a regulatory fee is an exercise of the police power or the power to raise revenue by analyzing the use of the fee involved rather than relying on its label. (*United States Com. v. City of San Diego, supra.*, 91 Cal.App.3d at p. 165.) The general rule is that a regulatory fee must not "exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought" in order to be considered as a fee rather than a guise for a tax. (*Ibid.*; see also *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 763 [87 P. 909]; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 5, pp. 3991-3992; 9 McQuillin, ***662** Municipal Corporations (3d ed. 1978) § 26.15, p. 29.) As long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees is not dependent on any legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution. (*County of Plumas v. Wheeler, supra.*, 149 Cal. at pp. 761, 763.) Land-use regulations fulfill a legitimate public welfare purpose under the police power. (*Associated Homebuilders etc. Inc. v. City of Livermore, supra.*, 18 Cal.3d at p. 604;*Associated Homebuilders etc. Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 651 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847].) Moreover, with respect to subdivision map activities in particular, Government Code section 66451.2 provides that "... local agenc [ies] may establish *reasonable* fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by [the Subdivision Map Act] or local ordinance." (Italics added.)

Senate Bill No. 785, enacted in September 1979 after the enactment of article XIII A and the county's adoption of resolution No. 73-78, is sufficiently contemporaneous to serve as an interpretive guide. Its purpose is to furnish legislative authorization for counties and general law cities to impose special taxes subject to the two-thirds requirement of article XIII A. Section 50076, added to the Government Code by Senate Bill No. 785, clarifies the meaning of "special tax" as follows: "As used in this article, •*special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.*" (Italics added.) Where the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts. (*San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273, 279 [191 P. 26]; *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692-693 [97 Cal.Rptr. 1, 488 P.2d 161].)

In addition, the "special tax" referred to in section 4 of article XIII A has been judicially construed to exclude special assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvement. (*County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 984.) The *Malmstrom* interpretation is consistent with that expressed by the Legislature in Senate Bill No. 785 (Gov. Code, § 50076).***663**

Ballot arguments and analyses presented to the electorate may be helpful in determining the probable meaning of an initiative's uncertain language. (*Amador Valley, supra.*, 22 Cal.3d at pp. 245-246.) Here, the arguments in favor of the constitutional initiative "support a conclusion that the article is aimed at *general* taxes and governmental spending." (Original italics; *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 981.) There is nothing in the ballot arguments supporting article XIII A suggesting an intent to prevent local government from exacting fees reasonably commensurate with the cost of regulatory activity from those at whose instance the activity is conducted.

Finally, support for the Legislature's interpretation of "special taxes" is found in an initiative measure subsequently adopted by the California electorate in 1979; the measure placed limitations on governmental spending. (Cal. Const., art. XIII B.) Although applicable only to article XIII B, the phrase, "proceeds of taxes," is defined there as including, but not restricted to "all tax revenues and the proceeds to an

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entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds *exceed* the costs reasonably borne by such entity in providing the regulation, product, or service, ..." (Italics added; Cal. Const., art. XIII B, § 8, subd. (c).)

Informed by those sources recognized as germane to the task of statutory interpretation, we conclude that "special taxes" under article XIII A, section 4 of the California Constitution do not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Since the trial court held the fees imposed by resolution No. 73-78 constitute a "special tax" as a matter of law, the factual question whether or not such fees exceed the reasonable cost of the related regulatory activity has never been litigated. On remand that issue must be tried.

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

Reynoso, J., and DeCristoforo, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

Respondent's petition for a hearing by the Supreme Court was denied September 24, 1980.

Cal.App.3.Dist.
Mills v. County of Trinity
108 Cal.App.3d 656, 166 Cal.Rptr. 674

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United States Court of Appeals,
District of Columbia Circuit.
NATURAL RESOURCES DEFENSE COUNCIL, INC.[FN*]

FN* For convenience the court will refer to this case hereafter as NRDC v. Costle (Runoff Point Sources).

v.

Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Forest Products Association, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.
v.
Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Milk Producers Federation, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.
v.
Douglas M. COSTLE, Administrator, and Environmental Protection Agency, et al., Appellants.
NATURAL RESOURCES DEFENSE COUNCIL, INC.
v.
Douglas M. COSTLE, Administrator, Environmental Protection Agency, Colorado River Water Conservation District, Appellant.
Nos. 75-2056, 75-2066, 75-2067 and 75-2235.

Argued Dec. 3, 1976.
Decided Nov. 16, 1977.

The National Resources Defense Council, Inc. challenged authority of the Environmental Protection Agency Administrator to exempt categories of point sources from permit requirements of the Federal Water Pollution Control Act Amendments of 1972. The United States District Court for the District of Columbia, Thomas A. Flannery, J., 396 F.Supp. 1393, granted summary judgment to the NRDC and the Administrator and others appealed. The Court of Appeals, Leventhal, Circuit Judge, held that: (1) legislative history shows that National Pollution Discharge Elimination System permit is the only means by which discharger may escape total prohibition of discharges from point sources found in FWPCA; (2) national effluent limitations need not be uniform as precondition for NPDES program to include pollution from agricultural, silvicultural, and storm runoff point sources, and while technological or administrative infeasibility of such limitations may warrant adjustments in permit program it does not authorize Administrator to exclude relevant point sources; (3) where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate problems of point source pollution as well as require monitoring and reporting of effluent level; and (4) a number of administrative devices, including general or area permits are available to aid EPA in practical administration of NPDES program, and FWPCA, however tight in some respects, leaves some leeway to EPA in interpretation of that statute and affords agency some means to consider matters of feasibility.

Affirmed in accordance with opinion.

MacKinnon, Circuit Judge, filed a concurring opinion.

West Headnotes

[1] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35, 199k25.7(16) Health and Environment)
Legislative history clearly shows that Congress intended that the national pollution discharge elimination system permit be the only means by which a discharger of pollutant may escape total prohibition of discharges from point sources found in Federal Water Pollution Control Act Amendments. Federal Water Pollution Control Act, §§ 301, 301(a), 402 as amended 33 U.S.C.A. §§ 1311, 1311(a), 1342.

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[2] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(13.1), 199k25.7(13) Health and Environment, 270k35)
Use of word "may" in that section of Federal Water Pollution Control Act Amendment providing that the administrator may issue permit for discharge of any pollutant means only that the administrator has the discretion either to issue permit or to leave pollutant discharger subject to total proscription of statute making discharge of any pollutant by any person unlawful except as provided in Act. Federal Water Pollution Control Act, §§ 301(a), 302, 304 as amended 33 U.S.C.A. §§ 1311(a), 1342, 1344.

[3] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(6.1), 199k25.7(6) Health and Environment)

Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35)
Existence of uniform national effluent limitations is not a necessary precondition for incorporating into the national pollutant discharge elimination system program pollution from agricultural, silvicultural, and storm water runoff point sources; technological or administrative infeasibility of such limitations may result in adjustments in permit programs but does not authorize administrator to exclude relevant point sources from program. Federal Water Pollution Control Act, §§ 301, 402, 404, 1362(12, 14), as amended 33 U.S.C.A. §§ 1311, 1342, 1344, 502(12, 14).

[4] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
(Formerly 270k35, 199k25.7(10.1), 199k25.7(10) Health and Environment)
Where numeric effluent limitations are infeasible, point of discharge permits may proscribe industry practices which aggravate problems of point source pollution as well as require monitoring and reporting of effluent levels contrary to claim that any limitations must be issued in terms of a numerical effluent standard. Federal Water Pollution Control Act, §§ 302(a), 402, 402(a) as amended 33 U.S.C.A. §§ 1312(a), 1342, 1342(a).

[5] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35, 199k25.7(13.1), 199k25.7(13) Health and Environment)
Federal Water Pollution Control Act Amendments merely require that point of discharge permits be in compliance with limitations section of Act and as a result the use of area or general permits is allowed. Federal Water Pollution Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[6] Environmental Law 149E 641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
(Formerly 199k25.15(3.2), 199k25.15(1) Health and Environment, 270k35)
Power to define point and nonpoint sources of pollution is vested in Environmental Protection Agency under the Federal Water Pollution Control Act Amendments, and exercise of that power should be reviewed by court only after opportunity for full agency review and examination. Federal Water Pollu-

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tion Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[7] Environmental Law 149E 216

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek216 k. In General. Most Cited Cases
(Formerly 270k35, 199k25.7(11) Health and Environment)
Federal Water Pollution Control Act Amendments, however tight in some respects, leave some leeway to Environmental Protection Agency in interpretation and affords agency some means to consider matter of feasibility. Federal Water Pollution Control Act, §§ 1-26, 101-517 as amended 33 U.S.C.A. §§ 1151-1175, 1251-1376.

[8] Administrative Law and Procedure 15A 305

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak303 Powers in General
15Ak305 k. Statutory Basis and Limitation. Most Cited Cases
It is not what court thinks that is generally appropriate to regulatory process, but what Congress intended.

***1370 **148** *Syllabus by the Court*

The National Resources Defense Council, Inc. (NRDC) challenged the authority of the EPA Administrator to exempt categories of point sources from the permit requirements of s 402 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. s 1342 (Supp. V 1975). On appeal from a grant of summary judgment to NRDC, held:

1. The legislative history makes clear that Congress intended the National Pollution Discharge Elimination System (NPDES) permit to be the only means by which a discharger may escape the total prohibition of discharges from point sources found in FWPCA s 301(a), 33 U.S.C. s 1311(a) (Supp. V 1975).

2. It is not necessary that national effluent limitations be uniform as a precondition for the NPDES program to include pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility ***1371 **149** of such limitations may warrant adjustments in the permit program, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

3. Where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate the problems of point source pollution as well as require monitoring and reporting of effluent levels.

4. A number of administrative devices, including general or area permits, are available to aid EPA in the practical administration of the NPDES program. The FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute and, in that regard, affords the agency some means to consider matters of feasibility.

Appeals from the United States District Court for the District of Columbia (D.C. Civil 1629-73).Irvin B. Nathan, Washington, D. C., with whom Burton J. Mallinger, Washington, D. C., was on the brief, for appellant in No. 75-2056.

Charles W. Bills, Washington, D. C., with whom James R. Murphy, Washington, D. C., was on the brief for appellant in No. 75-2066.

G. William Frick, Atty., Dept. of Justice, Kansas City, Mo., of the bar of the Supreme Court of Missouri, pro hac vice by special leave of court for appellants in No. 75-2067. Peter R. Taft, Asst. Atty. Gen., Robert V. Zener, Gen. Counsel, Environmental Protection Agency, Edmund B. Clark, Lloyd S. Guerci, Larry A. Boggs, Attys., Dept. of Justice and Pamela P. Quinn, Atty., Environmental Protection Agency, Washington, D. C., were on the brief for appellants in No. 75-2067.

Christopher D. Williams, Washington D. C., with whom Kenneth Balcomb and Robert L. McCarty, Washington, D. C., were on the brief for appellant in No. 75-2235.

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J. G. Speth, Washington, D. C., for appellee.

Theodore O. Torve, Asst. Atty. Gen., State of Washington, Olympia, Wash., filed a brief on behalf of the State of Washington as amicus curiae urging reversal in No. 75-2056.

Richard E. Schwartz, Jefferson City, Mo., filed a brief on behalf of Iron and Steel Institute, as amicus curiae urging reversal in No. 75-2067.

John L. Hill, Atty. Gen., State of Texas, and David M. Kendall, Jr., First Asst. Atty. Gen., State of Texas, Austin, Tex., filed a brief on behalf of State of Texas as amicus curiae urging reversal in No. 75-2067.

Before BAZELON, Chief Judge, and LEVENTHAL and MacKINNON, Circuit Judges.

Opinion for the Court filed by LEVENTHAL, Circuit Judge.
Concurring Opinion filed by MacKINNON, Circuit Judge.
LEVENTHAL, Circuit Judge:

In 1972 Congress passed the Federal Water Pollution Control Act Amendments (hereafter referred to as the "FWPCA" or the "Act" [FN1]). It was a dramatic response to accelerating environmental degradation of rivers, lakes and streams in this country. The Act's stated goal is to eliminate the discharge of pollutants into the Nation's waters by 1985. This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act.

> FN1.33 U.S.C. ss 1251-1376 (Supp. V 1975). Although characterized in the official title as "amendments", the 1972 FWPCA actually substitutes its provisions for those of the pre-1972 Federal Water Pollution Control Act as amended, id. ss 1151-1175 (1970).

The FWPCA sets up a permit program, the National Pollutant Discharge Elimination System (NPDES), as the primary means of enforcing the Act's effluent limitations.[FN2] At issue in this case is the authority*1372 **150 of the Administrator of the Environmental Protection Agency to make exemptions from this permit component of the FWPCA.

> FN2. This case deals with s 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), which sets out the permitting authority of the EPA Administrator as well as that of the states under EPA-approved state permit programs. The Secretary of the Army also has a permitting authority in certain circumstances. Under s 404 of the FWPCA, 33 U.S.C. s 1344 (Supp. V 1975), he may issue permits for the discharge of dredged or fill material into navigable waters.

Section 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), provides that under certain circumstances the EPA Administrator "may . . . issue a permit for the discharge of any pollutant" notwithstanding the general proscription of pollutant discharges found in s 301 of the Act.33 U.S.C. s 1311 (Supp. V 1975). The discharge of a pollutant is defined in the FWPCA as "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or floating craft."33 U.S.C. s 1362(12) (Supp. V 1975). In 1973 the EPA Administrator issued regulations that exempted certain categories of "point sources" of pollution from the permit requirements of s 402.[FN3] The Administrator's purported authority to make such exemptions turns on the proper interpretation of s 402.

> FN3.40 C.F.R. s 125.4 (1975). See 38 Fed.Reg. 18000-04 (1973).

A "point source" is defined in s 502(14) as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."[FN4]

> FN4.33 U.S.C. s 1362(14) (Supp. V 1975).

The 1973 regulations exempted discharges from a number of classes of point sources from the permit requirements of s 402, including all silvicultural point sources; all confined animal feeding operations be-

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low a certain size; all irrigation return flows from areas of less than 3,000 contiguous acres or 3,000 noncontiguous acres that use the same drainage system; all nonfeedlot, nonirrigation agricultural point sources; and separate storm sewers containing only storm runoff uncontaminated by any industrial or commercial activity.[FN5] The EPA's ***1373 **151** rationale for these exemptions is that in order to conserve the Agency's enforcement resources for more significant point sources of pollution, it is necessary to exclude these smaller sources of pollutant discharges from the permit program.

FN5.40 C.F.R. s 125.4 (1975):

The following do not require an NPDES permit:

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e. g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identi-

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> fied by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

The National Resources Defense Council, Inc. (NRDC) sought a declaratory judgment that the regulations are unlawful under the FWPCA. Specifically, NRDC contended that the Administrator does not have authority to exempt any class of point source from the permit requirements of s 402. It argued that Congress in enacting ss 301, 402 of the FWPCA intended to prohibit the discharge of pollutants from all point sources unless a permit had been issued to the discharger under s 402 or unless the point source was explicitly exempted from the permit requirements by statute. The District Court granted NRDC's motion for summary judgment. It held that the FWPCA does not authorize the Administrator to exclude any class of point sources from the permit program.NRDC v. Train, 396 F.Supp. 1393 (D.D.C.1975). The EPA has appealed to this court. It is joined on appeal by a number of defendant-intervenors, National Forest Products Association (NFPA), National Milk Producers Federation (NMPF), and the Colorado River Conservation District.[FN6]

> FN6. Briefs as amicus curiae were filed by the American Iron and Steel Institute, the State of Texas, and the State of Washington, Department of Natural Resources.

This case thus presents principally a question of statutory interpretation. EPA also argues that even if Congress intended to include the pertinent categories in the permit program, the regulations exempting them should be upheld on a doctrine of administrative infeasibility, i. e., the regulations should be upheld as a deviation from the literal terms of the FWPCA that is necessary to permit the Agency to realize the principal objectives of the Act.

I. LEGISLATIVE HISTORY

The principal purpose of the FWPCA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[FN7]The Act's ultimate objective, to eliminate the discharge of pollutants into navigable waters by 1985, is to be achieved by means of two intermediate steps. As of July 1, 1977, all point sources other than publicly owned treatment works were to have achieved effluent limitations that require application of the "best practicable control technology." [FN8]These same point sources must reduce their effluent discharges by July 1, 1983, to meet limitations determined by application of the "best available technology economically achievable" for each category of point source.[FN9]

> FN7.33 U.S.C. s 1251(a) (Supp. V 1975).
>
> FN8.33 U.S.C. s 1311(b)(1)(A) (Supp. V 1975).
>
> FN9.Id.s 1311(b)(2)(A).

The technique for enforcing these effluent limitations is straightforward. Section 301(a) of the FWPCA provides:

Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.[FN10]

> FN10.Id.s 1311(a).

Appellants concede that if the regulations are valid, it must be because they are authorized***1374 **152** by s 402; none of the other sections listed in s 301(a) afford grounds for relieving the exempted point sources from the prohibition of s 301. [FN11]

> FN11. Section 302, 33 U.S.C. s 1312 (Supp. V 1975), permits the Administrator to set water quality related effluent limitations or control strategies where technology-based limitations are inadequate. Section 306, 33 U.S.C. s 1316 (Supp. V 1975), instructs the EPA Administrator to promulgate standards of performance for new sources of pollution constructed after those standards are proposed. Section 307, 33 U.S.C. s 1317 (Supp. V 1975), gives the EPA Administrator the authority to issue generally applicable effluent standards with respect to toxic substances and to require pretreatment of some pollutants before their introduction into treatment works. By virtue of s 318, 33 U.S.C. s 1328 (Supp. V 1975), the Administrator may "permit the discharge of a spe-

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> cific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision."Section 404, 33 U.S.C. s 1344 (Supp. V 1975), gives the Secretary of the Army authority to issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 402 provides in relevant part that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of the necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

The NPDES permit program established by s 402 is central to the enforcement of the FWPCA. It translates general effluent limitations into the specific obligations of a discharger. As this court noted in NRDC v. Train, 166 U.S.App.D.C. 312, 315, 510 F.2d 692, 695 (1975), the Act "relies primarily on a permit program for the achievement of effluent limitations . . . to attain its goals."The comments in floor debates of Senator Muskie, the leading Congressional sponsor of the Act, makes this clear.[FN12]

> FN12."The Administrator of the Environmental Protection Agency is authorized to regulate discharge of pollutants through the use of an expanded permit program."117 Cong.Rec. 38800 (1971) (Senator Muskie) (emphasis added), reprinted in 2 Environmental Policy Div., Congressional Reference Serv., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 1259 (Senate Public Works Comm. Print 1973) (hereinafter cited as Legislative History).

The appellants argue that s 402 not only gives the Administrator the discretion to grant or refuse a permit, but also gives him the authority to exempt classes of point sources from the permit requirements entirely. They argue that this interpretation is supported by the legislative history of s 402 and the fact that unavailability of this exemption power would place unmanageable administrative burdens on the EPA.

[1] Putting aside for the moment the appellants' administrative infeasibility argument, we agree with the District Court that the legislative history makes clear that Congress intended the NPDES permit to be the only means by which a discharger from a point source may escape the total prohibition of s 301(a). This intention is evident in both Committee Reports. In discussing s 301 the House Report stressed:

Any discharge of a pollutant without a permit issued by the Administrator under section 318, or by the Administrator or the State under section 402 or by the Secretary of the Army under section 404 is unlawful. Any discharge of a pollutant not in compliance with the conditions or limitations of such a permit is also unlawful.[FN13]

> FN13. H.Rep.No.92-911, 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787.

The Senate Report echoed this interpretation:

(Section 301) clearly establishes that the discharge of pollutants is unlawful. Unlike its predecessor program which permitted the discharge of certain amounts of pollutants under the conditions described above, this legislation would clearly establish that no one has the right ***1375 **153** to pollute that pollution continues because of technological limits, not because of any inherent rights to use the nation's waterways for the purpose of disposing of wastes.

The program proposed by this Section will be implemented through permits issued in Section 402. The Administrator will have the capability and the mandate to press technology and economics to achieve those levels of effluent reduction which he believes to be practicable in the first instance and attainable in the second.[FN14]

> FN14. S.Rep.No.92-414, 92d Cong., 1st Sess. 42 (1971), reprinted in Legislative History at 1460; U.S.Code Cong. & Admin.News 1972, pp. 3668, 3709.

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[2] The EPA argues that since s 402 provides that "the Administrator may . . . issue a permit for the discharge of any pollutant" (emphasis added), he is given the discretion to exempt point sources from the permit requirements altogether. This argument, as to what Congress meant by the word "may" in s 402, is insufficient to rebut the plain language of the statute and the committee reports. We say this with due awareness of the deference normally due "the construction of a new statute by its implementing agency."NRDC v. Train, 166 U.S.App.D.C. at 326, 510 F.2d at 706; see Zuber v. Allen, 396 U.S. 168, 192, 90 S.Ct. 314, 24 L.Ed.2d 345 (1969); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965). The use of the word "may" in s 402 means only that the Administrator has discretion either to issue a permit or to leave the discharger subject to the total proscription of s 301. This is the natural reading, and the one that retains the fundamental logic of the statute.

Under the EPA's interpretation the Administrator would have broad discretion to exempt large classes of point sources from any or all requirements of the FWPCA. This is a result that the legislators did not intend. Rather they stressed that the FWPCA was a tough law that relied on explicit mandates to a degree uncommon in legislation of this type. A statement of Senator Jennings Randolph of West Virginia, Chairman of the Senate Committee responsible for the Act, is illustrative.

> I stress very strongly that Congress has become very specific on the steps it wants taken with regard to environmental protection. We have written into law precise standards and definite guidelines on how the environment should be protected. We have done more than just provide broad directives for administrators to follow. . . .
>
> In the past, too many of our environmental laws have contained vague generalities. What we are attempting to do now is provide laws that can be administered with certainty and precision. I think that is what the American people expect that we do.[FN15]
>
> FN15.117 Cong.Rec. 38805 (1971), reprinted in Legislative History at 1272. See also the comments of Senator Montoya on the original Senate bill.
>
> Your committee has placed before you a tough bill. This body and this Nation would not have it be otherwise. Our legislation contains an important principle of psychology: Men seldom draw the best from themselves unless pressed by circumstances and deadlines. This bill contains deadlines and it imposes rather tough standards on industry, municipalities, and all other sources of pollution. Only under such conditions are we likely to press the technological threshold of invention into new and imaginative developments that will allow us to meet the objectives stated in our bill.
>
> 117 Cong.Rec. 38808 (1971), reprinted in Legislative History at 1278.

There are innumerable references in the legislative history to the effect that the Act is founded on the "basic premise that a discharge of pollutants without a permit is unlawful and that discharges not in compliance with the limitations and conditions for a permit are unlawful."[FN16]Even when infeasibility arguments were squarely raised, ***1376 **154** the legislature declined to abandon the permit requirement.[FN17] We stand by our previous interpretation of the Act's scheme for the enforcement of effluent limitations:

> FN16.118 Cong.Rec. 10215 (1972) (Rep. Clausen), reprinted in Legislative History at 378. See, e. g., H.R.Rep.No.92-911 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787; S.Rep.No.92-414; 92d Cong., 1st Sess. 42-43 (1971), reprinted in Legislative History at 1460-61; 118 Cong.Rec. 10661 (1972) (Rep. Podell), reprinted in Legislative History at 574.
>
> FN17. The House rejected an amendment designed to avoid the problems of including irrigation return flows in the permit program. Congressman Teno Roncalio of Wyoming offered an amendment on the floor of the House that would have explicitly exempted irrigated agriculture from the NPDES permit program.
>
> Mr. RONCALIO. . . .

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> I offer my amendment so that a serious omission to H.R. 11896 can be corrected before we end up with a law that would be virtually impossible to enforce. My amendment would specifically exempt irrigated agriculture from sections 301(a), 302 and 304 of the Federal Water Pollution Control Act.
>
> I think my colleagues will agree that the type of salinity problems created by irrigation runoff are simply not as alarming as the more common pollutants discharged by industrial and municipal facilities. Substantial salinity concentrations have little effect on recreational use of water or its suitability for the propagation of fish.
>
> My amendment is necessary, Mr. Chairman, because at the present time we could not enforce pollution control on irrigation systems. It is virtually impossible to trace pollutants to specific irrigation lands, making these pollutants a nonpoint source in most cases. Second, we do not have the technology to deal with irrigation runoff (as contrasted to industrial pollution) and if we begin making laws to control something that cannot be handled with our given technological knowledge, we will be doing many thousand farmers and ranchers a great disservice. In fact, we will be doing the Federal Government a great disservice if we actually pass a Federal water pollution control bill that cannot be fully enforced.
>
> 118 Cong.Rec. 10764-65 (1972), reprinted in Legislative History at 651. The amendment was rejected.

After dates set forth in (s 301(b)), a person must obtain a permit and comply with its terms in order to discharge any pollutant. The conditions of the permit must assure that any discharge complies with the applicable requirements of numerous sections including the effluent limitations of section 301(b).
NRDC v. Train, 166 U.S.App.D.C. at 316, 510 F.2d at 696 (emphasis added; footnotes omitted).

We also note that all the Supreme Court decisions referring to s 402 view the permit as the only means by which a point source polluter can avoid the ban on discharges found in s 301. Strictly speaking these expressions may be dicta, for they do not touch directly on the interpretation of s 402. But they are at least a considered reading of what the Act appears to mean.

In Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976), Justice Marshall characterized the enforcement scheme of the FWPCA as follows:

(E)ffluent limitations are enforced through a permit program. The discharge of "pollutants" into water is unlawful without a permit issued by the Administrator of the EPA or, if a State has developed a program that complies with the FWPCA, by the State. . . .

Id. at 7, 96 S.Ct. at 1941 (footnote omitted).

In EPA v. State Water Resources Control Board, 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976), the issue was whether federal installations were subject to state NPDES programs. Justice White's majority opinion describes NPDES at 205, 96 S.Ct. at 2025 (footnote omitted):

Under NPDES, it is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. An NPDES permit serves to transform generally applicable effluent limitations and other standards including those based on water quality into the obligations (including a timetable for compliance) of the individual discharger, and the Amendments provide for direct administrative and judicial enforcement of permits.

In E. I. du Pont de Nemours v. Train, 430 U.S. 112, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977), the Court held that under FWPCA the EPA can set uniform effluent limitations through industry-wide regulations rather than develop them on an individual basis during the permit issuance process. But the Court, per Justice Stevens, clearly indicated***1377 **155** that those limitations were translated into obligations of the discharger through their inclusion in an NPDES permit.Id. at 119-20, 97 S.Ct. 965.

The wording of the statute, legislative history, and precedents are clear: the EPA Administrator does not have authority to exempt categories of point sources

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from the permit requirements of s 402. Courts may not manufacture for an agency a revisory power inconsistent with the clear intent of the relevant statute. In holding that the FPC does not have authority to exempt the rates of small producers from regulation under the Natural Gas Act, the Supreme Court observed:

It is not the Court's role . . . to overturn congressional assumptions embedded into the framework of regulation established by the Act. This is a proper task for the Legislature where the public interest may be considered from the multifaceted points of view of the representational process.

FPC v. Texaco, Inc., 417 U.S. 380, 400, 94 S.Ct. 2315, 2327, 41 L.Ed.2d 141 (1974).

II. ADMINISTRATIVE INFEASIBILITY

The appellants have stressed in briefs and at oral argument the extraordinary burden on the EPA that will be imposed by the above interpretation of the scope of the NPDES program. The spectre of millions of applications for permits is evoked both as part of appellants' legislative history argument that Congress could not have intended to impose such burdens on the EPA and as an invitation to this court to uphold the regulations as deviations from the literal terms of the FWPCA necessary to permit the agency to realize the general objectives of that act. During oral argument we asked for supplemental briefs so that the appellants could expand on their infeasibility arguments. We consider EPA's infeasibility contentions in turn.

A. Uniform National Effluent Limitations

EPA argues that the regulatory scheme intended under Titles III and IV of the FWPCA requires, first, that the Administrator establish national effluent limitations [FN18] and, second, that these limitations be incorporated in the individual permits of dischargers. EPA argues that the establishment of such limitations is simply not possible with the type of point sources involved in the 1973 regulations, which essentially involve the discharge of runoff i. e., wastewaters generated by rainfall that drain over terrain into navigable waters, picking up pollutants along the way.

FN18. See FWPCA s 502(11), 33 U.S.C. s 1362(11) (Supp. V 1975):

> The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

There is an initial question, to what extent point sources are involved in agricultural, silvicultural, and storm sewer runoff. The definition of point source in s 502(14), including the concept of a "discrete conveyance", suggests that there is room here for some exclusion by interpretation. We discuss this issue subsequently. Meanwhile, we assume that even taking into account what are clearly point sources, there is a problem of infeasibility which the EPA properly opens for discussion.

EPA contends that certain characteristics of runoff pollution make it difficult to promulgate effluent limitations for most of the point sources exempted by the 1973 regulations:

The major characteristic of the pollution problem which is generated by runoff . . . is that the owner of the discharge point . . . has no control over the quantity of the flow or the nature and amounts of the pollutants picked up by the runoff. The amount of flow obviously is unpredictable because it results from the duration and intensity of the rainfall event, the topography, the type of ground cover and the saturation point of the land due to any previous ***1378 **156** rainfall. Similar factors affect the types of pollutants which will be picked up by that runoff, including the type of farming practices employed, the rate and type of pesticide and fertilizer application, and the conservation practices employed . . .

An effluent limitation must be a precise number in order for it to be an effective regulatory tool; both the discharger and the regulatory agency need to have an identifiable standard upon which to determine whether the facility is in compliance. That was the principal of the passage of the 1972 Amendments.

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Federal Appellants' Memorandum on "Impossibility" at 7-8 (footnote omitted). Implicit in EPA's contentions is the premise that there must be a uniform effluent limitation prior to issuing a permit. That is not our understanding of the law.

In NRDC v. Train, we described the interrelationship of the effluent limitations and the NPDES permit program, 166 U.S.App.D.C. at 327, 510 F.2d at 707 (footnotes omitted):

The Act relies on effluent limitations on individual point sources as the "basis of pollution prevention and elimination." . . . Section 301(b) contains a broad description of phase one and phase two effluent limitations, to be achieved by July 1, 1977 and July 1, 1983, respectively. The limitations established under section 301(b) are to be imposed upon individual point sources through permits issued under the National Pollutant Discharge Elimination System (NPDES) established by section 402. Those permits are to contain schedules which will assure phased compliance with the effluent limitations no later than the final dates set forth in section 301(b). Section 304(b) calls for the publication of regulations containing guidelines for effluent limitations for classes and categories of point sources. These guidelines are intended to assist in the establishment of section 301(b) limitations that will provide uniformity in the permit conditions imposed on similar sources within the same category by diverse state and federal permit authorities.

As noted in NRDC v. Train, the primary purpose of the effluent limitations and guidelines was to provide uniformity among the federal and state jurisdictions enforcing the NPDES program and prevent the "Tragedy of the Commons" [FN19] that might result if jurisdictions can compete for industry and development by providing more liberal limitations than their neighboring states.166 U.S.App.D.C. at 329, 510 F.2d at 709. The effluent limitations were intended to create floors that had to be respected by state permit programs.

> FN19. As one commentator has recently written:
>
> The Tragedy of the Commons arises in non-centralized decisionmaking under conditions in which the rational but independent pursuit by each decisionmaker of its own self-interest leads to results that leave all decisionmakers worse off than they would have been had they been able to agree collectively on a different set of policies.
>
> Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 Yale L.J. 1196, 1211 (1977). The classic account of the Tragedy of the Commons can be found in Hardin, The Tragedy of the Commons, 162 Science 1243 (1968). Hardin makes the point in the context of sheep-grazing. Put simply, even over-simply, Hardin shows that if no one is authorized to set limits to preserve open pasture land as a whole, allowing sheep to graze on that land may lead to serious overgrazing, as each herdsman thinks only of his own advantage. The solution lies in some mandate, from above or by agreement, with sanctions to compel conformance.

But in NRDC v. Train it was also recognized that permits could be issued before national effluent limitations were promulgated and that permits issued subsequent to promulgation of uniform effluent limitations could be modified to take account of special characteristics of subcategories of point sources.

Prior to the promulgation of effluent limitations under section 301, the director of a state program is instructed merely to impose such terms and conditions in each permit as he determines are necessary to carry out the provisions of the Act. Once *1379 **157 an effluent limitation is established, however, the state director and the regional EPA Administrator are required to apply the specified, uniform effluent limitations, modified only as necessary to take account of fundamentally different factors pertaining to particular point sources within a given class or category. Any variation in the uniform limitations adopted for specific dischargers must be approved by the Administrator.

166 U.S.App.D.C. at 330, 510 F.2d at 710 (footnotes omitted).

Another passage in NRDC v. Train touches on the

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infeasibility problem. We noted that "(t)he statutory framework is not so tightly drawn as to require guidelines for each and every class and category of point source regardless of the need for uniform guidelines or to mandate that all guidelines be published prior to December 31 (1974) regardless of their quality or the burden that task would place upon the agency."Id. at 320-21, 510 F.2d at 710-11. In that case this court fully appreciated that technological and administrative constraints might prevent the Administrator from developing guidelines and corresponding uniform numeric effluent limitations for certain point sources anytime in the near future. The Administrator was deemed to have the burden of demonstrating that the failure to develop the guidelines on schedule was due to administrative or technological infeasibility.166 U.S.App.D.C. at 333, 510 F.2d at 713.Yet the underlying teaching was that technological or administrative infeasibility was a reason for adjusting court mandates to the minimum extent necessary to realize the general objectives of the Act.[FN20] It is a number of steps again to suggest that these problems afford the Administrator the authority to exempt categories of point sources from the NPDES program entirely.

FN20. In NRDC v. Train, this court stated:

A federal equity court may exercise its discretion to give or withhold its mandate in furtherance of the public interest, including specifically the interest in effectuating the congressional objective incorporated in regulatory legislation. We think the court may forebear the issuance of an order in those cases where it is convinced by the official involved that he has in good faith employed the utmost diligence in discharging his statutory responsibilities. The sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him "to do an impossibility."

166 U.S.App.D.C. at 333, 510 F.2d at 713 (footnotes omitted). For reasons stated in this opinion, we conclude that to require the EPA Administrator to include silvicultural, agricultural, and storm sewer point sources in the NPDES program is not to require him "to do an impossibility."

With time, experience, and technological development, more point sources in the categories that EPA has now classed as exempt may be amenable to national effluent limitations achieved through end-of-pipe technology or other means of pollution control. EPA has noted its own success with runoff from mining operations:

EPA has found that in the area of runoff from mining operations, there is sufficient predictability because of a longer history of regulation and the relatively confined nature of the operations that numerical limitations can be established. Thus, consistent with EPA's position stated earlier that it will expand the permit program where its capability of establishing effluent limitations allows, appropriate limitations have been created and the permit program expanded.

Federal Appellants' Memorandum on "Impossibility" at 8.

[3] In sum, we conclude that the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility of such limitations may result in adjustments in the permit programs, as will be seen, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

B. Alternative Permit Conditions under s 402(a)

EPA contends that even if it is possible to issue permits without national effluent limitations,***1380 **158** the special characteristics of point sources of runoff pollution make it infeasible to develop restrictions on a case-by-case basis. EPA's implicit premise is that whether limitations are promulgated on a class or individual source basis, it is still necessary to articulate any limitation in terms of a numerical effluent standard. That is not our understanding.

[4] Section 402 provides that a permit may be issued upon condition "that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to taking of necessary implementing actions relating to all such

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requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act."33 U.S.C. s 1342(a) (Supp. V 1975) (emphasis added). This provision gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges. The permit may proscribe industry practices that aggravate the problem of point source pollution.[FN21]

> FN21. That Congress did not regard numeric effluent limitations as the only permissible limitation on a discharger is supported by s 302(a) of the Act, 33 U.S.C. s 1312(a) (Supp. V 1975):
>
> Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under (s 301(b) of the Act), would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.
>
> The emphasis has been added.

EPA's counsel caricatures the matter by stating that recognition of any such authority would give EPA the power "to instruct each individual farmer on his farming practices."Federal Appellants Memorandum on "Impossibility" at 12. Any limitation on a polluter forces him to modify his conduct and operations. For example, an air polluter may have a choice of installing scrubbers, burning different fuels or reducing output. Indeed, the authority to prescribe limits consistent with the best practicable technology may be tantamount to prescribing that technology. Of course, when alternative techniques are available, Congress intended to give the discharger as much flexibility as possible in choosing his mode of compliance. See, e. g., H.Rep.No.92-911, 92d Cong., 2d Sess. 107, reprinted in Legislative History at 794. We only indicate here that when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.

It may be appropriate in certain circumstances for the EPA to require a permittee simply to monitor and report effluent levels; EPA manifestly has this authority.[FN22] Such permit conditions might be desirable where the full extent of the pollution problem is not known.

> FN22. FWPCA s 402(a)(3), (b)(2)(B), 33 U.S.C. s 1342(a)(3), (b)(2)(B) (Supp. V 1975). EPA concedes that it has this authority. Federal Appellants' Memorandum on "Impossibility" at 14.

C. General Permits

Finally, EPA argues that the number of permits involved in the absence of an exemption authority will simply overwhelm the Agency. Affidavits filed with the District Court indicate, for example, that the number of silviculture point sources may be over 300,000 and that there are approximately 100,000 separate storm sewer point sources.[FN23] We are and must be sensitive to ***1381 **159** EPA's concerns of an intolerable permit load. But the District Court and the various parties have suggested devices to mitigate the burden to accommodate within a practical regulatory scheme Congress's clear mandate that all point sources have permits. All that is required is that EPA makes full use of its interpretational authority. The existence of a variety of options belies EPA's infeasibility arguments.

> FN23. Affidavit of William H. McCredie, Director, Industrial Forestry, of the NFPA; Affidavit of Walter G. Gilbert, Chief of the Municipal Operations Branch, Municipal Waste Water Systems Div., EPA Office of Air and Water Programs.

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[5] Section 402 does not explicitly describe the necessary scope of a NPDES permit. The most significant requirement is that the permit be in compliance with limitation sections of the Act described above. As a result NRDC and the District Court have suggested the use of area or general permits. The Act allows such techniques. Area-wide regulation is one well-established means of coping with administrative exigency. An instance is area pricing for natural gas producers, which the Supreme Court upheld in Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968).[FN24] A more dramatic example is the administrative search warrant, which may be issued on an area basis despite the normal Fourth Amendment requirement of probable cause for searching specific premises. Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

FN24. In Permian Basin the Supreme Court observed:

> The Commission has asserted, and the history of producer regulation has confirmed, that the ultimate achievement of the Commission's regulatory purposes may easily depend upon the contrivance of more expeditious administrative methods. The Commission believes that the elements of such methods may be found in area proceedings."(C)onsiderations of feasibility and practicality are certainly germane" to the issues before us. . . . We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted.
>
> 390 U.S. at 777, 88 S.Ct. at 1365.

In response to the District Court's order, EPA promulgated regulations that make use of the general permit device.42 Fed.Reg. 6846-53 (Feb. 4, 1977). The general permit is addressed to a class of point source dischargers, subject to notice and opportunity for public hearing in the geographical area covered by the permit. Although we do not pass on the validity of the February, 1977, regulations, they serve to dilute an objection of wholesale infeasibility.[FN25]

FN25. It is also of some, albeit limited, significance that the House Committee on Government Operations found EPA's administrative problems with applying the permit program to animal feedlots "grossly exaggerated." It was of the opinion that the Administrator did not have authority to exempt point sources from the NPDES program. H.Rep.No.93-1012, 93d Cong., 2d Sess. 15-30 (1974).

Our approach is not fairly subject to the criticism that it elevates form over substance that the end result will look very much like EPA's categorical exemption. It is the function of the courts to require agencies to comply with legislative intent when that intent is clear, and to leave it to the legislature to make adjustments when the result is counterproductive.[FN26] At the same time, where intent on an issue is unclear,***1382 **160** we are instructed to afford the administering agency the flexibility necessary to achieve the general objectives of the Act.Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645, 653,93 S.Ct. 2448,37 L.Ed.2d 235 (1973); United States v. Southwestern Cable Co., 392 U.S. 157, 177-78, 88 S.Ct. 1994, 20 L.Ed.2d 1001 (1968); Permian Basin Area Rate Cases, 390 U.S. 747, 780, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968). These lines of authority conjoin in our approach. We insist, as the Act insists, that a permit is necessary; the Administrator has no authority to exempt point sources from the NPDES program. But we concede necessary flexibility in the shaping of the permits that is not inconsistent with the clear terms of the Act.

FN26. The Supreme Court recently reiterated this instruction in Union Electric Co. v. EPA, 427 U.S. 246, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). There the Court held that the EPA Administrator could not consider claims of technological or economic infeasibility when approving state implementation plans under the Clean Air Act Amendments of 1970, 42 U.S.C. ss 1857a-1857l (1970). Such claims were held only to be cognizable by the states in the plan design stage or by the Administrator when drawing up compliance orders. Justice Marshall, writing for the Court, emphasized that federal courts are not to ignore clear expressions of Congressional intent in order to accommodate claims of technological or eco-

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nomic infeasibility.

> Allowing such claims to be raised by appealing the Administrator's approval of an implementation plan . . . would frustrate congressional intent. It would permit a proposed plan to be struck down as infeasible before it is given a chance to work, even though Congress clearly contemplated that some plans would be infeasible when proposed. And it would permit the Administrator or a federal court to reject a State's legislative choices in regulating air pollution, even though Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent. Technology forcing is a concept somewhat new to our national experience and it necessarily entails certain risks. But Congress considered those risks in passing the 1970 Amendments and decided that the dangers posed by uncontrolled air pollution made them worth taking. Petitioner's theory would render that considered legislative judgment a nullity, and that is a result we refuse to reach.
>
> 427 U.S. at 268-69, 96 S.Ct. at 2531 (footnote omitted). See also Wilderness Society v. Morton, 156 U.S.App.D.C. 121, 171, 479 F.2d 842, 892 (1973), cert. denied, 411 U.S. 917, 93 S.Ct. 1550, 36 L.Ed.2d 309 (quoting United States v. City and County of San Francisco, 310 U.S. 16, 31-32, 60 S.Ct. 749, 84 L.Ed. 1050 (1940): " 'We cannot accept the contention that administrative rulings such as those relied on can thwart the plain purpose of a valid law.' ")

There is also a very practical difference between a general permit and an exemption. An exemption tends to become indefinite: the problem drops out of sight, into a pool of inertia, unlikely to be recalled in the absence of crisis or a strong political protagonist. In contrast, the general or area permit approach forces the Agency to focus on the problems of specific regions and requires that the problems of the region be reconsidered at least every five years, the maximum duration of a permit.[FN27]

FN27.33 U.S.C. s 1342(a)(3), (b)(1)(B) (Supp. V 1975).

D. Other Interpretational Powers

[6] Many of the intervenor-appellants appear to argue that the District Court should be reversed because the categories exempted by EPA are nonpoint sources and are not, in fact, point sources.[FN28]We agree with the District Court "that the power to define point and nonpoint sources is vested in EPA and should be reviewed by the court only after opportunity for full agency review and examination."396 F.Supp. at 1396. The only issue precisely confronted by all the parties and properly framed for our consideration is whether the Administrator has authority to exempt point sources from the NPDES program. We also think that we should, for similar reasons, not consider at this time the appropriate definition of "discharge of any pollutant" as used in s 402. The American Iron and Steel Institute as amicus curiae has pressed upon us the argument that the term "discharge" as used in s 402 was intended to encompass only "volitional flows" that add pollutants to navigable waters. Most forms of runoff, it is argued, do not involve volitional flows.

> FN28. This appears to be the position of the Colorado River Water Conservation District and the NFPA with respect to silvicultural activities, and NMPF, less obviously, with respect to small dairy farms.
>
> We would put in the same category EPA's contention that the exempt categories are best handled under the areawide waste treatment management planning process of s 208 of the FWPCA, 33 U.S.C. s 1288 (Supp. V 1975). By its terms that section is concerned with areawide waste treatment plans that identify and control "agriculturally and silviculturally related non-point sources of pollution."Id.s 1288(b)(2)(F).

[7] We assume that FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute, and in that regard affords the Agency some means to consider matters of feasibility. However, for reasons already noted, we do not consider these particular contentions as to interpretation on the merits.

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III. CONCLUSION

[8] As the Supreme Court recently stated in a FWPCA case, "(t)he question . . .is**161 *1383 not what a court thinks is generally appropriate to the regulatory process, it is what Congress intended . . .."E. I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138, 97 S.Ct. 965, 980, 51 L.Ed.2d 204 (1977). We find a plain Congressional intent to require permits in any situation of pollution from point sources. We also discern an intent to give EPA flexibility in the structure of the permits, in the form of general or area permits. We are aware that Congress hoped that more of the NPDES permit program would be administered by the states at this point.[FN29] But it also made provision for continuing EPA administration. Imagination conjoined with determination will likely give EPA a capability for practicable administration. If not, the remedy lies with Congress.

FN29. See, e. g., 118 Cong.Rec. 10235 (1972) (Rep. Ichord) reprinted in Legislative History at 428.

So ordered.

MacKINNON, Circuit Judge, concurring:

I concur in the very sound and practical construction set forth in the foregoing opinion. Any person concerned with the actual application and enforcement of laws would necessarily be concerned by the application of the relevant legislation to all point sources in agriculture and particularly to irrigated agriculture. Concern would also lie in the congressional admission that present technology is inadequate to enable our citizens to meet the standards and deadlines the Act imposes; in passing the law, Congress was relying on the future "invention (of) new and imaginative developments that will allow us to meet the objectives of our bill."[FN1]In gambling parlance, Congress in enacting the law was "betting on the come." It is relying on our citizens in the near future to develop the complex technology to meet all the law's standards and objectives on time. The difficulty with that approach is that the hopes of Congress in this respect, like that of any gambler, might not be realized. The agency in this case, however, has shown that it takes a realistic view of both the situation and the task of meeting the difficult requirements and objectives of the Act. I sincerely hope that the ability of the agency to issue section 402 permits including general area permits [FN2] will permit it to meet the present and future compliance problems posed by the Act in a practical way.

FN1. Comments of Senator Montoya, 117 Cong.Rec. 38808 (1971), quoted in court's opinion at 12, reprinted in Legislative History at 1278.

FN2. As an example, an area permit with appropriate conditions and modifications could issue for the agricultural point sources within the Grand River Irrigation District, or the watershed of the Roaring Fork River and tributaries, etc.

C.A.D.C.,1977.
Natural Resources Defense Council, Inc. v. Costle
568 F.2d 1369, 10 ERC 2025, 186 U.S.App.D.C. 147, 8 Envtl. L. Rep. 20,028

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Supreme Court of California
Kendra O'CONNELL, Plaintiff and Appellant,
v.
CITY OF STOCKTON et al., Defendants and Respondents.
No. S135160.

July 26, 2007.
Rehearing Denied Oct. 10, 2007.[FN*]

FN* Baxter, Chin, and Corrigan, JJ., are of the opinion the petition should be granted.

Background: City taxpayer filed action against city for declaratory and injunctive relief, challenging municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to solicit act of prostitution or to attempt to consummate drug transaction. The Superior Court, San Joaquin County, No. CV019275,Elizabeth Humphreys, J., entered judgment for city after it sustained city's demurrer and taxpayer did not amend complaint. Taxpayer appealed. The Court of Appeal reversed, ruling that state law preempted ordinance, and the Supreme Court granted review.

Holdings: The Supreme Court, Kennard, J., held that:
(1) ordinance was preempted by California Uniform Controlled Substances Act (UCSA), and
(2) ordinance was preempted by statute addressing subject of seizures of vehicles by local entities as nuisances when used in connection with prostitution; disapproving *Horton v. City of Oakland*, 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371.

Judgment of Court of Appeal affirmed.

Corrigan, J., filed a dissenting opinion in which Baxter and Chin, JJ., joined.

Opinion, 27 Cal.Rptr.3d 696, superseded.

West Headnotes

[1] Counties 104 24

104 Counties
104II Government
104II(A) Organization and Powers in General
104k24 k. Legislative Control of Acts, Rights, and Liabilities. Most Cited Cases

Municipal Corporations 268 65

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k65 k. Local Legislation. Most Cited Cases
A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general state laws; if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. West's Ann.Cal. Const. Art. 11, § 7.

[2] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
A conflict between state law and local legislation exists if the local legislation duplicates, contradicts, *or* enters an area fully occupied by general law, either expressly or by legislative implication. West's Ann.Cal. Const. Art. 11, § 7.

[3] Municipal Corporations 268 65

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k65 k. Local Legislation. Most Cited Cases
For purposes of preemption, a local ordinance duplicates state law when it is coextensive with state law. West's Ann.Cal. Const. Art. 11, § 7.

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[4] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to Constitutional and Statutory Provisions in General. Most Cited Cases
For purposes of preemption, a local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law. West's Ann.Cal. Const. Art. 11, § 7.

[5] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
For purposes of preemption, a local ordinance enters a field fully occupied by state law in either of two situations: when the Legislature expressly manifests its intent to occupy the legal area or when the Legislature impliedly occupies the field. West's Ann.Cal. Const. Art. 11, § 7.

[6] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
When the Legislature has not expressly stated its intent to occupy an area of law, courts look to whether it has impliedly done so for purposes of preemption analysis, which occurs in three situations: when (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

[7] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
With respect to the implied occupation of an area of law by the Legislature's full and complete coverage of it, where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme.

[8] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.

[9] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality

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268k592(1) k. In General. Most Cited Cases
When a local ordinance is identical to a state statute, it is clear that the field sought to be covered by the ordinance has already been occupied by state law.

[10] Municipal Corporations 268 ⚿592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases

Zoning and Planning 414 ⚿14

414 Zoning and Planning
414I In General
414k14 k. Concurrent and Conflicting Regulations. Most Cited Cases
When local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute.

[11] Controlled Substances 96H ⚿3

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk3 k. Preemption. Most Cited Cases

Municipal Corporations 268 ⚿592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to acquire any controlled substance was preempted by the California Uniform Controlled Substances Act (UCSA); comprehensive nature of the UCSA in defining drug crimes and specifying penalties, including forfeiture, was so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. West's Ann.Cal.Health & Safety Code § 11000 et seq.
See 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Introduction to Crimes, § 53 et seq.; Cal. Jur. 3d, Municipalities, § 244 et seq.

[12] Forfeitures 180 ⚿1

180 Forfeitures
180k1 k. Nature and Scope as Punishment. Most Cited Cases

Municipal Corporations 268 ⚿592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to solicit an act of prostitution was preempted by statute addressing subject of seizures of vehicles by local entities as nuisances when used in connection with prostitution; Legislature expressly preempted the field through the interplay of two Vehicle Code provisions, one that precluded local regulation in areas covered by the Vehicle Code, and a second that set up a pilot program for local entities to declare vehicles used in specified prostitution-related offenses public nuisances, but which did not allow for forfeitures; disapproving *Horton v. City of Oakland*, 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371. West's Ann.Cal.Vehicle Code §§ 21, 22659.5.

[13] Controlled Substances 96H ⚿3

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk3 k. Preemption. Most Cited Cases

Forfeitures 180 ⚿1

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180 Forfeitures
180k1 k. Nature and Scope as Punishment. Most Cited Cases

Municipal Corporations 268 ⚿592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Vehicle Code provision that set up a pilot program for local entities to declare vehicles used in specified prostitution-related offenses public nuisances was not a "special statute" for purposes of preemption analysis of city ordinance permitting the forfeiture of any vehicle used to solicit an act of prostitution or to acquire or attempt to acquire any controlled substance; statute was a general rather than a special law because it applied generally throughout the state, and was not limited to certain listed cities and counties. West's Ann.Cal.Vehicle Code §§ 21, 22659.5.
***69** Mark T. Clausen, Santa Rosa, for Plaintiff and Appellant.

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Meyers, Nave, Riback, Silver & Wilson, Joseph M. Quinn, San Francisco; Richard E. Nosky, Jr., City Attorney, and Lori S. Whittaker, Deputy City Attorney, for Defendants and Respondents.

Rockard J. Delgadillo, City Attorney (Los Angeles) and Claudia McGee Henry, Assistant City Attorney, for The League of California Cities as Amicus Curiae on behalf of Defendants and Respondents.

KENNARD, J.

***1065** ****585** Our state Constitution allows cities and counties to enact and enforce local ordinances so long as they are "not in conflict" with the state's "general laws." (Cal. Const., art. XI, § 7.) Any conflicting ordinance is preempted by state law and thus void.

At issue here is a city ordinance allowing forfeiture to the city of any vehicle used to commit certain acts made criminal by state law. The Court of Appeal held that state law preempts the city ordinance. We agree.

I.

Plaintiff Kendra O'Connell filed this taxpayer action (Code Civ. Proc., § 526a) against the City of Stockton and its city ***70** attorney (City) challenging ***1066** the constitutionality of a City ordinance labeled "Seizure and Forfeiture of Nuisance Vehicles." Plaintiff sought to enjoin the City's enforcement of the ordinance. The trial court sustained the City's demurrer to plaintiff's complaint, allowing plaintiff leave to amend her complaint. When plaintiff did not do so, the trial court dismissed the lawsuit.

On plaintiff's appeal, the Court of Appeal reversed. It held that the forfeiture ordinance****586** violated procedural due process because it failed to provide for a reasonably prompt postseizure probable cause hearing on the City's right to hold a vehicle pending its forfeiture. The Court of Appeal also held that the forfeiture ordinance was preempted by specific state law provisions governing vehicle forfeiture. This conclusion conflicted with *Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, in which a different Court of Appeal held that a vehicle forfeiture ordinance enacted by the City of Oakland, and similar to the one at issue here, was not preempted by state law. We granted review to resolve the conflict.[FN1]

FN1. In granting review in this case, we asked the parties to brief these three issues: "(1) Does California state law preempt provisions of the City of Stockton Municipal Code pertaining to 'Seizure and Forfeiture of Nuisance Vehicles'? (2) Do the Stockton municipal code provisions allowing the commencement of vehicle forfeiture proceedings 'as soon as practicable but in any case within one year' satisfy the state and federal constitutional requirements of proce-

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dural due process? (3) Do the municipal code provisions allocating proceeds of vehicle forfeitures to the offices of the San Joaquin County District Attorney and the Stockton City Attorney violate state or federal constitutional guarantees of substantive or procedural due process?" Because we conclude here that state law preempts the provisions of the Stockton Municipal Code pertaining to seizure and forfeiture of nuisance vehicles, thus invalidating those provisions and rendering them unenforceable, we need not address the remaining two issues.

II.

Part XXV of Chapter 5 of the Stockton Municipal Code is entitled "Seizure and Forfeiture of Nuisance Vehicles." The term "forfeiture," as used here, means that the government assumes title to property used to further some illegal purpose. (See *United States v. Bajakajian* (1998) 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314; *Bennis v. Michigan* (1996) 516 U.S. 442, 116 S.Ct. 994, 134 L.Ed.2d 68; *Calero-Toledo v. Pearson Yacht Leasing Co.* (1974) 416 U.S. 663, 682, 94 S.Ct. 2080, 40 L.Ed.2d 452.)

The ordinance at issue provides for the forfeiture of "[a]ny vehicle used *to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance,*" with "[a]ll right, title, and interest" thereafter vesting in the City. (Stockton Mun.Code, §§ 5-1000 & 5-1002, italics added.) A vehicle so used may be seized by a peace officer (1) with a court order; (2) incident to an arrest or a search conducted with a search warrant; or (3) with probable cause to believe the vehicle was used in the specified ***1067** crimes. (*Id.,* § 5-1003.) Within one year of police seizure of a vehicle, either the Stockton City Attorney or the San Joaquin County District Attorney "shall file a petition for forfeiture with the Superior Court of San Joaquin County." (*Id.,* § 5-1006, subds. (a) & (b).) The prosecuting agency must then give notice of the intended forfeiture proceedings to interested parties, advising them of their rights to file claims with the San Joaquin County Superior Court challenging the forfeiture. (*Id.,* § 5-1006, subd. (c).)

A trial of the vehicle forfeiture can be before either a court or a jury. The City *****71** has "the burden of proving by a preponderance of the evidence" that the vehicle was used for one of the prohibited purposes set out in the ordinance. (Stockton Mun.Code, § 5-1006, subd. (f).) Forfeited vehicles are to be sold; the proceeds are used first to pay any "bona fide or innocent purchaser, conditional sales vendor, mortgagee or lien holder" of the vehicle, when such payment is ordered by the prosecuting agency. (*Id.,* § 5-1008, subd. (a).) After paying the costs of publishing the notice of the forfeiture action and of storing, repairing and selling the vehicle (*id.,* § 5-1008, subd. (b)), remaining funds are distributed in proportionate shares to the involved prosecuting and law enforcement agencies. (*Id.,* § 5-1008, subd. (c).)

We now turn to the principles governing state law preemption of local ordinances.

III.

[1][2] We have in the past articulated the following principles on state law preemption of local ordinances. "Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws.'[¶] 'If otherwise valid local legislation conflicts with state law, ****587** it is preempted by such law and is void.' [Citations.] [¶] 'A conflict exists if the local legislation " '*duplicates, contradicts,* or *enters an area fully occupied* by general law, either expressly or by legislative implication. [Citations.]' " ' " (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 844 P.2d 534(*Sherwin-Williams*), italics added; see also *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1251, 23 Cal.Rptr.3d 453, 104 P.3d 813(*American Financial*).) We explain the italicized terms below.

[3] A local ordinance *duplicates* state law when it is "coextensive" with state law. (*Sherwin-Williams, supra,* 4 Cal.4th at pp. 897-898, 16 Cal.Rptr.2d 215, 844 P.2d 534, citing *In re Portnoy* (1942) 21 Cal.2d 237, 240, 131 P.2d 1 [as "finding 'duplication' where local legislation purported to impose the same criminal prohibition that general law imposed"].)

[4] ***1068** A local ordinance *contradicts* state law when it is inimical to or cannot be reconciled with state law. (*Sherwin-Williams, supra,* 4 Cal.4th at p.

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898, 16 Cal.Rptr.2d 215, 844 P.2d 534, citing *Ex Parte Daniels* (1920) 183 Cal. 636, 641-648, 192 P. 442 [as finding " 'contradiction' " in a local ordinance that set the maximum speed limit for vehicles below that set by state law].)

[5] A local ordinance *enters a field fully occupied* by state law in either of two situations-when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534; see also 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551["[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost."].)

[6] When the Legislature has not expressly stated its intent to occupy an area of law, we look to whether it has *impliedly* done so. This occurs in three situations: when " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount***72** state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

[7][8][9] With respect to the *implied* occupation of an area of law by the Legislature's full and complete coverage of it, this court recently had this to say: " 'Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme.' " (*American Financial, supra,* 34 Cal.4th at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813, quoting *Tolman v. Underhill* (1952) 39 Cal.2d 708, 712, 249 P.2d 280.) We went on to say: " 'State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation.' " (*American Financial, supra,* at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813.) We thereafter observed: " 'Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.' " (*Id.* at p. 1253, 23 Cal.Rptr.3d 453, 104 P.3d 813, quoting *In re Lane* (1962) 58 Cal.2d 99, 102, 22 Cal.Rptr. 857, 372 P.2d 897.) When a local ordinance is identical to a state statute, it is clear that " 'the field sought to be covered by the ordinance has already been occupied' " by state law. (*American Financial, supra,* at p. 1253, 23 Cal.Rptr.3d 453, 104 P.3d 813.)

***1069** [10] "[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will ****588** presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

With these principles in mind, we consider below whether state law preempts the City's vehicle forfeiture ordinance.

IV.

[11] As we noted earlier, the City's ordinance permits the forfeiture of any vehicle used to "to solicit an act of prostitution, *or* to acquire or attempt to acquire any controlled substance." (Stockton Mun.Code, § 5-1000, italics added.) We turn first to the latter aspect. The Court of Appeal concluded that this part of the ordinance was preempted by certain provisions of the California Uniform Controlled Substances Act (UCSA) (Health & Saf. Code, § 11000 et seq.) authorizing forfeiture of vehicles used in specified serious drug crimes. We too look to the UCSA as the source of state law preemption of this part of the City's forfeiture ordinance. But unlike the Court of Appeal, we do not rely solely on the UCSA's vehicle forfeiture provisions; instead, we consider the UCSA *as a whole,* a comprehensive scheme defining and setting the penalties for crimes involving controlled substances. This requires an analysis of various UCSA provisions pertinent here. It makes for tedious reading, but it is central to a resolution of the preemption issue presented.

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As defined in the UCSA, controlled substances include every "drug, substance, or immediate precursor" listed in one of five schedules set out in Health and Safety ***73** Code sections 11054 through 11058. The schedules include all commonly known controlled substances, such as marijuana, cocaine, heroin, and methamphetamine, as well as many others less familiar. The UCSA not only regulates the lawful use and distribution of controlled substances (see Health & Saf. Code, §§ 11100, 11210-11211), but it also defines as criminal offenses the unlawful possession and distribution of specified controlled substances (see Health & Saf. Code, § 11350-11361).

In addition, the UCSA sets forth the penalties for criminal violations of its provisions. For example, unlawful possession of "not more than 28.5 grams of marijuana" is a misdemeanor offense carrying a maximum fine of $100 and no jail time. (Health & Saf. Code, § 11357, subd. (b).) For more serious possessory drug crimes and those involving manufacture, sale, or possession for sale, the UCSA prescribes felony penalties. (See Health & Saf. Code, ***1070** §§ 11350, subd. (a) [providing that certain specified possessory drug crimes "shall be punished by imprisonment in the state prison"], 11351. 5 [punishment for the sale of cocaine base is "imprisonment ... for ... three, four, or five years"], 11352, subd. (a) [providing state prison terms of three, four, or five years for transporting, importing into California, selling, furnishing, administering, or giving away certain controlled substances.].)

In Health and Safety Code section 11470, the Legislature specifies the following as subject to forfeiture: Controlled substances "manufactured, distributed, dispensed, or acquired in violation of this division"(*id.,* subd. (a)); the raw materials, products and equipment used, or intended to be used, to manufacture, compound, process, deliver, import or export controlled substances in violation of the UCSA (*id.,* subd. (b)); items used as containers for the property described in subdivisions (a) and (b) (*id.,* subd. (c)); "[a]ll books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division"(*id.,* subd. (d)); moneys, negotiable instruments, securities and other valuable items furnished or intended to be furnished in illicit exchanges of specified controlled substances as well as all proceeds traceable to such exchanges (*id.,* subd. (f)); and the real property of persons convicted of specified drug crimes involving such property, except for real property "used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use"(*id.,* subd. (g)).

Subdivision (e) of Health and Safety Code section 11470 governs forfeitures involving boats, airplanes, and *vehicles.* It makes the ****589** following subject to forfeiture: "The interest of any registered owner of a boat, airplane, or *any vehicle* [other than certain vehicles used for agricultural purposes] which has been *used as an instrument to facilitate the manufacture of, or possession for sale or sale of* " specified amounts of certain controlled substances including 14.25 grams or more of heroin or cocaine base, or a substance containing 14.25 grams or more of heroin or cocaine base, or 28.5 grams or more of all Schedule I controlled substances except marijuana, peyote, or psilocybin, or 10 pounds or more of marijuana, peyote, or psilocybin, or methamphetamine in any amount. (Health & Saf. Code, § 11470, subd. (e), italics added.) Health and Safety Code section 11488.4, subdivision (i)(1), states that forfeiture of airplanes, boats, and vehicles requires *proof beyond a reasonable doubt* that the property to be forfeited was used for one of the specified drug offenses. Thus, as relevant here, under the UCSA a vehicle can be forfeited to a government entity only upon proof beyond a reasonable ***74** doubt that the vehicle was "used as an instrument to facilitate the manufacture of, or possession for sale or sale" of specified amounts of certain controlled substances. (Health & Saf. Code, § 11470, subd. (e).)

***1071** In Health and Safety Code section 11469, the Legislature has established "guidelines" that local law enforcement and prosecutorial agencies should follow in enforcing the state law provisions regarding the seizure and forfeiture of property used to commit drug crimes in California. It points out, among other things, that "[l]aw enforcement is the principal objective of forfeiture," and that "[p]otential revenue [to be derived from property forfeiture] must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses." (Health & Saf. Code, § 11469, subd. (a).) And it reminds prosecutors that they should "[w]henever appropriate ... seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action." (*Id.,* subd. (c).)

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Recognizing that forfeiture can sometimes lead to harsh results, the Legislature included this cautionary language in subdivision (j) of Health and Safety Code section 11469: "Although civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law."

We summarize: State law, through the UCSA (Health & Saf. Code, § 11000 et seq.), defines controlled substances, regulates their use, and sets penalties for their unlawful possession and distribution. Among the available penalties is vehicle forfeiture but, as pointed out earlier, only upon *proof beyond a reasonable doubt* of the vehicle's use to facilitate certain serious drug crimes (manufacture, sale, or possession for sale of methamphetamine, or of heroin or cocaine base, marijuana, peyote, or psilocybin and other Schedule I controlled substances in specified amounts). By way of contrast, the City's ordinance allows the harsh penalty of vehicle forfeiture upon proof merely by a *preponderance of evidence* of a vehicle's use simply "to attempt to acquire" any amount of any controlled substance (for instance, less than 28.5 grams of marijuana, a low-grade misdemeanor warranting only a $100 fine and no jail time and not subject to vehicle forfeiture under the UCSA).

The comprehensive nature of the UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. The UCSA accordingly occupies the field of penalizing crimes involving controlled substances, thus impliedly preempting the City's forfeiture ordinance to the extent it calls for the forfeiture of vehicles used "to acquire or attempt to acquire" (Stockton Mun.Code, § 5-1000) controlled substances regulated under the UCSA. (See *American Financial, supra,* 34 Cal.4th at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813; *Tolman v. Underhill, supra,* 39 Cal.2d at p. 712, 249 P.2d 280.)

*1072 Relevant to this conclusion is our decision in *In re Lane, supra,* 58 Cal.2d 99, 22 Cal.Rptr. 857, 372 P.2d 897. That case involved **590 a statewide statutory scheme that, we held, fully occupied an area of regulation, thereby preempting a municipal ordinance covering the same legal area. The statewide statutory scheme consisted of comprehensive criminal proscriptions against specified sexual conduct, and the local law was a Los Angeles City ordinance criminalizing sexual intercourse between ***75 persons not married to each other. Although the state statutory scheme included laws prohibiting prostitution, pimping and pandering, bigamy, acts against public decency, rape, and various sex crimes against children, it did not include any offense for "simple fornication or adultery." (*In re Lane, supra,* 58 Cal.2d at p. 104, 22 Cal.Rptr. 857, 372 P.2d 897.) This court reasoned that the exclusion of fornication or adultery from the comprehensive state law scheme showed the Legislature's intent that "such conduct sh[ould] not be criminal." (*Ibid.*)

Here too the Legislature's comprehensive enactment of penalties for crimes involving controlled substances, but exclusion from that scheme of any provision for vehicle forfeiture for simple possessory drug offenses, manifests a clear intent to reserve that severe penalty for very serious drug crimes involving the manufacture, sale, or possession for sale of specified amounts of certain controlled substances.

We now consider the Court of Appeal's decision in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, which involved an ordinance similar to the one at issue here, but which reached a conclusion contrary to that of the Court of Appeal in this case. *Horton* held that the UCSA's forfeiture provisions did not preempt Oakland's ordinance allowing forfeiture of vehicles used to acquire or attempt to acquire controlled substances. It reasoned that the ordinance covered an area of law "untouched by statewide legislation" because the UCSA's forfeiture provisions, which apply only to persons possessing for sale or selling illicit drugs, were "silent with regard to vehicles used by *drug buyers.*" (*Horton v. City of Oakland, supra,* 82 Cal.App.4th at p. 586, 98 Cal.Rptr.2d 371, italics added.) In focusing solely on the UCSA's forfeiture provisions, *Horton* failed to consider the UCSA's comprehensive scheme of drug crime penalties, which include forfeiture of various items of property, including vehicles, when used in specified serious

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drug offenses. Thus, *Horton* never addressed whether the UCSA as a whole constitutes a comprehensive scheme that fully occupies the field of penalizing crimes involving controlled substances. Because of our conclusion in this case that the UCSA's *comprehensive regulation of drug offenses as a whole* impliedly preempts the City's ordinance allowing forfeiture of vehicles used in acquiring controlled substances, we need not resolve whether the UCSA's *forfeiture provisions alone**1073 establish implied state preemption, the question entertained by the Courts of Appeal in this case and in *Horton.*[FN2]

> FN2. The dissent, relying on the Court of Appeal decision in *Horton,* asserts there is no conflict between the City's ordinance and the UCSA because the former covers drug buyers while the latter is silent on that topic. Not so. As comprehensive statewide legislation that broadly addresses the problems arising from illicit drugs, the UCSA, through its generally applicable laws against possession or attempted possession of all controlled substances, imposes criminal penalties on those who, in the words of the City's forfeiture ordinance, "acquire or attempt to acquire any controlled substance."

[12] We now turn to the other aspect of the City's forfeiture ordinance, allowing for the forfeiture of any vehicle used to solicit prostitution. The Court of Appeal below held that the Legislature had *expressly preempted* that field through the interplay of two Vehicle Code provisions: Vehicle Code section 21 (precluding local regulation in areas covered by the Vehicle Code absent express legislative authorization) and Vehicle Code section 22659.5, subdivision (a) (setting up a five-year pilot program for local entities to declare vehicles***76 used in specified prostitution-related offenses public nuisances). The Court of Appeal was correct, as we explain below.

Vehicle Code section 21 states: "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and *no local authority **591 shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.*" (Italics added.) Thus, under section 21, local regulation of any "matter[ ]" covered by this state's Vehicle Code is prohibited unless the Legislature has expressly allowed local regulation in that field. (See *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550, 183 Cal.Rptr. 73, 645 P.2d 124; *Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1177-1178, 105 Cal.Rptr.2d 172.)

The matter that is covered by the Vehicle Code and that is pertinent here is the authority of local government entities to declare a vehicle used in soliciting prostitution to be a public nuisance. That topic is addressed in the Vehicle Code by subdivision (a) of section 22659.5. That provision allows a city or a county to "adopt an ordinance establishing a five-year pilot program that implements procedures for declaring *any motor vehicle a public nuisance* " when used in the commission of specified criminal conduct, including acts covered in Penal Code section 647, subdivision (b), which prohibits engaging in acts of prostitution as well as soliciting or agreeing to engage in such acts. (Veh.Code, § 22659.5, subd. (a), italics added.)

Subdivision (b) of Vehicle Code section 22659.5 permits local ordinances adopted under the statutory scheme to "include procedures to *1074 enjoin and abate the declared [vehicular] nuisance by ordering the defendant not to use the vehicle again," and it allows for the forcible removal of vehicles. Under subdivision (c) of section 22659.5, any action taken to abate a public nuisance is limited to those "specified in subdivision (b)," that is, an injunction against or abatement of a declared nuisance or the removal of a nuisance vehicle. Section 22659.5 contains no language, however, that would allow a local entity such as the City here to seize and forfeit a vehicle that, through its use in soliciting prostitution, has created a public nuisance.

We summarize: Vehicle Code section 21 precludes local regulation of "matters covered" by the Vehicle Code, absent express legislative authorization. The use of vehicles in soliciting prostitution is a matter that the Vehicle Code covers in section 22659.5, which establishes a five-year pilot program under which cities and counties may treat as a public nuisance any vehicle used in soliciting prostitution, but that pilot program does not allow for forfeiture of the vehicle. There being no express legislative authorization for any other form of local regulation of the matter covered by Vehicle Code section 22659.5, Vehi-

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cle Code section 21 precludes an ordinance like the City's, which seeks to regulate vehicle use in soliciting prostitution by requiring forfeiture of the vehicle. Under Vehicle Code section 21, therefore, the City's ordinance is *expressly preempted* by state law.

In addressing a similar ordinance adopted by the City of Oakland, the Court of Appeal in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, reached a contrary conclusion. First, asking whether Vehicle Code section 22659.5 had *impliedly* preempted the Oakland ordinance allowing forfeiture of any vehicle used to solicit prostitution, *Horton* concluded it had not, because Oakland had not adopted the five-year pilot program authorized by that statute. (*Horton, supra,* 82 Cal.App.4th at p. 589, 98 Cal.Rptr.2d***77 371.) *Horton* then considered whether there was *express* preemption under Vehicle Code section 21. As we have seen, absent express legislative authorization of local regulation in a legal area, Vehicle Code section 21 prohibits such regulation pertaining to any "matters" covered by the Vehicle Code. And section 22659.5 of the Vehicle Code specifically covers abatement of public nuisance vehicles used to solicit prostitution, the same subject of the Oakland ordinance at issue in *Horton.* But *Horton* reasoned that because Vehicle Code section 22659.5 allowed local entities to abate as a public nuisance any vehicle used to solicit prostitution only if the local entity participated in "an optional and limited pilot program" authorized by section 22659.5, that state statute, according to *Horton,* did not cover the same subject as the Oakland ordinance, which was not based on the pilot program. (*Horton, supra,* 82 Cal.App.4th at p. 591, 98 Cal.Rptr.2d 371.) We disagree.

**592 Vehicle Code section 22659.5, and the vehicle forfeiture ordinances in this case and in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371,*1075 both address the same subject: abatement of a public nuisance created by vehicles used in soliciting prostitution. As the Court of Appeal here noted, the purpose of the state Legislature's enactment of section 22659.5 was to ascertain through a five-year pilot program " 'whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities.' " (Quoting Stats.1993, ch. 485, § 1, pp. 2595-2596.) Because the Vehicle Code addresses the same subject-nuisance abatement of vehicles used to solicit prostitution-as the City's ordinance at issue, and the state Legislature has in no other statute provided for local regulation in this area, the City's ordinance is preempted by state law.[FN3]

> FN3. To the extent it is contrary to our conclusions here, we disapprove *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371.

[13] We also reject the City's characterization of Vehicle Code section 22659.5 as a "special statute" that cannot support a claim of preemption, because such claims must be "founded upon a 'conflict with *general laws* ' "(*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 177, 36 Cal.Rptr.2d 886, italics added). Vehicle Code section 22659.5 allows, but does not require, a city or a county to adopt an ordinance declaring vehicles used in specified sex offenses to be a public nuisance in accord with the terms of the statute. But this statute is, contrary to the City's contention, a general rather than a special law because it applies generally throughout the state; it is not limited to certain listed cities and counties. Thus, Vehicle Code section 22659 cannot be characterized as special legislation. (See Cal. Const., art. IV, § 16 [authorizing the enactment of statutes applicable to particular cities or counties]; *White v. State of California* (2001) 88 Cal.App.4th 298, 305, 105 Cal.Rptr.2d 714 [Legislature must have rational basis for singling out a city or county to be " 'affected by [a special] statute' "]; *Baldwin, supra,* at p. 177, 36 Cal.Rptr.2d 886 [uncodified enactments granting limited powers over groundwaters to "specifically identified special districts" described as "special acts"].)

We now turn to the City's arguments made in overall support of its vehicle forfeiture ordinance. According to the City, the ordinance does not conflict with any state law, and therefore a necessary precondition***78 to state preemption is lacking. We disagree. As discussed earlier, the ordinance conflicts with state law because anyone using a vehicle "to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance"-conduct exclusively within the purview of state law-is subject to penalties in excess of those prescribed by the Legisla-

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ture.

The City also argues that because it operates under a charter rather than under the general laws governing California cities and therefore meets the ***1076** requirement of Government Code section 34101 for a "chartered city," our state Constitution allows it to adopt and enforce ordinances in conflict with state law so long as the subject matter constitutes a "municipal affair [ ]" rather than a "statewide concern." (See Cal. Const., art. XI, § 5; *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399, 14 Cal.Rptr.2d 470, 841 P.2d 990.) The City asserts that its vehicle forfeiture ordinance deals with a municipal affair, namely, abating the nuisance caused by vehicular traffic associated with the "illicit commercial activity" of obtaining drugs or soliciting prostitution within the City's boundaries. We are not persuaded, as explained below.

The illicit commercial activities-prostitution and trafficking in controlled substances-that are the focus of the City's vehicle forfeiture ordinance are matters of statewide concern that our Legislature has comprehensively addressed through various provisions of this state's Penal and Vehicle Codes, leaving no room for further regulation at the local level. One of the lesser harms associated with these crimes is the traffic congestion that may result when vehicles****593** are used to solicit acts of prostitution or to buy or sell drugs illegally on city streets. Although traffic congestion is a local problem that cities ordinarily are authorized to address, they may not do so by means of an ordinance that, by allowing forfeiture of a vehicle used to commit a specific state law violation, impinges on an area fully occupied or exclusively covered by state law.[FN4]

> FN4. Because the determination to preclude or to allow local regulation in a field addressed by state law resides exclusively with the state Legislature, that body can, of course, expressly authorize local entities to enact ordinances such as the one in this case that we conclude is preempted under existing law.

DISPOSITION

The judgment of the Court of Appeal is affirmed.

WE CONCUR: GEORGE, C.J., WERDEGAR, and MORENO, JJ.

Dissenting Opinion by CORRIGAN, J.

I respectfully dissent from the opinion of my colleagues.

The ordinance at issue is a practical and responsible attempt by the City of Stockton (Stockton) to address problems it, and many other cities face on a daily basis. The ordinance speaks to a narrow, pressing and quite real local concern. Street commerce in drugs and sex forces innocent people to share their neighborhoods with pimps, prostitutes, and drug dealers who use their streets as a bazaar for illegal transactions.

Article XI, section 7 of the California Constitution provides, "[a] county or city may make and enforce within it limits all local, police, sanitary, and ***1077** other ordinances and regulations not in conflict with general laws." Article XI, section 5 of the California Constitution, commonly referred to as the "home rule" doctrine, "reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather *****79** than one of 'statewide concern.' [Citation.]" (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 584-585, 98 Cal.Rptr.2d 371(*Horton*).) "[W]hen local government regulates in an area over which it traditionally has exercised control, ... California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

In deciding whether a local ordinance enacted by a charter city, like Stockton, is valid, we apply the following analysis: " 'First, a court must determine whether there is a genuine conflict between a state statute and a municipal ordinance. [Citations.] Only after concluding there is an actual conflict should a court proceed with the second question; i.e., does the local legislation impact a municipal or statewide concern?' [Citation.] Courts should avoid making unnecessary choices between competing claims of municipal and state governments 'by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other.' [Citation.] In other words, the preemp-

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tion question begins with an inquiry into the existence of a conflict. If there is no conflict, the home rule doctrine is not brought into play." (*Horton, supra,* 82 Cal.App.4th at p. 585, 98 Cal.Rptr.2d 371.)

The majority relies on the California Uniform Controlled Substances Act (UCSA) (Health & Saf. Code, § 11000 et seq.) in reaching its conclusion that Stockton's ordinance is preempted because of a conflict. It views the UCSA as so comprehensive in nature "as to manifest the Legislature's intent to preclude local regulation." (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 74, 162 P.3d at p. 589.) The majority's reasoning, if accepted, requires preemption on an all-encompassing basis.

Unlike the majority, I cannot conclude that the overall structure of the UCSA "manifests a clear intent" to limit the penalty of vehicle forfeiture to "very serious drug crimes involving the manufacture, sale, or possession for sale of" drugs. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 75, 162 P.3d at p. 590.) The Legislature has authorized a state prison sentence of up to three years for the simple ****594** possession of even a small amount of certain drugs. (health & saf. code, § 11350; pen.code, § 18.) it is difficult to conclude that the Legislature intended to deprive a person of freedom for simple possession, but intended to protect an automobile from forfeiture in only very serious cases of drug manufacture and sale.

1078** Certainly the Legislature has not said that was its intent and no legislative history [FN1] has been cited to support that conclusion.**80** Unlike the majority, I do not discern a conflict between the UCSA and Stockton's ordinance.

> FN1. In *Horton, supra,* 82 Cal.App.4th at page 588, 98 Cal.Rptr.2d 371, the court rejected an argument that it should "retroactively infer ... preemptive intent from recent legislative activity" based on the Legislature's passage of Assembly Bill No. 662 (1999-2000 Reg. Sess.) That bill amended Health and Saf. Code section 11469 et seq."to include forfeitures under the criminal profiteering statute. The bill also declared the Legislature's intent that forfeiture law be exclusive of any local ordinance or regulation, declaring the subject a matter of statewide concern." (*Horton,* at p. 588, 98 Cal.Rptr.2d 371.) The Governor vetoed Assembly Bill No. 662 explaining, " '[i]t is not appropriate for the State to take away the tools from Oakland, Sacramento, and other cities considering the adoption of similar ordinances without a more careful analysis of the amount of discretion which should be left to cities to craft their own remedies in response to local conditions.' " (*Horton,* at p. 588, 98 Cal.Rptr.2d 371.)The court concluded, "Thus the bill's statement that '[t]he provisions of this section are a clarification and declaration of existing law' is far from definitive. A 'clear indication' is one which needs no further elucidation. The Legislature's perceived need to 'clarify' demonstrates that the statute as drafted fails to provide the clear indication required to preempt by implication." *(Ibid.)*

In fact, "the [UCSA] is silent with regard to vehicles used by drug *buyers.*" (*Horton, supra,* 82 Cal.App.4th at p. 586, 98 Cal.Rptr.2d 371, fn. omitted.) Stockton has included these vehicles in its nuisance abatement program in an attempt to alleviate the concerns of its residents. Thus, rather than creating a conflict, Stockton's ordinance covers an area undisturbed by the UCSA.

Also, Stockton's ordinance does not conflict with provisions of the Vehicle Code. The majority relies on Vehicle Code section 21, which states, "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein." The majority next refers to Vehicle Code section 22659.5, which authorizes a city to "adopt an ordinance establishing a five-year pilot program that implements procedures for declaring any motor vehicle a public nuisance" used in soliciting prostitution. (See maj. opn., *ante,* 63 Cal.Rptr.3d at p. 76, 162 P.3d at p. 591, italics omitted.) The majority concludes that because Vehicle Code section 22659.5 covers nuisance abatement of vehicles used in soliciting prostitution and "does not allow for forfeiture of the vehicle," Stockton's ordinance is preempted under the provisions of Vehicle Code section 21. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 76, 162 P.3d at p. 591.)

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I disagree. The provisions of Vehicle Code section 22659.5 merely authorize "an optional and limited pilot program." (*Horton, supra,* 82 Cal.App.4th at p. 591, 98 Cal.Rptr.2d 371.) Vehicle Code section 22659.5"does not preclude local governments from enacting other provisions if they decide not to adopt the proffered pilot program." (*Horton,* at p. 589, 98 Cal.Rptr.2d 371.) Like the Oakland ordinance in *Horton,* ***1079** Stockton's ordinance "was not enacted pursuant to section 22659. 5, [therefore] it is not constrained by the procedural requirements of that statute." (*Ibid.,* fn. omitted.) Thus, Stockton's ordinance does not conflict with state law. The ordinance does not interfere with the operation of state law as it is not "inimical" to its provisions in the relevant sense, and it "does not prohibit what the statute commands or command what it prohibits." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 902, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

This court has counseled that we should carefully ensure "that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." (*California Fed. Savings and Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17, 283 Cal.Rptr. 569, 812 P.2d 916.) Contrary to the majority, I would hold that there ****595** is no conflict between state law and Stockton's ordinance.

In addition, assuming there is a conflict with state law, because Stockton is a charter city, it argues that its ordinance addresses a municipal affair: nuisance abatement. Stockton urges that the ordinance's forfeiture provisions are necessary to reduce the urban blight and traffic caused by prostitution and drug dealing. The majority summarily rejects this argument holding that although traffic congestion is a *****81** harm associated with these crimes, illicit commercial activities such as prostitution and drug trafficking are matters of statewide concern. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 78, 162 P.3d at p. 592.)

The majority quotes our opinion in *Big Creek Lumber Co. v. County of Santa Cruz, supra,* 38 Cal.4th 1139, 45 Cal.Rptr.3d 21, 136 P.3d 821, for the rule that when a local government regulates an area which it traditionally exercised control, courts will presume that the regulation is not preempted by state statute, absent the Legislature's clear intention to preempt. (*Id.* at p. 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821; see maj. opn., *ante,* 63 Cal.Rptr.3d at p. 72, 162 P.3d at p. 592.) The majority fails to follow this rule. It cannot be said that when the Legislature enacted the UCSA and Vehicle Code, it intended to invalidate local nuisance ordinances targeting the urban blight created by drug trafficking and prostitution.

The majority also relies on *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 23 Cal.Rptr.3d 453, 104 P.3d 813(*American Financial*), where we concluded that a statutory scheme that regulated predatory lending practices preempted an Oakland ordinance that purported to regulate predatory lending practices in the Oakland home mortgage market. In that case, we found it significant that "the Legislature was not suddenly entering an area previously governed by municipalities," but instead was addressing a subject matter that historically has been regulated "at the state, not the municipal, level." (*Id.* at p. 1255, 23 Cal.Rptr.3d 453, 104 P.3d 813.)

***1080** Here, by contrast, Stockton passed an ordinance aimed at nuisance abatement, a traditionally local police power.[FN2] (*People v. Johnson* (1954) 129 Cal.App.2d 1, 6, 277 P.2d 45 ["[a] city has the power to pass general police regulations to prevent nuisances"]; see also *The City of Oakland v. Williams* (1940) 15 Cal.2d 542, 549, 103 P.2d 168 [cities " possess the necessary police power, both under constitutional grant and under their respective charters, to abate nuisances"].) In acknowledging what constitutes a "nuisance," the Civil Code defines the term broadly as including "[a]nything which is injurious to health, including, *but not limited to,* the illegal sale of controlled substances," or anything that is " indecent or offensive ... so as to interfere with the comfortable enjoyment of life or property," or anything that "unlawfully obstructs the free passage or use, in the customary manner, of any ... public park, square, street, or highway...." (Civ.Code, § 3479, italics added; see also Civ.Code, § 3480["[a] public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal"].) Therefore, the traditionally local nature of nuisance regulation distinguishes this case from the situation presented in *American* *****82** *Financial, supra,* 34 Cal.4th 1239, 23 Cal.Rptr.3d 453, 104 P.3d

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813.

> FN2. The majority relies on *In re Lane* (1962) 58 Cal.2d 99, 22 Cal.Rptr. 857, 372 P.2d 897, in support of its conclusion that the UCSA thoroughly "occupies the field of penalizing crimes involving controlled substances." (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 74, 162 P.3d at p. 589.) *Lane* is distinguishable. It involved a statewide statutory scheme providing comprehensive criminal proscriptions against specified sexual conduct. *Lane* held void, a local ordinance that appears quaint nearly 50 years later, which purported to criminalize sexual intercourse between unmarried persons.
>
> This case involves a completely different situation. Here, Stockton's ordinance attempts to address the problems caused by drug dealing and prostitution, activities the city understandably views as public nuisances. (Civ.Code, §§ 3479, 3480, 3491.)

The majority does not address the compelling problem of urban blight for the poor and elderly, which is immediate, significant, and certainly a local concern. The aged homeowner**596 who must shut herself inside while drug transactions are conducted in her front yard, and the parents who must walk their children to school while commercial sex acts are performed in cars parked at the curb pay a heavy and very local price. Not all Californians confront these problems, but those who do have a pressing and localized need for protection.

It should not be the case that local governments require the permission of the state to protect their own citizens from nuisances that profoundly affect their quality of life and the quiet enjoyment of their own property.

*1081 Accordingly, I would reverse the judgment of the Court of Appeal.[FN3]

> FN3. I believe the distinctions drawn in *Horton, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, are sound and should be adopted. *Horton* specifically left open the due process question raised by ordinances that impose a reduced burden of proof and the authorization of a one-year time frame before requiring notice and providing an opportunity for challenging the forfeiture. These procedural provisions are worthy of careful scrutiny.

WE CONCUR: BAXTER, and CHIN, JJ.
Cal.,2007.
O'Connell v. City of Stockton
41 Cal.4th 1061, 162 P.3d 583, 63 Cal.Rptr.3d 67, 07 Cal. Daily Op. Serv. 8821, 2007 Daily Journal D.A.R. 11,377, 33 A.L.R.6th 661

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Supreme Court of California
Jerry RICHMOND et al., Plaintiffs and Appellants,
v.
SHASTA COMMUNITY SERVICES DISTRICT, Defendant and Respondent.
No. S105078.

Feb. 9, 2004.

Background: Property owners brought action challenging constitutionality of resolution adopted by water district that increased connection fee charged to new users and continued unchanged, as part of connection fee, a fee for fire suppression. The Superior Court, Shasta County, No. 0134636,Richard A. McEachen, J., upheld enactment. Property owners appealed. The Court of Appeal affirmed in part and reversed in part. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) district's capacity charge, imposed on applicants for new service connections, was not an "assessment" subject to state constitutional restrictions;
(2) district's fee for fire suppression as part of new connection fee was not subject to constitutional restrictions on fees; and
(3) district could amend ordinance establishing new connection fees by resolution.

Judgment of the Court of Appeal reversed and matter remanded to that court with directions.

Opinion, 116 Cal.Rptr.2d 343, superseded.

West Headnotes

[1] Waters and Water Courses 405 ⚿203(1)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases

Water district's capacity charge, imposed on applicants for new service connections, was not an "assessment" subject to state constitutional restrictions on assessments, since district could only estimate number of connections and could not identify specific parcels for which new applications would be made, as required by constitutional provision. West's Ann.Cal. Const. Art. 13D, §§ 2, 4.
See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 110A, 110B; Cal. Jur. 3d, Property Tax, § 4.

[2] Constitutional Law 92 ⚿580

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k580 k. In General. Most Cited Cases
(Formerly 92k12)
The principles of constitutional interpretation are similar to those governing statutory construction.

[3] Constitutional Law 92 ⚿584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited Cases
(Formerly 92k13)
The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue.

[4] Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k14)

Constitutional Law 92 ⚿592

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92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k592 k. Plain, Ordinary, or Common Meaning. Most Cited Cases
(Formerly 92k14)
To determine intent of enactors of a constitutional provision, the Supreme Court begins by examining the constitutional text, giving the words their ordinary meanings.

[5] Constitutional Law 92 ⚿589

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k587 Effect and Consequences
92k589 k. Reasonableness of Result. Most Cited Cases
(Formerly 92k12)

Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k12)
Courts construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results.

[6] Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k19)

Constitutional Law 92 ⚿615

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k615 k. Relation to Former Constitution. Most Cited Cases
(Formerly 92k19)

Statutes 361 ⚿179

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k177 Constitutional and Statutory Rules and Provisions
361k179 k. Interpretation Clauses and Definitions in Statutes Construed. Most Cited Cases

Statutes 361 ⚿212.6

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.6 k. Words Used. Most Cited Cases
Rule, holding that when a term has been given a particular meaning by a judicial decision it should be presumed to have the same meaning in later-enacted statutes or constitutional provisions, does not apply when the statute or constitutional provision contains its own definition of the term at issue; if the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts.

[7] Waters and Water Courses 405 ⚿203(1)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district's capacity charge, imposed on applicants for new service connections, was not a "development fee"; district had no authority to approve or disapprove property development, and a property owner could request a new service connection without proposing any new development.

[8] Waters and Water Courses 405 ⚿203(1)

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405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district's fee for fire suppression as part of new connection fee was not subject to constitutional restrictions on fees, since it was not imposed as an incident to ownership; although supplying water was a property-related service within constitutional definition of a fee or charge, a water service fee was a "fee or charge" only if it was imposed upon a person as an incident of property ownership, and making a new connection to the system was not such imposition, since it resulted from an owner's voluntary decision to apply for the connection. West's Ann.Cal. Const. Art. 13D, §§ 2(e), 3(b), 6(a, b); West's Ann.Cal.Gov.Code §§ 61621, 61621.3.

[9] Waters and Water Courses 405 ⇐203(1)

405 Waters and Water Courses
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405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district could amend ordinance establishing new connection fee by resolution under authority of Mitigation Fee Act, which allowed such action by ordinance or resolution; district was not subject to statute requiring sewage system actions to be enacted by ordinance. West's Ann.Cal.Gov.Code § 66016(b); West's Ann.Cal.Health & Safety Code § 5471.
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KENNARD, J.

In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C and XIII D to the California Constitution. (See *Apartment Assn. of Los Angeles County, *415 Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 835, 102 Cal.Rptr.2d 719, 14 P.3d 930.) Article XIII D of the state Constitution (hereafter article XIII D) specifies various restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. Here, the main issue is whether a charge that a local water district imposed as a condition of making a new connection to the water system, and that the district used to finance capital improvements to the water system, is subject to the restrictions of article XIII D. Other questions presented are whether article XIII D prohibits a local water district from continuing to include in the new connection fees a fire suppression charge, the proceeds of which are used to purchase firefighting and emergency medical equipment for the district's volunteer fire department, and whether an ordinance imposing a water connection fee may be amended by a resolution.

On these questions, we conclude: (1) a capacity charge imposed as a condition for making a new connection to a water system, the proceeds of which are used to finance capital improvements, is not an assessment within the meaning of article XIII D, and thus it is not subject to article XIII D's restrictions on assessments; (2) a fire suppression fee imposed as a condition for making a new connection to a water system, the proceeds of which are used to purchase

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firefighting and emergency medical***124 equipment, is not a property-related fee or charge under article XIII D, and thus it is not subject to article XIII D's prohibition against property-related fees and charges for general governmental services; and (3) an ordinance enacted by a community services district to impose a water connection fee may be amended by a resolution. Because these conclusions are consistent with the trial court's judgment but inconsistent with part of the Court of Appeal's opinion, we will reverse that court's judgment with directions to affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

Because neither party petitioned the Court of Appeal for a rehearing, we take the facts largely from that court's opinion. (See Cal. Rules of Court, rule 28(c)(2).)

Defendant Shasta Community Services District (the District) is a local public entity organized under the community services district law (Gov.Code, § 61000 et seq.). It operates a water system for residential and commercial users and a volunteer fire department that provides both fire suppression and emergency medical services. In February 1994, the District adopted an ordinance (No. 1-94) establishing a "standard connection fee" of $2,000, plus the cost of a water meter, for new water service connections. *416 According to the ordinance, this fee included a capacity charge [FN1] of $600 for future improvements to the water system and a fire suppression charge of $400. The ordinance did not expressly allocate the remaining $1,000, but one may infer that it covered the cost of installing the water service connection because the ordinance also provided that if the water main was not on the same side of the street or highway as the property to be served, "the District will charge the actual **521 cost of the connection to the extent such cost exceed[s] the sum of $1,000."

> FN1. The Government Code defines a "capacity charge" as "a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged." (Gov.Code, § 66013, subd. (b)(3).)

In November 1997, the District adopted a resolution (No. 10-97) to amend this ordinance. According to the resolution, applicants for new water service connections would be required to pay: (1) a "standard connection fee"; (2) the actual cost of a water meter; and (3) if the property owner chose to have the District install the service connection, the "actual cost of the materials, labor, and overhead" for installing the "entire service connection including the meter, line setter, meter box, appurtenant equipment, and mainline extension, if any." The "standard connection fee" consisted of a $3,176 capacity charge for capital improvements to the water system and a $400 fire suppression charge. The resolution stated that the $3,176 capacity charge was "based upon estimated project costs of $762,300 for future improvements assigned to the new development of 240 future connections which equals $3,176 per connection."

In March 1998, plaintiffs Jerry Richmond, Linda Panich, Hank Edelstein, and Victoria Edelstein, both individually and doing business as a joint venture, brought this action to test the validity of the resolution increasing the fees for new connections. (Code Civ. Proc., § 860; Gov.Code, §§ 66013, 66022.) They alleged that they owned real property within the District and also within an area proposed for annexation into the District. They challenged the resolution on many grounds, only three of which are relevant here: (1) The resolution imposed an assessment within the meaning of article XIII D, but ***125 the District had not satisfied the constitutional requirements for imposing an assessment; (2) the $400 fire suppression charge was a "fee" or "charge" within the meaning of article XIII D, and it violated article XIII D's prohibition against fees or charges for general governmental services; and (3) the 1994 ordinance could be amended only by another ordinance, not by a mere resolution. Plaintiffs requested a declaratory judgment that the resolution was void and a permanent injunction restraining the District from enforcing it.

*417 The action was tried to the court without a jury. At the trial, the District presented evidence showing, among other things, that the capital improvements to be funded by the $3,176 capacity charge, including a new 500,000-gallon storage tank, would both remedy existing deficiencies in the water system and expand the system's ability to provide service to new customers through new connections. The $3,176 charge was calculated by allocating 50 percent of the cost of the improvements to new connections and 50 percent to

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existing connections. Water customers throughout the district would benefit from the improvements, but customers in certain higher-elevation areas would receive somewhat less benefit than other customers. After considering the evidence, the superior court granted judgment for the District. The court concluded: (1) The connection fee imposed by resolution No. 10-97 is not a special assessment but a development fee exempt from article XIII D; (2) the fire suppression charge is merely the continuation of a fee imposed before article XIII D was enacted; and (3) the connection fee could legally be adopted by a resolution (enactment of an ordinance was not required).

On plaintiffs' appeal, the Court of Appeal affirmed the judgment, except as to the fire suppression charge. The court reasoned that the District's connection fee was not an assessment within the meaning of article XIII D because that constitutional provision by implication defines an assessment as a charge imposed on specific identified parcels, whereas the connection fee was not imposed on identified parcels. Because the connection fee was imposed only when a property owner requested a new service connection, the specific properties for which connections would be sought could not be identified (although the number of such requests could be estimated), and thus the connection charge could not be characterized as an assessment. The Court of Appeal also concluded that the connection fee, because it was incurred only when the owner voluntarily requested a new service connection, was properly characterized as a development fee, and as such it was exempt from the requirements of article XIII D.

****522** With respect to the fire suppression charge, however, the Court of Appeal accepted plaintiff's argument that it was a fee for general governmental services prohibited by section 6, subdivision (b)(5), of article XIII D. The Court of Appeal rejected the District's argument that this provision did not apply to fees authorized by laws enacted before article XIII D became effective, but only to fees that were newly enacted or increased thereafter.

Finally, the Court of Appeal concluded that the District could validly use a resolution to amend an ordinance.

*418 II. THE CAPACITY CHARGE

[1][2][3][4] To determine whether the District's $3,176 capacity charge, imposed only on applicants for new service connections, violates article XIII D's restrictions on assessments, we must interpret our state Constitution. "The principles of constitutional interpretation are similar to those governing statutory construction." ***126** (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, 105 Cal.Rptr.2d 46, 18 P.3d 1198.) The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue. (*Ibid.*) To determine that intent, we begin by examining the constitutional text, giving the words their ordinary meanings. (*Ibid.*; accord, *Leone v. Medical Board* (2000) 22 Cal.4th 660, 665, 94 Cal.Rptr.2d 61, 995 P.2d 191.)

Section 2 of article XIII D defines an "assessment" as "any levy or charge upon real property ... for a special benefit conferred upon the real property...." (Art. XIII D, § 2, subd. (b).) It defines "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large...." (*Id.*, § 2, subd. (i).)

Section 4 of article XIII D establishes procedures and requirements for assessments. A local public agency may not impose an assessment, as defined in article XIII D, unless: (1) the agency identifies "all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed" (art. XIII D, § 4, subd. (a)); (2) the agency obtains an engineer's report that supports the assessment (*id.*, § 4, subd. (b)); (3) the assessment does not exceed the reasonable cost of the proportional special benefit conferred on the affected parcel (*id.*, § 4, subds. (a) & (f)); and (4) after giving notice to affected property owners and holding a public hearing, the agency does not receive a majority protest based on ballots "weighted according to the proportional financial obligation of the affected property"(*id.*, § 4, subds. (c)-(e)).

To determine what constitutes an assessment under article XIII D, it is necessary to consider not only article XIII D's definition of an assessment, but also the requirements and procedures that article XIII D imposes on assessments. Article XIII D requires that an agency imposing an assessment identify "all parcels which *will* have a special benefit conferred upon them and upon which an assessment *will* be im-

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posed." (Art. XIII D, § 4, subd. (a), italics added.) The agency then must give written notice of the proposed assessment to the owners of these identified parcels (*id.*, § 4, subd. (c)) and provide an opportunity for a protest using ballots "weighted according to the proportional financial obligation of the affected property"(*id.*, § 4, subd. (e)).

419** Because the capacity charge is imposed only on property owners who apply for a new service connection, the District cannot identify the parcels upon which the capacity charge will be imposed. Here, the District *estimated* that there would be 240 new connection applications, but the District did not and could not *identify* the specific parcels for which new connection applications would be made. At most, the District can identify the parcels within its boundaries on which the capacity charge *would* be imposed *if* the owners applied for a service connection. But the matter is more complex, because many existing undeveloped parcels would likely be subdivided into an indeterminable number of smaller parcels, for each of which a connection might be requested, thus making it impossible to now determine "the proportional financial obligation of the affected property." And even this understates the problem, because owners of property outside the District's*523** boundaries may seek service connections by applying for annexation of their property into the District. Therefore, it is impossible for the District to comply with article XIII D's requirement that the agency identify the parcels on which the assessment will be imposed *****127** and provide an opportunity for a majority protest weighted according to the proportional financial obligation of the affected property.

We agree with the Court of Appeal that the proper conclusion to be drawn from this impossibility of compliance is that an assessment within the meaning of article XIII D must not only confer a special benefit on real property, but also be imposed on identifiable parcels of real property. Because the District does not impose the capacity charge on identifiable parcels, but only on individuals who request a new service connection, the capacity charge is not an assessment within the meaning of article XIII D.

[5] This construction is consistent with settled rules of constitutional interpretation. "Courts construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results." (*Carman v. Alvord* (1982) 31 Cal.3d 318, 327, 182 Cal.Rptr. 506, 644 P.2d 192; see also *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147, 43 Cal.Rptr.2d 693, 899 P.2d 79 ["a practical construction is preferred"].) Construing article XIII D's definition of assessment as applying only to charges imposed on identifiable parcels avoids the probably unintended result of prohibiting local water districts from imposing capacity charges, no matter how modest or reasonable, for new connections because of the inherent impossibility of identifying in advance the parcels for which new connections would later be requested.

This construction is also consistent with article XIII D's definition of an assessment as a "levy or charge *upon real property*...." (Art. XIII D, § 2, ***420** subd. (b), italics added.) [FN2] The District does not impose the capacity charge on real property as such, but on individuals who apply for new service connections. It is the applicant who must pay, and the District may not impose a lien or otherwise have recourse to the property to compel payment. Rather, the District simply does not initiate water service until the charge is paid. A charge that operates in this way cannot be described as a charge upon real property, within the meaning of article XIII D.

> FN2. In this regard, it may be instructive to compare article XIII D's definition of an assessment as a "levy or charge upon real property" (*id.*, § 2, subd. (b)) with its definition of a fee or charge as a "levy ... upon a parcel or upon a person as an incident of property ownership ..." (*id.*, § 2, subd. (e)). Although a property-related fee or charge may be imposed either on the property itself or upon the owner as an incident of ownership, a levy must be imposed on the property itself to qualify as an assessment under article XIII D.

Finally, this construction is consistent with the aim of Proposition 218 to enhance taxpayer consent. Here, the District proposed to divide the costs of new capital improvements between users receiving service through existing connections and users applying for new connections. This case concerns only imposition of costs on new connections. Presumably, any costs imposed on customers receiving service through ex-

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isting connections would be subject to article XIII D's voter approval requirements, and thus their consent. Customers who apply for new connections give consent by the act of applying. Moreover, water connection fees are already subject to significant constraints under Government Code section 66013.[FN3]

FN3. Government Code section 66013 provides:

"(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

"(b) As used in this section:

"(1) 'Sewer connection' means the connection of a structure or project to a public sewer system.

"(2) 'Water connection' means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

"(3) 'Capacity charge' means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

"(4) 'Local agency' means a local agency as defined in Section 66000.

"(5) 'Fee' means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

"(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

"(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

"(1) A description of the charges deposited in the fund.

"(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

"(3) The amount of charges collected in that fiscal year.

"(4) An identification of all of the following:

"(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

"(B) Each public improvement on which

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charges were expended that was completed during that fiscal year.

"(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

"(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

"(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

"(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

"(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

"(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

"(3) Charges collected on or before December 31, 1998.

"(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

"(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

"(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section."

*****128 *421 **524** Plaintiffs rely on this court's decision in *****129** *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935(*San Marcos*). The issue there was whether a provision of the state Constitution exempting public entities from payment of property taxes (Cal. Const., art. XIII, § 3, subd. (b)) applied to a local water district's capacity fee, used to fund capital improvements to the water system. The constitutional property tax exemption for public entities had been construed to include ***422** special assessments, but not user fees, and thus the issue presented to this court was whether the capacity charge was more properly characterized as a special assessment or as a user fee for purposes of this constitutional provision. We concluded that a capacity charge was a hybrid, in the sense that it had some characteristics of a user fee and some characteristics of an assessment. (*San Marcos, supra,* at p. 163, 228 Cal.Rptr. 47, 720 P.2d 935.) We concluded also, however, that the fee should be considered an assessment for purposes of the public entity property tax exemption. We established a bright-line rule that "a fee aimed at assisting a utility district to defray costs of capital ****525** improvements will be deemed a special assessment from which other public entities are exempt." (*Id.* at pp. 164-165, 228 Cal.Rptr. 47, 720 P.2d 935.) [FN4]

FN4. In response to our *San Marcos* decision, the Legislature granted local water districts authority to impose capacity charges on other public entities, thereby removing the public entity exemption. (See Gov.Code, §§ 54999-54999.6; *Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1189, 114 Cal.Rptr.2d 459, 36

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P.3d 2; *City of Marina v. Board of Trustees* (2003) 109 Cal.App.4th 1179, 1182-1183, 135 Cal.Rptr.2d 815; *Utility Cost Management v. East Bay Mun. Utility Dist.* (2000) 79 Cal.App.4th 1242, 1246-1247, 94 Cal.Rptr.2d 777.)

San Marcos, supra, 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935, is not on point here. We were not there construing the term "assessment" as used in article XIII D; instead, we were construing the constitutional provision exempting public entities from property taxes (Cal. Const., art. XIII, § 3, subd. (b)), a provision in which the term "assessment" does not appear. In deciding what constituted an assessment in *San Marcos,* we sought to determine and effectuate the constitutional purpose for exempting public entities from property taxes, a purpose that plays no role in interpreting the provisions of article XIII D that are at issue here. The characteristic that we found determinative for identifying assessments in *San Marcos*-that the proceeds of the fee were used for capital improvements-forms no part of article XIII D's definition of assessments. For each of these reasons, we agree with the Court of Appeal that *San Marcos* is not helpful, much less controlling, in this strikingly different context. (See *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2, 39 Cal.Rptr. 377, 393 P.2d 689 ["Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered."]; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008, 239 Cal.Rptr. 656, 741 P.2d 154 [a word may have different legal meanings in different contexts]; *In re Marriage of Buol* (1985) 39 Cal.3d 751, 757, fn. 6, 218 Cal.Rptr. 31, 705 P.2d 354 [same].)

[6] Plaintiffs invoke the rule that when a term has been given a particular meaning by a judicial decision, it should be presumed to have the same meaning in later-enacted statutes or constitutional provisions. (See *People v. Hurtado* (2002) 28 Cal.4th 1179, 1188-1189, 124 Cal.Rptr.2d 186, 52 P.3d 116; *Arnett v. Dal* ***130** *Cielo* (1996) 14 Cal.4th 4, 19, 56 Cal.Rptr.2d 706, 923 **423** P.2d 1.) Plaintiffs argue that *San Marcos, supra,* 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935, gave the term "assessment" a precise legal meaning as applying to capacity charges used to fund capital improvements, and therefore the term "assessment" in article XIII D, enacted after *San Marcos,* must be construed to have the same meaning. But the rule that plaintiffs invoke does not apply when, as here, the statute or constitutional provision contains its own definition of the term at issue: "If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063, 103 Cal.Rptr.2d 751, 16 P.3d 166.) Here, article XIII D provides both an express definition of assessment and an implied qualification of that definition through the requirement that the agency identify the specific parcels on which the assessment will be imposed.

Plaintiffs next rely on the definition of assessment in Government Code section 53750, part of the Proposition 218 Omnibus Implementation Act (Gov.Code, §§ 53750-53753) that the Legislature enacted in 1997. (Stats.1997, ch. 38, § 5.) Government Code section 53750 states that "[f]or purposes of Article XIII C and Article XIII D of the California Constitution" an "assessment" means "any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided." (Gov.Code, § 53750, subd. (b).) As plaintiffs point out, this definition does not distinguish between charges imposed only in response to a request for service and charges imposed on previously identified parcels. In this respect, **526 the statutory definition is no different from the constitutional definition in section 2, subdivision (b), of article XIII D. But the statutory provisions implementing article XIII D, like article XIII D itself, assume that assessments are imposed only on identified parcels. Under Government Code section 53753, subdivision (b), before levying a new or increased assessment, an agency must give notice " to the record owner of each identified parcel." Government Code section 53750, subdivision (g), defines an "identified parcel" as "a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed...." Because the statutory provisions merely reflect the constitutional provisions, they do not alter our conclusion that under article XIII D an assessment is a charge imposed on previously identified parcels, and not a charge imposed only as a condition of extending service through a new service connection.

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Arguing that a charge imposed only on property owners who voluntarily seek a governmental service or approval may properly be characterized as an assessment, plaintiffs call our attention to the Integrated Financing District ***424** Act (Gov.Code, § 53175 et seq.), under which local agencies may establish "contingent assessments" payable only when a landowner applies for development approval. (See *id.,* § 53187.) As plaintiffs point out, the Integrated Financing District Act includes notice and majority protest provisions for owners of property subject to the contingent assessment (*id.,* § 53183). (See *Southern Pacific Pipe Lines, Inc. v. Board of Supervisors* (1992) 9 Cal.App.4th 451, 461-462, 11 Cal.Rptr.2d 745.) We agree that the District's capacity charge is similar to a contingent assessment under the Integrated Financing District Act, but this *****131** observation does not assist plaintiffs. Unlike article XIII D, the Integrated Financing District Act does not require a local agency to identify in advance the particular parcels that *will be* subject to the assessment. Instead, the notice of intention to impose a contingent assessment goes to all owners of property within the proposed assessment zone, and the assessment cannot be imposed if protested by "the owners of more than one-half of the area of the property within the proposed ... district which is proposed to be subject to the contingent assessment immediately or in the future...." (Gov.Code, § 53183, subd. (d).) Thus, under the Integrated Financing District Act, in contrast to article XIII D, all owners of property *potentially* subject to a charge are entitled to notice and a weighted vote.

Article XIII D could have been written, like the Integrated Financing District Act, to cover contingent assessments as well as assessments imposed only on previously identified parcels. But it was not written in that manner, and we remain persuaded that a capacity charge contingent on some voluntary action by the property owner is not an assessment within the meaning of article XIII D.

[7] Plaintiffs argue that the Court of Appeal erred in characterizing the District's capacity charge as a development fee. Observing that development fees "are imposed only if a property owner elects to develop"(*Loyola Marymount University v. Los Angeles Unified School Dist.* (1996) 45 Cal.App.4th 1256, 1267, 53 Cal.Rptr.2d 424), the Court of Appeal reasoned that the District's capacity charge, because it was imposed only in response to a property owner's voluntary decision to request a service connection, should be considered a development fee and thus exempt from the requirements of article XIII D under its section 1, subdivision (b), stating that "[n]othing in this article ... shall be construed to ... [a]ffect existing laws relating to the imposition of fees or charges as a condition of property development."

Plaintiffs insist that the District's capacity charge cannot be a development fee because the District has no authority to approve or disapprove property development, and because a property owner may request a new service connection without proposing any new development, such as when the owner ***425** of a previously developed residential parcel decides to use the District's water instead of water from an existing well on the property.

We agree with plaintiffs that the District's capacity charge is not a development fee. It is similar to a development fee in being imposed****527** only in response to a property owner's voluntary application to a public entity, but it is different in that the application may be only for a water service connection without necessarily involving any development of the property. (See *Utility Cost Management v. Indian Wells Valley Water Dist., supra,* 26 Cal.4th at p. 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2 [noting that a capacity charge "might apply regardless of whether a development project is at issue"]; *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524, 530, 85 Cal.Rptr.2d 382 [concluding that a capacity charge is not a development fee under the Mitigation Fee Act (Gov.Code, § 66000 et seq.)].) Our agreement that the capacity charge is not a development fee does not assist plaintiffs, however, because it does not mean that the capacity charge is an assessment within the meaning of article XIII D. The capacity charge is neither an assessment nor a development fee under article XIII D.

We conclude, as did the trial court and the Court of Appeal, that the District's *****132** capacity charge is not an assessment under article XIII D.

III. THE FIRE SUPPRESSION CHARGE

Article XIII D provides: "No fee or charge may be imposed for general governmental services including, but not limited to, police, *fire,* ambulance or library

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services, where the service is available to the public at large in substantially the same manner as it is to property owners." (Art. XIII D, § 6, subd. (b)(5), italics added.) At the trial below, the evidence showed that the District uses the proceeds of the fire suppression component of the connection fee to purchase equipment for its volunteer fire department, including both firefighting equipment and emergency medical equipment.[FN5] The fire department provides firefighting and emergency medical services to the public at large. Accordingly, the District's fire suppression charge is "imposed for general governmental services" within the meaning of section 6, subdivision (b)(5), of article XIII D, and it is prohibited by that provision if it satisfies article XIII D's definition of a "fee or charge."

> FN5. Government Code section 50078 authorizes "[a]ny local agency which provides fire suppression services" to "determine and levy an assessment for fire suppression services." Plaintiffs have argued that the District may not rely on this provision as authority for its fire suppression fee because Government Code section 50001 defines "local agency" to include only cities and counties. Plaintiffs have overlooked Government Code section 50078.1, subdivision (b), which defines "local agency," as used in Government Code section 50078, to include any city, county, "or special district."

***426** Article XIII D defines a "fee" or "charge" as "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (*Id.*, § 2, subd. (e).) It defines "property-related service" as "a public service having a direct relationship to property ownership." (*Id.*, § 2, subd. (h).)

[8] The District argues that the connection fee, including its fire suppression component, does not fall within article XIII D's definition of a fee or charge because it is not imposed "upon a parcel or upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) The District does not impose the fee on parcels of real property but on persons who apply for a water service connection. The District does not impose the fee on such persons "as an incident of property ownership" but instead as an incident of their voluntary decisions to request water service. If a person fails to pay the connection fee, the District does not collect it by levying upon the person's property. Rather, because the person applying for service has not satisfied a condition for extending service, the District does not make the water connection and does not provide water service.

We agree that a connection charge, because it is not imposed "as an incident of property ownership" (art. XIII D, § 2, subd. (e)), is not a fee or charge under article XIII D. A connection fee is not imposed simply by virtue of property ownership, but instead it is imposed as an incident of the voluntary act of ****528** the property owner in applying for a service connection.

Urging a different construction, plaintiffs rely on article XIII D's definition of a fee or charge as "including a user fee or charge for a property-related service." (*Id.*, § 2, subd. (e).) They argue that supplying water is a "property-related service," and, therefore, all charges for water service must be deemed to be imposed *****133** "upon a person as an incident of property ownership."

We agree that supplying water is a "property-related service" within the meaning of article XIII D's definition of a fee or charge. In the ballot pamphlet for the election at which article XIII D was adopted, the Legislative Analyst stated that "[f]ees for water, sewer, and refuse collection service probably meet the measure's definition of property-related fee." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996), analysis of Prop. 218 by Legis. Analyst, p. 73.) The Legislative Analyst apparently concluded that water service has a direct relationship to property ownership, and thus is a property-related service within the meaning of article XIII D because water is indispensable to most uses of real property; because water is provided through pipes that are physically connected to the property; and because a water provider may, by recording a certificate, obtain a lien on the property for the amount of any ***427** delinquent service charges (see Gov.Code, §§ 61621, 61621.3). But the Legislative Analyst was apparently referring to fees imposed on existing water service customers, not fees imposed as a condition of initiating water service in the first instance.

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Several provisions of article XIII D tend to confirm the Legislative Analyst's conclusion that charges for utility services such as electricity and water should be understood as charges imposed "as an incident of property ownership." For example, subdivision (b) of section 3 provides that "fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership" under article XIII D. Under the rule of construction that the expression of some things in a statute implies the exclusion of other things not expressed (*In re Bryce C.* (1995) 12 Cal.4th 226, 231, 48 Cal.Rptr.2d 120, 906 P.2d 1275), the expression that electrical and gas service charges are not within the category of property-related fees implies that similar charges for other utility services, such as water and sewer, are property-related fees subject to the restrictions of article XIII D.

This implication is reinforced by subdivision (c) of article XIII D, section 6, which expressly excludes "fees or charges for sewer, water, and refuse collection services" from the voter approval requirements that article XIII D imposes on property-related fees and charges. Because article XIII D does not include similar express exemptions from the other requirements that it imposes on property-related fee and charges, the implication is strong that fees for water, sewer, and refuse collection services are subject to those other requirements. (See *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 645, 119 Cal.Rptr.2d 91 [reaching the same conclusion].)

Thus, we agree that water service fees, being fees for property-related services, may be fees or charges within the meaning of article XIII D. But we do not agree that *all* water service charges are necessarily subject to the restrictions that article XIII D imposes on fees and charges. Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.

***134** Any doubt on this point is removed by considering the requirements that article XIII D imposes on property-related fees and charges. As with assessments, article XIII D requires local government agencies to identify the **428** parcels affected by a property-related fee or charge. Specifically, it requires the agency to identify "[t]he parcels **529** upon which a fee or charge is proposed for imposition." (Art. XIII D, § 6, subd. (a)(1).) As we have explained, it is impossible for the District to comply with such a requirement for connection charges, because the District cannot determine in advance which property owners will apply for water service connection. As with assessments, this impossibility of compliance strongly suggests that connection fees for new users are not subject to article XIII D's restrictions on property-related fees.

Because the connection fee, including the fire suppression charge, is not a property-related fee or charge within the meaning of article XIII D, it is not subject to article XIII D's prohibition on property-related fees or charges for general governmental services.

IV. AMENDMENT OF AN ORDINANCE BY A RESOLUTION

[9] Government Code section 66016, part of the Mitigation Fee Act (Gov.Code, § 66000 et seq.), provides in subdivision (b): "Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance *or resolution.*" (Italics added.) We agree with the Court of Appeal that this provision authorizes the District to use a resolution to increase existing connection fees, and that this authorization applies even when the fees were initially imposed by an ordinance.

Arguing to the contrary, plaintiffs assert that the Mitigation Fee Act is procedural rather than substantive. In other words, it does not give local water districts substantive authority to impose fees, but instead it merely regulates the manner in which fees may be imposed. But whether a fee imposed by ordinance may be amended by resolution is essentially a question of procedure, not substance. Therefore, we may and do construe Government Code section 66016 as giving the District authority to use a resolution to

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amend a fee ordinance.

In support of their position that the District may not use a resolution to amend an ordinance imposing a connection fee, plaintiffs rely on *Cavalier Acres, Inc. v. San Simeon Acres Community Services District* (1984) 151 Cal.App.3d 798, 199 Cal.Rptr. 4(*Cavalier Acres*), in which the Court of Appeal concluded that a community services district could impose or increase water charges only by ordinance. In reaching this conclusion, the *Cavalier Acres* Court of Appeal relied on Government Code section 61621.5 and Health and Safety Code section 5471. Relying on the rule of construction that when two statutory provisions conflict, the one that is more specific controls, ***429** the *Cavalier Acres* Court of Appeal stated that, as applied to water charges imposed by a community services district, Government Code section 61621.5 and Health and Safety Code section 5471 were both more specific than Government Code section 66016.

Government Code section 61621.5 is part of the Community Services District Law (Gov.Code, § 61000 et seq.). As here relevant, it provides: "Except as otherwise provided in this section, a district may *by ordinance* adopt regulations binding upon all persons to govern the construction and use of its facilities and property, including regulations imposing reasonable charges for the use thereof." (Gov.Code, § 61621.5, subd. (a), italics added.) By its ***135** terms, this provision applies only to charges for the use of a community services district's *facilities,* not charges for its *services.* The Community Services District Law gives districts authority to impose charges for services, including charges for water, in a different section, Government Code section 61621. (See *Waterman Convalescent Hospital, Inc. v. Jurupa Community Services Dist.* (1996) 53 Cal.App.4th 1550, 1552-1553, 62 Cal.Rptr.2d 264.) As relevant here, it provides: "A district may prescribe, revise and collect rates or other charges for the services and facilities furnished by it...." (Gov.Code, § 61621.) Nothing in this provision requires a community services district to act by ordinance rather than by resolution when, as here, it revises and prescribes the charges for water service.

Health and Safety Code section 5471 is part of article 4 ("Sanitation and Sewerage Systems") of chapter 6 ("General Provisions with Respect to Sewers") of part 3 ("Community Facilities") of division 5 ("Sanitation") of **530 the Health and Safety Code. As relevant here, it reads: "In addition to the powers granted in the principal act, *any entity* shall have power, *by an ordinance* approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges, including *water,* sewer standby or immediate availability charges, for services and facilities furnished by it, either within or without its territorial limits, in connection with its *water,* sanitation, storm drainage, or sewerage system...." (Italics added.)

Health and Safety Code section 5471 does not apply to the District because it is not an "entity" within the meaning of this provision. Health and Safety Code section 5470 states that " '[e]ntity' means and includes counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." The District is a public agency organized as a community services district under the Community Services District Law (Gov.Code, § 61000 et seq.) to provide water service. Nothing in the record indicates it is authorized ***430** to construct, maintain, or operate sewers or sewerage systems. In this respect, *Cavalier Acres, supra,* 151 Cal.App.3d 798, 199 Cal.Rptr. 4, is distinguishable because the community services district at issue there provided both water and sewer services. (See *id.* at p. 800, 199 Cal.Rptr. 4.)

Moreover, even if we assume that Health and Safety Code section 5471 applies to the District, that provision, by its terms, confers authority "[i]n addition to" the authority otherwise granted to a public entity. In other words, its main purpose is to supplement rather than to limit a public agency's authority to impose charges for water or sewer services in connection with a water or sewerage system. For a public agency organized as a community services district, the "principal act" (*ibid.*) providing its authority is the Community Services District Law (Gov.Code, § 61000 et seq.). As we have seen, Government Code section 61621 authorizes community services districts to establish charges for water services without requiring that they act by ordinance rather than by resolution, and Government Code section 66016, part of the Mitigation Fee Act (Gov.Code, § 66000 et seq.), ex-

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pressly authorizes districts to use either a resolution or an ordinance to impose or increase a service charge. We do not read Health and Safety Code section 5471 as limiting or abrogating that authority.

Again, we find *Cavalier Acres, supra,* 151 Cal.App.3d 798, 199 Cal.Rptr. 4, to be ***136** distinguishable. In 1984, when the Court of Appeal decided *Cavalier Acres,* the wording of Health and Safety Code section 5471 was materially different. The introductory phrase ("In addition to the powers granted in the principal act") was not present, having been added later by amendment. (Stats.1988, ch. 706, § 1, p. 2348.) The 1988 amendment demonstrates the Legislature's intent that Health and Safety Code section 5471 not be read as limiting the powers conferred on public entities by the laws under which they were organized.

V. CONCLUSION

Before beginning to provide water service to real property through a new connection, the District requires its new customers to pay a capacity fee and a fire suppression fee. Both of these fees are used to fund capital improvements, the former to the water system and the latter to the volunteer fire department. Because these fees are imposed only on the self-selected group of water service applicants, and not on real property that the District has identified or is able to identify, and because neither fee can ever become a charge on the property itself, we conclude that neither fee is subject to the restrictions that article XIII D imposes on property assessments and property-related fees. We also conclude that the District could properly use a resolution to amend an ordinance establishing these fees.

***431** The judgment of the Court of Appeal is reversed and the matter is remanded to that court with directions to affirm the trial court's judgment.

****531** WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, BROWN and MORENO, JJ.

Cal.,2004.
Richmond v. Shasta Community Services Dist.
32 Cal.4th 409, 83 P.3d 518, 9 Cal.Rptr.3d 121, 2004 Daily Journal D.A.R. 1146, 2004 Daily Journal D.A.R. 1429

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SINCLAIR PAINT COMPANY, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant; DEPARTMENT OF HEALTH SERVICES et al., Interveners and Appellants.
No. S054115.

Supreme Court of California
June 26, 1997.

SUMMARY

The trial court granted a paint company summary judgment in the company's action against the Board of Equalization for a refund of fees paid pursuant to an assessment under the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.). The trial court found that the fees were taxes, and thus they were invalid since the Legislature passed the act by a simple majority, rather than by the two-thirds majority required by Cal. Const., art. XIII A, § 3 (Prop. 13). (Superior Court of Sacramento County, No. CV541310, Joe S. Gray, Judge.) The Court of Appeal, Third Dist., No. C021559, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13. Rather, the fees imposed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax. (Opinion by Chin, J., with George, C. J., Mosk, Kennard, Baxter, Werdegar, JJ., and Armstrong, J., [FN*] concurring.)

FN* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1) Property Taxes § 7.2--Constitutional Provisions--Proposition 13.
The purpose of Prop. 13 was to assure effective real property tax relief by means of an interlocking package consisting of a real property tax rate limitation (Cal. Const., art. XIII A, § 1), a real property assessment limitation (Cal. Const., art. XIII A, § 2), a restriction on state taxes (Cal. Const., art. XIII A, § 3), and a restriction on local taxes (Cal. Const., art. XIII A, § 4). Since any tax savings resulting from the operation of Cal. Const., art. XIII A, §§ 1 and 2, could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, Cal. Const., art. XIII A, §§ 3 and 4, combine to place restrictions upon the imposition of such taxes.

(2a, 2b, 2c) Taxation § 2--Validity of Taxation Legislation-- Proposition 13--Fees Assessed Under Childhood Lead Poisoning Prevention Act-- Applicability of Supermajority Requirement:Property Taxes § 7.8--Proposition 13.
The Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.), which the Legislature had enacted by a simple majority, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, § 3). Rather, the fees im-

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posed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax.
[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784.]
(3) Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction.
In determining under Prop. 13 (Cal. Const., art. XIII A, § 3), whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. The term "tax" has no fixed meaning, and the distinction between taxes and fees is frequently blurred, taking on different meanings in different contexts. In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. But compulsory fees may be deemed legitimate fees rather than taxes.

(4a, 4b) Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Special Taxes:Taxation § 3--Construction.
There are three general categories of fees or assessments involved in disputes concerning whether they are in legal effect "special taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, §§ 3 and 4). They are (1) special assessments, based on the value of benefits conferred on property, (2) development fees, exacted in return for permits or other government privileges, and (3) regulatory fees, imposed under the police power. Special assessments on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes." Similarly, development fees exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. Also, fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes, are not special taxes.

(5) Property Taxes § 7.8--Constitutional Provisions--Proposition 13-- Assessments as Regulatory Fee:Taxation § 3--Construction.
In order to show that an imposition is a regulatory fee and not a special tax under Prop. 13 (Cal. Const., art. XIII A, § 3), the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.

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CHIN, J.

In 1991, by simple majority vote, the Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991 (the Act) (Stats. 1991, ch. 799, § 3, amended Stats. 1995, ch. 415, § 5; see Health & Saf. Code, ***870** § 105275 et seq.). [FN1] The Act provided evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The Act's program was entirely supported by "fees" assessed on manufacturers or other persons contributing to environmental lead contamination. (See §§ 105305, 105310.) The question arises whether these fees were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. (See Cal. Const., art. XIII A, § 3.)

> FN1 All further statutory references are to the Health and Safety Code unless otherwise noted.

Contrary to the trial court and Court of Appeal, we conclude that the Act imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the fees must bear a reasonable relationship to those adverse effects. Accordingly, the trial court erred in granting summary judgment to award plaintiff Sinclair Paint Company (Sinclair) a refund of the fees it paid under the Act.

We take the following statement of uncontradicted facts largely from the Court of Appeal opinion in this case. Sinclair paid $97,825.26 in fees for 1991. After the Board of Equalization (the Board) denied Sinclair's administrative claim for refund, Sinclair filed a complaint for refund, alleging the fees assessed under section 105310 were "actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution." The court granted the request of the Department of Health Services (the Department) for leave to intervene. It also granted a similar request to intervene by Ray Cochenour and Cardaryl Commodore, representatives of a class of children suffering from lead poisoning, and People United for a Better Oakland, an unincorporated association whose members include the Act's intended beneficiaries (collectively Cochenour).

Sinclair moved for summary judgment, claiming the Act was invalid on its face because it was not passed by the requisite two-thirds majority vote of the Legislature. The court agreed the Act imposed an unconstitutional tax and granted Sinclair's motion.

The Board, the Department, and Cochenour appealed, contending the Act involves a regulatory fee, not a tax. Appellants also argued the court erred in granting Sinclair summary judgment without compelling it to produce discovery and improperly relied on legislative history in determining the Act's constitutionality. The Court of Appeal affirmed the judgment, concluding that the Act was unconstitutional on its face and rejecting appellants' other claims. We reverse the Court of Appeal's judgment. ***871**

Discussion

I. *The Childhood Lead Poisoning Prevention Act of 1991*

When the Legislature enacted the Act in 1991, it explained the Act's background and purpose in findings that described the numerous health hazards children face when exposed to lead toxicity and declared four state "goals," namely, (1) evaluating, screening, and providing case management for children at risk of lead poisoning, (2) identifying sources of lead contamination responsible for this poisoning, (3) identifying and utilizing programs providing adequate case management for children found to have lead poisoning, and (4) providing education on lead-poisoning detection and case management to state health care providers. (Stats. 1991, ch. 799, § 1.)

The Act directs the Department to adopt regulations

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establishing a standard of care for evaluation, screening (i.e., measuring lead concentration in blood), and medically necessary follow-up services for children determined to be at risk of lead poisoning. (§ 105285; see § 105280, subd. (e).) If a child is identified as being at risk of lead poisoning, the Department must ensure "appropriate case management," i.e., "health care referrals, environmental assessments, and educational activities" needed to reduce the child's exposure to lead and its consequences. (§§ 105280, subd. (a), 105290.) Additionally, the Act requires the Department to collect data and report on the effectiveness of case management efforts. (§ 105295.)

The Department has "broad regulatory authority to fully implement and effectuate the purposes" of the Act. (§ 105300.) This authority "include[s], but is not limited to," the development of protocols for screening and for appropriate case management; the designation of laboratories qualified to analyze blood specimens for lead concentrations, and the monitoring of those laboratories for accuracy; the development of reporting procedures by laboratories; reimbursement for state-sponsored services related to screening and case management; establishment of lower lead concentrations in whole blood than those specified by the United States Centers for Disease Control for lead poisoning; notification to parents or guardians of the results of blood-lead testing and environmental assessment; and establishment of a periodicity schedule for evaluating childhood lead poisoning. (§ 105300.)

The Act states that its program of evaluation, screening, and follow-up is supported *entirely* by fees collected under the Act: "Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to Section ***872** 105310. This chapter shall be implemented only to the extent fee revenues pursuant to Section 105310 are available for expenditure for purposes of this chapter." (§ 105305.)

Section 105310 imposes the fees at issue here. In pertinent part, that section imposes fees on manufacturers and other persons formerly and/or presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed and/or currently contribute to environmental lead contamination. (§ 105310, subd. (a).) The Department must determine fees based on the manufacturer's or other person's past and present responsibility for environmental lead contamination, or its "market share" responsibility for this contamination. (§ 105310, subd. (b).)

Those persons able to show that their industry did not contribute to environmental lead contamination, or that their lead-containing product does not and did not "result in quantifiably persistent environmental lead contamination," are exempt from paying the fees. (§ 105310, subd. (d).)

The Legislature has authorized the Department to adopt regulations establishing the specific fees to be assessed the parties identified in section 105310, subdivision (a). (§ 105310, subd. (b).) The formula for calculating fees attributable to leaded architectural coatings, including ordinary house paint, is set forth in California Code of Regulations, title 17, section 33020.

II. *Proposition 13*

(1) In June 1978, California voters added article XIII A, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (article XIII A), to the state Constitution. The initiative's purpose was to assure effective real property tax relief by means of an "interlocking 'package' " consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4). (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 [149 Cal.Rptr. 239, 583 P.2d 1281] (*Amador Valley*); see also *County of LosAngeles* v. *Sasaki* (1994) 23 Cal.App.4th 1442, 1451 [29 Cal.Rptr.2d 103].)

Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: "From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods ***873** of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or

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transaction taxes on the sales of real property may be imposed."

Section 4 of article XIII A imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose *special taxes* on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Italics added.)

As we explained in *Amador Valley*, "... since any tax savings resulting from the operation of sections 1 and 2 [of article XIII A] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes." (*Amador Valley*, *supra*, 22 Cal.3d at p. 231.)

III. *Taxes or Fees?*

(2a) Are the "fees" section 105310 imposes in legal effect "taxes enacted for the purpose of increasing revenues" under article XIII A, section 3, and therefore subject to a two-thirds majority vote? Although we have found no cases that interpret the language of section 3, several California appellate decisions have considered whether various fees are really "special taxes" under article XIII A, section 4. (See also *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57 [184 Cal.Rptr. 713, 648 P.2d 935] ["special taxes" are taxes levied for a specific purpose rather than for general governmental purposes]; Gov. Code, § 50076 [excluding from the term "special tax" in article XIII A, section 4, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].) Because of the close, "interlocking" relationship between the various sections of article XIII A (see *Amador Valley*, *supra*, 22 Cal.3d at p. 231), we believe these "special tax" cases may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, may apply equally to section 3 cases. [FN2]

FN2 We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments.

We first consider certain general guidelines used in determining whether "taxes" are involved in particular situations. (3) The cases agree that ***874** whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1216 [265 Cal.Rptr. 347]; *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212, 234 [253 Cal.Rptr. 497]; *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1504 [246 Cal.Rptr. 21].)

The cases recognize that "tax" has no fixed meaning, and that the distinction between taxes and fees is frequently "blurred," taking on different meanings in different contexts. (*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at p. 1504;*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905 [223 Cal.Rptr. 379]; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660 [166 Cal.Rptr. 674]; *County of Fresno* v. *Malmstrom* (1979) 94 Cal.App.3d 974, 983-984 [156 Cal.Rptr. 777].) In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240 [1 Cal.Rptr.2d 818]; *County of Fresno* v. *Malmstrom*, *supra*, 94 Cal.App.3d at p. 983 ["Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services."].) Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240;*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1505-1506; see *Terminal Plaza Corp. v. City and County of San Francisco*, *supra*, 177 Cal.App.3d at p. 907.) But compulsory fees may be deemed legitimate fees rather than taxes. (See *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1424 [23 Cal.Rptr.2d 910].)

(4a) The "special tax" cases have involved three gen-

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eral categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power. Although these three categories may overlap in a particular case, we consider them separately.

The cases uniformly hold that *special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes" under article XIII A, section 4. (*Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 735-739 [4 Cal.Rptr.2d 601] [assessments on businesses for downtown promotion]; *J. W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745, ***875** 750-758 [203 Cal.Rptr. 580] [facilities benefit assessments]; *City Council v. South* (1983) 146 Cal.App.3d 320, 332 [194 Cal.Rptr. 110] [special assessments on real property]; *County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at pp. 984-985 [special assessments for construction of streets].)

Similarly, *development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240 [school facilities fees]; *Bixel Associates v. City of Los Angeles*, *supra*, 216 Cal.App.3d at pp. 1211, 1218-1219 [fire hydrant fees]; *California Bldg. Industry Assn. v. Governing Bd.*, *supra*, 206 Cal.App.3d at pp. 235-237 [school facilities development fees]; *Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [transit impact fees]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235-238 [211 Cal.Rptr. 567] [new facilities water hookup fees]; *Trent Meredith, Inc.* v. *City of Oxnard* (1981) 114 Cal.App.3d 317, 325-328 [170 Cal.Rptr. 685] [fees as precondition for building permits]; *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 661-663 [fees for processing subdivision, zoning, and land use applications]; see *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 898 [50 Cal.Rptr.2d 242, 911 P.2d 429] (conc. opn. of Mosk, J.).)

According to Sinclair, because the present fees have been imposed solely to defray the cost of the state's program of evaluation, screening, and follow-up services for children determined to be at risk for lead poisoning, they are not analogous to either special assessments or development fees, for they neither reimburse the state for special benefits conferred on manufacturers of lead-based products nor compensate the state for governmental privileges granted to those manufacturers. As the Court of Appeal observed, the fees challenged here "do not constitute payment for a government benefit or service. The program described in the Act bears no resemblance to regulatory schemes involving special assessments, developer fees, or efforts to recoup the cost of processing land use applications where the benefit analysis is typically applied. [Citations.] The face of the Act makes clear the funds collected pursuant to section 105310 are used to benefit children exposed to lead, not Sinclair or other manufacturers in the stream of commerce for products containing lead."

(2b) Appellants argue, however, that the challenged fees fall squarely within a third recognized category not dependent on government-conferred benefits or privileges, namely, *regulatory fees* imposed under the police power, rather than the taxing power. We agree. ***876**

(4b) We have acknowledged that the term "special taxes" in article XIII A, section 4, " 'does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.' [Citations.]" (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111] (*Pennell*), affd. on other grounds *sub nom. Pennell v. San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1], quoting from *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 659-660; see *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 760-762 [53 Cal.Rptr.2d 120] [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425 [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-285 [17 Cal.Rptr.2d 845] [upholding waste dis-

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posal surcharge imposed on waste haulers]; *Evans v. City of San Jose*, *supra*, 3 Cal.App.4th at p. 737;*San Diego Gas & Electric Co.* v. *San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1149 [250 Cal.Rptr. 420] (*SDG&E*) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com.* v . *City of San Diego* (1979) 91 Cal.App.3d 156, 166-168 [154 Cal.Rptr. 263] (*United Business*) [upholding fees for inspecting and inventorying on-premises advertising signs].)

Pennell upheld rental unit fees that a city imposed under its rent control ordinance to assure it recovered the actual costs of providing and administering a rental dispute hearing process. (*Pennell*, *supra*, 42 Cal.3d at p. 375.) We explained in *Pennell* that regulatory fees in amounts necessary to carry out the regulation's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Id.* at p. 375, fn. 11; see also *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146, fn. 18;*Mills* v. *County ofTrinity*, *supra*, 108 Cal.App.3d at p. 661.)

We observe that Sinclair, in moving for summary judgment, did not contend that the fees exceed in amount the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any *unrelated* revenue purposes. (See *Pennell*, *supra*, 42 Cal.3d at p. 375.) Moreover, Sinclair has not yet sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that Sinclair's operations generated. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146; see also § 105310, subds. (b), (d); *Sea & Sage Audubon Society, Inc.* v. *Planning Com.* (1983) 34 Cal.3d 412, 421 [194 Cal.Rptr. 357, 668 P.2d ***877** 664] [persons challenging fees have burden of establishing invalidity].) Sinclair does contend, however, that the Act is not *regulatory* in nature, being primarily aimed at producing revenue.

According to Sinclair, the challenged fees were in effect "taxes" because the compulsory revenue measure that imposed them was not part of a *regulatory* effort. The Court of Appeal agreed, relying on prior cases indicating that where payments are exacted solely for *revenue* purposes and give the right to carry on the business with no further conditions, they are taxes. (E.g., *United Business*, *supra*, 91 Cal.App.3d at p. 165.) The Court of Appeal held that "Placing the factors distinguishing taxes and fees along a continuum, we conclude the monies paid by Sinclair pursuant to the Act are more like taxes than fees. [¶] *There is nothing on the face of the Act to show the fees collected are used to regulate Sinclair.* Apart from mere calculation of the payment, the Department's regulatory authority involves implementation of the program to evaluate, screen, and provide followup services to children at risk for lead poisoning. The Act does not require Sinclair to comply with any other conditions; it merely requires Sinclair to pay what the Department determines to be its share of the program cost."

Contrary to the Court of Appeal, we believe that section 105310 imposes bona fide regulatory fees. It requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a "mitigating effects" measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating effects" fees in a substantial amount (Sinclair allegedly paid $97,825.26 in 1991) also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products. (Cf. *SDG&E*, *supra*, 203 Cal.App.3d at p. 1147, fn. 20 [emissions-based fees provide incentive to use nonpollutant fuels].)

Sinclair disputes the state's authority to impose industry-wide "remediation fees" to compensate for the adverse societal effects generated by an industry's products. To the contrary, the case law previously cited or discussed clearly indicates that the police power is broad enough to include ***878** mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal

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connection or nexus between the product and its adverse effects. (See *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at pp. 760-762;*Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425;*City of Dublin v. County of Alameda*, *supra*, 14 Cal.App.4th at pp. 284-285;*SDG&E*, *supra*, 203 Cal.App.3d at pp. 1146-1149;*United Business*, *supra*, 91 Cal.App.3d at p. 168;*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [fees to pay for increased transit costs]; *J. W. Jones Companies v. City of San Diego*, *supra*, 157 Cal.App.3d at pp. 755, 758 [fees to defray costs of additional public facilities]; *Trent Meredith, Inc.* v. *City of Oxnard*, *supra*, 114 Cal.App.3d at p. 325 [fees to reduce growth impact of new subdivision]; see also *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 694 [151 P. 398] [police power authorizes legislation necessary or proper for protection of legitimate public interest]; *County of Plumas* v. *Wheeler* (1906) 149 Cal. 758, 761-764 [87 P. 909] [broad legislative discretion to regulate business, including license fees or charges]; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784, p. 311 ["police power is simply the power of sovereignty or power to govern-the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare"]; see generally, 6A McQuillan, The Law of Municipal Corporations (3d rev. ed. 1997) Municipal Police Power and Ordinances, § 24.01 et seq., p. 7 et seq.)

SDG&E involved regulatory fees comparable in some respects to the fees challenged here. (*SDG&E*, *supra*, 203 Cal.App.3d 1132.) There, 1982 legislation (see § 42311) empowered local air pollution control districts to apportion the costs of their permit programs among all monitored polluters according to a formula based on the amount of emissions they discharged. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1135.) (5) The *SDG&E* court observed that "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*Id.* at p. 1146, fn. omitted; see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, *supra*, 165 Cal.App.3d at pp. 234-235.)

In *SDG&E*, the amount of the regulatory fees was limited to the reasonable costs of each district's program, and the allocation of costs based on emissions "fairly relates to the permit holder's burden on the district's programs." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1146.) Accordingly, the ***879** court concluded that the fees were not "special taxes" under article XIII A, section 4. (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.)

As the court observed in *SDG&E*, "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves ...." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.) (2c) In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision. (See also *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 663;*County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at p. 985 [special assessments have no impact on government spending].)

The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes. *City of Oakland v. Superior Court* seems close on point. There, the court upheld city fees imposed on retailers of alcoholic beverages to defray the cost of providing and administering hearings into nuisance problems associated with the prior sale of those beverages. The court first observed that "If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers" to assure that the persons responsible "pay their fair share of the cost of government." (*City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at p. 761.) The court concluded that "The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed ... is not a tax imposed to pay general revenue to the

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local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. [Citation.]" (*Id.* at p. 762.)

The court in *United Business* applied the "regulation/revenue" distinction to conclude that sign inventory fees adopted to recover the city's cost of inventorying signs and bringing them into conformance with law were regulatory fees, not revenue-raising taxes. The court observed that, under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not mere revenue-raising, if the fees do not exceed the reasonably necessary expense of the regulatory effort. (*United Business*, ***880** *supra*, 91 Cal.App.3d at p. 165, and authorities cited.) Quoting with approval from an earlier decision, the court noted that, if revenue is the primary purpose, and regulation is merely incidental, the imposition is a tax, but if regulation is the primary purpose, the mere fact that revenue is also obtained does not make the imposition a tax. (*Ibid.*) Moreover, according to *United Business,* if a fee is exacted for revenue purposes, and its payment gives the right to carry on business without any further conditions, it is a tax. (*Ibid.*; see also *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at p. 761;*County of Plumas* v. *Wheeler*, *supra*, 149 Cal. at p. 763 [fee in amount greater than reasonably needed to regulate business "cannot stand as an exercise of the police power"]; *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at pp. 659-660;*City & County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450-451 [189 P.2d 32].)

The Court of Appeal, citing *United Business,* stressed that the challenged fees were exacted solely for revenue purposes, and their payment gave Sinclair and others the right to carry on the business without any further conditions. We see two flaws in that analysis. First, *all* regulatory fees are necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question, but that fact does not automatically render those fees "taxes." As stated in *United Business,* if regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax. (*United Business*, *supra*, 91 Cal.App.3d at p. 165; see also *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 660 [rejecting broad definition of "tax" as including all fees and charges that exact money for public purposes].)

Second, we find inconclusive the fact that the Act permits Sinclair and other producers to carry on their operations without any further conditions *specified in the Act itself.* As we have indicated, fees can "regulate" business entities without directly licensing them by mitigating their operations' adverse effects. Moreover, as appellants observe, the Act is part of a broader regulatory scheme by which, under various state and federal statutes, the state regulates Sinclair and other manufacturers in the stream of commerce for products containing lead. That being so, Sinclair's payment of the challenged fees did not confer the right to carry on business without any further conditions or regulation.

The Court of Appeal rejected appellants' argument invoking other state and federal regulations: "First, there is nothing on the face of the Act or the accompanying statement of legislative purpose which links the Act's programs for children at risk for lead poisoning with the cited state or federal statutes regulating lead. Second, none of the fees collected pursuant to ***881** section 105310 are used to fund those regulatory efforts." However, it is undisputed that Sinclair and other manufacturers of lead-based products remain subject to government regulation, that payment of the challenged fees therefore does not entitle those manufacturers to operate free of regulation, and that the state must use the funds it collects under section 105310 *exclusively* for mitigating the adverse effects of lead poisoning of children, and not for general revenue purposes. (§ 105310, subd. (f).)

Under existing case law, we can reasonably characterize the challenged fees as *regulatory fees* rather than as taxes. Accordingly, we conclude the trial court erred in granting Sinclair summary judgment on the constitutional issues. Of course, Sinclair should be permitted to attempt to prove at trial that the amount of fees assessed and paid exceeded the reasonable cost of providing the protective services for which the fees were charged, or that the fees were levied for unrelated revenue purposes. (See *Pennell*, *supra*, 42 Cal.3d at p. 375.) Additionally, Sinclair will have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic "burdens" its operations generated. (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1146; see also § 105310, subds. (b),

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(d).)

Disposition

The judgment of the Court of Appeal, affirming the trial court's grant of summary judgment in Sinclair's favor, is reversed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Werdegar, J., and Armstrong, J., [FN*] concurred.

FN* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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BARRY SULLIVAN, Appellant,
v.
CITY OF LOS ANGELES et al., Respondents.
Civ. No. 19325.

District Court of Appeal, Second District, Division 3, California.
Mar. 20, 1953.

HEADNOTES

(1) Buildings § 2--Fire Limit Ordinances.
Reasonable regulations governing the construction of wooden buildings within fire limits are within the police power.
Power to forbid or restrict repair of wooden building within fire limits, notes, 26 **A.L.R.** 1219; 56 **A.L.R.** 878. See, also, **Cal.Jur.,** Buildings, § 8; **Am.Jur.,** Buildings, § 17 et seq.
(2) Health § 8--Plumbing.
Reasonable regulations governing methods and devices for the conveyance of sewage from private dwellings in municipalities are within the police power.
Validity of regulations as to plumbers and plumbing, note, 22 **A.L.R.2d** 816.
(3) Constitutional Law § 109--Police Power--Conclusiveness of Legislative Determination.
Except where the court can say that a police regulation has no just relation to the object which it purports to carry out, and no reasonable tendency to preserve or protect the public safety, health, comfort or morals, the decision of the legislative body as to the necessity or reasonableness of the regulation is conclusive.
See **Cal.Jur.,** Constitutional Law, § 117; **Am.Jur.,** Constitutional Law, § 306.
(4) Municipal Corporations § 125--Police Power--Scope.
A local legislative body may, in the exercise of its police power, make and enforce ordinances to regulate or prohibit a thing or act which is of such a nature that it may become a nuisance or may be injurious to the public health if not suppressed or regulated.

(5) Municipal Corporations § 125--Police Power--Scope.
The exercise of the police power is not limited to the regulation of such things as have already become nuisances or have been declared to be such by the judgment of a court.

(6) Buildings § 1.1--Municipal Ordinances.
In the exercise of the police power a municipality may regulate the manner of the construction and occupation of buildings to the end of safeguarding the health of their occupants and lessening the fire hazard.

(7) Health § 10--Officers--Inspection.
When the work or alteration proposed is in accordance with sanitary regulations, an inspection thereof by officers duly authorized is a proper preliminary requirement and may be conducted, at the proper time, to the end that the public health will be preserved and protected.

(8) Health § 3--Regulations.
Legislation with respect to the preservation and protection of the public health will not be set aside unless the legislative discretion is obviously wrong.

(9) Buildings § 1.1--Municipal Ordinances.
City ordinances which forbid one to construct or maintain a canvas carport are not invalid merely because they permit his neighbor to continue to maintain an old wooden building as to which there is no evidence that it was not erected in conformity with ordinances then existing, since the legislative body may guard against the creation or extension of threatened evils without undertaking to wipe out every similar existing evil where a more sweeping enactment would work undue hardship.

(10) Buildings § 1.1--Municipal Ordinances.
A discrimination between buildings erected and those to be built is proper in the enactment of laws prohibiting the future construction of wooden buildings within certain boundaries.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County and from an order denying a

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new trial. Geo. A. Dockweiler, Judge. Judgment affirmed; appeal from order dismissed.

Action for a declaration of rights under building and plumbing codes of a city and for an injunction in which defendant city cross-complained for an injunction requiring plaintiff to comply with such codes. Judgment for defendant city on cross-complaint, affirmed.

COUNSEL

Gordon Leslie Cooper for Appellant.

Ray L. Chesebro, City Attorney, Bourke Jones and Alan G. Campbell, Assistant City Attorneys, for Respondents.

VALLEE, J.

Plaintiff sued the city of Los Angeles for a declaration of his rights under the building and plumbing codes of the city, and for an injunction restraining the city from enforcing them against him. The city cross-complained for an injunction requiring plaintiff to comply with the codes. The judgment was for the city on the cross-complaint. Plaintiff appeals from the judgment and from an order denying his motion for a new trial. Since the latter order is nonappealable, the appeal therefrom will be dismissed.

Plaintiff owns a parcel of realty in fire district No. 2 in Los Angeles, which is improved with a two-story brick building. Without first obtaining a permit from the Department of Building and Safety, he constructed about a 25- foot square carport in the rear yard. It consisted of a framework of pipes and scantlings covered with a flammable tarpaulin. With the intention of constructing a rest room as an addition to his building, plaintiff roughed in the waste lines in the rear yard for two toilets. After completing this preliminary step, the project was either abandoned or postponed. No toilets were installed nor was the site enclosed or protected by a roof. Plaintiff stuffed plaster of Paris into the sewer openings.

The building code of the city required a construction permit for every structure, and required the roof covering of every building or structure in fire district No. 2 to be fire retardant, the exterior walls to be constructed entirely of incombustible materials or at least one-hour fire- resistive construction. The plumbing code required that toilet bends, unconnected to a fixture, should be securely capped with a standard cast iron or other metallic noncorrosive plug, and that the plug should be securely leaded and caulked in place under the supervision of a plumbing inspector.

The court found that the carport did not conform to the requirements of the building code, and that the maintenance of the toilet bends was in violation of the plumbing code. The judgment directed plaintiff to remove all canvas and tarpaulin material from the carport, and enjoined him from maintaining ***810** it without first securing a permit from the city for the construction of the structure and without constructing it in accordance with the building code, and ordered him either to remove the toilet bends, and plug, cover, and conceal the sewer connections in accordance with the plumbing code, or under the supervision of a city plumbing inspector to securely lead and caulk the openings as provided by the code, or to install flush toilets as provided by the code.

Plaintiff contends the applicable ordinances are not within the police power; that they deprive him of his property without due process of law in that they restrain his free use of the property, and that they deny him the equal protection of the laws.

Plaintiff's property is located in a fire district as fixed by an ordinance of the city. (1, 2) It is elementary that reasonable regulations governing the construction of wooden buildings within fire limits and governing methods and devices for the conveyance of sewage from private dwellings in municipalities, are within the police power. (*Maguire v. Reardon,* 41 Cal.App. 596 [183 P. 303],affd. 255 U.S. 271 [41 S.Ct. 255, 65 L.Ed. 625]; *In re Nicholls,* 74 Cal.App. 504 [241 P. 399].)

(3) "[E]xcept where the court can see, in the light of facts properly brought to its knowledge, that a given police regulation has no just relation to the object which it purports to carry out, and no reasonable tendency to preserve or protect the public safety, health, comfort, or morals, the decision of the legislative body as to the necessity or reasonableness of the regulation in question is conclusive." (*Odd Fellows' Cemetery Assn. v. San Francisco,* 140 Cal. 226, 233 [73 P. 987].) (4) A local legislative body may, in the

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exercise of its police power, make and enforce ordinances to regulate or prohibit a thing or act which is of such a nature that it may become a nuisance or may be injurious to the public health if not suppressed or regulated. (5) The exercise of the police power is not limited to the regulation of such things as have already become nuisances or have been declared to be such by the judgment of a court. (*Odd Fellows' Cemetery Assn. v. San Francisco, supra.*)(6) In the exercise of the police power a municipality may regulate the manner of the construction and occupation of buildings to the end of safeguarding the health of their occupants, and lessening the fire hazard. (*Matter of Stoltenberg,* 165 Cal. 789 [134 P. 971].) In *Ex parte Fiske,* 72 Cal. 125, 127 [13 P. 310], the court declared "[I]t ***811** has become the settled law that a state,- and under our system a municipality of the state,- in order to protect the property of all its citizens from the ravages of fire, may establish fire limits, and regulate or prevent the use of wooden buildings within such limits; and that, although this may disturb the enjoyment of the rights of an individual, he is, in contemplation of law, compensated by sharing the general benefits derived from it."

"Regulation by ordinance of methods and devices for the conveyance of sewage from private dwellings in municipalities is recognized as an exercise of that branch of the police power which pertains to the public health; and the word 'plumbing' is held to include the pipes, fittings and fixtures for the conveyance of such sewage." (*In re Nicholls,* 74 Cal.App. 504, 507 [241 P. 399].) (7) When the work or alteration proposed is in accordance with sanitary regulations, an inspection thereof by officers duly authorized is a proper preliminary requirement and may be conducted, at the proper time, to the end that the public health be preserved and protected (*In re Nicholls, supra,* 508.) (8) Legislation with respect to the preservation and protection of the public health will not be set aside unless the legislative discretion is obviously wrong. (*Natural Milk Prod. Assn. v. City etc. of San Francisco,* 20 Cal.2d 101 [124 P.2d 25].) No such showing is made here.

(9) Plaintiff's principal complaint appears to be that while the city ordinances forbid him to construct or maintain a canvas carport they permit his neighbor to continue to maintain an old wooden building as to which there was no evidence that it was not erected in conformity with ordinances then existing. The Legislature may guard against the creation or extension of threatened evils without undertaking to wipe out every similar existing evil where a more sweeping enactment would work undue hardship. In *Matter of Stoltenberg,* 165 Cal. 789 [134 P. 971], the state Tenement Housing Act of 1911 had detailed provisions regulating the mode of construction and occupation of all tenement houses. There the petitioner contended that the act was invalid because different requirements were set up for houses built before the act and those constructed subsequently. The court said that (p. 794) "there is a substantial, inherent, logical difference between tenement houses already constructed and those to be built, and that this difference was one that the legislature might fairly make the basis of the different treatment that it has accorded to the two classes." (See, also, *McCloskey v. ***812** Kreling,* 76 Cal. 511 [18 P. 433].) (10) A discrimination between buildings erected and those to be built has been recognized as proper in the enactment of laws prohibiting the future construction of wooden buildings within certain boundaries. (*Maguire v. Reardon,* 41 Cal.App. 596 [183 P. 303],affd. 255 U.S. 271 [41 S.Ct. 255, 65 L.Ed. 625]; *Bancroft v. Goldberg, Bowen & Co.,* 166 Cal. 416 [137 P. 18].)

A small entryway had been attached to the rear wall of plaintiff's building. The pleadings made an issue of whether it had been constructed in violation of the city building ordinances. No evidence was received from which the court could determine the exact date it was built or what the requirements of the building ordinances were at that time. Consequently, the court did not undertake to settle any issue about this addition and granted no relief to either side. Since the court did not make any declaration relative to the entryway, the matter is moot.

The ordinances attacked are directed to the preservation of the public safety and health, and are well within the scope of the police power.

The appeal from the order denying a new trial is dismissed. The judgment is affirmed.

Shinn, P. J., and Wood (Parker), J., concurred. ***813**

Cal.App.2.Dist.
Sullivan v. City of Los Angeles Dept. of Bldg. & Safety

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116 Cal.App.2d 807, 254 P.2d 590

END OF DOCUMENT

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CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: June 21,2005 **ITEM NO.:** CC 11

STAFF SOURCE: Vince Mastrosimone, Director of Public Works
Charles Redden, Environmental Services Manager

ITEM TITLE: Adopt Resolution approving storm water inspection fees to be included with charges for Business Licenses for certain industrial/commercial facilities.

STAFF RECOMMENDATION:
Adopt Resolution No. 05-6455, approving storm water inspection fees to be included with charges for Business Licenses for certain industrial/commercial facilities.

GENERAL, FUND IMPACT:
$24,850 is in the FY 2005-2006 Environmental Services Budget to pay for 416 inspections of which 122 are restaurants. If the inspection fees bringing the revenue into Environmental Services are not approved, the expenses will have to be paid from the General Fund.

BACKGROUND:
To comply with the National Pollutant Discharge Elimination System (storm water) Permit, the City is required to conduct storm water compliance inspections at certain industrial/commercial facilities. We use a private contractor for the industrial facilities and the charge is approximately $140 per inspection. The County Department of Health Services inspects the restaurants and charges approximately $70 per inspection.

The charges for these inspections should be passed on to the facilities being inspected as a cost of doing business in Los Angeles County. "Storm Water Inspection Fees" have been added to the budget "Charts of Accounts – REVENUES" under the "Refuse/Waste Revenue" section. The annual fee would be half of the cost of the inspection since the facilities are inspected every two years. The fee would be collected when the Business License is purchased or renewed as the fee is based on the facility's Standard Industrial Classification (SIC) code. The code list is attached to the Resolution (Exhibit A) approving the fee schedule. The restaurant (SIC code 5812) fee would be $35. The fee for all other facilities would be $70.

EXHIBITS:
A. Resolution

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, APPROVING STORM WATER INSPECTION FEES TO BE INCLUDED WITH CHARGES FOR BUSINESS LICENSES FOR CERTAIN INDUSTRIAL/COMMERCIAL FACILITIES.

WHEREAS, the National Pollutant Discharge Elimination System (storm water) permit issued by the Regional Water Quality Control Board, Los Angeles, requires that the City of Covina inspect certain industrial/commercial facilities for compliance with the storm water program; and

WHEREAS, the State has not provided funding for this activity.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Covina, as follows:

SECTION 1. A storm water inspection fee shall be added to the annual cost of the Business License for the industrial/commercial facilities listed in the attachment. The fee will be $35 for restaurants (Standard Industrial Classification (SIC) code 5812) and $70 for all other SIC codes listed.

SECTION 2. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this day of June, 2005.

Peggy Delach, Mayor

ATTEST:

Rosie Fabian, City Clerk

APPROVED AS TO FORM:

Edward W. Lee, City Attorney

http://www.epa.gov/owow/tmdl/
Last updated on Wednesday, March 18th, 2009.

Impaired Waters and Total Maximum Daily Loads

Quick Finder

Air Deposition
Integrated Reporting (ATTAINS)
Nonpoint Source Pollution
NPDES Permits
TMDL Guidance
TMDL Litigation
TMDL Regulations
TMDL Technical Resources
Water Quality Inventory Report to Congress
Water Quality Monitoring and Assessment
Water Quality Standards
Water Quality Trading

Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Basic Information

- National Summary of Impaired Waters and TMDLs
- Geographic Information Systems (GIS) Data Downloads

TMDL Laws and Regulations

- 303(d) Clean Water Act
- TMDL Regulations
- Guidance Documents

TMDL Technical Resources

- Draft Daily Loads Technical

Example TMDLs

- Pathogens
- Nutrients
- Sediment
- Mercury
- Metals (other than mercury)
- More Example TMDLs...

Where You Live

- Window to My Environment
- WATERS Expert Query
- Surf Your Watershed

Evolving Issues

- Mercury TMDL Resources
- Stormwater Resources

Other Resources

Features

- Draft Handbook for Developing Watershed TMDLs (PDF) (168 pp, 4.2MB, About PDF)
- TMDLs to Stormwater Permits Draft Handbook (PDF) (200 pp, 5.7MB, About PDF)
- Atmospheric Mercury Deposition Project for Watershed Planning
- Incorporating Green Infrastructure into TMDLs (PDF) (11 pp, 172K, About PDF)

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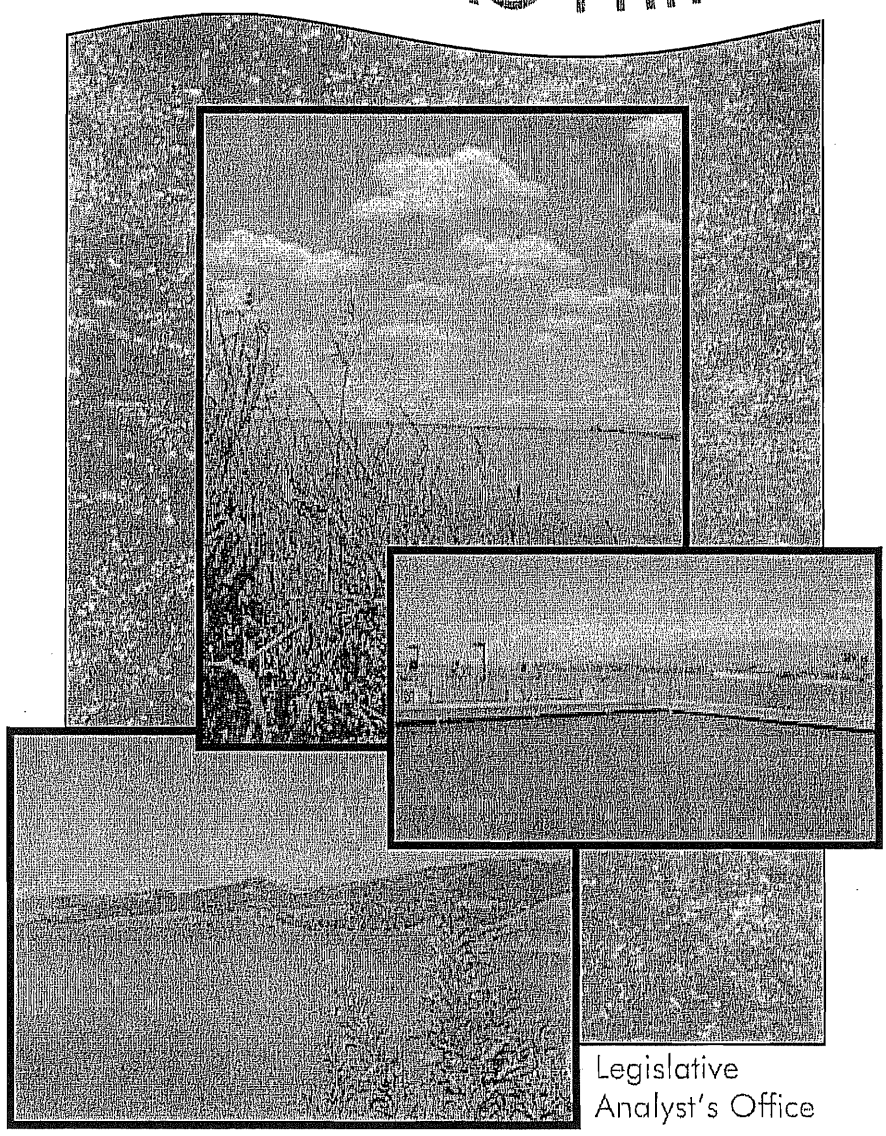
October 2008

California's Water: An LAO Primer



Legislative Analyst's Office

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Acknowledgments

This report was prepared by Catherine B. Freeman, under the supervision of Mark C. Newton. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the California Legislature.

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This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.

How Does Proposition 218 Affect Local Authority to Finance Water Programs?

- *Background.* Proposition 218, approved by the state's voters in 1996, restricts local governments' authority to raise property owner fees, taxes, and assessments. The measure also permits residents to use the initiative process to repeal or reduce local fees, taxes, and assessments. The provisions of Proposition 218 affect the financing of water programs, including water supply delivery, flood control, and stormwater services, as discussed below.

Water Supply Delivery Service

Many local governments charge property owners user fees for water delivery. Prior to increasing these fees, a government must notify fee payers, hold a hearing, and reject the increase if a majority of the fee payers submit written protests. In some cases, Proposition 218 does not allow governments to charge property owners user fees. For example, government may not impose fees to finance the future expansion of a water system. To raise revenues for these purposes, government may impose taxes, assessments, or fees on developers. (We discuss Proposition 218's requirements regarding these other revenue sources below.)

Stormwater Services

Local governments finance stormwater clean-up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two-thirds of the voters, or a majority of property owners. Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two-thirds of the electorate.

Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5537
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977
FAX (916) 341-5543 • Internet Address: http://www.waterboards.ca.gov/water_issues/programs/stormwater/

Arnold Schwarzenegger
Governor

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY (GENERAL PERMIT)
WATER QUALITY ORDER 99-08-DWQ

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9. ATTACHMENT 3: 303d LISTED WATER BODIES FOR SEDIMENTATION
10. ATTACHMENT 4: CHANGE OF INFORMATION (COI) FORM

FACT SHEET
FOR
WATER QUALITY ORDER 99-08-DWQ

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
901 P STREET, SACRAMENTO, CALIFORNIA 95814

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY (GENERAL PERMIT)

BACKGROUND

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) which establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass five (5) or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit. Regulations (Phase II Rule) that became final on December 8, 1999 expand the existing NPDES program to address storm water discharges from construction sites that disturb land equal to or greater than one (1) acre and less than five (5) acres (small construction activity). The regulations require that small construction activity, other than those regulated under an individual or Regional Water Quality Control Board General Permit, must be permitted no later than March 10, 2003.

While federal regulations allow two permitting options for storm water discharges (individual permits and General Permits), the SWRCB has elected to adopt only one statewide General Permit at this time that will apply to all storm water discharges associated with construction activity, except from those on Tribal Lands, in the Lake Tahoe Hydrologic Unit, and those performed by the California Department of Transportation (Caltrans). Construction on Tribal Lands is regulated by an USEPA permit, the Lahontan Regional Water Control Board adopted a separate NPDES permit for the Lake Tahoe Hydrologic Unit, and the SWRCB adopted a separate NPDES permit for Caltrans projects. This General Permit requires all dischargers where construction activity disturbs one acre or more, to:

1. Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.

2. Eliminate or reduce nonstorm water discharges to storm sewer systems and other waters of the nation.

3. Perform inspections of all BMPs.

This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs).

The General Permit accompanying this fact sheet regulates storm water runoff from construction sites. Regulating many storm water discharges under one permit will greatly reduce the otherwise overwhelming administrative burden associated with permitting individual storm water discharges. Dischargers shall submit a Notice of Intent (NOI) to obtain coverage under this General Permit. It is expected that as the storm water program develops, the RWQCBs may issue General Permits or individual permits containing more specific permit provisions. When this occurs, those dischargers will no longer be regulated by this General Permit.

On August 19, 1999, the State Water Resources Control Board (SWRCB) reissued the General Construction Storm Water Permit (Water Quality Order 99-08-DWQ referred to as "General Permit"). The San Francisco BayKeeper, Santa Monica BayKeeper, San Diego BayKeeper, and Orange Coast Keeper filed a petition for writ of mandate challenging the General Permit in the Superior Court, County of Sacramento. The Court issued a judgment and writ of mandate on September 15, 2000. The Court directed the SWRCB to modify the provisions of the General Permit to require permittees to implement specific sampling and analytical procedures to determine whether Best Management Practices (BMPs) implemented on a construction site are: (1) preventing further impairment by sediment in storm waters discharged directly into waters listed as impaired for sediment or silt, and (2) preventing other pollutants, that are known or should be known by permittees to occur on construction sites and that are not visually detectable in storm water discharges, from causing or contributing to exceedances of water quality objectives. The monitoring provisions in the General Permit have been modified pursuant to the court order.

TYPES OF CONSTRUCTION ACTIVITY COVERED BY THIS GENERAL PERMIT

Construction activity subject to this General Permit includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre of total land area. Construction activity that results in soil disturbances of less than one acre is subject to this General Permit if the construction activity is part of a larger common plan of development that encompasses one or more acres of soil disturbance or if there is significant water quality impairment resulting from the activity. Construction activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety. Dischargers should confirm with the local RWQCB whether or not a particular routine maintenance activity is subject to this General Permit.

A construction project which includes a dredge and/or fill discharge to any jurisdictional surface water (e.g., wetland, channel, pond, or marine water) will also need a CWA Section 404 permit

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

C

Court of Appeal, Third District, California.
COUNTY OF SACRAMENTO, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents.
No. C052237.

Aug. 9, 2007.

Background: County petitioned for writ of mandate, challenging orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility. The Superior Court, Sacramento County, No. 03CS01521,Lloyd Connelly, J., denied the petition, and county appealed.

Holdings: The Court of Appeal, Morrison, J., held that:
(1) basin plan's water quality objective for ground waters "used for" domestic or municipal supply included probable future use;
(2) court would decline to take judicial notice of ground water quality objectives for bacteria in two other basin plans; and
(3) court would decline to take judicial notice of proposed basin plan amendment.

Affirmed.

Raye, J., dissented with opinion.

West Headnotes

[1] Waters and Water Courses 405 196

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k196 k. Purity of Water and Protection Thereof from Pollution or Diversion. Most Cited Cases
Basin plan's coliform water quality objective for ground waters "used for" domestic or municipal supply referred to ground waters designated for use as domestic and municipal use and included probable future use such that objective applied to youth correctional facility's wastewater treatment facility, even though water was not currently used for municipal supply. West's Ann.Cal.Water Code § 13050.
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 893; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.

[2] Administrative Law and Procedure 15A 412.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases
The interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute.

[3] Constitutional Law 92 2340

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)1 In General
92k2340 k. Nature and Scope in General. Most Cited Cases
The Legislature has no authority to interpret a statute.

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construc-

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tion. Most Cited Cases
Where the language of a regulation is ambiguous, it is appropriate to consider the agency's interpretation.

[5] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
The court defers to an agency's interpretation of a regulation involving its area of expertise unless the interpretation flies in the face of the clear language and purpose of the provision.

[6] Evidence 157 48

157 Evidence
157I Judicial Notice
157k48 k. Official Proceedings and Acts. Most Cited Cases
Court considering county's appeal from orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility would decline to take judicial notice of ground water quality objectives for bacteria in two other basin plans, despite county's contention that those basin plans showed how terms "used for" and "designated" were used in water quality objectives, as consideration of other basin plans was irrelevant to the issue before the court as to whether ground waters subject to coliform limit were "used for" domestic or municipal supply; at most, the two basin plans showed that different terms were used, but not their effect, and county did not offer evidence of the waste discharge requirements issued under those basin plans to show how the differing terms were interpreted.

[7] Statutes 361 183

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k183 k. Spirit or Letter of Law. Most Cited Cases

Statutes 361 184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases

Statutes 361 208

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and Related Clauses. Most Cited Cases
The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment.

[8] Statutes 361 184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases
Where statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation.

[9] Evidence 157 48

157 Evidence
157I Judicial Notice
157k48 k. Official Proceedings and Acts. Most Cited Cases

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Court considering county's appeal from orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility would decline to take judicial notice of a transcript of an agenda item and minutes of a State Board meeting at which the State Board declined to adopt proposed basin plan amendment to change the water quality objective bacteria in ground waters, but tabled the matter; State Board's actions occurred after the revised waste discharge requirements at issue were adopted, and State Board's failure to adopt the amendment had little evidentiary value on the question of the proper interpretation of the basin plan.

[10] Administrative Law and Procedure 15A ⚿676

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak676 k. Record. Most Cited Cases
It is not proper to take judicial notice of evidence that was not before the agency at the time it made its decision.

****304** Robert A. Ryan, Jr., County Counsel, John H. Dodds, Deputy County Counsel; Somach, Simmons & Dunn, Paul S. Simmons, Kristen T. Castanos and Andrew M. Hitchings for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Mary E. Hackenbracht, Chief Assistant Attorney General, Bruce Reeves, Deputy Attorney General, for Defendants and Respondents.

MORRISON, J.

***1582** The County of Sacramento appeals from denial of its petition for a writ of mandate directing the State Water Resources Control Board and the Regional Water Quality Control Board for the Central Valley Region (collectively the Boards) to rescind and vacate their water quality orders that apply to the Boys Ranch wastewater treatment plant insofar as the orders establish limitations for coliform effluent. The County contends the water quality orders are inconsistent with the Basin Plan for the Central Valley Region and the Boards failed to comply with the requirements of the Water Code in adopting a new interpretation. We find the water quality orders are consistent with the applicable basin plan and affirm.

BACKGROUND

Porter-Cologne Water Quality Control Act

"It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." (Cal. Const., art. X, § 2.)

California's policy on water quality is set forth in the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.; all further undesignated section references are to the Water Code)."[A]ctivities and factors which may affect the quality of the waters of the state shall be regulated to attain the ***1583** highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."(§ 13000.) this act is administered by the state water resources control Board (the State Board) and nine regional boards. (§§ 13001; 13200.)

****305** Each regional board is required to adopt a water quality control plan for all areas in the region; the plan must be consistent with the state policy for water quality control. (§ 13240.) A regional water quality control plan is also known as a basin plan. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The State Board reviews and approves the basin plan. (§ 13245.) A basin plan designates or establishes the beneficial uses to be protected, the water quality objectives, and the program of implementation for achieving the water quality objectives. (§ 13050, subd. (j).) A water quality objective sets the limits or levels of water quality constituents or characteristics for reasonable protection of beneficial

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uses of water or the prevention of nuisance in the specific area. (§ 13050, subd. (h).)

In establishing water quality objectives, the regional board must consider various factors, including, but not limited to: "(a) Past, present, and probable future beneficial uses of water. [¶] (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. [¶] (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. [¶] (d) Economic considerations. [¶] (e) The need for developing housing within the region. [¶] (f) The need to develop and use recycled water."[¶] (§ 13241.)

The regional board prescribes requirements for waste discharge within the region. (§ 13263.) These requirements shall implement the relevant basin plan and take into consideration the beneficial uses to be protected and the factors set forth in section 13241. (§ 13263, subd. (a).)

The Basin Plan

The California Regional Water Quality Control Board for the Central Valley Region (the Regional Board) adopted a basin plan for the Sacramento River Basin and the San Joaquin River Basin (the Basin Plan). The Basin Plan states the primary goal of water quality planning is the protection and ***1584** enhancement of existing and potential beneficial uses. This protection and enhancement of beneficial uses is achieved by setting quality and quantity objectives for surface and ground waters. The Basin Plan sets forth various beneficial use designations. As relevant here, one of the designations is: "Municipal and Domestic Supply (MUN)-Uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply." Unless otherwise designated by the Regional Board, all ground waters in the region are considered suitable, or potentially suitable, at a minimum, for municipal and domestic water supply (MUN) and various other beneficial uses.

The Basin Plan sets forth water quality objectives. In establishing these water quality objectives, the Regional Board considered the factors set forth in section 13241, including past, present and probable future beneficial uses of water. The Basin Plan sets the water quality objectives for ground waters. These objectives "apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses." It is the water quality objective for bacteria that is at issue in this case. The Basin Plan sets the water quality objective for bacteria as follows: "In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml."

The Waste Discharge Requirements

The County owns and operates the Boys Ranch, a youth correctional facility of approximately****306** 100 wards and 70 staff. The Boys Ranch is located 12 miles south of Folsom and approximately one mile west of Scott Road. The land around the Boys Ranch is zoned for agricultural and residential uses. Residential properties are a minimum of 40 acres. There is no public water supply utility; all residences must rely on individual wells for water. The Boys Ranch obtains its water supply from a well.

The Boys Ranch has a wastewater treatment facility for its domestic wastewater. The wastewater treatment facility consists of a gravity collection system, a 9,000-gallon temporary storage and holding tank, a sewage distribution box, and two unlined percolation/evaporation ponds. The two ponds cover approximately 2.9 acres. Wastewater is concentrated through evaporation and infiltrates into the bottom soils of the ponds. Approximately 7.6 inches of wastewater infiltrates through the ponds each month. The well for the Boys Ranch is located approximately 10,000 feet west of the ponds. There are fewer than three private residences within a three-mile radius of the facility; the closest is a mile and a half away.

***1585** The Boys Ranch wastewater treatment facility is subject to waste discharge requirements set forth in orders from the Regional Board. The original requirement, adopted in the mid-1960's, required that waste discharge from the Boys Ranch wastewater treatment facility not cause pollution of usable

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ground or surface waters.

In 1985, the Regional Board issued Order No. 85-200 for waste discharge requirements for the Boys Ranch wastewater treatment facility. It required that discharges not cause pollution or nuisance or degrade the water supply.

In 2001, the Regional Board adopted updated waste discharge requirements for the Boys Ranch wastewater treatment facility. The Regional Board found the wastewater quality had a reasonable potential to impact the underlying ground water and required certain monitoring to determine if the Boys Ranch was employing the best practical treatment and control (BPTC), as required by Resolution 68-16, the antidegradation policy. This new waste discharge requirement, Order 5-01-256, established interim ground water limitations that would not unreasonably threaten present and anticipated beneficial uses or result in ground water quality that exceeds water quality objectives in the Basin Plan. The requirements could be reopened after monitoring. The limitation for total coliform organisms in ground was set at "nondetect."

The County sought review of this order before the State Board.

After settlement discussions, the County and the Regional Board resolved many of the disputed issues; four issues remained unresolved. The State Board issued Order WQO 2003-0014 addressing these issues. The County had challenged the interim limits for coliform organisms in groundwater. The State Board found that the Basin Plan set a water quality objective for bacteria that applies to groundwater at a most probable number (MPN) of coliform organism over a seven-day period of less than 2.2/100 ml, and that was also the level at which coliform could be detected. The State Board directed the Regional Board to revise its Waste Discharge Order No. 5-01-256 to include a numeric groundwater limitation. The State Board found the Regional Board had authority to set interim limits for groundwater and those limits must be set at less than 2.2 MPN/100 ml.

****307** In January 2004, the Regional Board adopted a revised waste discharge requirements order for the Boys Ranch wastewater treatment facility. This order, No. R5-2004-0003, set groundwater limitations for total coliform organisms at less than 2.2 MPN/100 ml over any seven-day period.

The County again sought review by the State Board. The County contended these wastewater discharge requirements were invalid. The State ***1586** Board dismissed the County's petition for review on the basis that it failed to raise substantial issues that were appropriate for review.

The County then petitioned for a writ of mandate. In a first amended petition, the County challenged State Board Order No. WQO 2003-0014 and Regional Board Orders Nos. 5-01-256 and R5-2004-0003, contending the water quality objective for bacteria applied to the Boys Ranch wastewater treatment facility was in violation of the law.

The trial court denied the petition. The County appealed.

DISCUSSION

[1] The County contends the State Board and the Regional Board misapplied the water quality objective for bacteria in groundwater set forth in the Basin Plan. The Basin Plan's water quality objective for groundwater states: "In ground waters *used for* domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml." (Italics added.) The County contends this water quality objective is not applicable to the Boys Ranch Wastewater treatment facility because the groundwater in the vicinity is not *used for* domestic or municipal supply. The County asserts this water quality objective applies only where the groundwater is *currently* being used for domestic or municipal supply.

The parties agree that we examine the Boards' interpretation of legal matters utilizing a de novo standard of review. (*County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997, 50 Cal.Rptr.3d 619 [mod. at 144 Cal.App.4th 589f].) We defer to the Boards' expertise as appropriate in the circumstances. (*Yamaha Corp. of America*

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v. State Board of Equalization (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

Here, the State Board directed the Regional Board to include the numeric groundwater limitation for bacteria in the Basin Plan in a revised order for the Boys Ranch wastewater treatment facility. Thus, the State Board interpreted the Basin Plan's water quality objective to apply where the groundwater was designated MUN.

[2][3][4][5] The County contends the Boards' interpretation is incorrect under the basic rules of statutory construction. As a starting point, the interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute. (*Blumenfeld v. San Francisco Bay Conservation etc. Com.* (1974) 43 Cal.App.3d 50, 59, 117 Cal.Rptr. 327.) However, there is an important difference between the interpretation of a statute and the interpretation of a regulation. "The Legislature has no authority to interpret a ***1587** statute." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1158, fn. 6, 278 Cal.Rptr. 614, 805 P.2d 873, quoting *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8, 185 Cal.Rptr. 582; followed in *People v. Cruz* (1996) 13 Cal.4th 764, 781, 55 Cal.Rptr.2d 117, 919 P.2d 731.) On the other hand, where the language of the regulation is ambiguous, it is appropriate ****308** to consider the agency's interpretation. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 883, 22 Cal.Rptr.3d 128.) Indeed, we defer to an agency's interpretation of a regulation involving its area of expertise, " 'unless the interpretation flies in the face of the clear language and purpose of the interpretive provision' [Citation.]" (*Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, 252, 51 Cal.Rptr.3d 497.)

As we shall see, in this case, the agency's interpretation of its own regulation makes all the difference.

Relying on dictionary definitions, the County asserts that "used for" cannot mean "designated." The County argues that "designated" is a term of art under the Porter-Cologne Water Quality Control Act and has a clearly distinguishable meaning from "used." Designated beneficial uses include future or potential uses; "used for" is more limited in temporal scope.

The Boards criticize the County's reliance on dictionary definitions to resolve the question of proper interpretation. (See *Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 539, fn. 1, 113 Cal.Rptr.2d 300.)They also raise various practical problems with the County's interpretation. Determining a current use may be difficult, especially where there are intermittent uses. The County argues no ground water in the vicinity of the Boys Ranch wastewater treatment facility is currently used for MUN, but fails to define vicinity. Further, if the Regional Board cannot regulate bacteria in ground water unless such water is currently being used as a water supply, such water may become so contaminated that it could never be used for drinking water.

The County also relies upon the different language used in the other water quality objectives in the Basin Plan. While the water quality objective for bacteria, states it applies "in ground waters used for domestic or municipal supply (MUN)," the water quality objectives for chemical constituents and radioactivity apply to "ground waters designated for use as domestic or municipal supply (MUN)." The County argues this difference in language is meaningful. "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the ***1588** normal inference is that the Legislature intended a difference in meaning. [Citation.]" (*People v. Trevino* (2001) 26 Cal.4th 237, 242, 109 Cal.Rptr.2d 567, 27 P.3d 283.)

[6] The County contends other regional boards have distinguished between a designated use and current use. For example, the ground water quality objective for bacteria in the Basin Plan for the Tulare Lake Basin applies to "ground waters designated MUN." The County requests this court take judicial notice of portions of the Basin Plans for the North Coast Region and the Los Angeles Region to show how regional boards employ the different terms "used for" and "designated" in water quality objectives. The Boards object to consideration of other basin plans as irrelevant to the issue before the court. We agree. At most, these other basin plans show that different terms are used, but not their effect. The County has

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not offered evidence of the waste discharge requirements issued under these basin plans to show how the differing terms are interpreted. We deny the County's request for judicial notice of exhibits A and B.

****309** We reject the County's contention that the phrase "used for" is limited in temporal scope and cannot include future uses. In general parlance, the phrase is broad and includes both present and future uses. For example, "chairs are used for sitting," is not limited to the chairs' current use.

The term "used for" is thus ambiguous as to whether it includes designated uses or only current uses. Thus, as stated earlier, where the language is ambiguous, we will defer to the agency's interpretation of a regulation involving its area of expertise, " 'unless the interpretation flies in the face of the clear language and purpose of the interpreted provision.' " The Boards' interpretation is completely consistent with the purpose of both the Basin Plan and the Porter-Cologne Water Quality Control Act.

[7][8] The real flaw in the County's argument is that it ignores a fundamental premise of statutory and regulatory interpretation, that the words must be construed in context. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.) " 'The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute [citation], and where possible the language should be read so as to conform to the spirit of the enactment. [Citation.]' [Citation.] [¶] Where statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. [Citation.]" (*Conrad v. Medical Bd. of California* (1996) 48 Cal.App.4th 1038, 1046, 55 Cal.Rptr.2d 901.)

The trial judge, experienced in water law having read numerous basin plans, noted that both the Porter-Cologne Water Quality Control Act and the ***1589** Basin Plan are fundamentally concerned with the protection of present and future beneficial uses of water. The various provisions of the Basin Plan reflect this central concern. It requires water quality objectives to protect beneficial uses. The Basin Plan uses MUN as an abbreviation for the beneficial use of water for community, military, or individual water supply systems. All ground waters in the region are considered suitable or potentially suitable for municipal and domestic water supply (MUN). In establishing water quality objectives, the Regional Board must consider past, present, and probable future beneficial uses. The objectives for ground waters "apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses."

Read in the context of the Basin Plan as a whole, the water quality objective for "ground waters used for domestic or municipal supply (MUN)" refers to ground waters designated for use as domestic or municipal supply. The reference to the use of water refers to its beneficial use, which has been designated by the Regional Board. All ground waters in the Sacramento and San Joaquin River Basins have been designated as MUN and the designation includes probable future uses. Nothing in the Basin Plan distinguishes between present and future uses of water. Restricting the water quality objective for bacteria to ground waters based on current uses would read in a temporal element not found in the language of the Basin Plan. Such an interpretation would depart from the language and intent of the Basin Plan to a greater extent than reading "used for" to mean "designated as."

[9] In support of its argument the County cites the Regional Board's proposed amendment to the Basin Plan to change the water quality objective bacteria in ground waters. Instead of reading "In ****310** ground waters used for domestic or municipal supply (MUN)," the revision would read "In ground waters designated for use as domestic or municipal supply (MUN)." The Regional Board characterized the change as "non-substantive editing." The County requests that this court take judicial notice of a transcript of an agenda item and minutes of a State Board meeting at which the State Board declined to adopt the amendment, but tabled the matter. The County contends these actions show the Regional Board's interpretation is new or inconsistent with the Basin Plan.

[10] We decline the request for judicial notice. The actions of State Board occurred in May 2004, after

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the revised waste discharge requirements at issue here were adopted in January 2004. It is not proper to take judicial notice of evidence that was not before the agency at the time it made its decision. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, fn. 4, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)Furthermore, the State Board's failure to adopt the amendment has little evidentiary value on the question of ***1590** the proper interpretation of the Basin Plan. The failure to adopt an amendment evokes conflicting inferences as to whether the amendment was necessary, whether it was merely a clarification or a change in the law. "As evidence of legislative intent, unadopted proposals have been held to have little value. [Citations.]" (*California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 32, 46 Cal.Rptr.2d 44.)

We find the water quality orders at issue are consistent with the Basin Plan and effectuate the intent to protect present and future beneficial uses of ground waters. Accordingly, we need not address the County's contention that the Regional Board failed to comply with the Water Code in imposing a new interpretation.

DISPOSITION

The judgment is affirmed. Defendants and respondents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.276(a)(1).)

I concur: SIMS, Acting P.J.

RAYE, J., Dissenting.

The issue that we resolve in this case arises from what respondents' counsel characterized at oral argument as the "unfortunate" drafting of the water quality objective for bacteria in the basin plan for the Sacramento and San Joaquin River Basins (Basin Plan). In other words, the language of the Basin Plan does not read as the Regional Water Quality Control Board for the Central Valley Region (Regional Board) wishes it did and perhaps as the Regional Board intended.

It is not our role to plumb the consciousness of regulation drafters and mold the language of a regulation to comport with their undisclosed intent. As with the construction of statutes, so also in ascertaining the meaning of regulations, we divine intent from the language actually used and not the language one supposes the drafters might have used had they anticipated the legal dispute now before us. To the extent the language does not accurately reflect what the drafters had in mind and application of the language actually used could lead to an environmental catastrophe, the cries of despair should be directed to the governmental bodies empowered to alter the language. This court is not one of those bodies and should not indulge arguments that seek to amend in the guise of interpreting a regulation. Because I believe the majority opinion does that, I must respectfully dissent.

****311 Background**

The facts underlying this dispute are remarkably clear. The Regional Board adopted the Basin Plan, which sets forth the water quality objective for ***1591** bacteria as follows: "In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml."

In January 2004 the Regional Board adopted a revised waste discharge requirements order for the Boys Ranch wastewater treatment facility. The parties acknowledge that there are fewer than three homes within a three-mile radius of the Ranch, and there is no domestic or municipal water supply serving those homes. Therefore, the wastewater from the Boys Ranch facility is not released into ground waters used for an existing domestic or municipal water supply. Nonetheless, the majority would approve the Regional Board's application of the Basin Plan's bacteria standards to wastewater discharged from the Boys Ranch treatment facility into underlying ground waters that are not used by any existing domestic or municipal water supply.

There are good reasons for this outcome: basin plans are all about the protection of both present and future beneficial uses of water. Therefore, in establishing water quality objectives, the Regional Board must consider not only present uses but also future uses. To the extent the past offers insight into the future, past uses are also relevant. Moreover, the Regional Board offers a persuasive technical argument, that

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restricting water quality objectives for bacteria to current ground water uses could allow water to become so contaminated that it could never be used for drinking water.

All this makes perfect sense. But the language of the regulation does not support these policies. Whatever our views on the wisdom of the Regional Board's proposed order, we are not given free reign to import our notions of commonsense and good environmental policy into the language of the regulation-language that we are obliged apply by its terms. And denominating these policy notions as part of the "context" within which the language of the regulation must be construed is at best disingenuous. The interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute. (*Blumenfeld v. San Francisco Bay Conservation etc. Com.* (1974) 43 Cal.App.3d 50, 59, 117 Cal.Rptr. 327.) We must employ the plain meaning of the regulatory text. (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 148-149, 18 Cal.Rptr.3d 417(*Environmental Charter*).)

There is no doubt the Regional Board could write a basin plan that would support the order it has adopted for the Boys Ranch wastewater treatment facility. However, the existing language does not.

I understand that we defer to an agency's interpretation of a regulation involving its area of expertise. Indeed, the authorities cited by the majority ***1592** for this proposition also extend deference to an administrative agency's interpretation of a *statute* involving its area of expertise. (*Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, 252, 51 Cal.Rptr.3d 497.) However, deference is not capitulation. The responsibility for discerning the meaning of a regulation, like that of a statute, is reposed in this court.

It is tempting to apply a more relaxed standard of review to a regulation; after all, the agency wrote it. However, like the Legislature, administrative agencies are ****312** not given unfettered authority to write whatever regulations they desire whenever they choose; procedures must be followed. Water quality control plans are in fact regulations and are neither expressly nor impliedly exempt from the provisions of the Administrative Procedure Act (APA; Gov.Code, §§ 11340 et seq., 11370 et seq.). (*State Water Resources Control Bd. v. Office of Admin. Law* (1993) 12 Cal.App.4th 697, 16 Cal.Rptr.2d 25.) The APA imposes substantial constraints on an agency's rulemaking authority. (See Gov.Code, § 11340 et seq.) Hearings must be held, public comments received, and reviews conducted. We should not permit the process to be circumvented through acquiescence in the Regional Board's interpretive powers.

While the Regional Board criticizes the County of Sacramento's reliance on dictionary definitions in applying the language in question, we often resort to dictionaries in construing the language of statutes and regulations. Indeed, a fundamental tenet of statutory construction is that the court must first consult the words of the statute, giving them their plain meaning. When the language at issue is clear, the courts should not indulge in construction. "A dictionary is a proper source to determine the usual and ordinary meaning of a word or phrase in a statute." (*E.W. Bliss Co. v. Superior Court* (1989) 210 Cal.App.3d 1254, 1258, fn. 2, 258 Cal.Rptr. 783.)

We do not, of course, apply dictionary definitions when it is clear a different meaning was intended, as when words are used in a technical sense. However, the regional boards have proposed no good etymological reason why the nontechnical terms "[i]n ground waters used for domestic or municipal supply (MUN)" should be read as "designated for use." The suggestion that construing the language in the present tense imports a "temporal element" is no more than skillful word play. Absent additional modifiers, it is not reasonable to suppose the Regional Board was intending to regulate the entire universe of ground water, whether used in the past, in the present, or potentially in the future. Such a construction would, as a practical matter, render what was clearly intended to be a restrictive phrase, "used for domestic or municipal supply (MUN)," unnecessary.

***1593** The majority argues: "In general parlance, the phrase ["used for"] is broad and includes both present and future uses. For example, 'chairs are used for sitting,' is not limited to the chairs' current use." The

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analogy illustrates the fallacy of the majority's word play. The phrase "used for" only suggests present and future uses when it describes the function of an object without limitation. Thus, if the regulation simply stated "ground waters are used for domestic or municipal supply," I would agree that ground waters have been, can be, and will in the future be used for domestic or municipal water supply. However, the regulation does not simply describe ground waters but places restrictions on substances discharged into ground waters of a certain type, viz: "[i]n ground waters used for domestic or municipal supply." To suggest that such a restriction applies to ground waters that have in the past been used but are not currently used for domestic or municipal supply, or ground waters that may be used for domestic or water supply at some time in this millennium or the next, makes a mockery of the language.

The majority's interpretation defies the plain meaning rule. It is also at odds with the principle that words of a regulation must be interpreted in context, " 'harmonizing to the extent possible all provisions relating to the same subject matter.' "(*Environmental Charter, supra,* 122 Cal.App.4th****313** at p. 149, 18 Cal.Rptr.3d 417.) In addition to the water quality objective for coliform organisms, the same section of the Basin Plan also includes water quality objectives for chemical constituents in ground water and for radioactivity in ground water. However, these water quality objectives only apply to ground waters "*designated* for use as domestic or municipal supply (MUN)." The use of more restrictive language for the bacteria objective is at odds with the Regional Board's argument that the term "used" includes waters "designated for use." Similarly, at the same time the subject Basin Plan was adopted the Regional Board also adopted a plan for the Tulare Lake Basin that restricts the water quality objective for coliform organisms to "ground waters designated MUN."

Perhaps this is all "unfortunate" drafting. However, the usual tools employed to discern the meaning of regulations do not permit us to modify language. Instead of seeking relief from this court, the Regional Board should pursue its administrative remedies. I also note that even in the absence of the disputed water quality objective pertaining to bacteria, the Regional Board is empowered to impose the same discharge restrictions under the authority of Water Code section 13263. This statutory procedure is more cumbersome but would address any public health concerns pending changes in the Basin Plan.

***1594** To conclude, I do not agree that the language of the Basin Plan supports the trial court's judgment. For that reason I respectfully dissent.

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County of Sacramento v. State Water Resources Control Bd.
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ZELDA J. LOW, Plaintiff and Respondent,
v.
CITY OF SACRAMENTO et al., Defendants and Appellants
Civ. No. 12325.

Court of Appeal, Third District, California.
May 20, 1970.

SUMMARY

Plaintiff sustained personal injuries when she fell into a water-filled depression in a parking strip outside a hospital owned and operated by a county. She brought suit against the county and also against the city in which the hospital was located. The trial court ruled as a matter of law that the parking strip was owned by the city and controlled by the county, instructing the jury to that effect. A verdict and judgment were entered against both defendants. (Superior Court of Sacramento County, William A. White, Judge.)

The Court of Appeal affirmed the judgment. The county contended that it neither owned nor controlled the parking strip. The court held that under Gov. Code, § 835, establishing the conditions under which a public entity is liable for the dangerous condition of its property, the county had a set of powers amounting to "control" in the statutory sense where it was an abutting landowner and undertook to maintain the grassy surface of the parking strip, subject only to the exercise of the city's control as owner of the public street easement, and where the county had power of control both to prevent deterioration of the parking strip and to remedy it, notwithstanding that Gov. Code, § 830, subd. (c), forecloses liability where the public entity has given up an easement. (Opinion by Friedman, Acting P. J., with Regan and Janes, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Counties § 109.5--Torts--Injuries Resulting From Dangerous or Defective Condition of Public Property.
In an action by a woman against a county and a city for personal injuries sustained when she fell into a water-filled depression in a parking strip outside a hospital owned and operated by the county, and located in the city, the trial court correctly ruled as a matter of law that the parking strip was owned by the city and controlled by the county within the terms of Gov. Code, § 835, establishing conditions under which a public entity is liable for the dangerous condition of its property, despite the county's urging that it neither owned nor controlled the parking strip, and notwithstanding Gov. Code, § 830, subd. (c), foreclosing liability where the public entity has surrendered control to an easement holder, where the county was an abutting landowner and undertook to maintain the grassy surface of the parking strip, subject only to the exercise of the city's control as owner of the public street easement, and where the county had power of control both to prevent deterioration of the parking strip and to remedy it.

(2) Counties § 109.5--Torts--Injuries Resulting From Dangerous or Defective Condition of Public Property.
Although liability of a public entity under Gov. Code, § 835, is explicitly foreclosed where the public entity has given up an easement which it does not own or control, the public entity, as holder of the servient estate, may retain enough control, that is, such kinds of control, as to share liability with the owner of the dominant estate.

(3) State of California § 67--Actions--Actions Against State.
Government tort liability in California is entirely statutory, but the exclusive sway of statutory rules does not foreclose the aid of common law tort doctrines and analogies in ascertaining and achieving imperfectly expressed statutory objections, as emphasized by the provision of the Tort Claims Act declaring a public entity's entitlement to any defense available to a private defendant (Gov. Code, § 815, subd. (b)).

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(4) Negligence § 58--Owners or Occupants of Real Property--Occupant as Owner.
At common law, the possessor of land is the party bearing the responsibility for its safe condition, possession being equated with occupancy plus control, and in identifying the party vulnerable to a verdict, control dominates over title.

(5) Highways, Streets, and Bridges § 74--Injuries on Sidewalks--Liability of Abutting Owner.
As a general rule, a sidewalk is considered as part of the street, the city rather than the abutting owner being held liable for pedestrian injuries caused by a dangerous condition of the sidewalk; the abutting owner incurs liability only when the accident results from a defect caused by him or from some condition or feature of the sidewalk altered or constructed for the benefit of his property.
[See **Cal.Jur.2d,** Highways and Streets, § 223 et seq.; **Am.Jur.2d,** Highways, Streets, and Bridges, § 311 et seq.]
(6) Highways, Streets, and Bridges § 70--Injuries on Sidewalks--Liability of Municipality.
In an action by a pedestrian against a city and a landowner for injuries caused by the dangerous condition of a sidewalk, the city and the landowner may be joint or concurrent tortfeasors and may incur joint liability, control over the sidewalk being more important than title in pointing the finger of liability.

(7) Highways, Streets, and Bridges § 74--Injuries--Parking Strips-- Liability of Abutting Owner.
The liability of a private abutting landowner for pedestrian injuries due to parking strip defects is consistent with state doctrine which requires an inviter to warn of a condition on a public street or sidewalk adjoining his business which, because of the inviter's special benefit or use, creates a danger to his invitees.

(8) Counties § 109.5--Torts--Injuries Resulting From Dangerous or Defective Condition of Public Property.
In determining whether particular property is "owned or controlled" by a public entity, within the meaning of Gov. Code, § 830, subd. (c), defining property of a public entity, for the dangerous condition of which the public entity may be liable, inquiry may be made as to whether the particular defendant had control, in the sense of power to prevent, remedy or guard against the dangerous condition, whether its ownership is a naked title or whether it is coupled with control, and whether a private defendant, having a similar relationship to the property, would be responsible for its safe condition.

(9) Highways, Streets, and Bridges § 30--Ownership--Rights of Abutter.
The annexation by a city of a county street adjacent to a county hospital did not divest the county of the underlying fee to the center of the street, acquired by an earlier deed, notwithstanding Sts. & Hy. Code, § 989, declaring that when territory is annexed to a city the county's interest in any county highway "including the underlying fee where owned by the county" shall vest in the city, since the statutory conveyance applies to the county in its capacity as a highway agency, not as the proprietory owner of abutting land held for governmental purposes.

(10) Counties § 109.5--Torts--Injuries Resulting From Dangerous or Defective Condition of Public Property:Municipal Corporations § 449(4)--Torts--Actions--Questions of Law and Fact.
In an action against a city and a county for personal injuries caused by a defective parking strip, the trial court did not err in disposing of the question, as to whether the county had control of the parking strip, as one of law, even though testimony of the county and city officials was not entirely consistent, where the facts giving rise to characterization of the property were undisputed and the jury could draw but one conclusion, that is, that both defendants were vulnerable to a damage verdict.

COUNSEL

Fitzwilliam, Memering, Stumbos & DeMers, Theodore D. Bolling, Hardy, Erich & Brown and Cavan Hardy for Defendants and Appellants.

Friedman & Collard and Morton Friedman for Plaintiff and Respondent.

FRIEDMAN, Acting P. J.

Plaintiff sustained personal injuries when she fell into

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a water-filled depression in a parking strip outside the Sacramento Medical Center, a hospital owned and operated by the County of Sacramento. She brought suit against the county and against the City of Sacramento as well. The trial court ruled as a matter of law that the parking strip was owned by the city and controlled by the county. It instructed the jury to that effect. A verdict and judgment were entered against both defendants. Each appeals. The city seeks affirmance of the judgment, the county reversal.

Government Code section 835 establishes the conditions under which a public entity is liable for the dangerous condition of its property. Government Code, section 830, subdivision (c), declares: "'Property of a public entity' and 'public property' mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity."

The trial court premised its declaration of concurrent responsibility upon the view that the city *owned* the parking strip as owner of the street easement ***830** within which the strip was located; while the county, as owner of the abutting hospital property, *controlled* it. On appeal the city supports the trial court's ruling. The county rejects it, urging that it neither owned nor controlled the parking strip.

The hospital property fronts on the east side of Stockton Boulevard in Sacramento. When the county acquired the property in 1869, it was situated in the unincorporated area. At that time the street in front of the property was a county road. The 1869 deed conveyed fee title to the county out to the center of the road. In 1911 the neighborhood was annexed to the City of Sacramento, and Stockton Boulevard became a city street. The city installed pavement, curbs and sidewalks in 1922. Stockton Boulevard became part of the state highway system in 1933 but in 1939 reverted to its former status as a city street.

The street occupies an 80-foot right of way, measured from the easterly edge of the sidewalk bordering the hospital grounds to the westerly edge of the opposite sidewalk. In this area the right of way is occupied, first, by a six-foot paved sidewalk; next, a six-foot parking strip or planting strip; then a rolled, as distinguished from vertical, curb; finally, the central portion reserved for automobile traffic.

Grass was planted on the parking strip. Until 1962 or 1963, county workers mowed and watered the strip, removed debris and filled any holes which developed. A problem arose. Drivers parking on Stockton Boulevard to visit the hospital would drive their automobiles over the rolled curb, permitting their wheels to rest on the parking strip. The strip became unsightly. Mowing the lawn became a difficult problem. The county asked the city to prohibit parking along the hospital frontage, but the city declined. The county suggested the possibility of paving the parking strip but without success. The county then reduced its maintenance activities, ceasing to water the lawn. As the grass died and bare dirt appeared, ruts and holes developed. Automobiles continued to roll over the curb onto the strip, creating more indentations. Each spring the county's ground crew filled in the holes but took no such action during the rainy winter weather. The county work crew continued to mow what grass was left in the strip and kept it clear of debris.

According to undisputed evidence, Sacramento property owners, not the municipality, maintain parking strips in front of their individual parcels.

On a February evening plaintiff parked her automobile in front of the hospital, intending to visit her husband, a patient in the hospital. She stepped from her car into a two-inch deep rut or hole filled with water, slipped to the ground and suffered injuries. ***831**

(1a) The appeal turns on the phrase "owned or controlled" in subdivision (c) of section 830. The phrase has not received judicial interpretation since its enactment as part of the California Tort Claims Act of 1963. (See, however, *Hoover v. City of Fresno* (1969) 272 Cal.App.2d 7 [77 Cal.Rptr. 146]; *Holmes v. City of Oakland* (1968) 260 Cal.App.2d 378 [67 Cal.Rptr. 197].) It is deceptively simple. It reveals ambiguity when ownership is separated from control; when the aggregation of powers called ownership is divided and when various kinds of control are held in separate hands. (2) Subdivision (c) explicitly fore-

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closes liability where the public entity has given up an easement which it does not own or control. Even at that point, the entity, as holder of the servient estate, may retain enough control, that is, such kinds of control, as to share liability with the owner of the dominant estate. (See e.g., *Holmes v. City of Oakland, supra*; cf. *Whalen v. Ruiz* (1953) 40 Cal.2d 294 [253 P.2d 457].)

(3) Government tort liability in California is entirely statutory. (Gov. Code, § 815, subd. (a); California Government Tort Liability (Cont. Ed. Bar 1964) p. 124.) Documentary aids to the interpretation of the California Tort Claims Act of 1963 are available, namely, the Recommendation Relating to Sovereign Immunity issued by the California Law Revision Commission and the Legislative Committee Comments accompanying the 1963 legislation. (Cont. Ed. Bar, *op. cit.*, pp. 120-123.) The documentary material accompanying Government Code section 830 does not discuss the phrase "owned or controlled" but deals only with the express exclusion of noncontrolled easements over public property. (See comment of Law Revision Commission following § 830 in annotated codes; Cont. Ed. Bar, *op. cit.*, pp. 545-548.) The exclusive sway of statutory rules does not foreclose the aid of common law tort doctrines and analogies in ascertaining and achieving imperfectly expressed statutory objectives. (See *Sanders v. County of Yuba* (1967) 247 Cal.App.2d 748, 751 [55 Cal.Rptr. 852].) The appropriateness of that aid is emphasized by the provision of the Tort Claims Act declaring the public entity's entitlement to any defense available to a private defendant. (Gov. Code, § 815, subd. (b).)

(4) In common law parlance, the possessor of land is the party bearing responsibility for its safe condition. Possession, in turn, is equated with occupancy plus control. (*Green v. Menveg Properties, Inc.* (1954) 126 Cal.App.2d 1, 9 [271 P.2d 544]; Rest. 2d Torts, § 328E.) Thus, in identifying the party vulnerable to a verdict, control dominates over title. "The crucial element is control." (*Schwartz* v. *Helms Bakery Ltd.* (1967) 67 Cal.2d 232, 239 [60 Cal.Rptr. 510, 430 P.2d 68].)

Interpretive aid may be drawn from the landlord and tenant cases, which are frequently characterized by division of ownership and control. ***832** Generally, the tenant rather than the landlord controls the leased portion of the premises and is liable to third persons injured by their dangerous condition. (*Schwerdtfeger v. State of California* (1957) 148 Cal.App.2d 335, 345 [306 P.2d 960]; *Pfingst v. Mayer* (1949) 93 Cal.App.2d 265, 272-273 [208 P.2d 1002]; Prosser on Torts (3d ed.) (1964) p. 412.) The landlord is liable for the condition of areas over which he retains control, such as common passageways. (*Johnston* v. *De La Guerra Properties, Inc.* (1946) 28 Cal.2d 394, 399 [170 P.2d 5]; Prosser, *op. cit.*, p. 418.) A tenant may be liable for an area outside the strict limits of his own tenancy if he assumes control over it. (*Johnston v. De La Guerra Properties, Inc., supra*, 28 Cal.2d at p. 401.) In appropriate circumstances the possessor of control and a third party who created or contributed to the dangerous condition may be concurrently liable. (See e.g., *Yee Chuck v. Board of Trustees* (1960) 179 Cal.App.2d 405, 411 [3 Cal.Rptr. 825]; *Schwerdtfeger v. State of California, supra*, 148 Cal.App.2d at p. 345.)

Cases decided under the superseded Public Liability Act of 1923 provide interpretive aid. (*Hibbs v. Los Angeles County Flood Control Dist.* (1967) 252 Cal.App.2d 166, 171 [60 Cal.Rptr. 364].) In express terms, that act imposed liability upon the governmental entity having authority to remedy the dangerous condition. (Former Gov. Code, § 53051, added by Stats. 1949, ch. 81, and repealed in 1963; *Gillespie v. City of Los Angeles* (1950) 36 Cal.2d 553, 556 [225 P.2d 522].) Although authority to remedy the dangerous condition is no longer an express statutory standard, the courts have continued to resort to it. Where control, rather than power to correct the defective condition, is the verbal signal of liability, the courts have continued to equate the two concepts. (*Avey* v. *County of Santa Clara* (1968) 257 Cal.App.2d 708, 712 [65 Cal.Rptr. 181]; *Larson v. Santa Clara Valley Conservation Dist.* (1963) 218 Cal.App.2d 515, 523-524 [32 Cal.Rptr. 875, 8 A.L.R.3d 665]; *Schwerdtfeger v. State of California, supra*, 148 Cal.App.2d at p. 345.) Thus, in identifying the defendant with whom control resides, location of the power to correct the dangerous conditions is an aid.

(5) The county relies heavily upon sidewalk accident decisions. The general rule views the sidewalk as part

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of the street; it absolves the abutting owner and holds the city liable for pedestrian injuries caused by the dangerous condition of the sidewalk. [FN1]The abutting owner incurs liability only when the accident results from a defect caused by him or from some condition ***833** or feature of the sidewalk altered or constructed for the benefit of his property. (*Kopfinger v. Grand Central Public Market* (1964) 60 Cal.2d 852, 858-860 [37 Cal.Rptr. 65,399 P.2d 529];*Sexton v. Brooks* (1952) 39 Cal.2d 153, 157 [245 P.2d 496].) (6) The city and the landowner may be joint or concurrent tortfeasors and may incur joint liability. (*Peters v. City & County of San Francisco* (1953) 41 Cal.2d 419, 429[260 P.2d 65].) Here too, control is more important than title in pointing the finger of liability.

> FN1 Streets and Highways Code section 5600 defines "sidewalk" to include the parking strip, while section 5610 requires the abutting owner to keep the sidewalk in safe condition. Such statutes are not designed as declarations of tort liability, but are aimed to fix financial responsibility for repairs as between the public entity and an abutting owner. (*Schaefer v. Lenahan* (1944) 63 Cal.App.2d 324, 327 [146 P.2d 929].)

The analogy between sidewalk and parking strip is only partial. The former is designed primarily for public traffic, while the grassy strip between the sidewalk and curb is not. Nevertheless, the latter's use by pedestrians is expectable and normal. Decisions in other states justify the generalization that when a private owner maintains the grassy parking strip between the sidewalk and street curb, he exercises control over it, subordinate only to the municipality's street easement; thus, that the owner is liable when his failure to maintain it in reasonably safe condition causes injury to a pedestrian. (Note, Liability for injury on parking or strip between sidewalk and curb, 19 A.L.R.2d 1053, 1075-1080.)The municipal street agency bears a similar liability. Since the parking strip lies within the street right of way, the public easement enables the city to control it in the interest of public safety. Hence, the city too incurs liability for unreasonably dangerous conditions within the parking strip. (19 A.L.R.2d at pp. 1057-1064.)

Research discloses only two California cases dealing with public liability for pedestrian injuries on parking strips. *Christy v. City of Alhambra* (1935) 9 Cal.App.2d 499 [50 P.2d 454], is not helpful because there the municipality's liability was based not upon the dangerous condition of the parking strip itself, but upon the condition of a water meter located there.*Castro v. Sutter Creek Union High School Dist.* (1938) 25 Cal.App.2d 372 [77 P.2d 509], held the district liable for injury caused by the unguarded hole in the parking strip fronting on school property, but did not discuss ownership or control as factors of liability. (7) Although direct California precedents are lacking, the liability of a private abutting owner for parking strip defects is consistent with the California doctrine which requires an invitor to warn of a condition on a public street or sidewalk adjoining his business which, because of the invitor's special benefit or use, creates a danger to his invitees. (*Schwartz v. Helms Bakery Ltd., supra*, 67 Cal.2d at pp. 239-240; see also *Ross v. Kirby* (1967) 251 Cal.App.2d 267 [59 Cal.Rptr. 601].)

(8) These decisional analogies shed light on the phrase "owned or controlled" in subdivision (c) of section 830. Where the public entity's relationship to the dangerous property is not clear, aid may be sought by inquiring whether the particular defendant had control, in the sense of power to ***834** prevent, remedy or guard against the dangerous condition; whether his ownership is a naked title or whether it is coupled with control; and whether a private defendant, having a similar relationship to the property, would be responsible for its safe condition.

(9) In this case each defendant had a species of ownership in the parking strip - the city as holder of the street easment and the county as holder of the underlying fee. [FN2](1b) More important, each had control - the city as holder of the public easement and the county as abutting owner. Like a private abutting owner, the county undertook to maintain the grassy surface of the parking strip. In this activity it was subject only to the exercise of the city's control as owner of the public street easement. The county permitted the parking strip to deteriorate. It had the power of control both to prevent its deterioration and to remedy it. Although subdivision (c) of section 830 forecloses liability where the public entity has surrendered control to an easement holder, here the

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county retained control, in the sense that it retained power to prevent or remedy the danger. (Cf. *Holmes* v. *City of Oakland, supra*, 260 Cal.App.2d 378.) Coupled with its ownership of the underlying fee was a set of powers amounting to "control" in the statutory sense.

> FN2 Contrary to the county's contention, the 1911 annexation to the City of Sacramento did not operate to transfer to the city the underlying fee of Stockton Boulevard which the county had acquired by the 1869 deed. At this point the county relies on Streets and Highways Code section 989, which declares that when territory is annexed to a city, the county's interest in any county highway, "including the underlying fee where owned by the county," shall vest in the city. The statutory conveyance applies to the county in its capacity as a highway agency, not as the proprietary owner of abutting land held for governmental purposes. The annexation of 1911 did not divest the County of Sacramento of the underlying fee out to the center of Stockton Boulevard.

(10) At oral argument counsel for the county contended that the evidence regarding control was in dispute, hence that the trial court erred in disposing of the question as one of law. Although the testimony of the county and city officials was not entirely consistent, these witnesses were simply attempting to express their own legal characterizations. The facts giving rise to these characterizations were undisputed. The jury could draw but one conclusion, that is, that both defendants were vulnerable to a damage verdict; thus the question was one of law for the court. (*Smith* v. *American Surety Co.* (1957) 148 Cal.App.2d 131, 134 [306 P.2d 489].)

Judgment affirmed. ***835**

In the interests of justice all costs of appeal shall be borne by the County of Sacramento.

Regan, J., and Janes, J., concurred. ***836**

Cal.App.3.Dist.

Low v. City of Sacramento
7 Cal.App.3d 826, 87 Cal.Rptr. 173

END OF DOCUMENT

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SENATE RULES COMMITTEE AB 1186
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1186
Author: Knox (D)
Amended: 8/6/97 in Senate
Vote: 21

SENATE AG. & WATER RESOURCES COMMITTEE : 7-4, 8/4/97
AYES: Costa, Ayala, Craven, Johnston, Kopp, Thompson, Peace
NOES: Johannessen, Kelley, Monteith, Wright

SENATE APPROPRIATIONS COMMITTEE : 7-4, 8/25/97
AYES: Johnston, Alpert, Burton, Calderon, Karnette, McPherson, Vasconcellos
NOES: Johnson, Kelley, Leslie, Mountjoy
NOT VOTING: Dills, Lee

ASSEMBLY FLOOR : 50-22, 5/19/97 - See last page for vote

SUBJECT : General industrial or construction storm water permit fees: disposition

SOURCE : National Resources Defense Council
American Oceanic Campaign

DIGEST : This bill revises the accounting and expenditure of specific fee revenues deposited in the Waste Discharge Permit Fund (WDPF), as specified. (See analysis for specifics.)

ANALYSIS : The Porter-Cologne Water Quality Control Act established the State Water Resources Control Board

□

(SWRCB) and nine regional water quality control boards (regional boards) charged with protecting the quality of waters in the state.

Current law requires regional boards to establish waste discharge requirements (WDR's) for any proposed discharge in order to implement relevant water quality control plans. Holders of WDR's are required to pay an annual fee, up to a maximum of $10,000 for the ability to discharge waste.

U.S. Environmental Protection Agency (EPA) regulations, pursuant to the national pollutant discharge elimination system (NPDES), require the operators of certain industrial facilities to obtain a permit to discharge storm water from their facilities. In California, this permit is called the General Industrial Activities Storm Water Permit, administered by the SWRCB.

Current storm water permit fees are set at $10,000 for areawide urban storm water discharges for areas with a population greater than 100,00, $5,000 for areawide urban storm water discharges for areas with a population less than 100,000, $250 for industries discharging into a municipal storm water system, and $500 for all other dischargers.

Permit fees are deposited into the Waste Discharge Permit Fund. The money in the Fund is available for expenditure by the SWRCB, to carry out the purposes of the Porter-Cologne Act.

This bill:

1. Requires the fees collected by the State Water Resources Control Board (SWRCB)/Regional Water Quality Control Board (RWQCB) from storm water dischargers that are subject to a general industrial or construction storm water permit shall be accounted for separately in the WDPF.

2. Requires that not less than 50 percent of the money in the WDPF, as noted in Number 1, shall be used by the regional water quality control board (RWQCB) with jurisdiction over the permitted industry or construction site that generated the fee to carry out storm water programs in the region.

3. Requires that each RWQCB that receives these fees to spend not less than 50 percent of those fee revenues solely on storm water inspection and regulatory compliance issues associated with industrial and construction storm water

□

programs.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT : (Verified 8/27/97)

Natural Resources Defense Council (co-source)
American Oceans Campaign (co-source)
Planning and Conservation League
Heal the Bay
Center for Marine Conservation
Santa Monica Bay Restoration Project, Bay Watershed Council
Surfrider Foundation, Santa Cruz Chapter
Coastwalk, Sebastopol
C.O.A.A.S.T.
Environmental Health Coalition
County of Sacramento
County of Los Angeles
Sonoma County Conservation Action
CALPIRG

ARGUMENTS IN SUPPORT : According to the proponents of this bill, California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required, but have failed, to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program.

ASSEMBLY FLOOR :
AYES: Aguiar, Alquist, Aroner, Ashburn, Baca, Bordonaro, Bowen, Brown, Caldera, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Firestone, Gallegos, Havice, Hertzberg, Honda, Keeley, Knox, Kuehl, Kuykendall, Lempert, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Murray, Napolitano, Ortiz, Pacheco, Papan, Perata, Scott, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Wright, Bustamante
NOES: Ackerman, Alby, Battin, Baugh, Bowler, Brewer, Campbell, Goldsmith, Granlund, House, Kaloogian, Leach, Leonard, McClintock, Morrow, Olberg, Oller, Poochigian, Prenter, Pringle, Takasugi, Woods
NOT VOTING: Baldwin, Figueroa, Floyd, Frusetta, Margett,

□

Richter, Runner, Shelley

TSM:cm 8/28/97 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
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EXHIBIT H

April 10, 2009

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Howard Gest
David W. Burhenn & Gest, LLP
624 S. Grand Ave., Suite 2200
Los Angeles, CA 90017

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Parts 4C2a., 4C2b, 4E & 4Fc3
County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downy, Monterey Park, Signal Hill, Co-claimants

Dear Kaye and Mr. Gest:

The draft staff analysis of these test claims is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Friday, May 1, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Friday, May 29, 2009,** at 10:30 a.m., 915 L Street, Redwood Room, Sacramento, California. The final staff analysis will be issued on or about May 15, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-8221 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Parts 4C2a., 4C2b, 4E & 4Fc3

Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downy, Monterey Park, Signal Hill, Co-claimants

On Remand from the Los Angeles County Superior Court
(Consolidated case nos. BS089769 and BS089785)
County of Los Angeles et al. v. Commission on State Mandates (2007) 150 Cal.App.4th 898

EXECUTIVE SUMMARY

The consolidated test claim, filed by the County of Los Angeles and several cities, allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claims because the claimants have fee authority (under Cal. Const. article XI, § 7, & Pub. Res. Code, § 40059) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in the permit (in parts 4C2a, 4C2b, 4E & 4Fc3).

STAFF ANALYSIS

Co-Claimants[1]

County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downy, Monterey Park, Signal Hill

Chronology

9/2/03	Test claim 03-TC-04 (*Transit Trash Receptacles*) filed by County of Los Angeles
9/26/03	Test claim 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) filed by County of Los Angeles
9/30/03	Test Claim 03-TC-20 (*Waste Discharge Requirements*) filed by the cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village
9/30/03	Test Claim 03-TC-21 (*Storm Water Pollution Requirements*) filed by the cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina
10/15/03	Executive Director returns test claims to claimants due to lack of Commission jurisdiction (Govt. Code, § 17516)
11/17/03	Claimant County of Los Angeles appeals Executive Director's decision returning test claims 03-TC-04 and 03-TC-19
11/18/03	Claimant cities appeal Executive Director's decision to return test claim 03-TC-21
12/12/03	Claimant cities appeal Executive Director's decision to return test claim 03-TC-20
3/25/04	Commission upholds staff's decision to return test claims and denied appeal
4/28/04	Claimants file petitions for writ of mandate and complaint for declaratory and injunctive relief in superior court
5/9/05	Trial court rules that Government Code section 17516 is unconstitutional insofar as it exempts state and regional water board orders from the definition of "executive order"
6/17/05	State appeals trial court decision
5/10/07	Second District Court of Appeals upholds trial court decision and remands case back to the Commission (*County of Los Angeles et al. v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
7/27/07	Commission staff invites claimants to re-file test claims

[1] In this analysis, co-claimants, claimants and permittees are used interchangeably to mean both the County of Los Angeles and the city claimants. As used in this analysis and in the permit, the permittees are the County of Los Angeles, the flood control district, and the 84 cities that are designated in the permit.

9/27/07	Commission adopts order to set aside order denying appeal of Executive Director's decision to return original test claims
10/2/07	City claimants re-file test claim 03-TC-21 *Storm Water Pollution*
10/18/07	County of Los Angeles re-files test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities*)
11/28/07	City claimants re-file test claim 03-TC-20 *Waste Discharge Requirements*
10/31/07	State Water Resources Control Board (State Water Board) requests extension of time to file comments on all four test claims
11/19/07	State Board requests extension of time to file comments on all four test claims
11/27/07	Commission staff grants extension of time to file comments
12/17/07	State Board requests extension of time to file comments on all four test claims
1/22/08	Claimant cities clarify the parts of the permit being pled under claim 03-TC-21
3/20/08	State Board requests extension of time to file comments on all four test claims
03/28/08	Commission staff grants extension of time to file comments
3/27/08	Department of Finance files comments on all four test claims
4/18/08	State Water Board files comments on all four test claims
5/11/08	City claimants request extension of time to file rebuttal comments
6/18/08	County claimant requests extension of time to file rebuttal comments
6/19/08	City claimants request extension of time to file rebuttal comments
6/23/08	County claimants submit rebuttal comments on all four test claims
6/25/08	City claimants submit rebuttal comments on all four test claims
7/30/08	City claimants re-file test claim 03-TC-21 and rename it *Waste Discharge Requirements.* Claimant representative files authorizations for city claimants
9/29/08	Commission staff requests clarification from city claimants on withdrawal of parts of test claim 03-TC-21
11/13/08	City claimants file application to withdraw parts 1, 2, 4C2c; 4F5a, 4F5b, and 4F6 from test claim 03-TC-21
11/18/08	Commission staff accepts claimant application to withdraw parts of test claim 03-TC-21
12/10/08	Commission staff consolidates all four test claims and renames the consolidated claim *Municipal Storm Water and Urban Runoff Discharges*
1/30/09	Commission dismisses permit parts 1, 2, 4C2c; 4F5a, 4F5b, and 4F6 from test claim 03-TC-21 pursuant to section 1183.08 of the Commission's regulations
4/10/09	Commission staff issues draft staff analysis

Background

The claimants allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board (LA Regional Board), a state agency.

History of the test claims

The test claims were filed in September 2003,[2] by the County of Los Angeles and several cities within it (the permit covers the Los Angeles County Flood Control District and 84 cities in Los Angeles County, all except Long Beach). The Commission originally refused jurisdiction over the permits based on Government Code section 17516's definition of "executive order" that excludes permits issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (Regional Boards). After litigation, the Second District Court of Appeal held that the exclusion of permits and orders of the State and Regional Water Boards from the definition of "executive order" is unconstitutional. The court issued a writ commanding the Commission to set aside the decision "affirming your Executive Director's rejection of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21" and to fully consider those claims.[3]

The County of Los Angeles and the cities re-filed their claims in October and November 2007. The claims were consolidated by the Executive Director in December 2008. If the Commission were to find that the claims are reimbursable, the reimbursement period would be as though the claims were filed in September 2003, i.e., beginning July 1, 2002.[4]

Before discussing the specifics of the permit, an overview of municipal stormwater pollution puts the permit in context.

Municipal stormwater

One of the main objectives of the permit is "to assure that stormwater discharges from the MS4 [Municipal Separate Storm Sewer Systems][5] shall neither cause nor contribute to the exceedance

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[2] Originally, test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities)* were filed by the County of Los Angeles in September 2003. Test claim 03-TC-21 (*Stormwater Pollution Requirements*) was filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina on September 30, 2003. Test claim 03-TC-20 (*Waste Discharge Requirements*) was filed by Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village on September 30, 2003.

[3] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898.

[4] Government Code section 17557, subdivision (e).

[5] Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction

of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-stormwater to the MS4 has been effectively prohibited." (Permit, p. 13.)

Stormwater runoff flows untreated from urban streets directly into streams, lakes and the ocean. To illustrate the effect of stormwater[6] on water pollution, the Ninth Circuit Court of Appeal has stated the following:

> Storm water runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources." [Citation omitted.] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States. [Citation omitted.] In 1985, three-quarters of the States cited urban storm water runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment. Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters. Among the sources of storm water contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[7]

Because of the stormwater pollution problems described by the Ninth Circuit above, California and the federal government regulate stormwater runoff as described below.

California law

The California Supreme Court summarized the state statutory scheme and regulatory agencies applicable to this test claim as follows:

> In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat. Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State

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over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (40 C.F.R. § 122.26 (b)(8).)

[6] Storm water means "storm water runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.26 (b)(13).)

[7] *Environmental Defense Center, Inc. v. U.S. E.P.A.* (2003) 344 F.3d 832, 840-841.

> Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).
>
> Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240).[8]

Much of what the Regional Board does, especially as pertaining to permits like the one in this claim, is based in federal law as described below.

Federal law

The Federal Clean Water Act (CWA) was amended in 1972 to implement a permitting system for all discharges of pollutants[9] from point sources[10] to waters of the United States, since discharges of pollutants are illegal except under a permit.[11] The permits, issued under the national pollutant discharge elimination system, are called NPDES permits. Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations[12] are not "less stringent" than those set out in the CWA (33 USCA 1370). The California Supreme Court described NPDES permits as follows:

> Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent

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[8] *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.

[9] According to the federal regulations, "Discharge of a pollutant" means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 C.F.R. § 122.2.)

[10] A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[11] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[12] *Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean. (40 C.F.R. § 122.2.)

> limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)[13]

In the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13370 et seq.), the Legislature found that the state should implement the federal law in order to avoid direct regulation by the federal government. The Legislature requires the permit program to be consistent with federal law, and charges the State and Regional Water Boards with implementing the federal program (Wat. Code, §§ 13372 & 13370). The State Water Resources Control Board (State Board) incorporates the regulations from the U.S. EPA for implementing the federal permit program, so both the Clean Water Act and U.S. EPA regulations apply to California's permit program (Cal.Code Regs., tit. 23, § 2235.2).

When a regional board adopts an NPDES permit, it must adopt as stringent a permit as U.S. EPA would have (federal Clean Water Act, § 402 (b)). As the California Supreme Court stated:

> The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not " *less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.[14]

Actions that dischargers must implement as prescribed in permits are commonly called "best management practices" or BMPs.[15]

Stormwater was not regulated by U.S. EPA in 1973 because of the difficulty of doing so. This exemption from regulation was overturned in *Natural Resources Defense Council v. Costle* (1977) 568 F.2d 1369, which ordered U.S. EPA to require NPDES permits for stormwater runoff. By 1987, U.S. EPA still had not adopted regulations to implement a permitting system for stormwater runoff. The Ninth Circuit Court of Appeals explained the next step as follows:

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[13] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 621. Actually, State and regional board permits allowing discharges into state waters are called "waste discharge requirements" (Wat. Code, § 13263).

[14] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 627-628.

[15] Best management practices, or BMPs, means "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 CFR § 122.2.)

> In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a two-phase overall program of stormwater regulation.[16]

NPDES permits are required for "A discharge from a municipal separate storm sewer system serving a population of 250,000 or more."[17] The federal Clean Water Act specifies the following criteria for municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.[18]

In 1990, U.S. EPA adopted regulations to implement Clean Water Act section 402(p), defining which entities need to apply for permits and the information to include in the permit application. The permit application must propose management programs that the permitting authority will consider in adopting the permit. The management programs must include the following:

> [A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate.[19]

General state-wide permits

In addition to the regional stormwater permit at issue in this claim, the State Board has issued two general statewide permits,[20] as described in the permit as follows:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater

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[16] *Environmental Defense Center, Inc. v. U.S. E.P.A., supra,* 344 F.3d 832, 841-842.

[17] 33 USCA 1342 (p)(2)(C).

[18] 33 USCA 1342 (p)(3)(B).

[19] 40 Code of Federal Regulations section 122.26 (d)(2)(iv).

[20] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA within a geographical area." (40 CFR § 122.2.)

> from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. ... Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations. (Permit, p. 11.)

The State Board has statutory fee authority to conduct inspections to enforce the general statewide permits.[21] The statewide permits are discussed in further detail in the analysis.

The Los Angeles Regional Board permit (Order No. 01-182, Permit CAS004001)

To obtain the permit, the County of Los Angeles, on behalf of all permittees, submitted on January 31, 2001 a Report of Waste Discharge , which constitutes a permit application, and a Stormwater Quality Management Program, which constituted the permittees' proposal for best management practices that would be required in the permit.[22]

The permit states that its objective is: "to protect the beneficial uses of receiving waters in Los Angeles County."[23] The permit was upheld by the Second District Court of Appeal in 2006, which described it as follows:

> The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees.[24]

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[21] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii).

[22] State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

[23] Permit page 13. The permit also says: "This permit is intended to develop, achieve, and implement a timely comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the US subject to the Permittees' jurisdiction."

[24] *County of Los Angeles v. California State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 990.

After finding that "the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems)" and that the discharges were the subject of regional board permits in 1990 and 1996, the regional board found that the storm drain systems in the county discharged a host of specified pollutants into local waters. The permit summed up by stating: "Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region."[25]

The permit also specifies prohibited and allowable discharges, receiving water limitations, the implementation of the Storm Water Quality Management Program "requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible."[26] As the court described the permit:

> In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-stormwater discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-stormwater emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; "uncontaminated ground water infiltrations" ... and waters from emergency fire-fighting flows.[27]

There is also a list of permissible discharges that are incidental to urban activity, as specified (e.g., landscape irrigation runoff, etc.). In the part on receiving water limitations, the permit prohibits discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans. Storm or non-stormwater discharges from storm sewer systems which constitute a nuisance are also prohibited.[28]

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[25] *County of Los Angeles v. California State Water Resources Control Board*, *supra,* 143 Cal.App.4th 985, 990

[26] *County of Los Angeles v. California State Water Resources Control Board,, supra,* 143 Cal.App.4th 985, 994.

[27] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985, 991-992.

[28] "'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." *Id.* at 992.

To comply with the receiving water limitations, the permittees must implement control measures in accordance with the permit.[29]

The permittees are also to implement the Storm Water Quality Management Program (SQMP) that meets the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduces the pollutants in stormwaters to the maximum extent possible with the use of best management practices. And the permittees must revise the SQMP to comply with specified total maximum daily load (TMDL) allocations.[30] If a permittee modified the countywide SQMP, it must implement a local management program. Each permittee is required by November 1, 2002, to adopt a stormwater and urban runoff ordinance. By December 2, 2002, each permittee must certify that it had the legal authority to comply with the permit through adoption of ordinances or municipal code modifications.[31]

The permit gives the County of Los Angeles additional responsibilities as principal permittee, such as coordination of the SQMP and convening watershed management committees. In addition, the permit contains a development construction program under which permittees are to implement programs to control runoff from construction sites, with additional requirements imposed on sites one acre or larger, and more on those five acres or larger. Permittees are to eliminate all illicit connections and discharges to the storm drain system, and must document, track and report all cases.

In this claim, however, claimants only allege activities in parts 4C2a, 4C2b, 4E and 4F5c3 of the permit. These parts concern placement and maintenance of trash receptacles at transit stops, and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites, as quoted below.

Co-Claimants' Position

Co-claimants assert that parts 4C2a, 4C2b, 4E and 4F5c3 of the LA Regional Board's permit constitute a reimbursable state-mandate within the meaning of article XIII B, section 6, and Government Code section 17514.

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[29] If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee must immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that describes the best management practices currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes these changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board. *Id.* at 993.

[30] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

[31] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

Transit Trash Receptacles: Los Angeles County ("County") filed test claims 03-TC-04 and 03-TC-19. In 03-TC-04, *Transit Trash Receptacles*, filed by the County, and 03-TC-20, *Waste Discharge Requirements,* filed by the cities, the claimants allege the following activities as stated in the permit part 4F5c3 (Part 4, Special Provisions, F. Public Agency Activities Program, 5. Storm Drain Operation and Management):

> c. Permittees not subject to a trash TMDL[32] shall: [¶]...[¶]
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Claimant County asserts that this permit condition requires the following:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Inspection of Industrial and Commercial Facilities: In claim 03-TC-19, *Inspection of Industrial/ Commercial Facilities*, filed by the County, and 03-TC-20, *Waste Discharge Requirements,* filed by the cities, claimants allege the following activities as stated in the permit parts 4C2a and 4C2b (Part 4, Special Provisions, C. Industrial/Commercial Facilities Control Program):

> 2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:
>
> a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections-: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP [Storm Water Quality Management Program]. At each restaurant, inspectors shall verify that the restaurant operator:

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[32] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

- has received educational materials on stormwater pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO [Retail Gasoline Outlet] and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices.

b) Phase I Facilities[33]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:[34] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that

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[33] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[34] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap,*

there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[35] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[36] to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Inspection of Construction Sites: In claims 03-TC-20 and 03-TC-21, *Waste Discharge Requirements*, the cities allege the activities in permit parts 4C2a, 4C2b, and 4F5c3, as listed in the test claims cited above, in addition to the following activities as stated in part 4E of the permit (Part 4, Special Provisions, E. Development Construction Program):

- For construction sites one acre or greater, each Permittee shall comply with all conditions in section E1 above and shall: …

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auto dismantling)...; Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations …; *Primary Metals.*"

[35] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

[36] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. … The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]…[¶] (x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;" [40 CFR §122.26 (b)(14), Emphasis added.]

(b) Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP [Storm Water Pollution Prevention Plan] shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Part 4E3 of the Order provides, in relevant part, as follows:

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E1 and E2 and shall:

a) require, prior to issuing a grading permit for all projects requiring coverage under the state general permit,[37] proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit][38] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

Both county and city claimants allege more than $1000 in costs in each test claim to comply with the permit activities.

State Agency Positions

Department of Finance: Finance, in comments filed March 27, 2008 on all four test claims, alleges that the permit does not impose a reimbursable mandate within the meaning of section 6 of article XIII B of the California Constitution because "The permit conditions imposed on the local agencies are required by federal laws" so they are not reimbursable pursuant to Government Code section 17556, subdivision (c). Finance asserts that "requirements of the permit are federally required to comply with the NPDES [National Pollutant Discharge Elimination System] program … [and] is enforceable under the federal CWA [Clean Water Act]."

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[37] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA [Clean Water Act] within a geographical area." (40 CFR § 122.2.) California has issued one general permit for construction activity and one for industrial activity.

[38] See page 11, paragraph 22 of the permit for a description of the statewide permits.

Finance also argues that the claimants had discretion over the activities and conditions to include in the permit application. The permittees submitted a Storm Water Quality Management Program prevention report with their applications, in which they had the option to use "best management practices" to identify alternative practices to reduce water pollution. Since the local agencies prescribed the activities to be included in the permit, the requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Finance cites the *Kern* case,[39] which held that if participation in the underlying program is voluntary, the resulting new consequential requirements are not reimbursable mandates.

Finally, Finance states that some local agencies are using fees for funding the claimed permit activities, so should the Commission find that the permit constitutes a reimbursable mandate, the fees should be considered as offsetting revenues.

State Water Resources Control Board: The State Board filed comments on the four test claims on April 18, 2008, noting that the federal CWA mandates that municipalities apply for and receive permits regulating discharges of pollutants from their municipal separate storm sewer system (MS4) to waters of the United States. "Pursuant to federal regulations, the Permit contains numerous requirements for the cities and County to take actions to reduce the flow of pollutants into the rivers and the Bay, known as Best Management practices (BMPs)."

The State Board asserts that the permit is mandated on the local governments by federal law, and applies to many dischargers of stormwater, both public and private, so it is not unique to local governments. The federal mandate requires that the permit be issued to the local governments, and the specific requirements challenged are consistent with the minimum requirements of federal law. According to the State Board, even if the permit were interpreted as going beyond federal law, any additional state requirements are de minimis. And the costs are not subject to reimbursement because the programs were proposed by the cities and County themselves, and because they have the ability to fund these requirements through charges and fees and are not required to raise taxes.

In comments filed with the State Board on April 10, 2008 (attached to the State Board comments on the test claim), the United States Environmental Protection Agency (U.S. EPA) asserts that the permit conditions reduce pollutants to the "maximum extent practicable." The transit trash receptacle and inspection programs, according to U.S. EPA, are founded in section 402 (p) of the Clean Water Act, and are well within the scope of the federal regulations (40 CFR § 122.26 (d)(2)(iv)(A)(3)).

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[39] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[40] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[41] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[42] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[43]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[44]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[45] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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[40] Article XIII B, section 6, subdivision (a), provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

[42] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[43] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[44] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[45] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

legislation.[46] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[47]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[48]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[49] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[50]

The permit provisions in the consolidated test claim are discussed separately to determine whether they are reimbursable state-mandates.

Issue 1: Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) subject to article XIII B, section 6, of the California Constitution?

The issues discussed here are whether the permit provisions are an executive order within the meaning of Government Code section 17516, whether they are discretionary, and whether they constitute a federal mandate.

A. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) an executive order within the meaning of Government Code section 17516?

The Commission has jurisdiction over test claims involving statutes and executive orders as defined by Government Code section 17516, which defines an "executive order" for purposes of state mandates, as "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government."[51]

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[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[48] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[49] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[50] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[51] Section 17516 also states: ""Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code." The Second District Court of Appeal has held that this statutory language is unconstitutional. *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 904.

The LA Regional Water Board is a state agency.[52] The permit it issued is both a plan for reducing water pollution, and contains requirements for local agencies toward that end. Therefore, staff finds that the permit is an executive order within the meaning of article XIII B, section 6 and Government Code section 17516.

B. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) the result of claimants' discretion?

The permit provisions require placing and maintaining trash receptacles at transit stops and inspecting specified facilities and construction sites.

The Department of Finance, in comments submitted March 27, 2008, asserts that the claimants had discretion over what activities and conditions to include in the permit application, so that any resulting costs are downstream of the claimant's decision to include those provisions in the permit. Thus, Finance argues that the costs are not mandated by the state.

Similarly, the State Board, in its April 18, 2008 comments, cites the Stormwater Quality Management Program (SQMP) submitted by the county that constituted the claimants' proposal for the BMPs required under the permit. The State Water Board refers to (on p. 28 of the SQMP) the county's proposal to "collect trash along open channels and encourage voluntary trash collection in natural stream channels." The State Water Board further states that the SQMP (pp. 22-23) contains the municipalities' proposal for (1) site visits to industrial and commercial facilities, including automotive service businesses and restaurants to verify evidence of BMP implementation, and (2) maintaining a database of automotive and food service facilities including whether they have NPDES stormwater permit coverage.

Claimant County of Los Angeles, in its June 23, 2008 rebuttal comments (pp.3-4), stated whether or not most jurisdictions place transit receptacles at transit stops is not relevant to the existence of a state mandate because Government Code section 17565 provides that if a local agency has been incurring costs for activities that are subsequently mandated by the state, the activities are still subject to reimbursement. The County also states that the permit application only proposed an industrial/commercial *educational* site visit program, not an inspection program. The claimants allege that the inspection program was previously the state's duty, but that the permit shifted it to the local agencies.

Claimant cities in their June 28, 2008 comments also construe the SQMP proposal as involving only educational site visits, which they characterize as very different from compliance inspections. And cities assert that "nowhere in the Report of Waste Discharge do the applicants propose compliance inspections of facilities that hold general industrial and general construction stormwater permits for compliance with those permits." According to the cities, the city and county objected orally and in writing to the inspection permit provision.

In determining whether the permit provisions at issue are a downstream activity resulting from the discretionary decision by the local agencies, the following rule stated by the Supreme Court in the *Kern High School Dist.* case applies:

> [A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—

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[52] Water Code section 13200 et seq.

> even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.[53]

Staff finds that the permit activities at issue were not undertaken at the option or discretion of the claimants. The claimants were required by state and federal law to submit the NPDES permit application in the form of a Report of Waste Discharge and SQMP. Submitting them was not discretionary. According to the record,[54] the county on behalf of all claimants, submitted on January 31, 2001 a Report of Waste Discharge (ROWD), which constitutes a permit application, and a SQMP, which constitutes the claimants' proposal for best management practices that would be required in the permit.

The duty to apply for an NPDES permit is not within the claimants' discretion. According to the federal regulation:

> a) *Duty to apply.* (1) Any person[55] who discharges or proposes to discharge pollutants ... and who does not have an effective permit ... must submit a complete application to the Director in accordance with this section and part 124 of this chapter.[56]

Moreover, the ROWD (tantamount to an NPDES permit application) is required by California law, as follows: "Any person discharging pollutants or proposing to discharge pollutants to the navigable water of the United States within the jurisdiction of this state ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260 ..."[57] Thus, submitting the ROWD is not discretionary.

Federal regulations also anticipate the filing of an application for a stormwater permit, which contains the information in the SQMP. The regulation states in part:

> (d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application.[58]

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[53] *Kern High School Dist., supra,* 30 Cal.4th 727, 742.

[54] State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

[55] *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof (40 CFR § 122.2).

[56] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[57] Water Code section 13376.

[58] 40 Code of Federal Regulations, section 122.26 (d).

According to the permit, section 122.26, subdivision (d), of the federal regulations contains the essential components of the SQMP (p. 32), which is an enforceable element of the permit (p. 45). Section 122.26, subdivision (d)(2)(iv)(C), in the federal regulations is interpreted in the permit to "require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4." (p. 35.) In short, the claimants were required by law to submit the ROWD and SQMP, with specified contents.

Because the claimants do not voluntarily participate in the NPDES program, staff finds that the *Kern High School Dist.* case does not apply to the permit, the contents of which were not the result of the claimants' discretion.

C. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b)?

The next issue is whether the parts of the permit at issue are federally mandated, as asserted by the State Board and the Department of Finance (whose comments are detailed below). If so, the parts of the permit would not constitute a state mandate.

In *County of Los Angeles v. Commission on State Mandates,* the court stated as follows regarding this permit: "We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances."[59] But after summarizing the arguments on both sides, the court declined to decide the issue, stating: "Resolution of the federal or state nature of these [permit] obligations therefore is premature and, thus, not properly before this court."[60] The court agreed with the Commission (calling it an "inescapable conclusion") that the federal versus state issues in the test claims must be addressed in the first instance by the Commission.[61]

The California Supreme Court has stated that "article XIII B, section 6, and the implementing statutes ... by their terms, provide for reimbursement only of *state*- mandated costs, not *federally* mandated costs."[62]

When analyzing federal law in the context of a test claim under article XII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[63] When federal law imposes a mandate on the state, however,

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[59] *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 914.

[60] *Id.* at page 918.

[61] *Id.* at page 917. The court cited *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal. 3d 830, 837, in support.

[62] *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 879-880, emphasis in original.

[63] *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593, citing *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 76; see also, Government Code sections 17513 and 17556, subdivision (c).

and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[64]

Similarly, Government Code section 17556, subdivision (c), states that the Commission shall not find "costs mandated by the state" if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *Long Beach Unified School Dist. v. State of California*,[65] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[66] The *Long Beach* court stated that unlike the federal law at issue, "the executive Order and guidelines require specific actions ... [that were] required acts. These requirements constitute a higher level of service."[67]

Staff finds that the permit activities are not federally mandated because federal law does not require the permittees to install and maintain trash receptacles at transit stops, or require inspections of restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships. As to inspecting phase I facilities or construction sites, the federal regulatory scheme authorizes states to perform the inspections under a general statewide permit, making it possible to avoid imposing a mandate on the local agencies to do so.

California in the NPDES program: Under the federal statutory scheme, a stormwater permit may be administered by the Administrator of U.S. EPA or by a state-designated agency, but states are not required to have an NPDES program. Subdivision (b) of section 1324 of the federal Clean Water Act, the section that describes the NPDES program (and which, in subdivision (p), describes the requirements for the municipal stormwater system permits) states in part:

> At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator [of U.S. EPA] a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. [Emphasis added.]

And the federal stormwater statute states that the permits:

> [S]hall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and

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[64] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1594.

[65] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[66] *Id.* at page 173.

[67] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)(iii). [Emphasis added].)

The federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits. According to section 1342 (p) quoted above, the Administrator of U.S. EPA would do so if California had no program. The California Legislature, when adopting the NPDES program[68] to comply with the Federal Water Pollution Control Act of 1972 stated the following findings and declaration in Water Code section 13370:

(a) The Federal Water Pollution Control Act [citation omitted] as amended, provides for permit systems to regulate the discharge of pollutants ... to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government, of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Act for the purpose of carrying out its responsibilities under this program.

Based on this Water Code section 13370, in which California voluntarily adopts the permitting program, and on the federal statutes quoted above that authorize but do not expressly require states to have this program, the state has freely chosen[69] to effect the stormwater permit program.

Any further discussion in this analysis of federal "requirements" should be construed in the context of California's choice to participate in the federal regulatory NPDES program.

The permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) are discussed below in context of the following federal law governing stormwater permits: Clean Water Act section 402(p) (33 USCA 1342 (p)(3)(B)) and Code of Federal Regulations, title 40, section 122.26.

Placing and maintaining trash receptacles at transit stops (part 4F5c3): This part of the permit states:

c. Permittees not subject to a trash TMDL[70] shall: [¶]...[¶]

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[68] Water Code section 13374 states: "The term 'waste discharge requirements' as referred to in this division is the equivalent of the term 'permits' as used in the Federal water Pollution Control Act, as amended."

[69] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[70] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The comments of the State Water Board and U.S. EPA assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations. The U.S. EPA submitted a letter to the State Water Board regarding the permit conditions in April 2008, which the State Water Board attached to its comments. Regarding the trash receptacles, the letter states:

> [M]aintaining trash receptacles at all public transit stops is well within the scope of these [Federal] regulations. Among the minimum controls required to reduce pollutants from runoff from commercial and residential areas are practices for "operating and maintaining public streets, roads, and highways … [40 CFR] § 122.26(d)(2)(iv)(A)(3).[71]

U.S. EPA also cites EPA's national menu of BMPs for stormwater management programs, "which recommends a number of BMPs to reduce trash discharges." Among the recommendations is 'improved infrastructure' for trash management when necessary, which includes the placement of trash receptacles at appropriate locations based on expected need."[72]

The State Water Board, in comments filed April 18, 2008, states that part 4F of the permit (regarding trash receptacles) concerns "the municipalities' own activities, as opposed to its regulation of discharges into its system by others." The State Water Board cites the same section 122.26 regulation as U.S. EPA, and states that the requirements "reflect the federal requirement to reduce pollutants from the MS4 to the maximum extent practicable. It is federal laws that animates the requirement and federal law that mandates specificity in describing the BMPs." The State Water Board alleges that two appellate courts[73] have determined that the permit provisions constitute the "maximum extent practicable" standard, which is the minimum requirement under federal law.

The Department of Finance also asserts that the permit requirements are a federal mandate.

The County of Los Angeles, in comments filed June 23, 2008, states that "Nothing in the federal Clean Water Act requires the County to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation." The county states that the U.S.EPA's citation to BMPs for stormwater management programs "may be permitted under federal law … and even encouraged as 'reasonable expectations.' But such requirements are not mandated on the County by federal law." The County admits the existence of "an abundance of

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[71] Letter from Alexis Strauss, Director, Water Division, U.S. EPA, to Tam M. Doduc, Chair, and Dorothy Rice, Executive Director, State Water Resources Control Board, April 10, 2008, page 3.

[72] *Id.* at page 3.

[73] The State Water Board cites: *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377; *County of Los Angeles v. California State Water Resources Control Board* (2006) 148 Cal.App.4th 985.

federal guidance and encouragement to have the County install and maintain trash receptacles at all public transit stops. But these are merely federal suggestions, not mandates."

The city claimants, in comments filed June 25, 2008, also argue that the requirement for transit trash receptacles is not a federal mandate, stating that nothing in the Clean Water Act or the federal regulations requires cities to install trash receptacles at transit stops. City claimants also submit a survey of other municipal stormwater permits, finding that none of those issued by U.S. EPA required installation of trash receptacles at transit stops.[74]

The federal law applicable to this issue is section 402 of the Clean Water Act, which states:

> Permits for discharges from municipal storm sewers--
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> (i) may be issued on a system- or jurisdiction-wide basis;
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> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
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> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator[75] or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)).

The applicable federal regulations state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator[76] of a discharge[77] from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is

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[74] See Exhibit __, page __.

[75] Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative. (40 CFR § 122.2.)

[76] "*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program." (40 CFR § 122.2)

[77] "*Discharge* when used without qualification means the "discharge of a pollutant. *Discharge of a pollutant* means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 CFR § 122.2)

designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures[78] to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: [¶]...[¶]

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; (40 CFR § 122.26(d)(2)(iv)(A)(3)) [Emphasis added.]

Staff finds that the plain language of the federal statute (33 USCA § 1342 (p)(3)(B)) and regulation (40 CFR § 122.26 (d)(2)(iv)(A)(3)) does not require the permitees to install and maintain trash receptacles at transit stops.

Specifically, the state freely chose[79] to impose the transit trash receptacle requirement on the permittees because neither the federal statute nor the regulations require it. Nor do they require

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[78] Minimum control measures are defined in 40 CFR § 122.34 to include: 1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination. (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment.; (6) Pollution prevention/good housekeeping for municipal operations.

[79] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

the permittees to implement "practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems"[80] although the regulation requires a description of practices for doing so. Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that "mandate costs that exceed the mandate in the federal law or regulation."[81]

In *Long Beach Unified School Dist. v. State of California*,[82] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[83] The *Long Beach Unified School District* court stated:

> Where courts have suggested that certain steps and approaches may be helpful [in meeting constitutional and case law requirements] the executive Order and guidelines require *specific actions*. ...[T]he point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service.[84] [Emphasis added.]

The reasoning of *Long Beach Unified School Dist.* is applicable to this claim. Although "operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems..."[85] is a federal requirement on municipalities, the permit requirement to place trash receptacles at all transit stops and maintain them is an activity, like in *Long Beach Unified School Dist.*, that is a *specified action* going beyond federal law.[86]

Neither of the cases cited by the State Water Board demonstrate that placing trash receptacles at transit stops is required by federal law. In *City of Rancho Cucamonga v. Regional Water Quality Control Board –Santa Ana Region*[87] the court upheld a stormwater permit similar to the one at issue in this claim. The City of Rancho Cucamonga challenged the permit on a variety of grounds, including that it exceeded the federal requirements for stormwater dischargers to

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[80] 40 CFR § 122.26(d)(2)(iv)(A)(3).

[81] Government Code section 17556, subdivision (c).

[82] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[83] *Id.* at page 173.

[84] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

[85] 40 Code of Federal Regulations, section 122.26 (d)(2)(iv)(A)(3).

[86] *Ibid.*

[87] *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region, supra,* 135 Cal.App.4th 1377.

"reduce the discharge of pollutants to the maximum extent practicable"[88] and that it was overly prescriptive. The court concluded that the permit did not exceed the maximum extent practicable standard and upheld the permit in all respects. There is no indication in that case, however, that the permit at issue required trash receptacles at transit stops. Similarly, in a suit regarding the same permit at issue in this case, the *Los Angeles County*[89] court dismissed various challenges to the permit, but made no mention of the permit's transit trash receptacle provision.

Therefore, staff finds that placing and maintaining trash receptacles at all transit stops within the jurisdiction of each permittee, as specified, is not a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b).

Part 4F5c3 of the permit states as follows:

> c. Permittees not subject to a trash TMDL shall: (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Based on the mandatory language (i.e., "shall") in part 4F5c3 of the permit, staff finds it is a state mandate for the claimants that are not subject to a trash TMDL to place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003, and to maintain all trash receptacles as necessary.

Inspecting commercial facilities (part 4C2a): Section 4C2a of the permit requires inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships as follows:

> 2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:
>
> (a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with Statw law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

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[88] 33 USCA section 1342 (p)(3(B)(iii).

[89] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

- has received educational materials on stormwater pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in

compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices. [¶]...[¶]

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The state asserts that these inspection requirements in permit part 4C2a are a federal mandate.

In comments filed April 18, 2008, the State Water Board quotes from the MS4 Program Evaluation Guide issued by U.S. EPA, asserting that it requires inspections of businesses. The State Water Board also states:

> The federal regulations also specifically require local stormwater agencies, as part of their responsibilities under NPDES permits, to conduct inspections. [citing 40 CFR § 122.26(d)(2)(iv)(C).] Throughout the federal law, there are numerous requirements for entities that discharge pollutants to waters of the United States to monitor and inspect their facilities and their effluent. [citing Clean Water Act §402(b)(2)(B); 40 CFR § 122.44(i)).] The claimants are the dischargers of pollutants into surface waters; as part of their permit allowing these dischargers they must conduct inspections.

Similarly, the April 10, 2008 letter from U.S. EPA to the State Water Board and attached to the Board's comments submitted April 18, 2008, states:

> A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practicable and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants and that there are

no non-stormwater discharges or illicit connections. Thus these programs are founded in both 402 (p)(3)(B)(ii) and (iii) and are well within the scope of 40 CFR § 122.26(d)(2)(iv)(A) and (B).

The County of Los Angeles, in its June 23, 2008 rebuttal comments, asserts that federal law requires prohibiting non-stormwater discharges into the storm sewers, and reducing the discharge of pollutants in stormwater to the maximum extent practicable (33 USC 1342(p)) but not inspecting restaurants, automotive service facilities, retail gas outlets, or automotive dealerships. Only municipal landfills, hazardous waste treatment, disposal and recovery facilities and related facilities are required to be inspected (40 CFR § 122.26(d)(2)(iv)(C)).

In comments received June 25, 2008, the city claimants argue that the LA Regional Board freely chose to impose the permit requirements on the permittees, and makes the following arguments: (1) The inspection obligations were not contained in two prior permits issued to the cities and the County—thus, the requirements are not a federal mandate; (2) No federal statute or regulation requires the cities or the County to inspect restaurants, automotive service facilities, retail gas outlets, automotive dealerships or facilities that hold general industrial permits; (3) Stormwater NPDES permits issued by the U.S. EPA do not contain the requirement to inspect restaurants, auto service facilities, retail gas outlets and automotive dealerships, or require the extensive inspection of facilities that hold general industrial stormwater permits as contained in the Order [i.e. permit]; (4) The Administrator of U.S. EPA, as well as the head of the water division for U.S. EPA Region IX, have specifically stated that a municipality has an obligation under a stormwater permit like the Order only to assure compliance with local ordinances; the state responsibility to inspect for compliance with state law, including state-issued permits;

The city claimants dispute the State Water Board's contention that the court in *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377 held that federal law required inspections like those at issue in the permit. The cities quote part of the *City of Rancho Cucamonga* case with the following emphasis:

> Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. *But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.* The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

The federal law applicable to this issue is section 402 of the Clean Water Act, which states that municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)).

The applicable federal regulations (40 CFR § 122.26 (d)(2)(iv)(B)&(C)) state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]
>
> (2) Part 2 of the application shall consist of: [¶]...[¶]
>
> (iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]
>
> (B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:
>
> (1) A description of a program, <u>including inspections</u>, to implement and enforce an ordinance, orders or similar means <u>to prevent illicit discharges to the municipal separate storm sewer system</u>; this program description shall address all types of illicit discharges, however the following category of non-stormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States [¶]...[¶]
>
> (C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

> (1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

There is a requirement in subdivision (d)(2)(iv)(B)(1) for implementing and enforcing "an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm system." There is no express requirement in federal law, however, to inspect restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships. Nor does the portion of the MS4 Program Evaluation Guide quoted by the State Water Board contain mandatory language to conduct inspections for these facilities.

In its April 2008 comments, the State Water Board argues that this reading of the regulations is not reasonable, and that U.S. EPA acknowledged that the initial selection by MS4s was only a starting point. In its comments (p. 15), the State Water Board also states:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. … Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.

The State Water Board would have the Commission read requirements into the federal law that is not there. The Commission, however, cannot read a requirement into a statute or regulation that is not on its face or its legislative history.[90]

Based on the plain language of the federal regulations that are silent on the types of facilities at issue in the permit, staff finds that performing inspections at restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships, as specified in the permit, is not a federal mandate.

Moreover, the requirements to inspect the facilities listed in the permit is an activity, as in the *Long Beach Unified School Dist.* case discussed above,[91] that is a specified action going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, the inspections are not federally mandated.

The permit states in part: "Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified …" Based on the mandatory language in part 4C2a of the permit, staff finds that this part is a state mandate on the claimants to perform the inspections at

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[90] *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 219-220. "Rules governing the interpretation of statutes also apply to interpretation of regulations." *Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1037.

[91] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships at the frequency and levels specified in the permit.

Inspecting phase I industrial facilities (part 4C2b): Part 4C2b of the permit regarding phase I industrial facilities requires the following:

> b) Phase I Facilities[92]
>
> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.
>
> Frequency of Inspection
>
> **Facilities in Tier 1 Categories**:[93] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> **Facilities in Tier 2 Categories**:[94] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that

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[92] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[93] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap, auto dismantling)...;* Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations ...; *Primary Metals.*"

[94] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The issue is whether these inspection requirements for phase I industrial facilities is a federal mandate. The governing federal regulation is 40 CFR section 122.26 (d)(2)(iv)(B)&(C), which is cited above. Specifically on point is subpart (C), which states that the proposed management program must include the following:

> (C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:
>
> (1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

The phase I facilities in the permit are defined to include.

> (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities. (Permit, p. 62)

And the Tier 1 facilities in the permit include municipal landfills, hazardous waste treatment, disposal and recovery facilities and facilities subject to SARA Title III (see permit attachment B, pp. B-1 to B-2). Thus, there is a federal requirement to inspect these phase I and tier 1 facilities in the permit. The issue is whether this requirement constitutes a federal mandate. Staff finds that it does not.

It is the state that mandates the phase I inspection and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[95]

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[95] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

This is because the federal regulatory scheme provides an alternative means of regulating and inspecting these industrial facilities under the state-enforced, statewide permit, as follows:

> (c) Application requirements for stormwater discharges associated with industrial activity[96] and stormwater discharges associated with small construction activity --
>
> (1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of stormwater which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph. [Emphasis added.]

The state has issued a statewide general industrial permit that is enforced through the regional boards.[97] This, along with the statewide construction permit, is described in the permit itself:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the

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[96] According to 40 CFR § 122.26, (b)(14): "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶](x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;"

[97] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)." See <http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/finalconstpermit.pdf> as of October 23, 2008.

> Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations. (Permit, p. 11, pgh. 22.)

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspections of industrial facilities (specified in part 4C2b of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4C2b of the permit.

In its April 18, 2008 comments (p. 15), the State Water Board asserts:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. ... Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.

Staff disagrees. Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the "owner or operator of the discharge") staff finds that the state has freely chosen[98] to impose these activities on the permittees. Therefore, staff finds that there is no federal mandate on the claimants to perform inspections of phase I facilities as specified in part 4C2b of the permit.

As to whether the permit is a state mandate, part 4C2b contains the following mandatory language:

> b) Phase I Facilities[99]
>
> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the

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[98] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[99] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below. [Emphasis added.]

Frequency of Inspection

Facilities in Tier 1 Categories:[100] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[101] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[102] to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively

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[100] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap, auto dismantling)...;* Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations ...; *Primary Metals.*"

[101] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

[102] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶] (x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;" [40 CFR §122.26 (b)(14), Emphasis added.]

implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Based on this mandatory language to perform the inspections of phase I facilities as specified, staff finds that part 4C2b of the permit is a state-mandate.

Inspecting construction sites (part 4E): Part 4E of the permit contains the following requirements:

- Implement a program to control runoff from construction activity at all construction sites within each permittees jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater, each permittee shall:

- Require the preparation and submittal of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a).
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons (Permit, 4E2b).
- Review the Local SWPPP for compliance with local codes, ordinances, and permits (Permit, 4E2b).
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
  - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
  - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
  - If non-compliance continues the Regional Board shall be notified for further joint enforcement actions (Permit, 4E2b).
- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP (Permit, 4E2c).
- For sites five acres and greater:
  - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a

certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

- Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
- Use an effective system to track grading permits issued by each permittee (Permit, 4E3).

- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements (Permit, 4E4b).
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees (Permit, 4E5).

The applicable federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) on the issue of whether the inspection of construction sites is a federal mandate is as follows:

(d) Application requirements for large[103] and medium[104] municipal separate storm sewer discharges. The operator[105] of a discharge from a large or medium municipal separate storm

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[103] "(4) Large municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or (ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. ..." [40 CFR § 122.26 (b)(4).]

[104] "(7) Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or (ii) Located in the counties listed in appendix I, except municipal

sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include: [¶]...[¶]

(3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ... [Emphasis added.]

The language of the federal regulation indicates a duty to inspect construction sites and enforce control measures as specified in part 4E of the permit. The *Rancho Cucamonga* case cited by the State Board also states that federal law requires NPDES permittees to inspect construction sites.[106]

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separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. ..." [40 CFR § 122.26 (b)(7).]

[105] "*Owner or operator* means the owner or operator of any 'facility or activity' subject to regulation under the NPDES program" (40 CFR § 122.2).

[106] *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region, supra,* 135 Cal.App.4th 1377, 1390.

The issue, however, is whether the federal requirements to inspect construction sites and enforce control measures amounts to a federal mandate. Staff finds that it does not. First, the federal regulations quoted above do not specify the frequency or other specifics of the inspection program as the permit does. These are activities, as in the *Long Beach Unified School Dist.* case discussed above,[107] that are specified actions going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, the inspections of construction sites are not federally mandated.

Moreover, it is the state that mandates the inspections of construction sites and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[108] The federal regulations do not require: (1) a municipality to have a separate permit for construction activity or enforcement; or (2) that the inspections and related activities in part 4E of the permit be conducted by the owner or operator of the discharge. Rather, these activities may be conducted by the state under a state-wide, state-enforced, general permit, as stated in the federal stormwater regulation (40 CFR § 122.26 (c)), which states in part:

> (c) Application requirements for stormwater discharges associated with industrial activity [includes construction activity of five or more acres] and stormwater discharges associated with small construction activity[109] [construction activity from one to less than five acres]--
>
> (1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. [Emphasis added.]

The state has issued a statewide general industrial permit and a statewide general construction permit, both of which are enforced through the regional boards.[110] These are described on page 11 of the permit as quoted above.

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[107] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[108] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[109] According to 40 CFR § 122.26, (b)(15): "Storm water discharge associated with small construction activity means the discharge of storm water from: (i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where: ..."

[110] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspection of construction sites and related activities (in part 4E of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4E of the permit. Therefore, staff finds that the requirement to inspect construction sites in section 4E of the permit is not a federal mandate.

Staff finds that, based on the permit's mandatory language, the following activities in part 4E are state mandates on the permittees within the meaning of article XIII B, section 6:

- Implement a program to control runoff from construction activity at all construction sites within each permittees jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater:

- Require the preparation of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a).
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons (Permit, 4E2b).
- Review the Local SWPPP for compliance with local codes, ordinances, and permits (Permit, 4E2b).
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
  - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
  - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
  - If non-compliance continues the Regional Board shall be notified for further joint enforcement actions (Permit, 4E2b).
- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP (Permit, 4E2c).

Regional Water Quality Control Boards (RWQCBs)." See <http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/finalconstpermit.pdf> as of October 23, 2008.

- For sites five acres and greater:
  - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
  - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
  - Use an effective system to track grading permits issued by each permittee (Permit, 4E3).
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements (Permit, 4E4b).
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees (Permit, 4E5).

One of the requirements in part 4E3c of the permit is to: "Use an effective system to track grading permits issued by each permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required." Staff finds that, based on the plain language of this provision, using an effective system to track grading permits is a state mandate, although use of a database or GIS system is not.

Issue 2: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) impose a new program or higher level of service?

The next issue is whether the permit provisions at issue, i.e., found above to be state-mandated, are a program, and whether they are a new program or higher level of service.

First, courts have defined a "program" for purposes of article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a

law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[111]

The State Water Board, in its April 2008 comments, argues that the NPDES program is not a program because "the NPDES permit program, and the stormwater requirements specifically, are not peculiar to local government. Industrial and construction facilities must also obtain NPDES stormwater permits."

In comments submitted June 25, 2008, the cities call the State Board's argument inapposite, and cite the *Carmel Valley Fire Protection District* case[112] regarding whether the permit constitutes a "program." According to claimant, "[t]he test is not whether the general program applies to both governmental and non-governmental entities. The test is whether the specific executive orders at issue apply to both government and non-governmental entities."

Staff finds that the permit activities constitute a program within the meaning of article XIII B, section 6. The permit activities are limited to local governmental entities. The permit defines the "permittees" as the County of Los Angeles and 84 incorporated cities within the Los Angeles County Flood Control District (Permit, p. 1 & attachment A). The permit lists no private entities as "permittees." Moreover, the permit provides a service to the public by preventing or abating pollution in waterways and beaches in Los Angeles County. (Or as stated on page 13 of the permit: "The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County.") Therefore, staff finds that the permit is a program within the meaning of article XIII B, section 6.

Second, to determine whether the permit is a new program or higher level of service, the permit is compared to the legal requirements in effect immediately before its adoption.[113]

Staff finds that local agencies were not required by state or federal law to place and maintain trash receptacles at transit stops before the permit was adopted. Whether or not most cities or counties do so, as argued by the State Water Board in its April 2008 comments, is not relevant to finding a state-mandated new program or higher level of service because even if they do, Government Code section 17565 states: "If a local agency ... at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency ... for those costs incurred after the operative date of the mandate."

Because the transit trash requirement is newly mandated by the permit, and based on the plain language of part 4F5c3 of the permit, staff finds that it is a new program or higher level of service to place trash receptacles at transit stops and maintain them as specified in the permit.

For the same reason, staff finds that the inspections and enforcement activities at industrial and commercial facilities, including restaurants, automotive service facilities, retail gasoline outlets,

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[111] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[112] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

[113] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

automotive dealerships, and phase I facilities (in parts 4C2a & 4C2b of the permit) as well as inspection and enforcement at construction sites (in part 4E of the permit) are a new program or higher level of service. These were not required activities of the permittees prior to the permit's adoption.

In sum, staff finds that all the permit provisions at issue in this test claim impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Issue 3: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether the permit provisions impose costs mandated by the state,[114] and whether any statutory exceptions listed in Government Code section 17556 apply to the test claims. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 requires reimbursement claims to exceed $1000 to be eligible for reimbursement.

In test claims 03-TC-20 and 03-TC-21, the cities' claimant representative declares (p. 24) that the cities will incur costs estimated to exceed $1000 to implement the permit conditions.

In test claim 03-TC-04, the County of Los Angeles states (p. 18) that the costs in providing the services claimed "far exceed the minimum reimbursement amount of $1000 per annum." In the attached declaration for *Transit Trash Receptacles*, the County declares (pp. 22-23) the following itemization of costs from December 13, 2001 to October 31, 2002:

> (1) Identify all transit stops in the jurisdiction: $19,989.17;
>
> (2) Select proper trash receptacle design, evaluate proper placement, specification and drawing preparation: $38,461.87;
>
> (3) Preliminary engineering works (construction contract preparation, specification reviewing process, bid advertising and awarding): $19,662.02;
>
> (4) Construct and install trash receptacle units: $230,755.58, construction management $34,628.31;
>
> (5) Trash collection and receptacle maintenance in FY 2002-03, $3,513.94, maintenance contractor costs for maintaining and collecting trash in FY 2002-03, $93,982.50;
>
> (6) Projected costs for on-going maintenance in FY 2003-04, $375,570.00.

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[114] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

Similarly, attached to claim 03-TC-19 (pp. 20-21) are declarations that itemize the County of Los Angeles' costs for *Inspection of Industrial/Commercial Facilities* program, from December 13, 2001 to September 15, 2003, as follows:

(1) inspect 1744 restaurants: $234,931.83;

(2) inspect 1110 automotive service facilities: $149,526.36;

(3) inspect 249 retail gasoline outlets and automotive dealerships: $33,542.45;

(4) Identify and inspect all Phase I (387 Tier 1 and 543 Tier 2) facilities within the jurisdiction: $125,155.31;

(5) Total $543,155.95.

These declarations illustrate that the costs associated with the permit activities exceed $1,000. The Commission, however, cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556 apply, which is discussed below.

A. Did the claimants request the activities in the permit within the meaning of Government Code section 17556, subdivision (a)?

The first issue is whether the claimants requested the activities in the permit. The Department of Finance and the State Water Board both asserted that they did. As discussed above, the claimants were required to submit a Report of Waste Discharge and Stormwater Quality Management Plan before the permit was issued.

Government Code section 17556, subdivision (a), provides that the Commission shall not find costs mandated by the state if:

> (a) The claim is submitted by a local agency ... that requested legislative authority for that local agency ... to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency ... that requests authorization for that local agency ... to implement a given program shall constitute a request within the meaning of this subdivision.

Based on the language of the statute, section 17556, subdivision (a), does not apply because the permit is not a statute, the claimants did not request "legislative authority" to implement the permit, and the record lacks any resolutions adopted by the claimants. Therefore, staff finds that the claimants did not request the activities in the permit within the meaning of Government Code section 17556, subdivision (a).

B. Do the claimants have fee authority for the permit activities within the meaning of Government Code section 17556, subdivision (d)?

Government Code section 17556, subdivision (d), states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ... if, after a hearing, the commission finds any one of the following: [¶]...[¶] (d) The local agency ... has

the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The constitutionality of Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in *County of Fresno v. State of California*,[115] in which the court held that the term "costs" in article XIII B, section 6, excludes expenses recoverable from sources other than taxes. The court stated:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*
>
> In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.[116]

In *Connell v. Superior Court,*[117] the dispute was whether local agencies had sufficient fee authority for a mandate involving increased purity of reclaimed wastewater used for certain types of irrigation. The court cited statutory fee authority for the reclaimed wastewater, and noted that the water districts did not dispute their fee authority. Rather, the water districts argued that they lacked "sufficient" fee authority in that it was not economically feasible to levy fees sufficient to pay the mandated costs. In finding the fee authority issue is a question of law, the court stated

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[115] *County of Fresno v. State of California , supra,* 53 Cal.3d 482.

[116] *County of Fresno v. State of California, supra,* 53 Cal.3d 482, 487.

[117] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

that Government Code section 17556, subdivision (d), is clear and unambiguous, in that its plain language precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." The court rejected the districts' argument that "authority" as used in the statute should be construed as a "practical ability in light of surrounding economic circumstances" because that construction cannot be reconciled with the plain language of section 17556, and would create a vague standard not capable of reasonable adjudication. The court also said that nothing in the fee authority statute (Wat. Code, § 35470) limited the authority of the Districts to levy fees "sufficient" to cover their costs. Thus, the court concluded that the plain language of section 17556 made the fee authority issue solely a question of law, and that the water districts could not be reimbursed due to that fee authority.[118]

In its April 18, 2008 comments (p. 19), the State Board asserted that the claimants have fee authority to pay for the trash receptacle and inspection programs in the permit. Likewise, the Department of Finance, in its March 2008 comments, states that "some local agencies have set fees to be used toward funding the claimed permit activities" that should be considered offsetting revenues.

Los Angeles County, in its comments submitted in June 2008, states (p. 2) that it is "without sufficient fee authority to recover its costs." The County points out that the state or regional water board has fee authority in Water Code section 13260, subdivision (d)(2)(B)(iii) for inspections of industrial and commercial facilities, but those fees are not shared with the County or the cities.[119] The County also states that the inspections are to determine compliance with the general industrial permit that is enforced by the Regional Boards.[120]

In their comments received June 25, 2008, the city claimants assert that they do not have fee authority. The cities first note that, for facilities that hold state-issued general industrial or

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[118] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 398-402.

[119] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii) states:

> (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund. (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

[120] Page 3 of the General Industrial Permit states in part: "Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions." See <http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf> as of October 23, 2008.

general construction stormwater permits, the state already imposes an annual fee and therefore has occupied the field (Wat. Code, § 13260, subd. (d)(2)(B)(iii)). The cities also relate the difficulty of imposing a fee for inspecting restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships because, although the cities could enact a general businesses license on all businesses, "the cities could not charge other businesses for the cost of inspecting this subgroup without again running the risk of charging fees on the other businesses for services not related to regulation of them." The cities also dispute the State Water Board's assertion that transit users could be charged a fee for the transit trash receptacles because the County and cities do not operate the transit system.

The issue of local fee authority for the municipal stormwater permit activities is one of first impression for the Commission. Although there are no authorities directly on point (except Pub. Res. Code, § 40059, discussed below) some legal principles emerge that guide the analysis, as discussed below.

1. Fee authority under the police power

The law on local government fee authority begins with article XI, section 7, of the California Constitution, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The Third District Court of Appeal has stated that article XI, section 7, includes the authority to impose fees. In *Mills v. Trinity County*,[121] a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors. In upholding the fees, the court stated:

> [S]o long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees does not depend on legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution.[122]

In addition to the *Mills* case, courts have held that water pollution prevention is a valid exercise of government police power.[123] And municipal inspections in furtherance of sanitary regulations have been upheld as "an exercise of that branch of the police power which pertains to the public health."[124]

In *Sinclair Paint v. State Board of Equalization*, [125] the California Supreme Court upheld a fee imposed on manufacturers of paint that funded a child lead-poisoning program, ruling it was a regulatory fee and not a special tax. The court recognized that determining under Proposition 13

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[121] *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656.

[122] *Mills v. County of Trinity, supra,* 108 Cal.App.3d 656, 662.

[123] *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.

[124] *Sullivan v. City of Los Angeles Dept. of Bldg. & Safety* (1953) 116 Cal.App.2d 807, 811.

[125] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866.

whether impositions were fees or taxes is a question of law. In holding that the fee on paint manufacturers was "regulatory" and not a special tax, the court stated:

> From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate.
>
> Viewed as a mitigating effects measure, [the fee] is comparable in character to several police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.[126] [Emphasis added.]

The *Sinclair Paint* court also recognized that regulatory fees help to prevent pollution when it stated: "imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products."[127]

Although the court's holding in *Sinclair Paint* applied to a state-wide fee, the language it used (putting "ordinances" in the same category as "statutes") recognizes that local agencies also have the police power to impose regulatory fees. Moreover, the court relied on local government police power cases in its analysis.[128]

A regulatory fee is an imposition that funds a regulatory program[129] and is "enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public."[130] Courts will uphold regulatory fees if they comply with the following principles:

> Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A section 4 analysis if the "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." [Citations omitted] "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." [Citations omitted] "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a

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[126] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[127] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[128] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 873. The Court stated: "Because of the close, 'interlocking' relationship between the various sections of article XIII A (Citation omitted) we believe these "special tax" cases [under article XIII A, § 3, state taxes] may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, [local government taxes] may apply equally to section 3 cases."

[129] *California Assn. of Prof. Scientists v. Dept. of Fish and Game* (2000) 79 Cal.App.4th 935, 950.

[130] *Ibid.*

> system of supervision and enforcement." [Citations omitted] Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. [Citations omitted] Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee."[131] [Emphasis added.]

Local fees for stormwater inspections would be preventative and could be imposed to comply with the criteria the courts have used to uphold regulatory fees, articulated above. And the regulatory fees fall within the local police power to prevent, clean up, or mitigate pollution.

Therefore, pursuant to article XI, section 7, staff finds that the claimants have fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to carry out the mandated activities in parts 4C2a, 4C2b, 4E, and 4F5c3 of the permit. Therefore, staff does not find "costs mandated by the state" within the meaning of Government Code section 17514 and 17556 to perform the activities in those parts of the permit (business and construction site inspections and related activities, and placing and maintaining trash receptacles at transit stops).

In fact, in June 2005, claimant Covina adopted stormwater inspection fees on restaurants, retail gasoline outlets, automotive service facilities, etc., as part of its business license fee, expressly for the purpose of complying with the permit at issue in this claim.[132]

2. Statutory fee authority to place and maintain transit trash receptacles

In addition to the police power, local agencies have statutory authority to place and maintain trash receptacles, and to charge fees for doing so. Public Resources Code section 40059, subdivision (a), states:

> (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

The statute gives local governments the authority over the "nature, location and extent of providing solid waste handling services" so it is broad enough to encompass "placing and maintaining" receptacles at transit stops, as specified in the permit. The statute also provides local governments with broad authority over the "level of services, charges and fees."

Both the State Board and county argue the ability or merits of imposing a trash fee on transit users. Regardless of whom the fees would be imposed on, the authority to impose them exists in section 40059 of the Public Resources Code.

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[131] *California Assn. of Prof. Scientists v. Dept. of Fish and Game, supra,* 79 Cal.App.4th 935, 945.

[132] Resolution No. 05-6455. See the resolution and agenda item at:<http://www.ci.covina.ca.us/clerk/agendas/2005/050621CCAgendaPacket.pdf > as of March 18, 2009.

As discussed in the *Connell v. Superior Court*[133] case cited above, whether the fee for transit stops is economically feasible is not relevant in finding a reimbursable state mandate. Thus, staff finds that the claimants possess statutory fee authority sufficient to pay for the activity of placing and maintaining trash receptacles at transit stops (in part 4F5c3) pursuant to Public Resources Code section 40059, and within the meaning of Government Code section 17556, subdivision (d). Therefore, staff does not find "costs mandated by the state" within the meaning of Government Code section 17514 and 17556 to install or maintain trash receptacles at transit stops.

3. Statutory fee authority to inspect commercial and industrial facilities and construction sites

Health and Safety Code section 5471 expressly authorizes cities and counties to charge fees for storm drainage maintenance and operation services:

> [A]any entity[134] shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. ... Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities ....

The statute makes no mention of "inspecting" commercial or industrial facilities. Rather, the fee revenues are used for "maintenance and operation" of storm drainage facilities. Thus, for the types of businesses regulated by the permit (restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites) staff cannot find that the claimants have statutory fee authority sufficient to pay for the mandated program because "operation and maintenance" of storm drainage facilities does not encompass the state-mandated inspections of the facilities or construction sites specified in the permit.

The remainder of this analysis addresses the arguments raised by the claimants that their local fee authority would be preempted by a statute granting the state fee authority, and that a local fee would be a special tax.

4. Local fee authority for stormwater would not be preempted by state fee authority

Claimant cities argue that the permittees cannot impose fees as follows:

> [W]ith respect to facilities that hold state-issued general industrial or general construction stormwater permits, the state had occupied the field. ...[T]he state already imposes an annual fee on general industrial and general construction

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[133] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 398-402.

[134] Entity is defined to include "counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." Health and Safety Code section 5470, subdivision (e).

stormwater permittees. That fee is explicitly designated, in part, to cover inspections of these facilities and regulatory compliance. Water Code § 13260(d)(2)(B).

This state fee thus preempts any fee that the Cities or County could charge for inspection of these facilities.

The statute that gives stormwater fee authority to the State Water Board, subdivision (d) of section 13260 of the Water Code, reads in pertinent part:

> (d)(1)(A) Each person who is subject to subdivision (a) [who discharges waste that affects the quality of waters of the state] or (c) shall submit an annual fee according to a fee schedule established by the state board.
>
> (B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.
>
> (C) Recoverable costs include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out those actions. [¶]...[¶]
>
> (2) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division. (B)
>
> (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.
>
> (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in that region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. (Wat. Code, § 13260, subds. (d)(1) & (d)(2).) [Emphasis added.]

The State Water Board has adopted regulations to implement the stormwater fee.[135] Staff finds that the state's fees in Water Code section 13260, subdivision (d)(2), and in the State Water Board's regulations does not preempt or "occupy the field" of stormwater regulation. The California Supreme Court has ruled that state law preemption of a local ordinance requires the following:

> Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws.' [¶] 'If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.' [Citations.] [¶] 'A conflict exists if the local legislation " ' *duplicates, contradicts,* or *enters an area fully occupied* by general law, either expressly or by legislative implication. [Citations.]' " ' " [Citations] ... A local ordinance *duplicates* state law when it is "coextensive" with state law. [Citations][136]

There is nothing in Water Code section 13260 or in the State Board's title 23 regulations that expressly preempts, or indicates that the state fee authority would preempt, a local regulatory fee for stormwater inspections. Nor would a local regulatory fee contradict these state laws. Staff also finds that a local fee ordinance for inspections would not "duplicate" state law because the local fee would not be coextensive with state law. Although the General Industrial Activities Storm Water Permit (GIASP, Water Quality Order No. 97-03-DWQ) issued by the State Water Board covers a variety of facilities and may overlap in inspection of phase I facilities, it does not cover restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships.[137]

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[135] Fees for NPDES permits for municipal separate stormwater sewer systems are in subdivision (b) of section 2200 of title 23 of the California Code of Regulations.

[136] *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067. Emphasis in original.

[137] The facilities covered under the GIASP are as listed at <www. waterboards.ca.gov/ water_issues/programs/stormwater/docs/induspmt.pdf> as of October 16, 2008. "Currently, categories of facilities subject to storm water effluent limitations guidelines are Cement Manufacturing (40 CFR Part 411), Feedlots (40 CFR Part 412), Fertilizer Manufacturing (40 CFR Part 418), Petroleum Refining (40 CFR Part 419), Phosphate Manufacturing (40 CFR Part 422), Steam Electric (40 CFR Part 423), Coal Mining (40 CFR Part 434), Mineral Mining and Processing (40 CFR Part 436), Ore Mining and Dressing (40 CFR Part 440), and Asphalt Emulsion (40 CFR Part 443). 2. MANUFACTURING FACILITIES: ... 3. OIL AND GAS/MINING FACILITIES: ... 4. HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES: ... 5. LANDFILLS, LAND APPLICATION SITES, AND OPEN DUMPS: ... 6. RECYCLING FACILITIES: ... 7. STEAM ELECTRIC POWER GENERATING FACILITIES: ... 8. TRANSPORTATION FACILITIES: ... 9. SEWAGE OR WASTEWATER TREATMENT WORKS: ... 10. MANUFACTURING FACILITIES WHERE INDUSTRIAL MATERIALS, EQUIPMENT, OR ACTIVITIES ARE EXPOSED TO STORM WATER: ...."

As for the phase I facilities[138] subject to inspection, the permit specifies that these need not be inspected if the Regional Board has inspected them within the past 24 months.

In a 1996 case, a California appellate court upheld an alcohol regulation ordinance and fee even though the state Department of Alcoholic Beverage Control has the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales under the California Constitution. The court explained that the local fee was not preempted by state law as follows:

> Courts distinguish between municipal revenue taxes that may be preempted by state law and fees properly imposed by a city pursuant to its regulatory authority to control and supervise a business that imposes an unusual burden on the local entity for services. For example, in one case, a city imposed a permit fee on house movers. State law specifically prohibits any municipal *license fee* to be imposed on intercity transportation. Despite this statute, the appellate court upheld the ordinance requiring the fee. The court found the purpose of the fee was to pay city inspection and administrative costs associated with house moving. The amount of the fee was based on reasonably anticipated costs of inspection and administration of the permitted house moving activities. Thus, the court concluded that the ordinance was a regulatory one and that the fee imposed was not preempted by the prohibition on license fees.[139] [Emphasis added.]

Thus, so long as the purpose of the regulatory fee would be stormwater regulation via inspections and not solely for revenue, the regulatory fee would not be classified as a special tax.[140] The special tax issue is discussed further below.

In short, a regulatory fee ordinance that provided for inspections of the facilities and construction sites specified in the permit (Parts 4C2a, 4C2b, & 4E) would not be preempted by the state fee authority in Water Code section 13260 or in title 23 of the California Code of Regulations.

5. A local regulatory fee for stormwater would not be a "special tax" under article XIII A, section 4, of the California Constitution

In their comments received June 25, 2008, the city claimants assert that they do not have sufficient fee authority under Government Code section 17556, subdivision (d). They focus on facilities that hold state-issued general industrial or construction stormwater permits and pay the

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[138] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[139] *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 759-760.

[140] *Id.* at 761.

state-imposed fees pursuant to Water Code section 13260, arguing that an additional local fee for inspecting these facilities would be considered a special tax. According to the city claimants:

> In order for a fee to be considered a "fee" as opposed to a "special tax," the fee cannot exceed the reasonable cost of providing the services necessary for which the fee is charged. See *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660. Any fee assessed by the Cities or the County for inspection of these facilities would be a double assessment, and thus run afoul of this rule.

Although the State Water Board's April 18, 2008 comments do not address the issue of a special tax or double fees, the comments do address double inspections under the two permit systems. Thus, the comments indirectly address state and local costs under the program:

> In addition to the requirements for permits issued to municipalities, the Water Boards are also mandated to issue permits to entities that discharge stormwater "associated with industrial activity." (fn. CWA § 402(p)(2)(B)). As part of its responsibilities for its in lieu program, the State Boards must administer and enforce all of its permits. (fn. CWA § 402(p).) The State Water Board has issued permits for industrial and construction discharges of stormwater, and the Los Angeles Water Board administers those permits within its jurisdiction. Therefore, the Los Angeles Water Board does conduct inspections at businesses in Los Angeles County to ensure compliance with the state permits. In addition, the MS4 Permit requires the permittees also to conduct inspections. This approach, which may result in two different entities inspecting the same businesses to review stormwater practices, was specifically envisioned and required by U.S. EPA in adopting its stormwater regulations.

The State Water Board includes the following in a footnote to its comments: "In fact, the Los Angeles Water Board acted to lessen any duplication of effort and costs to the municipal permittees by exempting them from inspection requirements if the same facility has been inspected by the Board." A review of the permit, however, shows this lessened duplication only for the inspections of phase I facilities.[141] Part 4C2b of the permit states: "Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months." This limitation does not apply to inspecting the construction sites or the specified industrial or commercial facilities (restaurants, retail gasoline outlets, automotive service facilities and automotive dealerships).

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[141] On page 62 of the permit, U.S. EPA phase I facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

Special taxes are governed by article XIII A, section 4, of the California Constitution:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Government Code section 50076 states that a fee is not a special tax under article XIII A, section 4, if the fees are: (1) "charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged," and (2) "are not levied for unrelated revenue purposes." The California Supreme Court has reaffirmed this rule.[142]

Staff finds that a local regulatory stormwater fee, if appropriately calculated and charged, would not be a special tax within the meaning of article XIII A, section 4. There is no indication that a local regulatory fee charged for the stormwater permit activities, and that does not exceed the reasonable cost of providing the inspections and related services, would violate the criteria in section 50076.

In fact, as to inspection duties and costs under two permit systems, one court has stated regarding a permit similar to the one in this claim:

> Rancho Cucamonga and the other permittees are responsible for inspection construction and industrial sites and commercial facilities within their jurisdiction for compliance with the enforcement of local municipal ordinance and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.[143]

The reasoning of the *City of Rancho Cucamonga* case is instructive because a local regulatory fee could be used for local-government inspections, and the state fee is for state or regional inspections under the general statewide permits. As the court stated in the *Connell v. Superior Court* case discussed above:

> The [Water] Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees

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[142] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th at p. 876: "[T]he term "special taxes" in article XIII A, section 4, does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."

[143] *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th 1377. The test claim record is silent as to the number of facilities within the permit area that are subject to the General Industrial Activity Storm Water Permit, or how many construction sites within the permit area are subject to the General Construction Activity Storm Water Permit.

would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.[144]

Similarly, in this claim no one is suggesting that the local agencies levy regulatory fees that exceed their costs. Therefore, staff finds that a local regulatory fee for stormwater would not be a "special tax" under article XIII A, section 4, of the California Constitution for the activities at issue in the permit.

6. The local fee for stormwater would not be subject to voter approval under article XIII D (Proposition 218) of the California Constitution

Some local government fees are subject to voter approval under article XIII D of the California Constitution, as added by Proposition 218 (1996). Article XIII D defines a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency on a parcel or a person as an incident of property ownership, including a user fee or charge for a property-related service. Among other things, new or increased property-related fees require a majority-vote of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners (article XIII D, § 6, subd. (c)). Exempt from voter approval, however, are property-related fees for sewer, water, or refuse collection services (*Ibid*).

In 2002, an appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. This means that an election would be required to impose storm water fees if they are imposed "as an incident of property ownership."

Staff finds that the voter requirement does not apply to the activities at issue in the permit for the following reasons. First, as to the trash receptacles, refuse collection is expressly exempted from Proposition's 218 majority-vote requirement (article XIII D, § 6, subd. (c).). This exemption would encompass the state-mandated activity of placing and maintaining trash receptacles at transit stops.

Second, staff finds that local fees for inspections of restaurants, retail gasoline outlets, automotive dealerships, etc., would not be subject to the vote requirement of Proposition 218. In a case involving inspections of apartments in the City of Los Angeles in which a fee was charged to landlords, the California Supreme Court ruled that the regulatory fee for inspecting apartments was not a "levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service" [145] within the meaning of Proposition 218. The court interpreted the phrase "incident of property ownership" as follows:

> The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge

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[144] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 402.

[145] That is the definition of "fee" or "charge" in article XIII D, section 2, subdivision (e).

> against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.[146]
>
> [¶]...[¶] In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners.* The [City of Los Angeles'] ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords.[147]

Following the reasoning of the *Apartment Assoc.* case, the inspection fees on restaurants, retail gasoline outlets, automotive dealerships, phase I facilities, etc., like the fee in *Apartment Assoc.*, would not be imposed on landowners as landowners, nor as an incident of property ownership, but by virtue of business ownership. Thus, the inspection fee would fall outside the voter requirement of Proposition 218.

As to the fees for inspecting construction sites, staff finds that they too would not be subject to Proposition 218's voter requirement. Article XIII D of the California Constitution states that it shall not be construed to "affect existing laws relating to the imposition of fees or charges as a condition of property development."[148]

Moreover, the California Supreme Court, in determining whether water connection fees are within the purview of Proposition 218, reasoned that "water service" fees were within the meaning of "property-related services" but "water connection" fees were not.

> Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.[149]

The Supreme Court's reasoning applies to local stormwater fees for inspecting construction sites. That is, the fee would not be an incident of property ownership because it results from the owner's voluntary decision to build on or develop the property. Therefore, staff finds that local inspection fees for stormwater compliance at construction sites would not be within the purview of the election requirement of Proposition 218. A recent report by the Office of the Legislative Analyst concurs with this conclusion.[150]

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[146] *Apartment Assoc. of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 839-840.

[147] *Id.* at 842 [Emphasis in original.]

[148] Article XIII D, section 1, subdivision (b).

[149] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 427.

[150] "Local governments finance stormwater clean–up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two–thirds of the voters, or a majority of property owners.

In sum, staff finds that the permit activities at issue are not subject to voter approval in article XIII D of the California Constitution (Proposition 218), so a regulatory stormwater fee ordinance enacted by the claimants would not be subject to voter approval.

Given the existence of local regulatory fee authority under the police power (Cal. Const, art. XI, § 7), and the statutory fee authority in Public Resources Code section 40059, and lacking any evidence or information to the contrary, staff finds that the claimants' authority to adopt a regulatory fee is sufficient (pursuant to Gov. Code, § 17556, subd. (d)) to pay for placement and maintenance of transit trash receptacles, and the inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites, and related activities specified in the permit. Therefore, the staff finds that there are no "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION AND STAFF RECOMMENDATION

For the reasons discussed above, staff recommends that the Commission adopt this analysis to deny the test claims because the claimants have fee authority (under Cal. Const. article XI, § 7, & Pub. Res. Code, § 40059) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in the permit (in parts 4C2a, 4C2b, 4E & 4Fc3).

Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two–thirds of the electorate." Office of the Legislative Analyst. *California's Water: An LAO Primer* (October 22, 2008) page 56. [Emphasis added.] See: <http://www.lao.ca.gov/2008/rsrc/water_primer/water_primer_102208.pdf> as of October 22, 2008.

Abbreviations

BMP - Best management practice

CWA – Clean Water Act

GCASP - General Construction Activity Storm Water Permit

GIASP - General Industrial Activity Storm Water Permit

MS4 - Municipal Separate Storm Sewer Systems

NOI - Notice of Intent for coverage under the GCASP

NPDES - national pollutant discharge elimination system

RGO - Retail Gasoline Outlet

ROWD – Report of Waste Discharge

SQMP - Storm Water Quality Management Program

SWPPP - Storm Water Pollution Prevention Plan

TMDL - Total Maximum Daily Load

U.S. EPA – United States Environmental Protection Agency

WDID - Waste Discharger Identification

Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

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APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES, Defendant and Respondent.
No. S082645.

Supreme Court of California
Jan. 8, 2001.

SUMMARY

A city council, seeking to establish and fund a program to remedy substandard housing conditions, adopted an ordinance that required the owners of all residential rental properties subject to inspection under the program to pay a fee. An apartment association and other groups with similar interests brought an action for declaratory and injunctive relief against the city, alleging that the fee ordinance was unconstitutional and therefore void as a charge upon real property under Prop. 218 (Cal. Const., art. XIII D). The trial court sustained the city's demurrer without leave to amend, finding that the fee was not subject to the constitutional requirements, and entered judgment for the city. (Superior Court of Los Angeles County, No. BC195216, Charles W. McCoy, Jr., Judge.) The Court of Appeal, Second Dist., Div. One, No. B130243, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that this ordinance did not fall within the scope of Cal. Const., art. XIII D, which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to fees imposed on an incident of property ownership, but rather to fees imposed on a parcel or a person as an incident of property ownership; this distinction was crucial to this case. According to its plain meaning, Cal. Const., art. XIII D applies only to exactions levied solely by virtue of property ownership. This inspection fee was imposed because the property was being rented; it ceased along with the business operation, whether or not ownership remained in the same hands. (Opinion by Mosk, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Dissenting opinion by Brown, J., with Baxter, J., concurring (see p. 845).)

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 145--Scope of Review--Questions of Law and Fact-- Interpretation of Constitutional Provision.
The interpretation of a constitutional provision, passed by voter initiative, is a question of law for the appellate courts to decide on independent review of the facts.

(2a, 2b, 2c) Property Taxes § 7.6--Real Property Tax Limitation-- Proposition 218--Construction--In Context of Proposition 13.
Prop. 218, which added Cal. Const., art. XIII C and art. XIII D, can best be understood against its historical background, which began in 1978 with the adoption of Prop. 13, the purpose of which was to cut local property taxes. Prop. 218 buttressed the limitations in Prop. 13 on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges. Prop. 218 must be construed in the context of Prop. 13. Prop. 218 focuses on exactions, whether they be called taxes, fees, or charges, that are directly associated with property ownership.

(3a, 3b, 3c, 3d, 3e) Property Taxes § 7.6--Real Property Tax Limitation--Proposition 218:Municipalities § 54--Ordinances--Fee Imposed on Owners of Residential Rental Properties--Validity.
A city ordinance that required payment of a fee by the owners of all residential rental properties subject to inspection under a program designed to remedy substandard housing conditions did not fall within the scope of Prop. 218 (Cal. Const., art. XIII D), which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to

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fees imposed on an incident of property ownership, but rather to fees imposed on a parcel or a person as an incident of property ownership. That distinction was crucial to this case. According to its plain meaning, Cal. Const., art. XIII D applies only to exactions levied solely by virtue of property ownership. This inspection fee was imposed because the property was being rented; it ceased along with the business operation, whether or not ownership remained in the same hands.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 110A, 110B.]
(4) Real Property § 4--Incidents of Ownership--Right of Alienation.
Ownership of property in fee simple absolute is the greatest possible estate. Among the panoply of lesser estates are such nonfreehold chattels real as leases for a specific term and periodic tenancies-in common parlance, rentals or leases of limited duration. Among the incidents of estates in land are the so-called bundle of rights that flow from such tenure. Among them is the fundamental right to alienate one's property held in fee simple. That incident, or right, has been called inseparable, indispensable, and necessary. The power to alienate property or a property right is not limited to the right to sell or assign it. It means generally the power to transfer or convey it to another. The conveyance need not be of the whole fee. The right of alienation applies when fee holders seek to convey lesser estates. The power or right of alienation incident to the ownership of an estate in fee simple includes the power or right to dispose of property held in fee by lease, mortgage, or other mode of conveyance.

(5) Taxation § 3--Construction--Distinguished from Regulatory Fees.
Regulatory fees are those charged in connection with regulatory activities, which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged, and which are not levied for unrelated revenue purposes.

(6) Statutes § 27--Construction--Liberality:Constitutional Law § 11-- Construction--Liberality.
As a rule, a command that a constitutional provision or a statute be liberally construed does not license either enlargement or restriction of the evident meaning of the provision.

COUNSEL

California Apartment Law Information Foundation, Trevor Grimm and Craig Mordoh for Plaintiffs and Appellants.

Sharon L. Browne and Stephen R. McCutcheon, Jr., for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiffs and Appellants.

James K. Hahn, City Attorney, Pedro B. Echeverria, Chief Assistant City Attorney, Ronald Tuller, Assistant City Attorney, and Miguel A. Dager, Deputy City Attorney, for Defendant and Respondent.

Hart, King & Coldren, Robert S. Coldren and C. William Dahlin for Western Manufactured Housing Communities Association as Amicus Curiae on behalf of Defendant and Respondent. ***833**

Gibson, Dunn & Crutcher, James P. Clark, Joel M. Tantalo; Western Center on Law & Poverty, Richard Rothschild; Bet Tzedek Legal Services and Lauren Saunders for the Los Angeles Blue Ribbon Citizens' Committee on Slum Housing, Bet Tzedek Legal Services, the Inner City Law Center, Los Angeles Center for Law and Justice, Legal Aid Foundation of Los Angeles, Legal Services of Northern California, Los Angeles Housing Law Project, Public Counsel, San Fernando Valley Neighborhood Legal Services, Western Center on Law and Poverty, Esperanza Community Housing Corporation, Southern California Association of Non-Profit Housing, Southern California Mutual Housing Association, the Coalition for Economic Survival, Inquilinos Unidos, the St. Francis Center, the Fair Housing Congress of Southern California and SEIU Local 347 as Amici Curiae on behalf of Defendant and Respondent.

Richard Doyle, City Attorney (San Jose), George Rios, Assistant City Attorney, and Robert Fabela, Deputy City Attorney, for the City of San Jose, 89 Additional California Cities, the California State Association of Counties and the California Association of Sanitation Agencies as Amici Curiae on behalf of Defendant and Respondent.

MOSK, J.

We granted review to decide whether a city ordi-

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nance imposing an inspection fee on private landlords violates article XIII D of the California Constitution (article XIII D), added by initiative measure, Proposition 218, in 1996. We conclude that it does not.

In July 1998, the City of Los Angeles put into effect the Los Angeles Housing Code. It is codified as article 1 of chapter XVI of the Los Angeles Municipal Code (§ 161.101 et seq.). Later that month, plaintiffs sued the city for declaratory and injunctive relief, alleging that Los Angeles Municipal Code section 161.352, imposing an inspection fee on private landlords, is unenforceable because it was enacted without complying with section 6 of article XIII D. The city demurred. The trial court sustained the demurrer without leave to amend, finding that the fee was not subject to the constitutional requirements. It entered judgment for the city.

In its statement of decision, the trial court recognized that the inspection fee "appears arguably to fall within the wide range of assessments which Proposition 218 was apparently written to encompass." But it added, "In *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, ***834** 721 P.2d 1111], the California Supreme Court held that a fee charged to cover the costs of operating San Jose's rent control ordinances, and not used to raise general revenue, is not subject to Article XIII A of the California Constitution. The City's ordinance here fits squarely within both the reason and rule of *Pennell*.The ordinance levies only property used for residential apartment rentals, and the money is used only to pay for regulat[ing such] rentals to insure, among other things, that they do not degenerate into what is commonly called 'slum conditions.' The assessment is not imposed on all property owners-only a subset of owners who rent apartments."

The Court of Appeal reversed, holding that the state constitutional provision invalidated the city ordinance. The court wrote: "There is nothing in Proposition 218 that exempts regulatory fees imposed on residential rental properties. It thus adds nothing to say, as does the City, that the fees are not 'imposed upon property owners in general, but only those who voluntarily engage in the business of renting, generate the risks of slum housing, and specially benefit from regular inspections as they contribute to the overall reputability and safety of the housing provided.' Quite plainly, Proposition 218 applies to any 'fee' or 'charge,' both of which are defined to mean 'any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service.' (Art. XIII D, § 2, subd. (e) ....) However well intentioned the City's program to abolish slum housing may be, we find it impossible to say that a fee imposed upon the owners of rental units so the City can locate and eradicate substandard housing is anything other than a user fee or charge for a property-related service." (Italics and fn. omitted.)

I.

A.

Section 161.102 of the Los Angeles Municipal Code states the reason for enacting the Los Angeles Housing Code: "It is found and declared that there exist in the City of Los Angeles substandard and unsanitary residential buildings and dwelling units the physical conditions and characteristics of which render them unfit or unsafe for human occupancy and habitation, and which conditions and characteristics are such as to be detrimental to or jeopardize the health, safety and welfare of their occupants and of the public.

"It is further found and declared that the existence of such substandard buildings as dwelling units threatens the physical, social and economic stability of sound residential buildings and areas, and of their supporting ***835** neighborhood facilities and institutions; necessitates disproportionate expenditures of public funds for remedial action; impairs the efficient and economical exercise of governmental powers and functions; and destroys the amenity of residential areas and neighborhoods and of the community as a whole."

Los Angeles Municipal Code section 161.301, entitled Scope, declares that the Los Angeles Housing Code applies to "all residential rental properties with two or more dwelling units on the same lot, the land, buildings and structures appurtenant thereto," but not to owner-occupied units, on-campus dormitory housing, hotels, motels, or certain other types of housing also specifically exempted.

Division 3.5 of the Los Angeles Housing Code (§ 161.351 et seq.) is entitled Housing Inspection Fees.

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Section 161.351 limits the scope of division 3.5 to "residential rental properties with two or more dwellings subject to the provisions of this Code." Those properties "will be subject to regular inspection by the General Manager or an authorized representative. Inspections may also be complaint-based." (*Ibid.*)

Section 161.352 of the Los Angeles Municipal Code, at issue here, sets forth the inspection fee schedule. It provides, in its entirety: "Owners of all buildings subject to inspection shall pay a service fee of $12.00 per unit per year. The fee will be used to finance the cost of inspection and enforcement by the Housing Department. Should the owner fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law. This fee shall be known as the 'Systematic Code Enforcement Program Fee.' " (*Ibid.*, boldface omitted.)

B.

In November 1996 the voters approved Proposition 218, the Right to Vote on Taxes Act. (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 1, p. 108; reprinted as Historical Notes, 2A West's Ann. Cal. Const. (2001 supp.) foll. art. XIII C, § 1, p. 33.) The proposition amended the California Constitution, adding article XIII D. Section 3, subdivision (a)(3) of article XIII D provides that, with certain exceptions not relevant here, "No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except: [¶] ... [¶] ... as provided by this article." An agency is a local or regional governmental entity. (*Id.*, § 2, subd. (a); Cal. Const., art. XIII C, § 1, subd. (b).) ***836**

Section 1 of article XIII D provides that it applies to "all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority." Fees and charges are defined in subdivision (e) of section 2 thereof. " 'Fee' or 'charge' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (*Ibid.*)

"Property-related service" is further defined. It "means a public service having a direct relationship to property ownership." (Art. XIII D, § 2, subd. (h).)

Thus, and in summary, article XIII D applies, with certain exceptions not relevant here, to "any levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (Art. XIII D, § 2, subd. (e).) As will appear, the outcome of this case turns on the meaning of this language.

C.

(1) Before us is "a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874 [64 Cal.Rptr.2d 447, 937 P.2d 1350].) Though our reasoning turns on the language of the constitutional stricture, it may be helpful to explain, as did the Court of Appeal in *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679 [86 Cal.Rptr.2d 592](*Howard Jarvis*), the reasons that led to placing Proposition 218 on the ballot.

(2a) "Proposition 218 can best be understood against its historical background, which begins in 1978 with the adoption of Proposition 13. 'The purpose of Proposition 13 was to cut local property taxes. [Citation.]' [Citation.] Its principal provisions limited ad valorem property taxes to 1 percent of a property's assessed valuation and limited increases in the assessed valuation to 2 percent per year unless and until the property changed hands. (Cal. Const., art. XIII A, §§ 1, 2.)

"To prevent local governments from subverting its limitations, Proposition 13 also prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. (Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 6-7 [2 Cal.Rptr.2d 490, 820 P.2d 1000].) It has been held, however, that a special assessment is not a special tax within the meaning of Proposition 13. (*Knox v. City of *837 Orland* (1992) 4 Cal.4th 132, 141 [14 Cal.Rptr.2d 159, 841 P.2d 144], and cases cited.) Accordingly, a special assessment could be imposed without a two-thirds vote.

"In November 1996, in part to change this rule, the

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electorate adopted Proposition 218, which added articles XIII C and XIII D to the California Constitution. Proposition 218 allows only four types of local property taxes: (1) an ad valorem property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge. (Cal. Const., art. XIII D, § 3, subd. (a)(1)-(4); see also [*id.*],§ 2, subd. (a).) It buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges." (*Howard Jarvis*, *supra*,73 Cal.App.4th 679, 681-682.)

D.

(3a) The Court of Appeal explained the parties' differing views of the effect of article XIII D on the city ordinance. "As viewed by [plaintiffs], the fee is imposed 'upon a parcel or upon a person as an incident of property ownership' and is, therefore, subject to the procedural requirements of Proposition 218. As viewed by the City, the fee is imposed upon a business activity (the rental of residential dwellings), separate and apart from property ownership, and purely for regulatory purposes, and it is therefore not subject to Proposition 218." (Italics omitted.)

Adhering before us to their point of view, plaintiffs contend that "nothing in Proposition 218 ... support[s] the contention that [it] was not meant to affect the ability of local governments to impose and collect business 'regulatory fees.' " The city also adheres to its position, devoting much of its briefing to an argument that because its inspection fee is a regulatory fee on business operations, it falls outside the purview of article XIII D. Examining the ballot arguments for and against Proposition 218 and the Legislative Analyst's analysis of the measure, the city also contends that article XIII D was intended only to restrict fees imposed directly on property owners in their capacity as such. A regulatory fee imposed on residential rental businesses, the city argues, necessarily falls outside article XIII D's ambit, even if the fee bears some relation to ownership of real property. FN1

FN1 We have also received several amicus curiae briefs. Along with one of them is a request to judicially notice three purported local mobilehome park rent control ordinances and two other documents regarding that topic. The request is denied. The five documents have no bearing on the question before us.

Amici curiae also include a printed discussion issued by the Legislative Analyst in December 1996 and entitled Understanding Proposition 218. This document contains material relevant to the question at bench, and we grant the request for judicial notice regarding it. (Evid. Code, §§ 452, subd. (c), 459, subd. (a).)

As will appear, neither party is entirely correct. The relevant language of article XIII D does not compel a conclusion in plaintiffs' favor; rather, it ***838** compels the opposite. The city also misses the mark when it contends (or at least implies) that a regulatory fee or a levy on the operation of a business necessarily falls outside the scope of article XIII D.

But both parties are partly correct. Plaintiffs accurately state that the constitutional provision does not speak of regulatory fees or levies on business operations. Hence, the mere fact that a levy is regulatory (as this inspection fee clearly is) or touches on business activities (as it clearly does) is not enough, by itself, to remove it from article XIII D's scope. But the city is correct that article XIII D only restricts fees imposed directly on property owners in their capacity as such. The inspection fee is not imposed solely because a person owns property. Rather, it is imposed because the property is being rented. It ceases along with the business operation, whether or not ownership remains in the same hands. For that reason, the city must prevail.

II.

Section 2 of Proposition 218 stated the measure's purpose. "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Ballot Pamp., Gen.

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Elec., *supra*, text of Prop. 218, § 2, p. 108; reprinted as Historical Notes, 2A West's Ann. Cal. Const., *supra*, foll. art. XIII C, § 1, p. 33.)

The repeated references to taxes and taxpayers suggest an intent to prohibit unratified exactions imposed on property owners as such, rather than on the business of renting or leasing apartments-i.e., "residential rental properties with two or more dwellings" (L.A. Mun. Code, § 161.351).

(2b) As explained in *Howard Jarvis*, *supra*,73 Cal.App.4th 679, Proposition 218 is Proposition 13's progeny. Accordingly, it must be construed in that context. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th ***839** 294, 301 [58 Cal.Rptr.2d 855, 926 P.2d 1042].) Specifically, because Proposition 218 was designed to close government-devised loopholes in Proposition 13, the intent and purpose of the latter informs our interpretation of the former. Proposition 13 was directed at taxes imposed on property owners, in particular homeowners. The text of Proposition 218, the ballot arguments (both in favor and against), the Legislative Analyst's analysis, and the annotations of the Howard Jarvis Taxpayers Association, which drafted Proposition 218, all focus on exactions, whether they are called taxes, fees, or charges, that are directly associated with property ownership.

(3b) The Legislative Analyst's analysis, printed in the November 1996 ballot pamphlet, is illustrative. It explained that Proposition 218 "would constrain local governments' ability to impose fees, assessments, and taxes," meaning "property-related" fees, including fees for water, sewer and refuse collection, but excluding gas and electricity charges (see Cal. Const., art. XIII D, § 3, subd. (b)) and development fees (see *id.*,§ 1, subd. (b)). (Ballot Pamp., Gen. Elec., *supra*, Legis. Analyst's analysis, p. 73.) It did not refer to levies linked more indirectly to property ownership.

(2c) The ballot arguments for Proposition 218 are also illustrative. "Proposition 218 guarantees your right to vote on local tax increases-even when they are called something else, like 'assessments' or 'fees' and imposed on homeowners." (Ballot Pamp., Gen. Elec., *supra*, argument in favor of Prop. 218, p. 76.) "After voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees.' " (*Ibid.*) "There are now over 5,000 local districts which can impose fees and assessments without the consent of local voters. Special districts have increased assessments by over 2400% over 15 years. Likewise, cities have increased utility taxes 415% and raised benefit assessments 976%, a tenfold increase." (*Ibid.*) "To confirm the impact of fees and assessments on you, look at your property tax bill. You will see a growing list of assessments imposed without voter approval. The list will grow even longer unless Proposition 218 passes." (*Ibid.*)

(3c) The ballot arguments identify what was perhaps the drafter's main concern: tax increases disguised via euphemistic relabeling as "fees," "charges," or "assessments." But in fairness to plaintiffs, it cannot be denied that the text of article XIII D does not limit its scope to taxes and taxpayers. We turn to the definitive language: restrictions on *any* levy imposed "upon a parcel or upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).)

The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it ***840** meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.

The contrary reasoning of the Court of Appeal, and of plaintiffs, stems from a reliance on the word "incident," leaving aside that the constitutional provision does not refer to fees imposed *on* an incident of property ownership, but on a parcel or a person *as* an incident of property ownership. As amicus curiae for the city persuasively argue, the distinction is crucial.

Were the principal words *parcel* and *person* missing, and were *as* replaced with *on*, so that article XIII D restricted the city's ability to impose fees "on an incident of property ownership," plaintiffs' argument might have merit. (4) For among the incidents [FN2] of estates in land are the so-called bundle of rights that flow from such tenure. (31 C.J.S. (1996) Estates § 12, pp. 28-30; *id.*, § 14, pp. 32, 34; *id.*, § 31, p. 58.) Among them is the fundamental right to alienate

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one's property held in fee simple. (E.g., *id.*, § 12, p. 30; *Holien v. Trydahl* (N.D. 1965) 134 N.W.2d 851, 856; *Davis v. Geyer* (1942) 151 Fla. 362, 369 [9 So.2d 727, 728]; *Hardy v. Galloway**841 (1892) 111 N.C. 519, 523 [15 S.E. 890]; see also *Yee v. City of Escondido* (1992) 503 U.S. 519, 528 [112 S.Ct. 1522, 1528-1529, 118 L.Ed.2d 153].) That incident, or right, has been called "inseparable" (*Holien, supra*, 134 N.W.2d at p. 856; *Hardy, supra*, 15 S.E. at p. 890), "indispensable" (*Dukes v. Crumpton* (1958) 233 Miss. 611, 620 [103 So.2d 385, 388]), and "necessary" (*Re Collier* (Nfld. 1966) 60 D.L.R.2d 70, 75 [52 M.P.R. 211, 216] (per Puddester, J.)).

FN2 Over time, "incident" has meant many things. As a noun, the meanings include the burden of the risk of a diminution of the value of real property during condemnation proceedings (*Agins v. City of Tiburon* (1980) 447 U.S. 255, 263, fn. 9 [100 S.Ct. 2138, 2143, 65 L.Ed.2d 106]), the " 'burdens and disabilities' " of slavery prohibited by the Thirteenth Amendment to the United States Constitution (*Jones v. Mayer Co.* (1968) 392 U.S. 409, 441 [88 S.Ct. 2186, 2204, 20 L.Ed.2d 1189]), or, in earlier times, the monetary obligations imposed by the king or a mesne lord (McPherson, *Revisiting the Manor of East Greenwich* (1998) 42 Am. J. Legal Hist. 35, 39; see also 2 Coke (1641) Institutes of the Lawes of England (Butler & Hargrave's Notes ed.) 69a, § 95, fn. 7). And, in a more general sense, the meanings of "incident" include benefits or duties that appertain to some greater right or interest, i.e., the principal. (Civ. Code, §§ 662, 1084, 3540; *Owsley v. Hamner* (1951) 36 Cal.2d 710, 716-717 [227 P.2d 263, 24 A.L.R.2d 112]; *Fender v. Waller* (1941) 139 Neb. 612, 616 [298 N.W. 349, 351]; *Harris v. Elliott* (1836) 35 U.S. (10 Pet.) 25, 54 [9 L.Ed. 333].) In its fourth edition (1897), Bouvier's Law Dictionary defined "incident" as a term "used both substantively and adjectively of a thing which, either usually or naturally and inseparably depends upon, appertains to, or follows another that is more worthy. For example, ... the right of alienation is necessarily incident to a fee-simple at common law ...." (*Id.* at p. 1006, col. 1.) Many cases have followed the Bouvier's Law Dictionary definition, or ones similar to it. (E.g., *Watts v. Copeland* (1933) 170 S.C. 449, 452 [170 S.E. 780]; *Moccasin State Bank v. Waldron* (1928) 81 Mont. 579, 586 [264 P. 940].) "Thus, timber trees are incident to the freehold, and so is a right of way." (*In re Estate of Bellesheim* (N.Y. Surr. 1888) 1 N.Y.S. 276, 278 [dictum]; accord, *Harris v. Elliott, supra*, 35 U.S. (10 Pet.) at p. 54 [9 L.Ed. at p. 344] [easements]; Black's Law Dict. (7th ed. 1999) p. 765, col. 1 ["the utility easement is incident to the ownership of the tract"].)

The power to alienate property or a property right is not limited to the right to sell or assign it. It means generally the power "to transfer or convey [it] to another." (Black's Law Dict., *supra*, p. 73, col. 1.) The conveyance need not be the whole fee. The right of alienation applies when fee holders seek to convey lesser estates. [FN3] " '[T]he power or right of alienation' " " 'incident to the ownership of an estate in fee-simple' " " 'include[s] the power or right to dispose of property held in fee ... by *lease*, mortgage, or other mode of conveyance ....' " (*Porter v. Barrett* (1925) 233 Mich. 373, 379-380 [206 N.W. 532, 535], quoting *Manierre v. Welling* (1911) 32 R.I. 104, 140 [78 A. 507, 522], italics added here.)

FN3 It is, of course, axiomatic in Anglo-American law that ownership of real property in fee simple absolute is the greatest possible estate (1 Coke (1628) Institutes of the Lawes of England (Butler & Hargrave's Notes ed.) 18a, § 11), and among the panoply of lesser estates are such nonfreehold chattels real as leases for a specific term and periodic tenancies (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162 [2 Cal.Rptr.2d 536, 820 P.2d 1046])-in common parlance, rentals or leases of limited duration. (1 Tiffany, The Law of Real Property (3d ed. 1939) § 76, pp. 112-113; *Wilgus v. Commonwealth* (1873) 72 Ky. (9 Bush.) 556, 557 [1873 WL 6660], citing 2 Blackstone, Commentaries 143 [" 'An estate for years in land is regarded in law as inferior to an estate for life or an inheritance' "]; *Brydges v. Millionair Club* (1942) 15 Wash.2d 714, 719 [132 P.2d 188, 190]; see also *Williams v. R. R.* (1921) 182 N.C. 267, 272 [108 S.E. 915, 918].)

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(3d) Accordingly, *if*article XIII D restricted the city's ability to impose a "tax, assessment, fee, or charge on an incident of property ownership" (cf. *id.*,§§ 2, subd. (e), 3), plaintiffs' argument might be persuasive. The business of renting apartments is an incident of owning them, an activity necessarily dependent on that ownership but not vice versa. One can own apartments without renting them, but no one can rent them without owning them. (See fn. 2, *ante*, at p. 840.) [FN4]

> FN4 In *Acme Freight Lines v. City of Vidalia* (1942) 193 Ga. 334 [18 S.E.2d 540](*Acme Freight*), similar statutory language favored an analogous argument-that a tax on an incident of the trucking business was a tax on a trucking company's ancillary delivery business.
>
> In *Acme Freight*, a trucking company sought an injunction against a city's practice of imposing a business tax on those ancillary operations. The firm relied on this law: " 'No subdivision of this State ... shall levy any excise, license, or occupation tax of any nature *on* ... *any incidents* of said motor carrier business, or on a motor common carrier.' " (*Acme Freight, supra*, 193 Ga. 334, 335 [18 S.E.2d 540, 541], italics added.)
>
> The city, Vidalia, acknowledged "its lack of authority to levy any tax against the plaintiff in reference to its transportation of freight as a motor common carrier .... Justification for the tax is founded upon the fact that, in addition to the operation of trucks for the transportation of freight ..., the plaintiff carries on ... a 'pick-up and delivery service' in and around the city. The trial judge ruled that this 'is not a *necessary* incident to the operation of a common carrier,' and that as to it 'the plaintiff is not a motor common carrier, but is engaged in a special and distinct business in the City of Vidalia, and is taxable as such.' This formula interpolates before the word 'incidents,' used in the statute, the word 'necessary' so as to require, as a condition of tax immunity, that the operation be a necessary incident of the business of a motor common carrier. This appears to us to be erroneous. [Rather,] ... an incident of the business of a motor common carrier of freight would be something naturally associated as pertinent to such transportation and necessarily dependent upon it, but without which the business of transportation might nevertheless be carried on. In other words, the incidental operation would be necessarily dependent upon the transportation, but the business of transportation would not be necessarily dependent upon the incidental operation.... As we understand the evidence adduced in this case, the plaintiff's operations against which the tax is said to be levied is of the above-described character; and accordingly we conclude that the tax is illegal, and should have been enjoined." (*Acme Freight, supra*, 193 Ga. 334, 335-336 [18 S.E.2d 540, 541].)

But the language of article XIII D is materially dissimilar. As stated, article XIII D, section 3 provides that "[n]o tax, assessment, fee, or charge ***842** shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except ... [¶] ... [¶] ... as provided by this article." (See also *id.*,§ 2, subd. (e).) In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners*. The ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords. [FN5] What plaintiffs ask us to do is to alter the foregoing language-changing "as an incident of property ownership" to "on an incident of property ownership." But to do so would be to ignore its plain meaning-namely, that it applies only to exactions levied solely by virtue of property ownership. We may not interpret article XIII D as if it had been rewritten. (Accord, *People ex rel. Lungren v. Superior Court, supra*,14 Cal.4th 294, 301.)

> FN5 We acknowledge that landlords may rent because they wish to keep the property occupied in their absence, for philanthropic reasons, or to a family member for a nominal charge. Such arrangements are not rare, and may lie within the province of the ordinance, which refers to "residential rental properties." But even nonprofit or charitable purposes are business purposes under broad constructions of the term, and we believe

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> that as long as the property is being rented for consideration, it is being conveyed for a business purpose. (Cf. *Marin Municipal Water Dist. v. Chenu* (1922) 188 Cal. 734, 738 [207 P. 251] [" 'business' " has "a narrower meaning applicable to occupation or employment for livelihood or gain, and to mercantile or commercial enterprises or transactions"].)

The language of article XIII D, sections 2, subdivision (e), and 3, shows that it applies to levies imposed on a person or on property strictly as an incident of property ownership. Had the law included levies imposed on incidents of the ownership or use of residential real property (as relevant ***843** here, the exercise of the right to rent one's property), its text would have said so. But it did not. And although the plain language of the relevant constitutional provisions requires us not to consider extrinsic evidence of the voters' intent, we reiterate, purely as an aside, that neither the ballot arguments nor the Legislative Analyst's analysis suggested that article XIII D was intended to encompass fees of the type at issue here.

The subordinate clause in section 2, subdivision (e), of article XIII D, as clarified in section 2, subdivision (h), supports our conclusion. It may be recalled that among the fees or charges covered by article XIII D, section 2, subdivision (e), is "a user fee or charge for a property-related service." Such a service "means a public service having a direct relationship to property ownership." (*Id.*,§ 2, subd. (h).) In this case, the relationship between the city's inspection fee and property ownership is indirect-it is overlain by the requirement that the landowner be a landlord.

As stated, the foregoing clause is subordinate. It does not include all possible fees and charges that fall within the ambit of article XIII D. (5)**(See fn. 6.)** But it does provide additional evidence of the scope of the constitutional provision. [FN6]

> FN6 We turn to discuss briefly the authorities on which the city chiefly relies. They consist of two cases: *Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866; and *Pennell v. City of San Jose* (1986) 42 Cal.3d 365 [228 Cal.Rptr. 726, 721 P.2d 1111] (affd. *sub nom.Pennell v. San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1]). They are inapposite.
>
> In *Sinclair* we held that an exaction on sources of lead contamination to remediate the effects of lead poisoning was a fee, not a tax. In *Pennell*, we held that a $3.75 charge on each residential rental unit, imposed by a rent control ordinance to fund its hearing process, also was a fee, not a tax. In *Sinclair* and *Pennell*, we defined such fees, which are similar to the city's inspection charge, as regulatory in nature. Regulatory fees are those " ' "charged in connection with regulatory activities[,] which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866, 876, quoting *Pennell v. City of San Jose*, *supra*,42 Cal.3d 365, 375, in turn quoting *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660 [166 Cal.Rptr. 674], bracketed material added here.)
>
> We have stated that the city's inspection fee is a regulatory fee. And we have concluded that it does not fall within article XIII D's ambit. But *Sinclair* and *Pennell* do not concern themselves with the issue we confront here. Indeed, in *Sinclair* we cautioned that "We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments." (*Sinclair Paint Co. v. State Bd. of Equalization*, *supra*,15 Cal.4th 866, 873, fn. 2.) In *Pennell v. City of San Jose*, *supra*,42 Cal.3d 365, we could not have written a similar caveat, for article XIII D did not exist at the time. But it applies just as well.

(3e) At oral argument, plaintiffs emphasized article XIII D's exemptions for existing development fees and all charges to provide gas and electrical ***844** service. (Art. XIII D, §§ 1, subd. (b), 3, subd. (b).) They assert that a developer fee is a fee on an incident of property-the right to improve it-and that there

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would have been no need to exempt such fees if other fees imposed on incidents of property did not fall within article XIII D's scope. Similarly, they argue that one can own property without having utility service, and that if article XIII D applied strictly to levies that are imposed solely on the basis of property ownership, there would have been no need to exempt such utility charges in the constitutional provision.

We note, however, that the provision regarding development fees refers only to those existing at the time of article XIII D's enactment. Moreover, it is unclear to us whether a fee to provide gas or electricity service is the same as a fee imposed on the consumption of electricity or gas. In any event, we believe that the aforementioned exemptions may have been included in an abundance of caution in case court interpretations of article XIII D similar to the Court of Appeal's should prevail. Finally, we do not believe that any incongruity can trump the plain language we have discussed herein. In short, we are unpersuaded.

Similarly unpersuasive is plaintiffs' contention, also emphasized at oral argument, that the city's ability to enforce payment of the inspection fee by imposing a lien on the property shows that the fee is property-related, not business-related. The fact is that the city is simply availing itself of all possible means to collect the fee. Property liens may be precipitated by at least one cause unconnected to land ownership (except ownership of the land on which the lien is imposed): the cost of removing graffiti. (Gov. Code, § 38772.)A lien may be imposed on parents' land to defray the cost of removing graffiti their child has scrawled on that belonging to another. (*Id.*, subd. (b).)

Plaintiffs also advert to section 5 of Proposition 218, which requires that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., Gen. Elec., *supra*, text of Prop. 218, § 5, p. 109; reprinted as Historical Notes, 2A West's Ann. Cal. Const., *supra*, foll. art. XIII C, p. 33.) But "[l]iberal construction cannot overcome the plain language of Proposition 218 limiting [its] scope ... to [levies] based on real property." (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (1999) 72 Cal.App.4th 230, 237-238 [84 Cal.Rptr.2d 804].) (6) As a rule, a command that a constitutional provision or a statute be liberally construed "does not license either enlargement or restriction of its evident meaning" (*People v. Cruz* (1974) 12 Cal.3d 562, 566 [116 Cal.Rptr. 242, 526 P.2d 250]). Thus, ***845** given that article XIII D's scope is, as we have explained, unambiguously limited to burdens on landowners as such, " 'no resort to this command [of liberal construction] is required' " (*Howard Jarvis*, *supra*,73 Cal.App.4th 679, 687, quoting *Buhlert Trucking v. Workers' Comp. Appeals Bd.* (1988) 199 Cal.App.3d 1530, 1533, fn. 4 [247 Cal.Rptr. 190]) or even permitted.

III.

The Court of Appeal's judgment is reversed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred.

BROWN, J.

I respectfully dissent.

Under the provisions of Proposition 218, affected property owners must approve the imposition of any new or increased fee, which is "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (Cal. Const., art. XIII D, § 2, subd. (e) (article XIII D).) The dispositive determination in this case is whether a rental inspection fee is imposed "upon a person as an incident of property ownership." (*Ibid.*) To find that it is not, the majority concludes the Court of Appeal erroneously substituted "on" for "as." It is the majority that errs, however, in assuming "incident" denotes "the so-called bundle of rights that flow from [estates in land]." (Maj. opn., *ante*, at p. 840; see maj. opn., *ante*, at pp. 840-841.) In my view, the voters did not intend the courts to look any further than a standard dictionary in applying the terms of article XIII D.

"A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words. [Citation.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302 [58 Cal.Rptr.2d 855, 926 P.2d 1042].) Nothing in the ballot arguments in favor of or

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against Proposition 218 or in the Legislative Analyst's analysis implies that a different rule should obtain with respect to "incident," or that the voters intended it to have other than a plain meaning. The dictionary defines an "incident" as "something incident to something else," that is, "dependent upon or involved in something else." (Webster's New World Dict. (3d college ed. 1988) p. 682; see also Black's Law Dict. (4th ed. 1968) p. 904, col. 2 ["Used as a noun, [incident] denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing .... Also, less strictly, it denotes anything which is usually ***846** connected with another, or connected for some purposes, though not inseparably"].) In other words, if the imposition of a fee depends upon one's ownership of property, it comes within the purview of article XIII D unless otherwise excepted.

The fee at issue here plainly meets this definition. Pursuant to its police powers, the City of Los Angeles (City) enacted a Housing Code (L.A. Mun. Code, § 161.101 et seq.), which provides that residential rental properties are subject to regular inspection for substandard and unsanitary conditions. Under the Housing Code, funding for these inspections devolves to a particular class of property owners, the landlords of the rental units, who must pay a $12 fee for every unit owned. (*Id.*, § 161.352.) [FN1] As the majority acknowledges, "no one can rent [apartments] without owning them." (Maj. opn., *ante*, at p. 841; see also *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97, 105 [207 Cal.Rptr. 285, 688 P.2d 894].) And no one is subject to the rental inspection fee without owning them. This exaction is thus imposed "as an incident of property ownership" (art. XIII D, § 2, subd. (e)); that is, it is dependent upon such ownership. (Cf. Off. of Legis. Analyst, Understanding Proposition 218 (Dec. 1996) p. 30 ["Generally, we think these fees would be considered property-related if there were no practical way that the owner could avoid the fee, short of selling the property or fundamentally changing its use"].) Moreover, "[s]hould the owner fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law." (L.A. Mun. Code, § 161.352.) The use of tax lien procedures is a typical enforcement mechanism for delinquent levies imposed against property.

FN1 Los Angeles Municipal Code section 161.352 provides: "*Owners* of all buildings subject to inspection shall pay a service fee of $12.00 per unit per year. The fee will be used to finance the cost of inspection and enforcement by the Housing Department. Should the *owner* fail to pay the required fee, the City of Los Angeles will recover it, plus accrued interest, utilizing any remedies provided by law including nuisance abatement or municipal tax lien procedures established by ordinance or state law. This fee shall be known as the 'Systematic Code Enforcement Program Fee.' " (Italics added.)

The majority avoids this result in part by finding the City "imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords." (Maj. opn., *ante*, at p. 842.) The last portion of this statement proves too much: Landlords are property owners. Imposition of the fee is an incident of, i.e., depends upon, that status and thereby runs afoul of article XIII D. As for the first portion of the statement, it ignores or disregards what the majority elsewhere concedes, that the business at issue is inseparable from property ownership. No amount of parsing can change that ineluctable fact. ***847**

The majority also concludes "neither the ballot arguments nor the Legislative Analyst's analysis suggested that article XIII D was intended to encompass fees of the type at issue here." (Maj. opn., *ante*, at p. 843.) Ultimately, the terms of the measure as enacted control our interpretation (see *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 673 [47 Cal.Rptr.2d 108, 905 P.2d 1248] (conc. opn. of Mosk, J.)); and their plain meaning does not support the majority's reasoning. But the ballot materials also belie the majority's conclusion. While those materials do not specifically mention rental inspection fees, such an intention is readily discernable from any fair reading. The Legislative Analyst warned generally that "[t]his measure would constrain local governments' ability to impose fees" and "[r]educe the amount of fees ... businesses pay." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996), analysis of Prop. 218 by the Legis. Analyst, p. 73 (Ballot Pamphlet).) More particularly, the Legislative Analyst's list of "most likely fees and assessments affected by these provisions" (*id.* at p. 74) easily encompasses this type of

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exaction: "park and recreation programs, fire protection, lighting, ambulance, business improvement programs, library, and water service." (*Ibid.*) The argument in favor of Proposition 218 reminded the electorate that "[a]fter voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees.' " (Ballot Pamp., *supra*, argument in favor of Prop. 218, p. 76.) "Proposition 218 guarantees your right to vote on local tax increases-even when they are called something else, like 'assessments' or 'fees' ...." (*Ibid.*) The argument did not limit the type of "fee" that would be subject to a vote under article XIII D but instead promised, "Proposition 218 ... stops politicians' end-runs around Proposition 13." (Ballot Pamp., *supra*, rebuttal to argument against Prop. 218, p. 77.) Particularly in light of its timing, the City's rental inspection fee appears to be just the kind of evasive maneuver at which proponents aimed Proposition 218. (See generally *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 105 [211 Cal.Rptr. 133, 695 P.2d 220] [purpose, in part, of Prop. 13 was "to prevent the government from recouping its losses from decreased property taxes by imposing or increasing other taxes"].)

In this regard, the majority also fails to accord any significance to two important provisions of Proposition 218. In any action challenging imposition of a new or increased fee or charge, the initiative assigns to the agency "the burden ... to demonstrate compliance with this article" (art. XIII D, § 6, subd. (b)(5)), thereby reversing the usual deference accorded governmental action in such matters and making it more difficult to defend its legitimacy. (See Ballot Pamp., *supra*, analysis of Prop. 218 by the Legis. ***848** Analyst, p. 74; see also art. XIII D, § 4, subd. (f) [imposing same burden for assessments].) The voters also expressly provided that Proposition 218 "shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., *supra*, text of Prop. 218, § 5, p. 109, also reprinted as Historical Notes, 2A West's Ann. Cal. Const. (2000 supp.) foll. art. XIII C, § 1, p. 25.) The majority's construction frustrates both these goals.

The City argues that conditioning imposition of its rental inspection fee on compliance with the procedures set forth in article XIII D would allow landlords to defeat regulation of their businesses. This argument misses two critical points: First and generally, since the City has decided its rental inspections are necessary to eradicate "substandard and unsanitary residential buildings and dwelling units the physical conditions and characteristics of which ... are such as to be detrimental to or jeopardize the health, safety and welfare of their occupants and of the public" (L.A. Mun. Code, § 161.102), it can reasonably expect the public to pay for the program.

Second and specifically, the Los Angeles Municipal Code already provides substantial enforcement authority to prosecute landlords who violate the City's Housing Code. If a property owner fails to correct violations, the City may recover its administrative as well as abatement costs (L.A. Mun. Code, § 161.206.2), may seek criminal penalties including fines and imprisonment (*id.*, § 161.206.3), and may pursue civil remedies as provided in the Health and Safety Code (L.A. Mun. Code, § 161.206.4).

When the voters passed Proposition 13 in 1978, they sought to restrict the ability of government to impose taxes and other charges on property owners without their approval. For almost two decades, however, they witnessed politicians evade this constitutional limitation. The message of Proposition 218 is that they meant what they said. With the majority turning a deaf ear to that message, we may well expect a future effort to "stop[] politicians' end-runs around Proposition 13." (Ballot Pamp., *supra*, rebuttal to argument against Prop. 218, p. 77.)

Baxter, J., concurred. ***849**

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CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS et al., Plaintiffs and Respondents,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Respondents; ALBERT W. MILLS et al., Interveners and Appellants.
ALBERT W. MILLS, Plaintiff and Appellant,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Appellants.
No. C023075., No. C023184.

Court of Appeal, Third District, California.
Apr. 10, 2000.

[Opinion certified for partial publication. [FN*]]

FN* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part I.

SUMMARY

An individual filed a declaratory relief action challenging the constitutionality of a flat fee imposed by the Legislature pursuant to Fish & G. Code, § 711.4, on those submitting project proposals to the Department of Fish and Game for environmental review. Plaintiff alleged the fee constituted a tax that was not passed by a two-thirds majority as required under Cal. Const., art. XIII A (Prop. 13). The trial court found that although the statute was not unconstitutional on its face, it was unconstitutional as applied to plaintiff. Before entry of judgment, however, the parties settled the matter, with the department agreeing to refund plaintiff's fees and to stop collecting the fees statewide. Employees of the department then filed a petition for a writ of mandate to compel the department to resume collection of the fees and to pursue retroactive collection. The writ proceeding and the declaratory relief action were consolidated. The trial court again ruled that the statute was unconstitutional as applied, but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to the individual plaintiff. The trial court ordered the department to reinstate enforcement and to retroactively collect the fees, and the settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. (Superior Court of Sacramento County, Nos. 95CS02523 and CV529928, Jeffrey L. Gunther, Judge.)

The Court of Appeal affirmed in part and reversed in part the judgment entered in the declaratory relief action, and, since the court concluded that the statute was a valid regulatory fee, and was therefore constitutionally enacted, plaintiff's appeal from the judgment entered in the writ proceedings was dismissed as moot. The court held that the Legislature did not violate the supermajority requirement of Cal. Const., art. XIII A, by imposing the flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals. The court further held that there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. (Opinion by Raye, J., with Sims, Acting P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Property Taxes § 7.6--Constitutional Provisions-- Proposition 13--Assessments as Fees or Taxes--Flat Fee for Environmental Review by Department of Fish and Game:Taxation § 3--

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Construction of Legislation.
The Legislature did not violate the super-majority requirement of Cal. Const., art. XIII A (Prop. 13) by imposing a flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, on those who submit project proposals to the Department of Fish and Game for the environmental review necessary to protect fish and wildlife, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 107 et seq.]
(2) Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction of Legislation.
The determination under Prop. 13 (Cal. Const., art. XIII A, §§ 3, 4) whether impositions are taxes or fees is a question of law for the appellate courts to decide on independent review of the facts. Ordinarily, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted, and most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.

(3a, 3b) Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Regulatory Fees--Special Taxes.
Fees charged for the costs of regulatory activities are not special taxes under a Cal. Const., art. XIII A, § 4 (Prop. 13) analysis if the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and they are not levied for unrelated revenue purposes. A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. The regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. Legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the fee. The government bears the burden of proof. It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. The record need only demonstrate a reasonable relationship between the fees to be charged and the estimated cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs.

(4) Fish and Game § 3--Regulation--Fee for Environmental Review with Department of Fish and Game--Validity of Higher Fee for Review of Negative Declaration.
In proceedings to challenge the validity of a flat fee (Fish & G. Code, § 711.4) on those submitting project proposals to the Department of Fish and Game for environmental review, there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. A senior environmental specialist supervisor for the department testified at trial that the standard for a negative declaration is that a project must have no adverse impact on the environment. Thus, the department must ensure that the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and the department staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spent more time on the review of a negative declaration than the review of an equivalent size project with environmental impact report documentation. Hence, due to project information collection costs and the time spent negotiating mitigation measures, the department's costs were generally higher for negative declarations.

COUNSEL

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and Appellant and for Interveners and Appellants.

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Dennis F. Moss for Plaintiffs and Respondents.

RAYE, J.

In this appeal we consider whether the Legislature ran afoul of the supermajority requirement of article XIII A of the California Constitution when it imposed a flat fee per environmental review by the Department ***939** of Fish and Game (Fish and Game). More precisely, we must determine whether the exactions imposed by section 711.4 of the Fish and Game Code [FN1] constitute a regulatory fee or a tax.

FN1 Further statutory references to sections of an undesignated code are to this code.

Determining whether an exaction is a fee or a tax has been a recurring chore since 1978 when the voters in California enacted comprehensive and constitutional tax reform. (Cal. Const., art. XIII A (the Jarvis-Gann Property Tax Initiative or Proposition 13).) An act to increase state taxes must be passed by two-thirds of the members of the Legislature and an increase in local taxes must be passed by a two-thirds vote of the qualified electors. (Cal. Const., art. XIII A, §§ 3 & 4.) Fees, by contrast, are not subject to the supermajority limitation of article XIII A. Albert Mills, an appellant in both cases, insists the environmental review fees charged by Fish and Game pursuant to section 711.4 constitute a tax and, therefore, are unconstitutional because the statute was passed by slightly less than a two-thirds majority.

It is well established that the amount of fees collected must not surpass the cost of the regulatory services or programs they are designed to support. We must decide whether there must be a direct correlation between the amount of a fee imposed on a specific payor and the benefits received or burdens imposed by the payor's activity. More to the point, is a flat regulatory fee in legal effect a tax subject to the supermajority requirement of California Constitution, article XIII A?

We conclude that as long as the cumulative amount of the fees does not surpass the cost of the regulatory program or service and the record discloses a reasonable basis to justify distributing the cost among payors, a fee does not become a tax simply because each payor is required to pay a predetermined fixed amount. Flat fees are not in legal effect taxes. Based on the evidentiary record before us, we find that the Legislature did not violate California Constitution, article XIII A by imposing a flat regulatory fee on those who submit project proposals to Fish and Game for the environmental review necessary to protect fish and wildlife. The consequences of our ruling to the multiple parties in these consolidated cases are explained below.

Procedural Background

Section 711.4, enacted by the Legislature in 1990, set a fee schedule to defray a portion of the costs incurred by Fish and Game in meeting its environmental review obligations under the California Environmental Quality Act and the Z'Berg-Nejedly Forest Practice Act of 1973. (§ 711.4, ***940** subds. (a), (b), (c) & (d); Pub. Resources Code, §§ 4511, 21000 et seq.) Section 711.4 states in relevant part: "(a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act ..., consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act. [ ] (b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified." For projects for which a negative declaration has been prepared, the filing fee set by the Legislature is $1,250 and for projects for

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which an environmental impact report has been prepared, the filing fee is $850. (§ 711.4, subd. (d)(3) & (4).) "The county clerk may charge a documentary handling fee of twenty-five dollars ($25) per filing in addition to the filing fee specified in subdivision (d)." (§ 711.4, subd. (e).)

Albert W. Mills challenged the constitutionality of section 711.4 in a declaratory relief action he filed in July 1991. He sought declaratory and injunctive relief in a first cause of action and a refund of his fees in a second cause of action. A demurrer was sustained without leave to amend to the second cause of action. Fish and Game sought a writ of mandate to compel the trial court to dismiss the entire complaint because Mills had not filed a claim for a tax refund. We summarily denied the petition for the writ. The trial court denied a subsequent motion for judgment on the pleadings on the same ground asserted in the writ petition.

In 1992 the Legislature amended the statute to expand the exemptions for projects for which no fees were required. The amendment passed by a two-thirds majority vote.

The case was tried in the summer of 1994 and the following spring the trial court issued a statement of decision. The court found that although the statute was not unconstitutional on its face, on the evidence received by the court, it was unconstitutionally applied. Before the statement of decision was filed and a judgment was entered, the parties settled the lawsuit. Fish and Game agreed to refund Mills's fees, to pay his attorney fees, and to cease collection of the fees statewide.

Employees of Fish and Game, however, filed a petition for a writ of mandate to compel Fish and Game to resume collection of the fees and to ***941** pursue retroactive collection. Mills intervened in the writ proceedings, which were then consolidated with the declaratory relief action.

The trial court again ruled that section 711.4 was unconstitutional as applied but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to Mills. (Cal. Const., art. III, § 3.5.)The court ordered Fish and Game to reinstate enforcement and to retroactively collect the fees. The settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. The settlement order provides in pertinent part that section 711.4 is not unconstitutional on its face but is unconstitutional as applied to Mills; Fish and Game is enjoined from collecting fees from Mills but is not otherwise prohibited from collecting fees.

Mills appeals both judgments. On appeal from the judgment in the declaratory relief action, he maintains section 711.4 is unconstitutional on its face and, consequently, Fish and Game must be enjoined from collecting all fees. Fish and Game urges us to dismiss the appeal on multiple grounds: Mills lacks standing because, under the terms of the settlement, he is not aggrieved; the constitutionality of section 711.4 is moot because it was amended by a two-thirds majority; and the trial court lacked jurisdiction because Mills failed to exhaust his administrative remedies by filing a claim for a tax refund. Fish and Game also appeals. We granted the Pacific Legal Foundation's request to file an amicus curiae brief echoing Mills's constitutional attack on the statute.

For the reasons discussed herein, we affirm in part and reverse in part the judgment entered in the declaratory relief action. Because we have concluded that section 711.4 is a valid regulatory fee, and was therefore constitutionally enacted, Mills's appeal from the judgment entered in the writ proceedings is moot. That appeal is dismissed.

Discussion

I [FN*]

FN* See footnote, *ante*, page 935.

. . . . . .

II

Before we apply the ever-growing body of case law involving post-Proposition 13 fees and taxes, it is essential to understand the statutory world ***942** in which Fish and Game lives and section 711.4 was born. The language of these statutes resolves some of the issues raised by Mills and provides the necessary background to analyze others.

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(1a) Mills argues that Fish and Game does not operate a regulatory program and, therefore, the fee is not regulatory in nature. We disagree. Fish and Game is only one small part of a huge regulatory system in place in this state to protect and sustain the environment, but it plays a vital regulatory role under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) CEQA guidelines specifically list Fish and Game as a trustee agency, a status which imposes certain obligations. Fish and Game must be consulted before a determination is made as to whether a negative declaration or an environmental impact report is required for a particular project. (Pub. Resources Code, § 21080.3, subd. (a).) If an environmental impact report is required, Fish and Game must comment as to the scope and contents of this document. (Pub. Resources Code, § 21080.4, subd. (a).) Later in the process, Fish and Game may be required to submit a proposed program to monitor the mitigation measures. (Pub. Resources Code, § 21081.6.)The same obligations are imposed by documents which function as environmental assessment documents such as timber harvest plans. (*Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal.App.3d 604, 626[216 Cal.Rptr. 5022].)Fish and Game Code section 1802 also requires Fish and Game to consult with lead and responsible agencies.*

Fish and Game also has comparable obligations under the Forest Practice Act. (Pub. Resources Code, § 4511 et seq.) Like the responsibility conferred on it under CEQA, Fish and Game must review the impact of a timber harvest plan on fish and wildlife. The Department of Forestry and Fire Protection cannot approve a timber harvest plan until it has consulted with Fish and Game. (Pub. Resources Code, § 4582.6.)

Under both CEQA and the Forest Practice Act, Fish and Game is an essential link in a comprehensive attempt to safeguard the environment. The fact that Fish and Game does not operate an independent regulatory program with a correlative accounting system does not detract from its regulatory role. The law is not so narrowly drawn. In a similar vein, the court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 [64 Cal.Rptr.2d 447, 937 P.2d 1350] observed: "From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less 'regulatory' in nature than the initial ***943** permit or licensing programs that allowed them to operate. Moreover, imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products." (*Id.* at p. 877.)

Having charged Fish and Game with the responsibility to manage and protect fish and wildlife through the environmental review process, the Legislature enacted a fee statute to fund Fish and Game's review functions. There are two parts of section 711.4 which are germane to the constitutional question before us.

The Legislature expressly addressed proportionality. Section 711.4, subdivision (b) states: "The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified."

Although the Legislature mandated a flat fee financing mechanism, it also provided an exemption for those projects with a de minimis impact on fish and wildlife. Section 711.4, subdivision (d)(1) provides: "For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act." In fact, 68 percent of the projects are found to be de minimis and a fee is not required.

In sum, the Legislature has given Fish and Game a critical regulatory role in the complex regulatory structure created to safeguard precious environmental resources. At the same time, the Legislature created a flat fee system to finance Fish and Game's environmental review. That system, by statute, must be proportional to the overall cost of environmental review, but only those who propose development projects which have more than a de minimis impact upon fish and wildlife are required to bear the cost of review. We must determine whether the Legislature violated the Constitution by establishing such a fee system

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with less than a two-thirds vote.

III

In 1991 the Legislature enacted the Childhood Lead Poisoning Prevention Act to provide evaluation, screening, and follow-up services for children who were at risk of suffering lead poisoning. The program of screening and treatment under the act was to be paid entirely by fees paid by those who ***944** contributed to lead contamination. In *Sinclair Paint Co.v.State Bd. ofEqualization, supra,* 15 Cal.4th 866, the Supreme Court concluded the act imposed bona fide regulatory fees, not taxes.

Sinclair is the first published case in the post-Proposition 13 era to consider whether a state, rather than a local, fee is in legal effect a tax. "Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: 'From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at pp. 872-873.)By contrast, there have been an abundance of cases in which courts have struggled to characterize a local exaction as a fee or a "special tax" under California Constitution, article XIII A, section 4. In *Sinclair*, the Supreme Court announced that "[b]ecause of the close, 'interlocking' relationship between the various sections of article XIII A" the section 4 cases "may be helpful, though not conclusive" in deciding cases under section 3. (15 Cal.4th at p. 873.)

(2) The court also reiterated the fundamental principle that "whether impositions are 'taxes' or 'fees' is a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at p. 874.)Ordinarily, "taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted" and "[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." (*Id.* at pp. 873-874.)

Sinclair was particularly helpful in identifying three very different kinds of fees or assessments, viz. special assessments, development fees and regulatory fees. (See also *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 596 [77 Cal.Rptr.2d 752].) As the court pointed out, special assessments are based on the value of benefits conferred on property, and development fees are exacted in return for permits or other government privileges. Regulatory fees, enacted under the police power, are an entirely different animal. The parties have failed to distinguish between these types of fees and, consequently, have extracted general principles from cases involving one type of fee and applied them to cases involving a completely different type of fee. We have focused our research on those cases, like *Sinclair*, involving regulatory fees. ***945**

(3a) General principles have emerged. Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A, section 4 analysis if the " ' "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at p. 876; *Townzen v. County of El Dorado* (1998) 64 Cal.App.4th 1350, 1359 [76 Cal.Rptr.2d 281].) "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." (*San Diego Gas &Electric Co.v.San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1146, fn. 18 [250 Cal.Rptr. 420].) "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." (*United Business-Com.v.City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263].) Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Pennellv.City of SanJose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111], affd. on other grounds *sub nom. Pennell v. City of San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1].) Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee." (*United Business Com.v.City ofSan Diego, supra,* 91

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Cal.App.3d at p. 166.)

The government bears the burden of proof. (*Beaumont Investorsv.Beaumont-CherryValley Water Dist.* (1985) 165 Cal.App.3d 227, 235 [211 Cal.Rptr. 567].) It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*Id.* at pp. 234-235.)"Courts [look] to a variety of evidence in determining whether the agency has satisfied that burden, not all of it prepared before the adoption of the ordinance." (*City of Dublinv.County of Alameda* (1993) 14 Cal.App.4th 264, 282 [17 Cal.Rptr.2d 845].)

*City of Dublinv.County of Alameda, supra,*14 Cal.App.4th 264, provides guidance on the quantum of proof necessary to establish the requisite fee-cost ratio. By initiative, the voters in Alameda County enacted a comprehensive recycling plan. Under the law, the plan was to be funded from a recycling fund created by a $6 per ton surcharge on materials dumped in the county landfills. The issue presented was whether the evidence before the trial court established that the surcharge would not exceed the reasonably ***946** necessary costs of the programs it would fund. The Court of Appeal considered both the estimated costs of the programs and the basis for determining the apportionment of those costs.

The court wrote: "The trial court concluded that the requisite fee-cost relationship was not established because Measure D's programs are not yet developed and their costs cannot presently be calculated with certainty, but such specificity is not required. Instead, the record need only demonstrate a reasonable relationship between the fees to be charged and the *estimated* cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs." (*City of Dublin v. County of Alameda, supra,*14 Cal.App.4th at p. 283, original italics.)

In a similar case, the Court of Appeal addressed the quantum of proof and proportionality. "Plaintiffs fault the report for failing to include 'site-specific' data showing a 'close connection' between new development and the fees to be imposed. However, their citation to 'taking' cases shows that they are blurring legal principles. [Citation.] The fee at issue here is a general one applied to all new residential development and valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed." (*Garrick Development Co.v.Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 333-334 [4 Cal.Rptr.2d 897].)

(1b) Fish and Game met its burden of showing that the amount of fees generated by section 711.4 was far less than the cost of the environmental reviews provided. There was evidence that $11 million had been collected in fees, but the cost of the reviews was in excess of $20 million. Thus, the fees were not revenue raising in that they did not generate income which surpassed the cost of the services provided.

The more difficult issue is determining what latitude the Legislature has in establishing the amount of a fee imposed on an individual payor. Fish and Game argues the fees have no indicia of a tax. Since there is sufficient evidence to demonstrate that collectively the amount of the fees do not exceed the cost of the regulatory program they are collected to support, they urge us to uphold the constitutionality of section 711.4. Mills, on the other hand, insists Fish and Game failed to prove the more specific requirement that the fees are proportionate to the service provided or the burden imposed. He insists the flat fee is a tax because there is no individual correlation between the amount of the fee and the cost of the benefit or burden. Whether the Legislature retains the flexibility to mandate a flat fee by a simple majority vote is the crux of this case. ***947**

Sinclair is noteworthy for its expansive legitimation of regulatory fees. Under the formula approved by the Supreme Court, paint manufacturers are assessed fees based on their market share or their past and present responsibility for environmental lead contamination. (*Sinclair Paint Co. v. State Bd. of Equalization, supra,*15 Cal.4th at p. 872.)Market share is a novel methodology for assessing fees. Nevertheless, the court permitted present fees to be determined on the basis of past conduct when not only were fees nonexistent, but the dangers of lead-based paint were unknown.

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As broad as the implications of *Sinclair* are, the Supreme Court did not have to reach the troublesome issue of proportionality, because paint manufacturers were assessed fees in proportion to their share of the market. Moreover, Sinclair, in moving for summary judgment, did not seek to establish that the amount of the fees bore no reasonable relationship to the social or economic burdens its operations generated. The court noted that Sinclair would have the opportunity at trial "to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic 'burdens' its operations generated." (*Sinclair Paint Co. v. State Bd. of Equalization, supra*,15 Cal. 4th at p. 881.)

Close to 20 years ago, we articulated the same rule to Mills in his earlier constitutional challenge to fees charged for processing land use applications. In *Millsv.County of Trinity* (1980) 108 Cal.App.3d 656 [166 Cal.Rptr. 674], we stated: " '[T]he special tax' referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." (*Id.* at pp. 659-660.)In *Mills* as in *Sinclair*, however, the case was remanded "for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities." (*Mills*, at p. 660.)

Flat regulatory fees were upheld in *Pennellv.City of SanJose, supra,*42 Cal.3d 365.In *Pennell*, a rent control ordinance imposed a flat annual fee on each rental unit. It was "designed to defray the costs of providing and administering the hearing process prescribed in the ordinance, not to pay general revenue to the local government." (*Id.* at p. 375.)The court concluded: "It is well settled that a municipality under the police power may impose a regulatory fee when, as here, the fee constitutes an amount necessary to carry out the purpose and provisions of the regulation." (*Id.* at p. 375, fn. 11.)***948**

The court in *Pennell* appeared satisfied that the cumulative amount of the fee would support the administration and implementation of the hearing process without an examination of the benefits to be derived by individual lessees. Many lessors would never avail themselves of the hearing process at all and yet under the rent control ordinance, they, like the lessees who would petition for hearing, were required to pay the fee. *Pennell* does not require the government to prove proportionality on an individual basis. Under *Pennell,* the significant inquiry is whether the amount of the fees collected under the ordinance exceed the cost of the regulatory program they are collected to support. Proportionality is measured collectively to assure that the fee is indeed regulatory and not revenue raising.

While Mills cites many cases for the general proposition that fees must be apportioned according to some formula for ascertaining the benefits received or the burdens imposed by the payor's activity, he fails to cite a single regulatory fee case in which a fee was found to be a tax because the government failed to sustain its burden of proving a reasonable apportionment. On this pivotal point, the cases require close examination for what they require and for what they do not.

Two cases involve regulatory fees, like those before us, enacted to defray the costs of programs to mitigate damage to the environment. In *San Diego Gas & Electric Co.v.San Diego CountyAir Pollution Control Dist., supra,*203 Cal.App.3d 1132(*San Diego Gas & Electric Co.*), and *Brydonv.East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178 [29 Cal.Rptr.2d 128], the Courts of Appeal upheld fee structures against challenges they constituted special taxes. Both cases discuss the apportionment issue at some length.

In *San Diego Gas & Electric Co., supra*, a utility company challenged an air pollution district's method of apportioning the costs of its permit programs by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. The emissions-based formula allowed the district to charge additional renewal permit fees based on the average pollution generated by a facility within a specific industry. The court wrote: "SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs .... There is no reason to require the district to show precisely how more emissions generate more costs to justify the emission-based apportionment formula. The purpose

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for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allocate costs based on a premise that the more emissions generated by a ***949** pollution source, the greater the regulatory job of the district." (203 Cal.App.3d at pp. 1147-1148, fn. omitted.)

In rejecting *San Diego Gas & Electric Co.*'s argument that the emissions-based formula eroded the intent of the voters in enacting California Constitution, article XIII A, the court explained that "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to [Health and Safety Code] section 42311 and the emissions-based fee schedule." (*San Diego Gas & Electric Co., supra*,203 Cal.App.3d at pp. 1148-1149.)

In *Brydon,* water customers challenged a new rate structure as a special tax. The inclined rate structure increased price per cubic foot for increased usage. The Court of Appeal found *San Diego Gas & Electric Co.* "a sustainable analogy." "Just as the regulatory scheme set forth by the [air pollution control district] was designed to achieve a legislatively mandated ecological objective, so is the inclined block rate structure of the District a response to state-mandated water-resource conservation requirements." (*Brydonv.East BayMun. Utility Dist., supra*,24 Cal.App.4th at p. 192.)The court emphasized the latitude necessary to set the amount of fees to meet the regulatory objectives. "In pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity. [Citation.] [ ] ... [ ] ... In short, California Constitution, article XIII A does not apply to every regulatory fee simply because, as applied to one or another of the payor class, the fee is disproportionate to the service rendered." (*Id.* at pp. 193-194.)

Hence, both cases narrow the breadth of California Constitution, article XIII A as applied to regulatory fees. Both suggest a flexible assessment of proportionality within a broad range of reasonableness in setting fees. In *San Diego Gas & Electric Co.,* the use of a formula to distribute indirect costs was sustained, while in *Brydon* an inclined block rate schedule allowed the water district to discourage water consumption. Neither relied on the kind of exact apportionment calculation urged by Mills.

Still, *San Diego Gas & Electric Co.* and *Brydon*, unlike *Pennell*, did not involve flat fees. While the formula or rate structure may not have been exact, each bore some relationship to the benefit reaped or the burden ***950** imposed by the payor. Put another way, the payors had some control over the amount of the regulatory fee they were compelled to pay by the degree to which their respective activities impacted the environment. The more they polluted the air and consumed the water, the more they paid.

We acknowledge that in this case Mills had no comparable control over the amount of the fees he was charged to review his timber harvest plan. The amount of the fees is expressly set forth in section 711.4. (3b) Nevertheless, we hold that a regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public. The legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes. An inherent component of reasonableness in this context is flexibility. We agree with the notion that shifting the costs of environmental protection to those who seek to impact our natural resources does not subvert the objectives embodied in Proposition 13. Hence, a regulatory fee does not violate California Constitution, article XIII A when the fees collected do not surpass the costs of the regulatory programs they support and the cost allocations to individual payors have a reasonable basis in the record.

IV

(1c) The record before us is a vivid illustration of the need for flexibility in establishing the amount of regulatory fees. Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity

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of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations; the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations; the intermingled functions of various departments as well as intermingled funding sources; and expansive accounting systems which are not designed to track specific tasks.

Mills asserts that these problems preclude a finding of a fee. He points out that Fish and Game did not conduct the kind of study now accepted within the expert field of user fee analysis to ascertain with precision the justifiable amount of a proposed fee based on the costs involved in providing the service. He criticizes the change in accounting systems in July 1991 which obfuscates the data necessary to make credible calculations, and he bemoans ***951** the incomprehensibility of the new CALSTARS accounting system as it relates to a user fee analysis. He insists that depositing the fees into Fish and Game's preservation fund is tantamount to a tax since the preservation fund operates as a general fund for Fish and Game. And he provides many examples of how disproportionate the fees are as to certain payors. Although most projects only receive a cursory review, there is a substantial variance in the amount of time spent on more in-depth reviews, varying from a few minutes to a few weeks, with the burden falling most heavily on small timberland owners.

This evidence is undisputed. There is no question that a flat fee will seldom represent the exact cost of providing a service. Fish and Game does not pretend such a correlation exists. Since we have determined that state regulatory fees are different from other user fees, the question presented is whether the evidence in this record is sufficient to sustain the legislative determination that a flat fee system is a reasonable means to allocate the costs of environmental review. FN3

> FN3 Evidence of the legislative history of section 711.4 was admitted at trial. Legislative history can be relevant to a determination whether an exaction is a fee or a tax. (*CentexReal Estate Corp.v.City of Vallejo* (1993) 19 Cal.App.4th 1358, 1362 [24 Cal.Rptr.2d 48].) Here, the trial court found the costs of environmental review exceeded the amount of the fees, but it found imposition of a flat fee arbitrary. Without the benefit of the Supreme Court's holding in *Sinclair* and the broad analysis of regulatory fees, the trial court narrowly construed section 711.4 as a user fee requiring the amount of the fees to reflect the cost of the service provided the payor. Because we have decided that a flat fee may be a reasonable allocation of the costs of a regulatory fee and the trial court found Fish and Game had met its burden of proof on this issue, the legislative history cited by the trial court is unnecessary.

Mills fails to appreciate the difference between regulatory fees and more typical user fees. At trial, he offered an expert from the new cottage industry of analysts and advisers to local governments on how to legitimize their fees in the litigious climate spawned by Proposition 13. That expert's testimony reflects his misguided assumption that all fees are created equal and that, to survive constitutional attack, they must be supported by exhaustive studies, unassailable time keeping, and a precise cost-fee analysis.

He insisted that a cost analysis study was not only advisable, but necessary. "So that is why I am saying it is possible for Fish and Game to do a kind of cost analysis study. My question then would be, secondly, do they now have that in place? Have they kept track? Have they required their staff to fill in reports? I mean, they might be able to do it starting now. But have they done it? Nothing has been submitted to me showing a tracking process of the steps taken and breaking down the specific tasks and functions.

"I recall this being referenced to the fact the administrative or bookkeeping costs were too high to do that. Frankly, my judgment is that becomes a ***952** copout. It is not too difficult. You can organize and set up, especially in today's computerized world with P.C.'s on half the staff desks.

"Attorneys have to bill by the minutes. They have to keep track of their time.

"It is perfectly possible to keep track of time. And I think, frankly, my judgment might be that if it is difficult, if your staff are not now doing those things systematically, it needs a whole retraining and re-

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gearing."

He opined that absent retraining, regearing, studies, and analysis, a fee could not survive a constitutional challenge. He went on to suggest a rather unique correlation between the time spent and the benefits achieved. Having testified he could not find a direct relationship between payment of a fee and providing any service, he stated: "There is no discussion of what happens as a result of the reviews. You know, do more spotted owls get saved? More fish saved? Or what. There is no functional relationship." Again he opined that in order to sustain the constitutionality of the fee, Fish and Game must document how a forest was saved or how many spotted owls were saved by the staff.

Fish and Game urges us to dismiss his opinion for several reasons: He had never reviewed the data supporting imposition of a state fee, he did not conduct any study to determine whether the section 711.4 flat fees were reasonable or proportional, and he had no familiarity with CEQA or the regulatory landscape in which Fish and Game must operate, not to mention that his proffered opinion constituted an inadmissible conclusion of law.

We need not address these specific deficiencies because we believe his testimony serves to highlight the fundamental distinction between a user fee and a regulatory fee. His testimony is predicated on many faulty assumptions based on user fees when there is an obvious correlation between cost and benefit. Moreover, in many cases, a statute demands that the amount of a fee be commensurate with the value of a service provided or the cost of a burden imposed. (See, e.g., Gov. Code, §§ 50076, 66001.) No comparable statutes apply to this state-imposed regulatory fee.

From the vantage point of one who earns a living studying user fees and counseling local governments on how to insulate their fees from constitutional attack, it is not surprising he would overlook the vast discrepancy between a fee imposed or a privilege accorded an individual and a fee that apportions and distributes the collective costs of a regulation. In the latter case, the many factors this expert described as deficiencies become the ***953** reasonable justification for imposing a flat fee. That is, the Legislature may have determined that the administrative cost and burden of a statewide fee, including expensive studies and accounting, was too high when a simpler, flat fee could be imposed. Moreover, often, as here, measuring the benefits is amorphous. The Legislature could reasonably eschew a graduated fee structure based on an accounting of owls that were spared and forests that survived. He failed to understand that a legislative body in determining the amount of a regulatory fee is legitimately hampered by the many factors he describes as necessary to support a user fee.

The Legislature determined that the fee must be paid when a notice of determination is entered. Mills argues the timing of the exaction is unfair and unreasonable because many payors pay for reviews they never receive and others receive a bargain price for an extensive and time-consuming study. It is not our role to assess the wisdom of legislation from either a public policy or public relations perspective. We are asked only to determine whether section 711.4 imposes a fee or a tax. The record discloses several reasonable justifications for imposing a flat fee.

Fish and Game offered testimony that the imposition of an hourly fee for any environmental review would discourage early consultation. Often developers contact Fish and Game to discuss potential adverse impacts of a proposed project before any plans are submitted. Fish and Game then has the opportunity to engage in a collaborative process to eliminate or mitigate impacts on fish and wildlife before resources have been committed to a particular development plan.

The record also discloses that the environmental review process for a CEQA project or a timber harvest plan can involve various biologists at the regional level, consultation with biologists at headquarters and review of various data bases. Moreover, the biologists often work on several projects simultaneously and perform work which benefits all the projects. Consequently, the evidence suggests it would be cumbersome and expensive to account for multiple biologists' time, from multiple regions, working multiple projects.

The evidentiary thrust to Fish and Game's argument is that the cost of performing its duties under CEQA and the Forest Practice Act far exceeds the revenue generated under section 711.4. (*City ofDublinv.County of Alameda, supra,* 14 Cal.App.4th at p.

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282.)Under the accounting system dismantled in 1991, Fish and Game employees recorded their time and charged the time to various codes. Before changing to a new system, the ***954** employees' time sheets were surveyed and analyzed. A new coding system was predicated on these surveys and analyses. Mills complains that the new system camouflages and inflates the true costs of environmental review.

The trial court found Fish and Game met its burden of proving the cost of its environmental review programs. The court wrote, "While Plaintiff attacks the Department's method of converting its costs under its old accounting system to the new accounting program, the authorities do not require absolute precision. Rather, as long as the estimate of costs is a reasonable one, it will be upheld."

We need not perform an appellate audit of Fish and Game's accounting systems. Having reviewed the entire record, we are satisfied there is sufficient evidence to support the trial court's finding that the cost of comprehensive environmental review far surpasses the amount of fees generated under section 711.4. " '[W]e would be demanding the impossible by insisting on rigorously supported findings.' [Citation.] All that our review requires is that we are able to determine that the [Legislature] acted after finding a reasonable relationship between the fee and the need to which the development contributes." (*Shapell Industries, Inc.v.Governing Board* (1991) 1 Cal.App.4th 218, 247 [1 Cal.Rptr.2d 818].) Mills squabbles about the costs associated with the review of Fish and Game's own projects, the preparation of resource databases, and a few other relatively small items. His argument, like his expert's testimony, proves the point. Complex regulatory programs involve complex accounting methodologies which render a more conventional "user fee" assessment impractical or expensive.

There is also evidence that the administrative costs to implement an extensive and comprehensive time-reporting system would be high. The evidence shows that biologists often simultaneously perform the preliminary work establishing resource data for several projects and consult and research issues relating to many different projects. It is reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eases the administrative burden of collection and provides certainty to those who submit project proposals.

Fish and Game provides an apt analogy to demonstrate the reasonableness of flat fees. The Legislature has adopted a flat filing fee for filing an action in superior court whether the matter is a simple case requiring little time and attention or a complex case requiring intensive judicial resources from pretrial motions through a lengthy trial. By statute, statewide judicial fees ***955** cannot be increased or decreased by counties to provide any kind of graduated structure. (Gov. Code, § 54985, subd. (c)(1).) The fees imposed by section 711.4 are quite similar. Like a civil action, the environmental review may be time and staff intensive or it may be summarily handled. In neither case does the fee operate as a tax just because a prescribed amount is charged to all who avail themselves of the opportunity to obtain discretionary government services.

(4) Finally, plaintiff also challenges the Legislature's decision to charge a higher fee for the filing of a negative declaration than for other environmental documents. As explained by a Fish and Game senior environmental specialist supervisor at trial, the standard for a negative declaration is that a project have no adverse impact on the environment. Thus, Fish and Game has the responsibility to make sure the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and Fish and Game staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spends more time on the review of a negative declaration than for the review of an equivalent size project with EIR (environmental impact report) documentation. Hence, because of project information collection cost and the time spent negotiating mitigation measures, Fish and Game's costs are generally higher for negative declarations. There is a sufficient reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report.

V

We need not address the many other issues raised by

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the parties in these consolidated cases rendered moot by our finding that section 711.4 does constitute a regulatory fee. Moreover, we dismiss Mills's second appeal because it too is rendered moot by our finding. In the underlying case, the California Association of Professional Scientists sought to enjoin the settlement entered into by Mills and Fish and Game in the original action. The crux of the appeal is whether the trial court properly restricted its constitutional ruling to Mills alone. Since we have upheld the constitutionality of section 711.4, we need not decide whether the trial court erred by invoking article III, section 3.5 of the California Constitution to limit the scope of its constitutional ruling.

Many of the arguments raised by Mills, and echoed by his expert at trial, are rooted in the perception that a flat fee is unfair. They object vociferously ***956** to the disparity between the amount of the fee and the services provided for different projects. This may be so. The scope of our inquiry, however, is not whether the fee is fair but whether the fee is, in legal effect, a tax. This case is not a challenge to the legislative power to enact a fee, nor is it a substantive constitutional challenge to the fee. We were asked to make the legal determination as to whether it is a fee exclusively for the purpose of determining whether it was properly enacted by a majority vote. Constrained by the limited scope of appellate review, we have concluded the Legislature did not violate California Constitution, article XIII A by enacting the section 711.4 fees by a simple majority vote. Any further challenge to the equity of a flat fee structure must be presented to the Legislature for the issue is political, not constitutional.

Disposition

The appeal in case No. C023075 is dismissed. The judgment in case No. C023184 is affirmed in part and reversed in part as explained above. In both cases, Mills shall pay the costs on appeal.

Sims, Acting P. J., and Nicholson, J., concurred.
The petition of appellant Albert W. Mills for review by the Supreme Court was denied July 12, 2000. ***957**

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H

Supreme Court of California
CITY OF BURBANK, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.
City of Los Angeles, Plaintiff and Respondent,
v.
State Water Resources Control Board et al., Defendants and Appellants.
Nos. S119248, B151175, B152562.

April 4, 2005.
Rehearing Denied June 29, 2005.[FN*]

FN* Brown, J., did not participate therein.

Background: Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960,Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and
(2) when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

West Headnotes

[1] Environmental Law 149E 165

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek165 k. Purpose. Most Cited Cases
Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

States 360 18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. U.S.C.A. Const. Art. 6, cl. 2; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 301(a), (b)(1)(B, C), 402(a)(1, 3), as amended, 33 U.S.C.A. §§ 1251 et seq., 1311(a), (b)(1)(B, C), 1342(a)(1, 3); West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.
See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69; 8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 23:54; Cal. Jur. 3d, Pollution and Conservation Laws, § 126.

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[3] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In General. Most Cited Cases

Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and Purpose of Act. Most Cited Cases
When construing any statute, the court's task is to determine the Legislature's intent when it enacted the statute so as to adopt the construction that best effectuates the purpose of the law.

[4] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or Conforming Laws or Regulations. Most Cited Cases
Under the federal Constitution's supremacy clause, a state law that conflicts with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(b), 510, as amended, 33 U.S.C.A. §§ 1251 et seq., 1251(b), 1370; West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

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KENNARD, J.

***618** **864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic **865 factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

*619 I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

A. California Law

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) [FN1] Its goal is "to attain the highest water ***307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."(§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality."(§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).[FN2]

FN1. Further undesignated statutory references are to the Water Code.

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> FN2. The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."(§ 13200, subd. (d).)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be consistent with "state policy for water quality control."(§ 13240.)

B. Federal Law

[1] In 1972, Congress enacted amendments (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean ***620** Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' "(*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter-Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act."(§ 13372.)

****866** Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Toward *****308** this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.[FN3] See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See § 1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

> FN3. A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

***621** "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia,* that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate

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water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles-Glendale Water Reclamation Plant (Los Angeles-Glendale Plant), which processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles-Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Burbank,***309** serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

*622 All three plants, which together process hundreds of millions of gallons of sewage **867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.[FN4] The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: "All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.[FN5]

> FN4. This opinion uses the terms "narrative criteria" or descriptions, and "numeric criteria" or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, "no toxic pollutants in toxic amounts" would be a narrative description. This contrasts with numeric criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.
>
> FN5. For example, the permits for the Tillman and Los Angeles-Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be

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too costly when considered in light of the potential benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter-Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional *623 board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed $50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over $9 million annually, a nearly 100 percent increase above its $9.7 million annual budget for wastewater treatment.

***310 The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter-Cologne Act required a regional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings **868 to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases.[FN6]

FN6. Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

*624 III. DISCUSSION

A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter-Cologne Act. (See 26 Cal.Rptr.3d pp. 306-307, 108 P.3d p. 865,*ante*.) Section 13263 provides in relevant part: "*The regional board*, after any necessary hearing, *shall prescribe requirements as to the nature of any proposed discharge* [of wastewater]. *The requirements* shall implement any relevant water quality control plans that have been adopted, and *shall take into consideration* the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and *the provisions of Section 13241*."(§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall es-

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tablish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

***311** "(a) Past, present, and probable future beneficial uses of water.

"(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

"(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

"(d) *Economic considerations.*

"(e) The need for developing housing within the region.

"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

[2] ***625** Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge ****869** permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

B. Statutory Construction

[3] When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra,* at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter-Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter-Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 ***312** Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. But unlike the former two statutes, section 13377 was *626 not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive

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water quality policy for the nation.

[4] Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.[FN7] Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's **870 declaration in section 13377 that all discharged wastewater must satisfy federal standards.[FN8] This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is " 'without effect.' " (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this *627 state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations ***313 that would exceed the mandates of federal law.

> FN7. The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions *that meet the clean water standards in more cost-effective and economically efficient ways.*" (Conc. Opn. of Brown, J., *post,* 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's *clean water standards, regardless of cost* (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)
>
> FN8. As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." We do not here decide how this provision would affect the cost-consideration requirements of sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account "economic considerations," such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

C. Other Contentions

The Cities argue that requiring a regional board at the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is con-

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sistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal "*wherever attainable*," an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters' "*use and value* for navigation" when revising or adopting a "water quality standard." (Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

[5] At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit ***628** a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a "navigable water" of the ****871** United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 ["The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."].) It is unclear when the Cities first raised this issue. The Court of Appeal did not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See Cal. Rules of Court, rule *****314** 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles-Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that exceeded the federal requirements. This is an issue of fact to be resolved by the trial court.

DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this ***629** matter to the trial court to decide whether any numeric limitations, as described in the permits, are "more stringent" than required under federal law and thus should have been subject to "economic considera-

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tions" by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because "the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require." (Maj. opn., *ante,* 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law-which purports to be an example of cooperative federalism-would decree such a result. I do not think the majority's reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

*****315 **872 I. Federal Law**

"In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA 'prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]' ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California's. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA's NPDES permit program, the states are required to develop *water quality standards.* [Citations.] A water quality standard 'establish[es] the desired condition of a waterway.' [Citation.] A water quality standard for any ***630** given waterway, or 'water body,' has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water quality criteria can be either *narrative* or *numeric.* [Citation.]" (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, "a polluter must comply with *effluent limitations.* The CWA defines an effluent limitation as 'any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.' [Citation.] 'Effluent limitations are a means of *achieving* water quality standards.' [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA's NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations,* which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL's) where applicable. In the CWA, Congress 'supplemented the "technology-based" effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd., supra,* 109 Cal.App.4th at pp. 1093-

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1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Commrs. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.)"Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork."***316** (*American Paper Institute, Inc. v. U.S. Envtl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349(*American Paper*).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if *631 necessary, revise those initial standards at least once every three years." (*American Paper,* at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper,* at p. 350.) Accordingly, it appears that in most instances, **873 state water quality standards are identical to the federal requirements for NPDES permits.

II. State Law

In California, pursuant to the Porter-Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter-Cologne Act), the regional water quality control boards establish water quality standards-and therefore federal requirements for NPDES permits-through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors-including economic factors-set forth in Water Code section 13241.

In addition, as one court observed: "The Porter-Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter-Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)[¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter-Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides that '[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act].' [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

*632 Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)-the body responsible to enforce the statutory framework-failed to comply with its statutory mandate.

***317** For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to

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do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, "[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years-a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they 'protect the public health or welfare, enhance the quality of water and serve the purposes' of the Act. [Citation.] Additionally, the CWA ****874** directs states to consider a variety of competing policy concerns during these reviews, including a waterway's 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes.'"(*American Paper, supra,* 996 F.2d at p. 349.)

According to the Cities, "[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994." The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion-including economic considerations-at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

***633** Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante,* 26 Cal.Rptr.3d at pp. 311-312, 108 P.3d at pp. 869-870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits*****318** designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[FN1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.[FN2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

> FN1. (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95-4, Sept. 21, 1995) 1995 WL 576920.)
>
> FN2. Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today

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appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

***634** Accordingly, I cannot conclude that the majority's decision is wrong. The analysis ****875** may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands," [FN3] I write separately to set forth my concerns and concur in the judgment-*dubitante*.[FN4]

FN3. Marvin Gaye (1971) "Inner City Blues."

FN4. I am indebted to Judge Berzon for this useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

Cal.,2005.
City of Burbank v. State Water Resources Control Bd.
35 Cal.4th 613, 108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Envtl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

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HCITY OF OAKLAND et al., Petitioners,
v.
THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; CALIFORNIA BEVERAGE RETAILER COALITION et al., Real Parties in Interest.
No. A068638.

Court of Appeal, First District, Division 4, California.
May 20, 1996.

SUMMARY

Following a city's enactment of an ordinance regulating nuisances associated with alcoholic beverage establishments, an organization of liquor retailers filed an action against the city, seeking a declaratory judgment that the ordinance was invalid, an injunction precluding its enforcement, and monetary damages. The trial court granted summary adjudication on two of six causes of action, concluding that the city ordinance illegally regulated holders of earlier-granted alcoholic beverages licenses (Bus. & Prof. Code, § 23790) and taxed these licensees in violation of state law (Cal. Const., art. XX, § 22). (Superior Court of Alameda County, No. 726329-3, James R. Lambden, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its order and to enter a new order denying the summary adjudication motion and granting summary adjudication on the two causes of action in favor of the city. The court held that Bus. & Prof. Code, § 23790, which permits alcoholic beverage licensees operating in an area before the enactment of restrictive zoning ordinances to remain in business, did not preempt or otherwise preclude enforcement of the city's ordinance addressing nuisance problems associated with alcoholic beverage sale establishments. A city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. The court also held that the ordinance was not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. It further held that the fee was not a tax imposed to pay general revenue to the local governmental entity, but was a valid regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. The court held that the Legislature did not intend that a person licensed to sell alcoholic beverages be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Thus, since the ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with the state's authority to regulate alcoholic beverage sales. (Opinion by Reardon, J., with Anderson, P. J., and Poché, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Mandamus and Prohibition § 40--Mandamus--To Courts--Summary Judgment.
A summary adjudication ruling that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law (Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 23790), was an appropriate matter to be considered on a petition for a writ of mandate. An order granting partial summary judgment or summary adjudication is not an appealable order, and mandate may be granted to review an order granting summary adjudication. Although there was not a final judgment in the case, as the trial court ruled on only two of six causes of action, the issues in the case presented significant legal questions of constitutional and statutory interpretation. The public interest supported an immediate review of the trial court's ruling, since, when the validity of a public agency's action was at issue, the public interest in a speedy determination of the matter may have made an appeal inadequate. Also, the issues presented were questions of law, making

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their immediate resolution on a petition for a writ of mandate appropriate. Mandate will lie if the trial court has a clear, present, and usually ministerial duty and the petitioner has a clear, present and beneficial right of performance of that duty. If the trial court erred, the appellate court could exercise its discretion to entertain the writ in order to avoid unnecessary trial court proceedings.
[See 8 **Witkin,** Cal. Procedure (3d ed. 1985) Extraordinary Writs, § 98.]
(2) Mandamus and Prohibition § 37--Mandamus--To Courts--Interim Order.
In most cases, a trial court's interim order must await review on appeal from the final judgment. However, in cases of significant legal impact, appellate courts may consider a petition for an extraordinary writ. The adequacy of an appellate remedy depends on the circumstances of the case, vesting a large measure of discretion in the appellate court to grant or deny a writ petition.

(3a, 3b, 3c) Alcoholic Beverages § 31--Regulation by Municipalities-- Control of Nuisances and Criminal Activities--State Preemption.
Bus. & Prof. Code, § 23790, which permits alcoholic beverage licensees operating in an area before the enactment of restrictive zoning ordinances to remain in business, did not preempt or otherwise preclude enforcement of a city's ordinance addressing nuisance problems associated with alcoholic beverage sale establishments. A city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. The ordinance did not create any new authority empowering the city to halt operation of an alcoholic beverage sales establishment. It merely created an administrative mechanism that might have resulted in a third party taking action against the alcoholic beverage seller-abatement by a court or license revocation by the State Department of Alcoholic Beverage Control. The conduct that is regulated by the ordinance, the control and abatement of nuisances and criminal activities, did not fall within the ambit of § 23790.

(4) Summary Judgment § 26--Appellate Review--Scope--Statutory Construction.
On review of a summary adjudication ruling that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law, the standard of review was one of de novo review. The construction of statutes and the ascertainment of legislative intent are questions of law. The reviewing court is not limited by the trial court's interpretation, nor by the evidence presented on the issue in the trial court.

(5) Evidence § 42--Hearsay--Exceptions--Admissions--By Conduct--Arguments in Favor of Amendment of Statute.
A city's role in the legislative history of Bus. & Prof. Code, § 23790, did not constitute an admission in a subsequent action that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments impermissibly regulated grandfathered alcoholic beverage sales establishments. The city's proposed amendment to § 23790 would have provided for the expiration of grandfather rights when continuous use ended, which did not shed any light on the issue presented in the subsequent case, whether the new administrative mechanism in the ordinance may properly be applied to alcoholic beverage sales establishments that have been in continuous operation since before the ordinance was enacted.

(6) Statutes § 22--Construction--Reasonableness.
A statute must be construed in a reasonable, commonsense manner consistent with the Legislature's apparent purpose and intent, the application of which will promote wise policy, not absurdity.

(7) Alcoholic Beverages § 34--Regulation by Municipalities--Licensing and Permits--Fees to Implement Nuisance Control Ordinance.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, were not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. That the ultimate result of a failure to pay the city's required fee might be abatement or revocation of the state liquor license did not transform the regulatory fee into a prohibited license tax.

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(8a, 8b) Municipalities § 30--Police Power--Regulation of Business-- Liquor Retailers--Fees For Enforcement of Nuisance Ordinance.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, was not precluded by Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. City documents showed that the annual operating budget for the program would be recovered in fees charged to alcoholic beverage retail establishments pursuant to the ordinance. Reinspection fees would be charged only to establishments that were found not to be in compliance with the terms of the ordinance. The estimated revenues derived from the fees matched the program's proposed budget, and the ordinance's revenue was intended to pay the administrative costs of its programs. The ordinance's primary purpose was regulatory, to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed pursuant to the ordinance was not a tax imposed to pay general revenue to the local governmental entity, but a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance.

(9) Municipalities § 30--Police Power--Regulation of Business--Liquor Retailers.
Cal. Const., art. XX, § 22, grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales, and a local tax on alcoholic beverage sales is preempted by state law. However, alcoholic beverages retailers may properly be required to pay their fair share of the cost of government. If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers, but may not impose a tax on alcoholic beverage retailers under the guise of a fee.

(10) Municipalities § 30--Police Power--Regulation of Business--Fee or Tax.
To determine whether the purpose of a local ordinance imposing a fee on a business is regulatory or revenue-generating, the court looks to the substantive provisions of the ordinance, not merely its title and form. If revenue is the primary purpose of the ordinance and regulation is merely incidental, then the imposition is a tax. If regulation is the primary purpose, the mere fact that incidental revenue is also obtained does not make the imposition a tax. Generally, when a fee is imposed for a regulatory purpose and the ordinance requires compliance with conditions in addition to the payment of the prescribed sum, the imposed sum is a not a tax, but is a fee properly imposed pursuant to the local entity's police power. When the sum is exacted solely for a revenue purpose and its payment gives the right to carry on the business without any further condition, it is a tax. Fees charged in connection with regulatory activities that do not exceed the reasonable costs of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes do not constitute a tax. Generally, a regulatory fee cannot exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought. These costs include all those incident to the issuance of the permit, investigation, inspection, and administration. The municipality need only apply sound judgment and consider probabilities according to the best honest view of informed officials in setting the amount of the regulatory fee.

(11) Municipalities § 30--Police Power--Regulation of Business--Fee or Tax.
To establish that a fee is a regulatory fee and not a tax, the local entity should show the estimated costs of the regulatory activity and the basis for determining the manner in which the costs are apportioned, so that the charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. It is not necessary that the payor perceive the regulation to be a benefit. A regulatory fee may be imposed pursuant to the local governmental entity's police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation.

(12a, 12b) Municipalities § 30--Police Power--Regulation of Business-- Liquor Retailers--Regulatory Fees--Validity.
Fees imposed by a city ordinance on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, derived solely from the city's police power under Cal. Const., art. XI, § 7, and the fees were therefore valid. A city's police powers are as broad as the police power that may be exercised by

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the Legislature itself. However, in its proper exercise of its police powers, the city could not also violate Cal. Const., art. XX, § 22, which grants the State Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales. Generally, the constitutional provision will not preempt a local ordinance when the ordinance does not directly affect the licensee's ability to sell alcoholic beverage to a willing purchaser. The Legislature did not intend that a person licensed to sell alcoholic beverages be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of a city's police power. Thus, since the ordinance was not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities, it did not conflict with the state's authority to regulate alcoholic beverage sales.
[See 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 795.]
(13) Municipalities § 28--Police Power--Public Safety, Health, and Morals-- State Law.
Local governments have a legitimate need to address problems generated by business involvement in activities that may be inimical to the health, welfare, and safety of the community. State requirements may be inadequate to meet the demands of densely populated cities. Thus, it becomes proper and necessary to add tostate regulations those provisions adapted to a city's special requirements. For this reason, a local entity may properly determine that a particular business fosters, profits from, and provides an environment for activities proscribed by state law. Thus, an ordinance is not transformed into a statute prohibiting crime simply because the city uses its police powers to discourage illegal activities associated with certain businesses.

(14) Alcoholic Beverages § 3--Police Power--Local Ordinance--Federal Regulation.
A city ordinance imposing a fee on liquor retailers to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments, did not violate U.S. Const., Amend. XXI, which grants the state authority to tax and regulate liquor licensing. The ordinance imposed a regulatory fee, not a tax, and as the state Constitution did not prohibit the ordinance's regulatory fees, the state having impliedly delegated to municipalities the power to impose such fees.

COUNSEL

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REARDON, J.

Many California cities must grapple with nuisances associated with alcoholic beverage sale establishments. Some local entities have *747 adopted ordinances to identify those activities associated with alcoholic beverage sales that constitute nuisances and to eliminate their attendant threat to the public health and welfare by means of an administrative process. The proprietors of alcoholic beverage sale establishments challenge these ordinances, arguing that they trod on the state's exclusive right to regulate and tax alcoholic beverage sales. We hold that a city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments does not improperly regulate preexisting grandfathered [FN1] licensees or tax licensees for regulatory purposes.

> FN1 "Grandfathered" businesses are nonconforming uses that are not required to seek permits under local zoning ordinances enacted after they were in business. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 397 [28 Cal.Rptr.2d 530].)

In this case, petitioner City of Oakland (city) enacted

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an ordinance regulating nuisances associated with alcoholic beverage establishments. Real parties in interest California Beverage Retailer Coalition and Village Market filed an action against the city, seeking a declaratory judgment that the ordinance was invalid, an injunction precluding its enforcement, and monetary damages. The trial court granted summary adjudication on two of six causes of action, concluding that the city ordinance illegally regulated holders of earlier-granted alcoholic beverages licenses and taxed these licensees in violation of state law. (See Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 23790.) [FN2]The city and others petitioned for a writ of mandate and prohibition, seeking to compel the trial court to vacate its summary adjudication order and enter an order denying the motion for summary adjudication. We issued an alternative writ and now grant the city's petition.

FN2 All statutory references are to the Business and Professions Code unless otherwise indicated.

I. Facts

In July 1993, petitioner city enacted an ordinance as a one-year pilot program to address public nuisance problems associated with certain alcoholic beverage sale establishments in specified areas of the city. (See Oakland Planning Code, §§ 15000-15530 [Ord. No. 11624].) Under the ordinance, the sale of alcoholic beverages in the city is deemed to be an approved commercial activity as long as the merchant complies with the city's "Deemed Approved Performance Standards." [FN3]Each merchant must post a notice of these standards. (*Id.*, § 15320.) If the city receives a ***748** complaint that these standards have been violated, an administrative hearing must be conducted to review the complaint. (*Id.* § 15340.) The hearing officer must determine if the merchant has conformed to the performance standards and, if the merchant has not, may impose conditions on the use of the property to ensure compliance. (*Ibid.*) If the merchant fails to comply with these conditions, the deemed approved status may be revoked. (*Id.* § 15350.) Once administrative appeals to the planning commission and city council are exhausted, the city may seek to have the activity abated as a nuisance. (*Id.* §§ 15360-15370, 15510(c).) The city may also refer the matter to the Department of Alcoholic Beverage Control for revocation of the merchant's liquor license. (See Bus. & Prof. Code, §§ 24200-24211.) To support the pilot project, most alcoholic beverage sale licensees within the city will be assessed a $600 fee. An additional $200 reinspection fee may be imposed on an estimated 10 percent of the alcoholic beverage establishments covered by the ordinance. [FN4] (Oakland Planning Code, §§ 15400, 15510(f).)

FN3 "An Activity shall retain its Deemed Approved Status only if it conforms with all of the following Deemed Approved Performance Standards: [¶] (a) That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area. [¶] (b) That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area. [¶] (c) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests. [¶] (d) That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute. [¶] (e) That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood." (Oakland Planning Code, § 15210.)

FN4 Full service restaurants, except those located on East 14th Street, Foothill Boulevard, MacArthur Boulevard, West MacArthur Boulevard, San Pablo Avenue north of 16th Street, and Edes Avenue between Clara Street and Bergedo Avenue, are exempt from the ordinance and are not required to pay the fee.

In November 1993, real parties in interest California

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Beverage Retailer Coalition and Village Market and others [FN5] filed a complaint against the city, seeking declaratory and injunctive relief and damages. The complaint alleged that the ordinance was preempted by state law, violated due process and equal protection, and infringed civil rights. It also sought a preliminary injunction to preclude enforcement of the ordinance pending trial on the merits of the complaint. In December 1993, petitioner Coalition on Alcohol ***749** Outlet Issues [FN6] was granted leave to intervene and filed a complaint in intervention in this matter. At the hearing on the motion for preliminary injunction, the trial court found that the ordinance was preempted by state law and that the restrictions and conditions imposed by the ordinance were impermissibly retroactive. The trial court granted the preliminary injunction later that month, barring enforcement of the ordinance. The city and CAOI appealed. In September 1994, we reversed the order granting the preliminary injunction, finding that there was no clear and imminent danger of irreparable harm. (See *California Beverage Retailer Coalition v. City of Oakland* (Sept. 20, 1994) A064898 [nonpub. opn.].) [FN7]

FN5 The California Beverage Retailer Coalition is a nonprofit organization of alcoholic beverage retailers. Village Market is a retail grocery doing business in Oakland and operates under a valid off-sale liquor license issued by the State of California before the September 1, 1993, operative date of the Oakland ordinance. The third plaintiff in the original complaint-Clem Daniels, Inc.-is not a plaintiff in the second amended complaint and is not a real party in interest on appeal. For convenience, this opinion refers to the California Beverage Retailer Coalition and Village Market as "CBRC."

FN6 The Coalition on Alcohol Outlet Issues consists of the California chapter of the National Black Alcoholism Council, the California Latino Alcohol and Other Drug Coalition, the Narcotics Education League, Jubilee West Inc., Interfaith Prevention Program, Inc., and Alcohol Policy Network. This group supports the city's ordinance. For convenience, all these groups will be referred to as "CAOI."

FN7 The city asks us to take judicial notice of the record in *California Beverage Retailer Coalition v. City of Oakland, supra,* A064898.We have done so. (See Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).)

In November 1994, CBRC filed its second amended complaint. It alleged six causes of action-preemption by article XX of the California Constitution, violation of section 23790, unlawful taxation in violation of article XX of the California Constitution, and violations of due process, equal protection and civil rights. CBRC also moved for summary adjudication on the second and third causes of action alleging improper regulation in violation of section 23790 and unlawful taxation in violation of the state Constitution. The city and CAOI opposed the motion, but it was granted by the trial court.

In January 1995, the trial court filed its order granting summary adjudication on these two causes of action. It found no triable issue of fact existed on these causes of action and ruled in CBRC's favor on the law. It concluded that the ordinance was preempted by section 23790 because it regulates previously existing licensees. It also found that the fees required by the ordinance were illegal because the power to regulate and tax alcoholic beverages belongs exclusively to the state. Its order anticipated trial on the unresolved matters in this case.

The city petitioned this court for a writ of mandate or prohibition. The city argues that the trial court erred as a matter of law in concluding that the ordinance was preempted by state law. It seeks either a peremptory writ of mandate directing the trial court to vacate and set aside its order granting summary adjudication and entering a denial order instead, or an alternative writ directing the trial court to show cause why it should not be so directed. In January 1996, we issued an alternative writ. ***750**

II. Mandate [FN8]

(1a) First, we must determine whether we may review the order granting summary adjudication on a petition for writ of mandate. A writ of mandate may be issued by any court to an inferior tribunal to compel the admission of a party to the use or enjoyment of a right to which it is entitled and from which it is unlawfully precluded by the inferior tribunal. (Code

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Civ. Proc., § 1085.)Typically, the writ will not issue if there is a plain, speedy and adequate remedy in the ordinary course of law. (*Id.* § 1086.)

> FN8 The issue of the absence of an adequate remedy in the ordinary course of law has already been determined by the granting of an alternative writ. (*Brown v. Superior Court* (1971) 5 Cal.3d 509, 515 [96 Cal.Rptr. 584, 487 P.2d 1224].) We include this part to explain our reason for granting the alternative writ.

An order granting partial summary judgment-or summary adjudication-is not an appealable order. Mandate may be granted to review an order granting summary adjudication. (See *Field Research Corp. v. Superior Court* (1969) 71 Cal.2d 110, 111 [77 Cal.Rptr. 243, 453 P.2d 747]; *Mason v. Superior Court* (1985) 163 Cal.App.3d 989, 994 [210 Cal.Rptr. 63]; see 8 Witkin, Cal. Procedure (3d ed. 1985) Extraordinary Writs, § 98, pp. 737-738.)

There is not yet a final judgment in this case, as the trial court has ruled on only two of six causes of action. (2) In most cases, an interim order must await review on appeal from the final judgment. However, in cases of significant legal impact, appellate courts may consider a petition for an extraordinary writ. The adequacy of an appellate remedy depends on the circumstances of the case, vesting a large measure of discretion in the appellate court to grant or deny a writ. (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 770 [192 Cal.Rptr. 415].)

(1b) Several factors cause us to exercise our discretion and consider the merits of the petition at this time. First, the issues in this case present significant legal questions of constitutional and statutory interpretation. If the court permits CBRC to go to trial based on erroneous rulings of law, substantial trial expenses will be needlessly imposed on the city and the public. (See, e.g., *San Diego Unified Port Dist. v. Superior Court* (1977) 67 Cal.App.3d 361, 364-365 [136 Cal.Rptr. 557].) This factor tends to make later review on appeal an inadequate remedy. (*City of Glendale v. Superior Court* (1993) 18 Cal.App.4th 1768, 1776-1777 [23 Cal.Rptr.2d 305]; see *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 657 [242 P.2d 1] [prohibition]; *Bricklayers & Masons Union No. 1 v. Superior Court* (1963) 216 Cal.App.2d 578, 582 [31 Cal.Rptr. 115] [prohibition]; see also 8 Witkin, ***751** Cal. Procedure, *supra*, Extraordinary Writs, §§ 101, 116, at pp. 739-740, 751-753.)

Second, the public interest supports an immediate review of the trial court's ruling. When the validity of a public agency's action is at issue, the public interest in a speedy determination of the matter may also make an appeal inadequate. (See *Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1496-1497 [261 Cal.Rptr. 409].) A number of municipalities have ordinances similar to the one challenged by CBRC or are interested in adopting one. The issues presented in this action are of significance to other California communities struggling with similar nuisances and criminal activity centering on establishments that sell alcoholic beverages. [FN9] (See, e.g., *City of Glendale v. Superior Court*, *supra*, 18 Cal.App.4th at p. 1777.) The fact that it is in the public interest to resolve this controversy as expeditiously as possible tends to weigh in favor of the exercise of our discretion to consider the petition for writ of mandate, rather than requiring the city to await a later appeal. (See *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 339-340 [144 Cal.Rptr. 236] [error in liability portion affects scheduled damage trial].)

> FN9 The cities and towns joining as amici curiae in support of the city are the Cities of Alameda, Anaheim, Bakersfield, Carlsbad, Chico, Cypress, Fresno, Glendale, Lemon Grove, Lodi, Los Altos, Monterey, Redlands, Sacramento, San Jose, Santa Cruz, Santee, Torrance and Walnut Creek and the Town of Los Gatos.

Third, the issues presented are questions of law, making their immediate resolution on a petition for writ of mandate appropriate. Mandate will lie if the trial court has a clear, present and usually ministerial duty and the city has a clear, present and beneficial right of performance of that duty. However, the city may not invoke mandamus to control a trial court's exercise of discretion. (See *Residents for Adequate Water v. Redwood Valley County Water Dist.* (1995) 34 Cal.App.4th 1801, 1806 [41 Cal.Rptr.2d 123]; see *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 771.) On a motion for summary adjudication, the trial court has no discretion to exercise. If a triable issue of material fact exists as to the

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challenged causes of action, the motion must be denied. If there is no triable issue of fact, the motion must be granted. (Code Civ. Proc., § 437c, subd. (f).) If the trial court errs, it has made an error of law, which automatically constitutes an abuse of discretion. Under these circumstances, obtaining relief by means of mandate may be proper. If it appears that the trial court erred, the appellate court may exercise its discretion to entertain the writ in order to avoid unnecessary trial court proceedings. (*Whitney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 266 [83 Cal.Rptr. 237].)*752

If the significant legal issues of statewide interest are resolved in favor of the validity of the city's ordinance, to await a later appeal in order to make this determination would cause needless expense to the city, the CBRC and the public. Thus, we conclude that this is an appropriate matter to be considered on a petition for writ of mandate.

III. Statutory Claim

A. *Section 23790*

(3a) The trial court concluded that the Oakland ordinance was preempted by section 23790 because it regulates previously existing licensees. Thus, it granted CBRC summary adjudication on its second cause of action for declaratory and injunctive relief based on its allegation that the Oakland ordinance violated section 23790. In its petition for writ of mandate, the city contends that the trial court erred in granting summary adjudication on this cause of action because it wrongly concluded that the ordinance was preempted. It argues that the trial court based its decision on cases that did not address the specific issue presented in this case. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th 376; see also *Boccato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 [35 Cal.Rptr.2d 282].)

The city frames the issue in this manner-does section 23790 preclude it from enforcing an ordinance setting up a new mechanism to control nuisance and criminal activities that were regulated *before* enactment of this ordinance, if the new mechanism applies to an alcoholic beverage sales establishment in operation before the ordinance was enacted? [FN10] The ordinance imposes no new regulation on alcoholic beverage sales establishments, it reasons-it simply collects various, scattered nuisance and criminal regulations that exist in other laws and creates a new means of enforcing them. Thus, the city reasons, its ordinance is not preempted by section 23790. Amici curiae California cities and towns have filed an amicus curiae brief in support of the city's position. (See fn. 9, *ante*.)For its part, CBRC contends that the issue is not whether the ordinance is preempted by section 23790, but simply whether this statute precludes a retroactive land use ordinance which interferes with the sale of alcoholic beverages by a licensee. Amici curiae Beer Institute of California, California Beer and Wine Wholesalers *753 Association, Inc., and Wine Institute have filed an amicus curiae brief in support of CBRC's opposition to the petition for writ of mandate. [FN11]

FN10 Although neither party addresses this specific point, CBRC does not contend that the alcoholic beverage sales establishments were in operation before the city began regulating nuisances and criminal activities.

FN11 The Legislative Counsel of California rendered an opinion in 1993 concluding that a court reviewing the Oakland ordinance would find that it was preempted by article XX, section 22 of the California Constitution and section 23790. However, the same report also noted that a contrary argument could be made that the ordinance "regulates a nuisance aspect of the liquor business, effects of consumption, that is not covered by state law either expressly or by implication."

The pertinent part of section 23790 provides that "[n]o retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. *Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions*: [¶] (a) The premises retain the same type of retail liquor license within a license classification. [¶] (b) The licensed premises are operated continuously without substantial change in mode or character of operation...." (Italics added.) This statute was originally enacted in 1935. (*Town of Los Gatos v. State Bd. of*

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Equal.(1956) 141 Cal.App.2d 344, 346-347 [296 P.2d 909]; see Stats. 1935, ch. 330, § 15, p. 1130.) It prohibits the issuance of alcoholic beverage retail licenses for any premises located in a zone where the exercise of the rights conferred by that license would violate a valid local zoning ordinance, unless the premises had been used in the exercise of such rights before the effective date of the ordinance. (*Board of Trustees v. Munro* (1958) 163 Cal.App.2d 440, 447 [329 P.2d 765].)

(4) When reviewing the Oakland ordinance and section 23790, we must interpret both. Thus, the standard of review is one of de novo review. The construction of statutes and the ascertainment of legislative intent are questions of law. We are not limited by the trial court's interpretation, nor by the evidence presented on the issue in the trial court. (See *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 391-392 [20 Cal.Rptr.2d 164].)

B. *Grandfathered Rights*

1. *Legislative Argument*

(5) Preliminarily, CBRC contends that Oakland's role in the legislative history of section 23790 constitutes an admission that the city ordinance ***754** impermissibly regulates grandfathered alcoholic beverage sales establishments. [FN12] In 1982, the city proposed an amendment to section 23790 providing for the expiration of grandfather rights under certain circumstances. The proposed amendment would have provided for the expiration of grandfather rights when continuous use ended. It would also have distinguished between types of alcoholic beverage licenses when applications were submitted to the Department of Alcoholic Beverage Control to reopen discontinued alcoholic beverage sales establishments. The city's intent was to prevent beer-and-wine-only establishments from being upgraded to full scale liquor stores and retaining the prior owner's grandfather rights. Under the proposed amendment, the premises used in the exercise of an alcoholic beverage license before the enactment of a local zoning ordinance would continue in that operation only if the same type of retail license were used continuously at the same location. In that legislative session, the Legislature enacted a provision defining what constituted a break in the continuous operation of an alcoholic beverage sales establishment. (See § 23790, subd. (b) [now subd. (b)(1)], as amended by Stats. 1982, ch. 474, § 1, p. 2076.)

> FN12 Although, for convenience, we state this issue in terms of CBRC's objections to the ordinance, we do not mean to suggest that we believe that CBRC has the burden of proof on this or any other issue presented in the petition. As the moving party, the city has the obligation to prove that the ordinance passes muster.

Oakland officials explained that the purpose of the city's proposed amendment was "an attempt to adjust existing state law to allow the city to control the location of alcoholic beverage sales activities in a more logical and successful manner." In its letter urging the Legislature to amend section 23790, the city's legislative advocate stated that this statute provided that an establishment licensed before the effective date of a zoning ordinance would be unaffected by that zoning ordinance because of the establishment's grandfather rights. The letter added that "the state preempts local jurisdictions in the field of licensing alcoholic beverage establishments." CBRC contends that these 1982 arguments urging amendment of section 23790 contradict the city's claim that this statute does not preclude the application of the Oakland ordinance to grandfathered alcoholic beverage licensees. (See, e.g., *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 30-31 [46 Cal.Rptr.2d 44] [Judicial Council's earlier requests for legislative authority to enact rules counters present argument that no legislative authority is now needed].)

Having reviewed this matter carefully, we are satisfied that the issues are sufficiently distinct such that the city's previous position does not contradict its contentions in the present case. In 1982, the city advocated a ***755** general change in the language of section 23790 defining more clearly what constituted "continuous use" for purposes of determining whether the city had authority to regulate more alcoholic beverage sales establishments. Much of the "argument" that CBRC cites is the city's summary of the then existing law-little more than a paraphrase of the text of section 23790. The city and CBRC do not dispute what section 23790*says*, but what its language *means*-whether it applies at all in the context presented by this case.

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More importantly, the issues presented by the proposed legislation and the case at bar are significantly different. In 1982, the city sought a legislative amendment that would have allowed it more authority to limit the number and location of alcoholic beverage *licenses* issued within certain zones in the city. In the ordinance now before us, the city attempts to create an *administrative mechanism* to regulate nuisance and criminal activities that occur near alcoholic beverage sales establishments. This ordinance does not affect alcoholic beverage licenses or attempt to limit or restrict them. (See pt. IV. B.-D., *post.*) The city's recitation of the text of a statute in the context of a request for legislative clarification that some alcoholic beverage establishments should no longer be entitled to the protection of grandfather status does not shed any light on the issue presented in our case-whether the new administrative mechanism may properly be applied to alcoholic beverage sales establishments that have been in continuous operation since before the ordinance was enacted. Thus, we conclude that the city's earlier statements on an unrelated issue do not preclude it from making the arguments that it now does in favor of its interpretation of section 23790.

2. *Nuisance and Criminal Activities Control*

(3b) The city contends that the ordinance merely creates an administrative mechanism for enforcing nuisance and criminal laws that are applicable to all alcoholic beverage establishments, even those in operation before the ordinance's effective date. CBRC couches the issue somewhat differently-it argues that the Oakland ordinance creates a mechanism in the form of a retroactive land use ordinance that may result in the denial of the right to sell alcoholic beverages. As we have already concluded, the purpose of this ordinance is to control and abate nuisances and criminal activities occurring near alcoholic beverage sales establishments. (See *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 389 [no invasion of state power to regulate alcohol sales]; see pt. IV. D., *post.*) Thus, we begin our legal analysis of the applicability of section 23790 by considering this purpose.

By ordinance, a city council may declare what constitutes a nuisance. (Gov. Code, § 38771.)A city may bring an action to abate a public nuisance.*756 (Code Civ. Proc., § 731.)The California Supreme Court permits the abatement of even a grandfathered business if it constitutes a nuisance. In one case, the high court reasoned that zoning laws do not customarily interfere with existing conditions, but regulate future use of land. However, if a business constitutes a nuisance, it can still be abated in a proper exercise of the police power. (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 311 [295 P. 14].) In another, it reaffirmed that the right to continue a previously existing lawful business may be revoked if the business is found to be a nuisance. The abatement of such an existing business would be a lawful exercise of the police power, the court ruled. (*Livingston Rock etc. Co. v. County of L. A.* (1954) 43 Cal.2d 121, 128 [272 P.2d 4].) In a third case, the Supreme Court ruled that a city may determine what constitutes a nuisance and may take action to abate such a nuisance, despite the fact that the safety standards that had been incorporated in a building code sought to be enforced was enacted after construction of the building. (See *City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 96, 100 [48 Cal.Rptr. 889, 410 P.2d 393],cert. den.384 U.S. 988 [16 L.Ed.2d 1005, 86 S.Ct. 1890].)

These cases support the conclusion that a city may properly enact a local ordinance to control and abate nuisance activities, despite the fact that the business that would be regulated by the ordinance possessed grandfather rights that might ordinarily render it immune from compliance with local ordinances. (See *Livingston Rock etc. Co. v. County of L. A.*, *supra*, 43 Cal.2d at p. 128;*Jones v. City of Los Angeles*, *supra*, 211 Cal. at p. 311; see also *City of Bakersfield v. Miller*, *supra*, 64 Cal.2d at pp. 96, 100;*Suzuki v. City of Los Angeles* (1996) 44 Cal.App.4th 263, 277-281 [51 Cal.Rptr.2d 880].) If a city may abate a public nuisance despite grandfather rights, then a fortiori a municipality may enforce criminal laws in the face of such a claim of prior existing lawful operation.

CBRC counters that while these cases may support the city's authority to abate a public nuisance or control criminal activities, they did not arise in a context of a zoning ordinance enacted in violation of section 23790. It contends that section 23790 overrides the city's police powers. We disagree. Construing section 23790, it appears to us that the Legislature intended that this provision protect the vested rights of the proprietors of premises engaged in the lawful, licensed sale of alcoholic beverages. Such a business

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has acquired by the passage of time a vested right to continue in operation to lawfully dispense alcoholic beverages. However, for CBRC's challenge to the ordinance to succeed, we must also read this provision to mean that the Legislature intended that a licensed alcoholic beverage establishment retains a vested right to conduct its operation in a manner that encourages nuisance or criminal activities to occur on or near its premises. *757

Such a conclusion defies logic. (6) We must construe the statute in a reasonable, commonsense manner consistent with the Legislature's apparent purpose and intent, the application of which will promote wise policy, not absurdity. (See *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722]; see also 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 94, pp. 146-148.) (3c) To interpret the concept of grandfather rights so far as to allow long-time businesses the freedom to conduct their operations in a manner that promotes nuisances and criminal activities would be absurd. A limited view of grandfather rights is also consistent with wise policy. As another court held when reviewing the applicability of grandfather rights under section 23790 in a different context, it makes sense for the number and type of events allowing nonconforming uses to avoid compliance with updated codes to be narrow and limited. (See *Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 397.)

Nevertheless, CBRC urges us to find that section 23790 invalidates the ordinance because its enforcement may ultimately lead to a loss of a state-issued license to sell alcoholic beverages. However, the city ordinance does not halt operation of a licensed alcoholic beverage establishment. If an alcoholic beverage sales establishment fails to comply with the requirements of the ordinance after numerous administrative attempts to obtain compliance, the ordinance authorizes the city to seek a court order to abate a nuisance or to ask the Department of Alcohol Beverage Control to revoke the license. The city already has *this* authority-independent of this ordinance-which it may use in appropriate cases in the proper exercise of its police power. The ordinance does not create any *new* authority empowering the city to halt operation of an alcoholic beverage sales establishment premises. It merely creates an administrative mechanism that may result in a third party taking action against the alcoholic beverage seller-abatement by a court or license revocation by the Department of Alcoholic Beverage Control.

In sum, we find that the conduct that is regulated by the ordinance-the control and abatement of nuisances and criminal activities-does not fall within the ambit of section 23790. A municipality retains the right to abate nuisances and enforce its criminal laws even in the face of grandfather rights. No business-not even an alcoholic beverage sales establishment regulated by state law-has a vested right to conduct its business in a ***758** manner that attracts public nuisances and encourages criminal activities near its premises. [FN13]

FN13 We are aware that other courts have analyzed the question of violation of section 23790 as a preemption question. (See *Suzuki v. City of Los Angeles*, *supra*, 44 Cal.App.4th at pp. 266, 281;*Boccato v. City of Hermosa Beach*, *supra*, 29 Cal.App.4th at p. 1807;*Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 394.) However, our conclusion that the city's authority to control and abate nuisances and criminal activities exists despite any grandfather rights makes it unnecessary for us to also consider whether the ordinance is preempted by section 23790. Clearly, if the statute does not preclude the city's use of its authority to control and abate nuisances and criminal activities, the state statute would not preempt this ordinance.

C. *Conclusion*

The trial court erred in concluding that CBRC was entitled to a summary adjudication on the second cause of action for declaratory and injunctive relief based on its claim of illegal regulation in violation of section 23790. As the ordinance does not violate this statute, the city is entitled to summary adjudication on the second cause of action.

IV. Constitutional Claim

A. *Article XX, Section 22*

The city also contends that the trial court erred in

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granting CBRC summary adjudication on its third cause of action because it wrongly concluded that the ordinance's fees constitute an unlawful taxation. The third cause of action sought declaratory and injunctive relief, alleging unlawful taxation in violation of section 22 of article XX of the California Constitution. The trial court held that the fees imposed pursuant to the ordinance violated article XX, section 22 of the California Constitution. In its response to the city's petition for writ of mandate, CBRC contends that the $600 annual fee and the subsequent fees constitute unlawful license fees. Amici curiae Beer Institute of California, California Beer and Wine Wholesalers Association, Inc., and Wine Institute filed an amicus curiae brief in support of CBRC.

The Constitution provides that "[t]he State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the ... sale ... of alcoholic beverages within the State .... [¶] ... [¶] The Department of Alcoholic Beverage Control shall have the exclusive power ... to license the ... sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof...." (Cal. Const., art. XX, § 22; see *Board of Trustees v. Munro*, *supra*, 163 Cal.App.2d at p. 445.) This provision of the ***759** state Constitution took effect in 1933 when the Twenty-first Amendment to the United States Constitution took effect. (*City of Rancho Cucamonga v. Warner Consulting Services, Ltd.* (1989) 213 Cal.App.3d 1338, 1343 [262 Cal.Rptr. 349].) While it originally granted municipalities the right to license the manufacture, disposition or sale of alcoholic beverages, article XX, section 22 was amended in 1934 to delete this authority. (*L. A. Brewing Co. v. Los Angeles* (1935) 8 Cal.App.2d 391, 394 [48 P.2d 71].)

B. *License Tax*

The trial court concluded that the state Constitution precluded all city taxation applying solely to alcoholic beverage licensees. Specifically, it found that "there is no precedent in the area of alcoholic beverage law to allow for a municipality to impose a fee solely on sellers of alcoholic beverages because of the nature of their business." (7) On the petition for mandamus relief, the city first contends that the fees imposed by its ordinance do not constitute a license tax. It argues that the ordinance's fees are not imposed as a condition to the issuance of a license, but are required to pay for the costs of regulating nuisance and criminal activities associated with alcoholic beverage sales establishments.

The California Constitution grants the state Department of Alcoholic Beverage Control the exclusive power to collect license fees or occupation taxes related to alcoholic beverage sales. (Cal. Const., art. XX, § 22.)Liquor licenses are not subject to local license or occupation taxes. (*Roehm v. County of Orange* (1948) 32 Cal.2d 280, 290-291 [196 P.2d 550].) The Oakland ordinance does not require the payment of a fee on the issuance of a license. It grants deemed approved status to existing alcoholic beverage retailers and requires them to pay a fee to administer the enforcement of the ordinance's requirements. (Oakland Planning Code, §§ 15400, 15510(f).)

Courts distinguish between municipal revenue taxes that may be preempted by state law and fees properly imposed by a city pursuant to its regulatory authority to control and supervise a business that imposes an unusual burden on the local entity for services. For example, in one case, a city imposed a permit fee on house movers. State law specifically prohibits any municipal *license fee* to be imposed on intercity transportation. Despite this statute, the appellate court upheld the ordinance requiring the fee. The court found that purpose of the fee was to pay city inspection and administrative costs associated with house moving. The amount of the fee was based on reasonably anticipated costs of inspection and administration of the permitted house moving activities. Thus, the court concluded that the ordinance was a regulatory one and that the fee imposed was not preempted by ***760** the prohibition on license fees. (*Housemoving Contractors Assn. v. City of Glendale* (1981) 123 Cal.App.3d 673, 675 [176 Cal.Rptr. 751]; see Pub. Util. Code, §§ 4303, 4304.)

We find this precedent persuasive in our own case. CBRC's criticism of this case on the ground that the license tax prohibition in *Housemoving Contractors Assn. v. City of Glendale*, *supra*, 123 Cal.App.3d 673 was statutory rather than constitutional strikes us as a distinction without a difference. A state statute, like a state constitutional provision, would prevail over a local ordinance if a conflict occurred. (See *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290 [219 Cal.Rptr. 467, 707 P.2d 840] [local legislation in con-

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flict with general law is void]; *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 384.) Both state laws specifically prohibit municipal license taxes. If the house moving fee does not constitute a license tax, neither does the fee imposed pursuant to Oakland's ordinance.

Nevertheless, CBRC and its amici curiae urge us to conclude that because the failure to pay the required fee may result in summary abatement and loss of the privilege of engaging in business, the fee constitutes a license tax. Neither abatement nor loss of the privilege of doing business will occur unless a court orders abatement or the Department of Alcoholic Beverage Control revokes the business's state-issued liquor license. (See §§ 24200-24211; Civ. Code, §§ 3490-3496; Oakland Planning Code, § 15510(c).) That the ultimate result of a failure to pay the city's required fee might be abatement or revocation of the state liquor license does not transform a regulatory fee to a license tax. Thus, we find that the ordinance's fees do not constitute an impermissible license tax.

C. *Tax or Fee*

(8a) The trial court impliedly concluded that the ordinance's fees constituted a tax on alcoholic beverage retailers. In its next claim in support of its petition for mandate, the city contends that the fees imposed pursuant to the ordinance are not taxes at all, but proper regulatory fees imposed without violating article XX, section 22 of the California Constitution. CBRC counters by arguing that the fee is a impermissible revenue-generating measure-that is, a tax disguised as a fee.

(9) The state Constitution grants the state Department of Alcoholic Beverage Control the exclusive power to tax alcoholic beverage sales. (Cal. Const., art. XX, § 22; see *Board of Trustees v. Munro*, *supra*, 163 Cal.App.2d at p. 445.) A local tax on alcoholic beverage sales is preempted by state law. ***761** (*A.B.C. Distributing Co. v. City and County of San Francisco* (1975) 15 Cal.3d 566, 575 [125 Cal.Rptr. 465, 542 P.2d 625]; see *Century Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 626 [87 Cal.Rptr. 166] [5 percent local excise tax on alcoholic beverage sales held illegal].) However, alcoholic beverages retailers may properly be required to pay their fair share of the cost of government. (*Id.* at p. 626.)If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers. (See, e.g., *Housemoving Contractors Assn. v. City of Glendale*, *supra*, 123 Cal.App.3d at p. 675;*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165-166 [154 Cal.Rptr. 263].) A local entity may not impose a tax on alcoholic beverage retailers under the guise of a fee. (See Cal. Const., art. XX, § 22.) Thus, we must determine whether the Oakland ordinance's fees are regulatory or are hidden taxes intended to generate unrelated revenue for the city.

The determination of whether the actual purpose of an ordinance is regulatory or revenue raising is a question of fact. (*United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165.) In the trial court, the parties posed no factual issues to be resolved, only legal questions. In its order granting summary adjudication, the trial court recited that the parties did not dispute that the fees generated revenue to fund the ordinance's programs. As the meaning of this recitation is somewhat ambiguous on this issue, we will consider how courts factually distinguish a fee from a tax.

(10) To determine whether the purpose of the ordinance is regulatory or revenue generating, the court looks to the substantive provisions of the ordinance, not merely its title and form. If revenue is the primary purpose of the ordinance and regulation is merely incidental, then the imposition is a tax. If regulation is the primary purpose, the mere fact that incidental revenue is also obtained does not make the imposition a tax. Generally, when a fee is imposed for a regulatory purpose and the ordinance requires compliance with conditions in addition to the payment of the prescribed sum, the imposed sum is a not a tax, but is a fee properly imposed pursuant to the local entity's police power. When the sum is exacted solely for a revenue purpose and its payment gives the right to carry on the business without any further condition, it is a tax. (See *United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165; see also *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 473 [211 P.2d 564] [regardless of formal title, character of tax determined by its incidents and from natural and legal effect of zoning ordinance language].)

Fees charged in connection with regulatory activities that do not exceed the reasonable costs of providing

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services necessary to the activity for which *762 the fee is charged and which are not levied for unrelated revenue purposes do not constitute a tax. (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111]; *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1146 [250 Cal.Rptr. 420].) Generally, a regulatory fee cannot exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought. These costs include all those incident to the issuance of the permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement. (*United Business Com. v. City of San Diego*, *supra*, 91 Cal.App.3d at p. 165.) The municipality need only apply sound judgment and consider probabilities according to the best honest view of informed officials in setting the amount of the regulatory fee. (*Id.* at p. 166.)

(11) To establish that a fee is a regulatory fee and not a tax, the local entity should prove the estimated costs of the regulatory activity and the basis for determining the manner in which the costs are apportioned, so that the charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.*, *supra*, 203 Cal.App.3d at p. 1146.) It is not necessary that the payor perceive the regulation to be a benefit. A regulatory fee may be imposed pursuant to the local governmental entity's police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. (*Id.* at p. 1146 fn. 18.)

(8b) In our case, city documents show that the annual operating budget for the program would be recovered in fees charged to alcoholic beverage retail establishments pursuant to the ordinance. Reinspection fees would be charged only to establishments that were found not to be in compliance with the terms of the ordinance. The estimated revenues derived from the fees match the program's proposed budget. The Oakland ordinance's revenue is intended to pay the administrative costs of its programs. [FN14] The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed pursuant to the ordinance is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. (See, e.g., *Pennell v. City of San Jose*, *supra*, 42 Cal.3d at p. 375.) *763

FN14 At trial, the parties agreed that the fees generated revenue to fund the ordinance's programs.

D. *Regulatory Fee Applied Solely to Alcoholic Beverage Retailers*

(12a) The trial court concluded that there was no precedent to allow a city to impose a fee on alcoholic beverage retailers because of the nature of their business. It impliedly agreed with CBRC's argument that the ordinance improperly singled out alcoholic beverage retailers. It its petition for writ of mandate, the city argues that the trial court erroneously concluded that the state Constitution prohibits a municipality from imposing a fee on alcoholic beverage establishments. CBRC counters that the trial court's ruling was correct because the fee was levied only against alcoholic beverage licensees. The city argues that a regulatory fee may be lawfully imposed on alcoholic beverage sales establishments.

As CBRC contends in its opposition to the petition for writ of mandate, a tax that singles out alcoholic beverage retailers is suspect. (*A.B.C. Distributing Co. v. City and County of San Francisco*, *supra*, 15 Cal.3d at p. 575.) However, we have already concluded that the ordinance requires the payment of a regulatory fee, not a tax of any kind. (See pt. III. B., C., *ante*.)To the extent that this suspect character also applies to regulatory fees, we note that to label a fee as "suspect" does not compel the finding that the fee is prohibited. As with other businesses, alcoholic beverage establishments may properly be required to pay their fair share of the cost of government. (See *Century Plaza Hotel Co. v. City of Los Angeles*, *supra*, 7 Cal.App.3d at p. 626.) That the fee will probably be paid from revenue derived at least in part from the sale of alcoholic beverages creates only an indirect burden on an alcoholic beverage retailer-one that is insufficient to nullify the otherwise proper imposition of a regulatory fee. (See *A.B.C. Distributing Co. v. City and County of San Francisco*,*supra*, at p. 575 [tax case].)

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CBRC does not dispute that the city may properly regulate nuisance and criminal activities through its exercise of its police power, but it argues that these police powers are overridden by article XX, section 22 of the California Constitution, when the regulation involves alcoholic beverages. Thus, the issue is whether a local entity's authority to regulate alcoholic beverage sellers properly derives from the city's police power under article XI, section 7 of the California Constitution. (See *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d 1338, 1345.) A local entity's authority to regulate state-licensed alcoholic beverage retailers derives solely from its general police powers. (*Id.* at pp. 1343, 1345.)A city's police powers are as broad as the police power that may be exercised by the Legislature itself. However, in its proper exercise of its police powers, the city may not also violate article XX, section 22. (213 Cal.App.3d at pp. 1344-1345.) ***764**

Article XX, section 22 of the California Constitution gives the state Department of Alcohol Beverage Control exclusive jurisdiction to regulate alcohol. (*Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 385.) If the purpose and effect of the city ordinance is to regulate the manufacture, sale, purchase, possession or transportation of alcoholic beverages, the legislation is expressly preempted by the state Constitution. (*Ibid.*;*Floresta, Inc. v. City Council* (1961) 190 Cal.App.2d 599, 606-607 [12 Cal.Rptr. 182].) For example, an express prohibition of the sale of alcoholic beverages at automobile service stations conflicts with article XX, section 22. (*Mussalli v. City of Glendale* (1988) 205 Cal.App.3d 524, 528 [252 Cal.Rptr. 299]; see § 23790.5 [by legislative enactment, local entities may now regulate alcoholic beverage sales at service stations].) Despite this constitutional prohibition, the state Legislature has expressed its intent that local entities-not the state-control local matters. (*Jon-Mar Co. v. City of Anaheim* (1962) 201 Cal.App.2d 832, 837 [20 Cal.Rptr. 350].) The resolution of the issue before us turns on whether the Oakland ordinance trods on the state's regulatory power or falls within local authority.

Courts have recognized that local regulation of alcoholic beverage retailers may be properly within the local entity's police powers without violating section 22 of article XX of the California Constitution. Generally, this constitutional provision will not preempt a local ordinance when the ordinance does not directly affect the licensee's ability to sell alcoholic beverage to a willing purchaser. (*California Restaurant Assn. v. City of Los Angeles* (1987) 192 Cal.App.3d 405, 411 [237 Cal.Rptr. 415] [local ordinance requiring posting of notice warning of alcohol effects on pregnant women was not preempted by Constitution]; see *Daniel v. Board of Police Commissioners* (1961) 190 Cal.App.2d 566, 570-571 [12 Cal.Rptr. 226],overruled on other grounds in *Burton v. MunicipalCourt* (1968) 68 Cal.2d 684, 693 [68 Cal.Rptr. 721, 441 P.2d 281] [prohibition of live entertainment at alcoholic beverage establishment does not interfere with licensee's right to sell alcoholic beverages].) The Legislature did not intend that a person licensed to sell alcoholic beverages should be immune from local supervision of any activity that the licensee may pursue in conjunction with the sale of alcoholic beverages. (*Id.* at p. 570.)

For example, the California Supreme Court has held that local ordinances may properly regulate live entertainment in taverns while leaving intact the state's jurisdiction to license the sale of alcoholic beverages. The two types of regulations were held to be independent and distinct. Thus, ordinances relating to live entertainment do not conflict with the state's powers over the ***765** sale of alcoholic beverages. (*Crownover v. Musick* (1973) 9 Cal.3d 405, 417-418 [107 Cal.Rptr. 681, 509 P.2d 497], cert. den. *subnom.Reynolds v. City of Sacramento,* 415 U.S. 931 [39 L.Ed.2d 489, 94 S.Ct. 1443]; *Owen v. Musick,* 415 U.S. 931 [39 L.Ed.2d 489, 94 S.Ct. 1443],disapproved on another point in *Morris v. Municipal Court* (1982) 32 Cal.3d 553, 564-565 [186 Cal.Rptr. 494, 652 P.2d 51].) In another case, an appellate court concluded that a municipality retains the constitutional right to enforce a zoning ordinance that does not permit a cocktail lounge in a shopping center without a use permit. This prerogative was held not to have been preempted by the state's generalized regulation of alcohol sales. (See *Floresta, Inc. v. City Council*, *supra*, 190 Cal.App.2d at pp. 612-613.) In a third case, another appellate court upheld a local ordinance prohibiting persons possessing, using, consuming or under the influence of alcohol from entering or remaining in a modeling studio adjacent to an alcoholic beverage retail establishment. The court found that the ordinance did not attempt to invade the exclusive power given to the state pursuant to article

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XX, section 22 of the state Constitution to license, regulate or prohibit the sale of alcoholic beverages. (See *Cristmat, Inc. v. County of Los Angeles* (1971) 15 Cal.App.3d 590, 594-598 [93 Cal.Rptr. 325]; see also *Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.) Courts upheld these ordinances because their purpose was properly related to the police powers, distinct from the direct regulation of alcoholic beverage licensees.

CBRC characterizes the Oakland ordinance as a regulation of alcoholic beverage retailer sellers. However, the purpose of the ordinance determines the issue before us. (See *Daniel v. Board of Police Commissioners*, *supra*, 190 Cal.App.2d at p. 571 [purpose of ordinance was to regulate live entertainment furnished in restaurants and cocktail lounges; local ordinance did not violate Cal. Const., art. XX, § 22].) To paraphrase one of these cases, the city may regulate nuisances and criminal activity pursuant to its police power. An ordinance prohibiting nuisance and criminal activities from being conducted on or near the premises of liquor licensees falls within the legitimate scope of the city's police power. The regulation is not intended to control the sale of alcoholic beverages, but to eliminate nuisances and criminal activities. (See *Cristmat, Inc. v. County of Los Angeles*, *supra*, 15 Cal.App.3d at pp. 595-596 [under art. XX, § 22, ordinance may regulate floor shows in places of public entertainment where alcoholic beverages are served]; see also *Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.) We are satisfied that the ordinance's purpose is the regulation of nuisance and criminal activity-a subject independent and distinct from the regulation of alcoholic beverage sales. Thus, the ordinance does not conflict with the state's authority to regulate alcoholic beverage sales. (See ***766** *Crownover v. Musick*, *supra*, 9 Cal.3d at pp. 417-418; see also *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d at pp. 1343-1344;*Mussalli v. City of Glendale*, *supra*, 205 Cal.App.3d at p. 528.)

Our conclusion is consistent with a recent decision of the Second Appellate District holding that the revocation requirements of a similar ordinance did not invade the state's exclusive power to regulate alcohol sales pursuant to article XX, section 22 of the California Constitution. In *Korean AmericanLegal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th 376, the city required a conditional use permit for all establishments selling alcoholic beverages. Uses in existence before the operative date of the specific plan requiring a conditional use permit were deemed to be approved conditional use permits. (*Id.* at p. 382.)After fire destroyed businesses in South Central Los Angeles, alcoholic beverage establishments seeking to rebuild were required to comply with the specific plan. Typically, the conditions imposed before rebuilding would be permitted were for the owner to agree to remove graffiti promptly, provide adequate lighting, remove trash, provide a security guard and limit hours of operation. (*Id.* at pp. 382-383.)In addition, the city instituted revocation hearings to revoke or condition an owner's deemed approved status or use permit if the business threatened to become, or became, a nuisance or a law enforcement problem. (*Id.* at p. 383.)

The appellate court found that the Los Angeles ordinance at issue in that case constituted a valid exercise of the city's police powers to control and abate nuisances under article XI, section 7 of the state Constitution. (*Korean American Legal Advocacy Foundation v. City of Los Angeles*, *supra*, 23 Cal.App.4th at p. 389.) It ruled that the city was not preempted by article XX, section 22 from exercising land use control over businesses licensed to sell alcoholic beverages. (23 Cal.App.4th at pp. 384, 389-390.) Although it acknowledged the state's exclusive jurisdiction to regulate alcoholic beverage sales, the court concluded that the ordinance did not directly regulate alcoholic beverage licensees. (*Id.* at p. 388.)It found that the ordinance was not expressly preempted by the state Constitution, that it did not duplicate or contradict state law, and that the statutory scheme codified in the Alcoholic Beverage Control Act did not evidence an intent to occupy the field by implication. (*Id.* at pp. 390-394; see §§ 23000-25762.) *Korean American*'s preemption analysis differs somewhat from ours, but our conclusion is the same-that a city in the exercise of its police powers may undertake to control nuisances occurring near alcoholic beverage sales establishments, without violating the state's exclusive power to regulate the sale of alcoholic beverages. (See 23 Cal.App.4th at pp. 384-394.) ***767**

The policy reason for the distinction between a city's improper direct regulation of alcoholic beverage sales and its appropriate use of its police powers applying to alcoholic beverage sales establishments is well established. (13) As the California Supreme Court

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has ruled, local governments have a legitimate need to address problems generated by business involvement in activities that may be inimical to the health, welfare and safety of the community. (*Cohen v. Board of Supervisors*, *supra*, 40 Cal.3d at p. 298.) State requirements may be inadequate to meet the demands of densely populated cities. Thus, it becomes proper and necessary to add to state regulations those provisions adapted to the city's special requirements.(*Ibid.*;*Daniel v. Board of Police Commissioners*, *supra*, 190 Cal.App.2d at p. 571; see *Bravo Vending v. City of Rancho Mirage*, *supra*, 16 Cal.App.4th at p. 411.) For this reason, a local entity may properly determine that a particular business fosters, profits from and provides an environment for activities proscribed by state law. For example, an ordinance is not transformed into a statute prohibiting crime simply because the city uses its police powers to discourage illegal activities associated with certain businesses. Many regulatory ordinances have a direct impact on the enforcement of state laws that have been enacted to preserve the health, safety and welfare of state and local citizens. This fact does not deprive a local entity of the power to enact them. (See *Cohen v. Board of Supervisors*,*supra*, at pp. 298-299 [licensing ordinance case].) (12b) The legislative history of the ordinance shows that there are substantial geographic, economic or other distinctions that persuade us of the need for local control. (See *id.* at p. 300.) [FN15]

FN15 The record reveals that the application of this ordinance to alcoholic beverage retailers alone was not unreasonable, given the high level of nuisance and criminal activity occurring near these establishments. Oakland's deputy chief of police testified about the proliferation of complaints about nuisance and criminal activities occurring around alcoholic beverage retail sales establishments. He opined that these activities constituted a blight on the neighborhoods where these alcoholic beverage establishments were located and served as a magnet for crime and neighborhood decay. He also stated that the number of police responses around alcoholic beverage establishments was disproportionately high when compared to police activity around adult entertainment facilities, gun dealer outlets, fast food restaurants or gas stations. Nuisance problems associated with alcoholic beverage retailers had risen over several years before the ordinance's enactment and the deputy chief opined that the program established by the ordinance would "... 'significantly mitigate the negative impacts that many of these establishments have on the community.' "

E. *Federal Bar*

(14) For its part, CBRC challenges the city's authority under the Twenty-first Amendment to the United States Constitution to tax sellers of alcoholic beverages. (U.S. Const., Amend. XXI.)The trial court found only ***768** that the ordinance violated the state Constitution; it did not rule on whether the ordinance also violated the federal Constitution. The Twenty-first Amendment grants the state authority to tax and regulate liquor licensing, although the state may delegate that authority to local entities. (*City of Rancho Cucamonga v. Warner Consulting Services, Ltd.*, *supra*, 213 Cal.App.3d at pp. 1342-1343). We have concluded that the ordinance imposes a regulatory fee, not a tax. (See pt. IV., B.-D., *ante.*)As the state Constitution does not prohibit the ordinance's regulatory fees, the state has impliedly delegated to municipalities the power to impose such fees. Thus, we are satisfied that the ordinance does not violate the Twenty-first Amendment.

F. *Conclusion*

The trial court erred in concluding that CBRC was entitled to a summary adjudication on the third cause of action for declaratory and injunctive relief, based on its claim of unlawful taxation in violation of section 22 of article XX of the California Constitution. As the ordinance does not violate this provision of the state Constitution, the city is entitled to summary adjudication on the third cause of action.

V. Remittitur

Let a peremptory writ of mandate issue directing the Superior Court of Alameda County to vacate its order of January 5, 1995, granting CBRC summary adjudication on the second and third causes of action, and to enter a new order denying CBRC's motion and granting summary adjudication on these two causes of action in favor of the city.

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Anderson, P. J., and Poché, J., concurred.

A petition for a rehearing was denied June 17, 1996, and the petition of real parties in interest for review by the Supreme Court was denied August 14, 1996. ***769**

Cal.App.1.Dist.
City of Oakland v. Superior Court
45 Cal.App.4th 740, 53 Cal.Rptr.2d 120, 96 Cal. Daily Op. Serv. 3559, 96 Daily Journal D.A.R. 5773

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H

Court of Appeal, Fourth District, Division 2, California.
CITY OF RANCHO CUCAMONGA, Plaintiff and Appellant,
v.
REGIONAL WATER QUALITY CONTROL BOARD-SANTA ANA REGION et al., Defendants and Respondents;
County of San Bernardino et al., Real Parties in Interest and Respondents.
No. E037079.

Jan. 26, 2006.
As Modified Feb. 27, 2006.

Background: Cities filed petitions for writs of mandate to challenge the procedure by which municipal storm sewer permit was issued by regional water quality control board, the conditions imposed by permit, and the expense of permit requirements. The Superior Court, San Bernardino County, No. RCV 071613, Shahla Sabet, J., sustained without leave to amend the demurrer of State Water Resources Control Board to entire action, sustained demurrer as to four causes of action and granted motion to strike of the regional board, and denied petition for writ of mandate. City appealed.

Holdings: The Court of Appeal, Gaut, J., held that:
(1) State Water Resources Control Board was not a proper party in lawsuit;
(2) regional water quality control board could move to strike less than all causes of action;
(3) substantial evidence supported regional water quality control board's findings in issuing permit; and
(4) permit requirements were not overly prescriptive.

Affirmed.

West Headnotes

[1] Environmental Law 149E 657

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases

State Water Resources Control Board (State Board) was not a proper party in lawsuit filed by two cities against State Board and Regional Water Quality Control Board, challenging the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements; permit was issued by regional board rather than state board, allegations failed to articulate any improper State Board conduct, and, challenge was barred by statute of limitations. West's Ann.Cal.Gov.Code § 11350; West's Ann.Cal.Water Code § 13330.

[2] Mandamus 250 168(2)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k168 Evidence
250k168(2) k. Presumptions and Burden of Proof. Most Cited Cases

In exercising its independent judgment in deciding a petition for writ of mandate, a trial court must afford a strong presumption of correctness concerning administrative findings; since the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings.

[3] Mandamus 250 187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and Extent in General. Most Cited Cases

On appeal from the trial court's decision on a petition for writ of mandate, the reviewing court determines whether substantial evidence supports the trial court's factual determinations.

[4] Mandamus 250 187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review

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250k187.9(1) k. Scope and Extent in General. Most Cited Cases
On appeal from the trial court's decision on a petition for writ of mandate, the trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations.

[5] Environmental Law 149E 666

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek666 k. Preservation of Error in Administrative Proceeding. Most Cited Cases
In city's challenge to procedure by which municipal storm sewer permit was adopted, to conditions imposed by permit, and to expense of permit requirements, city waived its objections to the administrative record, and to specific pieces of evidence, by not making such objections before or at the time of the administrative hearing; city was given notice that the hearing on the permit would proceed as an informal administrative adjudication, and it could not claim that it was relieved of the obligation to object to the administrative record at the time of the hearing. West's Ann.Cal.Gov.Code § 11445.10 et seq.

[6] Administrative Law and Procedure 15A 108

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak103 Status and Character
15Ak108 k. Quasi-Judicial. Most Cited Cases
The exercise of discretion to grant or deny a license, permit, or other type of application is a quasi-judicial function.

[7] Environmental Law 149E 673

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek673 k. Pleading, Petition, or Application. Most Cited Cases
Defendant regional water quality control board could move to strike less than all causes of action filed in suit cities to challenge the procedure by which municipal storm sewer permit was adopted, the conditions imposed by permit, and the expense of permit requirements, inasmuch as trial court had authority to strike only part of pleading. West's Ann.Cal.C.C.P. §§ 431.10, 436.

[8] Environmental Law 149E 230

149E Environmental Law
149EV Water Pollution
149Ek227 Evidence
149Ek230 k. Weight and Sufficiency. Most Cited Cases
Substantial evidence supported regional water quality control board's findings in issuing municipal storm sewer permit; board adopted recommendations of its staff, which were based on previous permits and other reports, and which established that board did not simply copy similar permit for other counties.

[9] Administrative Law and Procedure 15A 489.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak489 Decision
15Ak489.1 k. In General. Most Cited Cases

Administrative Law and Procedure 15A 791

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 k. Substantial Evidence. Most Cited Cases
An agency may rely upon the opinion of its staff in reaching decisions, and the opinion of staff may constitute substantial evidence.

[10] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

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Municipal storm sewer permit issued by regional water quality control board did not violate Clean Water Act by failing to include "safe harbor" provisions providing that, if permittee was in full compliance with permit conditions, it could not be found in violation of Clean Water Act; there was no statutory right to a "safe harbor" provision to be included as a term of the permit, and, in any event, such protection was already included in the Act. Clean Water Act, § 402(k), 33 U.S.C.A. § 1342(k).

[11] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases

Requirements contained in municipal storm sewer permit issued by regional water quality control board were not overly prescriptive and did not illegally dictate the manner of compliance; the federal Clean Water Act authorized imposition of permit conditions, and the permitting agency had discretion to decide what practices, techniques, methods, and other provisions were appropriate and necessary to control the discharge of pollutants. Clean Water Act, § 402(p)(3)(B)(iii), 33 U.S.C.A. § 1342(p)(3)(B)(iii).
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 892-896; Cal. Jur. 3d, Pollution and Conservation Laws, § 124 et seq.

****452** James L. Markman, Brea; Richards, Watson & Gershon, John J. Harris, Los Angeles, and Evan J. McGinley, for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Richard Magasin, Supervising Deputy Attorney General, and Jennifer F. Novak, Deputy Attorney General, for Defendants and Respondents.

***1379** OPINION

GAUT, J.

1. *Introduction*

This case involves environmental regulation of municipal storm sewers that carry excess water runoff to the Santa Ana River as it passes through San Bernardino County on its way to the Pacific Ocean. Federal and state laws impose regulatory controls on storm sewer discharges. Municipalities are required to obtain and comply with a federal regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems.

In this instance, the Regional Water Quality Control Board for the Santa Ana Region (the Regional Board) conducted public hearings and then issued a comprehensive 66-page municipal storm sewer permit governing 18 local ***1380** public entities. Two permittees, the City of Rancho Cucamonga and the City of Upland, among others, filed an administrative appeal with the State Water Resources Control Board (the State Board.) The State Board summarily dismissed the appeal. The Cities of Rancho Cucamonga and Upland [FN1] then filed a petition for writ of mandate and complaint against the State Board and the Regional Board.

FN1. Upland is not a party to this appeal.

The trial court sustained without leave to amend the demurrer of the State Board to the entire action. It sustained the demurrer as to four causes of action and granted the motion to strike of the Regional Board. After a hearing, the trial court denied the petition for writ of mandate.

Both procedurally and substantively, the City of Rancho Cucamonga challenges the conditions imposed by the NPDES [FN2] Permit and Waste Discharge Requirements (the 2002 permit). It contends the procedure by which the 2002 permit was adopted was not legal, that the 2002 permit's conditions are not appropriate for the area, and that the permit's requirements are too expensive. Because we conclude the permit was properly adopted and its conditions and requirements are appropriate, we reject these contentions.

FN2. The National Pollutant Discharge Elimination System.

2. *The National Pollutant Discharge Elimination System*

California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer

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discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862(*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 872-875, 22 Cal.Rptr.3d 128(*Building Industry*); *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, 1092-1094, 1 Cal.Rptr.3d 76(*Communities*); *WaterKeepers Northern California v. State Water Resources Control Board* (2002) 102 ****453** Cal.App.4th 1448, 1451-1453, 126 Cal.Rptr.2d 389(*WaterKeepers*)).

For purposes of this case, the important point is described by the California Supreme Court in *Burbank:* "Part of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* [(1992) 503 U.S. ***1381** 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.]) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)" (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat.Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)

As discussed more fully in part 6 below, the state-issued NPDES permits are subject to the informal hearing procedures set forth for administrative adjudications. (Gov.Code, § 11445.10 et seq.; Cal.Code Regs., tit. 23, § 647 et seq.) The issuance of permits is specifically excluded from the procedures for administrative regulations and rulemaking. (Gov.Code, §§ 11340 et seq., 11352.)

3. *Factual and Procedural Background*

The Regional Board issued the first NPDES permit for San Bernardino County in 1990. The principal permittee was the San Bernardino Flood Control District (the District). The 1990 permit required the permittees to develop and implement pollution control measures, using "best management practices" and monitoring programs, to eliminate illegal discharges and connections, and to obtain any necessary legal authority to do so. The management programs could be existing or new.

In 1993, the District developed the NPDES Drain Area Management Program (DAMP).

The second NPDES permit was issued in 1996 and was based on the Report of Waste Discharge (ROWD) prepared by the principal permittee and co-permittees, including Rancho Cucamonga. The 1996 permit proposed extending the existing program, which included inspections of industrial and commercial sources; policies for development and redevelopment; better public education; and implementation of a monitoring program. It offered a commitment to reduce pollutants to the "maximum extent practicable."

In 2000, the permittees submitted another ROWD to renew their NPDES permit. The 2000 ROWD proposed continuing to implement and develop water quality management and monitoring programs.

***1382** Based on the 2000 ROWD, the Regional Board staff created five successive drafts of the 2002 permit, incorporating written comments by Rancho Cucamonga and others and comments made during two public workshops. Some of the comments addressed the economic considerations of anticipated prohibitive compliance costs.

The notice of the public hearing to consider adoption of the 2002 permit hearing ****454** announced: "relevant Regional Board files are incorporated into the record;" the governing procedures were those for an informal hearing procedure as set forth in "Title 23, California Code of Regulations, Section 647 et seq.;" and "Hearings before the Regional Water Board are not conducted pursuant to Government Code section 11500 et seq.," the alternative formal hearing procedure for administrative adjudication. The notice was

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mailed to all permittees. The accompanying "fact sheet," which was publicly circulated, offered further information about the conduct and nature of the hearing and the legal and factual grounds for the Regional Board's recommendation to adopt the 2002 permit.

The informal public hearing was conducted on April 26, 2002. Neither Rancho Cucamonga nor any of the permittees objected to the form or substance of the hearing. Ultimately, after a staff presentation and testimony, including a statement from Rancho Cucamonga's counsel, the Regional Board adopted the 2002 permit. After the State Board dismissed their administrative appeal, Rancho Cucamonga and Upland filed the instant action.

The operative pleading is the second amended petition for writ of mandate and complaint. The petition alleges that the State Board and the Regional Board acted illegally and in excess of their jurisdiction in developing, adopting and implementing the 2002 permit. Based on 26 pages of general allegations, the petition asserts eight causes of action, alleging the State Board and the Regional Board violated sections 13241, 13263, and 13360 of the Water Code (the Porter-Cologne Act); the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.); the California Administrative Procedure Act (Gov.Code, §§ 11340-11529); the California Constitution; and the Federal Clean Water Act; and seeking declaratory and injunctive relief.

The State Board successfully opposed the action on demurrer. The Regional Board eliminated four causes of action, the fourth, fifth, seventh, and eighth by demurrer and motion to strike. On the remaining four causes of action, the trial court found in favor of the Regional Board.

***1383** 4. *State Board's Demurrer*

[1] Rancho Cucamonga maintains the trial court should not have sustained the demurrer of the State Board without leave to amend because the State Board is the ultimate authority on state-issued NPDES permits, and, therefore, was properly joined as a party: "Because the State Board has for all intents and purposes adopted the rules and policies of general application upon which the Permit is based, it is clearly a proper party to this action."

The difficulty with Rancho Cucamonga's theory of liability against the State Board is, to quote Gertrude Stein about the City of Oakland, "There is no there there." (Gertrude Stein, *Everybody's Autobiography.*) In other words, Rancho Cucamonga's allegations against the State Board lack any substance. Instead, Rancho Cucamonga launches an unspecific attack on the State Board without identifying any particular problems. The petition makes the unexceptional allegation that the State Board formulates general water control policy which it implements and enforces through regional boards. It also alleges the State Board has not complied with the Administrative Procedure Act but it does not identify any objectionable policies or how there is no compliance. Instead the petition complains about a State Board letter directing that all NPDES permits follow consistent principles regarding Standard Urban Storm Water Mitigation ****455** Plans. Additionally, the petition maintains the 2002 permit included new reporting requirements and increased costs of compliance.

But the foregoing allegations did not articulate any improper State Board conduct. The 2002 permit, issued by the Regional Board and not by the State Board, is not subject to formal rule-making procedures. (Gov.Code, § 11352, subd. (b).) The State Board's letter, explaining a precedential decision concerning mitigation plans, is not an example of formal rule-making. (Gov.Code, § 11425.60, subd. (b).) By dismissing Rancho Cucamonga's administrative appeal concerning the 2002 permit, the State Board declined to become involved and the Regional Board's decision to issue the permit became final and subject to judicial review. (*People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.) But the State Board was not made a proper party by reason of its dismissal of the administrative appeal.

Furthermore, even if Rancho Cucamonga had identified any cognizable claim against the State Board, it would have been barred by the 30-day statute of limitations for challenging an improperly adopted State Board regulation or order. (Wat.Code, § 13330; Gov.Code, § 11350.)

***1384** We hold the trial court properly sustained without leave to amend the State Board's demurrer to the second amended petition for writ of mandate and complaint.

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5. Standard of Review for Petition for Writ of Mandate

[2] In deciding a petition for writ of mandate, the trial court exercises its independent judgment. (Code Civ. Proc., § 1094.5, subd. (c); Wat.Code, § 13330, subd. (d); *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) But, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, ... Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817-818, 85 Cal.Rptr.2d 696, 977 P.2d 693(*Fukuda*).)

[3][4] On appeal, the reviewing court determines whether substantial evidence supports the trial court's factual determinations. (*Fukuda, supra,* 20 Cal.4th at p. 824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Building Industry, supra,* 124 Cal.App.4th at p. 879, 22 Cal.Rptr.3d 128.) The trial court's legal determinations receive a de novo review with consideration being given to the agency's interpretations of its own statutes and regulations. (*Building Industry, supra,* at p. 879, 22 Cal.Rptr.3d 128; *Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482, 22 Cal.Rptr.3d 772.)

6. Rancho Cucamonga's Objections to the Administrative Record and Lack of Notice

[5] The notice of the administrative hearing for adoption of the 2002 permit included the statement that the Regional Board's files would be incorporated as part of the record. Before trial on the writ petition, Rancho Cucamonga attempted to raise an omnibus objection to the entire administrative record and a specific objection to four documents, three studies about marine pollution and one economic study. The trial court ruled the objections had been waived by not making them before or at the time of the hearing. Applying the presumption of administrative regularity, we affirm the trial court's evidentiary ruling. (*Mason v. Office of Administrative* ***456** *Hearings* (2001) 89 Cal.App.4th 1119, 1131, 108 Cal.Rptr.2d 102.)

The reasons given by Rancho Cucamonga as to why the trial court should have sustained its objections to all or part of the administrative record are that it did not waive its objections to the record because Rancho Cucamonga did not know the hearing was adjudicative; the Regional Board did not provide ***1385** notice of an informal hearing (Gov.Code, § 11445.30); and Rancho Cucamonga never had an opportunity to object to the administrative record.

[6] As noted previously, Government Code section 11352, subdivision (b), makes the issuance of an NPDES permit exempt from the rulemaking procedures of the Administrative Procedure Act. Permit issuance is a quasi-judicial, not a quasi-legislative, rule-making proceeding: "The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function." (*Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320, 67 Cal.Rptr.2d 51; *City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 718, 279 Cal.Rptr. 22.)

Instead, the Regional Board correctly followed the administrative adjudication procedures (Gov.Code, § 11445.10 et seq.) and the companion regulations at California Code of Regulations, Title 23, sections 647-648.8 for informal adjudicative public hearings. These procedures were announced in the notice of hearing which also stated that Government Code section 11500 et seq., governing formal administrative adjudication hearings, would not apply, thus satisfying Government Code section 11445.30 requiring notice of an informal hearing procedure. At the time of the hearing, Rancho Cucamonga did not object to the informal procedure. Rancho Cucamonga's effort to argue that federal notice requirements (40 C.F.R. § 124.8, subd. (b)(6)(ii) (2005)) should also have been followed fails because this involved a state-issued NPDES permit adopted according to California procedures.

Because Rancho Cucamonga was given notice that the hearing on the permit would proceed as an informal administrative adjudication, it cannot successfully argue it was relieved of the obligation to object to the administrative record at the time of the hearing. An informal administrative adjudication contemplates liberality in the introduction of evidence. (Cal. Code Regs., tit. 23, §§ 648, subd. (d) and 648.5.1.) If Rancho Cucamonga wished to object to the informal hearing procedures, including the liberal introduction

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of evidence, it should have raised its objections as provided by statute and regulation before or at the time of the hearing (Gov.Code, §§ 11445.30, 11445.40, and 11445.50; Cal. Code Regs., tit. 23, § 648.7), not a year later in the subsequent civil proceeding.

7. *Economic Considerations for Issuance of NPDES Permit*

Rancho Cucamonga's next assignment of error is that the Regional Board failed to consider the economic impact of the requirements of the 2002 permit by not conducting a cost-benefit analysis. Rancho Cucamonga relies on the California Supreme Court's *Burbank* opinion, in which the court held: "When ... a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law ***1386** requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance." (*Burbank, supra,* 35 Cal.4th at p. 618, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Rancho Cucamonga contends that the 2002 permit exceeds federal requirements and that, therefore, this case should be remanded for a consideration of ****457** economic factors. (See *ibid.;* Wat.Code, § 13241, subd. (d).)

The two problems with this argument are the trial court found there was no evidence that the 2002 permit exceeded federal requirements and Rancho Cucamonga does not explain now how it does so. There was also evidence that the 2002 permit was based on a fiscal analysis and a cost-benefit analysis. In the absence of the foundational predicate and in view of evidence that cost was considered, Rancho Cucamonga's contention on this point fails.

[7] We also reject Rancho Cucamonga's related procedural argument that the Regional Board's motion to strike was impermissible as piecemeal adjudication. (*Regan Roofing v. Superior Court* (1994) 24 Cal.App.4th 425, 432-436, 29 Cal.Rptr.2d 413,*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1851-1855, 16 Cal.Rptr.2d 458.) It is well recognized a court may strike all or part of a pleading as it did in this instance. (Code Civ. Proc., §§ 431.10 and 436; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

8. *Substantial Evidence*

[8] Rancho Cucamonga also challenges the trial court's independent factual determination that sufficient evidence supports the findings of the Regional Board. Rancho Cucamonga's main contention is that the 2002 permit was not distinctively crafted for San Bernardino County but, instead, copied a similar permit for other counties without identifying any particular water quality impairment in San Bernardino County caused by the permittees. In other words, no evidence in the record supports issuance of the 2002 permit and the trial court did not identify any such evidence in its statement of decision.

One problem with Rancho Cucamonga's foregoing argument is that the Clean Water Act requires an NPDES permit to be issued for *any* storm sewer discharge, whether there is any actual impairment in a particular region. (33 U.S.C. § 1342; *Communities, supra,* 109 Cal.App.4th at pp. 1092-1093, 1 Cal.Rptr.3d 76.) Therefore, Rancho Cucamonga's contention that the permit fails to identify impaired water bodies in the region is beside the point.

In its statement of decision, the trial court discussed the inadequacy of the arguments and evidence cited by Rancho Cucamonga and concluded: "The San Bernardino Permit is based in part on the Basin Plan for this region. It is ***1387** also based on the permittees' own reports and monitoring within this region.... It incorporates the permittees' management program, which is unique to these cities and county." The trial court included a citation to the 1993 DAMP report's "Geographic Description of the Drainage Area," which discusses the specific conditions present in San Bernardino County.

On appeal, Rancho Cucamonga faults the trial court for not presenting a more detailed description of the evidence supporting the issuance of the permit. We do not think the trial court, or this court, must bear that burden.

[9] First, "[a]n agency may ... rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence. (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 535-536, 127 Cal.Rptr. 775.)"

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(*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866, 226 Cal.Rptr. 575.) Here the Regional Board adopted the recommendation of its staff in issuing the permit. And, as the record shows, the staff's recommendation was based on the previous 1990 and 1996 permits, the 1993 DAMP ****458** report and the 2000 ROWD, the permittees' application for renewal of the 1996 permit, as well as more general water quality factors. The evidence contradicts Rancho Cucamonga's assertion, that "the Regional Board simply copied verbatim the NPDES Permit for North Orange County, a coastal region with markedly different water quality conditions and problems."

As part of the trial court's consideration of the petition for writ of mandate, Rancho Cucamonga and the Regional Board directed the court to review specific items of evidence contained in the administrative record. In its opposing brief, the Regional Board offered a detailed account of the evidence supporting the issuance of the permit. The trial court indicated it had reviewed the parties' submissions before ruling. It discussed the evidence at the hearing on the petition and referred to it in its statement of decision. (*Lala v. Maiorana* (1959) 166 Cal.App.2d 724, 731, 333 P.2d 862.) Rancho Cucamonga had the burden of showing the Board abused its discretion or its findings were not supported by the facts. (*Building Industry, supra,* 124 Cal.App.4th at pp. 887-888, 22 Cal.Rptr.3d 128.) To the extent it attempted to do so at the trial court level, it was not successful.

This court has independently reviewed the record with particular attention to the evidence as emphasized by the parties. We do not, however, find it incumbent upon us or the trial court to review the many thousands of pages submitted on appeal and identify the particular evidence that constitutes substantial evidence. Instead, we deem the trial court's findings sufficient and not affording any grounds for reversal. (*Building Industry, supra,* 124 Cal.App.4th at p. 888, 22 Cal.Rptr.3d 128; see *Weisz Trucking Co., Inc. v. Emil R. Wohl* ***1388** *Construction* (1970) 13 Cal.App.3d 256, 264, 91 Cal.Rptr. 489, citing *Perry v. Jacobsen* (1960) 184 Cal.App.2d 43, 50, 7 Cal.Rptr. 177.)

9. *Safe Harbor Provision*

[10] As it did repeatedly below, Rancho Cucamonga maintains the 2002 permit violates section 402(k) of the Clean Water Act (33 U.S.C. § 1342, subd. (k)), because the permit does not include "safe harbor" language, providing that, if a permittee is in full compliance with the terms and conditions of its permit, it cannot be found in violation of the Clean Water Act. (*United States Public Interest Research Group v. Atlantic Salmon of Maine, LLC* (1st Cir.2003) 339 F.3d 23, 26; *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 205, 96 S.Ct. 2022, 48 L.Ed.2d 578.) The trial court found there was no statutory right to a "safe harbor" provision to be included as the term of the permit. We agree.

This seems like much ado about nothing because 33 U.S.C. § 1342, subdivision (k), already affords Rancho Cucamonga the protection it seeks: "Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health." Rancho Cucamonga does not cite any persuasive authority as to why this statutory protection had to be duplicated as a provision in the 2002 permit.

Furthermore, the 2002 permit complied with the State Board's Water Quality Order No. 99-05, a precedential decision requiring NPDES permits to omit "safe harbor" language used in earlier permits. A permit without "safe harbor" language was upheld in *Building Industry, supra,* 124 ****459** Cal.App.4th at p. 877, 22 Cal.Rptr.3d 128. The trial court did not err.

10. *Maximum Extent Practicable*

Rancho Cucamonga protests that the 2002 permit's discharge limitations/prohibitions exceed the federal requirement that storm water dischargers should "reduce the discharge of pollutants to the maximum extent practicable." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The trial court, however, found there was no evidence presented that the 2002 permit exceeded federal requirements. Because there is no evidence, the issue presented is hypothetical and, therefore, premature. (*Building Industry, supra,* 124 Cal.App.4th at p. 890, 22 Cal.Rptr.3d 128.)

Additionally, as Rancho Cucamonga recognizes,

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Building Industry rejected the contention that a "regulatory permit violates federal law because it allows the Water Boards to impose municipal storm sewer control measures more ***1389** stringent than a federal standard known as 'maximum extent practicable.' [Citation.] [Fn. omitted.] [W]e ... conclude the Water Boards had the authority to include a permit provision requiring compliance with state water quality standards." (*Building Industry, supra,* 124 Cal.App.4th at p. 871, 22 Cal.Rptr.3d 128.) The *Burbank* case, allowing for consideration of economic factors when federal standards are exceeded, does not alter the analysis in this case where there was no showing that federal standards were exceeded and where there was evidence that economic factors were considered. Furthermore, like the permit in *Building Industry*, the 2002 permit contemplates controlling discharge of pollutants to the maximum extent practicable through a "cooperative iterative process where the Regional Water Board and Municipality work together to identify violations of water quality standards." (*Building, supra,* at p. 889, 22 Cal.Rptr.3d 128.) The 2002 permit does not exceed the maximum extent practicable standard.

11. *The Requirements of the 2002 Permit*

[11] Rancho Cucamonga lastly complains the requirements of the 2002 permit are "overly prescriptive," illegally dictating the manner of compliance and improperly delegating to the permittees the inspection duties of the State Board and the Regional Board. Rancho Cucamonga's arguments contradict the meaning and spirit of the Clean Water Act.

In creating a permit system for dischargers from municipal storm sewers, Congress intended to implement actual programs. (*Natural Resources Defense Council, Inc. v. Costle* (D.C.Cir.1977) 568 F.2d 1369, 1375.) The Clean Water Act authorizes the imposition of permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator of the State determines appropriate for the control of such pollutants." (33 U.S.C. § 1342, subd. (p)(3)(B)(iii).) The Act authorizes states to issue permits with conditions necessary to carry out its provisions. (33 U.S.C. § 1342, subd. (a)(1).) The permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants. (*NRDC v. EPA* (9th Cir.1992) 966 F.2d 1292, 1308.) That is what the Regional Board has created in the 2002 permit.

Rancho Cucamonga's reliance on Water Code section 13360 is misplaced because that code section involves enforcement and implementation of state water quality law, (Wat.Code, § 13300 et seq.) not compliance with the Clean Water Act (Wat.Code, § 13370 et seq.) The federal law ****460** preempts the state law. (*Burbank, supra,* 35 Cal.4th at p. 626, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits.

***1390** Furthermore, the 2002 permit does afford the permittees discretion in the manner of compliance. It is the permittees who design programs for compliance, implementing best management practices selected by the permittees in the DAMP report and approved by the Regional Board. Throughout the permit, the permittees are granted considerable autonomy and responsibility in maintaining and enforcing the appropriate legal authority; inspecting and maintaining their storm drain systems according to criteria they develop; establishing the priorities for their own inspection requirements; and establishing programs for new development. The development and implementation of programs to control the discharge of pollutants is left largely to the permittees.

More particularly, we agree with the Regional Board that the permit properly allocated some inspection duties to the permittees. As part of their ROWD application for a permit, the permittees proposed to "Conduct Inspection, Surveillance, and Monitoring. Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal storm drain system." The ROWD also discussed continuing existing inspection programs.

Water Code section 13383 provides that as part of compliance with the Clean Water Act, the Regional Board may establish inspection requirements for any pollutant discharger. Federal law, either expressly or by implication, requires NPDES permittees to perform inspections for illicit discharge prevention and detection; landfills and other waste facilities; industrial facilities; construction sites; certifications of no

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discharge; non-stormwater discharges; permit compliance; and local ordinance compliance. (40 C.F.R. 122.26, subds. (d), (g); 33 U.S.C. § 1342, subd. (p)(3)(B)(ii).) Permittees must report annually on their inspection activities. (40 C.F.R. § 122.42, subd. (c)(6) (2005).)

Rancho Cucamonga claims it is being required to conduct inspections for facilities covered by other state-issued general permits. Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

***1391** 12. *Disposition*

Rancho Cucamonga is the only of the original 18 permittees still objecting to the 2002 NPDES permit. It has not successfully demonstrated that substantial evidence does not support the trial court's factual determinations or the trial court erred in its interpretation and application of state and federal law.

We affirm the judgment and order the prevailing parties to recover their costs on appeal.

HOLLENHORST, Acting P.J., and RICHLI, J., concur.
Cal.App. 4 Dist.,2006.
City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region
135 Cal.App.4th 1377, 38 Cal.Rptr.3d 450, 36 Envtl. L. Rep. 20,026, 06 Cal. Daily Op. Serv. 845, 06 Cal. Daily Op. Serv. 1699, 2006 Daily Journal D.A.R. 1126

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H

Court of Appeal, Second District, Division 5, California.
COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants,
v.
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents.
No. B184034.

Oct. 5, 2006.
Certified for Partial Publication.[FN*]

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Part IV(G)-(L).

As Modified on Denial of Rehearing Nov. 6, 2006.
Rehearing Denied Dec. 6, 2006.
Review Denied Feb. 14, 2007.

Background: Multiple cities, county, county flood control district, and other interested parties challenged order of the California Regional Water Quality Control Board adopting National Pollutant Discharge Elimination System permit. The Superior Court, Los Angeles County, No. BS080792,Victoria G. Chaney, J., entered judgment for regional board. Plaintiffs appealed.

Holdings: The Court of Appeal, Turner, P.J., held that:
(1) regional board had jurisdiction to issue permit;
(2) declaratory relief was not available to plaintiffs;
(3) regional board did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review; and
(4) CEQA review was not required.

Affirmed.

West Headnotes

[1] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, it is presumed the regional board considered the documents before it. West's Ann.Cal.Water Code § 13330.

[2] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, all reasonable doubts are resolved in favor of upholding the regional board's decision. West's Ann.Cal.Water Code § 13330.

[3] Environmental Law 149E 682

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek682 k. Water Pollution. Most Cited Cases

Environmental Law 149E 708

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek704 Further Review of Administrative Decision
149Ek708 k. Scope of Review. Most Cited Cases
On a challenge to a permit issued by the California Regional Water Quality Control Board, the appellate and trial courts examine the regional board's interpretation of legal matters utilizing a de novo standard of

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review, but the courts defer to the regional board's expertise in construing language which is not clearly defined in statutes. West's Ann.Cal.Water Code § 13330.

[4] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
California Regional Water Quality Control Board had statewide jurisdiction within meaning of federal regulation, notwithstanding its organization into nine regional boards, and thus had jurisdiction to issue National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174, 13100, 13200, 13225; 40 C.F.R. § 123.1(f).

[5] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Under the de facto officer doctrine, governmental and private parties objecting to National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board could not challenge permit by attacking regional board's authority. West's Ann.Cal.Water Code § 174 et seq.

[6] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Even though California Regional Water Quality Control Board was not an elected body, it was authorized to make the financial decisions of the scope entailed by a National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code §§ 174 et seq., 13201.

[7] Environmental Law 149E 657

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek657 k. Parties. Most Cited Cases
In absence of specific allegations, by parties challenging the California Regional Water Quality Control Board issuance of National Pollutant Discharge Elimination System permit, to hold the State Water Resources Control Board liable as engaging in independent activity, the State Water Resources Control Board was not properly joined as a party to challenging parties' action.

[8] Declaratory Judgment 118A 44

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases
In light of statute providing that order of the California Regional Water Quality Control Board may be reviewed by administrative mandate petition, declaratory relief was not available to governmental and private parties challenging regional board's issuance of National Pollutant Discharge Elimination System permit. West's Ann.Cal.Water Code § 13330(b).

[9] Declaratory Judgment 118A 44

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak44 k. Statutory Remedy. Most Cited Cases
When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable.

[10] Environmental Law 149E 171

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

Environmental Law 149E 196

149E Environmental Law

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149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

States 360 ⚷18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
California Regional Water Quality Control Board, by issuing National Pollutant Discharge Elimination System permit, did not unlawfully interfere in local general plans and California Environmental Quality Act (CEQA) review, since regional board was part of joint state and federal process to enforce the Clean Water Act, which superseded conflicting state and local pollution laws. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Pub.Res.Code § 21000 et seq.; West's Ann.Cal.Water Code § 13001; 40 C.F.R. § 122.26(d)(2)(iv)(A)(2).

[11] Environmental Law 149E ⚷171

149E Environmental Law
149EV Water Pollution
149Ek169 Concurrent and Conflicting Statutes or Regulations
149Ek171 k. Federal Preemption. Most Cited Cases

Environmental Law 149E ⚷196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

States 360 ⚷18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; Nuclear Projects. Most Cited Cases
California Regional Water Quality Control Board's issuance of National Pollutant Discharge Elimination System permit was not subject to review under California Environmental Quality Act (CEQA); although statute governing compliance with federal Clean Water Act exempted issuance process only from specified portion of CEQA, amendments to CEQA did not indicate Legislature's intent to impose duty on regional boards to prepare environmental impact reports, require regional boards to engage in any other form of environmental review specified in CEQA, or to otherwise modify statute governing compliance with Clean Water Act. Federal Water Pollution Control Act, § 402, 33 U.S.C.A. § 1342; West's Ann.Cal.Water Code § 13389; West's Ann.Cal.Pub.Res.Code §§ 21080, 21100.
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 831 et seq.; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.

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dents Natural Resources Defense Council, Santa Monica Baykeeper, and Heal the Bay.

TURNER, P.J.

*989 I. INTRODUCTION

Plaintiffs, 33 cities,[FN1] the County of Los Angeles (the county), the Los Angeles County Flood Control District (the flood control district), the Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality, appeal from a March 24, 2005 judgment in **622 favor of defendants, California Regional Water Quality Control Board, Los Angeles Region (the regional board) and the State Water Resources Control Board (the state board) and intervenors, Natural Resources Defense Council, Inc., Santa Monica Baykeeper, and Heal the Bay. Plaintiffs challenge the legality of the regional board's issuance of Order No. 01-182 adopting the National Pollutant Discharge Elimination System Permit No. CAS004001 (the permit) which is *990 entitled, "Municipal Storm Water And Urban Runoff Discharges Within The County Of Los Angeles, And The Incorporated Cities Therein, Except The City Of Long Beach." The December 13, 2001 permit was issued to the county, the flood control district, and 84 incorporated cities in Los Angeles County. We affirm the judgment in its entirety.

FN1. The following cities have appealed Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier.

II. THE PERMIT

A. Overview

The permit was issued pursuant to the obligations imposed by the Clean Water Act which will be discussed in greater detail later in this opinion. The Clean Water Act was originally entitled the Federal Water Pollution Control Act. (62 Stat. 1115; 1948 U.S.Code Cong. & Admin. News at pp. 2215-2220.) For purposes of clarity and consistency, the federal applicable water pollution statutes will collectively be referred to as the Clean Water Act. The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees. The findings and permit are as follows.

B. Findings

The permit found that the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems). These discharges were the subject of permits issued by the regional board in 1990 and 1996. The 1996 order served as the National Pollutant Discharge Elimination System permit for the discharge of municipal storm water.

The regional board found that storm drain systems in the county discharged cyanide, indicator bacteria, total dissolved solids, total suspended solids, turbidity, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons, diazinon, and chlorpyrifos. According to the regional board, there were certain pollutants present in urban runoff which resulted from sources over which the permittees had no control. Among the runoff sources over which the permittees have no control are polycyclic aromatic hydrocarbons *991 which are the products of internal combustion engines or copper from brake pad wear. Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region.

The regional board concluded that urbanization increased the velocity, volume, and duration of water runoff; increased erosion; and adversely affected natural drainages. The regional board found: "The [county] has identified as the seven highest priority

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industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive**623 repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; [and] (vii) primary metal products." Also, the regional board concluded, "auto repair facilities" contribute "significant concentrations of heavy metals" to storm waters. Moreover, paved surfaces such as those outside fast food establishments or parking lots "are potential sources of pollutants" in storm water runoff. Further, storm water runoff from retail gas establishments "have concentrations" of heavy metals and hydrocarbons.

The regional board further made findings concerning the background of the permit and its coverage area. The essential components of a Storm Water Management Program are: adequate legal authority; fiscal resources; the actual Storm Water Quality Management Program itself; and a monitoring program. A Storm Water Quality Management Program consists of: a Public Information and Participation Program; an Industrial/Commercial Facilities Program: a Development Planning Program; a Development Construction Program; a Public Agency Activities Program; and an Illicit Connection and Illicit Discharges Elimination Program. The permittees filed a Report of Waste Discharge dated January 31, 2001, which contained a proposed Storm Water Quality Management Program.

C. Prohibited and Allowable Discharges

In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-storm water discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-storm water emission; natural springs and rising ground water; *992 flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; "uncontaminated ground water infiltrations" as defined by 40 Code of Federal Regulations, part 35.2005(b)(20) (1990); and waters from emergency fire-fighting flows. Another category of permissible discharges were flows incidental to urban activities consisting of: reclaimed and potable landscape irrigation runoff; potable drinking water discharges which comply with the American Water Works Association guidelines for dechlorination and "suspended solids reduction practices"; drains for foundations, footings, and crawl spaces; air conditioning condensate; "dechlorinated/debrominated" swimming pool discharges; dewatering of lakes and decorative fountains; non-commercial car washing by residents or nonprofit organizations; and sidewalk rinsing.

The regional board's executive officer was granted authority to add or remove categories of non-storm water discharges. If one of the foregoing categories was determined to be "a source of pollutants" by the regional board's executive officer, the discharge was to be no longer exempt. The executive officer retained the authority to impose conditions on the city or county to ensure that the discharge was "not a source of pollutants." Also, the executive director was given the authority to impose additional "prohibitions on non-storm water discharges" after considering either of two factors. The first factor the regional board's executive officer could consider is anti-degradation policies. The second factor the regional board's executive officer could consider is the total maximum load an impaired water body can receive and still meet applicable water quality standards and protect beneficial uses. (33 U.S.C. § 1313(d)(1).)

**624 D. Receiving Water Limitations

Receiving waters are defined thusly, " 'Receiving waters' means all surface water bodies...." Discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans were prohibited. Storm or non-storm water discharges from storm sewer systems which constitute a nuisance were also prohibited. The term nuisance is defined, " 'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." In *993 order to comply with the receiving water limitations, the per-

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mittees were required to implement control measures in accordance with the permit. If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee was required to immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that described the best management practices that were currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes the foregoing changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board.

E. Storm Water Quality Management Program

The permittees were to implement the Storm Water Quality Management Program which meet the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduce the pollutants in storm waters to the maximum extent possible with the use of best management practices. Further, the permittees were required to revise the Storm Water Quality Management Program to comply with specified total daily maximum load allocations. If a permittee modified the countywide Storm Water Quality Management Program, it was required to implement a local management program. Each permittee was required by November 1, 2002, to adopt a storm water and urban runoff ordinance. By December 2, 2002, each permittee was required to certify that it had the requisite legal authority to comply with the permit through adoption of ordinances or municipal code modifications.

The county was designated as the "Principal Permittee" and was given coordination responsibilities for the Storm Water Quality Management Program. Among other things, the county was to convene watershed management committees which were to meet at least four times per year. Each permittee was entitled to have a voting representative on the committees. The committees were to coordinate and monitor implementation of the Storm Water Quality Management Program. Each permittee was required to designate a technically knowledgeable representative to the appropriate watershed management committees. Each permittee was required to prepare a budget summary of moneys spent on the Storm Water Quality Management Program.

****625 *994** The permit granted each permittee the "necessary legal authority" to prohibit non-storm water discharges into the storm drain system. That authority extended to prohibiting discharges from: illicit connections of all kinds; wash waters from gas stations and automotive service facilities; runoff from mobile cleaning businesses; areas where oil, fluid, or antifreeze was dripping from machinery; storage areas containing hazardous substances; swimming pool waters; washing of toxic materials; and washing impervious surfaces in industrial and commercial areas. The authority also extended to the discharge of concrete and cement-laden wash waters and prohibition of dumping of materials into storm drain systems. The legal authority extended to: requiring persons to comply with permittees' ordinances; holding dischargers to storm drain systems accountable; controlling pollutants and their potential contributors; inspecting, watching, and monitoring procedures to ensure compliance with the permit including prohibition of illicit discharges into storm drain systems; and requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible.

F. Special Provisions

The regional board's executive officer had the power to alter a best management practice under specified circumstances. The county, as the principal permittee, was required to implement a public information and participation program. The program included: marking all storm drains with " 'no dumping' " signs; instituting a county-wide hotline to report illicit discharges and other environmental hazards; public education; every year, requiring 50 percent of all school children to be educated on storm water pollution; assessments of education; and other outreach programs.

***995** Each permittee was required to maintain a database of entities that are "critical sources" of storm water pollution. Each permittee was required to inspect under specified circumstances critical facilities including: restaurants; automotive service businesses; retail gasoline outlets; and automotive dealerships.

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Further, each permittee was to evaluate best management practices and increase their severity if appropriate. Violations of the Storm Water Quality Management Program were to be investigated within specified time periods. By August 1, 2002, the permittees were to amend their ordinances or municipal codes to implement the standard urban storm water mitigation plans contained in the permit. Special requirements were imposed when discharges occur in environmentally sensitive areas.

Each permittee was required to consider storm water quality impacts as part of their California Environmental Quality Act assessments. Each permittee was required to update its general plan to include "considerations and policies" of watershed and storm water quality and quantity management. The permittees were required to educate employees involved in development planning regarding the permit's requirements.

G. Development Construction Program

The permittees were required to implement programs to "control" runoff from construction sites. Runoff from construction sites was prohibited. Non-storm water runoff from equipment washing on construction sites was to be contained on-site. Special requirements were imposed on construction sites of one acre or greater in area. Additional requirements were imposed on developments which were five acres or larger including securing a general construction activity storm water permit.**626 The permit imposed "Numerical Design Criteria" which required that post-construction best-management practices incorporate "either a volumetric or flow based treatment control design standard, or both" under specified circumstances. If there is a violation of a general construction activity storm water permit, the permittee may refer the violator to the state board.

H. Public Agency Activities Program

The permittees were required to minimize storm water pollution impacts. The requirements extended to: sewer systems; public construction; vehicle related facilities; landscape and recreational facilities; storm drain management; and street maintenance. The permittees were also required to participate in a study concerning possible dry weather discharges and the use of alternative treatment control best management practices.

I. Illicit Discharges And Connections

The permit states, "Permittees shall eliminate all illicit connections and ... discharges to the storm drain system, and shall document, track, report all such cases...." The elimination and reporting of such discharges required: development of an implementation program; by February 3, 2003, the municipalities provide the county with a list of all approved connections in the storm drain system; the county to conduct an annual evaluation of illicit ***996** discharges; and training of personnel in the identification and investigation of such discharges. The permittees were to complete the screening of illicit connections as follows: open channels, no later than February 3, 2003; underground pipes by February 1, 2005; and underground pipes with a diameter of 36 inches or greater by December 12, 2006. By December 12, 2006, the permittees were to complete a review of all "permitted connections" to the storm drain system to ensure eliminating illicit discharges. Upon receipt of a report an illicit connection, an investigation was to be initiated within 21 days to determine the source and the responsible party. Within 180 days, the permittees were required to "ensure termination of the connection" using appropriate enforcement authority. As to illicit discharges, a permittee was required within one business day to respond to a report and clean up a discharge. Illicit discharges were to be investigated as soon as possible and appropriate enforcement action was to be pursued.

III. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, PROCEDURAL HISTORY, AND STANDARDS OF REVIEW

The present appeal arises from the issuance of the permit. The legal genesis of the National Pollutant Discharge Elimination System permits for the discharge of municipal storm water has previously been described in some detail in other decisions. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1380-1381, 38 Cal.Rptr.3d 450.) In *City of Rancho Cucamonga,* our colleagues in the Division Two of the Fourth Appellate District sum-

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marized the complex federal and state relationship: " 'Part of the Federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239.) The NPDES sets out the conditions under ****627** which the federal [Environmental Protection Agency] or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)' (*Burbank, supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.)[¶] California's Porter-Cologne Act (Wat.Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat. ***997** Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342[ ](b)(1)(B).)" (*City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.)

After the board issued the aforementioned December 13, 2001 permit, on January 17, 2003, a series of legal challenges, consisting of the filing administrative mandate and mandate petitions and complaints, were instituted by plaintiffs. Judgments in favor of the regional and state boards were entered on March 24, 2005. After the judgments were entered, notices of appeal were filed on June 21 and 22, 2005. The parties stipulated to the maximum extensions of time to brief the matter as allowed by California Rules of Court, rule 15(b)(1). This court had no authority to deny the stipulated to extensions of time to file briefs. (Cal. Rules of Court, rule 15(b) ["The reviewing court may not shorten a stipulated extension"].) No extension of time request was ever granted by any member of this court. The final reply brief was filed on August 1, 2006. Oral argument was held on September 6, 2006.

[1][2][3] There are varying standards of review. Many of the challenges to the content of the permit involve review of the denial of Code of Civil Procedure section 1094.5 administrative mandate petitions filed pursuant to Water Code section 13330, subdivision (b). We review the trial court's factual findings for substantial evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824, 85 Cal.Rptr.2d 696, 977 P.2d 693; *Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 86, 87 P.2d 848.) Further, it is presumed the regional board considered the documents before it. (*City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 393-394, 142 Cal.Rptr. 873.) All reasonable doubts are resolved in favor of upholding the regional board's decision. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674, 125 Cal.Rptr.2d 745.) We (and trial courts) examine the regional board's interpretation of legal matters utilizing a de novo standard of review. But we defer to the regional board's expertise in construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450.) Finally, the trial court's denials of plaintiffs' new trial and to enter a new judgment motions ***998** and declaratory relief requests are reviewed for an abuse of discretion. (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, ****628** 616, 278 Cal.Rptr. 900 [new trial motion]; *Bess v. Park* (1955) 132 Cal.App.2d 49, 52, 281 P.2d 556 [declaratory relief].)

IV. DISCUSSION

A. The Jurisdiction of the Regional Board To Issue The Permit

[4] Plaintiffs contend the regional board did not have jurisdiction to issue the permit. Plaintiffs rely on language appearing in the Code of Federal Regulations. For example, the permittees cite to 40 Code of Federal Regulations part 123.1(g)(1) (1998) which states, "NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges." [FN2] Further the permittees refer to the following language in 40 Code of Federal Regulations part

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123.22(b) (1998), "If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities." [FN3] Moreover, 40 Code of Federal Regulations part 123.1(f) (1998) states, "Any State ***999** program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part."

> FN2. 40 Code of Federal Regulations part 123.1(g)(1) (1998) states in its entirety: "(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of [Clean Water Act]. [National Pollutant Discharge Elimination System] authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before [the Environmental Protection Agency] will begin formal review. [¶] (2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the [Clean Water Act]."
>
> FN3. 40 Code of Federal Regulations part 123.22(b) (1998) states in its entirety: "A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a 'lead agency' to facilitate communications between [the Environmental Protection Agency] and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program. [¶] (1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program. [¶] (2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. [¶] (3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding."

Plaintiffs reason that under state law, the regional board does not have statewide jurisdiction. Water Code section 13100 states that the state and regional boards are part of the California Environmental Protection Agency. Water Code section 13200 identifies the scope of jurisdiction of ****629** the nine regional boards. The regional board's limited jurisdiction is defined in Water Code section 13200, subdivision (d).[FN4] The powers of the regional boards are set forth in Water Code section 13225 with the caveat that the powers exist "with respect to its region." [FN5] Because the regional board is not a statewide agency, plaintiffs argue the permit is void.

> FN4. Water Code section 13200, subdivision (d) states: "The state is divided, for the purpose of this division, into nine regions: [¶] Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the

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watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."

FN5. Water Code section 13225 states in its entirety: "Each regional board, with respect to its region, shall: [¶] (a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance. [¶] (b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged. [¶] (c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. [¶] (d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws. [¶] (e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board. [¶] (f) Report to the state board and appropriate local health officer any case of suspected contamination in its region. [¶] (g) File with the state board, at its request, copies of the record of any official action. [¶] (h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state. [¶] (i) Encourage regional planning and action for water quality control."

This argument has no merit. Effective September 22, 1989, the authority to issue National Pollutant Discharge Elimination System permits was vested by the federal Environmental Protection Agency in the state board. (54 Fed.Reg. 40664, 40665 (Oct. 3, 1989); see *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 ***1000** Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.) The state board is organized into nine regional boards which are part of the California Environmental Protection Agency. (Wat.Code, §§ 174 et seq.13100; see *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1405, 38 Cal.Rptr.3d 373.) The nine regional boards are authorized under this state's laws to issue National Pollutant Discharge Elimination System permits. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd., supra,* 124 Cal.App.4th at p. 875, 22 Cal.Rptr.3d 128; Wat.Code, § 13374.) The federal Environmental Protection Agency memorandum of agreement with the state board complies with the statewide jurisdiction requirements imposed by the federal regulations. The fact the state board is organized into nine regional boards is legally irrelevant. The state board has statewide jurisdiction.

[5] Further, we agree with the Attorney General that plaintiffs may not challenge the regional board's authority to issue a National Pollutant Elimination System permit in this proceeding. Such ****630** an indirect challenge to the board's authority is barred by the de facto officer doctrine. The Supreme Court has described the de facto officer doctrine, which bars a challenge to an agency's action based on a purported lack of legal authority to act, thusly: "[W]e conclude that under the 'de facto officer' doctrine prior actions of the Commission cannot be set aside on the ground that the appointment of the commissioners who participated in the decision may be vulnerable to constitutional challenge. As this court explained in *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 41-42 [37 Cal.Rptr. 74, 389 P.2d 538]: 'The de facto doctrine in sustaining official acts is well established. [Given the existence of] a de jure office, "[p]ersons claiming to be public officers while in possession of an office, ostensibly exercising their function lawfully and with the acquiescence of the public, are *de facto* officers.... The lawful acts of an officer *de facto,* so far as the rights of third persons are concerned, are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it." [Cita-

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tions.]' (See also *Pickens v. Johnson* (1954) 42 Cal.2d 399, 410 [267 P.2d 801] ['There is no question but that ... the status of a judge de facto attached to his action. The office to which he was assigned was a de jure office. By acting under regular assignment under a statute authorizing it he was acting under color of authority as provided by law. His conduct in trying the cases and rendering judgment therein cannot here be questioned.'].)"(*Marine Forests Soc. v. California Coastal Com.* (2005) 36 Cal.4th 1, 54, 30 Cal.Rptr.3d 30, 113 P.3d 1062; original italics.) Here, plaintiffs are challenging the permit by attacking the regional board's authority. Under these circumstances, this they may not do in what amounts to a licensing proceeding. (*Ibid.; In re Redevelopment Plan for Bunker Hill, supra,* 61 Cal.2d at pp. 41-42, 37 Cal.Rptr. 74, 389 P.2d 538.)

[6] ***1001** Finally there is no merit to the contention that because the regional board is not an elected body, it cannot make the financial decisions of the scope entailed by the permit. The board's powers exist because of: the Clean Water Act which was adopted and amended by elected members of Congress and signed into law by elected presidents; provisions of the Water Code which were enacted by elected legislators and approved by elected governors; and the members, who must have special competence, are appointed by an elected governor and confirmed by the elected State Senate. (Wat.Code, § 13201, subds.(a)-(b).) The democratic processes of government control every aspect of the creation of the board, its legal authority, and the selection of its members. Further, the decisions of regulatory institutions such as the regional board, are entitled by law to a presumption of competence and propriety. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1384, 38 Cal.Rptr.3d 450; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104, 1 Cal.Rptr.3d 76.)

B. The Motions To Strike

Plaintiffs argue that the trial court erroneously granted the regional board's motions to strike portions of the petition. Plaintiffs contend: the motions to strike were in fact disguised summary adjudication motions; the orders granting the motions to strike did not resolve entire causes of action; and hence, the orders violated Code of Civil Procedure section 437c, subdivision****631** (f)(1). This contention has no merit. Code of Civil Procedure section 436 allows a court to strike portions of a cause of action. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1386, 38 Cal.Rptr.3d 450; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683, 40 Cal.Rptr.2d 169.)

C. The State Board's Demurrer

[7] Plaintiffs argue that the trial court erroneously sustained the state board's demurrer to the petitions. The state board contended it was not properly joined as a party to the litigation. A group of plaintiffs alleged the state board required the regional boards to adopt terms and conditions on National Pollutant Discharge Elimination System permits without complying with Government Code sections 11340.5, subdivision (a) [FN6] and 11352, ***1002** subdivision (b) which are part of the Administrative Procedure Act. Plaintiffs had a duty to specifically allege every fact that would give rise to liability by the state board. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790, 11 Cal.Rptr.3d 222, 86 P.3d 290; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795, 221 Cal.Rptr. 840, 710 P.2d 907.) The state board refused to assume jurisdiction over this case. There were thus no specific allegations as to the state board to hold it liable as it engaged in no independent activity. Hence, this contention has no merit and the demurrer was properly sustained. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at p. 1383, 38 Cal.Rptr.3d 450; *People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177, 239 Cal.Rptr. 349.)

FN6. Government Code sections 11340.5, subdivision (a) states, "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

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D. The Declaratory Relief Claims

[8] The trial court sustained the regional board's demurrers to the declaratory relief claims. Plaintiffs argue they were entitled to declaratory relief as to whether the permittees were required to "go beyond the [maximum extent practicable]" standard to comply with part 2 of the permit which relates to receiving water limitations; part 2 contained a "safe harbor" if the permittees were acting in good faith in implementing best management practices to control excessive discharge of pollutants and nuisance conditions; the requirement in part 4 of the permit that each permittee's general plan and California Environmental Quality Act review take into account storm water runoff is lawful; the regional board was required to consider the economic impact of the proposed permit and its effect on housing; and the regional board was required to perform a "cost/benefit analysis" of the monitoring and reporting program.

[9] When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249, 115 Cal.Rptr. 497, 524 P.2d 1281; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 546, 99 Cal.Rptr. 745, 492 P.2d 1137.) Water Code section 13330, subdivision (b) provides that a regional board order may be reviewed by a Code of Civil Procedure section 1094.5 administrative mandate petition****632** filed within 30 days after the state board denies review. Therefore, the demurrer was correctly sustained to the declaratory relief claims. (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 287, 98 Cal.Rptr. 785, 491 P.2d 369; *Hostetter v. Alderson* (1952) 38 Cal.2d 499, 500, 241 P.2d 230.)

***1003** E. The Regional Board Has Not Unlawfully Interfered In Local General Plans And California Environmental Quality Act Review

[10] The permit requires the permittees to update their general plans to include watershed and storm water runoff as considerations in land use, housing, conservation, and open space planning. Further, the permittees were required to amend their California Environmental Quality Act process to ensure review of the effect of commercial and residential development on storm water runoff. Plaintiffs argue these aspects of the permit violate the separation of powers doctrine. This contention has no merit. As noted, the regional boards are part of a joint state and federal process to enforce the Clean Water Act.(*City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at pp. 619-620, 26 Cal.Rptr.3d 304, 108 P.3d 862; *City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra,* 135 Cal.App.4th at pp. 1380-1381, 38 Cal.Rptr.3d 450.) The general plan powers and duties of cities and counties are limited by statewide law. (Cal. Const., art. XI, § 7; Gov.Code, § 65030.1; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 907-908, 4 Cal.Rptr.3d 325; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1118, 67 Cal.Rptr.2d 420.) Further, the Clean Water Act supersedes all conflicting state and local pollution laws. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101, 112 S.Ct. 1046, 117 L.Ed.2d 239; *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th at p. 621, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The state and regional boards are vested with the primary responsibility of controlling water quality. (Wat.Code, § 13001; see *Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046; *Hampson v. Superior Court* (1977) 67 Cal.App.3d 472, 484, 136 Cal.Rptr. 722.) Regional boards are explicitly granted the authority to issue orders for purposes of enforcing the federal Clean Water Act. (Wat.Code, § 13377.) Federal law requires that permits include controls to reduce pollutant discharge in areas of new development and significant redevelopment-the very area where regional board review occurs. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2) (2006).) So long as the regional boards' decisions carry out federal and state water quality mandates resulting from express legislative action as the challenged orders in this case in fact do, no separation of powers issue is present. (*Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-377, 71 Cal.Rptr. 687, 445 P.2d 303; *Salmon Trollers Marketing Assn. v. Fullerton* (1981) 124 Cal.App.3d 291, 300, 177 Cal.Rptr. 362.) Given the foregoing, we need not address the waiver, laches, and estoppel contentions of the regional and state boards and the intervenors.

F. Failure To Comply With the California Environmental Quality Act

[11] Plaintiffs argue that the permit issuance process violates provisions of the California Environmental Quality Act. Plaintiffs rely on Water Code section ***1004** 13389 which provides that chapter 3 of the

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California Environmental Quality Act does not apply to National Pollutant Discharge Elimination Systems permits proceedings: "Neither the state board nor the regional boards shall be required to comply**633 with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto." California Code of Regulations, title 23, section 3733 also states, "Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7 of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply to the policy provisions of Chapter 1 of CEQA."Plaintiffs argue that the California Environmental Quality Act applies to: the receiving water limitations; the revision of the Storm Water Quality Management Program; and the development planning program. (See *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pp. 1420-1426, 38 Cal.Rptr.3d 373; *Committee for Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 862, 237 Cal.Rptr. 723.)

Chapter 3 of the California Environmental Quality Act was originally adopted in 1970. (Stats.1970, ch. 1433, § 1, pp. 2781-2782.) The original chapter 3 of the California Environmental Quality Act required all state agencies, boards, and commissions that proposed a project which would have a significant effect on the environment to prepare a "detailed statement" setting forth the environmental effect of the contemplated undertaking.[FN7] (See *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158, 166, 118 Cal.Rptr. 490; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 246, 112 Cal.Rptr. 379.) Water Code section 13389 was adopted as urgency legislation to comply with certain provisions of the Clean Water Act provisions establishing the National Pollution Discharge Elimination System. (Stats.1972, ch. 1256, § 3, p. 2490.) Expressly for that purpose, the California Legislature enacted chapter 5.5, the "Water Quality" division, ***1005** which includes Water Code section 13389. (Wat.Code, § 13370 [FN8]; *City of Brentwood v.* ***634** *Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 723, 20 Cal.Rptr.3d 322; *Sierra Club v. Union Oil Co. of California* (9th Cir.1987) 813 F.2d 1480, 1483.) When Water Code section 13389 became effective on December 19, 1972, chapter 2.6 of the California Environmental Quality Act had just been enacted, also as urgency legislation, and it consisted of Public Resources Code sections 21080 through 21090. The new chapter 2.6 of the California Environmental Quality Act became effective on December 5, 1972. (Stats.1972, ch. 1154, § 19, p. 2280.) Chapter 3 of the California Environmental Quality Act was also amended effective December 5, 1972, and it which applied to all environmental assessments by state agencies, boards, and commissions. Former Public Resources Code section 21100, the core provision of the 1972 version of the California Environmental Quality Act as it related to state agencies, boards, and commissions, stated: "All state agencies, boards, and commissions shall prepare, or cause to be prepared ... and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment." (Stats.1972, ch. 1154, § 2.5, p. 2274; see *Desert Environment Conservation Assn. v. Public Utilities Com.* (1973) 8 Cal.3d 739, 742, 106 Cal.Rptr. 31, 505 P.2d 223; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594, fn. 8, 122 Cal.Rptr. 100.)Beyond question, the Legislature intended that chapter 3 of the California Environmental Quality Act not apply to National Pollution Discharge Elimination System permits-in that respect Water Code section 13389 is entirely clear.

FN7. Public Resources Code section 21100 as enacted in 1970 stated: "All state agencies, boards, and commissions shall include in any report on any project they propose to carry out which could have a significant effect on the environment of the state, a detailed statement by the responsible state official setting forth the following: [¶] (a) The environmental impact of the proposed action.[¶] (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented. [¶] (c) Mitigation measures proposed to minimize the impact. [¶] (d) Alternatives to the proposed action. [¶] (e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. [¶] (f) Any irreversible envi-

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ronmental changes which would be involved in the proposed action should it be implemented." (Stats.1970, ch. 1433, § 1, pp. 2781-2782.)

FN8. Water Code section 13370 states: "The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), as amended, provides for permit systems to regulate the discharge of pollutants and dredged or fill material to the navigable waters of the United States and to regulate the use and disposal of sewage sludge. [¶] (b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act. [¶] (c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Control Act for the purpose of carrying out its responsibilities under this program."

But on December 19, 1972, when Water Code section 13389 was enacted, chapter 2.6 of the California Environmental Quality Act, which contains generalized requirements for the preparation of environmental impact reports for discretionary projects, had just been adopted effective December 5, 1972. Chapter 2.6 of the California ***1006** Environmental Quality Act applies to discretionary projects proposed by public agencies. (Former Pub. Resources Code, § 21080.) Pursuant to new chapter 2.6 of the California Environmental Quality Act, all public agencies were required to adopt by ordinance, resolution, or the like procedures for preparation of environmental impact reports. (Former Pub. Resources Code, § 21082.) The Office of Planning and Research was directed to adopt proposed guidelines for the preparation of environmental impact reports including a listing of projects determined not to have a significant impact on the environment. (Former Pub. Resources Code, §§ 21083-21088.) Finally, chapter 2.6, as adopted in 1972, allowed a public agency to charge fees for the preparation of environmental impact report and defined public and private developments pursuant to a redevelopment plan as a single project. (Former Pub. Resources Code, §§ 21089-21090.)

It can be argued that even though chapter 3 with its environmental impact preparation requirement for state agencies, boards, and commissions was not to apply to National Pollution Discharge Elimination System permits, the discretionary projects requirements in chapter 2.6 of the California Environmental Quality Act mandated environmental review. Hence, the argument would be that the Legislature in enacting Water Code section 13389 did not intend to obviate the duty pursuant to ****635** chapter 2.6 of the California Environmental Quality Act to prepare an environmental impact report. We are unpersuaded by this analysis. Former Public Resources Code section 20180, subdivision (a), the core provision relating to discretionary projects, stated: "(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166)." (Stats.1972, ch. 1154, § 2.3, p. 2272; see *People v. County of Kern* (1974) 39 Cal.App.3d 830, 839, 115 Cal.Rptr. 67; *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 510, 113 Cal.Rptr. 539.) As can be noted, Public Resources Code section 21080, subdivision (a) established that a discretionary project was subject to the environmental impact requirement. But the requirement that a state agency, board, and commission prepare an environmental report was found in Public Resources Code section 21110 which was, and is now, located in chapter 3 of the California Environmental Quality Act. The obligation imposed on a state agency, board, and commission to prepare an environmental impact report existed in chapter 3 before the adoption of Water Code section 13389 and it remained there after the 1972 amendments to the California Environmental Quality Act. No doubt, since 1972 when the Legislature adopted Water Code section 13389 and the then new chapter 2.6, ***1007** the California Environmental Quality Act has been repeatedly amended. But de-

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fendants cite no evidence the Legislature ever intended to: impose a duty on regional boards to prepare environmental impact reports; require regional boards to engage in any other form of environmental review specified in the California Environmental Quality Act; or to otherwise modify Water Code section 13389.

Defendants rely on the analysis of our colleague Presiding Justice Judith D. McConnell of Division One of the Fourth Appellate District in *City of Arcadia v. State Water Resources Control Bd., supra,* 135 Cal.App.4th at pages 1420-1430, 38 Cal.Rptr.3d 373 that regional board basin plans are subject to limited California Environmental Quality Act review. The *City of Arcadia* decision does not involve the issuance of a National Pollution Discharge Elimination System permit. Rather, it involves the development of a basin plan. (*Ibid.*). We agree with the Attorney General that a basin plan is subject to limited environmental review pursuant to Public Resources Code section 21080.5. Public Resources Code section 21080.5, subdivision (a) vests the Secretary of the Resources Agency with the authority to require limited environmental review: "(a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section." The secretary's authority extends to requiring limited environmental review when an agency adopts "standards, rules, regulations, or plans for use" in a regulatory program. (Pub. Resources Code, § 21080.5, subd. (b)(2).) The secretary has certified the regional boards' basin plan program as requiring limited environmental review. (*City of Arcadia v. State Water Resources* ***636** *Control Bd., supra,* 135 Cal.App.4th at p. 1422, 38 Cal.Rptr.3d 373; Cal.Code Regs., tit. 14, § 15251, subd. (g).[FN9]) The resources secretary has never identified the National Pollution Discharge Elimination System permit system as a Public Resources Code section 21080.5 certified program. Thus, *City of Arcadia* does not require California Environmental Quality Act review prior to the issuance of a National Pollution Discharge Elimination System permit.

FN9. California Code of Regulations, title 14, section 15251, subdivision (g) states: "The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5: [¶] ... (g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards."

***1008** G.-L.[FN**]

FN** See footnote *, *ante*.

V. DISPOSITION

The judgment is affirmed. Defendants, California Regional Water Quality Control Board, Los Angeles Region and the State Water Resources Board, are to recover their costs incurred on appeal jointly and severally from plaintiffs, the Cities of Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier, and the County of Los Angeles, Los Angeles County Flood Control District, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality.

We concur: ARMSTRONG and KRIEGLER, JJ.

Cal.App. 2 Dist.,2006.
County of Los Angeles v. California State Water Resources Control Bd.
143 Cal.App.4th 985, 50 Cal.Rptr.3d 619

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H

Court of Appeal, First District, Division 3, California.
DIABLO VALLEY COLLEGE FACULTY SENATE, Plaintiff and Appellant,
v.
CONTRA COSTA COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.
No. A108713.

March 21, 2007.
Rehearing Denied April 6, 2007.
Review Denied June 27, 2007.

Background: Faculty senate of community college filed petition for a writ of mandate against community college district, and a complaint for declaratory relief against Chancellor. Faculty senate alleged that district was required to engage in collegial consultation with senate before effecting an administrative reorganization. The Superior Court, Contra Costa County, No. N03-0005,Steven K. Austin, J., denied relief, and faculty senate appealed.

Holding: The Court of Appeal, McGuiness, P.J., held that community college district was not required to engage in collegial consultation with faculty senate before effecting an administrative reorganization.

Affirmed.

West Headnotes

[1] Declaratory Judgment 118A 393

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak393 k. Scope and Extent of Review in General. Most Cited Cases

Mandamus 250 187.9(6)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(6) k. Questions of Fact. Most Cited Cases
In mandate and declaratory relief proceedings, the appellate court defers to the trial court's findings of fact if they are supported by substantial evidence.

[2] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
Where the material facts are undisputed, the trial court's interpretation of a statute is subject to de novo review.

[3] Colleges and Universities 81 7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases
Community college district was not required by applicable regulations to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization, which consisted of hiring professional deans for managerial positions previously filled on a part-time basis by faculty members; district's administrative organization could not be construed as a "district or college governance structure" within the meaning of regulation, and, moreover, the management system was not "related to faculty roles." 5 CCR § 53200(c)(6).

[4] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construc-

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tion. Most Cited Cases

Statutes 361 ⚷219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases

Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement.

See 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 111 et seq.; Cal. Jur. 3d, Administrative Law, § 147 et seq.

[5] Administrative Law and Procedure 15A ⚷751

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak751 k. Limitation of Scope of Review in General. Most Cited Cases

Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum.

[6] Colleges and Universities 81 ⚷7

81 Colleges and Universities
81k7 k. Governing Boards and Officers. Most Cited Cases

Court of Appeals would accord some weight to the Chancellor's interpretation of state regulations requiring collegial consultation for policies relating to academic and professional matters; Chancellor's careful consideration of the issue was evinced by his having issued four legal opinions, and Chancellor had consistently interpreted the regulation so as not to require collegial consultation for management reorganizations. 5 CCR § 53200(c)(6).

[7] Administrative Law and Procedure 15A ⚷796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases

Two broad categories of factors are relevant to a court's assessment of the weight due an agency's interpretation of a legal text: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct.

[8] Administrative Law and Procedure 15A ⚷796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases

An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.

[9] Administrative Law and Procedure 15A ⚷413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases

A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.

[10] Administrative Law and Procedure 15A ⚷413

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15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
With respect to whether an agency's decision is probably correct, factors suggesting such correctness include: (1) indications that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time.

[11] Administrative Law and Procedure 15A 796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases
Whatever the force of administrative construction, final responsibility for the interpretation of the law rests with the courts; at most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.

[12] Administrative Law and Procedure 15A 412.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases
Rules governing the interpretation of statutes also apply to interpretation of regulations.

[13] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases
In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage.

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McGUINESS, P.J.

***1027** This case concerns whether the Education Code or applicable regulations required a community college district to engage in collegial consultation with a college's academic senate before effecting an administrative reorganization. In September 2001, the President of Diablo Valley College (DVC) announced that, as part of a district-wide reorganization, professional deans would be hired for managerial positions previously filled on a part-time basis by faculty members. The Diablo Valley College ***1028** Faculty Senate (Faculty Senate) complained this change could not be undertaken without its consent, based on regulations requiring collegial consultation for policies relating to "academic and professional matters." (Cal.Code Regs., tit. 5, §§ 53200, 53203, subd. (a).) [FN1] After several unsuccessful complaints to the Chancellor of the California Community Colleges (Chancellor), which resulted in a series of legal opinions from the Chancellor concluding the reor-

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ganization did not impose a duty of collegial consultation, the Faculty Senate filed a petition for writ of mandate against the Contra Costa Community College District (District) and its governing board (Board) and a complaint for declaratory relief against the Chancellor. The trial court agreed that the regulations did not require collegial consultation and denied relief. As the third neutral entity to evaluate the question, we reach the same conclusion and affirm the judgment.

FN1. All unspecified section references are to Title 5 of the California Code of Regulations.

BACKGROUND

I. History of DVC Division Chairs and the Change to Professional Deans

With an annual enrollment of approximately 35,000 students, DVC is one of the largest community colleges in northern California, and it is one of three colleges managed by the District. Beginning in approximately 1968, DVC employed faculty "division chairs" to manage the various academic divisions within the college.[FN2] Division chairs were nominated by a majority vote of full-time faculty members within each division and then appointed to the position by the university president. Selected faculty members served up to two consecutive three-year terms as division chair and continued to teach part-time during this period. At the end of his or her service, a division chair generally resumed full-time teaching responsibilities. Division chairs acted as first-line managers for their divisions. They facilitated communications between faculty and administrators and managed most aspects of the faculty's involvement in college administration.

FN2. "Division" refers to an aggregate of related academic disciplines.

The division chair management system at DVC was first memorialized in writing in June 1977, when it was added to the District's Administrative Procedures Manual as AP 4111.07. The District moved this provision into different manuals over **297 the years, but the description of division chair selection procedures and responsibilities remained substantively unchanged. The parties dispute whether any of these acts were accompanied by collegial consultation and whether the Board ever formally adopted AP 4111.07 or its successors.

In addition, in 1982 or 1983, a description of the procedure for selecting division chairs was added to the collective bargaining agreement (CBA) between the District and United Faculty, the union representing faculty *1029 members in District colleges. The CBA identifies division chairs as "management positions." The significance of this description's appearance in the CBA is another subject of dispute between the parties.

In the spring of 2001, the chancellor of the District (Charles Spence) determined it would be advantageous for colleges in the District to switch from the division chair system, which all three were using, to full-time management by professional administrators. In accordance with this decision, on September 14, 2001, DVC president Mark Edelstein sent a memorandum to all faculty and staff advising them of the upcoming change. Because of the school's high enrollment and almost year-round instructional calendar, Edelstein explained it had become increasingly difficult for the college to manage its affairs effectively using part-time faculty division chairs, who worked for only nine months of the year and served relatively brief terms.

II. Opinions of the State Chancellor and Legal Proceedings

Although the change from division chairs to professional deans was accepted at other colleges in the District, it was controversial at DVC. On September 28, 2001, the Faculty Senate filed a formal complaint with statewide Chancellor Thomas J. Nussbaum arguing state regulations required the District to consult collegially with DVC faculty before implementing the proposed reorganization.[FN3] Specifically, the Faculty Senate maintained that the reorganization was an "academic or professional matter[ ]" requiring consultation (§ 53203, subd. (a)) because it would alter faculty roles in governance (§ 53200, subd. (c)(6)). For such matters, Board policy required the District to reach "mutual agreement" with faculty before they could legally make the change.

FN3. Mr. Nussbaum served as Chancellor of the California Community Colleges from

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May 1996 to January 17, 2004. The current statewide Chancellor is Marshall Drummond.

The Chancellor has statutory responsibility for establishing "minimum conditions" and ensuring these conditions are met at state community colleges as a prerequisite of their receipt of state funding. (Ed.Code, § 70901, subd. (b)(6).) One "minimum condition" is the requirement of collegial consultation with academic senates under certain defined circumstances. (§§ 51023, 53200, 53203.) The Chancellor treated the Faculty Senate's September 2001 letter (and subsequent letters) as a minimum conditions complaint triggering the office's duty to investigate, and on October 23, 2001, he issued the first of several legal opinions addressing the proposal to replace division chairs with full-time deans.

Legal opinion L 01-26 reported that the Board had tabled the proposed change for 90 days to allow for continuing informal discussions between the ***1030** DVC faculty and administration. Because the Board had taken no action to implement the reorganization, the Chancellor observed a formal complaint about the lack of collegial consultation was "technically premature." Nevertheless, in order to provide guidance, the Chancellor identified specific changes ****298** that might require collegial consultation if they were implicated by the District's actions, but he also repeated the general rule-set forth in his September 1997 advisory opinion on shared governance (legal opinion M 97-20)-that mere changes to a District's administrative organization do not require collegial consultation. The Chancellor issued a second opinion almost a month later. Legal opinion L 01-31 (November 15, 2001) repeated the prior opinion's conclusion that changes in the District's management structure "might" require collegial consultation if they could be construed as affecting faculty roles in governance. However, consultation would not be required if the change was merely to a past practice rather than to a policy. In addition, because the division chair practice was outlined in the CBA with United Faculty, the Chancellor believed collegial consultation would be inconsistent with a regulation exempting the provisions of collective bargaining agreements from such consultation obligations (§ 53204).

The Board formally approved the replacement of DVC's division chairs with full-time deans in December 2001, and the Faculty Senate renewed its complaint with Chancellor Nussbaum. On July 22, 2002, the Chancellor issued an exhaustive opinion (legal opinion O 02-19) reviewing all aspects of the District's reorganization, including the change from division chairs to deans. He concluded the regulations require collegial consultation only for "matters that go to the heart of faculty expertise," based on "their expertise as teachers and subject matter specialists and their professional status." Consistent with this understanding, the Chancellor's office had developed a general rule that management reorganizations do not require collegial consultation, and the Chancellor discerned no reason to depart from this rule with regard to the District's reorganization. Specifically, because the reorganization concerned only management of the colleges, it did not affect "governance structures ... related to faculty roles" (§ 53200, subd. (c)(6)). The Chancellor also found that the faculty's role in selecting division chairs was established through the collective bargaining process, and collegial consultation on the matter was therefore precluded.

On January 8, 2003, the Faculty Senate filed a petition for writ of mandate (Code Civ. Proc., § 1085) against the District and the Board and a complaint for declaratory relief against the Chancellor. Later in January 2003, counsel for the Faculty Senate sent a letter to Chancellor Nussbaum advising him that the Senate had just discovered the existence of a District policy for the selection of division chairs. This policy, which counsel represented had been in effect for many years, was contained in the District's Curriculum and Instruction Procedure Manual. The Chancellor responded with a fourth ***1031** opinion. In legal opinion O 03-13 (May 2, 2003), the Chancellor observed that, just like AP 4111.07, there was no evidence the provision in question was ever adopted by the Board.[FN4] The Chancellor therefore continued to maintain collegial consultation was not required, and he reiterated his additional conclusions that the division chair procedure was not an "academic or professional matter" requiring consultation (§ 53200, subd. (c)) and that the parties' CBA precluded such consultation.

FN4. Indeed, the Curriculum and Instruction provision was simply one of several successive versions of the procedure originally described in AP 4111.07.

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After a hearing, on October 13, 2004, the trial court entered an order denying the petition for writ of mandate and denying "all relief requested in the complaint for declaratory relief." The court rejected the ****299** respondents' arguments about the absence of a Board policy, interpreting the collegial consultation regulations as "applying to established practices, as well as to formally approved policies." Further, the court found the District and Board were estopped from denying that the division chair structure was an approved policy by their knowledge and approval of this job description over the years, through various policy and procedure manuals. The court also rejected the respondents' assertion that the CBA precluded collegial consultation, based on a finding that neither side intended the CBA to be binding on the subject of the division chair management structure.[FN5] However, the trial court agreed with the respondents that the regulations did not require collegial consultation because the switch from division chairs to deans did not implicate "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6).) The court interpreted the regulations as requiring collegial consultation only when a change in a college's governing structure diminishes the faculty's ability to perform their unique "faculty roles," as opposed to roles they might serve in management.

> FN5. The court also observed this provision could not have been a negotiable term in the CBA because modification of a management structure was exclusively a management prerogative.

DISCUSSION

[1][2] In mandate and declaratory relief proceedings, we defer to the trial court's findings of fact if they are supported by substantial evidence. (*Franzosi v. Santa Monica Community College Dist.* (2004) 118 Cal.App.4th 442, 447, 13 Cal.Rptr.3d 25; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974, 97 Cal.Rptr.2d 280.) Where, as here, the material facts are undisputed, the trial court's interpretation of the Education Code is subject to de novo review. (*Franzosi v. Santa Monica Community College Dist., supra,* 118 Cal.App.4th at p. 447, 13 Cal.Rptr.3d 25.)

[3] The District and the Chancellor, respondents herein, both adopt the trial court's interpretation of the applicable regulations. In addition, both liken ***1032** the Chancellor's office to a state agency and argue the Chancellor's interpretation of the regulations must be accorded deference unless it is clearly erroneous. The District repeats several alternative arguments that the trial court rejected (concerning the Faculty Senate's standing, lack of a Board-approved policy, and the provision regarding division chairs in the CBA) and adds a new claim that the collegial consultation regulations are invalid because they exceed the shared governance authority granted to academic senates by the Legislature. We do not address these alternative arguments because we agree with the trial court's conclusion that the regulations did not require collegial consultation for the specific management reorganization implemented at DVC.

I. Legislative and Regulatory Framework

In 1988, the Legislature enacted Assembly Bill No. 1725 (AB 1725), which provided for substantial changes in the administration and governance of the state's community colleges.[FN6] (Stats.1988, ch. 973, §§ 1-72, pp. 3087-3144.) AB ****300** 1725 established a statewide board of governors and charged this body with establishing minimum standards to govern academic matters, hiring, administration and governance. (Stats.1988, ch. 973, § 8, pp. 3102-3105.) Among several other additions and amendments to the Education Code, newly added Education Code section 70901, subdivision (b)(1)(E) required the statewide board of governors to establish: "Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards." (Stats.1988, ch. 973, § 8, p. 3103.)

> FN6. We grant the Chancellor's request for judicial notice of legislative history concerning AB 1725. Other requests for judicial notice, filed by the Faculty Senate and amicus curiae Academic Senate for California

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> Community Colleges, are denied because they concern arguments not addressed in this opinion.

With input from the statewide academic senate, the state Chancellor's office and others, the statewide board of governors promulgated regulations to implement this "minimum standards" directive for shared governance. The regulations direct the governing boards of local community college districts to adopt policies for delegating authority to academic senates. Such a policy must provide, at a minimum, "that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters."(§ 53203, subd. (a).) ***1033** "Academic and professional matters" are defined exclusively as: "(1) curriculum, including establishing prerequisites and placing courses within disciplines; [¶] (2) degree and certificate requirements; [¶] (3) grading policies; [¶] (4) educational program development; [¶] (5) standards or policies regarding student preparation and success; [¶] (6) district and college governance structures, as related to faculty roles; [¶] (7) faculty roles and involvement in accreditation processes, including self-study and annual reports; [¶] (8) policies for faculty professional development activities; [¶] (9) processes for program review; [¶] [and] (10) processes for institutional planning and budget development ...." (§ 53200, subd. (c).) Beyond these 10 subjects, collegial consultation may also be required for "other academic and professional matters ... mutually agreed upon between the governing board and the academic senate."(§ 53200, subd. (c)(11).)

Collegial consultation may take either of two forms, as decided by each local district. With respect to a particular subject, the district may decide to "rely primarily upon the advice and judgment of the academic senate," in which case, absent exceptional circumstances, "the recommendations of the senate will normally be accepted."(§ 53203, subd. (d)(1).) Or, the district may elect to require "mutual agreement" with the academic senate for certain subjects. In such cases, when an agreement is not reached, "existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship."(§ 53203, subd. (d)(2).)

In accordance with these regulations, the District's Governing Board adopted Board Policy 1009, which stated that the Governing Board would consult collegially with the District's academic senate "when adopting policies and procedures on academic and professional matters as defined in Title 5, Section 53200(c)." Board Policy 1009 sets forth the same categories of "academic and professional matters" defined in section 53200, subdivision (c), and it provides that the Board will "rely primarily upon the advice and judgment" of ****301** the academic senate with respect to curriculum, degree requirements and grading, and will "reach mutual agreement" with the academic senate with respect to all other categories.

II. Collegial Consultation Not Required for Administrative Reorganization

As discussed, local community college districts must consult collegially with faculty senates only with regard to specific "academic and professional matters." (§ 53203.) No one has suggested the parties here had a preexisting agreement to consult collegially about the administrative reorganization that occurred at DVC; thus, the question comes down to whether the reorganization comes within one of the categories enumerated in section 53200, subdivision (c). The only potentially relevant category in section 53200, as all ***1034** parties recognize, is subdivision (c)(6), which identifies "district and college governance structures, as related to faculty roles," as an academic and professional matter requiring collegial consultation.

A. Weight to be Accorded the Chancellor's Opinions

[4][5] Although the final responsibility for interpreting a statute or regulation rests with the court, judicial deference must often be accorded to the construction applied by an agency charged with the law's administration and enforcement. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 756-757, 151 P.2d 233; *Spanish Speaking Citizens' Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1214, 103 Cal.Rptr.2d 75 (*Spanish Speaking Citizens*).) " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-

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legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

[6] The parties dispute how much weight, if any, we should accord the Chancellor's interpretation of section 53200, subdivision (c)(6). When he was general counsel for the statewide board of governors, Chancellor Nussbaum personally participated in drafting the regulations at issue in this case. Then, as Chancellor of the California Community Colleges, he assumed responsibility for enforcing these regulations, including the statutory requirement that colleges satisfy certain "minimum conditions" as a condition of receiving state aid.[FN7] Respondents analogize the Chancellor's office to an administrative agency and cite case law holding an agency's interpretation of its own regulations is controlling unless it is plainly erroneous or unauthorized. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 613, 52 Cal.Rptr.2d 846; *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 645, 2 Cal.Rptr.2d 297.) While no precedent directly addresses this situation, a rule affording such great deference to legal opinions issued by the Chancellor's office appears to be precluded by *Yamaha Corp. of America v. State Bd. of Equalization***302** (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031(*Yamaha*).

> FN7. This authority was delegated to the Chancellor by the statewide board of governors pursuant to Education Code section 70901, subdivision (d).

[7] In *Yamaha,* the Supreme Court distinguished between the level of judicial deference to be accorded to quasi-legislative acts, in which an agency ***1035** exercises its delegated lawmaking power, as compared with interpretive acts, in which an agency interprets the meaning or legal effect of a statute or regulation. (*Yamaha, supra,* 19 Cal.4th at pp. 7, 10-11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Whereas courts are bound by an agency's rulemaking, so long as it is authorized by the enabling legislation, "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)Here, we are considering the Chancellor's interpretation of a regulation, as opposed to his quasi-legislative act in drafting the regulation itself. "The level of deference due to an agency's regulatory interpretation turns on a legally informed, commonsense assessment of its merit in the context presented. [Citation.]" (*State Farm Mutual Automobile Ins. Co. v. Quackenbush* (1999) 77 Cal.App.4th 65, 71, 91 Cal.Rptr.2d 381.) More specifically, the Supreme Court has proffered "two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' [Citations.]" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Both of these factors weigh in favor of according the Chancellor's decision some deference.

[8][9] An agency has a potential interpretive advantage over the courts if it has developed a specialized expertise, " 'especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.'" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Although the specific regulations at issue are not highly technical, they are part of a complex regulatory system of shared governance that is very familiar to the Chancellor's office but essentially foreign to the courts. " 'A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.]" (*Ibid.*)As is apparent from declarations and other opinions in the record, the Chancellor's office routinely issues opinions advising colleges and academic senates about whether collegial consultation is required for specific changes in policy or procedure. Because the Chancellor is thus " 'immersed in administering' " the collegial consultation regulations, he can be expected to have " 'an intimate knowledge of the problems dealt with in the [regulations] and the various administrative consequences arising from particular interpretations. In contrast, a generalist court that visits a particular regulatory stat-

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ute only infrequently lacks the advantage arising out of specialization.'" (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75, quoting Asimow, *The Scope of Judicial Review of Decisions of Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1195-1196.)

[10] ***1036** With respect to whether an agency's decision is "probably correct" (*Yamaha, supra,* 19 Cal.4th at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031), factors suggesting such correctness include: (1) indications****303** that the interpretation was carefully considered by senior agency officials; and (2) evidence that the agency has consistently maintained its interpretation, especially over a long period of time. (*Id.* at pp. 12-13, 78 Cal.Rptr.2d 1, 960 P.2d 1031; *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1215, 103 Cal.Rptr.2d 75.) The Chancellor issued four legal opinions addressing the issues in this case. These opinions, especially the final two, contain exhaustive analyses of the Faculty Senate's complaints, and they were drafted by the Chancellor's chief legal counsel. It is hard to envision evidence of a more careful consideration than occurred here.

The record also demonstrates that the Chancellor has maintained a consistent interpretation of the phrase "district and college governance structures, as related to faculty roles" (§ 53200, subd. (c)(6)). In 1997, the Chancellor issued an advisory opinion addressing several questions about the shared governance regulations. One question asked, "Must the district consult collegially on the administrative organization chart of the college?" The Chancellor answered, "No. Neither the governing board nor its designee(s) are required to 'consult collegially' with the academic senate regarding organization of the district administration, but the board would certainly have the discretion to do so if it wished." [FN8] The following year, the Chancellor applied this interpretation to a specific set of facts when he addressed a reorganization proposed by the Los Angeles Community College District. In response to the Los Angeles district's claim that collegial consultation was not required, the Chancellor's July 2, 1998 opinion explained: "A particular change in the administrative organization of a district may or may not affect academic and professional matters; but if it does, the governing board would have an obligation to consult with the academic senate before approving the change in administrative structure. In other words, a district is free to revise its administrative organization chart without consulting the academic senate, but if the changes in administrative structure also implicate academic and professional matters then there is an obligation to consult collegially before the policy is adopted." The Chancellor concluded the Los Angeles reorganization went "well beyond merely changing the administrative organization" of the district. In addition to changing fiscal planning and budgeting processes, the reorganization affected "faculty roles in governance" because it altered the local district's procedures for determining curriculum. Here, because the ***1037** District's switch from division chairs to deans is a much narrower reorganization and does not affect curriculum or other academic matters, the Chancellor's current interpretation of section 53200, subdivision (c)(6) is consistent with his opinion in the Los Angeles case that collegial consultation is required only when an administrative reorganization affects academic and professional matters.

> FN8. The Chancellor added that, although collegial consultation was not required, it would "probably be a good practice" for the district to inform faculty, staff and students and solicit their views before finalizing a reorganization. The record indicates the District took part in extended informal discussions with DVC faculty before it implemented the reorganization.

[11] Accordingly, we conclude some weight should be afforded to the Chancellor's consistent interpretation that section 53200, subdivision (c)(6) does not require collegial consultation for management reorganizations, and to his carefully considered opinion that the District was not required to consult collegially before implementing the reorganization ****304** at issue in this case. However, this conclusion does not relieve us of the obligation to interpret the meaning of the regulation ourselves. "Whatever the force of administrative construction, however, final responsibility for the interpretation of the law rests with the courts. 'At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed.... While we are of course bound to weigh seriously such rulings, they are never conclusive.' [Citation.]" (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra,* 24 Cal.2d at p. 757, 151 P.2d 233.)

B. De Novo Review Supports Chancellor's Inter-

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pretation

[12][13] Rules governing the interpretation of statutes also apply to interpretation of regulations. (*Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75.) "In interpreting regulations, the court seeks to ascertain the intent of the agency issuing the regulation by giving effect to the usual meaning of the language used so as to effectuate the purpose of the law, and by avoiding an interpretation which renders any language mere surplusage. [Citation.]" (*Modern Paint & Body Supply, Inc. v. State Bd. of Equalization* (2001) 87 Cal.App.4th 703, 708, 104 Cal.Rptr.2d 784.)

The Chancellor determined the reorganization at issue in this case did not require collegial consultation because the District's administrative organization could not be construed as a "district or college governance structure" (§ 53200, subd. (c)(6)). Unlike curriculum committees or budget committees, which clearly function in college governance, the Chancellor concluded the process of choosing managers of various college divisions is administrative in nature. This conclusion is reasonable, and it is consistent with the preexisting rule that collegial consultation is not required for administrative reorganizations that do not impact academic matters, such as curriculum.

Moreover, without regard to whether management by division chairs or deans constitutes a "district or college governance structure," it seems ***1038** clear that this management system is not "related to faculty roles." As the trial court observed, the phrase "as related to faculty roles" in section 53200, subdivision (c)(6) acts as a limitation imposed on the general subject of "district and college governance structures." Thus, only when a district seeks to change aspects of such governance structures that are related to "faculty roles"-such as, for example, curriculum or faculty hiring committees-must it consult collegially with the faculty. The regulations do not define "faculty roles." However, all other "academic and professional matters" defined in section 53200, subdivision (c) concern subjects that are within the unique expertise of faculty members, as opposed to administrators or any other specialists. These matters concern the development of academic programs and curriculum (§ 53200, subds. (c)(1), (2), (4), (9)), assessment of students and their progress toward degrees (§ 53200, subds. (c)(2), (3), (5)), professional development for faculty (§ 53200, subd. (c)(8)), and institutional development with respect to accreditation, review of existing academic programs, future planning and budgeting (§ 53200, subds. (c)(7), (9), (10)). Consistent with these other defined "academic and professional matters," we construe the term "faculty roles" in subdivision (c)(6) as referring to the traditionally understood roles faculty members play in a college. Faculty members are uniquely qualified to instruct students and assess their work, to design and implement curriculum, to develop the college's educational offerings, and to address broader institutional issues such as ****305** accreditation and budgeting to the extent these issues depend upon or impact student instruction. No evidence in the record, however, suggests faculty members at DVC are uniquely qualified to manage their peers or to decide which management structure the college should use.

The Faculty Senate advances two arguments against this construction. First, the Senate argues the District's management structure is related to faculty roles because DVC faculty members previously had a "role"-i.e., a function they performed-in selecting their managers and occasionally serving as managers themselves. In other words, because, through long-standing practice, the DVC faculty once played a role in college management, no change in management affecting this role could be accomplished without collegial consultation. This interpretation renders the definition of "faculty roles" in section 53200, subdivision (c)(6) entirely contextual, dependent in any given case on the faculty's history of involvement in a particular area. Such a broad construction would undermine the independent statutory authority of local governing boards to manage the colleges in their districts. (Ed.Code, § 70902.) In addition, it could prove unworkable in practice if districts were required to engage in the formal process of collegial consultation for every administrative practice that marginally involved faculty. (See *Spanish Speaking Citizens, supra,* 85 Cal.App.4th at p. 1214, 103 Cal.Rptr.2d 75 [court should consider consequences that might flow from a particular construction ***1039** in interpreting a statute or regulation].) In short, the faculty's past participation does not convert the District's reorganization of purely managerial positions into an "academic or professional matter" requiring collegial consultation.

Second, reaching back to legislative history, the Fac-

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ulty Senate argues section 53200 must be interpreted broadly consistent with the purpose of AB 1725, which was to expand the role of faculty in shared governance. However, the Senate's characterization of AB 1725 is far too narrow. This bill enacted comprehensive reforms of all aspects of the state's community college system, and we find no indication in the legislative history to support the Senate's view that a primary purpose of the statute was to increase faculty's ability to participate in purely administrative decisions concerning their colleges. On the contrary, among numerous other declarations, AB 1725 stated: "It is the intent of the Legislature that the California Community Colleges be governed under an efficient and flexible system.... The Legislature recognizes that the California Community Colleges is a statewide system with common standards and practices governing local initiative and control. The Legislature therefore finds and declares that clarifying and strengthening the respective roles of the Board of Governors and the Chancellor of the California Community Colleges will enhance the efficiency and flexibility of the system." (Stats.1988, ch. 973, § 3, p. 3093.) Thus, the Legislature envisioned clearly defined and enhanced powers for these administrators. With respect to shared governance, AB 1725 stated: "It is a general purpose of this act to improve *academic quality,* and to that end the Legislature specifically intends to authorize more responsibility for faculty members in duties that are *incidental to their primary professional duties.*" (Stats.1988, ch. 973, § 4(n), p. 3096, italics added.) This purpose of enhancing faculty responsibility "incidental to their primary professional duties" is consistent with the interpretation of section 53200, subdivision (c)(6) we reach here-i.e., districts must consult collegially with faculty for changes in college governance when such changes ****306** are related to the faculty's acknowledged areas of expertise. Although the Legislature clearly intended to expand the participation of faculty (and students) in college governance, the language of AB 1725 does not indicate a legislative intent to encourage faculty involvement in purely administrative matters.[FN9]

FN9. In its reply brief and at oral argument, the Faculty Senate urged us to rely on *Irvine Valley College Academic Senate v. South Orange County Community College Dist.* (2005) 129 Cal.App.4th 1482, 29 Cal.Rptr.3d 336(*Irvine Valley*) as a "mirror image" of this case. The *Irvine Valley* decision construed a specific statute, Education Code section 87360, which expressly requires a governing board to reach joint agreement with the academic senate in developing faculty hiring procedures. Based on this statute's language and legislative history, *Irvine Valley* concluded the Legislature intended academic senates to have a role in developing hiring procedures. (*Irvine Valley, supra,* 129 Cal.App.4th at pp. 1491-1492, 29 Cal.Rptr.3d 336.) The court never considered the regulation before us, or whether, for purposes of this regulation, faculty have an acknowledged "role" in choosing their managers. *Irvine Valley* is also notable for its rejection of the community college district's argument that requiring a joint agreement with faculty would give academic senates an unfair "veto" in the process of creating hiring policies. (*Id.* at p. 1492, 29 Cal.Rptr.3d 336.) Because we do not reach the District's argument that the collegial consultation regulations here give greater power to academic senates than is statutorily permitted, we have no occasion to consider the validity of *Irvine Valley's* observations on this point.

***1040 DISPOSITION**

The judgment is affirmed. Appellant shall bear costs on appeal.

PARRILLI and POLLAK, JJ., concur.
Cal.App. 1 Dist.,2007.
Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.
148 Cal.App.4th 1023, 56 Cal.Rptr.3d 294, 217 Ed. Law Rep. 877, 07 Cal. Daily Op. Serv. 2998, 2007 Daily Journal D.A.R. 3801

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DOUGLAS H. FREEMAN et al., Plaintiffs and Appellants,
v.
CONTRA COSTA COUNTY WATER DISTRICT, Defendant and Respondent
Civ. No. 28717.

Court of Appeal, First District, Division 4, California.
June 24, 1971.

SUMMARY

Homeowners with wells on their property challenged the validity of a regulation of their county water district requiring that unless they installed on their water meter boxes, at their own expense ($35, plus 25 cents per month maintenance) a double check valve assembly to prevent water from their auxiliary supply from backing up into, and contaminating, the public water system, their public water service would be terminated. Judgment was entered for the district. (Superior Court of Contra Costa County, No. 113193, S. C. Masterson, Judge.)

The Court of Appeal affirmed. Pointing out that the prevention of water pollution is a proper exercise of the police power to which the eminent domain guaranty of compensation is inapplicable, the court held that the district regulation was justified by the potential hazard of cross- connections, accidental or otherwise, between the homeowners' well systems and the public water supply, and that there was no necessity to wait until contamination had actually occurred. Furthermore, the regulation was statutorily authorized and was not void for vagueness. Other contentions by plaintiffs were held to be without merit. (Opinion by Christian, J., with Devine, P.J., and Rattigan, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Constitutional Law § 97--Police Power--Right to Damages.
The constitutional guaranty of just compensation that attaches to an exercise of the power of eminent domain does not extend to the state's exercise of its police power, and injury resulting from a proper exercise of the police power is *damnum absque injuria.* Thus, the eminent domain guaranty was inapplicable to the requirement by a water district that homeowners with wells on their property should install at their own expense, if they chose to make use of the public water supply, a $35 double check valve assembly on their public water meter box to prevent auxiliary water from backing up into, and contaminating, the public system, and it was immaterial that the general public, and not the homeowners, would receive the benefit of the protective device.
[See **Cal.Jur.2d, Rev.,** Eminent Domain, § 3; **Am.Jur.2d,** Constitutional Law, §§ 264, 301.]
(2) Constitutional Law § 107--Police Power--Legislative Discretion and Court Review.
A governmental regulation will be upheld as a valid exercise of the police power if it is reasonably necessary to protect the order, safety, health, morals, and general welfare of society.

(3) Administrative Law § 144--Judicial Review and Control--Burden of Proof.
A governmental regulation is presumed to be valid; therefore, one who challenges its validity has the burden of proving unreasonableness.

(4) Waters § 278--Interference of Third Parties--Pollution--Police Power.
Prevention of water pollution is a legitimate governmental objective in furtherance of which the police power may be exercised.

(5) Waters § 285(1)--Pollution--Remedies:Constitutional Law § 104--Police Power--Preventing Contamination to Water Supply.
The state need not wait until the public safety has actually suffered injury, and may take reasonable steps to protect a public water supply from potential cross-connections that may create a substantial hazard of contamination. Thus, in the case of homeowners with wells on their property, the potential hazard from cross-connections, accidental or otherwise, between their well-water and their public water supply justified the water district's requirement that the homeowners install, at their own expense, a device on their water meter box to eliminate the hazard, de-

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spite their claims that no such cross-connections presently existed.

(6) Waters § 483--Districts--Validity of Acts--Anti-contamination Regulation.
A regulation requiring that a protective device be installed on any premises receiving water from the public water system and containing an auxiliary water supply regardless of whether the auxiliary water supply were connected to the public water system was not unconstitutionally vague as leaving the determination of what constitutes an "auxiliary water supply" to the water district's unfettered discretion, where a state regulation defined "auxiliary water supply" as "any water supply on or available to the premises other than the public water supply."

(7) Waters § 483--Districts--Validity of Acts--Anti-contamination Regulation.
The requirement by a water district that homeowners with wells on their property should install, at their own expense, a protective device on their public water meter box to prevent auxiliary water from backing up into, and contaminating, the public water supply, was statutorily authorized, not only under Wat. Code, § 31024, authorizing a water district to establish regulations for the distribution and use of water, but also under a combination of Wat. Code, § 30060, providing that County Water District Law does not modify any other law relating to water, and Health & Saf. Code, §§ 203, 208, authorizing regulations that included the requirement that the responsibility for installing the protective device be placed on the water user.

(8) Administrative Law § 43--Validity of Administrative Action:Waters § 480--Districts--Due Process.
Due process does not require that new notice and hearing be given in each individual case before an agency can enforce a valid statute or regulation. Thus, homeowners with wells on their property were not required to be given notice and a hearing before their water district could demand either that their water service be discontinued or that they install, at their own expense, a device on their water meter boxes to prevent water from their well systems from backing up into, and contaminating, the public water supply, where, in making the demand, the district was merely enforcing a lawful state regulation.

COUNSEL

James H. Disney for Plaintiffs and Appellants.

Bold & Polisner and Jeffrey D. Polisner for Defendant and Respondent.

Evelle J. Younger, Attorney General, Sanford N. Gruskin, Assistant Attorney General, Roderick Walston and Charlton G. Holland, Deputy Attorneys General, as Amici Curiae on behalf of Defendant and Respondent. ***407**

CHRISTIAN, J.

Appellants are the owners of residences in the City of Concord served by the water system of respondent Contra Costa County Water District. Each of the appellants maintains on his property a well from which water is drawn for such purposes as gardening and car-washing. Although appellants had not connected their well water systems to the pipes of the district's public system, the district threatens to terminate service until the affected householders agree to have installed, at their own expense, a "double check valve assembly," designed to prevent water from the auxiliary supply from "backing up" into and contaminating the public water supply. Appellants sought from the court protection against the district's threat; judgment was for the district, and the present appeal followed. We affirm the judgment.

The record shows without contradiction that contamination of a water system can occur if there is a physical connection between the public system and auxiliary water supply, such as where the two systems are connected by pipes, or where the auxiliary water is "impounded" (e.g., in a swimming pool or fish pond) and an ordinary garden hose from the public water supply is allowed to lie in water from the auxiliary system. In the latter situation a temporary loss of pressure can result in contaminated water being drawn into the public system.

Protection against this risk can be provided by installing in the consumer's water meter box a device which prevents a backward flow of water. The directors of respondent district have established an installation charge of $35, and a $.25 per month maintenance charge, for such devices, based on the cost thereof to the district. Appellants receive no special benefit

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from the device other than that which they receive as members of the general public.

It will be useful to outline the statutory framework under which respondent is requiring the installation of the back flow prevention device. Health and Safety Code section 203 provides that the State Department of Public Health "shall examine and may prevent the pollution of sources of public domestic water ... supply." The department may "adopt and enforce rules and regulations" for this purpose. (Health & Saf. Code, § 208.)Pursuant to these statutes, the department adopted administrative regulations designed to prevent contamination or pollution of any public water supply as a result of "actual *or* potential cross-connections" with auxiliary water supplies. (Cal.Admin.Code, tit. 17, § 7583, italics added.) An auxiliary water supply is defined as "any water supply on or available to the premises other than the public water supply." (Cal.Admin.Code, tit.***408** 17, § 7590.)A protective device is required to be installed on any premises receiving water from the public water system and containing an auxiliary water supply, regardless of whether the auxiliary water supply is connected to the public water system. (Cal.Admin.Code, tit. 17, § 7603.)The regulations specify various types of protective devices, depending on the "degree of hazard" involved; where the auxiliary and public water supplies are not connected, the protective device required is a "double check valve assembly," which is what respondent desires appellants to install. (Cal.Admin.Code, tit. 17, § 7604, subd. 1.) Responsibility for installing the protective device is placed on the water user. (Cal.Admin.Code, tit. 17, § 7603.)Pursuant to the foregoing state regulations, respondent adopted its own regulations providing for discontinuance of water service to any consumer who failed to install the required device.

(1a) Appellants contend that the requirement that they install a protective device constitutes a taking of property which must be compensated. They argue that they have the right to take water from their wells and that respondent's demand infringes on their right to use their property as they wish. This contention confuses an exercise of the police power with an exercise of the power of eminent domain; "the constitutional guarantee of just compensation attached to an exercise of the power of eminent domain does not extend to the state's exercise of its police power, and damage resulting from a proper exercise of the police power is simply *damnum absque injuria*" (*Lees v. Bay Area Air, etc. Control Dist.* (1965) 238 Cal.App.2d 850, 856 [48 Cal.Rptr. 295]; see also *Goldblatt* v. *Town of Hempstead* (1962) 369 U.S. 590, 593 [8 L.Ed.2d 130, 133, 82 S.Ct. 987]; *Beverly Oil Co.* v. *City of Los Angeles* (1953) 40 Cal.2d 552, 557 [254 P.2d 865]). (2) A governmental regulation will be upheld as a valid exercise of the police power if it is reasonably necessary to "protect the order, safety, health, morals and general welfare of society." (*Lees v. Bay Area Air, etc. Control Dist., supra*, at p. 857, citing *In re Rameriz* (1924) 193 Cal. 633, 649, 650 [226 P. 914, 34 A.L.R. 51].) (3) A regulation is presumed to be valid; therefore, appellants have the burden of proving unreasonableness. (*Goldblatt v. Town of Hempstead, supra*, at p. 596 [8 L.Ed.2d at p. 135].) (4) It cannot be denied that prevention of water pollution is a legitimate governmental objective, in furtherance of which the police power may be exercised. (5) Appellants argue, however, that it is unreasonable to require them to install a protective device when their water well is not connected to the domestic water supply. Therefore, it is argued, there is no possibility of contamination and the danger that respondent seeks to protect is "imagined and speculative." But the state need not wait until the public safety has actually suffered injury; it may take reasonable steps to protect a public water supply from potential cross-connections ***409** that may create a substantial hazard of contamination. Otherwise respondent, or the Department of Public Health, would have the burdensome job of continuous inspection of all premises which possessed auxiliary water supplies to insure that no cross-connections had been made, accidently or otherwise. It is not unreasonable or oppressive to require appellants to install a $35 device to protect against a potential danger of water contamination.

(1b) Appellants also argue that it is unreasonable to require them to pay for the cost of installation and maintenance as their property receives no special benefit from the prevention device. It is argued that, since the device is for the benefit of the public, the public should pay for it. A similar contention was made in *Atchison, Topeka & S. F. R. Co. v. Public Util. Com.* (1953) 346 U.S. 346 [98 L.Ed. 51, 74 S.Ct. 92]. In that case the California Public Utilities Commission had ordered improvement of railroad underpasses to promote public safety and had assessed half the cost of the improvements to the rail-

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roads. The railroads argued that, since they would receive little or no benefit from the construction, the allocation of costs constituted a taking of their property without due process of law. In rejecting this contention, the United States Supreme Court stated, "The railroad tracks are in the streets not as a matter of right but by permission from the State or its subdivisions. The presence of these tracks in the streets creates the burden of constructing grade separations in the interest of public safety and convenience. Having brought about the problem, the railroads are in no position to complain because their share in the cost of alleviating it is not based solely on the special benefits accruing to them from the improvements." (346 U.S. at p. 353 [98 L.Ed. at p. 60].) Similarly appellants, by maintaining water wells on their premises, have created the potential hazard which requires special measures of protection; they have no reasonable grounds for complaint at being required to pay the cost of such protection. Appellants are not being forced to subscribe to respondent's water service; they have the option of relying solely on their water well for their water needs. While they are entitled to use both the public water supply and their own water well, they have no right to do so in a manner which may endanger the public water supply.

(6) Appellants next contend that the term "auxiliary water supply" used in the regulation is unconstitutionally vague, as it leaves the determination of what constitutes an auxiliary water supply to respondent's unfettered discretion. Title 17, section 7590, of the California Administrative Code defines "auxiliary water supply" as "any water supply on or available to the premises other than the public water supply." This definition is not so vague and ambiguous as to be unenforceable. ***410**

(7) Appellants argue that the district is without statutory authority to charge them for installation and maintenance of the protective device, as the County Water District Law (Wat. Code, § 30000 et seq.) provides the sole means by which respondent may finance public improvements. Respondent has not attempted to raise funds for installation of protective devices by any of the methods specified in the County Water District Act. (See Wat. Code, §§ 31501, 31502, 31503.) But section 31024 authorizes a water district to "establish rules and regulations for the sale, distribution, and use of water ..." The protective device is not a public improvement but a condition for appellants' use of the public water supply, a condition which respondent is authorized to impose under section 31024. Moreover, Water Code section 30060 provides that the County Water District Law shall not "be so construed as repealing or in anywise modifying any other law relating to water or the supply of water ...." The Department of Public Health regulations, authorized under Health and Safety Code sections 203 and 208, require that responsibility for installing the protective device be placed on the water user. Therefore the statutes do authorize respondent to require appellants to pay for the cost of installing and inspecting the protective device.

(8) Appellants contend that due process entitled them to notice and a hearing before respondent could demand that they either install the device or have their water service discontinued. But respondent was merely enforcing a lawful state regulation in making the demand. State law requires that before the regulations could be adopted there must be notice and a hearing at which any interested person could appear to oppose the proposed regulations. (Gov. Code, § 11420 et seq.) There is no requirement that a new notice and hearing be given in each individual case before an agency can enforce a valid statute or regulation.

The judgment is affirmed.

Devine, P. J., and Rattigan, J., concurred. ***411**

Cal.App.1.Dist.
Freeman v. Contra Costa County Water Dist.
18 Cal.App.3d 404, 95 Cal.Rptr. 852

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United States Court of Appeals,
Ninth Circuit.
ENVIRONMENTAL DEFENSE CENTER, INC., Petitioner,
Natural Resources Defense Council, Inc., Petitioner-Intervenor,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.
American Forest & Paper Association; National Association of Home Builders, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Applicant-Intervenor.
Texas Cities Coalition on Stormwater; Texas Counties Storm Water Coalition, Petitioners,
v.
United States Environmental Protection Agency, Respondent,
Natural Resources Defense Council, Inc., Respondent-Intervenor.
Nos. 00-70014, 00-70734, 00-70822.

Argued and Submitted Dec. 3, 2001.
Filed Sept. 15, 2003.

Environmental, municipal, and industry groups brought petitions for review of Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements. On denial of rehearing, the Court of Appeals, James R. Browning, Circuit Judge, held that: (1) EPA had authority to impose rule; (2) rule did not violate the Tenth Amendment; (3) rule improperly failed to provide for review of notices of intent and public participation in NPDES permitting process; (4) EPA's failure to designate industrial sources of storm water pollution for permitting requirements was not arbitrary and capricious; (5) challenge to rule's exclusion of forest roads was not time-barred; (6) forestry trade association lacked standing to challenge rule; (7) EPA properly consulted with state and local officials; (8) sites subject to rule were properly designated; and (9) EPA properly retained authority to designate future sources of storm water pollution for regulation.

Petitions for review granted in part and denied in part.

Tallman, Circuit Judge, filed opinion concurring in part and dissenting in part, and would have granted petition for rehearing.

Opinion, 319 F.3d 398, vacated.

West Headnotes

[1] Environmental Law 149E 176

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek176 k. Sewage and Sewers. Most Cited Cases

Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Storm sewers are established "point sources" subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
Diffuse runoff, such as rainwater that is not channeled through point source, is considered "nonpoint

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source" pollution and is not subject to federal regulation under Clean Water Act (CWA). Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[3] Constitutional Law 92 ⚿976

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k976 k. Resolution of Non-Constitutional Questions Before Constitutional Questions. Most Cited Cases
(Formerly 92k46(1))
Court of Appeals avoids considering constitutionality of a rule if an issue may be resolved on narrower grounds.

[4] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) interpretation of rule promulgated under Clean Water Act (CWA), whereby EPA would require that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, was reasonable, and thus EPA acted within its statutory mandate in formulating permit program under rule; even though permitting was not included on statutory list of elements for EPA's comprehensive program to regulate small sewer systems, list was non-exclusive, and statutory language requiring imposition of permits for "municipal storm sewers" was reasonably interpreted to extend to small systems. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6).

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
Minimum measures set forth by rule as conditions for issuance of stormwater discharge permit to operator of small municipal storm sewers did not exceed authority of Environmental Protection Agency (EPA) under Clean Water Act (CWA), as statute's list of elements for regulatory program was nonexclusive, and rule included at least one alternative to minimum measures. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(6), 33 U.S.C.A. § 1342(p)(6); 40 C.F.R. §§ 122.26(d), 122.26, 122.33(b)(1), 122.34(b), (d)(1)(i).

[6] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the Federal Government may not compel States to implement, by legislation or executive action, federal regulatory programs. U.S.C.A. Const.Amend. 10.

[7] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Under the Tenth Amendment, the federal government may not force the States to regulate third parties in furtherance of a federal program. U.S.C.A. Const.Amend. 10.

[8] States 360 ⚿4.16(1)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(1) k. In General. Most Cited Cases

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Protections of Tenth Amendment, whereby federal government may not compel States to implement federal regulatory programs by legislation or executive action, nor force the States to regulate third parties in furtherance of a federal program, extend to municipalities. U.S.C.A. Const.Amend. 10.

[9] United States 393 ⚿82(2)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
While federal government may not compel them to do so, it may encourage States and municipalities to implement federal regulatory programs; for example, the federal government may make certain federal funds available only to those States or municipalities that enact a given regulatory regime. U.S.C.A. Const.Amend. 10.

[10] States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
The crucial proscribed element under the Tenth Amendment, as to federal government's ability to have states implement federal programs, is coercion; the residents of the State or municipality must retain the ultimate decision as to whether or not the State or municipality will comply with the federal regulatory program, but as long as the alternative to implementing a federal regulatory program does not offend the Constitution's guarantees of federalism, the fact that the alternative is difficult, expensive, or otherwise unappealing is insufficient to establish a Tenth Amendment violation. U.S.C.A. Const.Amend. 10.

[11] Environmental Law 149E ⚿166

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek166 k. Validity. Most Cited Cases

States 360 ⚿4.16(3)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(3) k. Surrender of State Sovereignty and Coercion of State. Most Cited Cases
Environmental Protection Agency (EPA) rule promulgated under Clean Water Act (CWA), whereby discharges from small municipal storm sewers and construction sites were subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, did not wrongfully compel municipalities to regulate third parties under federal law as condition of receiving permit to operate, as would contravene Tenth Amendment; although one means of obtaining permit would require municipality to adopt various enforcement procedures, permit applicants retained option of applying for Alternative Permit. U.S.C.A. Const.Amend. 10; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.; 40 C.F.R. §§ 122.26(d), 122.34.

[12] Constitutional Law 92 ⚿1681

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(F) Politics and Elections
92k1681 k. Political Speech, Beliefs, or Activity in General. Most Cited Cases
(Formerly 92k90.1(4))

Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Environmental Protection Agency (EPA) adoption of "Public Education" and "Illicit Discharge" Minimum Measures within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to Na-

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tional Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), did not wrongfully compel municipalities to deliver EPA's political messages, and thus did not violate municipalities' free speech rights under First Amendment; requiring providers of storm sewers that discharged into national waters to educate public about impacts of storm water discharge, and to inform affected parties, including public, about hazards of improper waste disposal fell short of compelling political speech, since they did not dictate specific ideological message. U.S.C.A. Const.Amend. 1; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[13] Administrative Law and Procedure 15A 395

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak392 Proceedings for Adoption
15Ak395 k. Notice and Comment, Sufficiency. Most Cited Cases
In determining whether notice to interested parties was adequate under informal rulemaking strictures of Administrative Procedure Act (APA) when final regulation has varied from proposal, court must consider whether new round of notice and comment would have provided first opportunity for interested parties to offer comments that could have persuaded agency to modify its ruling. 5 U.S.C.A. § 553.

[14] Environmental Law 149E 218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) adoption of Alternative Permit option within rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), properly complied with minimum notice and comment procedures required in informal rulemaking under Administrative Procedure Act (APA), since Alternative Permit option was logical outgrowth of comments received by EPA in response to proposed rule, and option contained no elements that were not part of proposed rule, even though it was configured differently. 5 U.S.C.A. § 553; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[15] Environmental Law 149E 662

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek662 k. Ripeness. Most Cited Cases
Challenge to Environmental Protection Agency (EPA) rule allowing operators of small municipal storm sewers to pursue general permit option to meet National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA) was ripe for review, as issue did not involve merits of any specific permit but was purely one of statutory interpretation that would not benefit from further factual development; issue specifically was whether EPA accomplished the substantive controls for municipal stormwater that Congress mandated in the CWA. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[16] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
General permitting scheme of Environmental Protection Agency (EPA) rules governing discharges from small municipal storm sewers and construction sites, whereby such discharges would be subject to National Pollutant Discharge Elimination System (NPDES) requirements under Clean Water Act (CWA), improperly allowed sewer system operators to design storm water pollution control programs without adequate regulatory and public oversight, and thus contravened CWA, since permitting scheme did not require EPA to review content of dischargers' notices of intent, and did not contain express requirements for public participation in NPDES permitting process. Federal Water Pollution Control Act Amendments of 1972, § 402(p)(3), 33 U.S.C.A. §

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1342(p)(3); 40 C.F.R. § 122.34.

[17] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak413 k. Administrative Construction. Most Cited Cases

Administrative Law and Procedure 15A 753

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak753 k. Theory and Grounds of Administrative Decision. Most Cited Cases
Court of Appeals normally defers to an agency's interpretations of its own regulations, but it may decline to defer to the post hoc rationalizations of appellate counsel.

[18] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Failure of Environmental Protection Agency (EPA) to designate industrial sources of storm water pollution for discharge permit program, whereby such discharges would become subject to National Pollutant Discharge Elimination System (NPDES) requirements, was not arbitrary and capricious, and thus did not violate Clean Water Act (CWA); rather than designating industrial discharge sources on nationwide basis under NPDES program, EPA sought to establish local and regional designation authority for such sources. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[19] Environmental Law 149E 671

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek668 Time for Proceedings
149Ek671 k. Accrual, Computation, and Tolling. Most Cited Cases
Petitioners' challenge to failure of Environmental Protection Agency (EPA) to regulate stormwater drainage from forest roads did not have to be raised either when EPA initially promulgated silviculture regulations excluding certain silvicultural activities from National Pollutant Discharge Elimination System (NPDES) permitting requirements, or when EPA considered amending such regulations but chose not to do so, and challenge was thus not time-barred, to extent that present challenge was made to EPA's decision not to address forest roads under later-enacted portion of Clean Water Act (CWA) directed to municipal and industrial stormwater discharges. Federal Water Pollution Control Act Amendments of 1972, §§ 402(p), 509(b)(1), 33 U.S.C.A. §§ 11342(p), 1369(b)(1); 40 C.F.R. § 122.27(b)(1).

[20] Environmental Law 149E 641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
Petitioners' comments during rulemaking process in connection with Environmental Protection Agency (EPA) rule governing municipal and industrial stormwater discharges pursuant to Clean Water Act (CWA) were not so inadequate as to preclude appellate court jurisdiction to hear petitioners' subsequent challenge to rule's failure to address stormwater drainage from forest roads; comments comprised two paragraphs, with footnotes, stating objections and providing support, EPA was aware of forest road sedimentation problem at time of rulemaking, and EPA responded to comments without disputing that problem was serious. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[21] Environmental Law 149E 652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing

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149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases
Forestry and paper association lacked sufficient standing to challenge Environmental Protection Agency (EPA) rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), since association's interest in avoiding future regulation of forest roads was not actually or imminently affected by rule at issue. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[22] Environmental Law 149E 220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule mandating that discharges from small municipal storm sewers and construction sites be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, properly consulted with state and local officials, and thus did not violate Clean Water Act (CWA); draft of first report pertaining to proposed rule was circulated to states and municipalities, EPA regional offices, professional associations and other stakeholders, and rule was revised based upon comments received. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[23] Environmental Law 149E 652

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek652 k. Organizations, Associations, and Other Groups. Most Cited Cases

Environmental Law 149E 654

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek654 k. Government Entities, Agencies, and Officials. Most Cited Cases
Home builders' association and municipalities possessed sufficient standing to challenge designation by Environmental Protection Agency (EPA) of municipal storm sewers and construction sites for regulation under Clean Water Act (CWA), whereby National Pollutant Discharge Elimination System (NPDES) permits would be required for discharges by such entities, since association and municipalities were able to allege procedural harm from purported lack of notice or from effects of regulation itself. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[24] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Designation by Environmental Protection Agency (EPA) of municipal storm sewers to be subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, according to areas defined by Census Bureau as "urbanized," was not arbitrary and capricious, as would violate Clean Water Act (CWA), since EPA articulated reasoned basis for its conclusion that Census Bureau's designation was correlated to actual levels of pollution runoff in storm water; record evidence demonstrated compelling and widespread relationship between urban storm water runoff and deleterious impacts on water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[25] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Decision by Environmental Protection Agency (EPA) to subject construction sites disturbing between one and five acres of land to National Pollutant Discharge Elimination System (NPDES) permitting requirements was not arbitrary and capricious, as would

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violate Clean Water Act (CWA); record evidence included numerous studies of sedimentation from construction sites, which EPA specifically reviewed in promulgating challenged regulation, and EPA's extrapolation of data from studies involving larger sites had reasonable basis. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[26] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Allowance by Environmental Protection Agency (EPA) of regulatory waivers for small construction sites not likely to cause adverse water quality impacts, as would exempt such sites from National Pollutant Discharge Elimination System (NPDES) permit requirements, was not arbitrary and capricious, as would violate Clean Water Act (CWA); EPA's waiver approach promoted fairness and efficiency in permitting process, and did not create presumption applicable to evidentiary hearing. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[27] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Decision by Environmental Protection Agency (EPA) to subject small construction sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements was consistent with its decisions to exempt other potential storm water runoff sources from such requirements, notwithstanding alleged lack of quantifiable data regarding runoff, and thus was not arbitrary and capricious, as would violate Clean Water Act (CWA); record evidence demonstrated that construction sites of all sizes had greater erosion rates than almost any other land use, and thus were not similarly situated to potential polluters that EPA chose not to regulate. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.

[28] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
Language in Clean Water Act (CWA) conferring authority to Environmental Protection Agency (EPA) to regulate "a discharge" determined to threaten water quality does not preclude EPA from designating entire categories of discharge sources for regulation. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[29] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system was not ultra vires as to Clean Water Act (CWA); applicable statutory sections authorized designation of class of discharges to be identified on case-by-case, location-specific bases by NPDES permitting authority, consistent with comprehensive program to protect water quality. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[30] Constitutional Law 92 2419

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2410 To Executive, Particular Issues and Applications
92k2419 k. Environment and Natural Resources. Most Cited Cases
(Formerly 92k62(10))

Environmental Law 149E 196

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149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
Residual designation authority retained by Environmental Protection Agency (EPA) for subjecting storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA) did not effect unconstitutional delegation of legislative power, since such authority manifested statutory directive to restore and maintain chemical, physical and biological integrity of national waters. U.S.C.A. Const. Art. 1, § 1; Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[31] Environmental Law 149E 218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and Comment. Most Cited Cases
Environmental Protection Agency (EPA) provided proper notice and comment for rule allowing agency to retain residual designation authority subjecting categories of storm water discharge sites to future regulation under National Pollutant Discharge Elimination System (NPDES) permitting system under Clean Water Act (CWA), even though proposed rule would have only allowed such designation on case-by-case basis, since final rule was logical outgrowth of comments received by EPA; elements in proposed rule explicitly envisioned categorical designation of sources at watershed level. Federal Water Pollution Control Act Amendments of 1972, § 402(p), 33 U.S.C.A. § 1342(p).

[32] Administrative Law and Procedure 15A 405.5

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak404 Form
15Ak405.5 k. Economic or Social Impact Statement. Most Cited Cases
Under Regulatory Flexibility Act (RFA), federal agency must prepare regulatory flexibility analysis and assessment of economic impact of proposed rule on small business entities, unless agency certifies that proposed rule will not have significant economic impact on a substantial number of small entities, and provides a factual basis for that certification. 5 U.S.C.A. § 604.

[33] Environmental Law 149E 220

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek220 k. Permit and Certification Proceedings. Most Cited Cases
Environmental Protection Agency (EPA), in promulgating rule subjecting categories of storm water discharge sites to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Clean Water Act (CWA), reasonably certified that rule would not have significant economic impact on small business entities, as required under Regulatory Flexibility Act (RFA); EPA convened small business advocacy review panel before publishing notice of proposed rule, and included provisions in rule designed to minimize impacts on such entities. 5 U.S.C.A. § 604; Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., 33 U.S.C.A. § 1251 et seq.
***839** Victoria Clark, Environmental Defense Center, Santa Barbara, CA, for petitioner Environmental Defense Center, Inc.

Andrew G. Frank and Arlene Yang, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, and Nancy K. Stoner, Natural Resources Defense Council, Washington, DC, for intervenor National Resources Defense Council, Inc.

R. Timothy McCrum, Ellen B. Steen, and Donald J. Kochan, Crowell & Moring, Washington, DC, for petitioners American Forest & Paper Association and National Association of Home Builders.

Steven P. Quarles and J. Michael Klise, Crowell & Moring, Washington, DC, and William R. Murray, American Forest & Paper Association, Washington, DC, for petitioner American Forest & Paper Association.

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Jim Mathews and Clarence Joe Freeland, Mathews & Freeland, Austin, TX, for petitioner Texas Cities Coalition on Stormwater.

Sydney W. Falk, Jr. and William D. Dugat III, Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, Austin, TX, for petitioner Texas Counties Storm Water Coalition.

John C. Cruden, Daniel M. Flores and Kent E. Hanson, United States Department of Justice, Washington, DC, and Stephen J. Sweeny, United States Environmental Protection Agency, Washington, DC, for respondent United States Environmental Protection Agency.

On Petition for Review of an Order of the Environmental Protection Agency. EPA No. Clean Water 40 CFR.

Before BROWNING, REINHARDT, and TALLMAN, Circuit Judges.

Opinion by Judge JAMES R. BROWNING; Partial Concurrence and Partial Dissent by Judge TALLMAN.

ORDER AND OPINION

ORDER

The opinion and dissent filed in this case on January 14, 2003, and published at 319 F.3d 398 are vacated. They are replaced by the Opinion and Dissent filed today.

With the filing of the new Opinion and Dissent, the panel has voted to deny the petitions for rehearing and the petition for rehearing en banc. (Judge Tallman would grant the petition for rehearing filed by ***840** the Environmental Protection Agency.) The full court has been advised of the new Opinion, new Dissent, and petition for rehearing en banc. No judge has requested a vote on the petition for rehearing en banc. Fed. R.App. P. 35.

The petitions for rehearing and the petition for rehearing en banc are DENIED. The clerk is instructed not to accept for filing any new petitions for rehearing or petitions for rehearing en banc in this case.

Each party shall bear its own costs in this appeal.

OPINION

JAMES R. BROWNING, Circuit Judge.

Petitioners challenge a rule issued by the United States Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§ 1251-1387, to control pollutants introduced into the nation's waters by storm sewers.

Storm sewers drain rainwater and melted snow from developed areas into water bodies that can handle the excess flow. Draining stormwater picks up a variety of contaminants as it filters through soil and over pavement on its way to sewers. Sewers are also used on occasion as an easy (if illicit) means for the direct discharge of unwanted contaminants. Since storm sewer systems generally channel collected runoff into federally protected water bodies, they are subject to the controls of the Clean Water Act.

In October of 1999, after thirteen years in process, the Environmental Protection Agency ("EPA") promulgated a final administrative rule (the "Phase II Rule"[FN1] or "the Rule") under § 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), mandating that discharges from small municipal separate storm sewer systems and from construction sites between one and five acres in size be subject to the permitting requirements of the National Pollutant Discharge Elimination System ("NPDES"), 33 U.S.C. §§ 1311(a), 1342. EPA preserved authority to regulate other harmful stormwater discharges in the future.

> FN1. The "Phase II Rule" reviewed here is the product of the second stage of EPA's two-phase stormwater rulemaking effort. The "Phase I Rule," governing larger-scale stormwater discharges, was issued in 1990 and reviewed by this court in *Natural Res. Def. Council v. EPA*, 966 F.2d 1292 (9th Cir.1992).

In the three cases consolidated here, petitioners and intervenors challenge the Phase II Rule on twenty-two constitutional, statutory, and procedural grounds.

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We remand three aspects of the Rule concerning the issuance of notices of intent under the Rule's general permitting scheme, and a fourth aspect concerning the regulation of forest roads. We affirm the Rule against all other challenges.

I.

BACKGROUND

A. The Problem of Stormwater Runoff

Stormwater runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources."[FN2] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, ***841** and estuaries across the United States.[FN3] In 1985, three-quarters of the States cited urban stormwater runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment.[FN4] Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters.[FN5] Among the sources of stormwater contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[FN6]

FN2. Richard G. Cohn-Lee and Diane M. Cameron, *Urban Stormwater Runoff Contamination of the Chesapeake Bay: Sources and Mitigation,*THE ENVIRONMENTAL PROFESSIONAL, Vol. 14, p. 10, at 10 (1992); *see also Natural Res. Def. Council,* 966 F.2d at 1295 (citing a study by the Nationwide Urban Runoff Program).

FN3. Regulation for Revision of the Water Pollution Control Program Addressing Storm Water, 64 Fed. Reg. 68,722, 68,724, 68,727 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

FN4. *Id.* at 68,726.

FN5. *Id.*

FN6. *Id.* at 68,725-31.

B. Stormwater and the Clean Water Act

Congress enacted the Clean Water Act in 1948 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (originally codified as the Federal Water Pollution Control Act, 62 Stat. 1155). The Clean Water Act prohibits the discharge of pollutants from a "point source"[FN7] into the waters of the United States without a permit issued under the terms of the National Pollutant Discharge Elimination System, 33 U.S.C. §§ 1311(a), 1342, which requires dischargers to comply with technology-based pollution limitations (generally according to the "best available technology economically achievable," or "BAT" standard). 33 U.S.C. § 1311(b)(2)(A). NPDES permits are issued by EPA or by States that have been authorized by EPA to act as NPDES permitting authorities. 33 U.S.C. § 1342(a)-(b). The permitting authority must make copies of all NPDES permits and permit applications available to the public, 33 U.S.C. §§ 1342(j), 1342(b)(3); state permitting authorities must provide EPA notice of each permit application, 33 U.S.C. § 1342(b)(4); and a permitting authority must provide an opportunity for a public hearing before issuing any permit, 33 U.S.C. §§ 1342(a)(1), 1342(b)(3); *cf.*33 U.S.C. § 1251(e) (requiring public participation).

FN7. A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[1][2] Storm sewers are established point sources subject to NPDES permitting requirements. *Natural Res. Def. Council v. Costle,* 568 F.2d 1369, 1379 (D.C.Cir.1977) (holding unlawful EPA's exemption of stormwater discharges from NPDES permitting requirements); *Natural Res. Def. Council v. EPA,* 966 F.2d 1292, 1295 (9th Cir.1992).[FN8] In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Storm-

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water Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a ***842** two-phase overall program of stormwater regulation. *Id.* at § 1342(p)(2)-(4); *Natural Res. Def. Council,* 966 F.2d at 1296. In 1990, pursuant to § 402(p)(4), EPA issued the Phase I Rule regulating large discharge sources.[FN9]

FN8. Diffuse runoff, such as rainwater that is not channeled through a point source, is considered nonpoint source pollution and is not subject to federal regulation. *Oregon Natural Desert Ass'n v. Dombeck,* 172 F.3d 1092, 1095 (9th Cir.1998).

FN9. National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges, 55 Fed. Reg. 47,990 (Nov. 16, 1990) (codified at 40 C.F.R. pt. 122-124). The Phase I rule was challenged in this court in *Natural Res. Def. Council,* 966 F.2d at 1292. We held, *inter alia,* that EPA must impose deadlines for permit approvals, *id.* at 1300, that EPA's decision to regulate construction sites only over five acres in size was arbitrary and capricious, *id.* at 1306, and that EPA did not act capriciously in defining "municipal," *id.* at 1304, or in placing differently-sized municipalities on different permitting schedules, *id.* at 1301.

C. The Phase II Stormwater Rule

In Clean Water Act § 402(p), Congress also directed a second stage of stormwater regulation by ordering EPA to identify and address sources of pollution not covered by the Phase I Rule. Section 402(p)(1) placed a temporary moratorium (expiring in 1994) on the permitting of other stormwater discharges pending the results of studies mandated in § 402(p)(5) to identify the sources and pollutant content of such discharges and to establish procedures and methods to control them as "necessary to mitigate impacts on water quality." 33 U.S.C. § 1342(p)(5). Section 402(p)(6) required that EPA establish "a comprehensive program to regulate" these stormwater discharges "to protect water quality," following the studies mandated in § 402(p)(5) and consultation with state and local officials. *Id.* at § 1342(p)(6).

EPA proposed the Phase II Rule in January of 1998.[FN10] In October, 1999, Congress passed legislation precluding EPA from promulgating the new Rule until EPA submitted an additional report to Congress supporting certain anticipated aspects of the Rule.[FN11] EPA was also required to publish its report in the Federal Register for public comment. Pub. L. No. 106-74, § 431(c), 113 Stat. at 1097. Later that month, EPA submitted the required ("Appropriations Act") study and promulgated the Rule.[FN12]

FN10. Proposed Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 63 Fed. Reg. 1536 (proposed Jan. 9, 1998).

FN11. Pub. L. No. 106-74, § 431(a), 113 Stat. 1047, 1096 (1999) ("Appropriations, 2000-Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies").

FN12. Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68,722 (Dec. 8, 1999) (codified at 40 C.F.R. pts. 9, 122, 123, and 124).

Under the Phase II Rule, NPDES permits are required for discharges from small municipal separate storm sewer systems ("small MS4s") and stormwater discharges from construction activity disturbing between one and five acres ("small construction sites"). 40 C.F.R. §§ 122.26(a)(9)(i)(A)-(B). Small MS4s may seek permission to discharge by submitting an individualized set of best-management plans in six specified categories, *id.* at § 122.34, either in the form of an individual permit application, or in the form of a notice of intent to comply with a general permit. *Id.* at § 122.33(b). Small MS4s may also seek permission to discharge through an alternative process, under which a permit may be sought without requiring the operator to regulate third parties, *id.* at §§ 122.33(b)(2)(ii), 122.26(d).[FN13] Small construction sites may ***843** apply for individual NPDES permits or seek coverage under a promulgated general permit. *Id.* at § 122.26(c). EPA also preserved authority to

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regulate other categories of harmful stormwater discharges on a regional, as-needed basis. *Id.* at § 122.26(a)(9)(i)(C)-(D).

FN13. The Rule also allows a small MS4 to be regulated under an individual NPDES permit covering a nearby large or medium MS4, with provisions adapted to address the small MS4. 40 C.F.R. § 122.33(b)(3).

D. Facial Challenges to the Phase II Rule

The Rule was challenged in the Fifth, Ninth, and D.C. Circuits in three separate actions ultimately consolidated before the Ninth Circuit.

The Texas Cities Coalition on Stormwater and the Texas Counties Stormwater Coalition (collectively, "the Municipal Petitioners") assert that EPA lacked authority to require permitting, that its promulgation of the Rule was procedurally defective, that the Rule establishes categories that are arbitrary and capricious, and that the Rule impermissibly requires municipalities to regulate their own citizens in contravention of the Tenth Amendment and to communicate a federally mandated message in contravention of the First Amendment. The Natural Resources Defense Council ("NRDC") intervened on behalf of EPA.

Environmental Defense Center, joined by petitioner-intervenor NRDC ("the Environmental Petitioners"), asserts that the regulations fail to meet minimum Clean Water Act statutory requirements because they constitute a program of impermissible self-regulation, fail to provide required avenues of public participation, and neglect to address stormwater runoff associated with forest roads and other significant sources of runoff pollution.

The American Forest & Paper Association ("AF&PA") and the National Association of Home Builders ("the Industrial Petitioners") assert that promulgation of the Rule was procedurally defective and violated the Regulatory Flexibility Act, that EPA's retention of authority to regulate future sources of runoff pollution is *ultra vires,* and that the decision to regulate discharge from construction sites one to five acres in size is arbitrary and capricious. NRDC again intervened on behalf of EPA.

We have jurisdiction pursuant to section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1) (assigning review of EPA effluent and permitting regulations to the Federal Courts of Appeals).

II.

DISCUSSION

A. The Permit Requirements

[3] The Municipal Petitioners' primary contention is that the Phase II Rule compels small MS4s to regulate citizens as a condition of receiving a permit to operate, and that EPA lacks both statutory and constitutional authority to impose such a requirement. Because we avoid considering constitutionality if an issue may be resolved on narrower grounds, *Greater New Orleans Broadcasting Ass'n v. United States,* 527 U.S. 173, 184, 119 S.Ct. 1923, 144 L.Ed.2d 161 (1999), we first ask whether the Phase II Rule is supported by statutory authority.

1. Statutory Authority

[4] The Municipal Petitioners assert that the statutory command in Clean Water Act § 402(p)(6) that EPA develop a "comprehensive program to regulate" small MS4s did not authorize a program based on NPDES permits. Petitioners argue that because § 402(p)(6) explicitly indicates elements that the program may ***844** contain (performance standards, guidelines, etc.) without mentioning "permits," Congress must have intended that the program exclude permitting.[FN14]

FN14. The text of that section reads: "Not later than October 1, 1993, [EPA], in consultation with state and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater manage-

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GILLETT-HARRIS-DURANCEAU & ASSOCIATES, INC., Plaintiff and Appellant,
v.
ROBERT C. KEMPLE et al., Defendants and Respondents.
Civ. No. 40857.

Court of Appeal, First District, Division 2, California.
July 27, 1978.

SUMMARY

An engineering, land surveying, and architectural services firm brought an action for defamation against individual members of a grand jury. In its report on its investigations of local government affairs (Pen. Code, §§ 925-931), the jury had charged that the firm had been negligent, incompetent, and wrong in the performance of its duties. The firm alleged that the statement in the report was untrue. No indictment was returned against the firm, any of its employees, or against any elected or appointed officials mentioned in the report. The trial court ruled that, though Pen. Code, § 930, attempted to remove civil immunity from grand jury functions, the statute was unconstitutional because the grand jury was a judicial body entitled to be protected in its functions in the same way as courts and the statute constituted an impermissible invasion of the jury's judicial prerogatives. (Superior Court of Lake County, No. 13430, Frank S. Petersen, Judge. [FN*])

The Court of Appeal reversed, holding that, while the grand jury's criminal indictment function was clearly judicial in nature and provided for in the state Constitution, its function in investigating and reporting on local government was a task imposed solely by statute. The court noted that the procedural safeguards available to a defendant in a criminal proceeding were not available to individuals mentioned in the jury's reports on civil matters and held that, under those circumstances, the removal of civil immunity of jury members was justified and not in conflict with the state Constitution.

FN* Assigned by the Chairperson of the Judicial Council.(Opinion by Rouse, J., with Taylor, P. J., and Kane, J., concurring.) *215

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 29--Language--Legislative Intent--Literal Meaning.
Though courts cannot add to, alter, or insert qualifying provisions to a statute when its language is clear, the intent of the law will prevail over the literal meaning when a strict interpretation of statutory language is contrary to the legislative objective.

(2a, 2b) Grand Jury § 3--Powers and Jurisdiction--Distinctions-- Authority to Investigate Local Government--Civil Immunity of Jury Members.
A grand jury's authority to indict (Cal. Const., art. I, § 14) is separate from its authority to investigate and report on matters pertaining to local government (Pen. Code, §§ 925-931). The latter function is a unique creature of the Legislature and is subject to its limitations. Thus, the statutory removal of civil immunity from members of the jury for comments upon any person or official not indicted contained within a report on local government (Pen. Code, § 930) is not conflict with the state Constitution.
[See **Cal.Jur.3d**, Criminal Law, § 406; **Am.Jur.2d**, Grand Jury, § 29.]

(3) Statutes § 51--Construction--Codes--Conflicting Provisions--Reconciling Specific and General Statutes.
A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject.

(4) Grand Jury § 3--Powers and Jurisdiction--Distinctions Between Criminal and Investigative Powers--Procedural Safeguards.
A grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Criminal indictments are subject to public trial and judicial review, but the power of a court to review a grand jury's investigation and report on local government is limited because procedural safeguards such as a means for challenging the sufficiency of evidence and rules of evidence controlling

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the type of information that can be presented to a grand jury in its investigative function are not available.

COUNSEL

Littlejohn & Westfall, Donald W. Littlejohn, Gerald W. Nash and Crump, Bruchler & Crump for Plaintiff and Appellant.

Spridgen, Barrett, Achor, Luckhardt, Anderson & James, William G. Luckhardt and Harry A. Allen for Defendants and Respondents.

ROUSE, J.

Plaintiff, Gillett-Harris-Duranceau & Associates, Inc., appeals from a judgment of dismissal entered after a demurrer to its second amended complaint was sustained without leave to amend.

Plaintiff's second amended complaint named, as defendants, 19 individuals who served on the Lake County Grand Jury during the fiscal year 1974-1975. It was alleged therein that plaintiff was a firm which provided engineering, land surveying and architectural services, and that in 1970, it began contracting to furnish such services to the County of Lake and to certain special districts within said county. Plaintiff alleged that on August 8, 1975, defendants had filed a public report entitled 'Final Report of the Grand Jury-1975,' with the Lake County Clerk, and that said report contained the statement that plaintiff had been negligent, incompetent and wrong in the performance of its duties. Allegedly, such statement was untrue, was known by defendants to be untrue, was made with the intent to convey defamatory meaning, and did, in fact, bring plaintiff into public disgrace and disrepute and injure plaintiff in its profession. Plaintiff's complaint alleged that the grand jury had returned no indictment against plaintiff or any of its employees or agents or against any elected or appointed officers of the County of Lake. Plaintiff sought to recover compensatory damages for defamation and interference with prospective business advantage. Exemplary damages were also sought on the theory that defendants had acted maliciously in making the defamatory statement concerning plaintiff.

In sustaining the demurrer without leave to amend, the trial court concluded that a grand jury was a judicial body which was entitled to be as fully protected in the exercise of its powers and functions as the courts themselves and that, like the courts, the grand jury was therefore entitled ***217** to full immunity from liability based upon statements made in the performance of its duties. The court further concluded that to the extent that section 930 of the Penal Code constituted an attempt to remove civil immunity from the grand jury's functions, such statute was an unconstitutional invasion of judicial prerogatives.

Plaintiff's appeal presents two issues: (1) whether section 930 of the Penal Code is applicable in this instance, and (2) whether said statute, if applicable, is constitutional.

Section 930 of the Penal Code [FN1] is based upon former section 928, as amended in 1897. That statute specified the affairs of county government upon which the grand jury was required to make its annual report, and included the following caveat: '*provided*, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged.' (Stats. 1897, ch. 142, § 2, p. 205.)

> FN1 Unless otherwise specified, all subsequent statutory references are to the Penal Code.

Former section 928 was later amended, on various occasions, [FN2] until 1959, when it was repealed and its provisions were reenacted as seven separate statutes, namely, sections 925 through 931. (Stats. 1959, ch. 501, art. 2, pp. 2449-2450.) Sections 925 and 926 were based upon the first paragraph of former section 928, sections 927 and 928 upon the second paragraph of said statute, section 929 upon the third paragraph, section 930 upon the fourth paragraph, and section 931 upon the fifth paragraph. ***218**

> FN2 In 1957, that section read as follows: 'It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records and accounts of all the officers of the county, of all hospital districts which were organized in the county, and especially those pertaining to the revenue, and report as to the facts they have found, with

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such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, to be first approved by the court; and if, in their judgment, the services of assistants to such expert are required, they shall have power to employ such, at a compensation to be agreed upon and approved by the court.

'It shall be the duty of every grand jury first impaneled in even-numbered years to investigate, upon request to grant personal interviews to the officials concerned, and to report upon the needs for increase or decrease in salaries of the county supervisors, the district attorney and the auditor, and it shall cause a copy of such report to be transmitted to each Member of the Legislature representing the county in which it has been impaneled before the commencement of the regular session of the Legislature in odd-numbered years. It shall also be the duty of every grand jury to investigate and report upon the needs of all county officers in its county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices, and it shall cause a copy of such report to be transmitted to each member of the board of supervisors in its county.

'It shall be the duty of the grand jury, when making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, to include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district created by or under the laws of the State of California, in their respective counties.

'The judge, on impanelment of the grand jury, shall charge them especially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury the said comments shall not be deemed to be privileged.

'Any and all expenses incurred under this section, and also the per diem and mileage where allowed by law, of the grand jurors, shall be paid by the treasurer of the county out of the general fund of said county upon warrants drawn by the county auditor upon the written order of the judge of the superior court in said county.' (Stats. 1957, ch. 1364, § 1, p. 2699.)

In 1961, the Legislature enacted a new statute, section 933.5, which authorized the grand jury to examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county. (Stats. 1961, ch. 1461, § 2, p. 3313.) The statute was amended in 1969 to add language to the effect that the grand jury could investigate and report upon the method or system of performing the duties of such districts. (Stats. 1969, ch. 931, § 1, p. 1870.)

At the time of the grand jury report here in issue, section 930 read as follows: 'If any grand jury shall, *in the report above mentioned*, comment upon any person or official who has not been indicted by such grand jury such comments shall not be deemed to be privileged.' (Italics added.)

Section 930 was immediately preceded by section 929, [FN3] which provided that 'When making an examination of the books, records, and accounts of all the officers of the county and when investigating and reporting upon the needs of all county officers in its county, the grand jury shall include an examination and report upon all the books, records, and accounts of all the officers of such county which are kept in their ex officio capacity, as incumbents or officers of any special legislative district or other district in the county, created pursuant to state law.'

FN3 Section 929.1, which dealt with the employment by the grand jury of expert auditors or appraisers to assist in the examination of the county assessor's records, was repealed in 1974. (Stats. 1974, ch. 1396, § 2, p. 3054.)

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The alleged defamatory statement upon which the action is based was contained in a report rendered by the 'Special Districts Committee' of ***219** the grand jury. Defendants point out that, when the provision eliminating the grand jury's privilege was originally added to former section 928 in 1897, that statute dealt solely with the examination of the books, records and accounts of county officers and made no mention of special-purpose assessing or taxing districts. They assert that the Legislature could not have had special districts in mind when it originally added the provision eliminating the grand jury's privilege, since it was not until the 1961 enactment of section 933.5 that the grand jury was authorized to examine the books and records of such special districts. In 1975, when the grand jury rendered the report here in issue, section 930 provided that there should be no privilege in connection with 'the report above mentioned.' Reports on special districts are not mentioned in any of the statutes preceding section 930, but only in the subsequent statute, section 933.5. According to defendants, it follows that a special district report cannot be deemed 'the report above mentioned,' within the meaning of section 930. They contend that the statute was intended to eliminate immunity on the part of the grand jury only in connection with the previously mentioned reports on county officers.

Plaintiff asserts that there is no logical reason why the Legislature would have intended that a grand jury report on county officers not be privileged, while a report on special districts would be privileged. They point out that, as a matter of practice, grand juries do not separate special districts reports from reports on county officials; rather, that the normal practice, which was followed in this case, is to render a single report dealing with both subjects. Plaintiff argues that since the Legislature has imposed no requirement that grand juries separate special district reports from reports on county officers, it may be presumed that the Legislature approved of the preparation of a single report and that the reference to 'the report above mentioned' in section 930 should be interpreted as referring to a report by the grand jury on the subject of special districts as well as county officers.

(1)Juridical construction of a statute is possible only when uncertainty is found. 'Clear statutory language no more needs to be interpreted than pure water needs to be strained.' (*Holder v. Superior Court* (1969) 269 Cal.App.2d 314, 317 [74 Cal.Rptr. 853].) A court may not rewrite a statute by inserting thoughts that have been omitted or by omitting thoughts that have been inserted. (*Richardson v. City of San Diego* (1961) 193 Cal.App.2d 648, 650 [14 Cal.Rptr. 494].) Where the words of a statute are clear, the courts cannot add to them or alter them or insert qualifying ***220** provisions to conform to an assumed intent or accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314 [53 Cal.Rptr. 88].)

On the other hand, there is abundant authority for the proposition that the literal construction of a statute will not prevail if it is opposed to legislative objective. (*Pacific Gas & Elec. Co. v. Morse* (1970) 6 Cal.App.3d 707, 712 [86 Cal.Rptr. 7].) The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law, and every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. (*Cannon v. American Hydrocarbon Corp.* (1970) 4 Cal.App.3d 639, 648 [84 Cal.Rptr. 575].) Words will not be given their literal meaning when to do so would make the provisions of a statute apply to transactions never contemplated by the Legislature, and to this end, the intent of a law must be held to prevail over the letter. (*La-Borde v. McKesson & Robbins, Inc.* (1968) 264 Cal.App.2d 363, 370 [70 Cal.Rptr. 726].)

Here, the language of section 930 renders it applicable only to 'the report above mentioned.' The statutes preceding section 930 make no mention of reports concerning special districts; they refer only to reports on county officers. We agree, however, with plaintiff's assertion that it is difficult to conceive of any valid legislative objective which would be furthered by eliminating the grand jury's privilege in connection with reports concerning county officers while preserving such privilege as to reports which concern special districts within the county. We conclude that the provisions of section 930 apply both to grand jury reports on county officers and reports on special districts.

The question remaining is whether the provisions of section 930 constitute an unconstitutional impairment of the judicial privilege. Defendants remind us that article III, section 3, of the California Constitution

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divides the state government into legislative, executive and judicial departments, and that it has long been settled that the Legislature cannot exercise or place limitations upon judicial powers. Thus, in *Oppenheimer v. Ashburn* (1959) 173 Cal.App.2d 624 [343 P.2d 931], the appellate court held invalid a section of the Penal Code which provided for the imposition of a fine upon a judge who refused to grant a writ of habeas corpus after a proper application therefor had been made. In so holding, the court observed that the decisions of this state uniformly and ***221** consistently grant immunity to judges in the exercise of their judicial functions. The court then referred to an early California case which applied such rule to grand jurors, pointing out that 'The clear line of California decisions begins with the early case of *Turpen v. Booth* (1880), 56 Cal. 65[38 Am.Rep. 48], which held that since a grand juror served in a quasi-judicial status he was not civilly responsible, no matter how erroneous his findings or how malicious his motive, for his action on the grand jury.' (P. 629.)

Defendants also rely upon section 47, subdivision 2, of the Civil Code, which provides that a privileged publication or broadcast is one made in any judicial proceeding. They note that in *Irwin v. Murphy* (1933) 129 Cal.App. 713 [19 P.2d 292], it was held that a grand jury is a judicial body and grand jurors are officers of the court (p. 716), and that statements impugning the integrity of the plaintiff as a boxing referee were privileged where pertinent to the matters or persons under investigation (p. 718).

Plaintiff points out that the only reference to the grand jury in the California Constitution concerns the indicting function of that body and provides for the annual summoning of grand jurors. (Cal. Const., art. I, §§ 14, 23.)

In *Fitts v. Superior Court* (1936) 6 Cal.2d 230, 241 [57 P.2d 510], the California Supreme Court held that, by failing to make any further provision regarding the grand jury, the constitutional convention of 1879 left to the Legislature all questions affecting the grand jury not expressly covered by the Constitution.

(2a)Thus, as plaintiff suggests, an important distinction must be made between a grand jury's authority to indict and its authority to exercise a 'watchdog' function in matters of local government. The latter activity is a unique creature of the California Legislature, which has a long and well respected heritage. (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430, 436 [119 Cal.Rptr. 193, 531 P.2d 761].) Since the grand jury's power to investigate and report on matters pertaining to local government is a creature of statute, the Legislature is at liberty to impose reasonable limitations upon the exercise of this watchdog function. Section 930 imposes such a limitation.

The cases relied upon by defendants, namely, *Turpen v. Booth*, *supra.*, 56 Cal. 65, and *Irwin v. Murphy*, *supra.*, 129 Cal.App. 713, are readily ***222** distinguishable from the situation before us. Each of those cases upheld a claim of privilege in connection with statements made by grand juries as a part of investigations which were conducted in order to determine whether their constitutional authority to indict should be exercised. Also, we believe that defendants' reliance upon section 47, subdivision 2, of the Civil Code, is misplaced. (3)It is well settled that a special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. (*In re Williamson* (1954) 43 Cal.2d 651, 654 [276 P.2d 593]*Burum v. State Compensation Ins. Fund* (1947) 30 Cal.2d 575, 586 [184 P.2d 505].) Therefore, where the Legislature has enacted a statute which exempts statements made in certain reports rendered by the grand jury from the status of privileged communications, that statute takes precedence over another statute which deals generally with the subject of privilege in judicial proceedings.

(2b)Defendants have not established, nor have we been able to discern, any conflict between the provisions of section 930 and those of our state Constitution which deal with grand juries. The simple truth is that the latter document does not deal with the grand jury's authority to act as a watchdog and prepare reports on local government. Since the watchdog function of the grand jury was created by statute, there is no reason why its exercise cannot be limited by statute.

(4)We agree with plaintiff that the grand jury's function of investigating and reporting on local government is not inherently a part of the judicial system. Further, we find merit in plaintiff's contention that there is sufficient basis for distinguishing the grand

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jury's watchdog role from its role as an indicting body: indictment proceedings are secret and their disclosure is a misdemeanor (§ 924.1); the sufficiency of the evidence presented to the grand jury may be challenged pursuant to section 995; the accused, if indicted, is afforded a public trial and the opportunity to defend against the charges. By contrast, when the grand jury renders its watchdog report, the trial court's power to review such report is limited: it may refuse to file an illegal report which is beyond the grand jury's jurisdiction to render. (*People v. Superior Court (1973 Grand Jury)*, *supra.*, 13 Cal.3d at p. 440.) There is no statutory provision similar to section 995 for challenging the sufficiency of the evidence; there are no rules of evidence controlling the type of information which can be presented to the grand jury for its report; and there is no forum in which an individual who has been unfavorably mentioned by the grand jury may present his version of the facts. In our opinion, these considerations furnish ample justification for the Legislature's decision to enact section 930 and thereby ***223** eliminate the claim of privilege in connection with the grand jury's report on local government. [FN4]We conclude that, in so doing, the Legislature acted well within its power and that the restrictions thus imposed do not violate the California Constitution.

> FN4 It is of interest to note that when the grand jurors in this case were impaneled and sworn, the court advised them of their lack of immunity in certain instances, stating, 'as to any comments in your reports upon a person or public official not indicted, such comments are not privileged and could, if libelous, be the basis for a charge of civil or criminal libel.'

The judgment of dismissal is reversed.

Taylor, P. J., and Kane, J., concurred.
Respondents' petition for a hearing by the Supreme Court was denied October 12, 1978. ***224**

Cal.App.1.Dist.
Gillett-Harris-Duranceau & Associates, Inc. v. Kemple
83 Cal.App.3d 214, 147 Cal.Rptr. 616

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CALBERT MILLS, Plaintiff and Respondent,
v.
COUNTY OF TRINITY et al., Defendants and Appellants.
Civ. No. 18866.

Court of Appeal, Third District, California.
Jul 28, 1980.

SUMMARY

In an action against Trinity County and its board of supervisors brought by a taxpayer in that county challenging a resolution by the county's board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors required for a "special tax" within the meaning of Cal. Const., art. XIIIA, § 4, the court granted summary judgment for plaintiff and issued a writ of mandamus barring enforcement of the resolution's provisions. (Superior Court of Trinity County, No. 7030, Clyde H. Small, Judge. [FN*])

The Court of Appeal reversed and remanded with directions for further proceedings consistent with its holdings. The court held that special initiatives should be liberally interpreted to give full effect to the framers' objectives, but that the trial court erred in construing "tax" to include, within the contemplation of the "special tax" referred to in Cal. Const., art. XIIIA, § 4, all charges however labeled, to exact money for the support of government or for public purposes. The court further held that the "special tax" does not embrace fees charged in connection with regulatory activities that do not exceed the reasonable cost of providing services necessary to the activity for which the fees are charged, that the new and increased fees in Trinity County were not, therefore, unconstitutional as a matter of law, and that whether or not those fees were invalid would depend on a factual determination on remand as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed,

FN* Deleted on direction of Supreme Court by order dated October 1, 1980. (Opinion by Puglia, P. J., with Reynoso, J., and De-Cristoforo, J., [FN†]]] concurring.) ***657**

FN† Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers.
The "special tax" referred to in Cal. Const., art. XIIIA, § 4, as being incapable of being legally imposed in a taxing district without a two-thirds vote of the qualified electors of the taxing district, does not embrace, under the established rules of construction applicable to the interpretation of constitutional provisions, fees charged in connection with regulatory activities, where the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged, and that are not levied for unrelated revenue purposes.
[See **Cal.Jur.3d,** Constitutional Law, § 167; **Am.Jur.2d,** State and Local Taxation, § 93.]
(2) Words, Phrases and Maxims--Tax--Definition--Construction Within Context and Purpose in Which Used.
"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is created. In its broadest sense, a tax includes all charges on persons or property for the support of government or for public purposes. In narrower contexts, the word may be construed to exclude charges to particular individuals that do not exceed the value of the governmental benefit conferred on or the service rendered to the individuals, and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities.

(3) Initiative and Referendum § 6--State Elections--Initiative Measures-- Construction.

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Initiative measures should, like other constitutional provisions, be interpreted liberally to give full effect to the framers' objective and the growing needs of the people.

(4) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers--Regulatory Fees Within Ambit of Special Tax Proscription.
In an action challenging the constitutionality of a resolution by a county board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications, the trial court erred in determining that the resolution violated prohibitions of Cal. Const., art. XIIIA, § 4, against a "special tax." In reaching its decision the trial court erred in construing the term, "tax", as used in Cal. Const., art. XIIIA, § 4, to include all charges, however labeled, to exact money for the support of government or for public purposes, and in ruling that the special fees imposed by the county resolution thus constituted, a "special tax" within the prohibitions of Cal. Const., art. XIIIA, § 4. The "special tax" referred to in Cal. Const., art. XIIIA, does not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Whether or not the fees imposed under the resolution were invalid would depend on a factual determination on remand to the trial court as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed.

COUNSEL

Ronald Barbatoe, District Attorney, for Defendants and Appellants.

Wells, Wingate & Small, W. Leonard Wingate and Edward A. Shuttle as Amici Curiae on behalf of Defendants and Appellants.

David R. Hammer for Plaintiff and Respondent.

Ronald A. Zumbrun, John H. Findley, Thomas E. Hookano and James L. Meyer as Amici Curiae on behalf of Plaintiff and Respondent.

PUGLIA, P. J.

Following enactment of article XIII A of the California Constitution (Prop. 13 on the June 6, 1978, ballot, commonly known as the Jarvis-Gann initiative), the Trinity County Board of Supervisors adopted resolution No. 73-78 providing both increased and new fees for county services in processing subdivision, zoning, and other ***659** land-use applications. Plaintiff Mills then brought this action in the superior court against the county and its board challenging the constitutionality of the resolution and seeking to bar its enforcement through mandate and declaratory and injunctive relief. The trial court sustained plaintiff's claim that as a matter of law the new and increased fees under resolution No. 73-78 constitute a "special tax" within the meaning of article XIII A and thus cannot be imposed without a two-thirds affirmative vote of the electors of Trinity County. Since the board of supervisors had adopted the resolution without submitting it to the county electorate for approval, the court ordered summary judgment in plaintiff's favor and issued a peremptory writ of mandate. The writ ordered defendants to "desist and refrain from enforcing the provisions of Resolution Number 73-78" and further directed defendants to refund any and all monies received pursuant to the provisions of the resolution which exceeded amounts in effect under prior fee schedules.

Defendants appealed and filed an accompanying petition for a writ of supersedeas. We issued the writ, restraining enforcement of the judgment pending disposition of this appeal. (*Mills v. County of Trinity* (1979) 98 Cal.App.3d 859 [159 Cal.Rptr. 679].)

Although in its generality, article XIII A is not fatally vague, "in a number of particulars [it] is imprecise and ambiguous" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]) "and over a period of time will require judicial, legislative and administrative construction" (*id.*, at p. 244). We are now called upon in this appeal to determine whether the new and increased fees exacted by resolution No. 73-78 constitute a "special tax" within the meaning of section 4 of article XIII A. That provision states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a

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transaction tax or sales tax on the sale of real property within such City, County or special district."

(1)Utilizing the established rules of construction applicable to the interpretation of constitutional provisions (see *Amador Valley, supra.*, 22 Cal.3d at pp. 245-246), we conclude that the "special tax" referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.***660** Accordingly, we shall reverse and remand for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities.

(2)"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is to be used. (See *Crawford v. Herringer* (1978) 85 Cal.App.3d 544, 548-551 [149 Cal.Rptr. 578]; *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99-100 [308 P.2d 1].) In its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes. (*City of Madera v. Black* (1919) 181 Cal. 306, 310-311 [184 P. 397]; Webster's New Internat. Dict. (3d ed. 1971) p. 2345.) In narrower contexts, the word has been construed to exclude charges to particular individuals which do not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals (*County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 984 [156 Cal.Rptr. 777]; *Crawford v. Herringer, supra.*, 85 Cal.App.3d at p. 550), and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities (*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263]).

(3)Initiative measures as well as other general constitutional provisions should be interpreted liberally to give full effect to the framers' objective and the growing needs of the people. (*Amador Valley, supra.*, 22 Cal.3d at pp. 244-245.) Animated by the foregoing principle, the trial court construed "tax" in its broadest meaning holding that, as used in section 4 of article XIII A, it "includes all charges, however labeled, which are to exact money for the support of government or for public purposes." (4) However, were we to accept the trial court's broad definition, the initiative measure as so construed would prohibit any increase in fees for governmental activities conferring a direct benefit on the specific individual who is charged for such benefit without the prior approval of two-thirds of the electors. In other words, a county would be powerless to raise charges for proprietary functions such as hospital services, public transportation, and garbage collection without the two-thirds stamp of approval. We do not believe the state electors intended to put local government in such a fiscal straightjacket.

Conceding that such a draconian result was probably never intended by the electorate, plaintiff asserts the interpretation adopted by the trial ***661** court would exclude from the meaning of "special tax" fees charged for governmental activities *primarily* for the benefit of individuals and only incidentally for the benefit of the public. The minor premise of plaintiff's argument is that land-use charges imposed on the developer pursuant to the government's police power are primarily for the benefit of the public at large. Plaintiff thus concludes that such charges constitute taxes within the meaning of section 4 of article XIII A. Defendants, while not disputing the applicability of the "primary purpose" test, contend that it is the developer who is the primary beneficiary of an approval for land subdivision since the value of the land increases; the public, defendants assert, is merely the indirect beneficiary.

We eschew the public versus individual primary purpose test as a solvent of the instant litigation. The trial court also recognized the difficulty of embarking on such "spongy terrain" since all governmental activities by definition serve a public purpose. Under such a test, every charge imposed in connection with land-use activities as well as all other regulatory activities undertaken pursuant to the police power might well be categorized as a "special tax" since the police power is constitutional only if adopted to promote the health, safety, and welfare of the public as a whole. (*Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365, 387 [71 L.Ed. 303, 310, 47 S.Ct. 114, 54 A.L.R. 1016]; *Associated Homebuilders etc. Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].)

We rely instead on statutory and judicial precedent

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(see *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 850 [59 Cal.Rptr. 609, 428 P.2d 593]) and contemporaneous legislative construction (*Amador Valley, supra.*, 22 Cal.3d at p. 245) in determining that the state electorate did not intend to include within the meaning of "special tax" reasonable costs for processing land-use permits and applications.

Traditionally, courts have determined whether a local governmental charge denominated a regulatory fee is an exercise of the police power or the power to raise revenue by analyzing the use of the fee involved rather than relying on its label. (*United States Com. v. City of San Diego, supra.*, 91 Cal.App.3d at p. 165.) The general rule is that a regulatory fee must not "exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought" in order to be considered as a fee rather than a guise for a tax. (*Ibid.*; see also *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 763 [87 P. 909]; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 5, pp. 3991-3992; 9 McQuillin, ***662** Municipal Corporations (3d ed. 1978) § 26.15, p. 29.) As long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees is not dependent on any legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution. (*County of Plumas v. Wheeler, supra.*, 149 Cal. at pp. 761, 763.) Land-use regulations fulfill a legitimate public welfare purpose under the police power. (*Associated Homebuilders etc. Inc. v. City of Livermore, supra.*, 18 Cal.3d at p. 604;*Associated Homebuilders etc. Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 651 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847].) Moreover, with respect to subdivision map activities in particular, Government Code section 66451.2 provides that "... local agenc [ies] may establish *reasonable* fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by [the Subdivision Map Act] or local ordinance." (Italics added.)

Senate Bill No. 785, enacted in September 1979 after the enactment of article XIII A and the county's adoption of resolution No. 73-78, is sufficiently contemporaneous to serve as an interpretive guide. Its purpose is to furnish legislative authorization for counties and general law cities to impose special taxes subject to the two-thirds requirement of article XIII A. Section 50076, added to the Government Code by Senate Bill No. 785, clarifies the meaning of "special tax" as follows: "As used in this article, *'special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.*" (Italics added.) Where the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts. (*San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273, 279 [191 P. 26]; *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692-693 [97 Cal.Rptr. 1, 488 P.2d 161].)

In addition, the "special tax" referred to in section 4 of article XIII A has been judicially construed to exclude special assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvement. (*County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 984.) The *Malmstrom* interpretation is consistent with that expressed by the Legislature in Senate Bill No. 785 (Gov. Code, § 50076).***663**

Ballot arguments and analyses presented to the electorate may be helpful in determining the probable meaning of an initiative's uncertain language. (*Amador Valley, supra.*, 22 Cal.3d at pp. 245-246.) Here, the arguments in favor of the constitutional initiative "support a conclusion that the article is aimed at *general* taxes and governmental spending." (Original italics; *County of Fresno v. Malmstrom, supra.*, 94 Cal.App.3d at p. 981.) There is nothing in the ballot arguments supporting article XIII A suggesting an intent to prevent local government from exacting fees reasonably commensurate with the cost of regulatory activity from those at whose instance the activity is conducted.

Finally, support for the Legislature's interpretation of "special taxes" is found in an initiative measure subsequently adopted by the California electorate in 1979; the measure placed limitations on governmental spending. (Cal. Const., art. XIII B.) Although applicable only to article XIII B, the phrase, "proceeds of taxes," is defined there as including, but not restricted to "all tax revenues and the proceeds to an

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entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds *exceed* the costs reasonably borne by such entity in providing the regulation, product, or service, ..." (Italics added; Cal. Const., art. XIII B, § 8, subd. (c).)

Informed by those sources recognized as germane to the task of statutory interpretation, we conclude that "special taxes" under article XIII A, section 4 of the California Constitution do not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Since the trial court held the fees imposed by resolution No. 73-78 constitute a "special tax" as a matter of law, the factual question whether or not such fees exceed the reasonable cost of the related regulatory activity has never been litigated. On remand that issue must be tried.

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

Reynoso, J., and DeCristoforo, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

Respondent's petition for a hearing by the Supreme Court was denied September 24, 1980.

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United States Court of Appeals,
District of Columbia Circuit.
NATURAL RESOURCES DEFENSE COUNCIL, INC.[FN*]

FN* For convenience the court will refer to this case hereafter as NRDC v. Costle (Run-off Point Sources).

v.
Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Forest Products Association, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.
v.
Douglas M. COSTLE, Administrator, Environmental Protection Agency, et al., National Milk Producers Federation, Appellant.
NATURAL RESOURCES DEFENSE COUNCIL, INC., etc.
v.
Douglas M. COSTLE, Administrator, and Environmental Protection Agency, et al., Appellants.
NATURAL RESOURCES DEFENSE COUNCIL, INC.
v.
Douglas M. COSTLE, Administrator, Environmental Protection Agency, Colorado River Water Conservation District, Appellant.
Nos. 75-2056, 75-2066, 75-2067 and 75-2235.

Argued Dec. 3, 1976.
Decided Nov. 16, 1977.

The National Resources Defense Council, Inc. challenged authority of the Environmental Protection Agency Administrator to exempt categories of point sources from permit requirements of the Federal Water Pollution Control Act Amendments of 1972. The United States District Court for the District of Columbia, Thomas A. Flannery, J., 396 F.Supp. 1393, granted summary judgment to the NRDC and the Administrator and others appealed. The Court of Appeals, Leventhal, Circuit Judge, held that: (1) legislative history shows that National Pollution Discharge Elimination System permit is the only means by which discharger may escape total prohibition of discharges from point sources found in FWPCA; (2) national effluent limitations need not be uniform as precondition for NPDES program to include pollution from agricultural, silvicultural, and storm runoff point sources, and while technological or administrative infeasibility of such limitations may warrant adjustments in permit program it does not authorize Administrator to exclude relevant point sources; (3) where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate problems of point source pollution as well as require monitoring and reporting of effluent level; and (4) a number of administrative devices, including general or area permits are available to aid EPA in practical administration of NPDES program, and FWPCA, however tight in some respects, leaves some leeway to EPA in interpretation of that statute and affords agency some means to consider matters of feasibility.

Affirmed in accordance with opinion.

MacKinnon, Circuit Judge, filed a concurring opinion.

West Headnotes

[1] Environmental Law 149E ⚿196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35, 199k25.7(16) Health and Environment)
Legislative history clearly shows that Congress intended that the national pollution discharge elimination system permit be the only means by which a discharger of pollutant may escape total prohibition of discharges from point sources found in Federal Water Pollution Control Act Amendments. Federal Water Pollution Control Act, §§ 301, 301(a), 402 as amended 33 U.S.C.A. §§ 1311, 1311(a), 1342.

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[2] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 199k25.7(13.1), 199k25.7(13) Health and Environment, 270k35)
Use of word "may" in that section of Federal Water Pollution Control Act Amendment providing that the administrator may issue permit for discharge of any pollutant means only that the administrator has the discretion either to issue permit or to leave pollutant discharger subject to total proscription of statute making discharge of any pollutant by any person unlawful except as provided in Act. Federal Water Pollution Control Act, §§ 301(a), 302, 304 as amended 33 U.S.C.A. §§ 1311(a), 1342, 1344.

[3] Environmental Law 149E 175

149E Environmental Law
149EV Water Pollution
149Ek174 Substances, Sources, and Activities Regulated
149Ek175 k. In General. Most Cited Cases
(Formerly 199k25.7(6.1), 199k25.7(6) Health and Environment)

Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35)
Existence of uniform national effluent limitations is not a necessary precondition for incorporating into the national pollutant discharge elimination system program pollution from agricultural, silvicultural, and storm water runoff point sources; technological or administrative infeasibility of such limitations may result in adjustments in permit programs but does not authorize administrator to exclude relevant point sources from program. Federal Water Pollution Control Act, §§ 301, 402, 404, 1362(12, 14), as amended 33 U.S.C.A. §§ 1311, 1342, 1344, 502(12, 14).

[4] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and Limitations. Most Cited Cases
(Formerly 270k35, 199k25.7(10.1), 199k25.7(10) Health and Environment)
Where numeric effluent limitations are infeasible, point of discharge permits may proscribe industry practices which aggravate problems of point source pollution as well as require monitoring and reporting of effluent levels contrary to claim that any limitations must be issued in terms of a numerical effluent standard. Federal Water Pollution Control Act, §§ 302(a), 402, 402(a) as amended 33 U.S.C.A. §§ 1312(a), 1342, 1342(a).

[5] Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases
(Formerly 270k35, 199k25.7(13.1), 199k25.7(13) Health and Environment)
Federal Water Pollution Control Act Amendments merely require that point of discharge permits be in compliance with limitations section of Act and as a result the use of area or general permits is allowed. Federal Water Pollution Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[6] Environmental Law 149E 641

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek636 Administrative Decisions or Actions Reviewable in General
149Ek641 k. Water Pollution. Most Cited Cases
(Formerly 199k25.15(3.2), 199k25.15(1) Health and Environment, 270k35)
Power to define point and nonpoint sources of pollution is vested in Environmental Protection Agency under the Federal Water Pollution Control Act Amendments, and exercise of that power should be reviewed by court only after opportunity for full agency review and examination. Federal Water Pollu-

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tion Control Act, § 402 as amended 33 U.S.C.A. § 1342.

[7] Environmental Law 149E 216

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek216 k. In General. Most Cited Cases
(Formerly 270k35, 199k25.7(11) Health and Environment)
Federal Water Pollution Control Act Amendments, however tight in some respects, leave some leeway to Environmental Protection Agency in interpretation and affords agency some means to consider matter of feasibility. Federal Water Pollution Control Act, §§ 1-26, 101-517 as amended 33 U.S.C.A. §§ 1151-1175, 1251-1376.

[8] Administrative Law and Procedure 15A 305

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak303 Powers in General
15Ak305 k. Statutory Basis and Limitation. Most Cited Cases
It is not what court thinks that is generally appropriate to regulatory process, but what Congress intended.

**1370 **148 Syllabus by the Court*

The National Resources Defense Council, Inc. (NRDC) challenged the authority of the EPA Administrator to exempt categories of point sources from the permit requirements of s 402 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. s 1342 (Supp. V 1975). On appeal from a grant of summary judgment to NRDC, held:

1. The legislative history makes clear that Congress intended the National Pollution Discharge Elimination System (NPDES) permit to be the only means by which a discharger may escape the total prohibition of discharges from point sources found in FWPCA s 301(a), 33 U.S.C. s 1311(a) (Supp. V 1975).

2. It is not necessary that national effluent limitations be uniform as a precondition for the NPDES program to include pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility ***1371 **149** of such limitations may warrant adjustments in the permit program, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

3. Where numeric effluent limitations are infeasible, permit conditions may proscribe industry practices that aggravate the problems of point source pollution as well as require monitoring and reporting of effluent levels.

4. A number of administrative devices, including general or area permits, are available to aid EPA in the practical administration of the NPDES program. The FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute and, in that regard, affords the agency some means to consider matters of feasibility.

Appeals from the United States District Court for the District of Columbia (D.C. Civil 1629-73).Irvin B. Nathan, Washington, D. C., with whom Burton J. Mallinger, Washington, D. C., was on the brief, for appellant in No. 75-2056.

Charles W. Bills, Washington, D. C., with whom James R. Murphy, Washington, D. C., was on the brief for appellant in No. 75-2066.

G. William Frick, Atty., Dept. of Justice, Kansas City, Mo., of the bar of the Supreme Court of Missouri, pro hac vice by special leave of court for appellants in No. 75-2067. Peter R. Taft, Asst. Atty. Gen., Robert V. Zener, Gen. Counsel, Environmental Protection Agency, Edmund B. Clark, Lloyd S. Guerci, Larry A. Boggs, Attys., Dept. of Justice and Pamela P. Quinn, Atty., Environmental Protection Agency, Washington, D. C., were on the brief for appellants in No. 75-2067.

Christopher D. Williams, Washington D. C., with whom Kenneth Balcomb and Robert L. McCarty, Washington, D. C., were on the brief for appellant in No. 75-2235.

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J. G. Speth, Washington, D. C., for appellee.

Theodore O. Torve, Asst. Atty. Gen., State of Washington, Olympia, Wash., filed a brief on behalf of the State of Washington as amicus curiae urging reversal in No. 75-2056.

Richard E. Schwartz, Jefferson City, Mo., filed a brief on behalf of Iron and Steel Institute, as amicus curiae urging reversal in No. 75-2067.

John L. Hill, Atty. Gen., State of Texas, and David M. Kendall, Jr., First Asst. Atty. Gen., State of Texas, Austin, Tex., filed a brief on behalf of State of Texas as amicus curiae urging reversal in No. 75-2067.

Before BAZELON, Chief Judge, and LEVENTHAL and MacKINNON, Circuit Judges.

Opinion for the Court filed by LEVENTHAL, Circuit Judge.
Concurring Opinion filed by MacKINNON, Circuit Judge.
LEVENTHAL, Circuit Judge:

In 1972 Congress passed the Federal Water Pollution Control Act Amendments (hereafter referred to as the "FWPCA" or the "Act" [FN1]). It was a dramatic response to accelerating environmental degradation of rivers, lakes and streams in this country. The Act's stated goal is to eliminate the discharge of pollutants into the Nation's waters by 1985. This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act.

> FN1.33 U.S.C. ss 1251-1376 (Supp. V 1975). Although characterized in the official title as "amendments", the 1972 FWPCA actually substitutes its provisions for those of the pre-1972 Federal Water Pollution Control Act as amended, id. ss 1151-1175 (1970).

The FWPCA sets up a permit program, the National Pollutant Discharge Elimination System (NPDES), as the primary means of enforcing the Act's effluent limitations.[FN2] At issue in this case is the authority*1372 **150 of the Administrator of the Environmental Protection Agency to make exemptions from this permit component of the FWPCA.

> FN2. This case deals with s 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), which sets out the permitting authority of the EPA Administrator as well as that of the states under EPA-approved state permit programs. The Secretary of the Army also has a permitting authority in certain circumstances. Under s 404 of the FWPCA, 33 U.S.C. s 1344 (Supp. V 1975), he may issue permits for the discharge of dredged or fill material into navigable waters.

Section 402 of the FWPCA, 33 U.S.C. s 1342 (Supp. V 1975), provides that under certain circumstances the EPA Administrator "may . . . issue a permit for the discharge of any pollutant" notwithstanding the general proscription of pollutant discharges found in s 301 of the Act.33 U.S.C. s 1311 (Supp. V 1975). The discharge of a pollutant is defined in the FWPCA as "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or floating craft."33 U.S.C. s 1362(12) (Supp. V 1975). In 1973 the EPA Administrator issued regulations that exempted certain categories of "point sources" of pollution from the permit requirements of s 402.[FN3] The Administrator's purported authority to make such exemptions turns on the proper interpretation of s 402.

> FN3.40 C.F.R. s 125.4 (1975). See 38 Fed.Reg. 18000-04 (1973).

A "point source" is defined in s 502(14) as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."[FN4]

> FN4.33 U.S.C. s 1362(14) (Supp. V 1975).

The 1973 regulations exempted discharges from a number of classes of point sources from the permit requirements of s 402, including all silvicultural point sources; all confined animal feeding operations be-

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low a certain size; all irrigation return flows from areas of less than 3,000 contiguous acres or 3,000 noncontiguous acres that use the same drainage system; all nonfeedlot, nonirrigation agricultural point sources; and separate storm sewers containing only storm runoff uncontaminated by any industrial or commercial activity.[FN5] The EPA's ***1373 **151** rationale for these exemptions is that in order to conserve the Agency's enforcement resources for more significant point sources of pollution, it is necessary to exclude these smaller sources of pollutant discharges from the permit program.

FN5.40 C.F.R. s 125.4 (1975):

The following do not require an NPDES permit:

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e. g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identi-

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fied by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

The National Resources Defense Council, Inc. (NRDC) sought a declaratory judgment that the regulations are unlawful under the FWPCA. Specifically, NRDC contended that the Administrator does not have authority to exempt any class of point source from the permit requirements of s 402. It argued that Congress in enacting ss 301, 402 of the FWPCA intended to prohibit the discharge of pollutants from all point sources unless a permit had been issued to the discharger under s 402 or unless the point source was explicitly exempted from the permit requirements by statute. The District Court granted NRDC's motion for summary judgment. It held that the FWPCA does not authorize the Administrator to exclude any class of point sources from the permit program.NRDC v. Train, 396 F.Supp. 1393 (D.D.C.1975). The EPA has appealed to this court. It is joined on appeal by a number of defendant-intervenors, National Forest Products Association (NFPA), National Milk Producers Federation (NMPF), and the Colorado River Conservation District.[FN6]

FN6. Briefs as amicus curiae were filed by the American Iron and Steel Institute, the State of Texas, and the State of Washington, Department of Natural Resources.

This case thus presents principally a question of statutory interpretation. EPA also argues that even if Congress intended to include the pertinent categories in the permit program, the regulations exempting them should be upheld on a doctrine of administrative infeasibility, i. e., the regulations should be upheld as a deviation from the literal terms of the FWPCA that is necessary to permit the Agency to realize the principal objectives of the Act.

I. LEGISLATIVE HISTORY

The principal purpose of the FWPCA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[FN7]The Act's ultimate objective, to eliminate the discharge of pollutants into navigable waters by 1985, is to be achieved by means of two intermediate steps. As of July 1, 1977, all point sources other than publicly owned treatment works were to have achieved effluent limitations that require application of the "best practicable control technology." [FN8]These same point sources must reduce their effluent discharges by July 1, 1983, to meet limitations determined by application of the "best available technology economically achievable" for each category of point source.[FN9]

FN7.33 U.S.C. s 1251(a) (Supp. V 1975).

FN8.33 U.S.C. s 1311(b)(1)(A) (Supp. V 1975).

FN9.Id.s 1311(b)(2)(A).

The technique for enforcing these effluent limitations is straightforward. Section 301(a) of the FWPCA provides:

Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.[FN10]

FN10.Id.s 1311(a).

Appellants concede that if the regulations are valid, it must be because they are authorized***1374 **152** by s 402; none of the other sections listed in s 301(a) afford grounds for relieving the exempted point sources from the prohibition of s 301. [FN11]

FN11. Section 302, 33 U.S.C. s 1312 (Supp. V 1975), permits the Administrator to set water quality related effluent limitations or control strategies where technology-based limitations are inadequate. Section 306, 33 U.S.C. s 1316 (Supp. V 1975), instructs the EPA Administrator to promulgate standards of performance for new sources of pollution constructed after those standards are proposed. Section 307, 33 U.S.C. s 1317 (Supp. V 1975), gives the EPA Administrator the authority to issue generally applicable effluent standards with respect to toxic substances and to require pretreatment of some pollutants before their introduction into treatment works. By virtue of s 318, 33 U.S.C. s 1328 (Supp. V 1975), the Administrator may "permit the discharge of a spe-

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> cific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision."Section 404, 33 U.S.C. s 1344 (Supp. V 1975), gives the Secretary of the Army authority to issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

Section 402 provides in relevant part that the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of the necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

The NPDES permit program established by s 402 is central to the enforcement of the FWPCA. It translates general effluent limitations into the specific obligations of a discharger. As this court noted in NRDC v. Train, 166 U.S.App.D.C. 312, 315, 510 F.2d 692, 695 (1975), the Act "relies primarily on a permit program for the achievement of effluent limitations . . . to attain its goals."The comments in floor debates of Senator Muskie, the leading Congressional sponsor of the Act, makes this clear.[FN12]

> FN12."The Administrator of the Environmental Protection Agency is authorized to regulate discharge of pollutants through the use of an expanded permit program."117 Cong.Rec. 38800 (1971) (Senator Muskie) (emphasis added), reprinted in 2 Environmental Policy Div., Congressional Reference Serv., A Legislative History of the Water Pollution Control Act Amendments of 1972, at 1259 (Senate Public Works Comm. Print 1973) (hereinafter cited as Legislative History).

The appellants argue that s 402 not only gives the Administrator the discretion to grant or refuse a permit, but also gives him the authority to exempt classes of point sources from the permit requirements entirely. They argue that this interpretation is supported by the legislative history of s 402 and the fact that unavailability of this exemption power would place unmanageable administrative burdens on the EPA.

[1] Putting aside for the moment the appellants' administrative infeasibility argument, we agree with the District Court that the legislative history makes clear that Congress intended the NPDES permit to be the only means by which a discharger from a point source may escape the total prohibition of s 301(a). This intention is evident in both Committee Reports. In discussing s 301 the House Report stressed:

Any discharge of a pollutant without a permit issued by the Administrator under section 318, or by the Administrator or the State under section 402 or by the Secretary of the Army under section 404 is unlawful. Any discharge of a pollutant not in compliance with the conditions or limitations of such a permit is also unlawful.[FN13]

> FN13. H.Rep.No.92-911, 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787.

The Senate Report echoed this interpretation:

(Section 301) clearly establishes that the discharge of pollutants is unlawful. Unlike its predecessor program which permitted the discharge of certain amounts of pollutants under the conditions described above, this legislation would clearly establish that no one has the right ***1375 **153** to pollute that pollution continues because of technological limits, not because of any inherent rights to use the nation's waterways for the purpose of disposing of wastes.

The program proposed by this Section will be implemented through permits issued in Section 402. The Administrator will have the capability and the mandate to press technology and economics to achieve those levels of effluent reduction which he believes to be practicable in the first instance and attainable in the second.[FN14]

> FN14. S.Rep.No.92-414, 92d Cong., 1st Sess. 42 (1971), reprinted in Legislative History at 1460; U.S.Code Cong. & Admin.News 1972, pp. 3668, 3709.

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[2] The EPA argues that since s 402 provides that "the Administrator may . . . issue a permit for the discharge of any pollutant" (emphasis added), he is given the discretion to exempt point sources from the permit requirements altogether. This argument, as to what Congress meant by the word "may" in s 402, is insufficient to rebut the plain language of the statute and the committee reports. We say this with due awareness of the deference normally due "the construction of a new statute by its implementing agency."NRDC v. Train, 166 U.S.App.D.C. at 326, 510 F.2d at 706; see Zuber v. Allen, 396 U.S. 168, 192, 90 S.Ct. 314, 24 L.Ed.2d 345 (1969); Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965). The use of the word "may" in s 402 means only that the Administrator has discretion either to issue a permit or to leave the discharger subject to the total proscription of s 301. This is the natural reading, and the one that retains the fundamental logic of the statute.

Under the EPA's interpretation the Administrator would have broad discretion to exempt large classes of point sources from any or all requirements of the FWPCA. This is a result that the legislators did not intend. Rather they stressed that the FWPCA was a tough law that relied on explicit mandates to a degree uncommon in legislation of this type. A statement of Senator Jennings Randolph of West Virginia, Chairman of the Senate Committee responsible for the Act, is illustrative.

> I stress very strongly that Congress has become very specific on the steps it wants taken with regard to environmental protection. We have written into law precise standards and definite guidelines on how the environment should be protected. We have done more than just provide broad directives for administrators to follow. . . .
>
> In the past, too many of our environmental laws have contained vague generalities. What we are attempting to do now is provide laws that can be administered with certainty and precision. I think that is what the American people expect that we do.[FN15]
>
> FN15.117 Cong.Rec. 38805 (1971), reprinted in Legislative History at 1272. See also the comments of Senator Montoya on the original Senate bill.
>
> Your committee has placed before you a tough bill. This body and this Nation would not have it be otherwise. Our legislation contains an important principle of psychology: Men seldom draw the best from themselves unless pressed by circumstances and deadlines. This bill contains deadlines and it imposes rather tough standards on industry, municipalities, and all other sources of pollution. Only under such conditions are we likely to press the technological threshold of invention into new and imaginative developments that will allow us to meet the objectives stated in our bill.
>
> 117 Cong.Rec. 38808 (1971), reprinted in Legislative History at 1278.

There are innumerable references in the legislative history to the effect that the Act is founded on the "basic premise that a discharge of pollutants without a permit is unlawful and that discharges not in compliance with the limitations and conditions for a permit are unlawful."[FN16]Even when infeasibility arguments were squarely raised, ***1376** ****154** the legislature declined to abandon the permit requirement.[FN17] We stand by our previous interpretation of the Act's scheme for the enforcement of effluent limitations:

> FN16.118 Cong.Rec. 10215 (1972) (Rep. Clausen), reprinted in Legislative History at 378. See, e. g., H.R.Rep.No.92-911 92d Cong., 2d Sess. 100 (1972), reprinted in Legislative History at 787; S.Rep.No.92-414; 92d Cong., 1st Sess. 42-43 (1971), reprinted in Legislative History at 1460-61; 118 Cong.Rec. 10661 (1972) (Rep. Podell), reprinted in Legislative History at 574.
>
> FN17. The House rejected an amendment designed to avoid the problems of including irrigation return flows in the permit program. Congressman Teno Roncalio of Wyoming offered an amendment on the floor of the House that would have explicitly exempted irrigated agriculture from the NPDES permit program.
>
> Mr. RONCALIO. . . .

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> I offer my amendment so that a serious omission to H.R. 11896 can be corrected before we end up with a law that would be virtually impossible to enforce. My amendment would specifically exempt irrigated agriculture from sections 301(a), 302 and 304 of the Federal Water Pollution Control Act.
>
> I think my colleagues will agree that the type of salinity problems created by irrigation runoff are simply not as alarming as the more common pollutants discharged by industrial and municipal facilities. Substantial salinity concentrations have little effect on recreational use of water or its suitability for the propagation of fish.
>
> My amendment is necessary, Mr. Chairman, because at the present time we could not enforce pollution control on irrigation systems. It is virtually impossible to trace pollutants to specific irrigation lands, making these pollutants a nonpoint source in most cases. Second, we do not have the technology to deal with irrigation runoff (as contrasted to industrial pollution) and if we begin making laws to control something that cannot be handled with our given technological knowledge, we will be doing many thousand farmers and ranchers a great disservice. In fact, we will be doing the Federal Government a great disservice if we actually pass a Federal water pollution control bill that cannot be fully enforced.
>
> 118 Cong.Rec. 10764-65 (1972), reprinted in Legislative History at 651. The amendment was rejected.

After dates set forth in (s 301(b)), a person must obtain a permit and comply with its terms in order to discharge any pollutant. The conditions of the permit must assure that any discharge complies with the applicable requirements of numerous sections including the effluent limitations of section 301(b).
NRDC v. Train, 166 U.S.App.D.C. at 316, 510 F.2d at 696 (emphasis added; footnotes omitted).

We also note that all the Supreme Court decisions referring to s 402 view the permit as the only means by which a point source polluter can avoid the ban on discharges found in s 301. Strictly speaking these expressions may be dicta, for they do not touch directly on the interpretation of s 402. But they are at least a considered reading of what the Act appears to mean.

In Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976), Justice Marshall characterized the enforcement scheme of the FWPCA as follows:

(E)ffluent limitations are enforced through a permit program. The discharge of "pollutants" into water is unlawful without a permit issued by the Administrator of the EPA or, if a State has developed a program that complies with the FWPCA, by the State. . . .

Id. at 7, 96 S.Ct. at 1941 (footnote omitted).

In EPA v. State Water Resources Control Board, 426 U.S. 200, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976), the issue was whether federal installations were subject to state NPDES programs. Justice White's majority opinion describes NPDES at 205, 96 S.Ct. at 2025 (footnote omitted):

Under NPDES, it is unlawful for any person to discharge a pollutant without obtaining a permit and complying with its terms. An NPDES permit serves to transform generally applicable effluent limitations and other standards including those based on water quality into the obligations (including a timetable for compliance) of the individual discharger, and the Amendments provide for direct administrative and judicial enforcement of permits.

In E. I. du Pont de Nemours v. Train, 430 U.S. 112, 97 S.Ct. 965, 51 L.Ed.2d 204 (1977), the Court held that under FWPCA the EPA can set uniform effluent limitations through industry-wide regulations rather than develop them on an individual basis during the permit issuance process. But the Court, per Justice Stevens, clearly indicated*1377 **155 that those limitations were translated into obligations of the discharger through their inclusion in an NPDES permit.Id. at 119-20, 97 S.Ct. 965.

The wording of the statute, legislative history, and precedents are clear: the EPA Administrator does not have authority to exempt categories of point sources

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from the permit requirements of s 402. Courts may not manufacture for an agency a revisory power inconsistent with the clear intent of the relevant statute. In holding that the FPC does not have authority to exempt the rates of small producers from regulation under the Natural Gas Act, the Supreme Court observed:

It is not the Court's role . . . to overturn congressional assumptions embedded into the framework of regulation established by the Act. This is a proper task for the Legislature where the public interest may be considered from the multifaceted points of view of the representational process.

FPC v. Texaco, Inc., 417 U.S. 380, 400, 94 S.Ct. 2315, 2327, 41 L.Ed.2d 141 (1974).

II. ADMINISTRATIVE INFEASIBILITY

The appellants have stressed in briefs and at oral argument the extraordinary burden on the EPA that will be imposed by the above interpretation of the scope of the NPDES program. The spectre of millions of applications for permits is evoked both as part of appellants' legislative history argument that Congress could not have intended to impose such burdens on the EPA and as an invitation to this court to uphold the regulations as deviations from the literal terms of the FWPCA necessary to permit the agency to realize the general objectives of that act. During oral argument we asked for supplemental briefs so that the appellants could expand on their infeasibility arguments. We consider EPA's infeasibility contentions in turn.

A. Uniform National Effluent Limitations

EPA argues that the regulatory scheme intended under Titles III and IV of the FWPCA requires, first, that the Administrator establish national effluent limitations [FN18] and, second, that these limitations be incorporated in the individual permits of dischargers. EPA argues that the establishment of such limitations is simply not possible with the type of point sources involved in the 1973 regulations, which essentially involve the discharge of runoff i. e., wastewaters generated by rainfall that drain over terrain into navigable waters, picking up pollutants along the way.

FN18. See FWPCA s 502(11), 33 U.S.C. s 1362(11) (Supp. V 1975):

> The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

There is an initial question, to what extent point sources are involved in agricultural, silvicultural, and storm sewer runoff. The definition of point source in s 502(14), including the concept of a "discrete conveyance", suggests that there is room here for some exclusion by interpretation. We discuss this issue subsequently. Meanwhile, we assume that even taking into account what are clearly point sources, there is a problem of infeasibility which the EPA properly opens for discussion.

EPA contends that certain characteristics of runoff pollution make it difficult to promulgate effluent limitations for most of the point sources exempted by the 1973 regulations:

The major characteristic of the pollution problem which is generated by runoff . . . is that the owner of the discharge point . . . has no control over the quantity of the flow or the nature and amounts of the pollutants picked up by the runoff. The amount of flow obviously is unpredictable because it results from the duration and intensity of the rainfall event, the topography, the type of ground cover and the saturation point of the land due to any previous ***1378 ****156** rainfall. Similar factors affect the types of pollutants which will be picked up by that runoff, including the type of farming practices employed, the rate and type of pesticide and fertilizer application, and the conservation practices employed . . .

An effluent limitation must be a precise number in order for it to be an effective regulatory tool; both the discharger and the regulatory agency need to have an identifiable standard upon which to determine whether the facility is in compliance. That was the principal of the passage of the 1972 Amendments.

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Federal Appellants' Memorandum on "Impossibility" at 7-8 (footnote omitted). Implicit in EPA's contentions is the premise that there must be a uniform effluent limitation prior to issuing a permit. That is not our understanding of the law.

In NRDC v. Train, we described the interrelationship of the effluent limitations and the NPDES permit program, 166 U.S.App.D.C. at 327, 510 F.2d at 707 (footnotes omitted):

The Act relies on effluent limitations on individual point sources as the "basis of pollution prevention and elimination." . . . Section 301(b) contains a broad description of phase one and phase two effluent limitations, to be achieved by July 1, 1977 and July 1, 1983, respectively. The limitations established under section 301(b) are to be imposed upon individual point sources through permits issued under the National Pollutant Discharge Elimination System (NPDES) established by section 402. Those permits are to contain schedules which will assure phased compliance with the effluent limitations no later than the final dates set forth in section 301(b). Section 304(b) calls for the publication of regulations containing guidelines for effluent limitations for classes and categories of point sources. These guidelines are intended to assist in the establishment of section 301(b) limitations that will provide uniformity in the permit conditions imposed on similar sources within the same category by diverse state and federal permit authorities.

As noted in NRDC v. Train, the primary purpose of the effluent limitations and guidelines was to provide uniformity among the federal and state jurisdictions enforcing the NPDES program and prevent the "Tragedy of the Commons" [FN19] that might result if jurisdictions can compete for industry and development by providing more liberal limitations than their neighboring states.166 U.S.App.D.C. at 329, 510 F.2d at 709. The effluent limitations were intended to create floors that had to be respected by state permit programs.

> FN19. As one commentator has recently written:
>
> The Tragedy of the Commons arises in non-centralized decisionmaking under conditions in which the rational but independent pursuit by each decisionmaker of its own self-interest leads to results that leave all decisionmakers worse off than they would have been had they been able to agree collectively on a different set of policies.
>
> Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 Yale L.J. 1196, 1211 (1977). The classic account of the Tragedy of the Commons can be found in Hardin, The Tragedy of the Commons, 162 Science 1243 (1968). Hardin makes the point in the context of sheep-grazing. Put simply, even over-simply, Hardin shows that if no one is authorized to set limits to preserve open pasture land as a whole, allowing sheep to graze on that land may lead to serious overgrazing, as each herdsman thinks only of his own advantage. The solution lies in some mandate, from above or by agreement, with sanctions to compel conformance.

But in NRDC v. Train it was also recognized that permits could be issued before national effluent limitations were promulgated and that permits issued subsequent to promulgation of uniform effluent limitations could be modified to take account of special characteristics of subcategories of point sources.

Prior to the promulgation of effluent limitations under section 301, the director of a state program is instructed merely to impose such terms and conditions in each permit as he determines are necessary to carry out the provisions of the Act. Once ***1379 **157** an effluent limitation is established, however, the state director and the regional EPA Administrator are required to apply the specified, uniform effluent limitations, modified only as necessary to take account of fundamentally different factors pertaining to particular point sources within a given class or category. Any variation in the uniform limitations adopted for specific dischargers must be approved by the Administrator.

166 U.S.App.D.C. at 330, 510 F.2d at 710 (footnotes omitted).

Another passage in NRDC v. Train touches on the

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infeasibility problem. We noted that "(t)he statutory framework is not so tightly drawn as to require guidelines for each and every class and category of point source regardless of the need for uniform guidelines or to mandate that all guidelines be published prior to December 31 (1974) regardless of their quality or the burden that task would place upon the agency."Id. at 320-21, 510 F.2d at 710-11. In that case this court fully appreciated that technological and administrative constraints might prevent the Administrator from developing guidelines and corresponding uniform numeric effluent limitations for certain point sources anytime in the near future. The Administrator was deemed to have the burden of demonstrating that the failure to develop the guidelines on schedule was due to administrative or technological infeasibility.166 U.S.App.D.C. at 333, 510 F.2d at 713.Yet the underlying teaching was that technological or administrative infeasibility was a reason for adjusting court mandates to the minimum extent necessary to realize the general objectives of the Act.[FN20] It is a number of steps again to suggest that these problems afford the Administrator the authority to exempt categories of point sources from the NPDES program entirely.

FN20. In NRDC v. Train, this court stated:

> A federal equity court may exercise its discretion to give or withhold its mandate in furtherance of the public interest, including specifically the interest in effectuating the congressional objective incorporated in regulatory legislation. We think the court may forebear the issuance of an order in those cases where it is convinced by the official involved that he has in good faith employed the utmost diligence in discharging his statutory responsibilities. The sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him "to do an impossibility."
>
> 166 U.S.App.D.C. at 333, 510 F.2d at 713 (footnotes omitted). For reasons stated in this opinion, we conclude that to require the EPA Administrator to include silvicultural, agricultural, and storm sewer point sources in the NPDES program is not to require him "to do an impossibility."

With time, experience, and technological development, more point sources in the categories that EPA has now classed as exempt may be amenable to national effluent limitations achieved through end-of-pipe technology or other means of pollution control. EPA has noted its own success with runoff from mining operations:

> EPA has found that in the area of runoff from mining operations, there is sufficient predictability because of a longer history of regulation and the relatively confined nature of the operations that numerical limitations can be established. Thus, consistent with EPA's position stated earlier that it will expand the permit program where its capability of establishing effluent limitations allows, appropriate limitations have been created and the permit program expanded.
>
> Federal Appellants' Memorandum on "Impossibility" at 8.

[3] In sum, we conclude that the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silvicultural, and storm water runoff point sources. The technological or administrative infeasibility of such limitations may result in adjustments in the permit programs, as will be seen, but it does not authorize the Administrator to exclude the relevant point source from the NPDES program.

B. Alternative Permit Conditions under s 402(a)

EPA contends that even if it is possible to issue permits without national effluent limitations,***1380 **158** the special characteristics of point sources of runoff pollution make it infeasible to develop restrictions on a case-by-case basis. EPA's implicit premise is that whether limitations are promulgated on a class or individual source basis, it is still necessary to articulate any limitation in terms of a numerical effluent standard. That is not our understanding.

[4] Section 402 provides that a permit may be issued upon condition "that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to taking of necessary implementing actions relating to all such

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requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act."33 U.S.C. s 1342(a) (Supp. V 1975) (emphasis added). This provision gives EPA considerable flexibility in framing the permit to achieve a desired reduction in pollutant discharges. The permit may proscribe industry practices that aggravate the problem of point source pollution.[FN21]

> FN21. That Congress did not regard numeric effluent limitations as the only permissible limitation on a discharger is supported by s 302(a) of the Act, 33 U.S.C. s 1312(a) (Supp. V 1975):
>
> Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under (s 301(b) of the Act), would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.
>
> The emphasis has been added.

EPA's counsel caricatures the matter by stating that recognition of any such authority would give EPA the power "to instruct each individual farmer on his farming practices."Federal Appellants Memorandum on "Impossibility" at 12. Any limitation on a polluter forces him to modify his conduct and operations. For example, an air polluter may have a choice of installing scrubbers, burning different fuels or reducing output. Indeed, the authority to prescribe limits consistent with the best practicable technology may be tantamount to prescribing that technology. Of course, when alternative techniques are available, Congress intended to give the discharger as much flexibility as possible in choosing his mode of compliance. See, e. g., H.Rep.No.92-911, 92d Cong., 2d Sess. 107, reprinted in Legislative History at 794. We only indicate here that when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all.

It may be appropriate in certain circumstances for the EPA to require a permittee simply to monitor and report effluent levels; EPA manifestly has this authority.[FN22] Such permit conditions might be desirable where the full extent of the pollution problem is not known.

> FN22. FWPCA s 402(a)(3), (b)(2)(B), 33 U.S.C. s 1342(a)(3), (b)(2)(B) (Supp. V 1975). EPA concedes that it has this authority. Federal Appellants' Memorandum on "Impossibility" at 14.

C. General Permits

Finally, EPA argues that the number of permits involved in the absence of an exemption authority will simply overwhelm the Agency. Affidavits filed with the District Court indicate, for example, that the number of silviculture point sources may be over 300,000 and that there are approximately 100,000 separate storm sewer point sources.[FN23] We are and must be sensitive to ***1381 **159** EPA's concerns of an intolerable permit load. But the District Court and the various parties have suggested devices to mitigate the burden to accommodate within a practical regulatory scheme Congress's clear mandate that all point sources have permits. All that is required is that EPA makes full use of its interpretational authority. The existence of a variety of options belies EPA's infeasibility arguments.

> FN23. Affidavit of William H. McCredie, Director, Industrial Forestry, of the NFPA; Affidavit of Walter G. Gilbert, Chief of the Municipal Operations Branch, Municipal Waste Water Systems Div., EPA Office of Air and Water Programs.

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[5] Section 402 does not explicitly describe the necessary scope of a NPDES permit. The most significant requirement is that the permit be in compliance with limitation sections of the Act described above. As a result NRDC and the District Court have suggested the use of area or general permits. The Act allows such techniques. Area-wide regulation is one well-established means of coping with administrative exigency. An instance is area pricing for natural gas producers, which the Supreme Court upheld in Permian Basin Area Rate Cases, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968).[FN24] A more dramatic example is the administrative search warrant, which may be issued on an area basis despite the normal Fourth Amendment requirement of probable cause for searching specific premises. Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

> FN24. In Permian Basin the Supreme Court observed:
>
> The Commission has asserted, and the history of producer regulation has confirmed, that the ultimate achievement of the Commission's regulatory purposes may easily depend upon the contrivance of more expeditious administrative methods. The Commission believes that the elements of such methods may be found in area proceedings."(C)onsiderations of feasibility and practicality are certainly germane" to the issues before us. . . . We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted.
>
> 390 U.S. at 777, 88 S.Ct. at 1365.

In response to the District Court's order, EPA promulgated regulations that make use of the general permit device.42 Fed.Reg. 6846-53 (Feb. 4, 1977). The general permit is addressed to a class of point source dischargers, subject to notice and opportunity for public hearing in the geographical area covered by the permit. Although we do not pass on the validity of the February, 1977, regulations, they serve to dilute an objection of wholesale infeasibility.[FN25]

> FN25. It is also of some, albeit limited, significance that the House Committee on Government Operations found EPA's administrative problems with applying the permit program to animal feedlots "grossly exaggerated." It was of the opinion that the Administrator did not have authority to exempt point sources from the NPDES program. H.Rep.No.93-1012, 93d Cong., 2d Sess. 15-30 (1974).

Our approach is not fairly subject to the criticism that it elevates form over substance that the end result will look very much like EPA's categorical exemption. It is the function of the courts to require agencies to comply with legislative intent when that intent is clear, and to leave it to the legislature to make adjustments when the result is counterproductive.[FN26] At the same time, where intent on an issue is unclear,***1382 **160** we are instructed to afford the administering agency the flexibility necessary to achieve the general objectives of the Act.Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645, 653,93 S.Ct. 2448,37 L.Ed.2d 235 (1973); United States v. Southwestern Cable Co., 392 U.S. 157, 177-78, 88 S.Ct. 1994, 20 L.Ed.2d 1001 (1968); Permian Basin Area Rate Cases, 390 U.S. 747, 780, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968). These lines of authority conjoin in our approach. We insist, as the Act insists, that a permit is necessary; the Administrator has no authority to exempt point sources from the NPDES program. But we concede necessary flexibility in the shaping of the permits that is not inconsistent with the clear terms of the Act.

> FN26. The Supreme Court recently reiterated this instruction in Union Electric Co. v. EPA, 427 U.S. 246, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). There the Court held that the EPA Administrator could not consider claims of technological or economic infeasibility when approving state implementation plans under the Clean Air Act Amendments of 1970, 42 U.S.C. ss 1857a-1857l (1970). Such claims were held only to be cognizable by the states in the plan design stage or by the Administrator when drawing up compliance orders. Justice Marshall, writing for the Court, emphasized that federal courts are not to ignore clear expressions of Congressional intent in order to accommodate claims of technological or eco-

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nomic infeasibility.

> Allowing such claims to be raised by appealing the Administrator's approval of an implementation plan . . . would frustrate congressional intent. It would permit a proposed plan to be struck down as infeasible before it is given a chance to work, even though Congress clearly contemplated that some plans would be infeasible when proposed. And it would permit the Administrator or a federal court to reject a State's legislative choices in regulating air pollution, even though Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent. Technology forcing is a concept somewhat new to our national experience and it necessarily entails certain risks. But Congress considered those risks in passing the 1970 Amendments and decided that the dangers posed by uncontrolled air pollution made them worth taking. Petitioner's theory would render that considered legislative judgment a nullity, and that is a result we refuse to reach.
>
> 427 U.S. at 268-69, 96 S.Ct. at 2531 (footnote omitted). See also Wilderness Society v. Morton, 156 U.S.App.D.C. 121, 171, 479 F.2d 842, 892 (1973), cert. denied, 411 U.S. 917, 93 S.Ct. 1550, 36 L.Ed.2d 309 (quoting United States v. City and County of San Francisco, 310 U.S. 16, 31-32, 60 S.Ct. 749, 84 L.Ed. 1050 (1940): " 'We cannot accept the contention that administrative rulings such as those relied on can thwart the plain purpose of a valid law.' ")

There is also a very practical difference between a general permit and an exemption. An exemption tends to become indefinite: the problem drops out of sight, into a pool of inertia, unlikely to be recalled in the absence of crisis or a strong political protagonist. In contrast, the general or area permit approach forces the Agency to focus on the problems of specific regions and requires that the problems of the region be reconsidered at least every five years, the maximum duration of a permit.[FN27]

> FN27.33 U.S.C. s 1342(a)(3), (b)(1)(B) (Supp. V 1975).

D. Other Interpretational Powers

[6] Many of the intervenor-appellants appear to argue that the District Court should be reversed because the categories exempted by EPA are nonpoint sources and are not, in fact, point sources.[FN28]We agree with the District Court "that the power to define point and nonpoint sources is vested in EPA and should be reviewed by the court only after opportunity for full agency review and examination."396 F.Supp. at 1396. The only issue precisely confronted by all the parties and properly framed for our consideration is whether the Administrator has authority to exempt point sources from the NPDES program. We also think that we should, for similar reasons, not consider at this time the appropriate definition of "discharge of any pollutant" as used in s 402. The American Iron and Steel Institute as amicus curiae has pressed upon us the argument that the term "discharge" as used in s 402 was intended to encompass only "volitional flows" that add pollutants to navigable waters. Most forms of runoff, it is argued, do not involve volitional flows.

> FN28. This appears to be the position of the Colorado River Water Conservation District and the NFPA with respect to silvicultural activities, and NMPF, less obviously, with respect to small dairy farms.
>
> We would put in the same category EPA's contention that the exempt categories are best handled under the areawide waste treatment management planning process of s 208 of the FWPCA, 33 U.S.C. s 1288 (Supp. V 1975). By its terms that section is concerned with areawide waste treatment plans that identify and control "agriculturally and silviculturally related non-point sources of pollution."Id.s 1288(b)(2)(F).

[7] We assume that FWPCA, however tight in some respects, leaves some leeway to EPA in the interpretation of that statute, and in that regard affords the Agency some means to consider matters of feasibility. However, for reasons already noted, we do not consider these particular contentions as to interpretation on the merits.

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III. CONCLUSION

[8] As the Supreme Court recently stated in a FWPCA case, "(t)he question . . .is**161 *1383 not what a court thinks is generally appropriate to the regulatory process, it is what Congress intended . . .."E. I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138, 97 S.Ct. 965, 980, 51 L.Ed.2d 204 (1977). We find a plain Congressional intent to require permits in any situation of pollution from point sources. We also discern an intent to give EPA flexibility in the structure of the permits, in the form of general or area permits. We are aware that Congress hoped that more of the NPDES permit program would be administered by the states at this point.[FN29] But it also made provision for continuing EPA administration. Imagination conjoined with determination will likely give EPA a capability for practicable administration. If not, the remedy lies with Congress.

FN29. See, e. g., 118 Cong.Rec. 10235 (1972) (Rep. Ichord) reprinted in Legislative History at 428.

So ordered.

MacKINNON, Circuit Judge, concurring:

I concur in the very sound and practical construction set forth in the foregoing opinion. Any person concerned with the actual application and enforcement of laws would necessarily be concerned by the application of the relevant legislation to all point sources in agriculture and particularly to irrigated agriculture. Concern would also lie in the congressional admission that present technology is inadequate to enable our citizens to meet the standards and deadlines the Act imposes; in passing the law, Congress was relying on the future "invention (of) new and imaginative developments that will allow us to meet the objectives of our bill."[FN1]In gambling parlance, Congress in enacting the law was "betting on the come." It is relying on our citizens in the near future to develop the complex technology to meet all the law's standards and objectives on time. The difficulty with that approach is that the hopes of Congress in this respect, like that of any gambler, might not be realized. The agency in this case, however, has shown that it takes a realistic view of both the situation and the task of meeting the difficult requirements and objectives of the Act. I sincerely hope that the ability of the agency to issue section 402 permits including general area permits [FN2] will permit it to meet the present and future compliance problems posed by the Act in a practical way.

FN1. Comments of Senator Montoya, 117 Cong.Rec. 38808 (1971), quoted in court's opinion at 12, reprinted in Legislative History at 1278.

FN2. As an example, an area permit with appropriate conditions and modifications could issue for the agricultural point sources within the Grand River Irrigation District, or the watershed of the Roaring Fork River and tributaries, etc.

C.A.D.C.,1977.
Natural Resources Defense Council, Inc. v. Costle
568 F.2d 1369, 10 ERC 2025, 186 U.S.App.D.C. 147, 8 Envtl. L. Rep. 20,028

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Supreme Court of California
Kendra O'CONNELL, Plaintiff and Appellant,
v.
CITY OF STOCKTON et al., Defendants and Respondents.
No. S135160.

July 26, 2007.
Rehearing Denied Oct. 10, 2007.[FN*]

FN* Baxter, Chin, and Corrigan, JJ., are of the opinion the petition should be granted.

Background: City taxpayer filed action against city for declaratory and injunctive relief, challenging municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to solicit act of prostitution or to attempt to consummate drug transaction. The Superior Court, San Joaquin County, No. CV019275,Elizabeth Humphreys, J., entered judgment for city after it sustained city's demurrer and taxpayer did not amend complaint. Taxpayer appealed. The Court of Appeal reversed, ruling that state law preempted ordinance, and the Supreme Court granted review.

Holdings: The Supreme Court, Kennard, J., held that:
(1) ordinance was preempted by California Uniform Controlled Substances Act (UCSA), and
(2) ordinance was preempted by statute addressing subject of seizures of vehicles by local entities as nuisances when used in connection with prostitution;
disapproving *Horton v. City of Oakland*, 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371.

Judgment of Court of Appeal affirmed.

Corrigan, J., filed a dissenting opinion in which Baxter and Chin, JJ., joined.

Opinion, 27 Cal.Rptr.3d 696, superseded.

West Headnotes

[1] Counties 104 24

104 Counties
104II Government
104II(A) Organization and Powers in General
104k24 k. Legislative Control of Acts, Rights, and Liabilities. Most Cited Cases

Municipal Corporations 268 65

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k65 k. Local Legislation. Most Cited Cases
A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general state laws; if otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. West's Ann.Cal. Const. Art. 11, § 7.

[2] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
A conflict between state law and local legislation exists if the local legislation duplicates, contradicts, *or* enters an area fully occupied by general law, either expressly or by legislative implication. West's Ann.Cal. Const. Art. 11, § 7.

[3] Municipal Corporations 268 65

268 Municipal Corporations
268III Legislative Control of Municipal Acts, Rights, and Liabilities
268k65 k. Local Legislation. Most Cited Cases
For purposes of preemption, a local ordinance duplicates state law when it is coextensive with state law. West's Ann.Cal. Const. Art. 11, § 7.

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[4] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to Constitutional and Statutory Provisions in General. Most Cited Cases
For purposes of preemption, a local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law. West's Ann.Cal. Const. Art. 11, § 7.

[5] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
For purposes of preemption, a local ordinance enters a field fully occupied by state law in either of two situations: when the Legislature expressly manifests its intent to occupy the legal area or when the Legislature impliedly occupies the field. West's Ann.Cal. Const. Art. 11, § 7.

[6] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
When the Legislature has not expressly stated its intent to occupy an area of law, courts look to whether it has impliedly done so for purposes of preemption analysis, which occurs in three situations: when (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

[7] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
With respect to the implied occupation of an area of law by the Legislature's full and complete coverage of it, where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme.

[8] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.

[9] Municipal Corporations 268 592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality

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268k592(1) k. In General. Most Cited Cases
When a local ordinance is identical to a state statute, it is clear that the field sought to be covered by the ordinance has already been occupied by state law.

[10] Municipal Corporations 268 ⚷592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases

Zoning and Planning 414 ⚷14

414 Zoning and Planning
414I In General
414k14 k. Concurrent and Conflicting Regulations. Most Cited Cases
When local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute.

[11] Controlled Substances 96H ⚷3

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk3 k. Preemption. Most Cited Cases

Municipal Corporations 268 ⚷592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to acquire any controlled substance was preempted by the California Uniform Controlled Substances Act (UCSA); comprehensive nature of the UCSA in defining drug crimes and specifying penalties, including forfeiture, was so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. West's Ann.Cal.Health & Safety Code § 11000 et seq.
See 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Introduction to Crimes, § 53 et seq.; Cal. Jur. 3d, Municipalities, § 244 et seq.

[12] Forfeitures 180 ⚷1

180 Forfeitures
180k1 k. Nature and Scope as Punishment. Most Cited Cases

Municipal Corporations 268 ⚷592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Municipal ordinance permitting city to seize and hold for forfeiture any motor vehicle used to solicit an act of prostitution was preempted by statute addressing subject of seizures of vehicles by local entities as nuisances when used in connection with prostitution; Legislature expressly preempted the field through the interplay of two Vehicle Code provisions, one that precluded local regulation in areas covered by the Vehicle Code, and a second that set up a pilot program for local entities to declare vehicles used in specified prostitution-related offenses public nuisances, but which did not allow for forfeitures; disapproving *Horton v. City of Oakland*, 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371. West's Ann.Cal.Vehicle Code §§ 21, 22659.5.

[13] Controlled Substances 96H ⚷3

96H Controlled Substances
96HI In General
96Hk1 Nature and Power to Regulate
96Hk3 k. Preemption. Most Cited Cases

Forfeitures 180 ⚷1

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180 Forfeitures
180k1 k. Nature and Scope as Punishment. Most Cited Cases

Municipal Corporations 268 ⚿592(1)

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k592 Concurrent and Conflicting Exercise of Power by State and Municipality
268k592(1) k. In General. Most Cited Cases
Vehicle Code provision that set up a pilot program for local entities to declare vehicles used in specified prostitution-related offenses public nuisances was not a "special statute" for purposes of preemption analysis of city ordinance permitting the forfeiture of any vehicle used to solicit an act of prostitution or to acquire or attempt to acquire any controlled substance; statute was a general rather than a special law because it applied generally throughout the state, and was not limited to certain listed cities and counties. West's Ann.Cal.Vehicle Code §§ 21, 22659.5.
***69** Mark T. Clausen, Santa Rosa, for Plaintiff and Appellant.

O'Melveny & Myers, Meredith N. Landy, Dale M. Edmondson, Joshua D. Baker, Menlo Park, and Michel Amaral for American Civil Liberties Union of Northern California, American Civil Liberties Union of Southern California, American Civil Liberties Union of San Diego & Imperial Counties and California Attorneys for Criminal Justice as Amici Curiae on behalf of Plaintiff and Appellant.

Meyers, Nave, Riback, Silver & Wilson, Joseph M. Quinn, San Francisco; Richard E. Nosky, Jr., City Attorney, and Lori S. Whittaker, Deputy City Attorney, for Defendants and Respondents.

Rockard J. Delgadillo, City Attorney (Los Angeles) and Claudia McGee Henry, Assistant City Attorney, for The League of California Cities as Amicus Curiae on behalf of Defendants and Respondents.

KENNARD, J.

***1065** ****585** Our state Constitution allows cities and counties to enact and enforce local ordinances so long as they are "not in conflict" with the state's "general laws." (Cal. Const., art. XI, § 7.) Any conflicting ordinance is preempted by state law and thus void.

At issue here is a city ordinance allowing forfeiture to the city of any vehicle used to commit certain acts made criminal by state law. The Court of Appeal held that state law preempts the city ordinance. We agree.

I.

Plaintiff Kendra O'Connell filed this taxpayer action (Code Civ. Proc., § 526a) against the City of Stockton and its city ***70** attorney (City) challenging ***1066** the constitutionality of a City ordinance labeled "Seizure and Forfeiture of Nuisance Vehicles." Plaintiff sought to enjoin the City's enforcement of the ordinance. The trial court sustained the City's demurrer to plaintiff's complaint, allowing plaintiff leave to amend her complaint. When plaintiff did not do so, the trial court dismissed the lawsuit.

On plaintiff's appeal, the Court of Appeal reversed. It held that the forfeiture ordinance****586** violated procedural due process because it failed to provide for a reasonably prompt postseizure probable cause hearing on the City's right to hold a vehicle pending its forfeiture. The Court of Appeal also held that the forfeiture ordinance was preempted by specific state law provisions governing vehicle forfeiture. This conclusion conflicted with *Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, in which a different Court of Appeal held that a vehicle forfeiture ordinance enacted by the City of Oakland, and similar to the one at issue here, was not preempted by state law. We granted review to resolve the conflict.[FN1]

FN1. In granting review in this case, we asked the parties to brief these three issues: "(1) Does California state law preempt provisions of the City of Stockton Municipal Code pertaining to 'Seizure and Forfeiture of Nuisance Vehicles'? (2) Do the Stockton municipal code provisions allowing the commencement of vehicle forfeiture proceedings 'as soon as practicable but in any case within one year' satisfy the state and federal constitutional requirements of proce-

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dural due process? (3) Do the municipal code provisions allocating proceeds of vehicle forfeitures to the offices of the San Joaquin County District Attorney and the Stockton City Attorney violate state or federal constitutional guarantees of substantive or procedural due process?" Because we conclude here that state law preempts the provisions of the Stockton Municipal Code pertaining to seizure and forfeiture of nuisance vehicles, thus invalidating those provisions and rendering them unenforceable, we need not address the remaining two issues.

II.

Part XXV of Chapter 5 of the Stockton Municipal Code is entitled "Seizure and Forfeiture of Nuisance Vehicles." The term "forfeiture," as used here, means that the government assumes title to property used to further some illegal purpose. (See *United States v. Bajakajian* (1998) 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314; *Bennis v. Michigan* (1996) 516 U.S. 442, 116 S.Ct. 994, 134 L.Ed.2d 68; *Calero-Toledo v. Pearson Yacht Leasing Co.* (1974) 416 U.S. 663, 682, 94 S.Ct. 2080, 40 L.Ed.2d 452.)

The ordinance at issue provides for the forfeiture of "[a]ny vehicle used *to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance,*" with "[a]ll right, title, and interest" thereafter vesting in the City. (Stockton Mun.Code, §§ 5-1000 & 5-1002, italics added.) A vehicle so used may be seized by a peace officer (1) with a court order; (2) incident to an arrest or a search conducted with a search warrant; or (3) with probable cause to believe the vehicle was used in the specified ***1067** crimes. (*Id.,* § 5-1003.) Within one year of police seizure of a vehicle, either the Stockton City Attorney or the San Joaquin County District Attorney "shall file a petition for forfeiture with the Superior Court of San Joaquin County." (*Id.,* § 5-1006, subds. (a) & (b).) The prosecuting agency must then give notice of the intended forfeiture proceedings to interested parties, advising them of their rights to file claims with the San Joaquin County Superior Court challenging the forfeiture. (*Id.,* § 5-1006, subd. (c).)

A trial of the vehicle forfeiture can be before either a court or a jury. The City *****71** has "the burden of proving by a preponderance of the evidence" that the vehicle was used for one of the prohibited purposes set out in the ordinance. (Stockton Mun.Code, § 5-1006, subd. (f).) Forfeited vehicles are to be sold; the proceeds are used first to pay any "bona fide or innocent purchaser, conditional sales vendor, mortgagee or lien holder" of the vehicle, when such payment is ordered by the prosecuting agency. (*Id.,* § 5-1008, subd. (a).) After paying the costs of publishing the notice of the forfeiture action and of storing, repairing and selling the vehicle (*id.,* § 5-1008, subd. (b)), remaining funds are distributed in proportionate shares to the involved prosecuting and law enforcement agencies. (*Id.,* § 5-1008, subd. (c).)

We now turn to the principles governing state law preemption of local ordinances.

III.

[1][2] We have in the past articulated the following principles on state law preemption of local ordinances. "Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general [state] laws.'[¶] 'If otherwise valid local legislation conflicts with state law, ****587** it is preempted by such law and is void.' [Citations.] [¶] 'A conflict exists if the local legislation " '*duplicates, contradicts,* or *enters an area fully occupied* by general law, either expressly or by legislative implication. [Citations.]' " ' " (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 844 P.2d 534(*Sherwin-Williams*), italics added; see also *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1251, 23 Cal.Rptr.3d 453, 104 P.3d 813(*American Financial*).) We explain the italicized terms below.

[3] A local ordinance *duplicates* state law when it is "coextensive" with state law. (*Sherwin-Williams, supra,* 4 Cal.4th at pp. 897-898, 16 Cal.Rptr.2d 215, 844 P.2d 534, citing *In re Portnoy* (1942) 21 Cal.2d 237, 240, 131 P.2d 1 [as "finding 'duplication' where local legislation purported to impose the same criminal prohibition that general law imposed"].)

[4] ***1068** A local ordinance *contradicts* state law when it is inimical to or cannot be reconciled with state law. (*Sherwin-Williams, supra,* 4 Cal.4th at p.

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898, 16 Cal.Rptr.2d 215, 844 P.2d 534, citing *Ex Parte Daniels* (1920) 183 Cal. 636, 641-648, 192 P. 442 [as finding " 'contradiction' " in a local ordinance that set the maximum speed limit for vehicles below that set by state law].)

[5] A local ordinance *enters a field fully occupied* by state law in either of two situations-when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534; see also 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551["[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost."].)

[6] When the Legislature has not expressly stated its intent to occupy an area of law, we look to whether it has *impliedly* done so. This occurs in three situations: when " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount***72** state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

[7][8][9] With respect to the *implied* occupation of an area of law by the Legislature's full and complete coverage of it, this court recently had this to say: " 'Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme.' " (*American Financial, supra,* 34 Cal.4th at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813, quoting *Tolman v. Underhill* (1952) 39 Cal.2d 708, 712, 249 P.2d 280.) We went on to say: " 'State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation.' " (*American Financial, supra,* at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813.) We thereafter observed: " 'Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.' " (*Id.* at p. 1253, 23 Cal.Rptr.3d 453, 104 P.3d 813, quoting *In re Lane* (1962) 58 Cal.2d 99, 102, 22 Cal.Rptr. 857, 372 P.2d 897.) When a local ordinance is identical to a state statute, it is clear that " 'the field sought to be covered by the ordinance has already been occupied' " by state law. (*American Financial, supra,* at p. 1253, 23 Cal.Rptr.3d 453, 104 P.3d 813.)

***1069** [10] "[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will ****588** presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

With these principles in mind, we consider below whether state law preempts the City's vehicle forfeiture ordinance.

IV.

[11] As we noted earlier, the City's ordinance permits the forfeiture of any vehicle used to "to solicit an act of prostitution, *or* to acquire or attempt to acquire any controlled substance." (Stockton Mun.Code, § 5-1000, italics added.) We turn first to the latter aspect. The Court of Appeal concluded that this part of the ordinance was preempted by certain provisions of the California Uniform Controlled Substances Act (UCSA) (Health & Saf. Code, § 11000 et seq.) authorizing forfeiture of vehicles used in specified serious drug crimes. We too look to the UCSA as the source of state law preemption of this part of the City's forfeiture ordinance. But unlike the Court of Appeal, we do not rely solely on the UCSA's vehicle forfeiture provisions; instead, we consider the UCSA *as a whole,* a comprehensive scheme defining and setting the penalties for crimes involving controlled substances. This requires an analysis of various UCSA provisions pertinent here. It makes for tedious reading, but it is central to a resolution of the preemption issue presented.

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As defined in the UCSA, controlled substances include every "drug, substance, or immediate precursor" listed in one of five schedules set out in Health and Safety ***73** Code sections 11054 through 11058. The schedules include all commonly known controlled substances, such as marijuana, cocaine, heroin, and methamphetamine, as well as many others less familiar. The UCSA not only regulates the lawful use and distribution of controlled substances (see Health & Saf. Code, §§ 11100, 11210-11211), but it also defines as criminal offenses the unlawful possession and distribution of specified controlled substances (see Health & Saf. Code, § 11350-11361).

In addition, the UCSA sets forth the penalties for criminal violations of its provisions. For example, unlawful possession of "not more than 28.5 grams of marijuana" is a misdemeanor offense carrying a maximum fine of $100 and no jail time. (Health & Saf. Code, § 11357, subd. (b).) For more serious possessory drug crimes and those involving manufacture, sale, or possession for sale, the UCSA prescribes felony penalties. (See Health & Saf. Code, ***1070** §§ 11350, subd. (a) [providing that certain specified possessory drug crimes "shall be punished by imprisonment in the state prison"], 11351. 5 [punishment for the sale of cocaine base is "imprisonment ... for ... three, four, or five years"], 11352, subd. (a) [providing state prison terms of three, four, or five years for transporting, importing into California, selling, furnishing, administering, or giving away certain controlled substances.].)

In Health and Safety Code section 11470, the Legislature specifies the following as subject to forfeiture: Controlled substances "manufactured, distributed, dispensed, or acquired in violation of this division"(*id.,* subd. (a)); the raw materials, products and equipment used, or intended to be used, to manufacture, compound, process, deliver, import or export controlled substances in violation of the UCSA (*id.,* subd. (b)); items used as containers for the property described in subdivisions (a) and (b) (*id.,* subd. (c)); "[a]ll books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division"(*id.,* subd. (d)); moneys, negotiable instruments, securities and other valuable items furnished or intended to be furnished in illicit exchanges of specified controlled substances as well as all proceeds traceable to such exchanges (*id.,* subd. (f)); and the real property of persons convicted of specified drug crimes involving such property, except for real property "used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use"(*id.,* subd. (g)).

Subdivision (e) of Health and Safety Code section 11470 governs forfeitures involving boats, airplanes, and *vehicles.* It makes the ****589** following subject to forfeiture: "The interest of any registered owner of a boat, airplane, or *any vehicle* [other than certain vehicles used for agricultural purposes] which has been *used as an instrument to facilitate the manufacture of, or possession for sale or sale of* " specified amounts of certain controlled substances including 14.25 grams or more of heroin or cocaine base, or a substance containing 14.25 grams or more of heroin or cocaine base, or 28.5 grams or more of all Schedule I controlled substances except marijuana, peyote, or psilocybin, or 10 pounds or more of marijuana, peyote, or psilocybin, or methamphetamine in any amount. (Health & Saf. Code, § 11470, subd. (e), italics added.) Health and Safety Code section 11488.4, subdivision (i)(1), states that forfeiture of airplanes, boats, and vehicles requires *proof beyond a reasonable doubt* that the property to be forfeited was used for one of the specified drug offenses. Thus, as relevant here, under the UCSA a vehicle can be forfeited to a government entity only upon proof beyond a reasonable ***74** doubt that the vehicle was "used as an instrument to facilitate the manufacture of, or possession for sale or sale" of specified amounts of certain controlled substances. (Health & Saf. Code, § 11470, subd. (e).)

***1071** In Health and Safety Code section 11469, the Legislature has established "guidelines" that local law enforcement and prosecutorial agencies should follow in enforcing the state law provisions regarding the seizure and forfeiture of property used to commit drug crimes in California. It points out, among other things, that "[l]aw enforcement is the principal objective of forfeiture," and that "[p]otential revenue [to be derived from property forfeiture] must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses." (Health & Saf. Code, § 11469, subd. (a).) And it reminds prosecutors that they should "[w]henever appropriate ... seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action." (*Id.,* subd. (c).)

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Recognizing that forfeiture can sometimes lead to harsh results, the Legislature included this cautionary language in subdivision (j) of Health and Safety Code section 11469: "Although civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law."

We summarize: State law, through the UCSA (Health & Saf. Code, § 11000 et seq.), defines controlled substances, regulates their use, and sets penalties for their unlawful possession and distribution. Among the available penalties is vehicle forfeiture but, as pointed out earlier, only upon *proof beyond a reasonable doubt* of the vehicle's use to facilitate certain serious drug crimes (manufacture, sale, or possession for sale of methamphetamine, or of heroin or cocaine base, marijuana, peyote, or psilocybin and other Schedule I controlled substances in specified amounts). By way of contrast, the City's ordinance allows the harsh penalty of vehicle forfeiture upon proof merely by a *preponderance of evidence* of a vehicle's use simply "to attempt to acquire" any amount of any controlled substance (for instance, less than 28.5 grams of marijuana, a low-grade misdemeanor warranting only a $100 fine and no jail time and not subject to vehicle forfeiture under the UCSA).

The comprehensive nature of the UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation. The UCSA accordingly occupies the field of penalizing crimes involving controlled substances, thus impliedly preempting the City's forfeiture ordinance to the extent it calls for the forfeiture of vehicles used "to acquire or attempt to acquire" (Stockton Mun.Code, § 5-1000) controlled substances regulated under the UCSA. (See *American Financial, supra,* 34 Cal.4th at p. 1252, 23 Cal.Rptr.3d 453, 104 P.3d 813; *Tolman v. Underhill, supra,* 39 Cal.2d at p. 712, 249 P.2d 280.)

*1072 Relevant to this conclusion is our decision in *In re Lane, supra,* 58 Cal.2d 99, 22 Cal.Rptr. 857, 372 P.2d 897. That case involved **590 a statewide statutory scheme that, we held, fully occupied an area of regulation, thereby preempting a municipal ordinance covering the same legal area. The statewide statutory scheme consisted of comprehensive criminal proscriptions against specified sexual conduct, and the local law was a Los Angeles City ordinance criminalizing sexual intercourse between ***75 persons not married to each other. Although the state statutory scheme included laws prohibiting prostitution, pimping and pandering, bigamy, acts against public decency, rape, and various sex crimes against children, it did not include any offense for "simple fornication or adultery." (*In re Lane, supra,* 58 Cal.2d at p. 104, 22 Cal.Rptr. 857, 372 P.2d 897.) This court reasoned that the exclusion of fornication or adultery from the comprehensive state law scheme showed the Legislature's intent that "such conduct sh[ould] not be criminal." (*Ibid.*)

Here too the Legislature's comprehensive enactment of penalties for crimes involving controlled substances, but exclusion from that scheme of any provision for vehicle forfeiture for simple possessory drug offenses, manifests a clear intent to reserve that severe penalty for very serious drug crimes involving the manufacture, sale, or possession for sale of specified amounts of certain controlled substances.

We now consider the Court of Appeal's decision in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, which involved an ordinance similar to the one at issue here, but which reached a conclusion contrary to that of the Court of Appeal in this case. *Horton* held that the UCSA's forfeiture provisions did not preempt Oakland's ordinance allowing forfeiture of vehicles used to acquire or attempt to acquire controlled substances. It reasoned that the ordinance covered an area of law "untouched by statewide legislation" because the UCSA's forfeiture provisions, which apply only to persons possessing for sale or selling illicit drugs, were "silent with regard to vehicles used by *drug buyers.*" (*Horton v. City of Oakland, supra,* 82 Cal.App.4th at p. 586, 98 Cal.Rptr.2d 371, italics added.) In focusing solely on the UCSA's forfeiture provisions, *Horton* failed to consider the UCSA's comprehensive scheme of drug crime penalties, which include forfeiture of various items of property, including vehicles, when used in specified serious

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drug offenses. Thus, *Horton* never addressed whether the UCSA as a whole constitutes a comprehensive scheme that fully occupies the field of penalizing crimes involving controlled substances. Because of our conclusion in this case that the UCSA's *comprehensive regulation of drug offenses as a whole* impliedly preempts the City's ordinance allowing forfeiture of vehicles used in acquiring controlled substances, we need not resolve whether the UCSA's *forfeiture provisions alone**1073 establish implied state preemption, the question entertained by the Courts of Appeal in this case and in *Horton.*[FN2]

> FN2. The dissent, relying on the Court of Appeal decision in *Horton,* asserts there is no conflict between the City's ordinance and the UCSA because the former covers drug buyers while the latter is silent on that topic. Not so. As comprehensive statewide legislation that broadly addresses the problems arising from illicit drugs, the UCSA, through its generally applicable laws against possession or attempted possession of all controlled substances, imposes criminal penalties on those who, in the words of the City's forfeiture ordinance, "acquire or attempt to acquire any controlled substance."

[12] We now turn to the other aspect of the City's forfeiture ordinance, allowing for the forfeiture of any vehicle used to solicit prostitution. The Court of Appeal below held that the Legislature had *expressly preempted* that field through the interplay of two Vehicle Code provisions: Vehicle Code section 21 (precluding local regulation in areas covered by the Vehicle Code absent express legislative authorization) and Vehicle Code section 22659.5, subdivision (a) (setting up a five-year pilot program for local entities to declare vehicles***76 used in specified prostitution-related offenses public nuisances). The Court of Appeal was correct, as we explain below.

Vehicle Code section 21 states: "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and *no local authority **591 shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.*" (Italics added.) Thus, under section 21, local regulation of any "matter[ ]" covered by this state's Vehicle Code is prohibited unless the Legislature has expressly allowed local regulation in that field. (See *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550, 183 Cal.Rptr. 73, 645 P.2d 124; *Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1177-1178, 105 Cal.Rptr.2d 172.)

The matter that is covered by the Vehicle Code and that is pertinent here is the authority of local government entities to declare a vehicle used in soliciting prostitution to be a public nuisance. That topic is addressed in the Vehicle Code by subdivision (a) of section 22659.5. That provision allows a city or a county to "adopt an ordinance establishing a five-year pilot program that implements procedures for declaring *any motor vehicle a public nuisance* " when used in the commission of specified criminal conduct, including acts covered in Penal Code section 647, subdivision (b), which prohibits engaging in acts of prostitution as well as soliciting or agreeing to engage in such acts. (Veh.Code, § 22659.5, subd. (a), italics added.)

Subdivision (b) of Vehicle Code section 22659.5 permits local ordinances adopted under the statutory scheme to "include procedures to *1074 enjoin and abate the declared [vehicular] nuisance by ordering the defendant not to use the vehicle again," and it allows for the forcible removal of vehicles. Under subdivision (c) of section 22659.5, any action taken to abate a public nuisance is limited to those "specified in subdivision (b)," that is, an injunction against or abatement of a declared nuisance or the removal of a nuisance vehicle. Section 22659.5 contains no language, however, that would allow a local entity such as the City here to seize and forfeit a vehicle that, through its use in soliciting prostitution, has created a public nuisance.

We summarize: Vehicle Code section 21 precludes local regulation of "matters covered" by the Vehicle Code, absent express legislative authorization. The use of vehicles in soliciting prostitution is a matter that the Vehicle Code covers in section 22659.5, which establishes a five-year pilot program under which cities and counties may treat as a public nuisance any vehicle used in soliciting prostitution, but that pilot program does not allow for forfeiture of the vehicle. There being no express legislative authorization for any other form of local regulation of the matter covered by Vehicle Code section 22659.5, Vehi-

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cle Code section 21 precludes an ordinance like the City's, which seeks to regulate vehicle use in soliciting prostitution by requiring forfeiture of the vehicle. Under Vehicle Code section 21, therefore, the City's ordinance is *expressly preempted* by state law.

In addressing a similar ordinance adopted by the City of Oakland, the Court of Appeal in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, reached a contrary conclusion. First, asking whether Vehicle Code section 22659.5 had *impliedly* preempted the Oakland ordinance allowing forfeiture of any vehicle used to solicit prostitution, *Horton* concluded it had not, because Oakland had not adopted the five-year pilot program authorized by that statute. (*Horton, supra,* 82 Cal.App.4th at p. 589, 98 Cal.Rptr.2d***77 371.) *Horton* then considered whether there was *express* preemption under Vehicle Code section 21. As we have seen, absent express legislative authorization of local regulation in a legal area, Vehicle Code section 21 prohibits such regulation pertaining to any "matters" covered by the Vehicle Code. And section 22659.5 of the Vehicle Code specifically covers abatement of public nuisance vehicles used to solicit prostitution, the same subject of the Oakland ordinance at issue in *Horton.* But *Horton* reasoned that because Vehicle Code section 22659.5 allowed local entities to abate as a public nuisance any vehicle used to solicit prostitution only if the local entity participated in "an optional and limited pilot program" authorized by section 22659.5, that state statute, according to *Horton,* did not cover the same subject as the Oakland ordinance, which was not based on the pilot program. (*Horton, supra,* 82 Cal.App.4th at p. 591, 98 Cal.Rptr.2d 371.) We disagree.

**592 Vehicle Code section 22659.5, and the vehicle forfeiture ordinances in this case and in *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371,*1075 both address the same subject: abatement of a public nuisance created by vehicles used in soliciting prostitution. As the Court of Appeal here noted, the purpose of the state Legislature's enactment of section 22659.5 was to ascertain through a five-year pilot program " 'whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities.' " (Quoting Stats.1993, ch. 485, § 1, pp. 2595-2596.) Because the Vehicle Code addresses the same subject-nuisance abatement of vehicles used to solicit prostitution-as the City's ordinance at issue, and the state Legislature has in no other statute provided for local regulation in this area, the City's ordinance is preempted by state law.[FN3]

> FN3. To the extent it is contrary to our conclusions here, we disapprove *Horton v. City of Oakland, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371.

[13] We also reject the City's characterization of Vehicle Code section 22659.5 as a "special statute" that cannot support a claim of preemption, because such claims must be "founded upon a 'conflict with *general laws* ' "(*Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 177, 36 Cal.Rptr.2d 886, italics added). Vehicle Code section 22659.5 allows, but does not require, a city or a county to adopt an ordinance declaring vehicles used in specified sex offenses to be a public nuisance in accord with the terms of the statute. But this statute is, contrary to the City's contention, a general rather than a special law because it applies generally throughout the state; it is not limited to certain listed cities and counties. Thus, Vehicle Code section 22659 cannot be characterized as special legislation. (See Cal. Const., art. IV, § 16 [authorizing the enactment of statutes applicable to particular cities or counties]; *White v. State of California* (2001) 88 Cal.App.4th 298, 305, 105 Cal.Rptr.2d 714 [Legislature must have rational basis for singling out a city or county to be " 'affected by [a special] statute' "]; *Baldwin, supra,* at p. 177, 36 Cal.Rptr.2d 886 [uncodified enactments granting limited powers over groundwaters to "specifically identified special districts" described as "special acts"].)

We now turn to the City's arguments made in overall support of its vehicle forfeiture ordinance. According to the City, the ordinance does not conflict with any state law, and therefore a necessary precondition***78 to state preemption is lacking. We disagree. As discussed earlier, the ordinance conflicts with state law because anyone using a vehicle "to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance"-conduct exclusively within the purview of state law-is subject to penalties in excess of those prescribed by the Legisla-

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ture.

The City also argues that because it operates under a charter rather than under the general laws governing California cities and therefore meets the ***1076** requirement of Government Code section 34101 for a "chartered city," our state Constitution allows it to adopt and enforce ordinances in conflict with state law so long as the subject matter constitutes a "municipal affair [ ]" rather than a "statewide concern." (See Cal. Const., art. XI, § 5; *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399, 14 Cal.Rptr.2d 470, 841 P.2d 990.) The City asserts that its vehicle forfeiture ordinance deals with a municipal affair, namely, abating the nuisance caused by vehicular traffic associated with the "illicit commercial activity" of obtaining drugs or soliciting prostitution within the City's boundaries. We are not persuaded, as explained below.

The illicit commercial activities-prostitution and trafficking in controlled substances-that are the focus of the City's vehicle forfeiture ordinance are matters of statewide concern that our Legislature has comprehensively addressed through various provisions of this state's Penal and Vehicle Codes, leaving no room for further regulation at the local level. One of the lesser harms associated with these crimes is the traffic congestion that may result when vehicles****593** are used to solicit acts of prostitution or to buy or sell drugs illegally on city streets. Although traffic congestion is a local problem that cities ordinarily are authorized to address, they may not do so by means of an ordinance that, by allowing forfeiture of a vehicle used to commit a specific state law violation, impinges on an area fully occupied or exclusively covered by state law.[FN4]

> FN4. Because the determination to preclude or to allow local regulation in a field addressed by state law resides exclusively with the state Legislature, that body can, of course, expressly authorize local entities to enact ordinances such as the one in this case that we conclude is preempted under existing law.

DISPOSITION

The judgment of the Court of Appeal is affirmed.

WE CONCUR: GEORGE, C.J., WERDEGAR, and MORENO, JJ.

Dissenting Opinion by CORRIGAN, J.

I respectfully dissent from the opinion of my colleagues.

The ordinance at issue is a practical and responsible attempt by the City of Stockton (Stockton) to address problems it, and many other cities face on a daily basis. The ordinance speaks to a narrow, pressing and quite real local concern. Street commerce in drugs and sex forces innocent people to share their neighborhoods with pimps, prostitutes, and drug dealers who use their streets as a bazaar for illegal transactions.

Article XI, section 7 of the California Constitution provides, "[a] county or city may make and enforce within it limits all local, police, sanitary, and ***1077** other ordinances and regulations not in conflict with general laws." Article XI, section 5 of the California Constitution, commonly referred to as the "home rule" doctrine, "reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather *****79** than one of 'statewide concern.' [Citation.]" (*Horton v. City of Oakland* (2000) 82 Cal.App.4th 580, 584-585, 98 Cal.Rptr.2d 371(*Horton*).) "[W]hen local government regulates in an area over which it traditionally has exercised control, ... California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821.)

In deciding whether a local ordinance enacted by a charter city, like Stockton, is valid, we apply the following analysis: " 'First, a court must determine whether there is a genuine conflict between a state statute and a municipal ordinance. [Citations.] Only after concluding there is an actual conflict should a court proceed with the second question; i.e., does the local legislation impact a municipal or statewide concern?' [Citation.] Courts should avoid making unnecessary choices between competing claims of municipal and state governments 'by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other.' [Citation.] In other words, the preemp-

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tion question begins with an inquiry into the existence of a conflict. If there is no conflict, the home rule doctrine is not brought into play." (*Horton, supra,* 82 Cal.App.4th at p. 585, 98 Cal.Rptr.2d 371.)

The majority relies on the California Uniform Controlled Substances Act (UCSA) (Health & Saf. Code, § 11000 et seq.) in reaching its conclusion that Stockton's ordinance is preempted because of a conflict. It views the UCSA as so comprehensive in nature "as to manifest the Legislature's intent to preclude local regulation." (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 74, 162 P.3d at p. 589.) The majority's reasoning, if accepted, requires preemption on an all-encompassing basis.

Unlike the majority, I cannot conclude that the overall structure of the UCSA "manifests a clear intent" to limit the penalty of vehicle forfeiture to "very serious drug crimes involving the manufacture, sale, or possession for sale of" drugs. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 75, 162 P.3d at p. 590.) The Legislature has authorized a state prison sentence of up to three years for the simple ****594** possession of even a small amount of certain drugs. (health & saf. code, § 11350; pen.code, § 18.) it is difficult to conclude that the Legislature intended to deprive a person of freedom for simple possession, but intended to protect an automobile from forfeiture in only very serious cases of drug manufacture and sale.

1078** Certainly the Legislature has not said that was its intent and no legislative history [FN1] has been cited to support that conclusion.**80** Unlike the majority, I do not discern a conflict between the UCSA and Stockton's ordinance.

> FN1. In *Horton, supra,* 82 Cal.App.4th at page 588, 98 Cal.Rptr.2d 371, the court rejected an argument that it should "retroactively infer ... preemptive intent from recent legislative activity" based on the Legislature's passage of Assembly Bill No. 662 (1999-2000 Reg. Sess.) That bill amended Health and Saf. Code section 11469 et seq."to include forfeitures under the criminal profiteering statute. The bill also declared the Legislature's intent that forfeiture law be exclusive of any local ordinance or regulation, declaring the subject a matter of statewide concern." (*Horton,* at p. 588, 98 Cal.Rptr.2d 371.) The Governor vetoed Assembly Bill No. 662 explaining, " '[i]t is not appropriate for the State to take away the tools from Oakland, Sacramento, and other cities considering the adoption of similar ordinances without a more careful analysis of the amount of discretion which should be left to cities to craft their own remedies in response to local conditions.' " (*Horton,* at p. 588, 98 Cal.Rptr.2d 371.)The court concluded, "Thus the bill's statement that '[t]he provisions of this section are a clarification and declaration of existing law' is far from definitive. A 'clear indication' is one which needs no further elucidation. The Legislature's perceived need to 'clarify' demonstrates that the statute as drafted fails to provide the clear indication required to preempt by implication." *(Ibid.)*

In fact, "the [UCSA] is silent with regard to vehicles used by drug *buyers.*" (*Horton, supra,* 82 Cal.App.4th at p. 586, 98 Cal.Rptr.2d 371, fn. omitted.) Stockton has included these vehicles in its nuisance abatement program in an attempt to alleviate the concerns of its residents. Thus, rather than creating a conflict, Stockton's ordinance covers an area undisturbed by the UCSA.

Also, Stockton's ordinance does not conflict with provisions of the Vehicle Code. The majority relies on Vehicle Code section 21, which states, "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein." The majority next refers to Vehicle Code section 22659.5, which authorizes a city to "adopt an ordinance establishing a five-year pilot program that implements procedures for declaring any motor vehicle a public nuisance" used in soliciting prostitution. (See maj. opn., *ante,* 63 Cal.Rptr.3d at p. 76, 162 P.3d at p. 591, italics omitted.) The majority concludes that because Vehicle Code section 22659.5 covers nuisance abatement of vehicles used in soliciting prostitution and "does not allow for forfeiture of the vehicle," Stockton's ordinance is preempted under the provisions of Vehicle Code section 21. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 76, 162 P.3d at p. 591.)

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I disagree. The provisions of Vehicle Code section 22659.5 merely authorize "an optional and limited pilot program." (*Horton, supra,* 82 Cal.App.4th at p. 591, 98 Cal.Rptr.2d 371.) Vehicle Code section 22659.5"does not preclude local governments from enacting other provisions if they decide not to adopt the proffered pilot program." (*Horton,* at p. 589, 98 Cal.Rptr.2d 371.) Like the Oakland ordinance in *Horton,* ***1079** Stockton's ordinance "was not enacted pursuant to section 22659. 5, [therefore] it is not constrained by the procedural requirements of that statute." (*Ibid.,* fn. omitted.) Thus, Stockton's ordinance does not conflict with state law. The ordinance does not interfere with the operation of state law as it is not "inimical" to its provisions in the relevant sense, and it "does not prohibit what the statute commands or command what it prohibits." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 902, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

This court has counseled that we should carefully ensure "that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." (*California Fed. Savings and Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17, 283 Cal.Rptr. 569, 812 P.2d 916.) Contrary to the majority, I would hold that there ****595** is no conflict between state law and Stockton's ordinance.

In addition, assuming there is a conflict with state law, because Stockton is a charter city, it argues that its ordinance addresses a municipal affair: nuisance abatement. Stockton urges that the ordinance's forfeiture provisions are necessary to reduce the urban blight and traffic caused by prostitution and drug dealing. The majority summarily rejects this argument holding that although traffic congestion is a *****81** harm associated with these crimes, illicit commercial activities such as prostitution and drug trafficking are matters of statewide concern. (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 78, 162 P.3d at p. 592.)

The majority quotes our opinion in *Big Creek Lumber Co. v. County of Santa Cruz, supra,* 38 Cal.4th 1139, 45 Cal.Rptr.3d 21, 136 P.3d 821, for the rule that when a local government regulates an area which it traditionally exercised control, courts will presume that the regulation is not preempted by state statute, absent the Legislature's clear intention to preempt. (*Id.* at p. 1149, 45 Cal.Rptr.3d 21, 136 P.3d 821; see maj. opn., *ante,* 63 Cal.Rptr.3d at p. 72, 162 P.3d at p. 592.) The majority fails to follow this rule. It cannot be said that when the Legislature enacted the UCSA and Vehicle Code, it intended to invalidate local nuisance ordinances targeting the urban blight created by drug trafficking and prostitution.

The majority also relies on *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 23 Cal.Rptr.3d 453, 104 P.3d 813(*American Financial*), where we concluded that a statutory scheme that regulated predatory lending practices preempted an Oakland ordinance that purported to regulate predatory lending practices in the Oakland home mortgage market. In that case, we found it significant that "the Legislature was not suddenly entering an area previously governed by municipalities," but instead was addressing a subject matter that historically has been regulated "at the state, not the municipal, level." (*Id.* at p. 1255, 23 Cal.Rptr.3d 453, 104 P.3d 813.)

***1080** Here, by contrast, Stockton passed an ordinance aimed at nuisance abatement, a traditionally local police power.[FN2] (*People v. Johnson* (1954) 129 Cal.App.2d 1, 6, 277 P.2d 45 ["[a] city has the power to pass general police regulations to prevent nuisances"]; see also *The City of Oakland v. Williams* (1940) 15 Cal.2d 542, 549, 103 P.2d 168 [cities " possess the necessary police power, both under constitutional grant and under their respective charters, to abate nuisances"].) In acknowledging what constitutes a "nuisance," the Civil Code defines the term broadly as including "[a]nything which is injurious to health, including, *but not limited to,* the illegal sale of controlled substances," or anything that is " indecent or offensive ... so as to interfere with the comfortable enjoyment of life or property," or anything that "unlawfully obstructs the free passage or use, in the customary manner, of any ... public park, square, street, or highway...." (Civ.Code, § 3479, italics added; see also Civ.Code, § 3480["[a] public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal"].) Therefore, the traditionally local nature of nuisance regulation distinguishes this case from the situation presented in *American* *****82** *Financial, supra,* 34 Cal.4th 1239, 23 Cal.Rptr.3d 453, 104 P.3d

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813.

> FN2. The majority relies on *In re Lane* (1962) 58 Cal.2d 99, 22 Cal.Rptr. 857, 372 P.2d 897, in support of its conclusion that the UCSA thoroughly "occupies the field of penalizing crimes involving controlled substances." (Maj. opn., *ante,* 63 Cal.Rptr.3d at p. 74, 162 P.3d at p. 589.) *Lane* is distinguishable. It involved a statewide statutory scheme providing comprehensive criminal proscriptions against specified sexual conduct. *Lane* held void, a local ordinance that appears quaint nearly 50 years later, which purported to criminalize sexual intercourse between unmarried persons.
>
> This case involves a completely different situation. Here, Stockton's ordinance attempts to address the problems caused by drug dealing and prostitution, activities the city understandably views as public nuisances. (Civ.Code, §§ 3479, 3480, 3491.)

The majority does not address the compelling problem of urban blight for the poor and elderly, which is immediate, significant, and certainly a local concern. The aged homeowner****596** who must shut herself inside while drug transactions are conducted in her front yard, and the parents who must walk their children to school while commercial sex acts are performed in cars parked at the curb pay a heavy and very local price. Not all Californians confront these problems, but those who do have a pressing and localized need for protection.

It should not be the case that local governments require the permission of the state to protect their own citizens from nuisances that profoundly affect their quality of life and the quiet enjoyment of their own property.

***1081** Accordingly, I would reverse the judgment of the Court of Appeal.[FN3]

> FN3. I believe the distinctions drawn in *Horton, supra,* 82 Cal.App.4th 580, 98 Cal.Rptr.2d 371, are sound and should be adopted. *Horton* specifically left open the due process question raised by ordinances that impose a reduced burden of proof and the authorization of a one-year time frame before requiring notice and providing an opportunity for challenging the forfeiture. These procedural provisions are worthy of careful scrutiny.

WE CONCUR: BAXTER, and CHIN, JJ.
Cal.,2007.
O'Connell v. City of Stockton
41 Cal.4th 1061, 162 P.3d 583, 63 Cal.Rptr.3d 67, 07 Cal. Daily Op. Serv. 8821, 2007 Daily Journal D.A.R. 11,377, 33 A.L.R.6th 661

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Supreme Court of California
Jerry RICHMOND et al., Plaintiffs and Appellants,
v.
SHASTA COMMUNITY SERVICES DISTRICT, Defendant and Respondent.
No. S105078.

Feb. 9, 2004.

Background: Property owners brought action challenging constitutionality of resolution adopted by water district that increased connection fee charged to new users and continued unchanged, as part of connection fee, a fee for fire suppression. The Superior Court, Shasta County, No. 0134636,Richard A. McEachen, J., upheld enactment. Property owners appealed. The Court of Appeal affirmed in part and reversed in part. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) district's capacity charge, imposed on applicants for new service connections, was not an "assessment" subject to state constitutional restrictions;
(2) district's fee for fire suppression as part of new connection fee was not subject to constitutional restrictions on fees; and
(3) district could amend ordinance establishing new connection fees by resolution.

Judgment of the Court of Appeal reversed and matter remanded to that court with directions.

Opinion, 116 Cal.Rptr.2d 343, superseded.

West Headnotes

[1] Waters and Water Courses 405 ⚿203(1)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases

Water district's capacity charge, imposed on applicants for new service connections, was not an "assessment" subject to state constitutional restrictions on assessments, since district could only estimate number of connections and could not identify specific parcels for which new applications would be made, as required by constitutional provision. West's Ann.Cal. Const. Art. 13D, §§ 2, 4.
See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 110A, 110B; Cal. Jur. 3d, Property Tax, § 4.

[2] Constitutional Law 92 ⚿580

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k580 k. In General. Most Cited Cases
(Formerly 92k12)
The principles of constitutional interpretation are similar to those governing statutory construction.

[3] Constitutional Law 92 ⚿584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited Cases
(Formerly 92k13)
The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue.

[4] Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k14)

Constitutional Law 92 ⚿592

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92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k592 k. Plain, Ordinary, or Common Meaning. Most Cited Cases
(Formerly 92k14)
To determine intent of enactors of a constitutional provision, the Supreme Court begins by examining the constitutional text, giving the words their ordinary meanings.

[5] Constitutional Law 92 ⚿589

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k587 Effect and Consequences
92k589 k. Reasonableness of Result. Most Cited Cases
(Formerly 92k12)

Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k12)
Courts construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results.

[6] Constitutional Law 92 ⚿591

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k591 k. In General. Most Cited Cases
(Formerly 92k19)

Constitutional Law 92 ⚿615

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k615 k. Relation to Former Constitution. Most Cited Cases
(Formerly 92k19)

Statutes 361 ⚿179

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k177 Constitutional and Statutory Rules and Provisions
361k179 k. Interpretation Clauses and Definitions in Statutes Construed. Most Cited Cases

Statutes 361 ⚿212.6

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.6 k. Words Used. Most Cited Cases
Rule, holding that when a term has been given a particular meaning by a judicial decision it should be presumed to have the same meaning in later-enacted statutes or constitutional provisions, does not apply when the statute or constitutional provision contains its own definition of the term at issue; if the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts.

[7] Waters and Water Courses 405 ⚿203(1)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district's capacity charge, imposed on applicants for new service connections, was not a "development fee"; district had no authority to approve or disapprove property development, and a property owner could request a new service connection without proposing any new development.

[8] Waters and Water Courses 405 ⚿203(1)

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405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district's fee for fire suppression as part of new connection fee was not subject to constitutional restrictions on fees, since it was not imposed as an incident to ownership; although supplying water was a property-related service within constitutional definition of a fee or charge, a water service fee was a "fee or charge" only if it was imposed upon a person as an incident of property ownership, and making a new connection to the system was not such imposition, since it resulted from an owner's voluntary decision to apply for the connection. West's Ann.Cal. Const. Art. 13D, §§ 2(e), 3(b), 6(a, b); West's Ann.Cal.Gov.Code §§ 61621, 61621.3.

[9] Waters and Water Courses 405 ⚿203(1)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(1) k. Right to Make Charge and Liability Therefor in General. Most Cited Cases
Water district could amend ordinance establishing new connection fee by resolution under authority of Mitigation Fee Act, which allowed such action by ordinance or resolution; district was not subject to statute requiring sewage system actions to be enacted by ordinance. West's Ann.Cal.Gov.Code § 66016(b); West's Ann.Cal.Health & Safety Code § 5471.
***123 *414 **519** Law Offices of Walter P. McNeill and Walter P. McNeill, Redding, for Plaintiffs and Appellants.

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Betsy Strauss, City Attorney (Rohnert Park) for 84 California Cities, the Association of California Water Agencies and the California State Association of Counties as Amici Curiae on behalf of Defendant and Respondent.

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KENNARD, J.

In November 1996, California voters adopted Proposition 218, the Right to Vote on Taxes Act, which added articles XIII C and XIII D to the California Constitution. (See *Apartment Assn. of Los Angeles County, **415 Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 835, 102 Cal.Rptr.2d 719, 14 P.3d 930.) Article XIII D of the state Constitution (hereafter article XIII D) specifies various restrictions and requirements for assessments, fees, and charges that local governments impose on real property or on persons as an incident of property ownership. Here, the main issue is whether a charge that a local water district imposed as a condition of making a new connection to the water system, and that the district used to finance capital improvements to the water system, is subject to the restrictions of article XIII D. Other questions presented are whether article XIII D prohibits a local water district from continuing to include in the new connection fees a fire suppression charge, the proceeds of which are used to purchase firefighting and emergency medical equipment for the district's volunteer fire department, and whether an ordinance imposing a water connection fee may be amended by a resolution.

On these questions, we conclude: (1) a capacity charge imposed as a condition for making a new connection to a water system, the proceeds of which are used to finance capital improvements, is not an assessment within the meaning of article XIII D, and thus it is not subject to article XIII D's restrictions on assessments; (2) a fire suppression fee imposed as a condition for making a new connection to a water system, the proceeds of which are used to purchase

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firefighting and emergency medical***124 equipment, is not a property-related fee or charge under article XIII D, and thus it is not subject to article XIII D's prohibition against property-related fees and charges for general governmental services; and (3) an ordinance enacted by a community services district to impose a water connection fee may be amended by a resolution. Because these conclusions are consistent with the trial court's judgment but inconsistent with part of the Court of Appeal's opinion, we will reverse that court's judgment with directions to affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

Because neither party petitioned the Court of Appeal for a rehearing, we take the facts largely from that court's opinion. (See Cal. Rules of Court, rule 28(c)(2).)

Defendant Shasta Community Services District (the District) is a local public entity organized under the community services district law (Gov.Code, § 61000 et seq.). It operates a water system for residential and commercial users and a volunteer fire department that provides both fire suppression and emergency medical services. In February 1994, the District adopted an ordinance (No. 1-94) establishing a "standard connection fee" of $2,000, plus the cost of a water meter, for new water service connections. *416 According to the ordinance, this fee included a capacity charge [FN1] of $600 for future improvements to the water system and a fire suppression charge of $400. The ordinance did not expressly allocate the remaining $1,000, but one may infer that it covered the cost of installing the water service connection because the ordinance also provided that if the water main was not on the same side of the street or highway as the property to be served, "the District will charge the actual **521 cost of the connection to the extent such cost exceed[s] the sum of $1,000."

> FN1. The Government Code defines a "capacity charge" as "a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged." (Gov.Code, § 66013, subd. (b)(3).)

In November 1997, the District adopted a resolution (No. 10-97) to amend this ordinance. According to the resolution, applicants for new water service connections would be required to pay: (1) a "standard connection fee"; (2) the actual cost of a water meter; and (3) if the property owner chose to have the District install the service connection, the "actual cost of the materials, labor, and overhead" for installing the "entire service connection including the meter, line setter, meter box, appurtenant equipment, and mainline extension, if any." The "standard connection fee" consisted of a $3,176 capacity charge for capital improvements to the water system and a $400 fire suppression charge. The resolution stated that the $3,176 capacity charge was "based upon estimated project costs of $762,300 for future improvements assigned to the new development of 240 future connections which equals $3,176 per connection."

In March 1998, plaintiffs Jerry Richmond, Linda Panich, Hank Edelstein, and Victoria Edelstein, both individually and doing business as a joint venture, brought this action to test the validity of the resolution increasing the fees for new connections. (Code Civ. Proc., § 860; Gov.Code, §§ 66013, 66022.) They alleged that they owned real property within the District and also within an area proposed for annexation into the District. They challenged the resolution on many grounds, only three of which are relevant here: (1) The resolution imposed an assessment within the meaning of article XIII D, but ***125 the District had not satisfied the constitutional requirements for imposing an assessment; (2) the $400 fire suppression charge was a "fee" or "charge" within the meaning of article XIII D, and it violated article XIII D's prohibition against fees or charges for general governmental services; and (3) the 1994 ordinance could be amended only by another ordinance, not by a mere resolution. Plaintiffs requested a declaratory judgment that the resolution was void and a permanent injunction restraining the District from enforcing it.

*417 The action was tried to the court without a jury. At the trial, the District presented evidence showing, among other things, that the capital improvements to be funded by the $3,176 capacity charge, including a new 500,000-gallon storage tank, would both remedy existing deficiencies in the water system and expand the system's ability to provide service to new customers through new connections. The $3,176 charge was calculated by allocating 50 percent of the cost of the improvements to new connections and 50 percent to

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existing connections. Water customers throughout the district would benefit from the improvements, but customers in certain higher-elevation areas would receive somewhat less benefit than other customers. After considering the evidence, the superior court granted judgment for the District. The court concluded: (1) The connection fee imposed by resolution No. 10-97 is not a special assessment but a development fee exempt from article XIII D; (2) the fire suppression charge is merely the continuation of a fee imposed before article XIII D was enacted; and (3) the connection fee could legally be adopted by a resolution (enactment of an ordinance was not required).

On plaintiffs' appeal, the Court of Appeal affirmed the judgment, except as to the fire suppression charge. The court reasoned that the District's connection fee was not an assessment within the meaning of article XIII D because that constitutional provision by implication defines an assessment as a charge imposed on specific identified parcels, whereas the connection fee was not imposed on identified parcels. Because the connection fee was imposed only when a property owner requested a new service connection, the specific properties for which connections would be sought could not be identified (although the number of such requests could be estimated), and thus the connection charge could not be characterized as an assessment. The Court of Appeal also concluded that the connection fee, because it was incurred only when the owner voluntarily requested a new service connection, was properly characterized as a development fee, and as such it was exempt from the requirements of article XIII D.

****522** With respect to the fire suppression charge, however, the Court of Appeal accepted plaintiff's argument that it was a fee for general governmental services prohibited by section 6, subdivision (b)(5), of article XIII D. The Court of Appeal rejected the District's argument that this provision did not apply to fees authorized by laws enacted before article XIII D became effective, but only to fees that were newly enacted or increased thereafter.

Finally, the Court of Appeal concluded that the District could validly use a resolution to amend an ordinance.

*418 II. THE CAPACITY CHARGE

[1][2][3][4] To determine whether the District's $3,176 capacity charge, imposed only on applicants for new service connections, violates article XIII D's restrictions on assessments, we must interpret our state Constitution. "The principles of constitutional interpretation are similar to those governing statutory construction." *****126** (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, 105 Cal.Rptr.2d 46, 18 P.3d 1198.) The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue. (*Ibid.*) To determine that intent, we begin by examining the constitutional text, giving the words their ordinary meanings. (*Ibid.;* accord, *Leone v. Medical Board* (2000) 22 Cal.4th 660, 665, 94 Cal.Rptr.2d 61, 995 P.2d 191.)

Section 2 of article XIII D defines an "assessment" as "any levy or charge upon real property ... for a special benefit conferred upon the real property...." (Art. XIII D, § 2, subd. (b).) It defines "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large...." (*Id.*, § 2, subd. (i).)

Section 4 of article XIII D establishes procedures and requirements for assessments. A local public agency may not impose an assessment, as defined in article XIII D, unless: (1) the agency identifies "all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed" (art. XIII D, § 4, subd. (a)); (2) the agency obtains an engineer's report that supports the assessment (*id.*, § 4, subd. (b)); (3) the assessment does not exceed the reasonable cost of the proportional special benefit conferred on the affected parcel (*id.*, § 4, subds. (a) & (f)); and (4) after giving notice to affected property owners and holding a public hearing, the agency does not receive a majority protest based on ballots "weighted according to the proportional financial obligation of the affected property"(*id.*, § 4, subds. (c)-(e)).

To determine what constitutes an assessment under article XIII D, it is necessary to consider not only article XIII D's definition of an assessment, but also the requirements and procedures that article XIII D imposes on assessments. Article XIII D requires that an agency imposing an assessment identify "all parcels which *will* have a special benefit conferred upon them and upon which an assessment *will* be im-

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posed." (Art. XIII D, § 4, subd. (a), italics added.) The agency then must give written notice of the proposed assessment to the owners of these identified parcels (*id.*, § 4, subd. (c)) and provide an opportunity for a protest using ballots "weighted according to the proportional financial obligation of the affected property"(*id.*, § 4, subd. (e)).

419** Because the capacity charge is imposed only on property owners who apply for a new service connection, the District cannot identify the parcels upon which the capacity charge will be imposed. Here, the District *estimated* that there would be 240 new connection applications, but the District did not and could not *identify* the specific parcels for which new connection applications would be made. At most, the District can identify the parcels within its boundaries on which the capacity charge *would* be imposed *if* the owners applied for a service connection. But the matter is more complex, because many existing undeveloped parcels would likely be subdivided into an indeterminable number of smaller parcels, for each of which a connection might be requested, thus making it impossible to now determine "the proportional financial obligation of the affected property." And even this understates the problem, because owners of property outside the District's*523** boundaries may seek service connections by applying for annexation of their property into the District. Therefore, it is impossible for the District to comply with article XIII D's requirement that the agency identify the parcels on which the assessment will be imposed *****127** and provide an opportunity for a majority protest weighted according to the proportional financial obligation of the affected property.

We agree with the Court of Appeal that the proper conclusion to be drawn from this impossibility of compliance is that an assessment within the meaning of article XIII D must not only confer a special benefit on real property, but also be imposed on identifiable parcels of real property. Because the District does not impose the capacity charge on identifiable parcels, but only on individuals who request a new service connection, the capacity charge is not an assessment within the meaning of article XIII D.

[5] This construction is consistent with settled rules of constitutional interpretation. "Courts construe constitutional phrases liberally and practically; where possible they avoid a literalism that effects absurd, arbitrary, or unintended results." (*Carman v. Alvord* (1982) 31 Cal.3d 318, 327, 182 Cal.Rptr. 506, 644 P.2d 192; see also *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147, 43 Cal.Rptr.2d 693, 899 P.2d 79 ["a practical construction is preferred"].) Construing article XIII D's definition of assessment as applying only to charges imposed on identifiable parcels avoids the probably unintended result of prohibiting local water districts from imposing capacity charges, no matter how modest or reasonable, for new connections because of the inherent impossibility of identifying in advance the parcels for which new connections would later be requested.

This construction is also consistent with article XIII D's definition of an assessment as a "levy or charge *upon real property*...." (Art. XIII D, § 2, ***420** subd. (b), italics added.) [FN2] The District does not impose the capacity charge on real property as such, but on individuals who apply for new service connections. It is the applicant who must pay, and the District may not impose a lien or otherwise have recourse to the property to compel payment. Rather, the District simply does not initiate water service until the charge is paid. A charge that operates in this way cannot be described as a charge upon real property, within the meaning of article XIII D.

> FN2. In this regard, it may be instructive to compare article XIII D's definition of an assessment as a "levy or charge upon real property" (*id.*, § 2, subd. (b)) with its definition of a fee or charge as a "levy ... upon a parcel or upon a person as an incident of property ownership ..." (*id.*, § 2, subd. (e)). Although a property-related fee or charge may be imposed either on the property itself or upon the owner as an incident of ownership, a levy must be imposed on the property itself to qualify as an assessment under article XIII D.

Finally, this construction is consistent with the aim of Proposition 218 to enhance taxpayer consent. Here, the District proposed to divide the costs of new capital improvements between users receiving service through existing connections and users applying for new connections. This case concerns only imposition of costs on new connections. Presumably, any costs imposed on customers receiving service through ex-

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isting connections would be subject to article XIII D's voter approval requirements, and thus their consent. Customers who apply for new connections give consent by the act of applying. Moreover, water connection fees are already subject to significant constraints under Government Code section 66013.[FN3]

FN3. Government Code section 66013 provides:

"(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

"(b) As used in this section:

"(1) 'Sewer connection' means the connection of a structure or project to a public sewer system.

"(2) 'Water connection' means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

"(3) 'Capacity charge' means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

"(4) 'Local agency' means a local agency as defined in Section 66000.

"(5) 'Fee' means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

"(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

"(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

"(1) A description of the charges deposited in the fund.

"(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

"(3) The amount of charges collected in that fiscal year.

"(4) An identification of all of the following:

"(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

"(B) Each public improvement on which

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charges were expended that was completed during that fiscal year.

"(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

"(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

"(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

"(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

"(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

"(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

"(3) Charges collected on or before December 31, 1998.

"(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

"(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

"(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section."

*****128 *421 **524** Plaintiffs rely on this court's decision in *****129** *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935(*San Marcos*). The issue there was whether a provision of the state Constitution exempting public entities from payment of property taxes (Cal. Const., art. XIII, § 3, subd. (b)) applied to a local water district's capacity fee, used to fund capital improvements to the water system. The constitutional property tax exemption for public entities had been construed to include ***422** special assessments, but not user fees, and thus the issue presented to this court was whether the capacity charge was more properly characterized as a special assessment or as a user fee for purposes of this constitutional provision. We concluded that a capacity charge was a hybrid, in the sense that it had some characteristics of a user fee and some characteristics of an assessment. (*San Marcos, supra,* at p. 163, 228 Cal.Rptr. 47, 720 P.2d 935.) We concluded also, however, that the fee should be considered an assessment for purposes of the public entity property tax exemption. We established a bright-line rule that "a fee aimed at assisting a utility district to defray costs of capital ****525** improvements will be deemed a special assessment from which other public entities are exempt." (*Id.* at pp. 164-165, 228 Cal.Rptr. 47, 720 P.2d 935.) [FN4]

FN4. In response to our *San Marcos* decision, the Legislature granted local water districts authority to impose capacity charges on other public entities, thereby removing the public entity exemption. (See Gov.Code, §§ 54999-54999.6; *Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1189, 114 Cal.Rptr.2d 459, 36

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P.3d 2; *City of Marina v. Board of Trustees* (2003) 109 Cal.App.4th 1179, 1182-1183, 135 Cal.Rptr.2d 815; *Utility Cost Management v. East Bay Mun. Utility Dist.* (2000) 79 Cal.App.4th 1242, 1246-1247, 94 Cal.Rptr.2d 777.)

San Marcos, supra, 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935, is not on point here. We were not there construing the term "assessment" as used in article XIII D; instead, we were construing the constitutional provision exempting public entities from property taxes (Cal. Const., art. XIII, § 3, subd. (b)), a provision in which the term "assessment" does not appear. In deciding what constituted an assessment in *San Marcos,* we sought to determine and effectuate the constitutional purpose for exempting public entities from property taxes, a purpose that plays no role in interpreting the provisions of article XIII D that are at issue here. The characteristic that we found determinative for identifying assessments in *San Marcos*-that the proceeds of the fee were used for capital improvements-forms no part of article XIII D's definition of assessments. For each of these reasons, we agree with the Court of Appeal that *San Marcos* is not helpful, much less controlling, in this strikingly different context. (See *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2, 39 Cal.Rptr. 377, 393 P.2d 689 ["Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered."]; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1008, 239 Cal.Rptr. 656, 741 P.2d 154 [a word may have different legal meanings in different contexts]; *In re Marriage of Buol* (1985) 39 Cal.3d 751, 757, fn. 6, 218 Cal.Rptr. 31, 705 P.2d 354 [same].)

[6] Plaintiffs invoke the rule that when a term has been given a particular meaning by a judicial decision, it should be presumed to have the same meaning in later-enacted statutes or constitutional provisions. (See *People v. Hurtado* (2002) 28 Cal.4th 1179, 1188-1189, 124 Cal.Rptr.2d 186, 52 P.3d 116; *Arnett v. Dal* ***130** *Cielo* (1996) 14 Cal.4th 4, 19, 56 Cal.Rptr.2d 706, 923 **423** P.2d 1.) Plaintiffs argue that *San Marcos, supra,* 42 Cal.3d 154, 228 Cal.Rptr. 47, 720 P.2d 935, gave the term "assessment" a precise legal meaning as applying to capacity charges used to fund capital improvements, and therefore the term "assessment" in article XIII D, enacted after *San Marcos,* must be construed to have the same meaning. But the rule that plaintiffs invoke does not apply when, as here, the statute or constitutional provision contains its own definition of the term at issue: "If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063, 103 Cal.Rptr.2d 751, 16 P.3d 166.) Here, article XIII D provides both an express definition of assessment and an implied qualification of that definition through the requirement that the agency identify the specific parcels on which the assessment will be imposed.

Plaintiffs next rely on the definition of assessment in Government Code section 53750, part of the Proposition 218 Omnibus Implementation Act (Gov.Code, §§ 53750-53753) that the Legislature enacted in 1997. (Stats.1997, ch. 38, § 5.) Government Code section 53750 states that "[f]or purposes of Article XIII C and Article XIII D of the California Constitution" an "assessment" means "any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided." (Gov.Code, § 53750, subd. (b).) As plaintiffs point out, this definition does not distinguish between charges imposed only in response to a request for service and charges imposed on previously identified parcels. In this respect, **526 the statutory definition is no different from the constitutional definition in section 2, subdivision (b), of article XIII D. But the statutory provisions implementing article XIII D, like article XIII D itself, assume that assessments are imposed only on identified parcels. Under Government Code section 53753, subdivision (b), before levying a new or increased assessment, an agency must give notice " to the record owner of each identified parcel." Government Code section 53750, subdivision (g), defines an "identified parcel" as "a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed...." Because the statutory provisions merely reflect the constitutional provisions, they do not alter our conclusion that under article XIII D an assessment is a charge imposed on previously identified parcels, and not a charge imposed only as a condition of extending service through a new service connection.

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Arguing that a charge imposed only on property owners who voluntarily seek a governmental service or approval may properly be characterized as an assessment, plaintiffs call our attention to the Integrated Financing District ***424** Act (Gov.Code, § 53175 et seq.), under which local agencies may establish "contingent assessments" payable only when a landowner applies for development approval. (See *id.*, § 53187.) As plaintiffs point out, the Integrated Financing District Act includes notice and majority protest provisions for owners of property subject to the contingent assessment (*id.*, § 53183). (See *Southern Pacific Pipe Lines, Inc. v. Board of Supervisors* (1992) 9 Cal.App.4th 451, 461-462, 11 Cal.Rptr.2d 745.) We agree that the District's capacity charge is similar to a contingent assessment under the Integrated Financing District Act, but this *****131** observation does not assist plaintiffs. Unlike article XIII D, the Integrated Financing District Act does not require a local agency to identify in advance the particular parcels that *will be* subject to the assessment. Instead, the notice of intention to impose a contingent assessment goes to all owners of property within the proposed assessment zone, and the assessment cannot be imposed if protested by "the owners of more than one-half of the area of the property within the proposed ... district which is proposed to be subject to the contingent assessment immediately or in the future...." (Gov.Code, § 53183, subd. (d).) Thus, under the Integrated Financing District Act, in contrast to article XIII D, all owners of property *potentially* subject to a charge are entitled to notice and a weighted vote.

Article XIII D could have been written, like the Integrated Financing District Act, to cover contingent assessments as well as assessments imposed only on previously identified parcels. But it was not written in that manner, and we remain persuaded that a capacity charge contingent on some voluntary action by the property owner is not an assessment within the meaning of article XIII D.

[7] Plaintiffs argue that the Court of Appeal erred in characterizing the District's capacity charge as a development fee. Observing that development fees "are imposed only if a property owner elects to develop"(*Loyola Marymount University v. Los Angeles Unified School Dist.* (1996) 45 Cal.App.4th 1256, 1267, 53 Cal.Rptr.2d 424), the Court of Appeal reasoned that the District's capacity charge, because it was imposed only in response to a property owner's voluntary decision to request a service connection, should be considered a development fee and thus exempt from the requirements of article XIII D under its section 1, subdivision (b), stating that "[n]othing in this article ... shall be construed to ... [a]ffect existing laws relating to the imposition of fees or charges as a condition of property development."

Plaintiffs insist that the District's capacity charge cannot be a development fee because the District has no authority to approve or disapprove property development, and because a property owner may request a new service connection without proposing any new development, such as when the owner ***425** of a previously developed residential parcel decides to use the District's water instead of water from an existing well on the property.

We agree with plaintiffs that the District's capacity charge is not a development fee. It is similar to a development fee in being imposed****527** only in response to a property owner's voluntary application to a public entity, but it is different in that the application may be only for a water service connection without necessarily involving any development of the property. (See *Utility Cost Management v. Indian Wells Valley Water Dist., supra,* 26 Cal.4th at p. 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2 [noting that a capacity charge "might apply regardless of whether a development project is at issue"]; *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524, 530, 85 Cal.Rptr.2d 382 [concluding that a capacity charge is not a development fee under the Mitigation Fee Act (Gov.Code, § 66000 et seq.)].) Our agreement that the capacity charge is not a development fee does not assist plaintiffs, however, because it does not mean that the capacity charge is an assessment within the meaning of article XIII D. The capacity charge is neither an assessment nor a development fee under article XIII D.

We conclude, as did the trial court and the Court of Appeal, that the District's *****132** capacity charge is not an assessment under article XIII D.

III. THE FIRE SUPPRESSION CHARGE

Article XIII D provides: "No fee or charge may be imposed for general governmental services including, but not limited to, police, *fire,* ambulance or library

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services, where the service is available to the public at large in substantially the same manner as it is to property owners." (Art. XIII D, § 6, subd. (b)(5), italics added.) At the trial below, the evidence showed that the District uses the proceeds of the fire suppression component of the connection fee to purchase equipment for its volunteer fire department, including both firefighting equipment and emergency medical equipment.[FN5] The fire department provides firefighting and emergency medical services to the public at large. Accordingly, the District's fire suppression charge is "imposed for general governmental services" within the meaning of section 6, subdivision (b)(5), of article XIII D, and it is prohibited by that provision if it satisfies article XIII D's definition of a "fee or charge."

> FN5. Government Code section 50078 authorizes "[a]ny local agency which provides fire suppression services" to "determine and levy an assessment for fire suppression services." Plaintiffs have argued that the District may not rely on this provision as authority for its fire suppression fee because Government Code section 50001 defines "local agency" to include only cities and counties. Plaintiffs have overlooked Government Code section 50078.1, subdivision (b), which defines "local agency," as used in Government Code section 50078, to include any city, county, "or special district."

*426 Article XIII D defines a "fee" or "charge" as "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (*Id.*, § 2, subd. (e).) It defines "property-related service" as "a public service having a direct relationship to property ownership." (*Id.*, § 2, subd. (h).)

[8] The District argues that the connection fee, including its fire suppression component, does not fall within article XIII D's definition of a fee or charge because it is not imposed "upon a parcel or upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) The District does not impose the fee on parcels of real property but on persons who apply for a water service connection. The District does not impose the fee on such persons "as an incident of property ownership" but instead as an incident of their voluntary decisions to request water service. If a person fails to pay the connection fee, the District does not collect it by levying upon the person's property. Rather, because the person applying for service has not satisfied a condition for extending service, the District does not make the water connection and does not provide water service.

We agree that a connection charge, because it is not imposed "as an incident of property ownership" (art. XIII D, § 2, subd. (e)), is not a fee or charge under article XIII D. A connection fee is not imposed simply by virtue of property ownership, but instead it is imposed as an incident of the voluntary act of **528 the property owner in applying for a service connection.

Urging a different construction, plaintiffs rely on article XIII D's definition of a fee or charge as "including a user fee or charge for a property-related service." (*Id.*, § 2, subd. (e).) They argue that supplying water is a "property-related service," and, therefore, all charges for water service must be deemed to be imposed ***133 "upon a person as an incident of property ownership."

We agree that supplying water is a "property-related service" within the meaning of article XIII D's definition of a fee or charge. In the ballot pamphlet for the election at which article XIII D was adopted, the Legislative Analyst stated that "[f]ees for water, sewer, and refuse collection service probably meet the measure's definition of property-related fee." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996), analysis of Prop. 218 by Legis. Analyst, p. 73.) The Legislative Analyst apparently concluded that water service has a direct relationship to property ownership, and thus is a property-related service within the meaning of article XIII D because water is indispensable to most uses of real property; because water is provided through pipes that are physically connected to the property; and because a water provider may, by recording a certificate, obtain a lien on the property for the amount of any *427 delinquent service charges (see Gov.Code, §§ 61621, 61621.3). But the Legislative Analyst was apparently referring to fees imposed on existing water service customers, not fees imposed as a condition of initiating water service in the first instance.

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Several provisions of article XIII D tend to confirm the Legislative Analyst's conclusion that charges for utility services such as electricity and water should be understood as charges imposed "as an incident of property ownership." For example, subdivision (b) of section 3 provides that "fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership" under article XIII D. Under the rule of construction that the expression of some things in a statute implies the exclusion of other things not expressed (*In re Bryce C.* (1995) 12 Cal.4th 226, 231, 48 Cal.Rptr.2d 120, 906 P.2d 1275), the expression that electrical and gas service charges are not within the category of property-related fees implies that similar charges for other utility services, such as water and sewer, are property-related fees subject to the restrictions of article XIII D.

This implication is reinforced by subdivision (c) of article XIII D, section 6, which expressly excludes "fees or charges for sewer, water, and refuse collection services" from the voter approval requirements that article XIII D imposes on property-related fees and charges. Because article XIII D does not include similar express exemptions from the other requirements that it imposes on property-related fee and charges, the implication is strong that fees for water, sewer, and refuse collection services are subject to those other requirements. (See *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 645, 119 Cal.Rptr.2d 91 [reaching the same conclusion].)

Thus, we agree that water service fees, being fees for property-related services, may be fees or charges within the meaning of article XIII D. But we do not agree that *all* water service charges are necessarily subject to the restrictions that article XIII D imposes on fees and charges. Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.

***134** Any doubt on this point is removed by considering the requirements that article XIII D imposes on property-related fees and charges. As with assessments, article XIII D requires local government agencies to identify the **428** parcels affected by a property-related fee or charge. Specifically, it requires the agency to identify "[t]he parcels **529** upon which a fee or charge is proposed for imposition." (Art. XIII D, § 6, subd. (a)(1).) As we have explained, it is impossible for the District to comply with such a requirement for connection charges, because the District cannot determine in advance which property owners will apply for water service connection. As with assessments, this impossibility of compliance strongly suggests that connection fees for new users are not subject to article XIII D's restrictions on property-related fees.

Because the connection fee, including the fire suppression charge, is not a property-related fee or charge within the meaning of article XIII D, it is not subject to article XIII D's prohibition on property-related fees or charges for general governmental services.

IV. AMENDMENT OF AN ORDINANCE BY A RESOLUTION

[9] Government Code section 66016, part of the Mitigation Fee Act (Gov.Code, § 66000 et seq.), provides in subdivision (b): "Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance *or resolution.*" (Italics added.) We agree with the Court of Appeal that this provision authorizes the District to use a resolution to increase existing connection fees, and that this authorization applies even when the fees were initially imposed by an ordinance.

Arguing to the contrary, plaintiffs assert that the Mitigation Fee Act is procedural rather than substantive. In other words, it does not give local water districts substantive authority to impose fees, but instead it merely regulates the manner in which fees may be imposed. But whether a fee imposed by ordinance may be amended by resolution is essentially a question of procedure, not substance. Therefore, we may and do construe Government Code section 66016 as giving the District authority to use a resolution to

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amend a fee ordinance.

In support of their position that the District may not use a resolution to amend an ordinance imposing a connection fee, plaintiffs rely on *Cavalier Acres, Inc. v. San Simeon Acres Community Services District* (1984) 151 Cal.App.3d 798, 199 Cal.Rptr. 4(*Cavalier Acres*), in which the Court of Appeal concluded that a community services district could impose or increase water charges only by ordinance. In reaching this conclusion, the *Cavalier Acres* Court of Appeal relied on Government Code section 61621.5 and Health and Safety Code section 5471. Relying on the rule of construction that when two statutory provisions conflict, the one that is more specific controls, ***429** the *Cavalier Acres* Court of Appeal stated that, as applied to water charges imposed by a community services district, Government Code section 61621.5 and Health and Safety Code section 5471 were both more specific than Government Code section 66016.

Government Code section 61621.5 is part of the Community Services District Law (Gov.Code, § 61000 et seq.). As here relevant, it provides: "Except as otherwise provided in this section, a district may *by ordinance* adopt regulations binding upon all persons to govern the construction and use of its facilities and property, including regulations imposing reasonable charges for the use thereof." (Gov.Code, § 61621.5, subd. (a), italics added.) By its ***135** terms, this provision applies only to charges for the use of a community services district's *facilities,* not charges for its *services.* The Community Services District Law gives districts authority to impose charges for services, including charges for water, in a different section, Government Code section 61621. (See *Waterman Convalescent Hospital, Inc. v. Jurupa Community Services Dist.* (1996) 53 Cal.App.4th 1550, 1552-1553, 62 Cal.Rptr.2d 264.) As relevant here, it provides: "A district may prescribe, revise and collect rates or other charges for the services and facilities furnished by it...." (Gov.Code, § 61621.) Nothing in this provision requires a community services district to act by ordinance rather than by resolution when, as here, it revises and prescribes the charges for water service.

Health and Safety Code section 5471 is part of article 4 ("Sanitation and Sewerage Systems") of chapter 6 ("General Provisions with Respect to Sewers") of part 3 ("Community Facilities") of division 5 ("Sanitation") of **530 the Health and Safety Code. As relevant here, it reads: "In addition to the powers granted in the principal act, *any entity* shall have power, *by an ordinance* approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges, including *water,* sewer standby or immediate availability charges, for services and facilities furnished by it, either within or without its territorial limits, in connection with its *water,* sanitation, storm drainage, or sewerage system...." (Italics added.)

Health and Safety Code section 5471 does not apply to the District because it is not an "entity" within the meaning of this provision. Health and Safety Code section 5470 states that " '[e]ntity' means and includes counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." The District is a public agency organized as a community services district under the Community Services District Law (Gov.Code, § 61000 et seq.) to provide water service. Nothing in the record indicates it is authorized ***430** to construct, maintain, or operate sewers or sewerage systems. In this respect, *Cavalier Acres, supra,* 151 Cal.App.3d 798, 199 Cal.Rptr. 4, is distinguishable because the community services district at issue there provided both water and sewer services. (See *id.* at p. 800, 199 Cal.Rptr. 4.)

Moreover, even if we assume that Health and Safety Code section 5471 applies to the District, that provision, by its terms, confers authority "[i]n addition to" the authority otherwise granted to a public entity. In other words, its main purpose is to supplement rather than to limit a public agency's authority to impose charges for water or sewer services in connection with a water or sewerage system. For a public agency organized as a community services district, the "principal act" (*ibid.*) providing its authority is the Community Services District Law (Gov.Code, § 61000 et seq.). As we have seen, Government Code section 61621 authorizes community services districts to establish charges for water services without requiring that they act by ordinance rather than by resolution, and Government Code section 66016, part of the Mitigation Fee Act (Gov.Code, § 66000 et seq.), ex-

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pressly authorizes districts to use either a resolution or an ordinance to impose or increase a service charge. We do not read Health and Safety Code section 5471 as limiting or abrogating that authority.

Again, we find *Cavalier Acres, supra,* 151 Cal.App.3d 798, 199 Cal.Rptr. 4, to be ***136** distinguishable. In 1984, when the Court of Appeal decided *Cavalier Acres,* the wording of Health and Safety Code section 5471 was materially different. The introductory phrase ("In addition to the powers granted in the principal act") was not present, having been added later by amendment. (Stats.1988, ch. 706, § 1, p. 2348.) The 1988 amendment demonstrates the Legislature's intent that Health and Safety Code section 5471 not be read as limiting the powers conferred on public entities by the laws under which they were organized.

V. CONCLUSION

Before beginning to provide water service to real property through a new connection, the District requires its new customers to pay a capacity fee and a fire suppression fee. Both of these fees are used to fund capital improvements, the former to the water system and the latter to the volunteer fire department. Because these fees are imposed only on the self-selected group of water service applicants, and not on real property that the District has identified or is able to identify, and because neither fee can ever become a charge on the property itself, we conclude that neither fee is subject to the restrictions that article XIII D imposes on property assessments and property-related fees. We also conclude that the District could properly use a resolution to amend an ordinance establishing these fees.

***431** The judgment of the Court of Appeal is reversed and the matter is remanded to that court with directions to affirm the trial court's judgment.

****531** WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, BROWN and MORENO, JJ.

Cal.,2004.
Richmond v. Shasta Community Services Dist.
32 Cal.4th 409, 83 P.3d 518, 9 Cal.Rptr.3d 121, 2004 Daily Journal D.A.R. 1146, 2004 Daily Journal D.A.R. 1429

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SINCLAIR PAINT COMPANY, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant; DEPARTMENT OF HEALTH SERVICES et al., Interveners and Appellants.
No. S054115.

Supreme Court of California
June 26, 1997.

SUMMARY

The trial court granted a paint company summary judgment in the company's action against the Board of Equalization for a refund of fees paid pursuant to an assessment under the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.). The trial court found that the fees were taxes, and thus they were invalid since the Legislature passed the act by a simple majority, rather than by the two-thirds majority required by Cal. Const., art. XIII A, § 3 (Prop. 13). (Superior Court of Sacramento County, No. CV541310, Joe S. Gray, Judge.) The Court of Appeal, Third Dist., No. C021559, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13. Rather, the fees imposed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax. (Opinion by Chin, J., with George, C. J., Mosk, Kennard, Baxter, Werdegar, JJ., and Armstrong, J., [FN*] concurring.)

FN* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1) Property Taxes § 7.2--Constitutional Provisions--Proposition 13.
The purpose of Prop. 13 was to assure effective real property tax relief by means of an interlocking package consisting of a real property tax rate limitation (Cal. Const., art. XIII A, § 1), a real property assessment limitation (Cal. Const., art. XIII A, § 2), a restriction on state taxes (Cal. Const., art. XIII A, § 3), and a restriction on local taxes (Cal. Const., art. XIII A, § 4). Since any tax savings resulting from the operation of Cal. Const., art. XIII A, §§ 1 and 2, could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, Cal. Const., art. XIII A, §§ 3 and 4, combine to place restrictions upon the imposition of such taxes.

(2a, 2b, 2c) Taxation § 2--Validity of Taxation Legislation-- Proposition 13--Fees Assessed Under Childhood Lead Poisoning Prevention Act-- Applicability of Supermajority Requirement:Property Taxes § 7.8--Proposition 13.
The Court of Appeal erred in ruling that "fees" assessed on manufacturers or other persons contributing to environmental lead contamination, pursuant to the Childhood Lead Poisoning Prevention Act of 1991 (Health & Saf. Code, § 105275 et seq.), which the Legislature had enacted by a simple majority, were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, § 3). Rather, the fees im-

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posed were bona fide regulatory fees. The act requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. The shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is a reasonable police power decision. The fact that the fees were charged after, rather than before, the product's adverse effects were realized was immaterial to the question whether the measure imposed valid regulatory fees rather than taxes. Also, if regulation is the primary purpose of a fee, the mere fact that revenue is also obtained does not make the imposition a tax.
[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784.]
(3) Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction.
In determining under Prop. 13 (Cal. Const., art. XIII A, § 3), whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. The term "tax" has no fixed meaning, and the distinction between taxes and fees is frequently blurred, taking on different meanings in different contexts. In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. But compulsory fees may be deemed legitimate fees rather than taxes.

(4a, 4b) Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Special Taxes:Taxation § 3--Construction.
There are three general categories of fees or assessments involved in disputes concerning whether they are in legal effect "special taxes" required to be enacted by a two-thirds vote of the Legislature under Prop. 13 (Cal. Const., art. XIII A, §§ 3 and 4). They are (1) special assessments, based on the value of benefits conferred on property, (2) development fees, exacted in return for permits or other government privileges, and (3) regulatory fees, imposed under the police power. Special assessments on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes." Similarly, development fees exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. Also, fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes, are not special taxes.

(5) Property Taxes § 7.8--Constitutional Provisions--Proposition 13-- Assessments as Regulatory Fee:Taxation § 3--Construction.
In order to show that an imposition is a regulatory fee and not a special tax under Prop. 13 (Cal. Const., art. XIII A, § 3), the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.

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CHIN, J.

In 1991, by simple majority vote, the Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991 (the Act) (Stats. 1991, ch. 799, § 3, amended Stats. 1995, ch. 415, § 5; see Health & Saf. Code, ***870** § 105275 et seq.). [FN1] The Act provided evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The Act's program was entirely supported by "fees" assessed on manufacturers or other persons contributing to environmental lead contamination. (See §§ 105305, 105310.) The question arises whether these fees were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. (See Cal. Const., art. XIII A, § 3.)

> FN1 All further statutory references are to the Health and Safety Code unless otherwise noted.

Contrary to the trial court and Court of Appeal, we conclude that the Act imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the fees must bear a reasonable relationship to those adverse effects. Accordingly, the trial court erred in granting summary judgment to award plaintiff Sinclair Paint Company (Sinclair) a refund of the fees it paid under the Act.

We take the following statement of uncontradicted facts largely from the Court of Appeal opinion in this case. Sinclair paid $97,825.26 in fees for 1991. After the Board of Equalization (the Board) denied Sinclair's administrative claim for refund, Sinclair filed a complaint for refund, alleging the fees assessed under section 105310 were "actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution." The court granted the request of the Department of Health Services (the Department) for leave to intervene. It also granted a similar request to intervene by Ray Cochenour and Cardaryl Commodore, representatives of a class of children suffering from lead poisoning, and People United for a Better Oakland, an unincorporated association whose members include the Act's intended beneficiaries (collectively Cochenour).

Sinclair moved for summary judgment, claiming the Act was invalid on its face because it was not passed by the requisite two-thirds majority vote of the Legislature. The court agreed the Act imposed an unconstitutional tax and granted Sinclair's motion.

The Board, the Department, and Cochenour appealed, contending the Act involves a regulatory fee, not a tax. Appellants also argued the court erred in granting Sinclair summary judgment without compelling it to produce discovery and improperly relied on legislative history in determining the Act's constitutionality. The Court of Appeal affirmed the judgment, concluding that the Act was unconstitutional on its face and rejecting appellants' other claims. We reverse the Court of Appeal's judgment. ***871**

Discussion

I. *The Childhood Lead Poisoning Prevention Act of 1991*

When the Legislature enacted the Act in 1991, it explained the Act's background and purpose in findings that described the numerous health hazards children face when exposed to lead toxicity and declared four state "goals," namely, (1) evaluating, screening, and providing case management for children at risk of lead poisoning, (2) identifying sources of lead contamination responsible for this poisoning, (3) identifying and utilizing programs providing adequate case management for children found to have lead poisoning, and (4) providing education on lead-poisoning detection and case management to state health care providers. (Stats. 1991, ch. 799, § 1.)

The Act directs the Department to adopt regulations

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establishing a standard of care for evaluation, screening (i.e., measuring lead concentration in blood), and medically necessary follow-up services for children determined to be at risk of lead poisoning. (§ 105285; see § 105280, subd. (e).) If a child is identified as being at risk of lead poisoning, the Department must ensure "appropriate case management," i.e., "health care referrals, environmental assessments, and educational activities" needed to reduce the child's exposure to lead and its consequences. (§§ 105280, subd. (a), 105290.) Additionally, the Act requires the Department to collect data and report on the effectiveness of case management efforts. (§ 105295.)

The Department has "broad regulatory authority to fully implement and effectuate the purposes" of the Act. (§ 105300.) This authority "include[s], but is not limited to," the development of protocols for screening and for appropriate case management; the designation of laboratories qualified to analyze blood specimens for lead concentrations, and the monitoring of those laboratories for accuracy; the development of reporting procedures by laboratories; reimbursement for state-sponsored services related to screening and case management; establishment of lower lead concentrations in whole blood than those specified by the United States Centers for Disease Control for lead poisoning; notification to parents or guardians of the results of blood-lead testing and environmental assessment; and establishment of a periodicity schedule for evaluating childhood lead poisoning. (§ 105300.)

The Act states that its program of evaluation, screening, and follow-up is supported *entirely* by fees collected under the Act: "Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to Section ***872** 105310. This chapter shall be implemented only to the extent fee revenues pursuant to Section 105310 are available for expenditure for purposes of this chapter." (§ 105305.)

Section 105310 imposes the fees at issue here. In pertinent part, that section imposes fees on manufacturers and other persons formerly and/or presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed and/or currently contribute to environmental lead contamination. (§ 105310, subd. (a).) The Department must determine fees based on the manufacturer's or other person's past and present responsibility for environmental lead contamination, or its "market share" responsibility for this contamination. (§ 105310, subd. (b).)

Those persons able to show that their industry did not contribute to environmental lead contamination, or that their lead-containing product does not and did not "result in quantifiably persistent environmental lead contamination," are exempt from paying the fees. (§ 105310, subd. (d).)

The Legislature has authorized the Department to adopt regulations establishing the specific fees to be assessed the parties identified in section 105310, subdivision (a). (§ 105310, subd. (b).) The formula for calculating fees attributable to leaded architectural coatings, including ordinary house paint, is set forth in California Code of Regulations, title 17, section 33020.

II. *Proposition 13*

(1) In June 1978, California voters added article XIII A, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (article XIII A), to the state Constitution. The initiative's purpose was to assure effective real property tax relief by means of an "interlocking 'package' " consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4). (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 [149 Cal.Rptr. 239, 583 P.2d 1281] (*Amador Valley*); see also *County of LosAngeles* v. *Sasaki* (1994) 23 Cal.App.4th 1442, 1451 [29 Cal.Rptr.2d 103].)

Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: "From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods ***873** of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or

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transaction taxes on the sales of real property may be imposed."

Section 4 of article XIII A imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose *special taxes* on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Italics added.)

As we explained in *Amador Valley*, "... since any tax savings resulting from the operation of sections 1 and 2 [of article XIII A] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes." (*Amador Valley*, *supra*, 22 Cal.3d at p. 231.)

III. *Taxes or Fees?*

(2a) Are the "fees" section 105310 imposes in legal effect "taxes enacted for the purpose of increasing revenues" under article XIII A, section 3, and therefore subject to a two-thirds majority vote? Although we have found no cases that interpret the language of section 3, several California appellate decisions have considered whether various fees are really "special taxes" under article XIII A, section 4. (See also *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57 [184 Cal.Rptr. 713, 648 P.2d 935] ["special taxes" are taxes levied for a specific purpose rather than for general governmental purposes]; Gov. Code, § 50076 [excluding from the term "special tax" in article XIII A, section 4, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].) Because of the close, "interlocking" relationship between the various sections of article XIII A (see *Amador Valley*, *supra*, 22 Cal.3d at p. 231), we believe these "special tax" cases may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, may apply equally to section 3 cases. [FN2]

FN2 We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments.

We first consider certain general guidelines used in determining whether "taxes" are involved in particular situations. (3) The cases agree that ***874** whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1216 [265 Cal.Rptr. 347]; *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212, 234 [253 Cal.Rptr. 497]; *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1504 [246 Cal.Rptr. 21].)

The cases recognize that "tax" has no fixed meaning, and that the distinction between taxes and fees is frequently "blurred," taking on different meanings in different contexts. (*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at p. 1504;*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905 [223 Cal.Rptr. 379]; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660 [166 Cal.Rptr. 674]; *County of Fresno* v. *Malmstrom* (1979) 94 Cal.App.3d 974, 983-984 [156 Cal.Rptr. 777].) In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240 [1 Cal.Rptr.2d 818]; *County of Fresno* v. *Malmstrom*, *supra*, 94 Cal.App.3d at p. 983 ["Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services."].) Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240;*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1505-1506; see *Terminal Plaza Corp. v. City and County of San Francisco*, *supra*, 177 Cal.App.3d at p. 907.) But compulsory fees may be deemed legitimate fees rather than taxes. (See *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1424 [23 Cal.Rptr.2d 910].)

(4a) The "special tax" cases have involved three gen-

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eral categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power. Although these three categories may overlap in a particular case, we consider them separately.

The cases uniformly hold that *special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes" under article XIII A, section 4. (*Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 735-739 [4 Cal.Rptr.2d 601] [assessments on businesses for downtown promotion]; *J. W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745, ***875** 750-758 [203 Cal.Rptr. 580] [facilities benefit assessments]; *City Council v. South* (1983) 146 Cal.App.3d 320, 332 [194 Cal.Rptr. 110] [special assessments on real property]; *County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at pp. 984-985 [special assessments for construction of streets].)

Similarly, *development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. (*Shapell Industries, Inc. v. Governing Board*, *supra*, 1 Cal.App.4th at p. 240 [school facilities fees]; *Bixel Associates v. City of Los Angeles*, *supra*, 216 Cal.App.3d at pp. 1211, 1218-1219 [fire hydrant fees]; *California Bldg. Industry Assn. v. Governing Bd.*, *supra*, 206 Cal.App.3d at pp. 235-237 [school facilities development fees]; *Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [transit impact fees]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235-238 [211 Cal.Rptr. 567] [new facilities water hookup fees]; *Trent Meredith, Inc.* v. *City of Oxnard* (1981) 114 Cal.App.3d 317, 325-328 [170 Cal.Rptr. 685] [fees as precondition for building permits]; *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 661-663 [fees for processing subdivision, zoning, and land use applications]; see *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 898 [50 Cal.Rptr.2d 242, 911 P.2d 429] (conc. opn. of Mosk, J.).)

According to Sinclair, because the present fees have been imposed solely to defray the cost of the state's program of evaluation, screening, and follow-up services for children determined to be at risk for lead poisoning, they are not analogous to either special assessments or development fees, for they neither reimburse the state for special benefits conferred on manufacturers of lead-based products nor compensate the state for governmental privileges granted to those manufacturers. As the Court of Appeal observed, the fees challenged here "do not constitute payment for a government benefit or service. The program described in the Act bears no resemblance to regulatory schemes involving special assessments, developer fees, or efforts to recoup the cost of processing land use applications where the benefit analysis is typically applied. [Citations.] The face of the Act makes clear the funds collected pursuant to section 105310 are used to benefit children exposed to lead, not Sinclair or other manufacturers in the stream of commerce for products containing lead."

(2b) Appellants argue, however, that the challenged fees fall squarely within a third recognized category not dependent on government-conferred benefits or privileges, namely, *regulatory fees* imposed under the police power, rather than the taxing power. We agree. ***876**

(4b) We have acknowledged that the term "special taxes" in article XIII A, section 4, " 'does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.' [Citations.]" (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111] (*Pennell*), affd. on other grounds *sub nom. Pennell v. San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1], quoting from *Mills v. County of Trinity*, *supra*, 108 Cal.App.3d at pp. 659-660; see *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 760-762 [53 Cal.Rptr.2d 120] [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425 [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-285 [17 Cal.Rptr.2d 845] [upholding waste dis-

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posal surcharge imposed on waste haulers]; *Evans v. City of San Jose*, *supra*, 3 Cal.App.4th at p. 737;*San Diego Gas & Electric Co.* v. *San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1149 [250 Cal.Rptr. 420] (*SDG&E*) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com.* v . *City of San Diego* (1979) 91 Cal.App.3d 156, 166-168 [154 Cal.Rptr. 263] (*United Business*) [upholding fees for inspecting and inventorying on-premises advertising signs].)

Pennell upheld rental unit fees that a city imposed under its rent control ordinance to assure it recovered the actual costs of providing and administering a rental dispute hearing process. (*Pennell*, *supra*, 42 Cal.3d at p. 375.) We explained in *Pennell* that regulatory fees in amounts necessary to carry out the regulation's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Id.* at p. 375, fn. 11; see also *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146, fn. 18;*Mills* v. *County ofTrinity*, *supra*, 108 Cal.App.3d at p. 661.)

We observe that Sinclair, in moving for summary judgment, did not contend that the fees exceed in amount the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any *unrelated* revenue purposes. (See *Pennell*, *supra*, 42 Cal.3d at p. 375.) Moreover, Sinclair has not yet sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that Sinclair's operations generated. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1146; see also § 105310, subds. (b), (d); *Sea & Sage Audubon Society, Inc.* v. *Planning Com.* (1983) 34 Cal.3d 412, 421 [194 Cal.Rptr. 357, 668 P.2d ***877** 664] [persons challenging fees have burden of establishing invalidity].) Sinclair does contend, however, that the Act is not *regulatory* in nature, being primarily aimed at producing revenue.

According to Sinclair, the challenged fees were in effect "taxes" because the compulsory revenue measure that imposed them was not part of a *regulatory* effort. The Court of Appeal agreed, relying on prior cases indicating that where payments are exacted solely for *revenue* purposes and give the right to carry on the business with no further conditions, they are taxes. (E.g., *United Business*, *supra*, 91 Cal.App.3d at p. 165.) The Court of Appeal held that "Placing the factors distinguishing taxes and fees along a continuum, we conclude the monies paid by Sinclair pursuant to the Act are more like taxes than fees. [¶] *There is nothing on the face of the Act to show the fees collected are used to regulate Sinclair.* Apart from mere calculation of the payment, the Department's regulatory authority involves implementation of the program to evaluate, screen, and provide followup services to children at risk for lead poisoning. The Act does not require Sinclair to comply with any other conditions; it merely requires Sinclair to pay what the Department determines to be its share of the program cost."

Contrary to the Court of Appeal, we believe that section 105310 imposes bona fide regulatory fees. It requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a "mitigating effects" measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating effects" fees in a substantial amount (Sinclair allegedly paid $97,825.26 in 1991) also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products. (Cf. *SDG&E*, *supra*, 203 Cal.App.3d at p. 1147, fn. 20 [emissions-based fees provide incentive to use nonpollutant fuels].)

Sinclair disputes the state's authority to impose industry-wide "remediation fees" to compensate for the adverse societal effects generated by an industry's products. To the contrary, the case law previously cited or discussed clearly indicates that the police power is broad enough to include ***878** mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal

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connection or nexus between the product and its adverse effects. (See *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at pp. 760-762;*Kern County Farm Bureau v. County of Kern*, *supra*, 19 Cal.App.4th at pp. 1422-1425;*City of Dublin v. County of Alameda*, *supra*, 14 Cal.App.4th at pp. 284-285;*SDG&E*, *supra*, 203 Cal.App.3d at pp. 1146-1149;*United Business*, *supra*, 91 Cal.App.3d at p. 168;*Russ Bldg. Partnership v. City and County of San Francisco*, *supra*, 199 Cal.App.3d at pp. 1504-1506 [fees to pay for increased transit costs]; *J. W. Jones Companies v. City of San Diego*, *supra*, 157 Cal.App.3d at pp. 755, 758 [fees to defray costs of additional public facilities]; *Trent Meredith, Inc.* v. *City of Oxnard*, *supra*, 114 Cal.App.3d at p. 325 [fees to reduce growth impact of new subdivision]; see also *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 694 [151 P. 398] [police power authorizes legislation necessary or proper for protection of legitimate public interest]; *County of Plumas* v . *Wheeler* (1906) 149 Cal. 758, 761-764 [87 P. 909] [broad legislative discretion to regulate business, including license fees or charges]; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784, p. 311 ["police power is simply the power of sovereignty or power to govern-the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare"]; see generally, 6A McQuillan, The Law of Municipal Corporations (3d rev. ed. 1997) Municipal Police Power and Ordinances, § 24.01 et seq., p. 7 et seq.)

SDG&E involved regulatory fees comparable in some respects to the fees challenged here. (*SDG&E*, *supra*, 203 Cal.App.3d 1132.) There, 1982 legislation (see § 42311) empowered local air pollution control districts to apportion the costs of their permit programs among all monitored polluters according to a formula based on the amount of emissions they discharged. (See *SDG&E*, *supra*, 203 Cal.App.3d at p. 1135.) (5) The *SDG&E* court observed that "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*Id.* at p. 1146, fn. omitted; see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, *supra*, 165 Cal.App.3d at pp. 234-235.)

In *SDG&E*, the amount of the regulatory fees was limited to the reasonable costs of each district's program, and the allocation of costs based on emissions "fairly relates to the permit holder's burden on the district's programs." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1146.) Accordingly, the ***879** court concluded that the fees were not "special taxes" under article XIII A, section 4. (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.)

As the court observed in *SDG&E*, "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves ...." (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1148.) (2c) In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision. (See also *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 663;*County of Fresno v. Malmstrom*, *supra*, 94 Cal.App.3d at p. 985 [special assessments have no impact on government spending].)

The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes. *City of Oakland v. Superior Court* seems close on point. There, the court upheld city fees imposed on retailers of alcoholic beverages to defray the cost of providing and administering hearings into nuisance problems associated with the prior sale of those beverages. The court first observed that "If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers" to assure that the persons responsible "pay their fair share of the cost of government." (*City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at p. 761.) The court concluded that "The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed ... is not a tax imposed to pay general revenue to the

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local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. [Citation.]" (*Id.* at p. 762.)

The court in *United Business* applied the "regulation/revenue" distinction to conclude that sign inventory fees adopted to recover the city's cost of inventorying signs and bringing them into conformance with law were regulatory fees, not revenue-raising taxes. The court observed that, under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not mere revenue-raising, if the fees do not exceed the reasonably necessary expense of the regulatory effort. (*United Business*, ***880** *supra*, 91 Cal.App.3d at p. 165, and authorities cited.) Quoting with approval from an earlier decision, the court noted that, if revenue is the primary purpose, and regulation is merely incidental, the imposition is a tax, but if regulation is the primary purpose, the mere fact that revenue is also obtained does not make the imposition a tax. (*Ibid.*) Moreover, according to *United Business,* if a fee is exacted for revenue purposes, and its payment gives the right to carry on business without any further conditions, it is a tax. (*Ibid.*; see also *City of Oakland v. Superior Court*, *supra*, 45 Cal.App.4th at p. 761;*County of Plumas* v. *Wheeler*, *supra*, 149 Cal. at p. 763 [fee in amount greater than reasonably needed to regulate business "cannot stand as an exercise of the police power"]; *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at pp. 659-660;*City & County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450-451 [189 P.2d 32].)

The Court of Appeal, citing *United Business,* stressed that the challenged fees were exacted solely for revenue purposes, and their payment gave Sinclair and others the right to carry on the business without any further conditions. We see two flaws in that analysis. First, *all* regulatory fees are necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question, but that fact does not automatically render those fees "taxes." As stated in *United Business,* if regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax. (*United Business*, *supra*, 91 Cal.App.3d at p. 165; see also *Mills* v. *County of Trinity*, *supra*, 108 Cal.App.3d at p. 660 [rejecting broad definition of "tax" as including all fees and charges that exact money for public purposes].)

Second, we find inconclusive the fact that the Act permits Sinclair and other producers to carry on their operations without any further conditions *specified in the Act itself.* As we have indicated, fees can "regulate" business entities without directly licensing them by mitigating their operations' adverse effects. Moreover, as appellants observe, the Act is part of a broader regulatory scheme by which, under various state and federal statutes, the state regulates Sinclair and other manufacturers in the stream of commerce for products containing lead. That being so, Sinclair's payment of the challenged fees did not confer the right to carry on business without any further conditions or regulation.

The Court of Appeal rejected appellants' argument invoking other state and federal regulations: "First, there is nothing on the face of the Act or the accompanying statement of legislative purpose which links the Act's programs for children at risk for lead poisoning with the cited state or federal statutes regulating lead. Second, none of the fees collected pursuant to ***881** section 105310 are used to fund those regulatory efforts." However, it is undisputed that Sinclair and other manufacturers of lead-based products remain subject to government regulation, that payment of the challenged fees therefore does not entitle those manufacturers to operate free of regulation, and that the state must use the funds it collects under section 105310 *exclusively* for mitigating the adverse effects of lead poisoning of children, and not for general revenue purposes. (§ 105310, subd. (f).)

Under existing case law, we can reasonably characterize the challenged fees as *regulatory fees* rather than as taxes. Accordingly, we conclude the trial court erred in granting Sinclair summary judgment on the constitutional issues. Of course, Sinclair should be permitted to attempt to prove at trial that the amount of fees assessed and paid exceeded the reasonable cost of providing the protective services for which the fees were charged, or that the fees were levied for unrelated revenue purposes. (See *Pennell*, *supra*, 42 Cal.3d at p. 375.) Additionally, Sinclair will have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic "burdens" its operations generated. (*SDG&E*, *supra*, 203 Cal.App.3d at p. 1146; see also § 105310, subds. (b),

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(d).)

Disposition

The judgment of the Court of Appeal, affirming the trial court's grant of summary judgment in Sinclair's favor, is reversed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Werdegar, J., and Armstrong, J., [FN*] concurred.

FN* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Cal. 1997.
Sinclair Paint Co. v. State Bd. of Equalization
15 Cal.4th 866, 937 P.2d 1350, 64 Cal.Rptr.2d 447, 97 Cal. Daily Op. Serv. 5059, 97 Daily Journal D.A.R. 8242

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BARRY SULLIVAN, Appellant,
v.
CITY OF LOS ANGELES et al., Respondents.
Civ. No. 19325.

District Court of Appeal, Second District, Division 3, California.
Mar. 20, 1953.

HEADNOTES

(1) Buildings § 2--Fire Limit Ordinances.
Reasonable regulations governing the construction of wooden buildings within fire limits are within the police power.
Power to forbid or restrict repair of wooden building within fire limits, notes, 26 **A.L.R.** 1219; 56 **A.L.R.** 878. See, also, **Cal.Jur.**, Buildings, § 8; **Am.Jur.**, Buildings, § 17 et seq.
(2) Health § 8--Plumbing.
Reasonable regulations governing methods and devices for the conveyance of sewage from private dwellings in municipalities are within the police power.
Validity of regulations as to plumbers and plumbing, note, 22 **A.L.R.2d** 816.
(3) Constitutional Law § 109--Police Power--Conclusiveness of Legislative Determination.
Except where the court can say that a police regulation has no just relation to the object which it purports to carry out, and no reasonable tendency to preserve or protect the public safety, health, comfort or morals, the decision of the legislative body as to the necessity or reasonableness of the regulation is conclusive.
See **Cal.Jur.**, Constitutional Law, § 117; **Am.Jur.**, Constitutional Law, § 306.
(4) Municipal Corporations § 125--Police Power--Scope.
A local legislative body may, in the exercise of its police power, make and enforce ordinances to regulate or prohibit a thing or act which is of such a nature that it may become a nuisance or may be injurious to the public health if not suppressed or regulated.

(5) Municipal Corporations § 125--Police Power--Scope.
The exercise of the police power is not limited to the regulation of such things as have already become nuisances or have been declared to be such by the judgment of a court.

(6) Buildings § 1.1--Municipal Ordinances.
In the exercise of the police power a municipality may regulate the manner of the construction and occupation of buildings to the end of safeguarding the health of their occupants and lessening the fire hazard.

(7) Health § 10--Officers--Inspection.
When the work or alteration proposed is in accordance with sanitary regulations, an inspection thereof by officers duly authorized is a proper preliminary requirement and may be conducted, at the proper time, to the end that the public health will be preserved and protected.

(8) Health § 3--Regulations.
Legislation with respect to the preservation and protection of the public health will not be set aside unless the legislative discretion is obviously wrong.

(9) Buildings § 1.1--Municipal Ordinances.
City ordinances which forbid one to construct or maintain a canvas carport are not invalid merely because they permit his neighbor to continue to maintain an old wooden building as to which there is no evidence that it was not erected in conformity with ordinances then existing, since the legislative body may guard against the creation or extension of threatened evils without undertaking to wipe out every similar existing evil where a more sweeping enactment would work undue hardship.

(10) Buildings § 1.1--Municipal Ordinances.
A discrimination between buildings erected and those to be built is proper in the enactment of laws prohibiting the future construction of wooden buildings within certain boundaries.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County and from an order denying a

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new trial. Geo. A. Dockweiler, Judge. Judgment affirmed; appeal from order dismissed.

Action for a declaration of rights under building and plumbing codes of a city and for an injunction in which defendant city cross-complained for an injunction requiring plaintiff to comply with such codes. Judgment for defendant city on cross-complaint, affirmed.

COUNSEL

Gordon Leslie Cooper for Appellant.

Ray L. Chesebro, City Attorney, Bourke Jones and Alan G. Campbell, Assistant City Attorneys, for Respondents.

VALLEE, J.

Plaintiff sued the city of Los Angeles for a declaration of his rights under the building and plumbing codes of the city, and for an injunction restraining the city from enforcing them against him. The city cross-complained for an injunction requiring plaintiff to comply with the codes. The judgment was for the city on the cross-complaint. Plaintiff appeals from the judgment and from an order denying his motion for a new trial. Since the latter order is nonappealable, the appeal therefrom will be dismissed.

Plaintiff owns a parcel of realty in fire district No. 2 in Los Angeles, which is improved with a two-story brick building. Without first obtaining a permit from the Department of Building and Safety, he constructed about a 25- foot square carport in the rear yard. It consisted of a framework of pipes and scantlings covered with a flammable tarpaulin. With the intention of constructing a rest room as an addition to his building, plaintiff roughed in the waste lines in the rear yard for two toilets. After completing this preliminary step, the project was either abandoned or postponed. No toilets were installed nor was the site enclosed or protected by a roof. Plaintiff stuffed plaster of Paris into the sewer openings.

The building code of the city required a construction permit for every structure, and required the roof covering of every building or structure in fire district No. 2 to be fire retardant, the exterior walls to be constructed entirely of incombustible materials or at least one-hour fire- resistive construction. The plumbing code required that toilet bends, unconnected to a fixture, should be securely capped with a standard cast iron or other metallic noncorrosive plug, and that the plug should be securely leaded and caulked in place under the supervision of a plumbing inspector.

The court found that the carport did not conform to the requirements of the building code, and that the maintenance of the toilet bends was in violation of the plumbing code. The judgment directed plaintiff to remove all canvas and tarpaulin material from the carport, and enjoined him from maintaining ***810** it without first securing a permit from the city for the construction of the structure and without constructing it in accordance with the building code, and ordered him either to remove the toilet bends, and plug, cover, and conceal the sewer connections in accordance with the plumbing code, or under the supervision of a city plumbing inspector to securely lead and caulk the openings as provided by the code, or to install flush toilets as provided by the code.

Plaintiff contends the applicable ordinances are not within the police power; that they deprive him of his property without due process of law in that they restrain his free use of the property, and that they deny him the equal protection of the laws.

Plaintiff's property is located in a fire district as fixed by an ordinance of the city. (1, 2) It is elementary that reasonable regulations governing the construction of wooden buildings within fire limits and governing methods and devices for the conveyance of sewage from private dwellings in municipalities, are within the police power. (*Maguire v. Reardon,* 41 Cal.App. 596 [183 P. 303],affd. 255 U.S. 271 [41 S.Ct. 255, 65 L.Ed. 625]; *In re Nicholls,* 74 Cal.App. 504 [241 P. 399].)

(3) "[E]xcept where the court can see, in the light of facts properly brought to its knowledge, that a given police regulation has no just relation to the object which it purports to carry out, and no reasonable tendency to preserve or protect the public safety, health, comfort, or morals, the decision of the legislative body as to the necessity or reasonableness of the regulation in question is conclusive." (*Odd Fellows' Cemetery Assn. v. San Francisco,* 140 Cal. 226, 233 [73 P. 987].) (4) A local legislative body may, in the

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exercise of its police power, make and enforce ordinances to regulate or prohibit a thing or act which is of such a nature that it may become a nuisance or may be injurious to the public health if not suppressed or regulated. (5) The exercise of the police power is not limited to the regulation of such things as have already become nuisances or have been declared to be such by the judgment of a court. (*Odd Fellows' Cemetery Assn. v. San Francisco, supra.*)(6) In the exercise of the police power a municipality may regulate the manner of the construction and occupation of buildings to the end of safeguarding the health of their occupants, and lessening the fire hazard. (*Matter of Stoltenberg,* 165 Cal. 789 [134 P. 971].) In *Ex parte Fiske,* 72 Cal. 125, 127 [13 P. 310], the court declared "[I]t ***811** has become the settled law that a state,- and under our system a municipality of the state,- in order to protect the property of all its citizens from the ravages of fire, may establish fire limits, and regulate or prevent the use of wooden buildings within such limits; and that, although this may disturb the enjoyment of the rights of an individual, he is, in contemplation of law, compensated by sharing the general benefits derived from it."

"Regulation by ordinance of methods and devices for the conveyance of sewage from private dwellings in municipalities is recognized as an exercise of that branch of the police power which pertains to the public health; and the word 'plumbing' is held to include the pipes, fittings and fixtures for the conveyance of such sewage." (*In re Nicholls,* 74 Cal.App. 504, 507 [241 P. 399].) (7) When the work or alteration proposed is in accordance with sanitary regulations, an inspection thereof by officers duly authorized is a proper preliminary requirement and may be conducted, at the proper time, to the end that the public health be preserved and protected (*In re Nicholls, supra,* 508.) (8) Legislation with respect to the preservation and protection of the public health will not be set aside unless the legislative discretion is obviously wrong. (*Natural Milk Prod. Assn. v. City etc. of San Francisco,* 20 Cal.2d 101 [124 P.2d 25].) No such showing is made here.

(9) Plaintiff's principal complaint appears to be that while the city ordinances forbid him to construct or maintain a canvas carport they permit his neighbor to continue to maintain an old wooden building as to which there was no evidence that it was not erected in conformity with ordinances then existing. The Legislature may guard against the creation or extension of threatened evils without undertaking to wipe out every similar existing evil where a more sweeping enactment would work undue hardship. In *Matter of Stoltenberg,* 165 Cal. 789 [134 P. 971], the state Tenement Housing Act of 1911 had detailed provisions regulating the mode of construction and occupation of all tenement houses. There the petitioner contended that the act was invalid because different requirements were set up for houses built before the act and those constructed subsequently. The court said that (p. 794) "there is a substantial, inherent, logical difference between tenement houses already constructed and those to be built, and that this difference was one that the legislature might fairly make the basis of the different treatment that it has accorded to the two classes." (See, also, *McCloskey v. ***812** Kreling,* 76 Cal. 511 [18 P. 433].) (10) A discrimination between buildings erected and those to be built has been recognized as proper in the enactment of laws prohibiting the future construction of wooden buildings within certain boundaries. (*Maguire v. Reardon,* 41 Cal.App. 596 [183 P. 303],affd. 255 U.S. 271 [41 S.Ct. 255, 65 L.Ed. 625]; *Bancroft v. Goldberg, Bowen & Co.,* 166 Cal. 416 [137 P. 18].)

A small entryway had been attached to the rear wall of plaintiff's building. The pleadings made an issue of whether it had been constructed in violation of the city building ordinances. No evidence was received from which the court could determine the exact date it was built or what the requirements of the building ordinances were at that time. Consequently, the court did not undertake to settle any issue about this addition and granted no relief to either side. Since the court did not make any declaration relative to the entryway, the matter is moot.

The ordinances attacked are directed to the preservation of the public safety and health, and are well within the scope of the police power.

The appeal from the order denying a new trial is dismissed. The judgment is affirmed.

Shinn, P. J., and Wood (Parker), J., concurred. ***813**

Cal.App.2.Dist.
Sullivan v. City of Los Angeles Dept. of Bldg. & Safety

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116 Cal.App.2d 807, 254 P.2d 590

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CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: June 21, 2005 **ITEM NO.:** CC 11

STAFF SOURCE: Vince Mastrosimone, Director of Public Works
Charles Redden, Environmental Services Manager

ITEM TITLE: Adopt Resolution approving storm water inspection fees to be included with charges for Business Licenses for certain industrial/commercial facilities.

STAFF RECOMMENDATION:
Adopt Resolution No. 05-6455, approving storm water inspection fees to be included with charges for Business Licenses for certain industrial/commercial facilities.

GENERAL, FUND IMPACT:
$24,850 is in the FY 2005-2006 Environmental Services Budget to pay for 416 inspections of which 122 are restaurants. If the inspection fees bringing the revenue into Environmental Services are not approved, the expenses will have to be paid from the General Fund.

BACKGROUND:
To comply with the National Pollutant Discharge Elimination System (storm water) Permit, the City is required to conduct storm water compliance inspections at certain industrial/commercial facilities. We use a private contractor for the industrial facilities and the charge is approximately $140 per inspection. The County Department of Health Services inspects the restaurants and charges approximately $70 per inspection.

The charges for these inspections should be passed on to the facilities being inspected as a cost of doing business in Los Angeles County. "Storm Water Inspection Fees" have been added to the budget "Charts of Accounts – REVENUES" under the "Refuse/Waste Revenue" section. The annual fee would be half of the cost of the inspection since the facilities are inspected every two years. The fee would be collected when the Business License is purchased or renewed as the fee is based on the facility's Standard Industrial Classification (SIC) code. The code list is attached to the Resolution (Exhibit A) approving the fee schedule. The restaurant (SIC code 5812) fee would be $35. The fee for all other facilities would be $70.

EXHIBITS:
A. Resolution

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, APPROVING STORM WATER INSPECTION FEES TO BE INCLUDED WITH CHARGES FOR BUSINESS LICENSES FOR CERTAIN INDUSTRIAL/COMMERCIAL FACILITIES.

WHEREAS, the National Pollutant Discharge Elimination System (storm water) permit issued by the Regional Water Quality Control Board, Los Angeles, requires that the City of Covina inspect certain industrial/commercial facilities for compliance with the storm water program; and

WHEREAS, the State has not provided funding for this activity.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Covina, as follows:

SECTION 1. A storm water inspection fee shall be added to the annual cost of the Business License for the industrial/commercial facilities listed in the attachment. The fee will be $35 for restaurants (Standard Industrial Classification (SIC) code 5812) and $70 for all other SIC codes listed.

SECTION 2. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this day of June, 2005.

Peggy Delach, Mayor

ATTEST:

Rosie Fabian, City Clerk

APPROVED AS TO FORM:

Edward W. Lee, City Attorney

http://www.epa.gov/owow/tmdl/
Last updated on Wednesday, March 18th, 2009.

Impaired Waters and Total Maximum Daily Loads

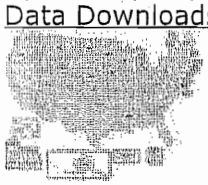
Quick Finder

Air Deposition
Integrated Reporting (ATTAINS)
Nonpoint Source Pollution
NPDES Permits
TMDL Guidance
TMDL Litigation
TMDL Regulations
TMDL Technical Resources
Water Quality Inventory Report to Congress
Water Quality Monitoring and Assessment
Water Quality Standards
Water Quality Trading

Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Basic Information

- National Summary of Impaired Waters and TMDLs
- Geographic Information Systems (GIS) Data Downloads



TMDL Laws and Regulations

- 303(d) Clean Water Act
- TMDL Regulations
- Guidance Documents

TMDL Technical Resources

- Draft Daily Loads Technical

Example TMDLs

- Pathogens
- Nutrients
- Sediment
- Mercury
- Metals (other than mercury)
- More Example TMDLs...

Where You Live

- Window to My Environment
- WATERS Expert Query
- Surf Your Watershed

Evolving Issues

- Mercury TMDL Resources
- Stormwater Resources

Other Resources

Features

- Draft Handbook for Developing Watershed TMDLs (PDF) (168 pp, 4.2MB, About PDF)
- TMDLs to Stormwater Permits Draft Handbook (PDF) (200 pp, 5.7MB, About PDF)
- Atmospheric Mercury Deposition Project for Watershed Planning
- Incorporating Green Infrastructure into TMDLs (PDF) (11 pp, 172K, About PDF)

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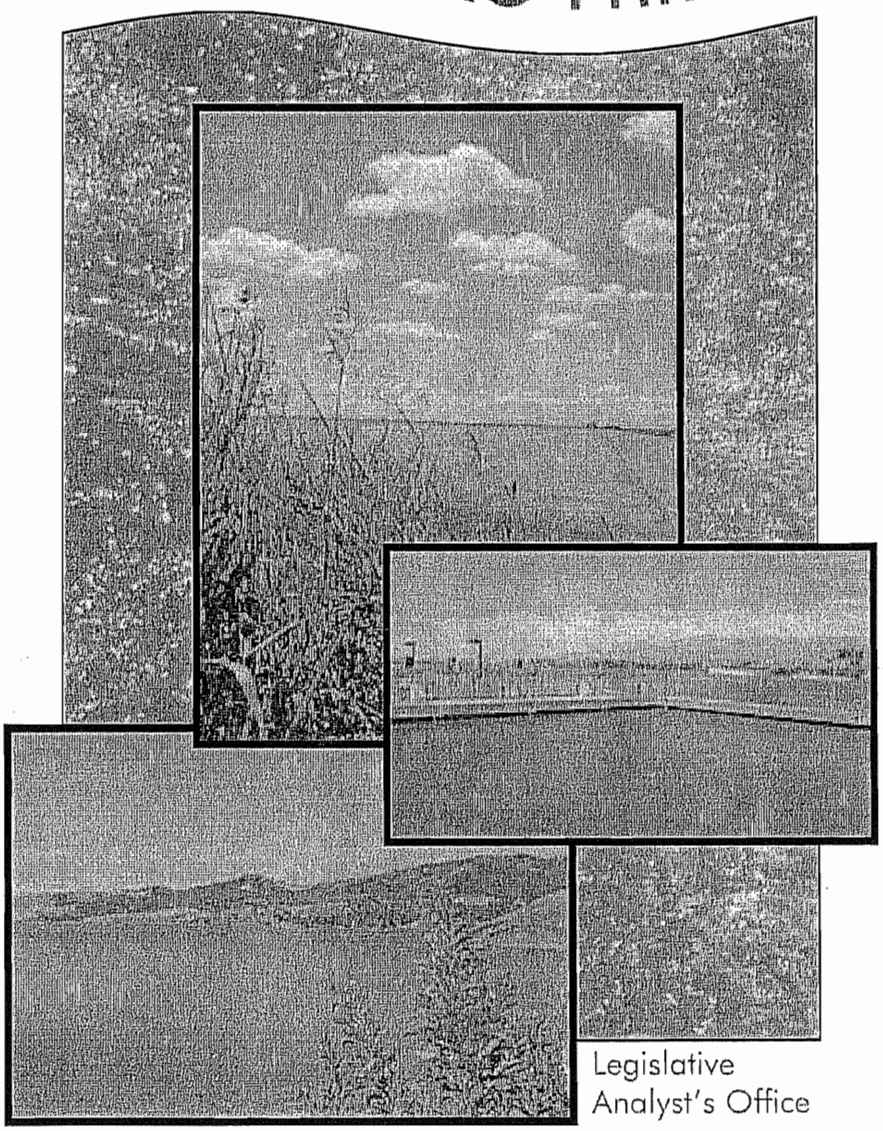
October 2008

California's Water: An LAO Primer



Legislative Analyst's Office

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Acknowledgments

This report was prepared by Catherine B. Freeman, under the supervision of Mark C. Newton. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the California Legislature.

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How Does Proposition 218 Affect Local Authority to Finance Water Programs?

- *Background.* Proposition 218, approved by the state's voters in 1996, restricts local governments' authority to raise property owner fees, taxes, and assessments. The measure also permits residents to use the initiative process to repeal or reduce local fees, taxes, and assessments. The provisions of Proposition 218 affect the financing of water programs, including water supply delivery, flood control, and stormwater services, as discussed below.

Water Supply Delivery Service

Many local governments charge property owners user fees for water delivery. Prior to increasing these fees, a government must notify fee payers, hold a hearing, and reject the increase if a majority of the fee payers submit written protests. In some cases, Proposition 218 does not allow governments to charge property owners user fees. For example, government may not impose fees to finance the future expansion of a water system. To raise revenues for these purposes, government may impose taxes, assessments, or fees on developers. (We discuss Proposition 218's requirements regarding these other revenue sources below.)

Stormwater Services

Local governments finance stormwater clean-up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two-thirds of the voters, or a majority of property owners. Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two-thirds of the electorate.

Linda S. Adams
Secretary for
ɔnmental Protection

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5537
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977
FAX (916) 341-5543 • Internet Address: http://www.waterboards.ca.gov/water_issues/programs/stormwater/

Arnold Schwarzenegger
Governor

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY (GENERAL PERMIT)
WATER QUALITY ORDER 99-08-DWQ

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FACT SHEET
FOR
WATER QUALITY ORDER 99-08-DWQ

STATE WATER RESOURCES CONTROL BOARD (SWRCB)
901 P STREET, SACRAMENTO, CALIFORNIA 95814

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY (GENERAL PERMIT)

BACKGROUND

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) which establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) published final regulations that establish storm water permit application requirements for specified categories of industries. The regulations provide that discharges of storm water to waters of the United States from construction projects that encompass five (5) or more acres of soil disturbance are effectively prohibited unless the discharge is in compliance with an NPDES Permit. Regulations (Phase II Rule) that became final on December 8, 1999 expand the existing NPDES program to address storm water discharges from construction sites that disturb land equal to or greater than one (1) acre and less than five (5) acres (small construction activity). The regulations require that small construction activity, other than those regulated under an individual or Regional Water Quality Control Board General Permit, must be permitted no later than March 10, 2003.

While federal regulations allow two permitting options for storm water discharges (individual permits and General Permits), the SWRCB has elected to adopt only one statewide General Permit at this time that will apply to all storm water discharges associated with construction activity, except from those on Tribal Lands, in the Lake Tahoe Hydrologic Unit, and those performed by the California Department of Transportation (Caltrans). Construction on Tribal Lands is regulated by an USEPA permit, the Lahontan Regional Water Control Board adopted a separate NPDES permit for the Lake Tahoe Hydrologic Unit, and the SWRCB adopted a separate NPDES permit for Caltrans projects. This General Permit requires all dischargers where construction activity disturbs one acre or more, to:

1. Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.

2. Eliminate or reduce nonstorm water discharges to storm sewer systems and other waters of the nation.

3. Perform inspections of all BMPs.

This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs).

The General Permit accompanying this fact sheet regulates storm water runoff from construction sites. Regulating many storm water discharges under one permit will greatly reduce the otherwise overwhelming administrative burden associated with permitting individual storm water discharges. Dischargers shall submit a Notice of Intent (NOI) to obtain coverage under this General Permit. It is expected that as the storm water program develops, the RWQCBs may issue General Permits or individual permits containing more specific permit provisions. When this occurs, those dischargers will no longer be regulated by this General Permit.

On August 19, 1999, the State Water Resources Control Board (SWRCB) reissued the General Construction Storm Water Permit (Water Quality Order 99-08-DWQ referred to as "General Permit"). The San Francisco BayKeeper, Santa Monica BayKeeper, San Diego BayKeeper, and Orange Coast Keeper filed a petition for writ of mandate challenging the General Permit in the Superior Court, County of Sacramento. The Court issued a judgment and writ of mandate on September 15, 2000. The Court directed the SWRCB to modify the provisions of the General Permit to require permittees to implement specific sampling and analytical procedures to determine whether Best Management Practices (BMPs) implemented on a construction site are: (1) preventing further impairment by sediment in storm waters discharged directly into waters listed as impaired for sediment or silt, and (2) preventing other pollutants, that are known or should be known by permittees to occur on construction sites and that are not visually detectable in storm water discharges, from causing or contributing to exceedances of water quality objectives. The monitoring provisions in the General Permit have been modified pursuant to the court order.

TYPES OF CONSTRUCTION ACTIVITY COVERED BY THIS GENERAL PERMIT

Construction activity subject to this General Permit includes clearing, grading, disturbances to the ground such as stockpiling, or excavation that results in soil disturbances of at least one acre of total land area. Construction activity that results in soil disturbances of less than one acre is subject to this General Permit if the construction activity is part of a larger common plan of development that encompasses one or more acres of soil disturbance or if there is significant water quality impairment resulting from the activity. Construction activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety. Dischargers should confirm with the local RWQCB whether or not a particular routine maintenance activity is subject to this General Permit.

A construction project which includes a dredge and/or fill discharge to any jurisdictional surface water (e.g., wetland, channel, pond, or marine water) will also need a CWA Section 404 permit

STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD)
WATER QUALITY ORDER NO. 97-03-DWQ
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000001 (GENERAL PERMIT)

WASTE DISCHARGE REQUIREMENTS (WDRS)
FOR
DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES
EXCLUDING CONSTRUCTION ACTIVITIES

The State Water Board finds that:

1. Federal regulations for storm water discharges were issued by the U.S. Environmental Protection Agency (U.S. EPA) on November 16, 1990 (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with industrial activity (storm water) occur to obtain an NPDES permit and to implement Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm discharges.

2. This General Permit shall regulate storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified in Attachment 1, storm water discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Boards (Regional Water Boards), and storm water discharges and authorized non-storm water discharges from other facilities seeking General Permit coverage. This General Permit may also regulate storm water discharges and authorized non-storm water discharges from facilities as required by U.S. EPA regulations. This General Permit shall regulate storm water discharges and authorized non-storm water discharges previously regulated by San Francisco Bay Regional Water Board Order, No.92-11 (as amended by Order No. 92-116). This General Permit excludes storm water discharges and non-storm water discharges that are regulated by other individual or general NPDES permits, storm water discharges and non-storm water discharges from construction activities, and storm water discharges and non-storm water discharges excluded by the Regional Water Boards for coverage by this General Permit. Attachment 2 contains the addresses and telephone numbers of each Regional Water Board office.

3. To obtain coverage for storm water discharges and authorized non-storm water discharges pursuant to this General Permit, operators of facilities (facility operators) must submit a Notice of Intent (NOI), in accordance with the Attachment 3

instructions, and appropriate annual fee to the State Water Board. This includes facility operators that have participated in U.S. EPA's group application process.

4. This General Permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control storm water discharges and authorized non-storm water discharges to storm drain systems or other water-courses within their jurisdictions as allowed by State and Federal law.

5. If an individual NPDES permit is issued to a facility operator otherwise subject to this General Permit or an alternative NPDES general permit is subsequently adopted which covers storm water discharges and/or authorized non-storm water discharges regulated by this General Permit, the applicability of this General Permit to such discharges is automatically terminated on the effective date of the individual NPDES permit or the date of approval for coverage under the subsequent NPDES general permit.

6. Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

7. This action to adopt an NPDES general permit is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.) in accordance with Section 13389 of the California Water Code.

8. Federal regulations (40 CFR Subchapter N) establish effluent limitations guidelines for storm water discharges from some facilities in ten industrial categories.

9. For facilities which do not have established effluent limitation guidelines for storm water discharges in 40 CFR Subchapter N, it is not feasible at this time to establish numeric effluent limitations. This is due to the large number of discharges and the complex nature of storm water discharges. This is also consistent with the U.S. EPA's August 1, 1996 "Interim Permitting Approach for Water Quality Based Effluent Limitations in Storm Water Permits."

10. Facility operators are required to comply with the terms and conditions of this General Permit. Compliance with the terms and conditions of this General Permit constitutes compliance with BAT/BCT requirements and with requirements to achieve water quality standards. This includes the development and implementation of an effective Storm Water Pollution Prevention Plan (SWPPP) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges.

11. Best Management Practices (BMPs) to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges are appropriate where numeric effluent limitations are infeasible, and the implementation of BMPs is adequate to achieve compliance with BAT/BCT and with water quality standards.

12. The State Water Board has adopted a Watershed Management Initiative that encourages watershed management throughout the State. This General Permit recognizes the Watershed Management Initiative by supporting the development of watershed monitoring programs authorized by the Regional Water Boards.

13. Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions.

14. Following public notice in accordance with State and Federal laws and regulations, the State Water Board held a public hearing on November 12, 1996 and heard and considered all comments pertaining to this General Permit. A response to all significant comments has been prepared and is available for public review.

15. This Order is an NPDES General Permit in compliance with Section 402 of the CWA and shall take effect upon adoption by the State Water Board.

16. All terms that are defined in the CWA, U.S. EPA storm water regulations and the Porter-Cologne Water Quality Control Act will have the same definition in this General Permit unless otherwise stated.

IT IS HEREBY ORDERED that all facility operators required to be regulated by this General Permit shall comply with the following:

A. DISCHARGE PROHIBITIONS:

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. EFFLUENT LIMITATIONS:

1. Storm water discharges from facilities subject to storm water effluent limitation guidelines in Federal regulations (40 CFR

Original List Date:
Last Updated:
List Print Date: 04/10/2009
Claim Number: 03-TC-04, 19, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Scott Nichols Albarez-Glasman & Clovin 13181 Crossroads Parkway North Suite 400 City of Industry, CA 91746	Tel: Fax:	(562) 699-5500 (562) 692-2244
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Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: Fax:	(916) 485-8102 (916) 485-0111
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768	Tel: Fax:	(949) 644-3127 (949) 644-3339

Newport Beach, CA 92659-1768

Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Fax:	(916) 939-7901 (916) 939-7801
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Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: Fax:	(916) 712-4490 (916) 290-0121
Ms. Elizabeth Miller Jennings State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	Tel: Fax:	(916) 341-5161 (916) 341-5199

EXHIBIT I

Alameda Countywide
Clean Water Program

Contra Costa
Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Stormwater Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Vallejo
Sanitation and Flood
Control District

B A S M A A

April 29, 2009

RECEIVED
JUN 0 3 2009
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Subject: Public Comments on Draft Staff Analysis Concerning Los Angeles Area Municipal Storm Water and Urban Runoff Dischargers' Test Claims 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA Municipal Stormwater Permit Test Claims")

Dear Ms. Higashi:

These comments are being submitted on behalf of the Bay Area Stormwater Management Agencies Association ("BASMAA") with regard to the Commission on State Mandates' ("Commission's") draft staff analysis of the LA Municipal Stormwater Permit Test Claims. BASMAA is a consortium of eight area-wide municipal stormwater programs in the San Francisco Bay Area, collectively representing 90 municipal agencies, including 79 cities and 7 counties.

Because their own municipal stormwater permits are in the process of being reissued by the California Regional Water Quality Control Board, San Francisco Bay Region in the form of a consolidated "municipal regional stormwater permit" ("MRP") that is proposed to entail requirements both similar to, and going well beyond, those that are the subject of the LA Municipal Stormwater Permit Test Claims, BASMAA members have a strong interest in the matters pending before the Commission and its forthcoming decisions thereon.[1] Accordingly, BASMAA Executive Board members and their counsel have reviewed the Commission staff's draft analysis concerning the LA Municipal Stormwater Permit Test Claims and offer the following comments for the Commission's consideration:

1) **This is a matter of Statewide importance with broad implications**. As set forth in the staff's draft analysis, the issues the Commission will decide in the context of the LA Municipal Stormwater Permit Test Claims – whether the types of highly detailed and often ambitious requirements imposed by California's Regional Water Quality Control Boards in municipal stormwater permits result from the State's exercise of discretion beyond the mandates imposed through the federal Clean Water Act, and, if so, whether such State-mandated requirements are unfunded – will affect not only local governments and taxpayers in the Los Angeles

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[1] This letter is therefore also relevant to the test claims pending before the Commission concerning the municipal stormwater permit previously issued in San Diego County (File 07-TC- 09); BASMAA therefore requests that these comments also be considered and made part of the record with respect to the latter proceeding.

area, but ultimately those in the San Diego and San Francisco Bay-Delta areas and elsewhere throughout the State as well. Municipalities and Water Boards will undoubtedly look to the decision in this matter in upcoming municipal stormwater permitting matters. The Commission should therefore consider the broader implications of its forthcoming decisions and the reasoning that stands behind them with care and in light of the fundamental purpose for which it was established.

2) **This is fundamentally a matter of public finance, not water quality**. We all support clean water and a healthy environment. However, the issues pending before the Commission are really about whether the directives to local governments surrounding these issues were made at the federal or State level and how related local public services to improve water quality and reduce pollutants in stormwater and urban runoff are to be financed. They are *not* about whether or not such measures are needed, whether the particular measures in question make sense, or even whether the California Water Quality Control Boards have sufficient authority to impose them. While these latter issues are properly the subject of debate before the Boards themselves and, if necessary, in the State's courts, they are not properly within the Commission's purview and the Commission's staff is correct not to let its draft analysis rest on them or provide undue deference to the State Board's or U.S. EPA Region 9's advocacy views here.

3) **The Commission must keep the voter's objectives paramount**. Under a string of California Supreme Court decisions, our State's law is clear and consistent with regard to its direction regarding the implementation of initiative statutes, particularly those amending the State's Constitution: heed and work to fulfill the intent and objectives of the State's voters. The Commission must avoid embracing highly technical arguments and analyses and remember to assess the issues before it from the perspective of the voter who pulled the "yes" lever in the voting booth based on *their* (rather than a lawyer or even a judge's) likely understanding of the Proposition that was placed before them.

4) **The Commission's staff have correctly concluded that the municipal stormwater permit requirements at issue here are new programs and/or higher levels of service resulting from the State's exercise of discretion**. BASMAA appreciates and supports the Commission staff's thorough and well reasoned analysis of the federal vs. state mandate issues raised by the LA Municipal Stormwater Permit Test Claims. The assertion that the federal Clean Water Act's "maximum extent practicable" ("MEP") standard for municipal stormwater permitting allows a Water Quality Control Board to define as the federal minimum anything they say they think is practicable or needed to achieve water quality standards is contrary to the State's case law, lacks credibility, and begs the question of what the federal Clean Water Act actually mandates rather than allows a delegated state permit writer to require as a matter of discretion. We agree with the conclusions in the draft staff analysis that highly prescriptive permit provisions, such as those that are the subject of the LA Municipal Stormwater Permit Test Claims, go beyond the federal Clean Water Act's mandates and reflect an exercise of discretion sufficient to render the requirement a State mandate.

5) **The Commission's staff have not yet provided the Commission with a sufficient analysis of permissible/impermissible stormwater fee issues.** BASMAA also has carefully considered the portion of the Commission staff's analysis concerning the issue of whether the State mandates at issue in the LA Municipal Stormwater Permit Test Claims are funded or unfunded. Unfortunately, this section of the Commission staff's analysis looks at the LA Municipal Stormwater Permit Test Claims too myopically and therefore falls short in its consideration of all potentially relevant issues and appellate court precedents that need to be presented to the Commission to serve the interest of the public.

Beyond this, as broader matter of Statewide import, it is essential for the Commission to recognize and address, in this proceeding, the distinguishing fact that many non-federally mandated requirements in the State's municipal stormwater permits (such as highly prescriptive water quality monitoring and total maximum daily load implementation tasks designed to address widespread conditions of water quality impairment, to name just two) relate to local communities and their residents (rather than specific business activities) broadly, require public services that are essentially incident to real property ownership, and/or may only be financed via non-regulatory fees that remain subject to Proposition 218 or increased property taxes per se.[2] In addition, in many instances, due to joint power authorities, special districts, and other political configurations, it is often the case that many State-mandated municipal stormwater permit requirements fall on agencies which have no authority to impose regulatory fees or for which certain exemptions from Proposition 218 (such as those concerning the imposition of fees for water treatment or refuse collection) may not be applicable. In fact, the municipal stormwater permit requirements which do not lend themselves to regulatory fees (such as the two mentioned above) or qualify from exemptions to Proposition 218 have historically required, and will increasingly require, a more significant percentage of local agencies' stormwater program budgets to address than will the types of requirements that might arguably be subject to funding through locally-imposed regulatory fees.

Accordingly, BASMAA requests that this portion of the Commission staff's analysis be revised to revisit the conclusions reached with regard to the "funded vs. unfunded" nature of the requirements that are the subject of LA Municipal Stormwater Permit Test Claims and also to recognize and distinguish that there are many types of municipal stormwater permit requirements that do not give rise to the possibility of regulatory fees and therefore may well be "unfunded" State mandates.

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[2] Over the last five years, there have been three attempts to pass State legislation (ACA 10, ACA 13, and SCA 12) that would place a State Constitutional Amendment before the voters to create a further exemption to Proposition 218 for municipal stormwater fees on the ballot. All have failed. Since all of the case law cited by the Commission's staff in this section of their analysis preceded both the Salinas decision and this additional legislative history, both of which go much more directly to the stormwater-related fee issues, it is readily distinguishable. Additional precedents on Proposition 218 related cases have been decided by the appellate courts since the Salinas decision that should be carefully reviewed by the Commission.

* * * * * * *

In sum, while it appreciates and applauds the Commission staff's efforts to date, BASMAA remains concerned that the staff's work is not yet complete and believes that further analysis and discussion of the funding issues relating to The Los Angeles Municipal Stormwater Permit Test Claims and to various types of State mandates for municipal stormwater permits needs to be delineated and brought before the Commission. These concerns are by no means merely theoretical – over the last 15+ years, the requirements and scope of California's municipal stormwater permitting program have increased significantly from simply developing and implementing stormwater management programs as envisioned in U.S. EPA's regulations. Many of these increased requirements entail both new programs and higher levels of service that address widespread conditions and serve a community's residents at large; they are distinguishable from the focus of the Commission staff's current analysis and are not tied to increased local regulatory programs so they cannot be financed through so-called "regulatory" fees.

Accordingly, due to fiscal constraints and competing local needs (such as police and fire protection services), there is now a critical need to both prioritize and phase many municipal stormwater program requirements currently under consideration by the California Regional Water Quality Control Boards so federal legal mandates are addressed and State add-ons to federal minimums are either curtailed or tied to the provision of supplemental funding from the State itself.

We ask the Commission for its help by considering these comments and directing its staff to revise their draft analysis of the LA Municipal Stormwater Permit Test Claims in a manner which addresses our concerns.

Very truly yours,

Donald P. Freitas, Chair
Bay Area Stormwater Management Agencies Association

cc: BASMAA Board of Directors

PROOF OF SERVICE BY MAIL
(Code Civ. Proc. secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

PUBLIC COMMENTS ON DRAFT STAFF ANALYSIS CONCERNING LOS ANGELES AREA MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGERS' TEST CLAIMS 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA MUNICIPAL STORMWATER PERMIT TEST CLAIMS")

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practices:

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Burhenn & Gest LLP
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Los Angeles, CA 90017

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 2nd day of June, 2009.

Sara L. Davis
(typed)

(signature)

EXHIBIT J

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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June 4, 2009

RECEIVED
JUN 05 2009
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Dear Ms. Higashi:

LOS ANGELES COUNTY REVIEW
COMMISSION ON STATE MANDATES DRAFT STAFF ANALYSIS
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

The County of Los Angeles respectfully submits its review of the Commission on State Mandates draft staff analysis of the Municipal Storm Water and Urban Runoff Discharges test claims.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:lk
H:\SB90\Storm Water 06 05 09 Response\Storm Water Review 06 03 09 Cover.doc

Enclosure

Los Angeles County Review
Commission on State Mandates Draft Staff Analysis
Municipal Storm Water and Urban Runoff Discharges Test Claims

The County of Los Angeles [County] has reviewed the Commission on State Mandates [Commission] draft staff analysis of four consolidated storm water test claims[1].

State Mandates

The County seeks reimbursement for the following state mandates contained in Los Angeles Regional Water Quality Control Board ("Regional Board") Order No. 01-182 ("Order"):

a. Part 4.c.2.a [Inspection of certain commercial facilities to prevent those facilities from discharging waste into waters of the state and to assure compliance with state law], pages 28-31;

b. Part 4.c.2.b [Inspection of industrial facilities to determine compliance with the State's program that regulates discharge of storm water from industrial facilities, including compliance with State Water Resources Control Board ("State Water Board") permits], page 31;

c. Part 4.E. [Inspection of construction sites to determine those sites' compliance with the State's program that regulates discharge of storm water from those sites, including compliance with State Water Board permits], pages 42-45;

d. Part 4.F.5.c.3 [Installation and maintenance of trash receptacles at transit stops], pages 48-49.

[1] Originally, test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities)* were filed by the County of Los Angeles in September 2003. Test claim 03-TC-21 (*Storm water Pollution Requirements*) was filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina on September 30, 2003. Test claim 03-TC-20 (*Waste Discharge Requirements*) was filed by Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village on September 30, 2003.

Commission Findings

In Commission's 63 page analysis, issued on April 30, 2009, staff identified the following requirements of a reimbursable state mandated program to be met by claimants:

a. "... the permit is an executive order within the meaning of article XIII B section 6 and Government Code section 17516." Staff Analysis [SA], page 20.

b. "The duty to apply for an NPDES permit is not within the claimants' discretion." SA, page 21.

c. "... the state freely chose to impose the transit trash receptacle requirement on the permittees because neither the federal statute nor the regulations require it. Nor do they require minimum control measures as defined in 40 CFR § 122.34 to include: 1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination. (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment.; (6) Pollution prevention/good housekeeping for municipal operations." SA, page 27.

d. "Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that "mandate costs that exceed the mandate in the federal law or regulation." SA, page 28.

e. "Staff finds that the permit activities constitute a program within the meaning of article XIII B, section 6. The permit activities are limited to local governmental entities. The permit defines the "permittees" as the County of Los Angeles and 84 incorporated cities within the Los Angeles County Flood Control District (Permit, p. 1 & attachment A). The permit lists no private entities as "permittees." Moreover, the permit provides a service to the public by preventing or abating pollution in waterways and beaches in Los Angeles County. (Or as stated on page 13 of the permit: "The objective of this Order is to protect the beneficial uses of receiving

waters in Los Angeles County.") Therefore, staff finds that the permit is a program within the meaning of article XIII B, section 6." SA, page 46.

f. "Staff finds that local agencies were not required by state or federal law to place and maintain trash receptacles at transit stops before the permit was adopted. Whether or not most cities or counties do so, as argued by the State Water Board in its April 2008 comments, is not relevant to finding a state-mandated new program or higher level of service because even if they do, Government Code section 17565 states: "If a local agency ... at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency ... for those costs incurred after the operative date of the mandate." Because the transit trash requirement is newly mandated by the permit, and based on the plain language of part 4F5c3 of the permit, staff finds that it is a new program or higher level of service to place trash receptacles at transit stops and maintain them as specified in the permit. For the same reason, staff finds that the inspections and enforcement activities at industrial and commercial facilities, including restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, and phase I facilities (in parts 4C2a & 4C2b of the permit) as well as inspection and enforcement at construction sites (in part 4E of the permit) are a new program or higher level of service. These were not required activities of the permittees prior to the permit's adoption." SA, pages 46-47.

g. "In sum, staff finds that all the permit provisions at issue in this test claim impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution." SA, page 47.

h. "These [claimant] declarations illustrate that the costs associated with the permit activities exceed $1,000." SA, page 48.

i. Commission staff found the funding disclaimer in Government Code section 17556, subdivision (a), does not apply. Staff explained that "... the claimants did not request "legislative authority" to implement the permit, and the record lacks any resolutions adopted by the claimants. Therefore, staff found that the claimants did not

request the activities in the permit within the meaning of Government Code section 17556, subdivision (a)." SA, page 48.

Commission staff, however, concluded that the municipal storm water and urban runoff discharge costs claimed by the County are subject to the funding disclaimer in Government Code section 17556, subdivision (d)[2]. SA, page 62. If true, reimbursement would be prohibited. But it is not.

No Bus Fee Authority

The County finds that it has no fee authority to recover its costs of complying with the bus stop trash requirements in Order No. 01-182. Previously, as noted by Commission staff, " ... both the State Board and the county argue the ability or merits of imposing a trash fee on transit [bus] users" [SA, page 53].

In staff's current analysis, no explicit bus fee authority is cited to rebut the arguments of the State Board and County. Staff merely indicate that "... regardless of whom the fees are imposed on, the authority to impose them exists in section 40059 of the Public Resources Code" [SA, page 53].

Public Resources Code, § 40059[3], according to Commission staff "... provides local governments with broad authority over the "level of services, charges and fees..." [SA, page 53]. Presumably, under staff's analysis, the County could impose trash fees on bus operators. But this is not possible. Under *BIBER ELECTRIC CO., Inc. v. CITY OF SAN CARLOS, 181, Cal.App.2d 342,* attached as Exhibit One, the Court explains:

> "Granting the validity of the proposition that an exercise of police power in the regulation of a municipal affair will take precedence

[2] Government Code section 17556, subdivision (d), states: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ... if, after a hearing, the commission finds any one of the following: [¶]...[¶] (d) The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service".

[3] Public Resources Code section 40059, subdivision (a), states that "Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services."

> over a State statute (cf. Nat. Milk Producers Ass'n of California v. City, etc., of S. F., 20 Cal.2d 101, 124 P.2d 25), the argument again fails because the ordinance is not a business license ordinance. Its connection with the enforcement of the business license ordinance is entirely incidental and indirect. The fee charged is not a business license but a license upon vehicles using city streets, matters which are clearly governed by section 9250***344** et sequitur of the 1959 Vehicle Code (§ 372 et seq. of 1935 Code)."

Therefore, the County could not impose a fee upon bus operators governed by section 9250***344** et sequitur of the 1959 Vehicle Code (§ 372 et seq. of 1935 Code). Here, a local fee authority is in conflict with general laws. Accordingly, the direct grant of police power under article XI, section 7, of the California Constitution is unavailable[4]. Accordingly, the authority to impose transit trash fees upon bus operators is not available.

In addition, there is no fee authority to impose a fee on bus riders as the mandated storm water pollution prevention activities would benefit all county residents, not just a special class of residents riding buses. Clearly, all county residents benefit from clean water.

Previously, the Commission found that all county residents benefit from enhanced emergency firefighter services. Imposing a fee on them was held to be invalid. The Commission explains, on page 4 of this decision[5], that:

> "The state also suggests the program's costs could be recovered from all County residents, but this argument ignores the purpose for the enactment of article XIII B, which was to prohibit taxing local residents for state mandated programs. We find that a statutory grant of authority to recover program costs which, in reality, cannot county be meaningfully exercised, is a legally insufficient payment recovery provision."

Therefore, the County is unable to recover transit trash costs by imposing fees on bus riders or operators. In addition, the County has no authority to impose such fees without voter approval.

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[4] See *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662.

[5] "Remand of Sudden Infant Death Syndrome Training for Firefighters" Statement of Decision, Test Claim Number CSM 4412, adopted December 17, 1998.

Proposition 218 Bus Stop Property Fees

The County does not have sufficient fee authority to recover the costs of installing and maintaining trash receptacles at bus stop properties. Voter approval for such fees under Proposition 218 is required. Commission staff argue otherwise. They claim that voter approval is not required for imposition of the proposed fees in light of the exception from voter approval for "fees or charges for sewer, water, and refuse collection services". Specifically, staff contend that "... refuse collection is expressly exempted from Proposition's 218 majority vote requirement (article XIII D, § 6, subd. (c))".

However, the purpose of installing and maintaining trash receptacles at bus stop properties is to exclude trash from storm water drainage system, not the routine collection of residential or commercial trash. In this regard, the City of Santa Clarita [City] in their Proposition 218 storm water fee proposal to voters propose "trash excluders".

On page 3 of the City's "Storm water Pollution Prevention Fee, Rate Analysis Report", [attached as Exhibit Two, the City notes that:

> "These [trash excluders] are devices installed inside catch basins to prevent trash, litter and debris on the streets from getting into the storm drain system. Each device costs between $2,000 and $2,300 to install. Staff anticipates an additional cost of $600,000 to retrofit all 264 catch basins if this requirement is retained."

Certainly, trash receptacles at bus stops to prevent trash, litter and debris on the streets from getting into the storm drain system serve the same purpose as trash excluders and must meet Proposition's 218 voter approval requirements.

Therefore, the County has insufficient fee authority to impose bus stop property fees as well as insufficient fee authority to impose regulatory fees on bus operators and riders.

Proposition 218 Storm Water Inspection Fees

Storm water inspection costs are often part of Proposition's 218 storm water pollution prevention fee proposals to voters. For example the City of Santa Clarita notes, on page two of their "Storm water Pollution Prevention Fee, Rate Analysis Report", that:

"In order to provide for the safety of the residents of the City and protect property in the City from the damage associated with flooding and to meet water quality requirements of the NPDES permit issued to the City by the LA-RWQCB and SWRCB, it is necessary to design, construct, operate, maintain, improve and replace storm drainage facilities which collect storm and surface water runoff and convey and treat such runoff in a safe manner to an acceptable point of discharge. It is also necessary to inspect, monitor, and take enforcement action related to illegal dumping, illicit discharges, and various water quality concerns. In order to properly fund such facilities and activities, the City Council has determined that it is necessary to impose on all properties in the City a user charge for storm drainage service." [Emphasis added.]

Santa Clarita's storm water pollution prevention fee, and the inspection fees claimed herein, are designed to recover the costs of "storm water drainage" systems, not "sewer" systems exempt from the voter approval requirements of Proposition 218. The Attorney General in Opinion No. 97-1104 (March 5, 1998), attached as Exhibit Three, distinguishes the two systems and explains that:

"The main issue to be resolved is whether prior voter approval is required for imposition of the proposed fees in light of the exception from voter approval for "fees or charges for sewer, water, and refuse collection services." (Cal. Const., art. XIII D, § 6, subd. (c).) If the fees are for sewer, water, or refuse collection services, no voter approval is necessary. First, as for sewer services, the term "sewer" is often used differently in different contexts.(See, e.g., Pub. Util. Code, § 230.5.) We note that subdivision (a) of section 5 of article XIII D refers to "[a]ny assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage system, or vector control." Such language in a related constitutional provision supports application of the following rule of statutory construction: "If a statute on a particular subject omits a particular provision, inclusion of that provision in another related statute indicates an intent the provision is not applicable to the statute from which it was omitted." (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827.) **Footnote No. 3** Placing "flood control, drainage systems" in section 5 of article XIII D while omitting such terms in section 6's voter approval exemption

clause evidences an intent to require prior voter approval of new or additional storm drainage system fees.

The Legislature has similarly distinguished sewer systems from storm drainage systems in various statutory schemes. For example, Government Code section 63010, subdivision (i) describes the two separately as follows:

". . . . . .

"(3) 'Drainage and flood control' includes ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

". . . . . .

"(10) 'Sewage collection and treatment' includes pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

". . . . . ."

Health and Safety Code section 5471 likewise differentiates between sewer systems and storm drainage systems, as does the organic act under which the District was formed and continues to operate (see Stats. First x. Sess. 1952, ch. 17, p. 351; Deering's Wat.--Uncod. Acts, Act 8934; West's Water Code--App., ch. 67). **Footnote No. 4** Any remaining doubt is removed by applying the following principle of statutoryconstruction recently reaffirmed in *City of Lafayette* v. *East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005, 1017:

". . . 'Exceptions to the general rule of a statute are to be strictly construed. In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. . . . One seeking to be excluded from the sweep of the general statute must establish that the exception applies.'

[Citations.]" If storm drainage system fees are not fees for "sewer . . . services," are they fees for "water . . . services" within the meaning of article XIII D, section 6, subdivision (c)? Government Code section 53750, subdivision (m) defines "water" for purposes of article XIII D as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water."

While there may be some temporary storage of water in connection with a storm drainage system, it is apparent that the District's drainage and flood control system is designed to do the opposite of that which the Legislature's definition of "water . . . services" contemplates. The District's storm drainage system does not produce water or supply it to end users. Rather than distributing water, it collects and removes it. The District does not treat any water flowing into its storm drainage system. Consequently, the exception from voter approval in Article XIII D, section 6, subdivision (c), for "water . . . services" is inapplicable."

There is additional evidence that storm water pollution prevention fees such as those claimed herein are not exempt from Proposition 218 voter approval requirements. Specifically, SCA 18 (2009), attached as Exhibit 4, seeks to add storm water pollution prevention fees for the same type of services, as are claimed herein, to the three current types of services which are exempt from the requirements of Proposition 218. The new storm water fee exemption language in SCA 18 is italicized as follows:

" Voter Approval for New or Increased Fees and Charges.

Except for fees or charges for sewer, water, and *storm water and urban runoff management, or* refuse collection services, no property related *a property-related* fee or charge shall *not* be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision."

It should be noted that the title assigned by Commission staff to the subject consolidated test claims is "Municipal Storm Water and Urban Runoff Discharges". This is similar to the new exemption in SCA 18: "*storm water and urban runoff management*". Therefore, under SCA 18, now pending in the State Legislature, the County would have sufficient fee authority. However, under current law, it does not.

Accordingly, the storm water pollution prevention inspection fees claimed herein are subject to the voter approval requirements of Proposition 218. As such, the County has insufficient inspection fee authority.

Insufficient Regulatory Inspection Fee Authority

No express fee authority to recover inspection costs is to be found. In this regard, Commission staff note that "... the issue of local fee authority for the municipal storm water permit activities is one of first impression for the Commission. Although there are no authorities directly on point (except Pub. Res. Code, § 40059) ... some legal principles emerge that guide the analysis" Staff Analysis [SA] page 51.

However, even Public Resources Code, § 40059 does not refer to fees to recover the costs of inspection activities. The only types of activities covered by this section are enumerated in § 40059, subdivision (a) as follows:

> "Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services."

Accordingly, Public Resources Code, § 40059 provides no express authority to charge inspection fees. Moreover, the broad phrase "... Aspects of solid waste handling which are of local concern, including, but not limited to ..." [emphasis added] should not be inferred to include acknowledged state mandated inspections.

Also, Commission staff acknowledge that the inspection fee authority to inspect commercial and industrial facilities and construction sites under

"Health and Safety Code section 5471[6] is insufficient. In particular, staff note that section 5471:

> "... makes no mention of "inspecting" commercial or industrial facilities. Rather, the fee revenues are used for "maintenance and operation" of storm drainage facilities. Thus, for the types of businesses regulated by the permit (restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites) staff cannot find that the claimants have statutory fee authority sufficient to pay for the mandated program because "operation and maintenance" of storm drainage facilities does not encompass the state-mandated inspections of the facilities or construction sites specified in the permit." [Emphasis added.] SA, page 54.

It should be noted that the State was given fee authority to cover the costs of inspecting general industrial facilities and construction sites in Chapter 775, Statutes of 1997 [AB 1186]. Before the County was delegated the inspection duties claimed herein, the California Regional Water Quality Control Boards [Regional Board] were solely responsible for inspection and regulatory compliance issues associated with general industrial and construction storm water programs and, under AB 1186, were required to spend not less than 50% of State permit fee revenues on such issues.

However, according to the AB 1186 Bill Analysis of the Senate Committee on Agriculture and Water Resources, attached as Exhibit 5, the inspection and regulatory work loads associated with general industrial and construction storm water programs of Regional Boards was getting out-of-hand. This analysis explains why on page 2:

> "1. According to the proponents of this bill, California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries

[6] Section 5471 provides that [A]any entity shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. .... Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities .... "

and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program. This bill would require at least 50% of the revenues collected under this program to be returned to the regional boards and would further require the regional boards to use at least 50% of the money received for inspection and regulatory compliance issues associated with industrial and construction storm water programs.

2. The SWRCB indicates that at least 50% of the moneys in the Waste Discharge Permit Fund are already allocated to regional boards for use in enforcing the storm water program. The SWRCB indicates that approximately $3.2 million is collected annually from the storm water program, and approximately $2.4 million goes back to the regional boards. Further, the SWRCB indicates that it has an accounting system that ensures revenues go back to the originating program and region.

3. Recent amendments to this bill address concerns expressed by the SWRCB and remove the opposition of the SWRCB. Specifically, the amendments eliminate the creation of a special account in the Waste Discharge Permit Fund, and instead only require a separate accounting of the revenues received under the program. The amendments further require at least 50% of the revenues to go back to the regional board from which they were collected, which is consistent with the current practice of the SWRCB.

4. The recent amendments further address the issue of accountability of the funds at the regional level by requiring the regional boards to use at least 50% of the amount received solely on storm water inspection and regulatory compliance issues associated with the program.

5. The California Environmental Protection Agency has recently stepped up its efforts to require industries to obtain permits through

mailings to facility operators. Operators could be in violation of federal law and facing with fines up to $25,000 per day."

It is not surprising then that a few years after AB 1186 was enacted that claimants were delegated inspection and regulatory duties under the test claimed permit to help address "rampant" noncompliance --- "... with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits". However, no the State fee revenue was provided to claimants to perform these inspections. As a consequence, the State was compensated for work the claimants did. Or put another way, the state was compensated for work the State did not do.

To correct the unearned State compensation problem, the Legislature proposed sharing the State fees. In this regard, the Legislative Counsel explains in their digest to SB 2058 (2002), attached as Exhibit 6, that:

> " ... all fees collected for permits for the discharge of storm water by municipalities and industries be accounted for separately in the fund. The bill would also provide that not less than 50% of the money collected from general industrial or construction storm water permits, upon appropriation by the Legislature, would be used by the California regional water quality control board with jurisdiction over the permitted industry or construction site that generated the fee, to carry out storm water programs in the region. The bill would further provide that a portion of the money collected from the fees from all storm water discharge permits, upon appropriation by the Legislature, would be used by the city, county, or city and county, in which the fee was collected, solely to assist the local government to control pollutants or meet water quality standards from storm water dischargers that are subject to a general in dustrial or construction storm water permit under the NPDES permit program to be separately accounted for, by region, in the Waste Discharge Permit Fund. <u>The board would require each regional board that receives money that is generated from general industrial or construction storm water permit fees to allocate 25% of those funds to counties and cities to carry out storm water programs in that region</u> . [Emphasis added.]

The purpose of SB 2058 is explained in the SB 2058 Bill Analysis of the Senate Committee on Environmental Quality, attached as Exhibit 7, as follows:

"The regulation of storm water discharges has become increasing controversial over the past several years. The controversy has been enhanced by lawsuits that resulted in judicial orders to regional water quality control boards to manage indirect sources of water pollution in order to mitigate the effects of runoff on impaired water bodies and by repeated ocean beach closures because of bacterial contamination from storm drain flows. ... The purpose of this bill is to provide a subsidy to cities and counties to assist them in complying with the requirements of municipal storm water permits. The subsidy is taken from permit fee revenue paid by industrial and construction storm water dischargers." [Emphasis added.]

Apparently, SB 2058 recognized that cities and counties have insufficient fee authority to recover their permit costs, including their inspection costs claimed herein. In essence, the State pocketed the fee revenue while making the County and cities do the work. Unfortunately, SB 2058 never was enacted --- and cities and counties have not recovered the costs as claimed herein.

Recently, SB 310 (2009), attached as Exhibit 8, proposes to provide cities and counties with storm water regulatory or user-based fee authority, currently unavailable under existing law. Specifically, SB 310 proposes to add Section 16103 to the Water Code as follows:

"(a) In addition to making use of other financing mechanisms that are available to local agencies to fund watershed improvement plans and plan measures and facilities, a county, city, special district, or combination thereof may impose fees on activities that generate or contribute to runoff, storm water, or surface runoff pollution, to pay the costs of the preparation of a watershed improvement plan, and the implementation of a watershed improvement plan that is approved by a regional board~~, if the plan will facilitate compliance with one or more water quality requirements~~. Fees imposed pursuant to this section shall be reasonably related to the actual or anticipated past, present, or future adverse effects of the fee payer's activities. "Activities," for purposes of this subdivision, include all the activities, operations, means the operations and existing structures and improvements subject to regulation under an NPDES permit for municipal separate storm sewer systems.

(b) A county, city, special district, or combination thereof may plan, design, implement, construct, operate, and maintain controls and facilities to improve water quality, including controls and facilities related to the diversion, interception infiltration, retention and reuse, diversion, interception, filtration, or collection of surface runoff, including urban runoff, storm water, and other forms of runoff, the treatment of pollutants in runoff or other waters subject to water quality regulatory requirements, the return of diverted and treated waters to receiving water bodies, the enhancement of beneficial uses of waters of the state, or the beneficial use or reuse of diverted waters.

(c) The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter." [Emphasis added.]

Of course, when SB 310 passes, cities and counties will have storm water user-based or regulatory fee authority. Until then, none is available.

The common thread in the [above] legislative proposals is that under existing law claimants have insufficient fee authority.

Conclusion

Accordingly, for all of the above reasons, reimbursement for providing State-permitted industrial and commercial facility and construction site inspections and public transit trash removal services pursuant to the Regional Water Board's Executive Order Number 01-182, Permit Number CAS004001, issued December 13, 2001, is required.

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Los Angeles County Review
Commission on State Mandates Draft Staff Analysis
Municipal Storm Water and Urban Runoff Discharges Test Claims

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review of the Commission on State Mandates draft staff analysis of the Municipal Storm Water and Urban Runoff Discharges test claims filed by the County.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs in implementing the test claim legislation, and find that such costs as set forth in the subject test claims, are, in my opinion, are reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/4/09; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

181 Cal.App.2d 342
181 Cal.App.2d 342, 5 Cal.Rptr. 261
(Cite as: 181 Cal.App.2d 342, 5 Cal.Rptr. 261)

C

District Court of Appeal, First District, Division 2, California.

BIBER ELECTRIC CO., Inc., a corporation, Plaintiff and Respondent,

v.

CITY OF SAN CARLOS, a municipal corporation, et al., Defendants and Appellants.

Civ. 19011.

May 26, 1960.
Rehearing Denied June 24, 1960.
Hearing Denied July 20, 1960.

Action for declaratory relief and injunction against enforcement of city ordinance which required that every commercial vehicle driven on city streets by any person or firm subject to city's business licensing provisions have displayed on it a certain emblem issued by city. The Superior Court, San Mateo County, Arthur L. Mundo, J., held the ordinance unconstitutional, and city appealed. The District Court of Appeal, Good, J. pro tem., held that the fee for additional emblems required by ordinance was not adjunct of business licensing but rather involved a fee for the use of city streets by commercial vehicles of business licenses, an area pre-empted by state Vehicle Code so that trial court correctly enjoined enforcemet of ordinance.

Affirmed.

West Headnotes

[1] **Automobiles 48A** ⚿**62**

48A Automobiles
48AIII Public Service Vehicles
48AIII(A) Control and Regulation in General
48Ak62 k. Concurrent and Conflicting Regulations. Most Cited Cases
Where city ordinance required that an emblem available from city be displayed on every commercial vehicle driven on city streets by firms or persons subject to business licensing within city, such emblem to cost $1.00 each, except for first one issued free to each business licensee, such fee was not an adjunct of business licensing but rather involved a fee on the use of city streets by commercial vehicles of business licensees, an area pre-empted by state Vehicle Code so that ordinance was void. West's Ann.Vehicle Code, §§ 21, 9250 et seq., 21100(b), 35701 et seq.

[2] **Automobiles 48A** ⚿**9**

48A Automobiles
48AI Control, Regulation, and Use in General
48Ak9 k. Concurrent and Conflicting Regulations. Most Cited Cases
Unless express authority is granted, a local government has no authority to regulate or control any matter covered by the Vehicle Code. West's Ann.Vehicle Code, §§ 21, 9250 et seq., 21100(b), 35701 et seq.

[3] **Appeal and Error 30** ⚿**717**

30 Appeal and Error
30X Record
30X(N) Matters Not Apparent of Record
30k717 k. Opinion of Lower Court. Most Cited Cases
Although memorandum opinion filed by trial judge discussed several propositions other than the single reason for the judgment as stated in the findings of fact, appellate court need not discuss all propositions in memorandum opinion since the appeal is from the judgment and not from the memorandum of the judgment.

****261 *342** Melvin E. Cohn, City Atty., Michael Aaronson, Asst. City Atty., San Carlos, for appellants.

Dinkelspiel & Dinkelspiel, Redwood City, for respondent.

***343** GOOD, Justice pro tem.

In this action plaintiff sought declaratory relief and to enjoin enforcement of San Carlos' Ordinance No. 462 (codified section 4038) adopted October 14, 1958. The ordinance required the owner of every commercial vehicle driven on any San Carlos street by any person or firm subject to business licensing within said city to display a certain emblem on or near the left

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door of such vehicle. Each business licensee was entitled to one such emblem without fee and a charge of $1.00 was imposed for each additional emblem that might be required by a licensee. Plaintiff was an electrical contractor and subject to the San Carlos business license ordinance. It operated eight vehicles in its business. The preamble to Ordinance 462 recites that ready identification of business licensees would be facilitated by the use of such emblems and they 'would, therefore, facilitate the policing of said City.'Defendant appeals from a judgment declaring the ordinance unconstitutional. The declaratory judgment is supported by a specific finding that the ordinance is invalid because it attempts to impose additional requirements in fields that are pre-empted by the State of California.

262 [1] The defendant argues that the imposition of a **business license fee measured by the number of commercial vehicles of a firm using its streets is not an attempt to enter into a field pre-empted by the State. The argument might be valid if the charge imposed by the ordinance was a **business license fee.** But by its very terms, the taxable transaction involved in this ordinance is the use of city streets by commercial vehicles of business licensees. The city's next argument is that the ordinance in question is not regulatory because any licensee can procure the emblem without examination or investigation and, therefore, is a valid exercise of the police power as applied to a municipal affair, namely, the enforcement of the business license ordinance of said city. Granting the validity of the proposition that an exercise of police power in the regulation of a municipal affair will take precedence over a State statute (cf. Nat. Milk Producers Ass'n of California v. City, etc., of S. F., 20 Cal.2d 101, 124 P.2d 25), the argument again fails because the ordinance is not a business license ordinance. Its connection with the enforcement of the business license ordinance is entirely incidental and indirect. The fee charged is not a business license but a license upon vehicles using city streets, matters which are clearly governed by section 9250*344 et sequitur of the 1959 Vehicle Code (§ 372 et seq. of 1935 Code). Its violation is a misdemeanor and prosecution would lie independently and separately from a possible violation of the business license ordinance.

[2] The city is correct in its contention that section 458 of the 1935 Vehicle Code does not of itself support the finding of pre-emption. This section provided that the provisions of division 9 of that code should be uniform throughout the State of California and proscribed the enactment or enforcement of ordinances by local authorities on matters covered by this division unless express authorization was granted therein. Registration and licensing of motor vehicles were provided for in division 6. However, the policy of uniformity of laws affecting taxation, regulation and control of motor vehicles throughout the State of California has long been recognized as extending to more than the traffic rules and regulations of division 9. Thus, the weight limits set forth in section 88 of the 1923 Motor Vehicle Act were held to be a pre-empted field in Atlas Mixed Mortar Co. v. City of Burbank, 202 Cal. 660, 262 P. 334 decided in 1927. The fact that in 1935 section 713 of the Vehicle Code[FN1] gave municipalities express authority (subject to one exception, here of no consequence) to enact ordinances to limit use of their streets by commercial vehicles in excess of gross weights to be fixed by such ordinance does not affect the authority of the Atlas decision. Cf. Agnew v. City of Los Angeles, 51 Cal.2d 1, 330 P.2d 385.In the enactment of the 1959 Vehicle Code, section 458 has become section 21 and the words 'this division' have been changed to the inclusive words 'this code' thus providing present statutory authority for the proposition that unless express authority is granted, a local government has no authority to regulate or control any matter covered by the Vehicle Code. This is but a statutory expression of what was recognized as law in Atlas and cases therein cited and, also, what may have been recognized by the Legislature itself in its grant to local authorities by section 459(b)[FN2] of the power to license and regulate vehicles for hire, thus impliedly prohibiting the licensing of other vehicles. For the foregoing reasons we are of the opinion that the ordinance was in fact an attempt by the city to impose an additional license fee in a field pre-empted by the State and the judgment of the trial court was correct.

FN1. Now Vehicle Code 1959, § 35701 et seq.

FN2. Now Vehicle Code 1959, § 21100(b).

[3] The memorandum opinion filed by the trial judge *345 discussed several propositions other than the single reason for the judgment as stated in the findings of fact. These propositions were discussed at length in the briefs but because an appeal is from **263 the judgment and not from a memorandum (In re Estate

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of Bullock, 133 Cal.App.2d 542, at page 549, 284 P.2d 960, at page 965) the remaining propositions need not be discussed. However, nothing in this opinion is intended to hold that a revenue producing business license ordinance may not graduate its license fees according to the number of vehicles used in a business. The reasonableness of such a classification is not presently before us. Neither is the question whether or not if such a classification were validly imposed a city could a sticker type receipt or other identifying emblem to be displayed on the vehicles of such licensees.

The judgment is affirmed.

KAUFMAN P. J., and DRAPER J., concur.

Cal.App. 1960
Biber Elec. Co. v. City of San Carlos
181 Cal.App.2d 342, 5 Cal.Rptr. 261

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EXHIBIT 2

Harris & Associates

SHAPING THE FUTURE ONE PROJECT AT A TIME.

Rate Analysis Report

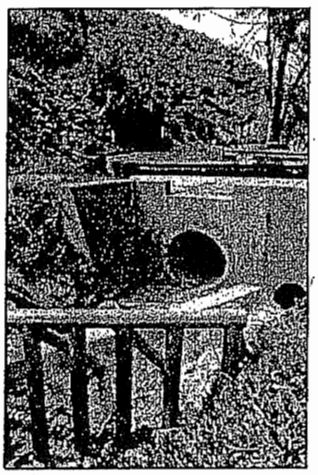
for the

Stormwater Pollution Prevention Fee

For the

City of Santa Clarita

Los Angeles County, California



February 23, 2009

Introduction

The City of Santa Clarita (City) is considering updating its current Stormwater Pollution Prevention Fee, which is being levied per Chapter 15.50 of the Santa Clarita Municipal Code and the California Health and Safety Code Section 5471 et seq.

The purpose of this Rate Analysis Report is to:

- Review the Stormwater Pollution Prevention Fee and improvements currently being funded.
- Review the requirements of Article XIIID of the State Constitution (Proposition 218) relating to requirements for apportioning the costs associated with the City's stormwater runoff system.
- Analyze and recommend an appropriate rate structure and provide estimated rates based on cost data information provided by the City.

Proposition 218 Requirements

This fee must comply with the provisions of Article XIIID of the California Constitution (Proposition 218). Section 6.b of Proposition 218 has the following requirements for all "new, extended, imposed or increased" fees and charges:

1) "Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service."

2) "Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed."

3) "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel."

4) "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with [the assessment section of this code]."

5) "No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners."

Background Information

In accordance with the Federal Clean Water Act of 1972, the United States Environmental Protection Agency (EPA) is required to establish regulations setting forth National Pollution Discharge Elimination System (NPDES) permit standards. The enactment of 1987 amendments to the Federal Clean Water Act (Act) of 1972 imposes permit requirements for discharge of storm waters. The Act allows the EPA to delegate its NPDES permitting authority to states with an approved environmental regulatory program. The State of California is one of the delegated states.

The responsibility for implementing various NPDES permits in the State of California has been delegated to the State Water Resources Control Board (SWRCB). The SWRCB administers NPDES authority through its nine Regional Boards. In anticipation of the issuance of the Federal regulations, the Los Angeles County Department of Public Works (LACDPW), together with 86 other cities,

applied to the Los Angeles Regional Water Quality Control Board (LA-RWQCB) and SWRCB for an "early" permit. On June 18, 1990, the NPDES permit for Stormwater/Urban Runoff Discharge in Los Angeles County was issued. Los Angeles County is the designated "Principal Permittee" with the 86 cities given the opportunity to become Co-Permittees. The City of Santa Clarita is the only incorporated City in the Los Angeles County portion of the Santa Clara River watershed. The Santa Clara River runs 86 miles from Acton to Ventura, eventually reaching the Pacific Ocean. The City is approximately 45 miles from the Pacific Ocean. The Santa Clara River provides habitat to hundreds of plant and animal species, 16 of which are threatened or endangered. The Santa Clara River provides roughly 50% of the water supply to the Santa Clarita Valley area.

In May 1992, the City provided the County with a letter of intention to participate as a Co-Permittee with the County in the application of a NPDES permit. The City is one of 86 other co-permittee agencies that filed a letter of intention to participate in the County's NPDES Permit No. CA0061154 at that time. Since then, there have been three stormwater NPDES Permits issued to the group, the most recent one issued in 2001. A new NPDES Permit for the stormwater program in Los Angeles County is anticipated to be issued in 2009.

The City of Santa Clarita is in somewhat of a unique situation with regard to stormwater management. Being a relatively new city, most of the street and drainage systems were developed during the process of land development under the supervision of Los Angeles County. Both before and after incorporation in 1987, the ownership of drainage facilities, once constructed, have been transferred to the Los Angeles County Flood Control District (LACFCD). However, in the past few years the LACFCD has not been processing title transfer requests in a timely manner. As a result, there are currently approximately 230 storm drains in the City that are maintained by the County and 200 storm drains that are still the responsibility of the developer for maintenance. Many of the privately maintained storm drains will probably become the City's at some future time. The public streets, which are a part of the primary storm drainage system, are owned and maintained by the City. The storm drainage catch basins in the street present a mix of ownership and responsibility with some owned by LACFCD and others by the City.

In order to provide for the safety of the residents of the City and protect property in the City from the damage associated with flooding and to meet water quality requirements of the NPDES permit issued to the City by the LA-RWQCB and SWRCB, it is necessary to design, construct, operate, maintain, improve and replace storm drainage facilities which collect storm and surface water runoff and convey and treat such runoff in a safe manner to an acceptable point of discharge. It is also necessary to inspect, monitor, and take enforcement action related to illegal dumping, illicit discharges, and various water quality concerns. In order to properly fund such facilities and activities, the City Council has determined that it is necessary to impose on all properties in the City a user charge for storm drainage service.

In addition to existing costs, the City anticipates significant increased costs for compliance with the new NPDES Permit to be issued by the LA-RWQCB and SWRCB in 2009. There is a significant monitoring requirement anticipated. Currently, Los Angeles County pays for a single mass emissions monitoring station on the Santa Clara River. The anticipated, new requirements will increase the monitoring sites significantly. Los Angeles County has stated it will not pay for the increased monitoring. Staff estimates the increased monitoring will likely cost $1.5 million during the first year if the requirements are retained as written in the Ventura County NPDES Permit. If significant pollution levels are found, monitoring costs will likely increase; if not, the monitoring costs could decrease. Staff cannot anticipate the cost increase associated with significant pollution levels. There are hundreds of pollutants to monitor for that the City has little experience with mitigating. The expense of response largely depends on the type of pollutant, if any, found. For

example, bacteria requires disinfection, metals requires filtration, etc. However, treatment for certain types of pollutants can be profoundly expensive.

Another anticipated, additional requirement are trash excluders. These are devices installed inside catch basins to prevent trash, litter and debris on the streets from getting into the storm drain system. Each device costs between $2,000 and $2,300 to install. Staff anticipates an additional cost of $600,000 to retrofit all 264 catch basins if this requirement is retained. Other treatment best management practices that may be required include creating infiltration rain gardens surrounding catch basins and one or two large scale infiltration projects. Rain gardens essentially create planted areas around catch basins to capture flows from the street before entering the storm drain system. They force the flows to infiltrate into the ground before entering the Santa Clara River. Large scale infiltration projects divert flows that enter the storm drain system. These flows are treated and infiltrated in large land areas, such as parks, preventing much of the flows from reaching the surface water, such as rivers. Staff anticipates costs for rain gardens on inlets/streets at a cost of approximately $2,000,000 annually for 20 years. The large scale infiltration projects may cost $10 million or more between 2009 and 2014.

Services Funded

Expenditures from the revenue generated from the Stormwater Utility fee are intended to comply with the requirements set forth in the NPDES permit. The activities and services funded by this fee include, but are not limited to:

1. Administration and oversight of the requirements set forth in the NPDES permit to various City departments, developments, and local agencies.
2. Prepare ordinances and resolutions designed to remain in compliance with the rules and regulations required by the NPDES permit, the Clean Water Act, and the Porter-Cologne Act.
3. Respond to and investigate incidents of illicit discharges and illegal connections to the storm drain system.
4. Periodically inspect facilities for proper handling of materials, chemicals, pollutants, garbage, waste, and debris and prevent any discharges to the storm drain system.
5. Regularly clean and provide maintenance of catch basins, the flowline, and storm drainage facilities.
6. Installation and maintenance of water quality devices required to keep pollutants out of the storm drain system.
7. Discourage illegal dumping or discharge of pollutants into the storm drain system by stenciling all City-owned catch basins with a "No Dumping" message.
8. Provide street sweeping to keep litter and debris from entering the storm drain system.
9. Augment public education and outreach programs in regards to the proper use and function of the storm drainage system and the receiving waters.
10. Develop programs to promote, publicize, and facilitate public reporting of illicit discharges to the storm drain system.

11. Encourage the proper disposal of household hazardous waste (HHW) to prevent the improper disposal to the storm drain system or to the sewer system.

12. Discourage the improper disposal of litter, garden clippings, leaves, and pet waste into the street or the storm drain system.

Rate Structure Analysis

Section 6.b of Article XIIID of the State Constitution (Proposition 218) states that:

> "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel."
>
> and
>
> "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question."

By definition, all properties that shed stormwater into the City's Stormwater drainage system use, or are served by, the City's stormwater drainage system. The amount of use attributed to each parcel is measurable by the amount of storm runoff contributed by the property, which is directly proportional to the amount of impervious area on a parcel (such as buildings and concrete). The more impervious area on a property, the more storm runoff the property generates, the more demand placed on the storm drain system.

The amount each parcel uses the stormwater drainage system is computed by the following formula:

(Parcel Area) x (Impervious Percentage) = Drainage Units

The typical percent impervious (% Impervious) for land uses in the City, as provided in the Los Angeles County Flood Control District Hydrology Manual, updated January 2006, have been applied for the purposes of estimating the runoff generated by each property. These are shown in Table 1 on the following page.

The more Drainage Units a parcel has, the more storm run-off it generates, and the more it uses and impacts the stormwater drainage system.

It is standard practice to relate other land uses to a developed single family home, instead of working exclusively with Drainage Units. The City's parcel database shows that over 60% of the parcels within the City are designated as Single Family Residential (SFR) parcels, and the median size of a SFR parcel is approximately 7,000 square feet (0.16 acre). Therefore, it makes sense to relate all parcels to this median residential property. Therefore, the runoff from a 0.16-acre SFR parcel is set equal to one Equivalent Residential Unit (ERU) and this base ERU is calculated as follows:

(0.16 acres of area) x 42% = 0.0672 Drainage Units = 1 ERU

Table 1, below, provides a preliminary summary of Drainage Units and ERU's for the various land uses in the City.

Table 1 – Drainage Unit Summary Table

Drainage Land Use	Parcels	Acres	% Imp	Drainage Units	ERU's
Antenna	1	3.7810	2%	0.075620	1.1253
Cemetery	1	17.7000	10%	1.770000	26.3393
Church / Inst	49	163.5735	82%	125.384943	1,865.8473
College	14	289.1198	47%	128.448106	1,911.4301
Com Recreation	16	94.8034	90%	75.046497	1,116.7635
Com Storage	24	74.7712	90%	67.294080	1,001.4000
Communications	8	51.8101	82%	42.484282	632.2066
Day Care	2	1.5800	68%	1.074400	15.9881
Dev Park	274	1,000.5589	10%	100.055890	1,488.9269
Dump	2	1.2799	15%	0.191985	2.8569
El-Hi School	64	599.5594	Actual	362.356110	5,392.2039
Golf	15	643.3163	3%	19.299489	287.1948
High Density CNDO	4,525	196.7444	90%	177.069960	2,634.9696
High Density MFR	157	236.4982	90%	212.848380	3,167.3866
Hotel/Motel	8	20.4990	96%	19.679040	292.8429
Light Industrial	656	1,593.7965	91%	1,450.354815	21,582.6609
Low Density CNDO	4,993	863.4141	55%	474.877755	7,066.6333
Low Density MFR	76	216.7250	55%	114.906300	1,709.9150
Med Density CNDO	5,498	409.0633	86%	351.794438	5,235.0363
Med Density MFR	149	109.3529	86%	94.043494	1,399.4568
Medical Facility	16	25.7734	74%	19.072316	283.8142
Mineral Extract	18	258.7750	10%	25.877500	385.0818
Mobile Homes	30	347.6541	91%	316.365231	4,707.8159
Nurseries / Agr	10	32.7699	15%	4.915485	73.1471
Office	295	297.0540	91%	270.319140	4,022.6063
Open Storage	88	150.5060	66%	99.333960	1,478.1839
Parking	156	216.7565	91%	197.248415	2,935.2443
Power Facilities	8	132.3674	47%	62.212678	925.7839
Ranch	8	26.6053	42%	9.202126	136.9364
Regnl Shopping Ctr	54	154.7115	95%	146.975925	2,187.1417
Retail	550	731.0564	97%	709.124708	10,552.4510
SFR-0.5	30,972	5,467.2074	42%	2,296.227108	34,170.0463
SFR-1	1,099	779.8717	formula	279.168057	4,154.2866
SFR Rural	927	2,233.6513	formula	422.670130	6,289.7341
Undev Park	74	253.5892	2%	5.071784	75.4730
Vacant	3,572	10,547.4373	1%	105.474373	1,569.5591
	54,409	28,243.7333		8,788.314520	130,778.4896

SFR properties are separated into three (3) groups and their impervious percentage is calculated as follows:

SFR Category	Drainage Unit Formula
SFR-0.5 – SFR parcels 0.5 acres or less	acres x 42% (max = 0.21)
SFR-1 – SFR parcels 0.5 – 1 acres	(0.21) + (acres – 0.5) x 21% (max = 0.315)
SFR-Rural – SFR parcels more than 1 acre	(0.315) + (acres – 1.0) x 10%

Multi-Family Residential (MFR) and Condominium (CNDO) units are split into categories by the density, or number of dwelling units per acre (DU/Ac) as follows:

MFR or Condo Category	Density	% Impervious
High Density	Greater than 18 DU/Ac	90%
Med Density	10 – 18 DU/Ac	86%
Low Density	Less than 10 DU/Ac	55%

Condominium unit parcel areas are calculated one of two ways:

1) either by using the sizes of the individual unit and the common area parcels separately, or

2) by dividing the total area of the condominium complex (which includes the common area) by the number of condominium units, and the total imperviousness of the entire complex is attributed to each individual condo parcel in the complex. (This divides the runoff of the entire complex to each of the individual units.) Because these condominium common areas are taken into consideration in this manner, they are exempt from the charge.

The latter calculation has been made when the individual unit areas are not readily available. These two ways of calculating the charges are considered nearly equivalent when applied. With the first method, the common area property is charged and paid by the Home Owner Associations which are passed on to the individual units. With the second method, the common area property is added into the individual units. Therefore, proportionality has been maintained.

Within the City of Santa Clarita and the Santa Clara River Watershed, there are many separate drainage areas of various terrain and with inlets, pipes and channels made of various materials and in various conditions. The storm drain system discharges to the Santa Clara River and its tributaries. The Santa Clara River provides habitat to hundreds of plant and animal species. It also provides about 50% of the area's water supply.

All parcels draining into City-maintained drainage infrastructure are proposed to be charged the same user fee rate per ERU for stormwater runoff treatment. The Stormwater Pollution Prevention Fee is proposed in perpetuity.

For the purposes of this report, City-maintained drainage infrastructure includes streets, pipes, inlets, outlets, and natural drainage courses, and is also referred to as the "City's stormwater drainage system." Parcels related to these types of property uses are exempt from the runoff charge, as they are part of the infrastructure being funded. Also exempt from the runoff charge is Caltrans right-of-way, because Caltrans handles its own runoff under a separate NPDES permit.

Elementary through High Schools (El-Hi Schools) have been looked at on an individual basis to determine the actual percent impervious for each property, as properties with this use had a wide range of impervious percentages.

Properties that had previously submitted appeals to the charge have been reviewed and a determination has been made on a parcel-by-parcel basis as to the applicability of the appeal to this methodology.

Cost Estimate

Table 2 – FY 09-10 Estimated Expenditures and Revenues

FY 09-10 Expenditures	
Personnel	$802,500
Office, Equipment and Program Costs	$206,000
Street Sweeping	$832,000
Professional and Contractual Services	$304,800
Storm Drain Facility Repair	$86,000
General Fund Overhead Allocation	$448,800
Subtotal 09-10 Expenditures:	$2,680,100
Anticipated New Permit Expenditures (actual costs unknown)	
New Permit - Increase in Monitoring	$1,500,000
New Permit - CIP - Trash Excluders	$600,000
New Permit - Regional Water Quality Devices	$2,000,000
Subtotal Anticipated New Permit Expenditures:	$4,100,000
Reserves	
50% Operating Reserve	$3,390,050
(Less Site-Specific Reserve)	($192,370)
Equipment Replacement Reserve	$392,072
Subtotal Reserves:	$3,589,752
Total Expenditures:	**$10,369,852**

FY 09-10 Revenues	
Interest	$121,180
Stormwater SUSMP	$7,650
Stormwater SWPPP	$4,080
Miscellaneous Revenue	$123,110
Operating Transfers in	$171,920
Site-Specific - Bridgeport	$24,050
Site-Specific - Creekside	$21,620
Site-Specific - Hidden Creek	$20,200
Site-Specific - Hart Pony	$5,790
Estimated Fund Balance - July 1, 2009	$3,663,326
Subtotal Revenues:	$4,162,926
City Contribution:	$3,395,226
Total Revenues:	**$7,558,152**
Stormwater Pollution Prevention Fee Requirement:	**$2,811,700**

Fee Calculations

The estimated annual costs for the proposed storm drain improvements are $2,811,700 in as shown above. Dividing that by the total number of ERU's in the City, the estimated annual Stormwater Pollution Prevention Fee rate is **$21.50 per ERU.**

This rate would be the proposed maximum fee rate for fiscal year 2009-10 (FY 09-10). The maximum rate will be increased each subsequent Fiscal Year by the annual change in the Consumer Price Index (CPI), during the preceding year, for All Urban Consumers, for the Los Angeles, Riverside and Orange County areas, published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index should the stated index be discontinued).

The actual rate to be levied each year will be as approved by the City Council at a public hearing, after they consider an Annual Fee Report outlining the estimated annual costs of the program.

Table 3 provides sample fee calculations for various land uses and parcel sizes.

Table 3 – Sample Calculations

Land Use Designation	Parcel Area (sf)	Parcel Area (ac)	x	Percent Imperv.	=	Drainage Units	/	0.0672	=	ERU's	FY 09-10 Max. Annual Fee = $21.5/ERU
SFR- 0.5	3,500	0.08	x	42%	=	0.033600	/	0.0672	=	0.5000	$10.75
SFR- 0.5	5,000	0.11	x	42%	=	0.046200	/	0.0672	=	0.6875	$14.78
SFR- 0.5	7,000	0.16	x	42%	=	0.067200	/	0.0672	=	1.0000	$21.50
SFR- 0.5	12,000	0.28	x	42%	=	0.117600	/	0.0672	=	1.7500	$37.62
SFR- 0.5	21,500	0.49	x	42%	=	0.205800	/	0.0672	=	3.0625	$65.84
SFR-1	22,000	0.51		0.21+(ac-0.5)x21%	=	0.212100	/	0.0672	=	3.1563	$67.86
SFR-1	35,000	0.80		0.21+(ac-0.5)x21%	=	0.273000	/	0.0672	=	4.0625	$87.34
SFR-Rural	87,120	2.00		0.315+(ac-1)x10%	=	0.415000	/	0.0672	=	6.1756	$132.77
Low Density CNDO	7,100	0.16	x	55%	=	0.088000	/	0.0672	=	1.3095	$28.15
Low Density MFR	43,560	1.00	x	55%	=	0.550000	/	0.0672	=	8.1845	$175.97
Med Density CNDO	3,150	0.07	x	86%	=	0.060200	/	0.0672	=	0.8958	$19.26
Med Density MFR	43,560	1.00	x	86%	=	0.860000	/	0.0672	=	12.7976	$275.15
High Density CNDO	1,800	0.04	x	90%	=	0.036000	/	0.0672	=	0.5357	$11.52
High Density MFR	43,560	1.00	x	90%	=	0.900000	/	0.0672	=	13.3929	$287.95
Service Station	6,534	0.15	x	91%	=	0.136500	/	0.0672	=	2.0313	$43.67
Retail	21,780	0.50	x	96%	=	0.480000	/	0.0672	=	7.1429	$153.57
Business Park	21,780	0.50	x	91%	=	0.455000	/	0.0672	=	6.7708	$145.57
Office	10,890	0.25	x	91%	=	0.227500	/	0.0672	=	3.3854	$72.79
Light Industrial	43,560	1.00	x	91%	=	0.910000	/	0.0672	=	13.5417	$291.14
Church	32,670	0.75	x	85%	=	0.637500	/	0.0672	=	9.4866	$203.96
El-Hi School	43,560	1.00	x	82%	=	0.820000	/	0.0672	=	12.2024	$262.35
Developed Parks		5.00	x	10%	=	0.500000	/	0.0672	=	7.4405	$159.97
Golf Courses		10.00	x	3%	=	0.300000	/	0.0672	=	4.4643	$95.98
Vacant		2.00	x	1%	=	0.020000	/	0.0672	=	0.2976	$6.40

SFR = Single Family Residential 0.0672 = Drainage Units per median SFR ERU = Equivalent Residential Unit

Note: Condominium parcel areas include a prorata share of the common areas of the complex.

It should be noted that 50% of all Single Family homes will have a charge equal to or less than the median fee of $21.50.

The Preliminary Charge Roll, which is a listing of each parcel to be charged a fee and its proposed maximum fee for FY 2009-10, is on file in the office of the City Clerk.

Appeals Process

If a property owner disagrees with the calculation of his or her fee, based on the parcel area and estimated impervious percentage assigned to the property, then the property owner may appeal the calculation as follows:

1. Property owner must provide written documentation explaining the reason why the charge should be changed. This documentation must include:

a. The name, phone number, mailing address, and email address, if available, of the property owner.

b. The Assessor's Parcel Number (APN) of the property in question.

2. If additional documentation is required or insufficient documentation was submitted, a representative of the Public Works Department or his or her designee (Staff) will notify the property owner in writing.

3. Once Staff has determined that sufficient documentation has been submitted, Staff will perform the initial review. Staff will notify the property owner in writing within four (4) weeks from the time sufficient documentation was submitted as to whether or not the fee amount will be changed.

   a. If the determination is to change the fee amount, then the new fee amount will be documented within the City's fee database.

   b. If the determination is that the fee should not be changed, the property owner can appeal Staff's decision to the City Engineer. The appeal must be made in writing and returned no later than four (4) weeks from the date of mailing of Staff's initial review decision. The City Engineer will notify the property owner in writing within four (4) weeks from the date of receipt of the appeal as to whether or not the fee amount will be changed.

      If the owner of any parcel shall have reason to feel that the computation of the ERU count for his/her parcel is not correct, that person may file an appeal with the City Engineer in the manner prescribed by the City Engineer. The City Engineer will consider all data provided by the appellant and shall render a decision in writing. The decision of the City Engineer will be final with respect to City action on the appeal.

Appeals will be accepted annually up until June 30 for inclusion on the following fiscal year's property tax roll submittal. However, if an appeal is granted by Staff or the City Engineer that does not permit inclusion for the following fiscal year's property tax roll submittal, a reimbursement will be provided to the property owner by the City.

Respectfully submitted:

Harris & Associates

Joan E. Cox, PE
Sr. Project Manager

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION	:	
	:	No. 97-1104
of	:	
	:	March 5, 1998
DANIEL E. LUNGREN Attorney General	:	
ANTHONY M. SUMMERS Deputy Attorney General	:	

THE HONORABLE MIKE THOMPSON, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

1. Does the method by which the Vallejo Sanitation and Flood Control District calculates the monthly user fees charged for the operation and maintenance of its storm drainage system meet constitutional requirements?

2. Is the Vallejo Sanitation and Flood Control District required to obtain prior voter approval when revising the methodology by which it calculates its storm drainage system monthly user fees, resulting in an increased amount being charged certain persons?

CONCLUSIONS

1. The method by which the Vallejo Sanitation and Flood Control District calculates the monthly user fees charged for the operation and maintenance of its storm drainage system does not meet constitutional requirements.

2. The Vallejo Sanitation and Flood Control District is required to obtain prior voter approval when revising the methodology by which it calculates its storm drainage system monthly user fees, resulting in an increased amount being charged certain persons.

ANALYSIS

The Vallejo Sanitation and Flood Control District ("District") operates a sanitation sewer system and a storm drainage system for its customers. (See *English Manor Corp.* v. *Vallejo*

Sanitation & Flood Control Dist. (1974) 42 Cal.App.3d 996, 1000.) The two systems are operated separately, with the sewer system connecting to a water treatment plant and the storm drainage system transporting water directly into San Francisco Bay. **Footnote No. 1**

The customers of the District are charged separately for maintaining the two systems. Currently only those persons who are connected to the sewer system are charged monthly fees to maintain the storm drainage system. If a parcel is vacant or otherwise not connected to the sewer system, no storm drainage system user fees are imposed. Hence, owners of parcels used for storage facilities, parking lots, or other uses that do not require a sewer connection escape the fees.

1. Validity of the Fees

The first question presented for resolution is whether the District's method of imposing its storm drainage system monthly user fees meets constitutional requirements. We conclude that it does not.

At the November 5, 1996, general election, state voters approved Proposition 218, adding articles XIII C and XIII D to the Constitution. The two constitutional amendments generally require prior voter approval for new or increased general taxes (Cal. Const., art. XIII C, § 2, subd. (b)), special taxes (Cal. Const., art. XIII C, § 2, subd. (d)), assessments (Cal. Const., art. XIII D, § 4, subds. (d), (e)), and fees and charges (Cal. Const. art. XIII D, § 6, subd. (c)). Among the specific constitutional requirements is that fees and charges "imposed upon any parcel . . . shall not exceed the proportional cost of the service attributable to the parcel." (Cal. Const., art. XIII D, § 6, subd. (b) (3).) The first question focuses on this latter constitutional provision.

It is evident that a storm drainage system is designed to benefit individual parcels of property. It transports runoff water from rainstorms and other sources into channels and waterways, rather than allowing the water to flood areas where it might damage property. These purposes are confirmed by statutes enacted by the Legislature to implement article XIII D of the Constitution. Government Code section 53750 provides in part:

"For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

". . . . . .

"(d) 'Drainage System' means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

". . . . . .

"(f) 'Flood control' means any system of public improvements that is intended to protect property from overflow by water.

". . . . . ."

The owners of land used for such purposes as storage buildings and parking lots are benefitted by the District's storm drainage system services. Yet they are not charged any fees if they are not connected to the District's sewer system. It necessarily follows that the District's costs associated with operating and maintaining the system are borne totally by those connected to the sewer system. Therefore, those who *are* charged the fees must pay more than the proportional cost of the services attributable to their own parcels. This is not permissible under article XIII D, section 6, subdivision (b)(3) of the Constitution. **Footnote No. 2**

We conclude that the method by which the District charges monthly user fees for its storm drainage system services does not meet constitutional requirements.

2. Prior Voter Approval

The District intends to establish a new schedule of storm drainage system fees that will be based upon the proportional cost of storm drainage services provided to each parcel, a schedule that will take into account the amount of impervious area of each developed parcel. Accordingly, persons in the District who currently have no sewer connections will be subject to the storm drainage system fees for the first time.

The second question presented for resolution concerns whether the voters of the District must approve the proposed change in calculating the new monthly user fees for operating and maintaining the District's storm drainage system. We conclude that an election must be held and approval given.

At the core of this question is subdivision (c) of section 6 of article XIII D of the Constitution, which provides:

"Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. . . ."

A fee or charge is "property related" if it is for "a public service having a direct relationship to property ownership." (Cal. Const., art. XIII D, § 2, subd. (h).) Subdivision (e) of section 2 of article XIII D states:

"'Fee' or 'charge' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service."

In contrast, an "assessment" is defined in subdivision (b) of section 2 of article XIII D as follows:

"'Assessment' means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. 'Assessment' includes, but is not limited to, 'special assessment,' 'benefit assessment,' 'maintenance assessment' and 'special assessment tax.'"

The District plans to impose the new monthly rates as "fees" for providing storm drainage "services" to its customers rather than as "assessments" to cover the cost of providing its storm drainage system as a "benefit" to the parcels within the District. Because of the conclusion we reach, it makes little analytical difference whether the establishment of "fees" or "assessments" is involved here.

Undoubtedly, the new monthly fees will be "property related," since they will be based upon the amount of impervious area of each developed parcel. As observed in answer to the first question, the District's storm drainage system is intended to serve directly the property within the drainage area. (See Gov. Code, § 53750, subds. (d), (f).)

The main issue to be resolved is whether prior voter approval is required for imposition of the proposed fees in light of the exception from voter approval for "fees or charges for sewer, water, and refuse collection services." (Cal. Const., art. XIII D, § 6, subd. (c).) If the fees are for sewer, water, or refuse collection services, no voter approval is necessary.

First, as for sewer services, the term "sewer" is often used differently in different contexts. (See, e.g., Pub. Util. Code, § 230.5.) We note that subdivision (a) of section 5 of article XIII D refers to "[a]ny assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage system, or vector control." Such language in a related constitutional provision supports application of the following rule of statutory construction: "If a statute on a particular subject omits a particular provision, inclusion of that provision in another related statute indicates an intent the provision is not applicable to the statute from which it was omitted." (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827.) Footnote No. 3 Placing "flood control, drainage systems" in section 5 of article XIII D while omitting such terms in section 6's voter approval exemption clause evidences an intent to require prior voter approval of new or additional storm drainage system fees.

The Legislature has similarly distinguished sewer systems from storm drainage systems in various statutory schemes. For example, Government Code section 63010, subdivision (i) describes the two separately as follows:

"..... .....

"(3) 'Drainage and flood control' includes ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

"..... .....

"(10) 'Sewage collection and treatment' includes pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or

contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

"....."

Health and Safety Code section 5471 likewise differentiates between sewer systems and storm drainage systems, as does the organic act under which the District was formed and continues to operate (see Stats. First Ex. Sess. 1952, ch. 17, p. 351; Deering's Wat.--Uncod. Acts, Act 8934; West's Water Code--App., ch. 67). Footnote No. 4

Any remaining doubt is removed by applying the following principle of statutory construction recently reaffirmed in *City of Lafayette* v. *East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005, 1017:

". . . 'Exceptions to the general rule of a statute are to be strictly construed. In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. . . . One seeking to be excluded from the sweep of the general statute must establish that the exception applies.' [Citations.]"

If storm drainage system fees are not fees for "sewer . . . services," are they fees for "water . . . services" within the meaning of article XIII D, section 6, subdivision (c)? Government Code section 53750, subdivision (m) defines "water" for purposes of article XIII D as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water."

While there may be some temporary storage of water in connection with a storm drainage system, it is apparent that the District's drainage and flood control system is designed to do the opposite of that which the Legislature's definition of "water . . . services" contemplates. The District's storm drainage system does not produce water or supply it to end users. Rather than distributing water, it collects and removes it. The District does not treat any water flowing into its storm drainage system. Consequently, the exception from voter approval in Article XIII D, section 6, subdivision (c), for "water . . . services" is inapplicable.

Finally, we note that prior voter approval is required only if the fees or charges are "imposed or increased." (Cal. Const., art. XIII D, § 6, subd. (c).) Here, the District proposes to change its method of calculating the fees in question, which revision will impose the fees on some property owners who have not previously been charged. The Legislature has addressed this issue in Government Code section 53750:

"For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

"....."

"(h)(1) 'Increased,' when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

"(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

"(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

"(2) A tax, fee, or charge is not deemed to be 'increased' by an agency action that does either or both of the following:

"(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

"(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

"(3) A tax, assessment, fee or charge is not deemed to be 'increased' in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

"......"

The District will be revising the methodology by which the storm drainage system monthly user fees are calculated, resulting in an increased amount being charged certain persons. The formula is newly developed to reflect the proportional cost of the services attributable to each landowner served. (See Cal. Const., art. XIII D, § 6, subd. (b)(3).) Hence, the proposed adjusted fees will be "imposed or increased" for purposes of article XIII D.

No other constitutional or statutory provision appears to affect our determination. We conclude that the District is required to obtain prior voter approval when revising the methodology by which it calculates its storm drainage system monthly user fees, resulting in an increased amount being charged certain persons.

* * * * * .

Footnote No. 1
We are informed that in a few localities, the sewer system and storm drainage system are combined, with both connecting to a water treatment plant. The operation of such combined systems is beyond the scope of this opinion.

Footnote No. 2
The *storm drainage* fees charged by the District are based upon the amount of *sewer system* usage attributable to a parcel. We have not been informed of any relationship between sewer usage and the District's proportional cost of providing storm drainage services to a particular parcel. (See fn. 1.)

Footnote No. 3
Rules of statutory interpretation "apply as well to the interpretation of constitutional provisions." (*Lungren* v. *Deukmejian* (1988) 45 Cal.3d 727, 735.)

Footnote No. 4
As previously noted, in a few localities the sewer system and storm drainage system are combined and connect to a water treatment plant. (See fn. 1.)

Senate Constitutional Amendment No. 18

Introduced by Senators Liu and Yee

March 10, 2009

Senate Constitutional Amendment No. 18—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 6 of Article XIII D thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SCA 18, as introduced, Liu. Local government: property-related fees.

The California Constitution, with the exception of fees or charges for sewer, water, and refuse collection services, conditions the imposition or increase of a property-related fee or charge upon approval by either a majority vote of the owners of the properties subject to the fee or charge or, at the option of the agency imposing the fee or charge, by a ⅔ vote of the voters residing in the area affected by the fee or charge.

This measure would additionally exclude fees and charges for stormwater and urban runoff management from these approval requirements for the imposition or increase of a property-related fee or charge.

Vote: ⅔. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 2009–10 Regular Session commencing on the first day of December 2008, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

That Section 6 of Article XIII D thereof is amended to read:

SEC. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) ~~No~~ *A* fee or charge ~~may~~ *shall not* be imposed for a service, unless that service is ~~actually~~ used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall

be classified as assessments and shall not be imposed without compliance with Section 4.

(5) ~~No~~ *A* fee or charge ~~may~~ *shall not* be imposed for general governmental services including, but not limited to, police, fire, ambulance, or library services, ~~where~~ *if* the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, ~~and~~ *stormwater and urban runoff management, or* refuse collection services, ~~no property related~~ *a property-related* fee or charge shall *not* be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

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SENATE COMMITTEE ON AGRICULTURE AND WATER RESOURCES
Jim Costa, Chairman

AB 1186 (Knox)
As Amended July 10, 1997
Hearing Date: July 31, 1997
Fiscal: Yes
Consultant: Linda Adams

PURPOSE OF BILL:

To direct funds collected through storm water permit fees to programs designed to reduce storm water pollution.

PRIOR ACTIONS:

Assembly Water, Parks & Wildlife	11-1
Assembly Appropriations	14-5
Assembly Floor	50-22

BACKGROUND:

The Porter-Cologne Water Quality Control Act establishes the State Water Resources Control Board (SWRCB) and nine regional water quality control boards (regional boards) charged with protecting the quality of waters in the state.

Current law requires regional boards to establish waste discharge requirements (WDR's) for any proposed discharge in order to implement relevant water quality control plans. Holders of WDR's are required to pay an annual fee, up to a maximum of $10,000 for the ability to discharge waste.

U.S. Environmental Protection Agency (EPA) regulations, pursuant to the national pollutant discharge elimination system (NPDES), require the operators of certain industrial facilities to obtain a permit to discharge storm water from their facilities. In California, this permit is called the General Industrial Activities Storm Water Permit, administered by the SWRCB.

Current storm water permit fees are set at $10,000 for areawide urban storm water discharges for areas with a population greater than 100,000, $5,000 for areawide urban storm water discharges for areas with a population less than 100,000, $250 for industries discharging into a municipal storm water system, and $500 for all other dischargers.

Permit fees are deposited into the Waste Discharge Permit Fund. The money in the Fund is available for expenditure by the SWRCB, to carry out the purposes of the Porter-Cologne Act.

PROPOSED LAW:

Requires the fees collected from storm water dischargers that are subject to an NPDES permit to be separately accounted for in the Waste Discharge Permit Fund.

Requires at least 50% of the moneys accounted for under this program to be available and used, upon appropriation by the Legislature, by the regional board with jurisdiction over the permitted industry that generated the fee to carry out industrial and construction storm water programs in the particular region.

Requires each regional board receiving the moneys for this program to expend at least 50% of those monies solely on storm water inspection and regulatory compliance issues associated with industrial and construction storm water programs.

COMMENTS:

1. According to the proponents of this bill, California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program.

This bill would require at least 50% of the revenues collected under this program to be returned to the regional boards and would further require the regional boards to use at least 50% of the money received for inspection and regulatory compliance issues associated with industrial and construction storm water programs.

2. The SWRCB indicates that at least 50% of the moneys in the Waste Discharge Permit Fund are already allocated to regional

boards for use in enforcing the storm water program. The SWRCB indicates that approximately $3.2 million is collected annually from the storm water program, and approximately $2.4 million goes back to the regional boards. Further, the SWRCB indicates that it has an accounting system that ensures revenues go back to the originating program and region.

3. Recent amendments to this bill address concerns expressed by the SWRCB and remove the opposition of the SWRCB. Specifically, the amendments eliminate the creation of a special account in the Waste Discharge Permit Fund, and instead only require a separate accounting of the revenues received under the program. The amendments further require at least 50% of the revenues to go back to the regional board from which they were collected, which is consistent with the current practice of the SWRCB.

4. The recent amendments further address the issue of accountability of the funds at the regional level by requiring the regional boards to use at least 50% of the amount received solely on storm water inspection and regulatory compliance issues associated with the program.

5. The California Environmental Protection Agency has recently stepped up its efforts to require industries to obtain permits through mailings to facility operators. Operators could be in violation of federal law and facing with fines up to $25,000 per day.

6. Technical correction : On page 3, line 21, "account" should be "fund".

SUPPORT:

Planning and Conservation League
Heal the Bay
Natural Resources Defense Council
Center for Marine Conservation
Santa Monica Bay Restoration Project, Bay Watershed Council
Surfrider Foundation, Santa Cruz Chapter
Coastwalk, Sebastopol
C.O.A.A.S.T.
Environmental Health Coalition
County of Sacramento
County of Los Angeles
Sonoma County Conservation Action
CALPIRG

OPPOSED:

None on File (prior opposition removed, based on July 10 amendments)

SB 2058 Senate Bill - AMENDEDBILL NUMBER: SB 2058 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 17, 2002

INTRODUCED BY Senator Morrow

FEBRUARY 22, 2002

An act to amend Section 13260 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 2058, as amended, Morrow. Water quality: storm water permit fees: disposition.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of storm water by municipalities and industries in accordance with the federal national pollutant discharge elimination system (NPDES) permit program. Existing law requires each person for whom waste discharge requirements have been prescribed to submit an annual fee, for deposit in the Waste Discharge Permit Fund for expenditure by the State Water Resources Control Board, upon appropriation by the Legislature, for the purpose of carrying out the Porter-Cologne Water Quality Control Act. Existing law further requires that the fees collected from the storm water discharges that are subject to a general industrial or construction storm water permit under the NPDES permit program to be accounted for separately in the fund and authorizes that not less than 50% of the money in the account those funds be used, upon appropriation by the Legislature, by the California regional water quality control board with jurisdiction over the permitted industry or construction site that generated the fee, to carry out storm water programs in the region.

This bill would require that all fees collected for permits for the discharge of storm water by municipalities and industries be accounted for separately in the fund. The bill would also provide that not less than 50% of the money collected from general industrial or construction storm water permits, upon appropriation by the Legislature, would be used by the California regional water quality control board with jurisdiction over the permitted industry or construction site that generated the fee, to carry out storm water programs in the region. The bill would further provide that a portion of the money collected from the fees from all storm water discharge permits, upon appropriation by the Legislature, would be used by the city, county, or city and county, in which the fee was collected, solely to assist the local government to control pollutants or meet water quality standards from storm water dischargers that are subject to a general industrial or construction storm water permit under the NPDES permit program to be separately accounted for, by region, in the Waste Discharge Permit Fund. The board would require each regional board

that receives money that is generated from general industrial or construction storm water permit fees to allocate 25% of those funds to counties and cities to carry out storm water programs in that region .

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from storm water dischargers that are subject to a general industrial or construction storm water permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for , by region, in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money collected as fees from general industrial or construction storm water discharges separately accounted for in the Waste Discharge Permit Fund

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out storm water programs in the region. Upon

appropriation of the Legislature, a portion of the money collected from fees from all municipal and industrial or construction storm water discharges that is separately accounted for in the Waste Discharge Permit Fund shall be used by the city, county, or city and county, in which the fee was collected, solely for purposes of assisting the local government to control pollutants or meet water quality standard. site that generated the fee for storm water programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on storm water inspection and regulatory compliance issues associated with industrial and construction storm water programs.

(iv) Each regional board that receives money pursuant to clause (ii) shall allocate 25 percent of that money to counties and cities to carry out storm water programs in the region.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, and who is or will be subject to the fee imposed pursuant to Section 46801 of the Public Resources Code in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set forth in the Budget Act, the state board may further adjust the annual filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(l) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(m) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a

supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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JOHN NAIMO
JUDI E. THOMAS

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 4th day of June 2009, I served the attached:

Documents: Los Angeles County Review of the Commission on State Mandates Draft Staff Analysis of the Municipal Storm Water and Urban Runoff Discharges Test Claims, *including a 1 page letter of Wendy L. Watanabe, dated June 4, 2009, a 15 page narrative, 8 Exhibits and a declaration of Leonard Kaye, dated June 4, 2009, all pursuant to CSM-03-TC-04 and CSM 03-TC-19, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date a FAX copy to the Commission on State Mandates and mailing originals to the Commission.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of June 2009, at Los Angeles, California.

Hasmik Yaghobyan

Commission on State Mandates

Original List Date:	10/8/2003
Last Updated:	9/28/2007
List Print Date:	06/04/2009
Claim Number:	03-TC-21
Issue:	Stormwater Pollution Control Requirements

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT K

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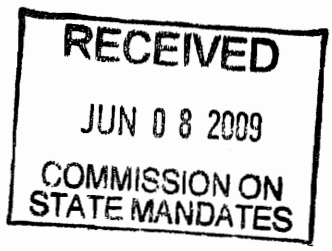
June 4, 2009



Paula Higashi
Executive Director
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Re: Public Comments on Draft Staff Analysis Concerning Los Angeles Area Municipal Storm Water and Urban Runoff Dischargers' Test Claims 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA Municipal Stormwater Permit Test Claims")

Dear Ms. Higashi:

These comments are submitted on behalf of the League of California Cities ("League") and the California State Association of Counties ("CSAC") with regard to the Commission's draft Staff Analysis of the LA Municipal Stormwater Permit Test Claims dated April 10, 2009. The League is an association representing the interests of the 480 California cities. CSAC is an association representing the interests of the 58 counties in California.

California cities and counties that are subject to regulation by Regional Water Quality Control Boards throughout the state have a significant interest in the Commission's decision on these test claims. Although these test claims only affect cities and counties regulated by the LA Regional Water Quality Control Board, other Regional Boards will look to this proceeding in determining to what extent they will be able to regulate stormwater discharge without triggering the constitutional requirement to reimburse state mandates on local agencies.[1]

Cities and counties are under increasing strain due to reduced revenues resulting from the current economic conditions. In addition, the Governor's current budget proposal seeks to pull the Proposition 1A (2004) trigger and borrow $2,000,000,000 in local property tax to help close the state's budget gap.[2] Further, the passage of Proposition 218 restricts the ability of a local legislative body to adopt new taxes, fees, and assessments without first

[1] Cal. Const. Art. XIIIB, sec. 6.
[2] Cal. Const. Art. XIII, sec. 25.5.

seeking voter approval or going through a majority protest ballot procedure.[3] This becomes particularly difficult for cities and counties where state agencies, like the Regional Boards, impose new regulations that don't take into account how cities and counties will fund compliance with the new regulations, or whether the results anticipated from the new regulations actually justify the new costs being imposed. To the extent the Commission finds state mandates to be exempt from reimbursement, cities and counties will have to fund these mandates out of increasingly scarce fiscal resources, and be forced to make difficult decisions as to where to find the funds to cover the mandate. And a conclusion that the city or county can simply raise a fee ignores the fiscal and legal realities with which cities and counties are faced.

1. THE LEAGUE AND CSAC AGREE WITH THE DRAFT STAFF ANALYSIS THAT THE REGULATIONS APPROVED BY THE LA REGIONAL BOARD ARE MANDATES.

The League and CSAC agree with the Staff Analysis that the LA Municipal Stormwater Permit imposes new programs or require cities and counties to provide a higher level of service. The mandates imposed by the LA Regional Board are in excess of the Clean Water Act's maximum extent practicable (MEP) standard for stormwater permits, and therefore, they are not a federal mandate.

2. THE LEAGUE AND CSAC QUESTION WHETHER THE DECISIONS IN *CONNELL* AND *COUNTY OF FRESNO* CAN ANY LONGER BE CITED AS GOOD AUTHORITY FOR THE CONSTITUTIONALITY OF GOVERNMENT CODE SEC. 17556(d) GIVEN THE VOTER APPROVAL OF PROPOSITION 218.

Unfortunately the League and CSAC disagree with the Staff Analysis' conclusion that most of the state mandates are exempt from reimbursement under Government Code sec. 17556(d). The Staff Analysis quotes extensively from the Supreme Court decision in *County of Fresno v. State of California* and a Court of Appeal decision in *Connell v. Superior Court* in arguing that Government Code sec. 17556(d) is constitutional. Article XIIIB sec. 6 does not explicitly provide that a local agency's ability to impose a fee to cover the mandate's cost is an exception to reimbursement. In *County of Fresno*, Justice Mosk construed the constitutional language of Article XIIIB, sec. 6 that "read in its textual and historical context section 6 of article XIIIB requires subvention only when the costs in question are recovered *solely from tax revenues*."[4] But the Supreme Court did acknowledge that Article XIIIB, sec. 6 was included in Proposition 4 out of the

[3] Cal. Const. Art. XIIIC and XIIID

[4] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (italics in original).

recognition that article XIIIA "severely restricted the taxing powers of local governments, and that the provision was "intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities ill-equipped to handle the task."[5]

The opinion in *County of Fresno* was issued in 1991. The constitutional landscape changed in 1996 with the voter adoption of Proposition 218, which added Article XIIIC and Article XIIID. Proposition 218 was entitled the "Right to Vote on Taxes Act." Proposition 218 expanded restrictions on local government fund raising by allowing the voters to repeal or reduce taxes, assessments, fees and charges through the initiative process, reiterates the requirement for voter approval for both special taxes and general taxes, and imposes procedural and substantive limitations on assessments of real property and certain types of fees.[6] Proposition 218 contains a finding that the Act protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent. Section 5 of Proposition 218 entitled "Liberal Construction" provides that the Act shall be liberally construed to effectuate its purpose of limiting local government revenue and enhancing taxpayer consent.

Proposition 218 and the subsequent court decisions it spawned have limited a local legislative body's ability to impose new or increased taxes, fees, assessments, or charges without first obtaining voter approval, or doing a majority protest ballot. In contrast, in 1991 a local legislative body's ability to unilaterally impose new and increased fees, assessments, and charges was much less constrained.

Therefore, the adoption of Proposition 218 has knocked the analytical underpinnings from under *County of Fresno*, and calls into question whether the Supreme Court, if asked to review the issue today, would continue to follow this opinion. We note that the *Connell* decision, which was decided after Proposition 218 was approved by the voters, does not provide insight as to how the courts view Proposition 218 in the context of section 17556(d) because the court explicitly states that it has no need to consider the effect, if any, Proposition 218 might have on the issues in the case.[7] Further, we are not aware of any post-Proposition 218 published cases that directly address the impact of Proposition 218 on the constitutionality of sec. 17556(d).

The League and CSAC urge the Commission to reject the Staff Analysis with respect to its discussion of *County of Fresno* and *Connell*, and to use your independent judgment in deciding whether sec. 17556(d) should continue to be applied. Further, given the recent

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[5] *Id.*

[6] League of California Cities, Proposition 218 Implementation Guide, 2007 Ed. at 5

[7] *Connell v. Superior Court* 59 Cal.App.4th 382, 403 (1997).

court decision in *California School Boards Association*,[8] the Commission should not let the mere fact that sec. 17556(d) was adopted by the Legislature influence the decision either.

The League and CSAC supports the argument made by the county and cities, discussed in the Staff Analysis beginning on page 50, as to the legal and practical difficulties of imposing fees, and we urge the Commission to conclude that sec. 17556(d) does not apply to the mandates at issue here.

3. THE LEAGUE AND CSAC URGE THAT TO THE EXTENT THERE MAY BE LEGAL DOUBT WHETHER A LOCAL AGENCY HAS THE AUTHORITY TO IMPOSE A FEE, THE COMMISSION SHOULD NOT FIND THE SECTION 17556(d) EXCEPTION APPLIES.

To the extent that the Commission may be prepared to accept the Staff Analysis' conclusion that local agencies have the authority to impose fees to recover costs of municipal stormwater permit activities, we urge the Commission to be cautious where solid legal authority is not present. As the Staff Analysis at page 51 admits, the local fee authority of local agencies in this area is a matter of first impression for the Commission. Therefore, the League and CSAC urge the Commission to tread carefully.

The League and CSAC agree that cities and counties have broad police power authority to impose regulatory fees.[9] But it is not unlimited. The Staff Analysis cites to *Sinclair Paint* and *Apartment Assoc.* to conclude that regulatory fees for preventative inspections would be upheld by the courts if properly adopted. While the court in *Apartment Assoc.* concluded that the city's inspection fee was regulatory in nature, it noted that "the mere fact that a levy is regulatory...or touches on business activities...is not enough, by itself, to remove it from article XIII D's scope."[10]

While the League believes that most properly-adopted regulatory fees are not subject to the Proposition 218 requirements, we cannot state with certainty that this is true with every case. The courts continue to examine and refine the outer limits of Proposition

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[8] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183.

[9] Special districts that also may be subject to a stormwater permit may not have as broad of authority as cities and counties.

[10] *Apartment Assoc. of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, at 838. Proposition 218 Implementation Guide, 2007 Ed. at 55.

218, and therefore, caution is required when making broad statements regarding its application.[11]

The League and CSAC urge the Commission not to conclude for these test claims that cities and counties may impose fees to cover the costs of the mandates at issues as such a blanket conclusion is not supported by the law, and future adoption of any locally imposed fees may still be subject to legal challenge. The Commission's belief that such a challenge would not be successful is not sufficient to impose the unfair burden on cities and counties not only to adopt the fee, but also to defend any potential lawsuits.

4. THE LEAGUE AND CSAC URGE THAT TO THE EXTENT THERE IS NO PERSON UPON WHICH THE LOCAL AGENCY CAN IMPOSE A FEE FOR A PARTICULAR MANDATE, THE COMMISSION SHOULD NOT FIND THE SECTION 17556(d) EXCEPTION TO THAT MANDATE.

The Staff Analysis at page 53 argues that cities and counties have authority over the "nature, location, and extent of providing solid waste handling services."[12] The Staff Analysis then goes on to conclude that this authority extends to the placement and maintenance of trash receptacles at transit stops, and that the statute provides local agencies broad authority over the level of services, charges and fees. The Staff Analysis concludes that because this statutory authority exists, the exception in sec. 17556(d) applies. But the Staff Analysis does not discuss upon whom this fee would be imposed. This concern is dismissed with citation to the *Connell* opinion that economic feasibility is not relevant to the inquiry. But the concern is not whether it is "economically feasible;" it is a matter of whether it is legally feasible. If the city or county owned and operated the transit system, and owned the transit stops as well, conceivably it could impose a fee on its ridership. But what happens when the transit system is owned and operated by a transit district? The city or county would have no legal ability to impose a fee on the district's ridership, or to require the district to collect a fee on behalf of the city or county.[13] Further, Proposition 218 imposes procedural and substantive requirements on imposing assessments on adjacent businesses and residences so that such an assessment could not be imposed by the local agency without the consent of the affected businesses and residents. Further, the revenues derived from such an assessment would likely not be sufficient to cover the entire costs because the assessment would have to take into account that the transit ridership is contributing the bulk of the need for the trash

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[11] For example, it was not until 2006 that the Supreme Court held conclusively that water rates were subject to Proposition 218. *Bighorn-Desert View Water Agency v. Verjil*, (2006) 39 Cal.4th 205

[12] Cal. Pub. Resources Code sec. 40059.

[13] And it is questionable whether this would meet the requirements of sec. 17556(d) in that the local agency does not have the authority to impose the fee.

receptacles, not the adjacent businesses and residents. So the local agency would need to use tax revenues to backfill the revenue gap and cover the costs of the mandate. This is exactly what Proposition 4 was adopted to prevent.

Further, refuse handling in some cities and counties may be handled by a separate public agency. In many cities and counties, a sanitation district has the exclusive authority to provide refuse handling services within the district's jurisdiction. In these cases, the county or city would have no authority to place trash receptacles, or impose a fee within the district's territory.

While not every city and county may have these legal constraints, the Commission should not find that the sec. 17556(d) exception applies where some local agencies may not have the ability to offset mandated costs.

CONCLUSION

The League and CSAC request that the Commission revisit the exception in Sec. 17556(d), and conclude that under current Constitutional restrictions imposed on cities and counties, the fee exception should no longer be applied where the Commission concludes that a mandate is a state mandate. If the Commission rejects our argument, we further request that the Commission not find the exception applicable where some legal doubt remains as to the authority of cities and counties to impose fees exists, or where the authority to impose a fee is merely illusory.

Very truly yours,

Patrick Whitnell, General Counsel

cc: Chris McKenzie, Executive Director
Dan Carrigg, Legislative Director

See attached service list

PROOF OF SERVICE
STATE OF CALIFORNIA - COUNTY OF SACRAMENTO

I, the undersigned, declare that I am a citizen of the United States and am employed in the City and County of Sacramento, State of California. I am over the age of 18 and not a party to this action; my business address is: 1400 K Street, Sacramento, CA 95814.

On June 4, 2009, I served the document(s) described as: **Public Comments on Draft Staff Analysis Concerning Los Angeles Area Municipal Storm Water and Urban Runoff Dischargers' Test Claims 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA Municipal Stormwater Permit Test Claims")** in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

[X] (**BY MAIL**) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (**BY FAX**) I transmitted, pursuant to Rules 2001 et seq., the above described document(s) by facsimile machine (which complied with Rule 2003(3)), to the above-listed facsimile number(s). The transmission originated from facsimile phone number (916) 658-8240 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.

[ ] (**BY PERSONAL SERVICE**) I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

[ ] (**BY OVERNIGHT DELIVERY**) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on June 4, 2009 at Sacramento, California.

[X] (**STATE**) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Janet M. Reynolds

Service List

Public Comments on Draft Staff Analysis Concerning Los Angeles Area Municipal Storm Water and Urban Runoff Dischargers' Test Claims 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA Municipal Stormwater Permit Test Claims")

Claim No.: 03-TC-04

Issue: Transit Trash Receptacles

Related Matters:
03-TC-04, 19, 20
03-TC-19
03-TC-20
03-TC-21

Municipal Stormwater and Runoff Discharges
Inspection of Industrial/Commercial Facilities
Waste Discharge Requirements
Stormwater Pollution Control Requirements

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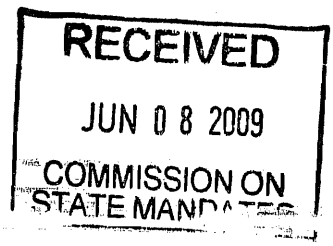


VIA FEDERAL EXPRESS

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Test Claim Nos. 03-TC-20 and 03-TC-21*

Dear Ms. Higashi:

Enclosed please find claimant's comments on the draft staff analysis regarding municipal stormwater and urban runoff discharges. Enclosed is an unbound original, two copies and a proof of service.

Thank you for your attention to this matter.

Very truly yours,

Howard Gest

HDG:da

Enclosures

cc: Mailing List (w/enclosures)

CONSOLIDATED TEST CLAIM NOS. 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
Municipal Storm Water and Urban Runoff Discharges

CLAIMANT CITIES' COMMENTS ON DRAFT STAFF ANALYSIS

I. INTRODUCTION

Claimants Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park and Signal Hill are gratified that the staff of the Commission have accepted their position that the requirements of the Los Angeles County municipal stormwater permit, Order No. 01-182 ("Permit") of the California Regional Water Quality Control Board, Los Angeles Region ("LA Regional Board"), at issue in this consolidated test claim are in fact "state mandates."

In so doing, staff has correctly rejected the arguments of the State Water Resources Control Board and L.A. Regional Board (collectively, the "State Board") and the Department of Finance that these requirements, for the placement and maintenance of trash receptacles at transit stops (Permit Part 4.F.5(c)(3)), for the inspection of industrial facilities and construction sites subject to state general stormwater permits (Parts 4.C.2(b) and 4.E) and for the inspection of certain commercial facilities (Part 4.C.2(a)) were in fact federally mandated provisions, were not uniquely applicable to municipalities or were proposed by the claimants themselves.

The requirements at issue in this test claim all were imposed on claimants by the LA Regional Board as mandates that went well beyond the requirements of the federal Clean Water Act and accompanying regulations. The requirements were uniquely aimed at municipalities and were not in fact proposed by claimants.

Claimants have carefully reviewed the Draft Staff Analysis and its proposed conclusions regarding the ability of claimants to assess fees sufficient to fund the state mandates identified in the Analysis. Claimants disagree with the Draft Staff Analysis with respect to its conclusions on fee authority to recoup the costs of the transit stop trash receptacle mandate, as will be discussed below. Claimants also disagree with the Draft Staff Analysis as to its conclusions on the mandate to inspect facilities covered by the state-issued general stormwater permits, as will also be discussed below.[1]

[1] Claimants' comments are not directed towards the claimants' ability to assess fees for inspections of the other commercial establishments, i.e. restaurants and automotive service facilities, retail gasoline outlets and automobile dealerships, or Phase I facilities or construction sites that are not required to hold a state-issued general industrial or general construction stormwater permit.

II. COMMENTS ON DRAFT STAFF ANALYSIS REGARDING FINDING OF FEE AUTHORITY

The following sections set forth claimants' comments on the conclusion in the Draft Staff Analysis that claimants have adequate fee authority under their police powers or state statutes to recoup the costs of the placement and maintenance of transit stop trash receptacles and the costs of the inspection of industrial facilities and construction sites covered by state general stormwater permits. While claimants agree that the issue is of "first impression" for the Commission (Draft Staff Analysis, 51), claimants disagree that the legal principles identified by staff should lead to the conclusion that claimants have fee authority. Instead, the facts and the law should lead the Commission to find for claimants.

A. *Claimants Do Not Have Authority to Assess Fees For the Costs of Installing and Maintaining Transit Stop Trash Receptacles*

Claimants have previously asserted (in rebuttal comments filed on June 25, 2008) that they lack authority to levy fees to recoup the costs of installing and maintaining trash receptacles. The transit stop trash receptacle requirement, set forth in Part 4.F.5(c)(3) of the Permit, has been found by staff to be a state mandate. *See* Draft Staff Analysis, 24-29.

Citing Government Code section 17556(d), the Draft Staff Analysis notes that the Commission cannot find a cost to be mandated by the state if a local agency "has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." Draft Staff Analysis, 48. The question facing the Commission is whether claimants have authority to levy such service charges, fees or assessments.

Preliminarily, staff, citing *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, argues that if a city has "authority" to levy fees, even if those fees are not economically sufficient to pay for the mandated program, this defeats the finding of a state mandate requiring a subvention of funds. The question of what constitutes "authority," however, was not fully analyzed by staff. Claimants are not arguing that the costs associated with the installation and maintenance of transit stop trash receptacles cannot be recouped in an economic sense. The cities are contending that they have no "authority" to obtain the fees in the first place, since the parties creating the burden leading to their placement are immune from the imposition of city fees. Moreover, claimants cannot assess the fees generally against property owners or against businesses because such a fee would represent a "special tax."

Connell does not address this key question. *Connell* involved a statute that, on its face, gave the water districts specific authority to charge their customers (who were receiving the benefits of water supply services) for the cost of complying with a regulatory amendment that increased the cost of those services. The "authority" of the districts was clear. Here, unlike in *Connell* and the other authorities cited by staff,

claimants do not have such authority. As discussed below, claimants do not have authority to assess these costs against the beneficiaries of the receptacles or the persons the entities responsible for the burden, i.e., the transit users or the transit agencies. Claimants also cannot recover such costs from property owners or through business license fees, since the benefit of the receptacles has no relationship to either property owners generally or to businesses, and thus the fees would represent a "special tax." Neither under their general police power nor under a savings clause provision of the Public Resources Code do claimants have authority to assess a fee to recoup of the cost of this state mandate.

1. *Claimants Cannot Assess Regulatory Fees Under Their Police Powers to Recoup the Costs of Installing and Maintaining Transit Stop Trash Receptacles*

In order for a fee to be a "fee" and not a "special tax," there must be a causal connection or nexus between the person or entity paying the fee and the benefit or burden being addressed. If there is no such causal connection or nexus, the fee is a special tax. *Sinclair Paint v. State Board of Equalization* (1997) 5 Cal.4th 866, 876-78. The staff's draft analysis does not address this question with respect to trash receptacles. It does not identify a group of persons or businesses that have a causal connection with the trash receptacles and upon whom a fee can be assessed. The logical group would be transit riders or operators. As discussed below, however, claimants do not have the authority to assess such fees.

The Draft Staff Analysis first asserts, at 51-53, that local agencies have "fee authority under the police power" to pay for the costs of installing and maintaining transit stop trash receptacles, relying principally on *Sinclair Paint, supra*, in support of that conclusion. *Sinclair Paint*, however, supports the claimants' position here.

In *Sinclair*, a paint company challenged the imposition of a statutory fee used to provide health care services to children who suffered from lead paint poisoning. The fee was assessed against paint companies based on their sales volume. Sinclair challenged the fee on the ground that it was an illegal tax which had not been passed by a two-thirds vote of the Legislature, as required under the California Constitution.

In holding that the lead paint assessment was a regulatory fee and not a tax, the Supreme Court affirmed the requirement that there be a relationship between the entities being assessed and the benefit obtained or burden addressed. The Court stated: "[T]he case law . . . indicates that the police power is broad enough to include mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, **the measure requires a causal connection or nexus between the product and its adverse effects."** 15 Cal. 4th at 877-78 (italicized emphasis in original; bold emphasis supplied).

The issue of a causal nexus, a relationship between the fee and the activities of the party on whom the fee was being assessed, was vital to the Supreme Court's analysis, and

it must inform the Commission's analysis here. Simply assessing a fee against persons with no direct responsibility or benefit from the activities funded by the fee is not a proper exercise of the police power. This was recognized by the Supreme Court in *Sinclair Paint.* The Court specifically noted that on remand to the trial court, Sinclair would "have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning . . . ." 15 Cal.4th at 881. Obviously, a failure to show such nexus would negate the proposition that there was in fact a regulatory "fee" rather than a tax.

Other courts examining whether a particular fee constituted a "regulatory fee" and not a special tax require that "the charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1146 (quoting *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235.) In *San Diego Gas,* the court found that permit fees that were higher based on greater emissions from a source and that were used to recover an air district's costs not identified with a specific polluter was not a special tax because the district had shown that it incurred greater costs to regulate higher-emission sources. *Id.* at 1147-48. The court therefore concluded that the district had established that the emission-based fees "are reasonably related to the district's costs of regulating a permit holder's air pollution, and thus are not a special tax." *Id.* at 1148. The court in *San Diego Gas* thus found the necessary relationship between the imposition of the fee and its payor.

Likewise, in *California Assn. of Professional Scientists v. Department of Fish and Game* (2000) 79 Cal.App.4th 935, cited in the Draft Staff Analysis, the court held that a flat fee imposed to pay for environmental reviews of timber harvesting plans was an appropriate regulatory fee and not a tax. While holding that the Department had "flexibility" in apportioning the costs of the regulatory program, the court still found that a relationship between the fee and the payor was required, noting that "[w]e agree with the notion that shifting the costs of environmental protection to those who seek to impact our natural resources does not subvert the objectives embodied in Proposition 13." *Id.* at 950.

Municipalities can impose different kinds of fees in addition to regulatory fees, including "user fees" (a fee charged for the cost of using some service) or "development fees" (a fee that bears a reasonable relationship to the development's probable cost to the community). *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 694-95. However, all of these types of fees bear a similar characteristic: a relationship between the payor and the purpose for the fee. The court in *Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 738, explained the relationship issue:

> With each of these cases [regulatory fees, user fees or development fees], a discrete group receives a benefit (for example, a permit to build or inspection of produce) or a service (for example, providing and administering a rental dispute mediation and arbitration hearing process) or a permanent public improvement

(such as a local park or landscaped median islands on a local road) which inures to the benefit of that discrete group. The public as a whole may be incidentally benefited, but the discrete group is specially benefited by the expenditure of these funds. . . . The public should not be required to finance an expenditure through taxation which benefits only a small segment of the population. . . . If it is asked to do so, it must agree by a two-thirds vote. On the other hand, where the burden for these expenditures is borne by the group specifically benefited by them, Proposition 13 is not implicated.

(citations omitted).

Here, there is no group upon which the claimants can assess a fee that has a relationship with the trash receptacles. The trash receptacles either benefit the public at large by preventing trash from getting into the street and waters of the state or the discrete group of transit users and operators. The burden is created by the transit riders. The Permit does not require claimants to place trash receptacles every 250 feet along main thoroughfares or in front of certain business establishments. It only requires them to place the receptacles *at transit stops*. Accordingly, the cost of the trash being addressed derives from the transit riders who are littering the trash and would otherwise cause it to accumulate at that location. The State Board clearly recognized that the trash receptacle program was imposed because of transit users when it asserted in its comments: "Any additional costs associated with trash removal at these transit stops, a service cities already provide, *could be borne by transit users through higher transit fees.*" State Board comment letter at 19 (emphasis supplied).

The only group of persons or entities that have a relationship to the trash generation is transit users or the transit entities themselves. The staff's draft analysis does not address whether the claimants can assess transit users or transit operators with a regulatory fee that would offset the cost of providing this service. Examination of this question highlights the claimants' inability to assess such a fee.

2. *Claimants Cannot Assess Fees On Transit Agencies or Increase Transit Fares to Recoup the Costs of Installing and Maintaining Trash Receptacles*

The claimants subject to the trash receptacle requirement in Permit Part 4.F.5(c)(3) do not have the authority to recoup the cost of the receptacles through fees on transit riders or owners. For example, with respect to the Metropolitan Transit Authority ("MTA"), the largest public transit operator in Los Angeles County, state law places the authority to set transit fares exclusively with the MTA's board, and not individual cities situated on the MTA's route. *See* Pub. Util. Code section 30638 ("the rates and charges for service furnished pursuant to this part shall be fixed by a vote of two-thirds of all of the members of the board . . . ."), applicable to the MTA pursuant to Pub. Util. Code section 130051.14. Thus the claimants have no authority to assess transit riders.

Similarly, a city cannot assess such fees against the MTA itself as a condition of allowing the MTA into the city. The MTA Board has exclusive jurisdiction to establish MTA routes and stops. See Pub. Util. Code section 30631 (MTA may "operate . . . control or use . . . stations . . . and any and all other facilities necessary or convenient for rapid transit service . . . over public streets . . . together with all physical structures necessary or convenient for the access of persons and vehicles thereto . . . ."). This section is applicable to MTA pursuant to Pub. Util. Code section 130051.14. Thus, a city has no authority to condition the MTA's use of a station on the payment of a fee for the placement and maintenance of trash receptacles.

Likewise, Foothill Transit, which operates buses within the San Gabriel and Pomona Valleys (and whose member municipalities include the County of Los Angeles and the City of Azusa, claimants herein), also has sole authority to establish fares within its service area as well as bus routes. Declaration of Kevin O. McDonald, Deputy Executive Director, Foothill Transit, attached hereto, ¶¶ 2, 7. A member city of Foothill Transit cannot receive funds from the agency to repay it for the cost of establishing trash receptacles. McDonald Declaration, ¶ 6. Thus, a member city could not to recover the costs of transit stop trash receptacles by charging the Foothill Transit for such services or receiving payment from the agency.

Thus, there is no way that claimants could, in fact, recoup the costs of placing trash receptacles at transit stops either through higher transit fares or through some fees levied on transit operators. Staff's draft analysis does not address this issue.

3. Claimants Cannot Use Their Police Power to Assess Fees On Property Owners or Businesses to Recoup The Cost of the Trash Receptacles

A city also cannot assess trash receptacle maintenance costs on top of existing property trash fees because to do so would be to collect more than the actual cost of the collection, and thus create a "special tax." A fee that is not tied to the proportional cost of a service and which is imposed to fund a specific program is, in reality, a "special tax." Government Code section 50076. *See also Bay Area Cellular, supra,* 162 Cal.App.4th at 699.

This point is further demonstrated by examining the definition of "property-related fees," which are defined in California Constitution Article XIII D, sections 6(b)(3)-(4) to be limited to those "imposed on any parcel or person as an incident of property ownership" and in an amount which "shall not exceed the proportional cost of the service attributable to the parcel." In addition, the fee must be for a service that "is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted."

Were a city to attempt to recoup the transit stop trash receptacle cost from property owners as part of their trash collection fees, the additional amount would not qualify as a "property-related fee." The fee obviously would not be a fee imposed "as an incident of property ownership" since the fee was intended to fund trash receptacles at

transit stops, not the property on which the fee was imposed. Also, the fee would by necessity exceed the proportional cost of the service attributable to the parcel because there would, in fact, be no service to the parcel. Finally, the receptacles would not provide a service "immediately available to the owners" (such as would be the case for trash pickup at a residence), but merely a "potential or future use of a service" (such as if the property owner used the receptacle while waiting for a bus). Such a use may, of course, never occur.

Staff does not explain how claimants are supposed to assess the fee pursuant to their police power, other than to cite an ordinance adopted by claimant City of Covina. Draft staff analysis, 53. However, that ordinance applies *only* to the costs associated with the inspection of businesses. *See* City of Covina ordinance, attached to the draft staff analysis. It does not apply to the installation and maintenance of trash receptacles.

A city cannot recoup the cost or trash receptacle through increased business license fees, since there again is no relationship between the activities of the business and the placement of the trash receptacles. The business is not benefiting from the trash receptacle placement at transit stops, nor is it contributing to the burden of trash. That benefit/burden is on the transit users or operators. Such a fee placed on businesses therefore would be a special tax.

4. Local Agencies Do Not Have Statutory Fee Authority To Assess Property Owners For the Cost of Installing and Maintaining Transit Stop Trash Receptacles

The Draft Staff Analysis asserts, at 53-54, that Pub. Res. Code section 40059(a) gives local agencies "statutory authority" to recoup the costs of transit stop receptacle installation and maintenance. Staff further asserts that such authority exists, "[r]egardless of whom the fees would be imposed on." Draft Staff Analysis, 53. However, this statute does not authorize claimants to collect fees sufficient to pay for the costs of installing and maintaining the transit trash receptacles.

Section 40059(a) was adopted as a "savings provision" in legislation establishing the Integrated Waste Management Board, to ensure that local trash collection agreements would not be affected by the IWMB legislation. In *Waste Resource Technologies v. Department of Public Health* (1994) 23 Cal.App.4th 299 the court held that the statute reflected Legislature's intent to allow for local regulation of waste collection. *Id.* at 308-09 (validating city's exclusive refuse contract). The statute was not intended as an *imprimatur* for local agencies to assess fees on their residents or on businesses to pay for the costs of trash generated by transit users when that requirement was established not as a matter of local choice but rather state mandate.

Staff asserts that the statute "provides local governments with broad authority over the 'level of services charges and fees.'" Draft Staff Analysis, 53. However, section 40059(a) states that it applies to "[a]spects of solid waste handling *which are of local concern . . .*" (emphasis supplied). The requirement in the Permit to place transit

stop trash receptacles is fundamentally *not* a matter of local concern but rather a regional and state concern, the quality of the state's water in water courses that traverse the Los Angeles basin. This concern goes beyond the specific, local boundaries of the individual cities. Moreover, as the draft staff analysis recognizes, this is a state concern, one that "the state freely chose to impose" on claimants. Draft Staff Analysis, 27. The installation of trash receptacles is a requirement of the *state,* adopted through the Regional Board's Permit, not one freely elected by the claimants or other permittees.

Finally, attempting to exercise fee authority under this statute poses the same problem as discussed with respect to claimants' police power "authority" – how are the local agencies to assess such fees, assuming that they have the statutory "authority" to assess them? The fee cannot be constitutionally assessed on property owners or businesses because there is no direct relationship between the property and the generation of the trash in question. The fees assessed on property owners and businesses must be proportionate to the costs incurred by the city to dispose of the trash. This cost does not include the cost of the trash receptacles. Thus, adding to property trash fees the cost of maintaining transit stop trash receptacles raises the same "special tax" issues as noted above with respect to the police powers discussion. And, the "authority" provided in Pub. Res. Code section 40059(a) will not allow claimants to seek the cost of the receptacles from transit users or transit operators, since those operators have exclusive jurisdiction over fares and routes, as discussed above.

5. *The Imposition of a "Fee" on Property Owners for Transit Stop Receptacles, Even If It Were Not a Special Tax, Still Would Require a Vote Under Proposition 218 (Article XIII D of the California Constitution)*

As discussed above, claimants cannot assess property owners a fee to pay for the costs of the placement and maintenance of transit stop trash receptacles because such fee would, in fact, be considered as a "special tax." Nonetheless, even if such an assessment were considered to be a property-related fee, it would still be subject to a vote as required by Proposition 218, Article XIII D of the California Constitution.

Staff asserts that imposing a fee on property owners for the cost of installing and maintaining transit stop trash receptacles would not constitute a "special tax," since Proposition 218, adopted as Article XIII D, section 6 of the California Constitution, exempts property-related fees for "sewer, water, or refuse collection services." Draft Staff Analysis, 60. This conclusion, however, ignores the fact that the transit stop trash receptacles are not intended for refuse collection within the meaning of Proposition 218, but instead to prevent stormwater pollution.

The court's decision in *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351 governs here. The Court of Appeal in that case was faced the question of whether a property assessment for stormwater cleanup violated Proposition 218. First, the court rejected the city's argument that the fee was not property-related, finding that the city's attempt to assess property owners a stormwater drainage fee based

on the amount of impervious area on their property was in fact a property-related assessment since it was "a fee for a public service having a direct relationship to the ownership of developed property" and "was not proportional to the amount of services requested or used by the occupant, but on the physical properties of the parcel." *Id.* at 1355.

The court then went on to dismiss the city's attempt to characterize the assessment as one for "sewer services" (and thus exempt from the voting requirements of Proposition 218) because the stormwater system was distinct from the sanitary sewer system and that the purpose of the fee was "not just to provide drainage service to property owners, but to monitor and control pollutants that might enter the storm water before it is discharged into natural bodies of water." *Id.* at 1358.

The purpose of the state mandate requiring the placement and maintenance of transit stop trash receptacles is to "control pollutants that might enter the storm water," not as part of "refuse collection services". It therefore would not be exempt from Proposition 218 requirements. In reaching this conclusion, the Commission must keep in mind "the voters' intent that the constitutional provision be liberally construed to curb the rise in 'excessive' taxes, assessments, and fees exacted by local governments without taxpayer consent . . . and that exceptions to a general rule of enactment must be strictly construed." *Id.* at 1357-58.

Thus, while claimants believe that an assessment of property owners to pay for the transit stop receptacles would represent a "special tax," even were the assessment to be characterized as a fee, it would not be allowed under Proposition 218 without the vote required.

B. ***Claimants Cannot Assess Fees On Industrial Facilities and Construction Sites For the Costs of Conducting Inspections Required Under State General Stormwater Permits***

Parts 4.C.2(b) and 4.E of the Permit require claimants to conduct inspections of so-called "Phase I" industrial facilities covered by the statewide General Industrial Activities Storm Water Permit ("GIASP") and construction sites subject to the statewide General Construction Activity Storm Water Permit ("GCASP"). Both the GIASP and the GCASP are issued by the State Board and, as staff found, the requirement to conduct inspections of such facilities and sites constitutes a state mandate. Draft Staff Analysis, 40; 44-45.

Pursuant to Water Code section 13260(d)(2)(i), the State Board is authorized to establish an annual fee schedule for collecting fees from the persons subject to the GIASP and GCASP requirements. The Legislature further provided, in Water Code section 13260(d)(2)(iii), that regional boards are to receive monies specified for the inspection of the industrial and constructions sites covered by the GCASP and GIASP programs. This is appropriate, given that the State Board determined that the regional boards should bear responsibility for the enforcement of those permits. *See* State Board Order No. 97-03-

DWQ (adopting the GIASP), Finding 13: "following adoption of this general permit, *the regional water boards shall enforce its provisions*." (emphasis added). Part F(1)(A) of the GIASP provides that "Regional Water boards . . . [i]implement the provisions of this General Permit, including, but not limited, . . . conducting compliance inspections, and taking enforcement actions." *See also* State Board Order No. 99-08-DWQ (adopting the GCASP), Finding 11: "Following adoption of this General Permit, the RWQCBs shall enforce the provisions herein . . . ." Part D.1 of the GCASP specifically provides that "RWQCBs shall . . . implement the provisions of this General Permit. Implementation of this General Permit may include, but is not limited to . . . conducting compliance inspections, and taking enforcement actions."

These provisions, taken together, indicate that both the Legislature and the State Board intended that the obligation to inspect Phase I industrial facilities under the statewide GIASP program and construction sites under the statewide GCASP program to fall to the regional boards and that the costs of all such inspections be paid for by the GIASP and GCASP permit holders in fees to the State Board. Nonetheless, the Permit requires inspections of these facilities and sites to be carried out by permittees under the Permit, without the Regional Board sharing of any of the funds collected to carry out those inspections.

What the Regional Board has done in the Permit is exactly what Article XIII B, section 6 of the California Constitution was intended to address: shift to local governments the financial responsibility to provide public services where the state has already received the money to fully provide those services. As the Court of Appeal in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1578 held, "The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies."

Staff correctly judged these requirements of the Permit to be state mandates, but has concluded that claimants are not entitled to a subvention of state funds because they can raise fees from the state permit holders who have already paid the State Board for the same inspection services. Claimants respectfully disagree.

1. *Local Fees For The Inspection of Phase I Industrial Facilities and Construction Sites, Where Fees For Such Inspections Have Already Been Collected by the State, Are Preempted*

In response to the arguments of claimants that a local stormwater inspection fee would be preempted, staff argues that there is nothing in Water Code section 13260 or the State Board regulations that "expressly preempt, or indicates that the state fee authority would preempt" a local regulatory fee. Draft Staff Analysis, 56. Staff also argues that a local fee would not duplicate state law "because the local fee would not be coextensive with state law." *Id.*

As the state Supreme Court has held, the issue of preemption is not limited to "express" preemption. Preemption can also occur when the local regulation has entered a

field fully occupied" by state law. *See American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252 ("Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not be measured alone by the language used but by the whole purpose and scope of the legislative scheme" quoting *Tolman v. Underhill* (1952) 39 Cal.2d 708, 712).

Here, the Legislature adopted a statute that specifically established a mechanism for fees to be assessed on GIASP and GCASP holders, for those funds to be segregated and sent to the regional boards, and for a specified amount of those funds ("not less than 50 percent of the money") to be used by the regional boards "solely" on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. Water Code section 13260(d)(2)(iii). Such a specific determination as to the destination of the funds for the purposes of inspection and compliance evidences the intent of the Legislature that the issue of funding for GIASP and GCASP inspections be "fully occupied."

Staff is correct in noting that the Phase I industrial facilities are not co-extensive with the other commercial establishments (restaurants, service stations, etc.) also to be inspected under the Permit (Draft Staff Analysis, 56). This does not avoid the double taxation, however, with respect to the inspections of GIASP and GCASP permit holders. With respect to them, the inspection and fee program is not complimentary, but *duplicative*. Staff further notes that with respect to the industrial facilities, the Permit does not require inspections by permittees if the Regional Board has inspected them within the past 24 months. (Draft Staff Analysis, 57). This waiver does not apply, however, to the inspection of construction sites (as acknowledged by staff, Draft Staff Analysis, 58). It also does not apply to the Permit requirement for inspection of the state-permitted facilities for all facilities *not* inspected by the Regional Board.

Staff's discussion of *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740 also does not support its arguments. Unlike the municipality in that case, claimants are not here seeking funding for a purely local regulatory program, but rather for the costs of inspecting facilities *subject to a state permit for their compliance with that state permit.*

2. *Assessing Fees Against Permit Holders For Inspections They Have Already Paid For Represents a Special Tax*

The California Legislature and courts have plainly held that fees which exceed the reasonable cost of providing services are a "special tax," and not a fee that could excuse the requirement for a subvention of state funds. *See* Government Code section 50076; *e.g., California Ass'n of Professional Scientists, supra,* 79 Cal.App.4th at 948; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-60. By forcing the claimants to recover their costs for inspecting the state-permitted GIASP and GCASP facilities and sites, the Regional Board has created such a special tax.

As set forth above, claimants are required to inspect the state-permitted facilities and sites despite the fact that the persons holding those permits already have paid the state for the cost of those inspections. Thus, to the extent that the claimants' inspections duplicate the scope of the state inspections, the fees constitute a "special tax."

Staff's citation of *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377 is inapposite. Staff states that the reasoning of the case "is instructive because a local regulatory fee could be used for local-government inspections, and the state fee is for state or regional inspections under the general statewide permits." Draft Staff Analysis, 59. Again, however, the inspections for which a subvention of funds is being sought here are those inspections under the general statewide permits, not "local-government inspections."

III. CONCLUSION

Staff has concluded, that the requirements identified by claimants in these consolidated Test Cases are, in fact, state mandates. This is an important and correct finding.

At the same, without identifying how claimants are to do so, staff has concluded that a subvention of funds is not required because claimants have "authority" to recoup the costs of placing trash receptacles at transit stops or to inspect *state-permitted* facilities or construction sites that have already and annually paid the state for the full costs of those inspections. Claimants have demonstrated however, that in fact they do not have "authority" to recoup these costs and, as a result, claimants are entitled to reimbursement of these costs.

For the foregoing reasons, Claimants again respectfully request that the Commission approve these test claims.

Dated: June 5, 2009

BURHENN & GEST LLP
Howard Gest
David W. Burhenn

By: _____
Howard Gest

DECLARATION OF KEVIN O. McDONALD

I, Kevin O. McDonald, hereby declare and state as follows:

1. I am Deputy Executive Director of Foothill Transit, which operates public bus transit lines in 21 Los Angeles County cities and unincorporated Los Angeles County. I have personal and first-hand knowledge of the matters set forth herein and could, if called upon, testify competently thereto.

2. Foothill Transit was created in 1988. It provides bus service to approximately 15 million riders annually within a 327 square mile area of the San Gabriel and Pomona Valleys in Los Angeles County.

3. Foothill Transit is comprised of 21 member cities and the County of Los Angeles. Foothill Transit operates pursuant to the Foothill Transit Joint Powers Agreement ("JPA").

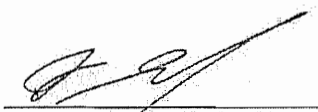
4. Fares for Foothill Transit riders are established by the Governing Board of Foothill Transit. No individual member city or the County can establish fares independently of the Governing Board.

5. The JPA does not provide for monies collected in fares to be distributed back to individual member cities or the County for any purpose except to reimburse costs associated with the administration of Foothill Transit itself.

6. The costs of establishing a trash receptacle at a bus stop to comply with a stormwater permit would not be considered a Foothill Transit administrative cost for which a member city or the County could obtain reimbursement.

7. Routes for Foothill Transit bus lines are establish by majority vote of the Governing Board. No member city or the County of Los Angeles can block a route or require Foothill Transit to pay a fee for the right to operate bus stops in the city or the County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of June 2009 at West Covina, California.



Kevin O. McDonald

Article 3.5

VOTER–APPROVED SPECIAL TAXES

Sec.

50075. Legislative intent.
50076. Definition.
50077. Ordinance or resolution; election; collection.

Article 3.5 was added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979.

§ 50075. Legislative intent

It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution.

(Added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979. Amended by Stats.1980, c. 672, § 1, eff. July 20, 1980.)

Historical Note

The 1980 amendment substituted "cities, counties, and districts" for "cities and counties" and substituted "pursuant" for "subject".

Library References

Counties ⇐192.
Municipal Corporations ⇐961.
C.J.S. Counties § 281.
C.J.S. Municipal Corporations § 1992 et seq.

§ 50076. Definition

As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

(Added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979.)

Library References

Words and Phrases (Perm.Ed.)

Notes of Decisions

I. In general

Proposed initiative ordinance, which would have required city to submit any revenue-raising measure to the voters for their approval before the measure could be implemented, was invalid as being in conflict with general laws and an unlawful attempt to impair essential government functions through interference with the administration of the city's fiscal powers. City of Atascadero v. Daly (1982) 185 Cal.Rptr. 228, 135 C.A.3d 466.

duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

(Added by Stats.1992, c. 60 (A.B.152), § 15.)

Research References

Encyclopedias

CA Jur. 3d Public Transit § 7, Transportation Commissions.

§ 130051.14. References to abolished Commission and district

On and after April 1, 1993, any reference in this part, or in any other provision of law or regulation, to the Southern California Rapid Transit District or to the Los Angeles County Transportation Commission or to the county transportation commission in general shall be deemed to refer to the Los Angeles County Metropolitan Transportation Authority.

(Added by Stats.1992, c. 60 (A.B.152), § 16.)

§ 130051.15. Assumption of rights and obligations

(a) Upon the abolishment of the Southern California Rapid Transit District and the Los Angeles County Transportation Commission, the Los Angeles County Metropolitan Transportation Authority shall assume the rights and obligations of the district and the commission under any contract to which the district or the commission is a party and which is to be performed, in whole or in part, on or after January 1, 1993. All real and personal property owned by the district or the commission shall be transferred to the authority by operation of law.

(b) The Los Angeles County Metropolitan Transportation Authority shall assume, without any condition whatsoever, all responsibilities and obligations previously assumed by the Southern California Rapid Transit District or the Los Angeles County Transportation Commission with regard to the full funding agreement, including all agreements pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964 which relate to the full funding agreement, with the Federal Transit Administration for the funding of the Los Angeles County Metro Rail Project. It is the intent of the Legislature that nothing in this act shall enlarge or diminish the projects covered or any rights or obligations under any existing agreements pursuant to Section 13(c).

(c) The Los Angeles County Metropolitan Transportation Authority shall not, until April 1, 1993, renew or extend any personal services contract entered into between either the Los Angeles County Transportation Commission or the Southern California Rapid Transit District and an employee or former employee of either agency prior to January 1, 1993.

(Added by Stats.1992, c. 60 (A.B.152), § 17.)

§ 130051.16. Collective bargaining agreements or labor obligations; extent of assumption

Notwithstanding any other provision of law, the Los Angeles County Metropolitan Transportation Authority shall assume the duties, obligations, and liabilities of the Southern California Rapid Transit District, including those duties, obligations, and liabilities arising from or relating to collective bargaining agreements or labor obligations imposed by state or federal law, only to the extent that the authority is acting pursuant to specific duties, obligations, liabilities, rights, or powers to which it succeeded as a result of the abolishment of the district pursuant to Section 130051.13.

(Added by Stats.1992, c. 60 (A.B.152), § 18.)

§ 130051.17. Acceptance of gifts by members and employees of authority; adoption of ordinance prior to contract approval gifts of travel; violations

(a) Prior to the approval of any contract by the Los Angeles County Metropolitan Transportation Authority, or by any organizational unit of the authority, the authority shall adopt an ordinance comparable to Chapter 9.5 (commencing with Section 89500) of Title 9 of the Government Code, which regulates the acceptance of gifts by members of the authority, * * * members of the board of an

§ 30638. Fixing of reasonable rates, fees or charges; vote requirement; objectives for revenues

(a) The rates, fees, and charges for service or rights furnished, leased, or otherwise transferred pursuant to this part, including, but not limited to, station cost-sharing, connector fees, and land or air rights sales or leasing, shall be fixed by a vote of two-thirds of all of the members of the board and shall be reasonable. Insofar as practicable, the rates, fees, and charges shall be determined and fixed so as to result in revenue which will make the transit system self-supporting and shall be sufficient to accomplish all of the following:

(1) Pay the operating expenses of the district.

(2) Provide for repairs, maintenance, and depreciation of works owned or operated by the district.

(3) Provide for the purchase, lease, or acquisition of equipment under Article 3 (commencing with Section 30940) of Chapter 7.

(4) Provide for the payment of the interest and principal of the bonded debt, subject to the applicable provisions of this part authorizing the issuance and retirement of bonds.

(5) Provide for the payment of contracts, agreements, leases, equipment, trust certificates, and other legal liabilities assumed under Chapter 8 (commencing with Section 31000).

* * *

(b) After making any current allocations of funds required for the purposes prescribed by paragraphs (1) to (5), inclusive, of subdivision (a) and by the terms of any indebtedness incurred under Article 1 (commencing with Section 30900), Article 2 (commencing with Section 30930), and Article 5 (commencing with Section 30960) of Chapter 7, the board may provide funds for any purpose the board deems necessary and desirable to carry out the purposes of this part.

(c) This section does not constitute a covenant to the holders of any bonds or other evidences of indebtedness of the district unless the ordinance, resolution, or indenture providing for the issuance of those instruments so provides.

(Added by Stats.1964, 1st Ex.Sess., c. 62, p. 221, § 1. Amended by Stats.1971, c. 1515, p. 2988, § 1; Stats.1983, c. 497, § 11; Stats.1988, c. 683, § 1, eff. Aug. 27, 1988.)

Research References

Encyclopedias

CA Jur. 3d Public Transit § 24, Transit Facilities and Service.

§ 30638.1. Repealed by Stats.1988, c. 683, § 2, eff. Aug. 27, 1988

§ 30638.2. Net income; purposes; operating expenses

Notwithstanding Section 30638, all net income from fees, charges, rents, profits, or other net income arising from joint development of the property of the district which was acquired exclusively for the rail rapid transit system shall be used only for the following purposes:

(a) Pay the capital and operating expenses of the rail rapid transit system.

(b) Provide for the payment of interest and principal of the bonded debt for the rail rapid transit system, subject to the applicable provisions of this part authorizing the issuance and retirement of bonds.

(c) Provide for the payment of contracts, agreements, leases, equipment, and other legal liabilities assumed under Chapter 8 (commencing with Section 31000).

As used in this section, "operating expenses" includes the expenses of operation, maintenance, and repair of all personal or real property physically or functionally related to rail rapid transit services or facilities.

(Added by Stats.1983, c. 497, § 11.5.)

Library References

Urban Railroads ⇐1.
C.J.S. Street Railroads §§ 1 to 7, 19, 20, 154 to 159.

§ 30640. Time and place of hearing; notice; publication

Upon the filing of a request for hearing as provided in Section 30639, the district board shall fix the time and place for hearing. The time fixed shall not be less than 15 days nor more than 60 days from the

LexisNexis

1 of 1 DOCUMENT

KATHLEEN CONNELL, as Controller, etc., et al., Petitioners, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; SANTA MARGARITA WATER DISTRICT et al., Real Parties in Interest.

No. C024295.

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

59 Cal. App. 4th 382; *69 Cal. Rptr. 2d 231*; *1997 Cal. App. LEXIS 948*; *97 Cal. Daily Op. Service 8821*; *97 Daily Journal DAR 14255*

November 20, 1997, Decided

SUBSEQUENT HISTORY: Review Denied February 25, 1998.

PRIOR-HISTORY: APPEAL from a judgment of the Superior Court of Sacramento County. Super. Ct. Nos. CV347181, CV357155, CV357156, CV357950. James T. Ford, Judge.

COUNSEL: Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

JUDGES: Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.

OPINION BY: SIMS

OPINION

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (*Cal. Const., art. XIII B, § 6* (hereafter, section 6); [1] *Gov. Code, § 17500 et seq.*; former *Rev. & Tax. Code, § 2201 et seq.*) The State Controller and State Treasurer appeal from a trial court judgment granting petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim--former *Revenue and Taxation Code section 2207*--was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following

mandates: [P] (a) Legislative mandates requested by the local agency affected; [P] (b) Legislation defining a new crime or changing an existing definition of a crime; or [P] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to *California Rules of Court, rule 213* (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

FACTUAL AND PROCEDURAL BACKGROUND

In 1975, the State Department of Health Services (DHS) adopted regulations (*Cal. Code Regs., tit. 22, § 60301-* 60357) implementing *Water Code section 13521*, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." *Section 60313* [3] *of title 22 of the California Code of Regulations* prescribed the level of purity required for reclaimed water to be used for landscape irrigation.

3 *California Code of Regulations, title 22, section 60313*, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed." (Former *§ 60313*, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system--the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of $ 17 million.

In September 1978, DHS amended the regulations. The amendment to *California Code of Regulations, title 22, section 60313* [4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983.

4 *Section 60313* of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former *Revenue and Taxation Code section 2231*, [6] which required reimbursement to local agencies for costs mandated by the state (see now *Gov. Code, § 17561* [7]), and former *Revenue and Taxation Code section 2207, subdivisions (a)* and *(b)* [8] defining "costs mandated by the state." (See now *Gov. Code, § 17514.* [9]) The test claim also cited section 6 (fn. 1, *ante*).

5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former *Rev. & Tax. Code, § 2218*; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in *Government Code sections 17521- 17522.*

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

6 Former *Revenue and Taxation Code section 2231* provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in *Section 2207. . . .*" (Stats. 1982, ch. 1586, § 3, p. 6264.)

7 *Government Code section 17561* provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in *Section 17514. . . .*"

8 Former *Revenue and Taxation Code section 2207* provided in part: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [P] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [P] (b) Any executive order issued after January 1, 1973, which mandates a new program . . . ." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former *Revenue and Taxation Code section 2207*, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [P] . . . [P] . . . (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them.

9 *Government Code section 17514* provides: " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 . . . ."

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former *Rev. & Tax. Code, § 2253.2*; Stats. 1982, ch. 734, § 10, pp. 2916-2917; *Gov. Code, § 17557.*)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former *Revenue and Taxation Code section 2255*, [10] submitted to the Legislature a statewide cost estimate of $ 14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

10 Former *Revenue and Taxation Code section 2255* provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement. . . . Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in *Government Code section 17600*, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost $ 14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including $ 945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to *Code of Civil Procedure section 1085*. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant.

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in *County of Los Angeles v. State of California (1987) 43 Cal. 3d 46, 56 [233 Cal. Rptr. 38, 729 P.2d 202]*.

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former *Revenue and Taxation Code section 2207* (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former *Revenue and Taxation Code section 2207* destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former *Revenue and Taxation Code section 2207* in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former *Rev. & Tax. Code, § 2253.2, subd. (b)(4)*; [11] Stats. 1982, ch. 734, § 10, p. 2916; *Gov. Code, § 17556* [12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment

of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former *Revenue and Taxation Code section 2253(b)(4)* and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

> 11 At the time SMWD filed its test claim, former *Revenue and Taxation Code section 2253.2* provided in part: "(b) The Board of Control shall not find a reimbursable mandate . . . in any claim submitted by a local agency . . . if, after a hearing, the board finds that: [P] . . . [P] (4) The local agency . . . has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)
>
> 12 *Government Code section 17556* provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in *Section 17514*, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [P] . . . [P] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California, supra, 43 Cal. 3d 46*; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

DISCUSSION

I. *Appealability*

Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget [13] (*Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal. App. 3d 521, 538-541 [234 Cal. Rptr. 795]*)--a determination requiring an evidentiary hearing which was not held--we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

> 13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

An appealable judgment or order is a jurisdictional prerequisite to an appeal. (*Code Civ. Proc., § 904.1*; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 13-14, pp. 72-73.)

An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*Lyon v. Goss (1942) 19 Cal. 2d 659, 669-670 [123 P.2d 11]*.)

In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong.

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determin-

ing what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure--which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist.* v. *State of California, supra, 190 Cal. App. 3d 521*--a case discussed in the trial court and on appeal--recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id. at pp. 538-539.*) Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*) Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (*Morehart v. County of Santa Barbara (1994) 7 Cal. 4th 725, 743-744 [29 Cal. Rptr. 2d 804, 872 P.2d 143]* [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs--which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. *Standard of Review*

In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd. (1985) 39 Cal. 3d 398, 407 [216 Cal. Rptr. 782, 703 P.2d 122].*) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. *Collateral Estoppel*

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception.

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California (1990) 50 Cal. 3d 51,*

64-65 [266 Cal. Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *Sacramento II* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California (1984) 156 Cal. App. 3d 182 [203 Cal. Rptr. 258]* (*Sacramento I*).) On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra, 50 Cal. 3d at p. 64.*) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '. . . But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed. . . .' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies. . . ." (*Sacramento II, supra, 50 Cal. 3d at p. 64*, original italics.)

The Supreme Court also rejected the argument that res judicata applied. "Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II, supra, 50 Cal. 3d at p. 65*, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., *Gov. Code, § 17500.* [14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal. 2d 450 [20 Cal. Rptr. 321, 369 P.2d 937].*) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (*Gov. Code, § 17559*; former *Rev. & Tax. Code, § 2253.5*; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

14 *Government Code section 17500* provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies . . . for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 . . . . The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated

> costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [P] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 . . . and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 . . ."

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist.* v. *State of California, supra, 190 Cal. App. 3d at p. 536.*)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. *Authority to Levy Fees*

Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former *Revenue and Taxation Code section 2253.2* provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to *Section 905.2 of the Government Code*, in any claim submitted by a local agency or school district, pursuant to *subdivision (a) of Section 2218*, if, after a hearing, the board finds that:

"

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [15] (Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.)

15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in *Government Code section 17556.* [16]

16 *Government Code section 17556* provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in *Section 17514*, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [P] . . . [P] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. . . ."

The facial constitutionality of this provision was upheld in *County of Fresno v. State of California (1991) 53 Cal. 3d 482 [280 Cal. Rptr. 92, 808 P.2d 235].* The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (*53 Cal. 3d at p. 487.*) *Government Code section 17556, subdivision (d)*, "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (*County of Fresno v. State of California, supra, 53 Cal. 3d at p. 487.*)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as *Water Code section 35470*, which provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [17]

> 17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where *Water Code section 35470* was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in *Water Code section 13512*, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "DISCUSSION: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge . . . ." The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical phrase, 'sufficient to pay for the mandated costs,' that's the condition with [*sic*] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay . . . ."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees

sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co. (1989) 48 Cal. 3d 711, 724 [257 Cal. Rptr. 708, 771 P.2d 406].*) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . ." (*Lungren v. Deukmejian (1988) 45 Cal. 3d 727, 735 [248 Cal. Rptr. 115, 755 P.2d 299].*)

Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; . . ." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action . . . ." (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. *Water Code section 35470* authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in *Water Code section 35470* limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former *Revenue and Taxation Code section 2253.2* (now *Gov. Code, § 17556*) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II, supra, 50 Cal. 3d at p. 64.*)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." How-

ever, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground.

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former *Revenue and Taxation Code section 2207.*

DISPOSITION

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.

The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.

LexisNexis

1 of 1 DOCUMENT

SINCLAIR PAINT COMPANY, Plaintiff and Respondent, v. STATE BOARD OF EQUALIZATION, Defendant and Appellant; DEPARTMENT OF HEALTH SERVICES et al., Interveners and Appellants.

No. S054115.

SUPREME COURT OF CALIFORNIA

15 Cal. 4th 866; *937 P.2d 1350*; *64 Cal. Rptr. 2d 447*; *1997 Cal. LEXIS 2967*; *97 Cal. Daily Op. Service 5059*; *97 Daily Journal DAR 8242*

June 26, 1997, Decided

PRIOR-HISTORY: Court of Appeal of California, Third Appellate District. C021559. Superior Court of Sacramento County, Super. Ct. No. CV541310. Joe S. Gray, Judge.

COUNSEL: Daniel E. Lungren, Attorney General, Timothy G. Laddish, Assistant Attorney General, Lawrence K. Keethe and William L. Carter, Deputy Attorneys General, for Defendant and Appellant and for Interveners and Appellants.

National Center for Youth Law, Alice Bussiere, Patrice McElroy, Long & Levit, Joyce C. Wang, Stephen P. Randall, Abrams & Abrams, Abrams & Hebert, William F. Abrams and William N. Hebert for Interveners and Appellants.

Carol A. Korade, City Attorney Alameda, Jerome F. Coleman, City Attorney Burlingame, Robert G. Boehm, City Attorney Chico, Scott H. Howard, City Attorney Glendale, John L. Cook, City Attorney Indian Wells, Michael D. Milich, City Attorney Modesto, Daniel J. McHugh, City Attorney Redlands, Samuel L. Jackson, City Attorney Sacramento, Louise Renne, City Attorney San Francisco, Thomas Owen, Deputy City Attorney, Paul M. Valle-Riestra, Assistant City Attorney Walnut Creek, Ruth Sorensen, Catherine I. Hanson, Ellen G. Widess, Alden, Aronovsky & Sax and Ronald G. Aronovsky as Amici Curiae on behalf of Defendant and Appellant and Interveners and Appellants.

Livingston & Mattesich, Gene Livingston and Rebecca M. Ceniceros for Plaintiff and Respondent.

Jonathan M. Coupal, Trevor A. Grimm, Sharon L. Browne, Jeffrey Sinsheimer, Nielsen, Merksamer, Parrinello, Mueller & Naylor, John E. Mueller, Eric J. Miethke, Pillsbury, Madison & Sutro, Jeffrey M. Vesely and Richard E. Nielsen as Amici Curiae on behalf of Plaintiff and Respondent.

JUDGES: Opinion by Chin, J., with George, C. J., Mosk, Kennard, Baxter, Werdegar, JJ., and Armstrong, J., * concurring.

* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

OPINION BY: CHIN

OPINION

CHIN, J.

In 1991, by simple majority vote, the Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991 (the Act) (Stats. 1991, ch. 799, § 3, amended Stats. 1995, ch. 415, § 5; see *Health & Saf. Code, § 105275 et seq.*). [1] The Act provided evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The Act's program was entirely supported by "fees" assessed on manufacturers or other persons contributing to environmental lead contamination. (See § 105305, 105310.) The question arises whether these fees were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. (See *Cal. Const., art. XIII A, § 3.*)

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

Contrary to the trial court and Court of Appeal, we conclude that the Act imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the fees must bear a reasonable relationship to those adverse effects. Accordingly, the trial court erred in granting summary judgment to award plaintiff Sinclair Paint Company (Sinclair) a refund of the fees it paid under the Act.

We take the following statement of uncontradicted facts largely from the Court of Appeal opinion in this case. Sinclair paid $ 97,825.26 in fees for 1991. After the Board of Equalization (the Board) denied Sinclair's administrative claim for refund, Sinclair filed a complaint for refund, alleging the fees assessed under *section 105310* were "actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution." The court granted the request of the Department of Health Services (the Department) for leave to intervene. It also granted a similar request to intervene by Ray Cochenour and Cardaryl Commodore, representatives of a class of children suffering from lead poisoning, and People United for a Better Oakland, an unincorporated association whose members include the Act's intended beneficiaries (collectively Cochenour).

Sinclair moved for summary judgment, claiming the Act was invalid on its face because it was not passed by the requisite two-thirds majority vote of the Legislature. The court agreed the Act imposed an unconstitutional tax and granted Sinclair's motion.

The Board, the Department, and Cochenour appealed, contending the Act involves a regulatory fee, not a tax. Appellants also argued the court erred in granting Sinclair summary judgment without compelling it to produce discovery and improperly relied on legislative history in determining the Act's constitutionality. The Court of Appeal affirmed the judgment, concluding that the Act was unconstitutional on its face and rejecting appellants' other claims. We reverse the Court of Appeal's judgment.

DISCUSSION

I. *The Childhood Lead Poisoning Prevention Act of 1991*

When the Legislature enacted the Act in 1991, it explained the Act's background and purpose in findings that described the numerous health hazards children face when exposed to lead toxicity and declared four state "goals," namely, (1) evaluating, screening, and providing case management for children at risk of lead poisoning, (2) identifying sources of lead contamination responsible for this poisoning, (3) identifying and utilizing programs providing adequate case management for children found to have lead poisoning, and (4) providing education on lead-poisoning detection and case management to state health care providers. (Stats. 1991, ch. 799, § 1.)

The Act directs the Department to adopt regulations establishing a standard of care for evaluation, screening (i.e., measuring lead concentration in blood), and medically necessary follow-up services for children determined to be at risk of lead poisoning. (§ 105285; see § 105280, subd. (e).) If a child is identified as being at risk of lead poisoning, the Department must ensure "appropriate case management," i.e., "health care referrals, environmental assessments, and educational activities" needed to reduce the child's exposure to lead and its consequences. (§ 105280, subd. (a), 105290.) Additionally, the Act requires the Department to collect data and report on the effectiveness of case management efforts. (§ 105295.)

The Department has "broad regulatory authority to fully implement and effectuate the purposes" of the Act. (§ 105300.) This authority "include[s], but is not limited to," the development of protocols for screening and for appropriate case management; the designation of laboratories qualified to analyze blood specimens for lead concentrations, and the monitoring of those laboratories for accuracy; the development of reporting procedures by laboratories; reimbursement for state-sponsored services related to screening and case management; establishment of lower lead concentrations in whole blood than those specified by the United States Centers for Disease Control for lead poisoning; notification to parents or guardians of the results of blood-lead testing and environmental assessment; and establishment of a periodicity schedule for evaluating childhood lead poisoning. (§ 105300.)

The Act states that its program of evaluation, screening, and follow-up is supported *entirely* by fees collected under the Act: "Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to *Section 105310*. This chapter shall be implemented only to the extent fee revenues pursuant to *Section 105310* are available for expenditure for purposes of this chapter." (§ 105305.)

Section 105310 imposes the fees at issue here. In pertinent part, that section imposes fees on manufacturers and other persons formerly and/or presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed

and/or currently contribute to environmental lead contamination. (*§ 105310, subd. (a).*) The Department must determine fees based on the manufacturer's or other person's past and present responsibility for environmental lead contamination, or its "market share" responsibility for this contamination. (*§ 105310, subd. (b).*)

Those persons able to show that their industry did not contribute to environmental lead contamination, or that their lead-containing product does not and did not "result in quantifiably persistent environmental lead contamination," are exempt from paying the fees. (*§ 105310, subd. (d).*)

The Legislature has authorized the Department to adopt regulations establishing the specific fees to be assessed the parties identified in *section 105310, subdivision (a).* (*§ 105310, subd. (b).*) The formula for calculating fees attributable to leaded architectural coatings, including ordinary house paint, is set forth in *California Code of Regulations, title 17, section 33020.*

II. *Proposition 13*

In June 1978, California voters added article XIII A, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (article XIII A), to the state Constitution. The initiative's purpose was to assure effective real property tax relief by means of an "interlocking 'package' " consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4). (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization (1978) 22 Cal. 3d 208, 231 [149 Cal. Rptr. 239, 583 P.2d 1281]* (*Amador Valley*); see also *County of Los Angeles v. Sasaki (1994) 23 Cal. App. 4th 1442, 1451 [29 Cal. Rptr. 2d 103].*)

Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: "From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members . . . of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."

Section 4 of article XIII A imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose *special taxes* on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Italics added.)

As we explained in *Amador Valley*, ". . . since any tax savings resulting from the operation of sections 1 and 2 [of article XIII A] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes." (*Amador Valley, supra*, 22 Cal. 3d at p. 231.)

III. *Taxes or Fees?*

Are the "fees" *section 105310* imposes in legal effect "taxes enacted for the purpose of increasing revenues" under article XIII A, section 3, and therefore subject to a two-thirds majority vote? Although we have found no cases that interpret the language of section 3, several California appellate decisions have considered whether various fees are really "special taxes" under article XIII A, section 4. (See also *City and County of San Francisco v. Farrell (1982) 32 Cal. 3d 47, 57 [184 Cal. Rptr. 713, 648 P.2d 935]* ["special taxes" are taxes levied for a specific purpose rather than for general governmental purposes]; *Gov. Code, § 50076* [excluding from the term "special tax" in article XIII A, section 4, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].) Because of the close, "interlocking" relationship between the various sections of article XIII A (see *Amador Valley, supra*, 22 Cal. 3d at p. 231), we believe these "special tax" cases may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, may apply equally to section 3 cases. [2]

> 2 We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments.

We first consider certain general guidelines used in determining whether "taxes" are involved in particular situations. The cases agree that whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. (*Bixel Associates v. City of Los Angeles (1989) 216 Cal. App. 3d 1208, 1216 [265 Cal. Rptr. 347]*; *California Bldg. Industry Assn. v. Governing Bd. (1988) 206 Cal. App. 3d 212, 234 [253 Cal. Rptr. 497]*; *Russ Bldg. Partnership v. City and County of San Francisco (1987) 199 Cal. App. 3d 1496, 1504 [246 Cal. Rptr. 21].*)

The cases recognize that "tax" has no fixed meaning, and that the distinction between taxes and fees is fre-

quently "blurred," taking on different meanings in different contexts. (*Russ Bldg. Partnership v. City and County of San Francisco, supra, 199 Cal. App. 3d at p. 1504*; *Terminal Plaza Corp. v. City and County of San Francisco (1986) 177 Cal. App. 3d 892, 905 [223 Cal. Rptr. 379]*; *Mills v. County of Trinity (1980) 108 Cal. App. 3d 656, 660 [166 Cal. Rptr. 674]*; *County of Fresno v. Malmstrom (1979) 94 Cal. App. 3d 974, 983-984 [156 Cal. Rptr. 777]*.) In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board (1991) 1 Cal. App. 4th 218, 240 [1 Cal. Rptr. 2d 818]*; *County of Fresno v. Malmstrom, supra, 94 Cal. App. 3d at p. 983* ["Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services."].) Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. (*Shapell Industries, Inc. v. Governing Board, supra, 1 Cal. App. 4th at p. 240*; *Russ Bldg. Partnership v. City and County of San Francisco, supra, 199 Cal. App. 3d at pp. 1505-1506*; see *Terminal Plaza Corp. v. City and County of San Francisco, supra, 177 Cal. App. 3d at p. 907*.) But compulsory fees may be deemed legitimate fees rather than taxes. (See *Kern County Farm Bureau v. County of Kern (1993) 19 Cal. App. 4th 1416, 1424 [23 Cal. Rptr. 2d 910]*.)

The "special tax" cases have involved three general categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power. Although these three categories may overlap in a particular case, we consider them separately.

The cases uniformly hold that *special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes" under article XIII A, section 4. (*Evans v. City of San Jose (1992) 3 Cal. App. 4th 728, 735-739 [4 Cal. Rptr. 2d 601]* [assessments on businesses for downtown promotion]; *J. W. Jones Companies v. City of San Diego (1984) 157 Cal. App. 3d 745, 750-758 [203 Cal. Rptr. 580]* [facilities benefit assessments]; *City Council v. South (1983) 146 Cal. App. 3d 320, 332 [194 Cal. Rptr. 110]* [special assessments on real property]; *County of Fresno v. Malmstrom, supra, 94 Cal. App. 3d at pp. 984-985* [special assessments for construction of streets].)

Similarly, *development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. (*Shapell Industries, Inc. v. Governing Board, supra, 1 Cal. App. 4th at p. 240* [school facilities fees]; *Bixel Associates v. City of Los Angeles, supra, 216 Cal. App. 3d at pp. 1211, 1218-1219* [fire hydrant fees]; *California Bldg. Industry Assn. v. Governing Bd., supra, 206 Cal. App. 3d at pp. 235-237* [school facilities development fees]; *Russ Bldg. Partnership v. City and County of San Francisco, supra, 199 Cal. App. 3d at pp. 1504-1506* [transit impact fees]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist. (1985) 165 Cal. App. 3d 227, 235-238 [211 Cal. Rptr. 567]* [new facilities water hookup fees]; *Trent Meredith, Inc.* v. *City of Oxnard (1981) 114 Cal. App. 3d 317, 325-328 [170 Cal. Rptr. 685]* [fees as precondition for building permits]; *Mills v. County of Trinity, supra, 108 Cal. App. 3d at pp. 661-663* [fees for processing subdivision, zoning, and land use applications]; see *Ehrlich v. City of Culver City (1996) 12 Cal. 4th 854, 898 [50 Cal. Rptr. 2d 242, 911 P.2d 429]* (conc. opn. of Mosk, J.).)

According to Sinclair, because the present fees have been imposed solely to defray the cost of the state's program of evaluation, screening, and follow-up services for children determined to be at risk for lead poisoning, they are not analogous to either special assessments or development fees, for they neither reimburse the state for special benefits conferred on manufacturers of lead-based products nor compensate the state for governmental privileges granted to those manufacturers. As the Court of Appeal observed, the fees challenged here "do not constitute payment for a government benefit or service. The program described in the Act bears no resemblance to regulatory schemes involving special assessments, developer fees, or efforts to recoup the cost of processing land use applications where the benefit analysis is typically applied. [Citations.] The face of the Act makes clear the funds collected pursuant to *section 105310* are used to benefit children exposed to lead, not Sinclair or other manufacturers in the stream of commerce for products containing lead."

Appellants argue, however, that the challenged fees fall squarely within a third recognized category not dependent on government-conferred benefits or privileges, namely, *regulatory fees* imposed under the police power, rather than the taxing power. We agree.

We have acknowledged that the term "special taxes" in article XIII A, section 4, " 'does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.' [Citations.]" (*Pennell v. City of San Jose (1986) 42 Cal. 3d 365, 375 [228 Cal. Rptr. 726, 721 P.2d 1111]* (*Pennell*), affd. on other grounds *sub nom. Pennell v. San Jose (1988) 485 U.S. 1 [108 S. Ct. 849, 99*

L. Ed. 2d 1], quoting from *Mills v. County of Trinity, supra, 108 Cal. App. 3d at pp. 659-660*; see *City of Oakland v. Superior Court (1996) 45 Cal. App. 4th 740, 760-762 [53 Cal. Rptr. 2d 120]* [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern, supra, 19 Cal. App. 4th at pp. 1422-1425* [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda (1993) 14 Cal. App. 4th 264, 280-285 [17 Cal. Rptr. 2d 845]* [upholding waste disposal surcharge imposed on waste haulers]; *Evans v. City of San Jose, supra, 3 Cal. App. 4th at p. 737*; *San Diego Gas & Electric Co.* v. *San Diego County Air Pollution Control Dist. (1988) 203 Cal. App. 3d 1132, 1145-1149 [250 Cal. Rptr. 420]* (*SDG&E*) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com.* v. *City of San Diego (1979) 91 Cal. App. 3d 156, 166-168 [154 Cal. Rptr. 263]* (*United Business*) [upholding fees for inspecting and inventorying on-premises advertising signs].)

Pennell upheld rental unit fees that a city imposed under its rent control ordinance to assure it recovered the actual costs of providing and administering a rental dispute hearing process. (*Pennell, supra, 42 Cal. 3d at p. 375.*) We explained in *Pennell* that regulatory fees in amounts necessary to carry out the regulation's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Id. at p. 375, fn. 11*; see also *SDG&E, supra*, 203 Cal. App. 3d at p. 1146, fn. 18; *Mills v. County of Trinity, supra, 108 Cal. App. 3d at p. 661.*)

We observe that Sinclair, in moving for summary judgment, did not contend that the fees exceed in amount the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any *unrelated* revenue purposes. (See *Pennell, supra, 42 Cal. 3d at p. 375.*) Moreover, Sinclair has not yet sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that Sinclair's operations generated. (See *SDG&E, supra*, 203 Cal. App. 3d at p. 1146; see also *§ 105310, subds. (b), (d)*; *Sea & Sage Audubon Society, Inc.* v. *Planning Com. (1983) 34 Cal. 3d 412, 421 [194 Cal. Rptr. 357, 668 P.2d 664]* [persons challenging fees have burden of establishing invalidity].) Sinclair does contend, however, that the Act is not *regulatory* in nature, being primarily aimed at producing revenue.

According to Sinclair, the challenged fees were in effect "taxes" because the compulsory revenue measure that imposed them was not part of a *regulatory* effort. The Court of Appeal agreed, relying on prior cases indicating that where payments are exacted solely for *revenue* purposes and give the right to carry on the business with no further conditions, they are taxes. (E.g., *United Business, supra*, 91 Cal. App. 3d at p. 165.) The Court of Appeal held that "Placing the factors distinguishing taxes and fees along a continuum, we conclude the monies paid by Sinclair pursuant to the Act are more like taxes than fees. [P] *There is nothing on the face of the Act to show the fees collected are used to regulate Sinclair.* Apart from mere calculation of the payment, the Department's regulatory authority involves implementation of the program to evaluate, screen, and provide follow-up services to children at risk for lead poisoning. The Act does not require Sinclair to comply with any other conditions; it merely requires Sinclair to pay what the Department determines to be its share of the program cost."

Contrary to the Court of Appeal, we believe that *section 105310* imposes bona fide regulatory fees. It requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a "mitigating effects" measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating effects" fees in a substantial amount (Sinclair allegedly paid $ 97,825.26 in 1991) also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products. (Cf. *SDG&E, supra*, 203 Cal. App. 3d at p. 1147, fn. 20 [emissions-based fees provide incentive to use nonpollutant fuels].)

Sinclair disputes the state's authority to impose industry-wide "remediation fees" to compensate for the adverse societal effects generated by an industry's products. To the contrary, the case law previously cited or discussed clearly indicates that the police power is broad enough to include mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects. (See *City of Oakland v. Superior Court, supra, 45 Cal. App. 4th at pp. 760-762*; *Kern County Farm Bureau v. County of Kern, supra, 19 Cal. App. 4th at pp. 1422-1425*; *City of Dublin v. County of Alameda, supra, 14 Cal. App. 4th at pp. 284-285*; *SDG&E, supra*, 203 Cal. App. 3d at pp. 1146-1149;

nited Business, *supra*, 91 Cal. App. 3d at p. 168; *Russ Bldg. Partnership v. City and County of San Francisco, supra, 199 Cal. App. 3d at pp. 1504-1506* [fees to pay for increased transit costs]; *J. W. Jones Companies v. City of San Diego, supra, 157 Cal. App. 3d at pp. 755, 758* [fees to defray costs of additional public facilities]; *Trent Meredith, Inc.* v. *City of Oxnard, supra, 114 Cal. App. 3d at p. 325* [fees to reduce growth impact of new subdivision]; see also *Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 694 [151 P. 398]* [police power authorizes legislation necessary or proper for protection of legitimate public interest]; *County of Plumas v. Wheeler (1906) 149 Cal. 758, 761-764 [87 P. 909]* [broad legislative discretion to regulate business, including license fees or charges]; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784, p. 311 ["police power is simply the power of sovereignty or power to govern--the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare"]; see generally, 6A McQuillan, The Law of Municipal Corporations (3d rev. ed. 1997) Municipal Police Power and Ordinances, § 24.01 et seq., p. 7 et seq.)

SDG&E involved regulatory fees comparable in some respects to the fees challenged here. (*SDG&E*, *supra*, 203 Cal. App. 3d 1132.) There, 1982 legislation (see § 42311) empowered local air pollution control districts to apportion the costs of their permit programs among all monitored polluters according to a formula based on the amount of emissions they discharged. (See *SDG&E*, *supra*, 203 Cal. App. 3d at p. 1135.) The *SDG&E* court observed that "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*Id. at p. 1146*, fn. omitted; see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist., supra, 165 Cal. App. 3d at pp. 234-235.*)

In *SDG&E*, the amount of the regulatory fees was limited to the reasonable costs of each district's program, and the allocation of costs based on emissions "fairly relates to the permit holder's burden on the district's programs." (*SDG&E*, *supra*, 203 Cal. App. 3d at p. 1146.) Accordingly, the court concluded that the fees were not "special taxes" under article XIII A, section 4. (*SDG&E*, *supra*, 203 Cal. App. 3d at p. 1148.)

As the court observed in *SDG&E*, "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the taxpaying public to the pollution-causing industries themselves . . . ." (*SDG&E*, *supra*, 203 Cal. App. 3d at p. 1148.) In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision. (See also *Mills v. County of Trinity, supra, 108 Cal. App. 3d at p. 663*; *County of Fresno v. Malmstrom, supra, 94 Cal. App. 3d at p. 985* [special assessments have no impact on government spending].)

The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes. *City of Oakland v. Superior Court* seems close on point. There, the court upheld city fees imposed on retailers of alcoholic beverages to defray the cost of providing and administering hearings into nuisance problems associated with the prior sale of those beverages. The court first observed that "If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police powers" to assure that the persons responsible "pay their fair share of the cost of government." (*City of Oakland v. Superior Court, supra, 45 Cal. App. 4th at p. 761.*) The court concluded that "The ordinance's primary purpose is regulatory--to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed . . . is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. [Citation.]" (*Id. at p. 762.*)

The court in *United Business* applied the "regulation/revenue" distinction to conclude that sign inventory fees adopted to recover the city's cost of inventorying signs and bringing them into conformance with law were regulatory fees, not revenue-raising taxes. The court observed that, under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not mere revenue raising, if the fees do not exceed the reasonably necessary expense of the regulatory effort. (*United Business*, *supra*, 91 Cal. App. 3d at p. 165, and authorities cited.) Quoting with approval from an earlier decision, the court noted that, if revenue is the primary purpose, and regulation is merely incidental, the imposition is a tax, but if regulation is the primary purpose, the mere fact that revenue is also obtained does not make the imposition a tax. (*Ibid.*) Moreover, according to *United Business*, if a fee is exacted for revenue purposes, and its payment gives the right to carry on business without any further conditions, it is a tax. (*Ibid.*; see also *City of Oak-*

land v. Superior Court, supra, 45 Cal. App. 4th at p. 761; *County of Plumas v. Wheeler, supra, 149 Cal. at p. 763* [fee in amount greater than reasonably needed to regulate business "cannot stand as an exercise of the police power"]; *Mills v. County of Trinity, supra, 108 Cal. App. 3d at pp. 659-660*; *City & County of San Francisco v. Boss (1948) 83 Cal. App. 2d 445, 450-451 [189 P.2d 32]*.)

The Court of Appeal, citing *United Business*, stressed that the challenged fees were exacted solely for revenue purposes, and their payment gave Sinclair and others the right to carry on the business without any further conditions. We see two flaws in that analysis. First, *all* regulatory fees are necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question, but that fact does not automatically render those fees "taxes." As stated in *United Business*, if regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax. (*United Business*, *supra*, 91 Cal. App. 3d at p. 165; see also *Mills v. County of Trinity, supra, 108 Cal. App. 3d at p. 660* [rejecting broad definition of "tax" as including all fees and charges that exact money for public purposes].)

Second, we find inconclusive the fact that the Act permits Sinclair and other producers to carry on their operations without any further conditions *specified in the Act itself*. As we have indicated, fees can "regulate" business entities without directly licensing them by mitigating their operations' adverse effects. Moreover, as appellants observe, the Act is part of a broader regulatory scheme by which, under various state and federal statutes, the state regulates Sinclair and other manufacturers in the stream of commerce for products containing lead. That being so, Sinclair's payment of the challenged fees did not confer the right to carry on business without any further conditions or regulation.

The Court of Appeal rejected appellants' argument invoking other state and federal regulations: "First, there is nothing on the face of the Act or the accompanying statement of legislative purpose which links the Act's programs for children at risk for lead poisoning with the cited state or federal statutes regulating lead. Second, none of the fees collected pursuant to *section 105310* are used to fund those regulatory efforts." However, it is undisputed that Sinclair and other manufacturers of lead-based products remain subject to government regulation, that payment of the challenged fees therefore does not entitle those manufacturers to operate free of regulation, and that the state must use the funds it collects under *section 105310 exclusively* for mitigating the adverse effects of lead poisoning of children, and not for general revenue purposes. (*§ 105310, subd. (f)*.)

Under existing case law, we can reasonably characterize the challenged fees as *regulatory fees* rather than as taxes. Accordingly, we conclude the trial court erred in granting Sinclair summary judgment on the constitutional issues. Of course, Sinclair should be permitted to attempt to prove at trial that the amount of fees assessed and paid exceeded the reasonable cost of providing the protective services for which the fees were charged, or that the fees were levied for unrelated revenue purposes. (See *Pennell, supra, 42 Cal. 3d at p. 375*.) Additionally, Sinclair will have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic "burdens" its operations generated. (*SDG&E*, *supra*, 203 Cal. App. 3d. at p. 1146; see also *§ 105310, subds. (b), (d)*.)

DISPOSITION

The judgment of the Court of Appeal, affirming the trial court's grant of summary judgment in Sinclair's favor, is reversed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Werdegar, J., and Armstrong, J., * concurred.

* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to *article VI, section 6 of the California Constitution*.

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1 of 1 DOCUMENT

SAN DIEGO GAS & ELECTRIC COMPANY, Plaintiff and Appellant, v. SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT et al., Defendants and Respondents; INDUSTRIAL ENVIRONMENTAL ASSOCIATION OF SAN DIEGO COUNTY et al., Interveners and Appellants

No. D006647

Court of Appeal of California, Fourth Appellate District, Division One

203 Cal. App. 3d 1132; *250 Cal. Rptr. 420*; *1988 Cal. App. LEXIS 765*

August 17, 1988

SUBSEQUENT HISTORY: The petition of intervenors & appellants for review by the Supreme Court was denied November 10, 1988.

PRIOR-HISTORY: Superior Court of San Diego County, No. 579211, Patricia D. Benke, Judge.

COUNSEL: Lisa C. Anderson, Timothy W. Tower and Michael R. Weinstein for Plaintiff and Appellant.

Lloyd M. Harmon, Jr., County Counsel, Daniel J. Wallace, Chief Deputy County Counsel, and Barbara Baird, Deputy County Counsel, for Defendants and Respondents.

James L. McBride, County Counsel (Ventura), and James W. Thonis, Assistant County Counsel, as Amici Curiae on behalf of Defendants and Respondents.

Latham & Watkins, David L. Mulliken, Christoper W. Garrett, Timothy C. Stutler, Stephen McConnell, Kristine L. Wilkes and Laurens H. Silver for Interveners and Appellants.

JUDGES: Opinion by Work, J., with Wiener, Acting P. J., and WoodWorth, J., * concurring.

* Assigned by the Chairperson of the Judicial Council.

OPINION BY: WORK

OPINION

In this case we hold the San Diego County Air Pollution Control District (district or APCD) may recover actual costs of operation which are not reasonably identifiable with specific industrial polluters (indirect costs) by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. In reaching this result, we find the "emissions-based" formula adopted by the district is neither a prohibited "special tax" (see *Cal. Const., art. XIII A, § 4* (Prop. 13)) nor beyond the district's statutory authority. For the following reasons we affirm the judgment.

Factual And Procedural Background

San Diego Gas & Electric Company (SDG&E) [1] unsuccessfully petitioned for mandate challenging a change in the San Diego County APCD's method of apportioning the costs of its permit programs among stationary sources of pollution required to obtain operating permits under *Health and Safety Code* [2] *section 42311*. As explained more fully below, *section 42311* was amended in 1982 to allow a local air pollution control district to fully (rather than partially) recover the costs of its permit programs through permit fees, with a view to decreasing the district's reliance on government funding. [3] The APCD incrementally implemented its expanded authority to cover its costs through fees by phasing in fee increases for permits. In prior years, the district's direct costs were apportioned among the permit holders based on a formula derived from labor costs incurred in the permit programs. After a public hearing and a workshop for permit holders, the district's fee system was changed to a two-tiered system commencing in fiscal year 1986-1987--still apportioning direct costs based on the labor stan-

dard, but adding indirect costs to the fees and apportioning them by a formula derived from the amount of emissions discharged by a stationary pollution source. (APCD Rule 40.) The district considered a variety of factors before adopting the new formula. The various types of stationary sources of pollution are divided into separate fee schedules (i.e., abrasive blasting equipment, asphalt roofing kettles, rock drills, brick manufacturing plants, fish canneries, etc.). The permitted sources are charged (1) a fee for a permit to construct and operate, based on time and material charges, and (2) an annual permit renewal fee, to pay for ongoing implementation, enforcement and related activities.

1 The Industrial Environmental Association (IEA) of San Diego County participated in the action as an intervener. SDG&E and intervener IEA are referred to collectively in this opinion as SDG&E unless specific reference is made to intervener IEA.

2 All subsequent statutory references are to the Health and Safety Code unless otherwise specified.

3 The local air pollution control districts are responsible for controlling air pollution from all sources other than vehicular sources, whereas the State Air Resources Board is responsible for controlling vehicular sources. (§ 39002.) Section 42300 authorizes every district board to establish a permit system requiring permits for the operation of equipment which causes air pollution.

APCD costs related to the permitted sources of pollution are separated into three groups: (1) direct (identified with a specific fee schedule); (2) direct add-on (directly related to the permit system but not attributable to a specific fee schedule--i.e., labor tracking, permit coding, permit system related training, etc.); and, (3) indirect (related to the overall program but not directly related to permit activity--i.e., personnel matters, rule development, correspondence, complaint investigations, hearing board participation, consultation with other agencies, etc.).

The fee schedules for the direct costs and direct add-on costs are based on data obtained from a labor-tracking system. Actual labor expended (direct costs) on activities related to a specific fee schedule are charged against that fee schedule. The total labor cost tracked for each fee schedule is then divided by the number of fee units within that schedule to obtain the average labor cost per fee unit. Direct add-on costs, which are directly attributable to the permit system but not to a specific fee schedule, are added to the permit renewal fees based on the ratio of total labor expended within a specific permit renewal fee schedule to the total labor expended within all permit fee schedules. Thus, the higher direct cost permit renewal fee schedules receive a larger share of the direct add-on costs.

Amended Rule 40 permits recouping indirect costs through additional renewal permit fees based on the average pollution generated by a facility within a specific industry, rather than based on the labor-tracking system described above for direct costs. The San Diego County APCD argues an emissions-based fee schedule for indirect costs more equitably distributes permit program costs among large and small polluters. In contrast, if the indirect costs were recovered through the same labor-tracking formula used for direct costs, small polluters would pay more than their proportionate contribution to pollution.

An Emissions-Based Fee Schedule Is Within Statutory Guidelines

Original enactments

Sections 42311 and *40510* were enacted in 1975 and 1976.

Section 40510, pertaining to the south coast district board, [4] contains specific language authorizing fees to be based on emissions. That section states: "The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the cost of planning, inspection, and monitoring related thereto. . . .

4 The south coast district board was created to control air pollution in the Counties of Los Angeles, Orange, Riverside, and San Bernardino, in recognition of the critical air pollution problems existing in the South Coast Air Basin. (§§ 40402, 40410, 40412.)

"*The fees may be varied according to the quantity of emissions and the effect of such emissions on the ambient air quality within the south coast district.*" (*§ 40510*, italics added.)

In contrast, *section 42311*, pertaining to local district boards, including San Diego's APCD, does not mention emissions as a basis for charging fees. At the time of its 1975 enactment, the section stated: "'(a) A district board may adopt, by regulation, a schedule of fees not exceeding the estimated cost of issuing permits and inspection pertaining to such issuance to be paid for the issuance of permits. Every person applying for a permit shall pay the fee required by the schedule.'" (41B West's Ann. Health & Saf. Code (1986 ed.) (hereinafter West's) *§ 42311*, p. 320.)

Section 42311 has been amended several times, but still does not specify emissions as a basis for apportioning fees. Thus, SDG&E contends since *section 40510*

expressly authorizes the south coast district board to base fees on emissions, whereas *section 42311* makes no such specification for local districts, the Legislature has shown an intent not to allow local districts to base fees on emissions. An extensive legislative history convinces us the district's emission fee policy is within its statutory powers.

Section 42311 (Assem. Bill No. 1758) and *section 40510* (Assem. Bill No. 250) were introduced as bills by Assemblyman Lewis during the 1975-1976 legislative sessions. *Section 42311* was derived from former section 24267, enacted in 1947, utilizing essentially the same language. [5] *Section 40510* was a new statute. Assembly Bill No. 250 was introduced on December 13, 1974, amended to add the emissions language on April 3, 1975, and enacted on July 3, 1976. Assembly Bill No. 1758 was introduced April 14, 1975, and enacted on September 22, 1975.

> 5 Former section 24267 stated: "The air pollution control board may provide by regulation a schedule of fees not exceeding the estimated cost of issuing such permits and inspection pertaining to such issuance to be paid for the issuance of such permits. Every person applying for a permit shall pay the fee required by such schedule." (Stats. 1947, ch. 632, p. 1647.)

After its 1975 enactment, *section 42311*'s fee language was amended several times. In 1979, the section was rewritten to state: "'A district board may adopt, by regulation, a schedule of fees for each fiscal year, commencing with the 1979-80 fiscal year, to be paid for the issuance and renewal of permits. *Such schedule of fees shall not exceed the estimated cost for such fiscal year of (1) evaluation and issuance of permits, (2) inspection*, including source testing and surveillance, of sources for which a permit or permits have been issued, to the extent such inspection is for the purpose of determining whether such sources are in compliance with all applicable permit conditions and all applicable orders, rules, or regulations . . ., and (3) *Implementation and enforcement of permit terms* and conditions.' "[6] (West's *supra*, *§ 42311*, p. 321, italics added.)

> 6 The 1979 statute (and the current statute) also stated that the estimated costs were not to exceed the estimated costs for the immediately preceding fiscal year, with an adjustment no greater than the change in the California Consumer Price Index, and that any revenues from the fees which exceed the cost of the activities should be carried over in the subsequent fiscal year and the schedule of fees changed to reflect the carryover.

The 1979 amendment also added subdivision (c) (current subdivision (e)) which states that *section 42311* does not apply to the south coast district board, which is governed by *section 40510*. (West's, *supra*, *§ 42311*, p. 321.)

Interpretation of section 42311 before 1982 amendment

The Governor's proposed budget for fiscal year July 1982-June 1983 sought to decrease subvention funding of local districts by 80 percent. Faced with local districts' claims they would not be able to support themselves with such a drastic cut in state funds, the legislative analysis of the budget bill for the fiscal year 1982-1983 deferred recommending what the level of state funding to the local districts should be pending evaluation of how support of the districts could be accomplished. This report stated that to offset the proposed reduction in state support, the administration intended to seek legislation authorizing local districts to charge emission fees to cover operating costs noting that under current law only the south coast district had such authority. [7] The emissions fees concept had been recommended in a December 1980 study prepared for the legislative analyst's office which noted emissions fees were advantageous because they imposed a portion of the cost to control pollution on its sources and provided an incentive for emissions reduction. Although observing collection of emissions fees would make most districts self-supporting, the legislative analyst deferred its recommendation on the level of state support until legislation permitting the fees to be levied could be enacted and fee schedules put in place in each district.

> 7 In contrast, in an August 1982 letter, the Counsel for the State Air Resources Board responded to a local district's inquiry, referring to the language of *section 42311* as of 1979, and opining a fee schedule which was based on emissions was a permissible method of allocating the district's costs.

1982 amendment of section 42311

Effective October 1, 1982, *section 42311* was amended to state: "'A district board may adopt, by regulation, a schedule of annual fees to be paid for the evaluation, issuance, and renewal of permits *to cover the cost of district programs* related to permitted stationary sources authorized or required under the provisions of Division 26 (commencing with Section 39000) that are not otherwise funded. . . .'" (West's, *supra*, *§ 42311*, p. 321, italics added.)

The 1982 bills to amend *section 42311* (Sen. Bill No. 1326 and Sen. Bill No. 1477) originally included emissions fees language as contained in *section 40510*--

i.e., a sentence would have been added stating the fees may vary according to the quantity of emissions and according to the effect of the emissions on air quality. In a May 1982 letter from the chairman of the Senate Committee on Local Government (Senator Marks), reference was made to that committee's reasons for recommending deletion of the emissions language. Marks's letter, addressed to the Chairman of the Senate Committee on Finance (Senator Alquist), stated: "When I wrote to you on April 1, regarding the Local Government Committee's recommendations on SB 1326 and SB 1477, I attached a background report comparing the two bills. An ambiguity in that report has caused some local officials and industry representatives to ask for clarification.

"The first sentence of the second paragraph on page six ought to read: 'The Committee agreed to require APCDs to levy fees by ordinance to pay for programs that are not otherwise funded, but deleted language which appeared to limit these fees to emissions fees. [8] The committee's action neither decreased nor increased APCDs' current ability to use emissions fees.

> 8 The first sentence of the second paragraph on page 6 of the Local Government Committee's background report, dated April 1, 1982, had stated: "The Committee agreed to require APCDs to levy fees by ordinance to pay for programs that are not otherwise funded, but declined to allow emissions fees." Earlier staff analysis reports of the committee, dated March 17 and 31, 1982, respectively, had stated: "Others are also concerned that the ability to vary fees based on quantity and air pollution effects may allow APCDs to require expensive instack monitoring devices. The Committee may wish . . . to specifically declare that the bill does not require the installation of measuring units"; and "Some are concerned that the language in both bills that permits APCDs to vary fees based on quantity and air pollution effects may allow districts to require emissions fees. The Committee may wish to delete this language."

"Thank you for your consideration of this clarification." (Fn. added.)

The 1982 amendment also added subdivision (g) deleted in 1985) requiring the legislative analyst to review the fee systems' capability to finance the activities of local districts, evaluate the overall equity and reasonableness of the fees as they affect segments industry and agriculture which pay the fees, and report the findings and recommendations to the Legislature by October 1, 1983. (West's, *supra*, *§ 42311*, p. 321.) In the 1982 statute, the Legislature stated its intent was to investigate new opportunities for reducing the costs of administering programs in which the state and counties share responsibility, and the legislative analyst was requested to work with county officials and estimate the savings to the state and counties if certain proposals were implemented, along with the probable effects on program beneficiaries, and to submit progress reports to the Legislature by January 1, 1983, and July 1, 1983, and a final report by January 1, 1984. (Stats. 1982, ch. 1638, § 11, p. 6665.) [9]

> 9 The 1982 amendment also added subdivision (b) (current subd. (c)) providing that the district board could adopt a fee schedule for fiscal years ending before July 1, 1984 (extended to 1986 in a 1984 amendment) to offset loss of state and federal subvention funds (which the legislature found was necessary to provide a transition period to develop an equitable funding mechanism for local districts). The 1982 amendment added subdivision (e) (current subd. (f)) providing that the district board should hold a public meeting before adopting a regulation establishing fees and make information available indicating the amount of cost required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service.

1983 legislative analyst report

The legislative analyst report on "Financing Air Pollution Control" dated October 1983 summarizes past developments, including the proposed (but essentially not enacted) cuts in state funding of local districts for the 1982-1983 fiscal year. The report described the 1982 amendments to *section 42311* (ch. 1638), noting that chapter 1638 expanded the purposes for which permit fee revenue may be used. Further, the report observed: "The general understanding of the Legislature and the districts during consideration of Chapter 1638 appears to have been that the districts would adopt 'emission' fees. Because the Legislature continued funding for subventions last year, however, only two districts exercised their authority to establish fees. . . .

"The type of fees authorized in chapter 1638 is not defined. Moreover, our preliminary work on this report indicated that the nature of emission fees and the role of these fees in financing air pollution activities is not clear from a conceptual standpoint.

"In recognition of this, we have attempted in this report to refine the concept of emission fees and incorporate it in a system for financing state and local air quality activities." [10]

> 10 This information is obtained from the introduction to the 1983 legislative analyst's report. The report itself was not included in the record.

The executive summary of the 1983 legislative analyst's report notes that in submitting the 1982-1983 budget, the governor proposed "legislation be enacted authorizing the districts to charge fees for stationary source emissions in order to replace the revenues lost" as a result of the proposed 80 percent reduction in state subventions to local districts. The report characterized the 1982 amendments as "authorizing districts to impose emission fees." [11]

11 Since the report had already observed that the type of fees authorized in the 1982 amendments were not defined, the legislative analyst was apparently interpreting the 1982 amendments as impliedly authorizing emissions fees.

1985 amendments

In 1985, the Legislature added the last sentence to *subdivision (a) of section 42311*, stating, "Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources," [12] The 1985 amendments also added two new subdivisions, (b) and (h). Subdivision (b) allows the district board to charge a deposit prior to evaluating a permit application, and requires that the district refund any significant portion of the deposit which exceeds the actual reasonable cost of evaluating the application. Subdivision (h) allows the district to charge fees for permit holders emitting toxic air contaminants based on the direct and indirect costs of district activities relating to each toxic air contaminant. [13]

12 Letter, dated March and June 1985, from Santa Barbara's county counsel to legislators urged support of the 1985 amendments for the following reasons. The amendments were necessary to clarify that a local district is entitled to fully recover its actual costs for the evaluation, issuance and renewal of permits, which was the Legislature's original intention. This intent was not clearly reflected in the existing language of the statute, since it could be interpreted as limiting a local district from recovering its actual costs for permit processing during any year where those costs exceed the prior year's costs plus an increase in the Consumer Price Index. Such an interpretation would cause extreme hardship in Santa Barbara County where the extraordinary rate of growth in the oil and gas industry has caused a corresponding expansion in the effort to evaluate and issue permits.

13 A copy of the current language of *section 42311* is attached at the end of this opinion, as an appendix.

Our statutory analysis involves two concepts: (1) the extent to which a local district may recoup costs by collecting fees from permit holders (rather than relying on government funds); and, (2) the methods by which a district may allocate program costs between permit holders. As we discuss below, *section 42311* has expanded the authority of the district so that it may now recover all costs related to permitted stationary sources through fees. Further, *section 42311* now partially addresses the methods by which the district may allocate certain costs among permit holders. That is, subdivision (b) allows a local district to charge a deposit for evaluating a permit application based only on the actual cost of the evaluation. Subdivision (h) allows a district to assess fees against those emitting toxic air contaminants based on the actual costs of programs related to those toxins. Other than these two specific cost items, however, the statute does not address how the remaining costs involved in issuing and renewing permits may be allocated. Moreover, the statute from its inception has been silent as to how the district may allocate among permit holders the indirect costs pertaining to the overall permit program but not attributable to any specific permit activity or permit holder.

As amended in 1979, *section 42311* specified the activities for which fees could be charged (i.e., costs of evaluating and issuing permits, of inspecting for compliance with permit conditions and regulations, and of implementing and enforcing permit terms and conditions). The 1982 amendment expanded the language of *section 42311*, broadly stating fees could be charged for evaluating, issuing and renewing permits to "cover the cost" of the district's programs.

SDG&E and the district do not dispute that under the 1979 statute the district could only charge fees to cover the costs directly pertaining to the permits, whereas under the 1982 statute, the district can now charge fees to cover all costs of its program, including indirect costs not related to a specific permit activity. [14] The Legislature indicated its intent in the 1982 statute that the government's cost of administering the program be decreased and that systems be studied to determine whether fees could finance the districts. The 1985 amendment, by the adding the last sentence to subdivision (a), clarified that all reasonable costs could be recovered through fees.

14 Focusing in on *subdivision (b) of section 42311*, IEA meritlessly argues that the district is only entitled to charge fees to cover the costs of evaluating permit applications. The 1985 amendment to subdivision (a) clarified that the district may charge fees to recover the estimated reasonable costs of its programs.

The legislative history of *section 42311* suggests the Legislature, at least by 1982, contemplated the districts should use an emissions-based fee schedule to support their operations. The 1982-1983 legislative analyst's budget report referred to the desirability of emissions fees. The 1983 legislative analyst's report on air pollution control financing explicitly stated the general understanding of the Legislature and the districts during consideration of Chapter 1638 was the districts would adopt emissions fees, and the report characterized the 1982 amendments as authorizing emissions fees.

SDG&E notes the legislative analyst in the 1982-1983 budget report expressed an opinion that under current legislation, only the south coast district, not the local districts, had the authority to base fees on emissions, [15] and the 1982 and subsequent amendments did not include a reference to the use of emissions fees. At the time of the 1982-1983 budget report, the 1979 statute was in effect, which statute was interpreted as not authorizing the recoupment through fees of indirect costs of the permit program. It is these indirect costs, recoverable under the 1982 amendments, which San Diego's APCD has apportioned based on emissions. Thus, even if arguendo the 1979 statute were interpreted as not allowing direct costs to be apportioned based on emissions, [16] it does not necessarily follow the 1982 statute does not allow indirect costs to be apportioned based on emissions.

15 SDG&E also points to a staff report of the Assembly Subcommittee on Air Quality, dated 22, 1975, which could arguably (but need not necessarily) be viewed as suggesting the same interpretation. The report states the bill creating the south coast district board gives it all the powers and duties of the county and regional districts, with specified exceptions, and in addition grants it "the following additional powers and duties." The report then proceeds to list 14 features of the bill, one of which is the provision that the south coast district could vary its fees according to emissions.

16 Since the 1979 statute was silent as to how the costs should be allocated among the permit holders, the legislative analyst's interpretation was not compelled.

Moreover, the budget report suggests the desirability of a district-implemented fee system based on emissions, and this legislative understanding was again acknowledged in the 1983 legislative analyst's report. Thus, regardless of whether under the 1979 statute the district had authority to base fees on emissions, the 1982 amendment clearly contemplated such authority. Although the 1982 amendment did not expressly authorize the use of emissions fees, there is no indication in the legislative history suggesting the Legislature determined, contrary to the legislative analyst's recommendations, that costs-apportionment should *not* be based on emissions.

Given the strong recommendation by the legislative analyst that emissions fees were an appropriate method of paying for the costs of the districts' programs and the lack of a contrary recommendation, the implication urged by SDG&E arising from the failure to include the proposed emissions fees language in the 1982 amendment is not convincing. As suggested in the May 1982 letter from Senator Marks clarifying an ambiguity on the emissions issue, the language appears to have been deleted to ensure the statute was not construed as *requiring* the fees be based on emissions. (*Ravettino v. City of San Diego (1945) 70 Cal.App.2d 37, 47 [160 P.2d 52]* [delegation of power to local government, without providing mode for carrying power into effect, impliedly gives right to select lawful and reasonable means].)

The express reference to the possibility of using emissions as a basis for the south coast district board's fees in *section 40510* is not sufficient to overcome the strong indications of legislative intent in the legislative analysts's reports pertaining to *section 42311*. The general rule that where a statute contains a critical phrase, omission of that phrase from a similar statute on the same subject shows a different legislative intent (see *Craven v. Crout (1985) 163 Cal.App.3d 779, 783 [209 Cal.Rptr. 649]*), cannot be reasonably applied to this statutory scheme. Construing the Legislature's decision not to include the reference to emissions in *section 42311* as precluding the use of fees based on emissions, gives undue weight to a rule of legislation by implication and ignores the concrete evidence of intent favoring an emissions-based system in the legislative analyst reports.

Analyzing the various subdivisions of *section 42311*, intervener IEA argues the Legislature has evinced a general intent that the districts only charge fees to a permit holder for the work related to that permit holder's permit, and not for work done on another's permit. This argument ignores the fact the San Diego district's fee schedule uses an emissions-based, rather than labor-based, apportionment method only for those indirect costs which are related to the overall permit program but which cannot be directly attributed to any specific permit activity or fee schedule. Thus, the emissions-based schedule does not charge a permit holder for work on another's permit, since these indirect costs by definition do not involve a specific permit holder.

This Emissions-based Fee Schedule Is Not A Special Tax Under Proposition 13

California Constitution, article XIII A, section 4 (§ 4), enacted in June 1978 as part of Proposition 13, provides: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County, or special district."

The parties dispute whether this district is a "special district" within the meaning of Proposition 13 (see *Los Angeles County Transportation Com. v. Richmond (1982) 31 Cal.3d 197, 206-208 [182 Cal.Rptr. 324, 643 P.2d 941]*; *Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 106-107 [211 Cal.Rptr. 133, 695 P.2d 220]*). [17] We need not resolve this issue, because the record readily shows these emissions-based fees are a regulatory fee, not a "special tax," and outside the purview of section 4.

17 In *Los Angeles County Transportation Com. v. Richmond, supra, 31 Cal.3d at pages 207-208*, our Supreme Court narrowly defined a "special district" as a local entity empowered to levy *property* taxes. The court held since the Los Angeles County Transportation Commission--which was authorized to adopt a retail transaction and use tax if approved by a majority of the voters--was not authorized to levy property taxes, it was not a special district, and thus a majority, not a two-thirds, vote of the electorate was sufficient to adopt the tax. SDG&E argues, inter alia, that although the district does not have the power to levy property taxes, the emissions-based fee schedule was levied by the board of supervisors (sitting as the district's governing body, the Air Pollution Control Board), and the board of supervisors does have the power to levy property taxes.

Proposition 13 was enacted to give effective property tax relief. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 231 [149 Cal.Rptr. 239, 583 P.2d 1281]*.) Article XIII A of the Constitution consists of four major elements: a real property tax limitation (§ 1), a real property assessment limitation (§ 2), a restriction on state taxes (§ 3), and a restriction on local taxes (§ 4). (*Id. at pp. 220, 231.*) Section 4 is a limitation on the imposition of "special taxes" by local entities because it requires a two-thirds vote of the local electorate. (*Id. at pp. 220, 231, 242*; *Los Angeles County Transportation Com. v. Richmond, supra 31 Cal.3d at p. 201.*) Sections 3 and 4 were included to restrict imposition of additional or increased state or local taxes other than property taxes which would effectively withdraw or deplete the property tax savings in sections 1 and 2. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d at p. 231*; *Huntington Park Redevelopment Agency v. Martin, supra, 38 Cal.3d at p. 105.*)

A "special tax" under section 4 does not embrace fees charged in connection with regulatory activities which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purpose. (*Pennell v. City of San Jose (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111]*; *Gov. Code, § 50076*; *Mills* v. *County of Trinity* (1980) Cal.App.3d 656, 661 [*166 Cal.Rptr. 674]*; see generally, *United Business Com. v. City of San Diego (1979) 91 Cal.App.3d 156, 165-167 [154 Cal.Rptr. 263]*, describing distinctions between regulatory fee and revenue-raising tax.)

As stated in *Beaumont Investors* v. *Beaumont-Cherry Valley Water Dist. (1985) 165 Cal.App.3d 227, 235 [211 Cal.Rptr. 567]*, to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. [18]

18 To show regulatory fee is not a special tax, it is not necessary for the payor to perceive the regulation as a "benefit." A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. (See *Pennell v. City of San Jose, supra, 42 Cal.3d at p. 375*; see also *Mills* v. *County of Trinity, supra*, 108 Cal.App.3d at p. 661.)

Here, the terms of *section 42311* limit the amount of fees which may be charged to the reasonable costs of the district's programs. The mandate action did not challenge the reasonableness of the district's costs, but only the method of apportioning those costs based on emissions. [19] The record shows the allocation of costs based on emissions fairly relates to the permit holder's burden on the district's programs.

19 Intervener IEA's brief at one point vaguely asserts the district took no steps to "determine the precise costs of regulation and the appropriate formula for apportioning those costs." It is clear a challenge to the district's method of estimating its costs was not raised below, and it may not be raised for the first time on appeal. (*San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154, 168 [228 Cal.Rptr. 47, 720 P.2d 935]*.) In any event, the record indicates indirect costs are estimated based on labor activity

reports for the previous fiscal adjusted for changes in the Consumer Price Index.

The district's report explains in detail the rationale and method used for apportioning the costs on an emissions-based, rather than labor-based, standard for apportioning indirect costs. If the labor-based standard, already used to apportion direct costs, were also used for indirect costs small polluters would pay fees greater than their proportionate contribution to pollution, whereas large polluters would pay proportionately less. For example, under the labor-based system for direct costs, service stations pay about 34 percent of the total annual permit renewal fees, and emit cumulatively only 1 percent of the industrial pollution. In contrast, the 31 major polluters pay about 13 percent of the fees, but emit 38 percent of the industrial pollution and 51 percent of the pollution from permitted facilities. Moreover, using an emissions-based standard for indirect costs would provide an incentive to large polluters to reduce existing emissions to reduce fees. [20]

20 As explained more specifically, the labor-based standard provides an incentive to maintain ongoing *compliance* with pollution control requirements to keep district enforcement costs, and thereby fees, down. However, it provides no incentive to *lower emissions*. For example, SDG&E can burn oil as well as natural gas in its power plants, both in compliance with requirements, but more pollution is generated when oil is burning. The emissions-based fees would provide an incentive to use natural gas instead of oil.

Although recommending the use of an emissions-based standard for indirect costs, the report also presents alternative methods of allocating the costs. That is, all permit fees (direct and indirect) could be based on the amount of emissions on the premise fees should be based on a facility's share of pollution. The disadvantage to such a system is that small polluters would experience a windfall; for example, the average service station would pay $ 25 rather than the current $ 375 annual fee; thereby taking away the incentive for small operators to maintain their equipment. Alternatively, all fees, including indirect costs, could be allocated based on the labor standard used for direct costs. As stated above, the disadvantage would be the inequity of having small polluters paying much more than their proportionate share; for example, service stations would pay about 30 percent of the additional fees while emitting only about 1 percent of the industrial pollution.

The district's determination that a purely labor-based standard results in small polluters paying fees greater than their proportionate share of pollution reasonably justifies using an emissions-based standard to more equitably divide the costs based on the amount of pollution caused.

SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs citing the *Beaumont* case in support of its argument. In *Beaumont Investors* v. *Beaumont-Cherry Valley Water Dist., supra*, 165 Cal.App.3d at pages 236-238, the court found no evidence in the record showing how the estimated costs of the anticipated government activity were ascertained or apportioned. In contrast here, the district's method of estimating its costs was not challenged, and the district's report details the apportionment method and its rationale. There is no reason to require the district to show precisely how more emissions generate more costs to justify the emissions-based apportionment formula. The purpose for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allocate costs based on a premise that the more emissions generated by a pollution source, the greater the regulatory job of the district. [21]

21 The district argues major polluters cost the district more because if not for their existence, it would have a reduced need to extensively regulate smaller sources of pollution. SDG&E responds the major source of pollution is from transportation sources, and contrary to the district's assertion, the district would have to regulate small stationary polluters even if the big stationary polluters did not operate. We are not presented here with issues pertaining to the division of responsibility for pollution between transportation and stationary sources of pollution, nor need we rely on the district's analysis of how big polluters require regulation of small polluters. *Section 42311* allows the district to impose fees to cover the costs of its programs pertaining to stationary sources of pollution, and for the reasons we state above, the emissions-based formula is a reasonable method of apportionment among the stationary permit holders.

Moreover, the district diligently evaluated the various methods of apportioning costs, and recommended a two-tiered system, utilizing both a labor and emissions apportionment standard, seeking to distribute the financial burden of controlling pollution in proportion to a stationary source's contribution to pollution, and to provide incentives for sources to control their pollution. No further showing is necessary to establish the emissions-based fees are reasonably related to the district's costs of regulating a permit holder's air pollution, and thus are not a special tax. (Cf. *White v. County of San Diego (1980)*

26 Cal.3d 897, 905 [163 Cal.Rptr. 640, 608 P.2d 728]; *J. W. Jones Companies v. City of San Diego (1984) 157 Cal.App.3d 745, 755, 756, 758 [203 Cal.Rptr. 580]*.)

SDG&E also argues the emissions-based fees thwart the purpose of Proposition 13 since they are designed to replace lost revenues from Proposition 13 without subjecting them to a two-thirds vote of the electorate. [22] The argument is misplaced in the context of this action since it is not the emissions-based formula itself, but rather the 1982 amendment to *section 42311* (allowing full cost recovery through fees) which serves to replace lost government funding. The emissions formula is merely a method of allocating the increased fees among the permit holders, and even if only the labor-based formula urged by SDG&E was used, the fees would still be increased to replace public funds. Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to *section 42311* and the emissions-based fee schedule. (See *Mills* v. *County of Trinity, supra*, 108 Cal.App.3d at p. 663.)

22 This assertion is made in connection with the argument that the APCD is a "special district." Although we need not address the special district issue, we respond to the argument pertaining to the circumvention of Proposition 13 since it is an underlying theme used to challenge the validity of the emissions-based fees.

Judgment affirmed.

LexisNexis

1 of 1 DOCUMENT

CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS et al., Plaintiffs and Respondents, v. DEPARTMENT OF FISH AND GAME et al., Defendants and Respondents; ALBERT W. MILLS et al., Interveners and Appellants. ALBERT W. MILLS, Plaintiff and Appellant, v. DEPARTMENT OF FISH AND GAME et al., Defendants and Appellants.

No. C023075, No. C023184.

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

79 Cal. App. 4th 935; *94 Cal. Rptr. 2d 535*; *2000 Cal. App. LEXIS 267*; *2000 Cal. Daily Op. Service 2760*; *2000 Daily Journal DAR 3719*

April 10, 2000, Decided

NOTICE: Opinion certified for partial publication. *

* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part I.

SUBSEQUENT HISTORY: Review Denied July 12, 2000 (S088551), Reported at: *2000 Cal. LEXIS 5717*.

PRIOR-HISTORY: APPEAL from a judgment in the Superior Court of Sacramento County. Super. Ct. Nos. 95CS02523 and CV529928. Jeffrey L. Gunther, Judge.

COUNSEL: McNeill & Belton and Walter P. O'Neill for Plaintiff and Appellant and for Interveners and Appellants.

Robin L. Rivett, Sharon L. Browne and Anne M. Hawkins for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiff and Appellant.

Daniel E. Lungren and Bill Lockyer, Attorneys General, Roderick E. Walston, Chief Assistant Attorney General, Charles W. Getz IV and Marian E. Moe, Deputy Attorneys General, for Defendants and Appellants and for Defendants and Respondents.

Dennis F. Moss for Plaintiffs and Respondents.

JUDGES: Opinion by Raye, J., with Sims, Acting P. J., and Nicholson, J., concurring.

OPINION BY: RAYE

OPINION

RAYE, J.

In this appeal we consider whether the Legislature ran afoul of the supermajority requirement of article XIII A of the California Constitution when it imposed a flat fee per environmental review by the Department of Fish and Game (Fish and Game). More precisely, we must determine whether the exactions imposed by *section 711.4 of the Fish and Game Code* [1] constitute a regulatory fee or a tax.

1 Further statutory references to sections of an undesignated code are to this code.

Determining whether an exaction is a fee or a tax has been a recurring chore since 1978 when the voters in California enacted comprehensive and constitutional tax reform. (Cal. Const., art. XIII A (the Jarvis-Gann Property Tax Initiative or Proposition 13).) An act to increase state taxes must be passed by two-thirds of the members of the Legislature and an increase in local taxes must be passed by a two-thirds vote of the qualified electors. (*Cal. Const., art. XIII A, § 3 & 4.*) Fees, by contrast, are not subject to the supermajority limitation of article XIII A. Albert Mills, an appellant in both cases, insists the environmental review fees charged by Fish and Game pursuant to section 711.4 constitute a tax and, therefore, are unconstitutional because the statute was passed by slightly less than a two-thirds majority.

It is well established that the amount of fees collected must not surpass the cost of the regulatory services

or programs they are designed to support. We must decide whether there must be a direct correlation between the amount of a fee imposed on a specific payor and the benefits received or burdens imposed by the payor's activity. More to the point, is a flat regulatory fee in legal effect a tax subject to the supermajority requirement of California Constitution, article XIII A?

We conclude that as long as the cumulative amount of the fees does not surpass the cost of the regulatory program or service and the record discloses a reasonable basis to justify distributing the cost among payors, a fee does not become a tax simply because each payor is required to pay a predetermined fixed amount. Flat fees are not in legal effect taxes. Based on the evidentiary record before us, we find that the Legislature did not violate California Constitution, article XIII A by imposing a flat regulatory fee on those who submit project proposals to Fish and Game for the environmental review necessary to protect fish and wildlife. The consequences of our ruling to the multiple parties in these consolidated cases are explained below.

PROCEDURAL BACKGROUND

Section 711.4, enacted by the Legislature in 1990, set a fee schedule to defray a portion of the costs incurred by Fish and Game in meeting its environmental review obligations under the California Environmental Quality Act and the Z'Berg-Nejedly Forest Practice Act of 1973. (§ 711.4, subds. (a), (b), (c) & (d); *Pub. Resources Code, § 4511, 21000 et seq.*) Section 711.4 states in relevant part: "(a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act . . ., consulting pursuant to *Section 21104.2 of the Public Resources Code*, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act. [P] (b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified." For projects for which a negative declaration has been prepared, the filing fee set by the Legislature is $ 1,250 and for projects for which an environmental impact report has been prepared, the filing fee is $ 850. (§ 711.4, subd. (d)(3) & (4).) "The county clerk may charge a documentary handling fee of twenty-five dollars ($ 25) per filing in addition to the filing fee specified in subdivision (d)." (§ 711.4, subd. (e).)

Albert W. Mills challenged the constitutionality of section 711.4 in a declaratory relief action he filed in July 1991. He sought declaratory and injunctive relief in a first cause of action and a refund of his fees in a second cause of action. A demurrer was sustained without leave to amend to the second cause of action. Fish and Game sought a writ of mandate to compel the trial court to dismiss the entire complaint because Mills had not filed a claim for a tax refund. We summarily denied the petition for the writ. The trial court denied a subsequent motion for judgment on the pleadings on the same ground asserted in the writ petition.

In 1992 the Legislature amended the statute to expand the exemptions for projects for which no fees were required. The amendment passed by a two-thirds majority vote.

The case was tried in the summer of 1994 and the following spring the trial court issued a statement of decision. The court found that although the statute was not unconstitutional on its face, on the evidence received by the court, it was unconstitutionally applied. Before the statement of decision was filed and a judgment was entered, the parties settled the lawsuit. Fish and Game agreed to refund Mills's fees, to pay his attorney fees, and to cease collection of the fees statewide.

Employees of Fish and Game, however, filed a petition for a writ of mandate to compel Fish and Game to resume collection of the fees and to pursue retroactive collection. Mills intervened in the writ proceedings, which were then consolidated with the declaratory relief action.

The trial court again ruled that section 711.4 was unconstitutional as applied but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to Mills. (*Cal. Const., art. III, § 3.5.*) The court ordered Fish and Game to reinstate enforcement and to retroactively collect the fees. The settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. The settlement order provides in pertinent part that section 711.4 is not unconstitutional on its face but is unconstitutional as applied to Mills; Fish and Game is enjoined from collecting fees from Mills but is not otherwise prohibited from collecting fees.

Mills appeals both judgments. On appeal from the judgment in the declaratory relief action, he maintains section 711.4 is unconstitutional on its face and, consequently, Fish and Game must be enjoined from collecting all fees. Fish and Game urges us to dismiss the appeal on multiple grounds: Mills lacks standing because, under the terms of the settlement, he is not aggrieved; the constitutionality of section 711.4 is moot because it was amended by a two-thirds majority; and the trial court

lacked jurisdiction because Mills failed to exhaust his administrative remedies by filing a claim for a tax refund. Fish and Game also appeals. We granted the Pacific Legal Foundation's request to file an amicus curiae brief echoing Mills's constitutional attack on the statute.

For the reasons discussed herein, we affirm in part and reverse in part the judgment entered in the declaratory relief action. Because we have concluded that section 711.4 is a valid regulatory fee, and was therefore constitutionally enacted, Mills's appeal from the judgment entered in the writ proceedings is moot. That appeal is dismissed.

DISCUSSION

I *

* See footnote, *ante*, page 935.

. . . .

II

Before we apply the ever-growing body of case law involving post-Proposition 13 fees and taxes, it is essential to understand the statutory world in which Fish and Game lives and section 711.4 was born. The language of these statutes resolves some of the issues raised by Mills and provides the necessary background to analyze others.

Mills argues that Fish and Game does not operate a regulatory program and, therefore, the fee is not regulatory in nature. We disagree. Fish and Game is only one small part of a huge regulatory system in place in this state to protect and sustain the environment, but it plays a vital regulatory role under the California Environmental Quality Act (CEQA). (*Pub. Resources Code, § 21000 et seq.*) CEQA guidelines specifically list Fish and Game as a trustee agency, a status which imposes certain obligations. Fish and Game must be consulted before a determination is made as to whether a negative declaration or an environmental impact report is required for a particular project. (*Pub. Resources Code, § 21080.3, subd. (a).*) If an environmental impact report is required, Fish and Game must comment as to the scope and contents of this document. (*Pub. Resources Code, § 21080.4, subd. (a).*) Later in the process, Fish and Game may be required to submit a proposed program to monitor the mitigation measures. (*Pub. Resources Code, § 21081.6.*) The same obligations are imposed by documents which function as environmental assessment documents such as timber harvest plans. (*Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal. App. 3d 604, 626 [216 Cal. Rptr. 502].) Fish and Game Code section 1802 also requires Fish and Game to consult with lead and responsible agencies.*

Fish and Game also has comparable obligations under the Forest Practice Act. (*Pub. Resources Code, § 4511 et seq.*) Like the responsibility conferred on it under CEQA, Fish and Game must review the impact of a timber harvest plan on fish and wildlife. The Department of Forestry and Fire Protection cannot approve a timber harvest plan until it has consulted with Fish and Game. (*Pub. Resources Code, § 4582.6.*)

Under both CEQA and the Forest Practice Act, Fish and Game is an essential link in a comprehensive attempt to safeguard the environment. The fact that Fish and Game does not operate an independent regulatory program with a correlative accounting system does not detract from its regulatory role. The law is not so narrowly drawn. In a similar vein, the court in *Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal. 4th 866 [64 Cal. Rptr. 2d 447, 937 P.2d 1350]* observed: "From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less 'regulatory' in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of 'mitigating effects' fees in a substantial amount . . . also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products." (*Id. at p. 877.*)

Having charged Fish and Game with the responsibility to manage and protect fish and wildlife through the environmental review process, the Legislature enacted a fee statute to fund Fish and Game's review functions. There are two parts of section 711.4 which are germane to the constitutional question before us.

The Legislature expressly addressed proportionality. Section 711.4, subdivision (b) states: "The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified."

Although the Legislature mandated a flat fee financing mechanism, it also provided an exemption for those projects with a de minimis impact on fish and wildlife. Section 711.4, subdivision (d)(1) provides: "For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act." In fact, 68 percent of the projects are found to be de minimis and a fee is not required.

In sum, the Legislature has given Fish and Game a critical regulatory role in the complex regulatory structure created to safeguard precious environmental resources. At the same time, the Legislature created a flat fee system to finance Fish and Game's environmental review. That system, by statute, must be proportional to the overall cost of environmental review, but only those who propose development projects which have more than a de minimis impact upon fish and wildlife are required to bear the cost of review. We must determine whether the Legislature violated the Constitution by establishing such a fee system with less than a two-thirds vote.

III

In 1991 the Legislature enacted the Childhood Lead Poisoning Prevention Act to provide evaluation, screening, and follow-up services for children who were at risk of suffering lead poisoning. The program of screening and treatment under the act was to be paid entirely by fees paid by those who contributed to lead contamination. In *Sinclair Paint Co. v. State Bd. of Equalization, supra, 15 Cal. 4th 866*, the Supreme Court concluded the act imposed bona fide regulatory fees, not taxes.

Sinclair is the first published case in the post-Proposition 13 era to consider whether a state, rather than a local, fee is in legal effect a tax. "Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: 'From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members . . . of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. ' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra, 15 Cal. 4th at pp. 872-873.*) By contrast, there have been an abundance of cases in which courts have struggled to characterize a local exaction as a fee or a "special tax" under *California Constitution, article XIII A, section 4.* In *Sinclair*, the Supreme Court announced that "[b]ecause of the close, 'interlocking' relationship between the various sections of article XIII A" the section 4 cases "may be helpful, though not conclusive" in deciding cases under section 3. (*15 Cal. 4th at p. 873.*)

The court also reiterated the fundamental principle that "whether impositions are 'taxes' or 'fees' is a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization, supra, 15 Cal. 4th at p. 874.*) Ordinarily, "taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted" and "[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." (*Id. at pp. 873-874, 64 Cal. Rptr. 2d 447, 937 P.2d 1350.*)

Sinclair was particularly helpful in identifying three very different kinds of fees or assessments, viz. special assessments, development fees and regulatory fees. (See also *Isaac v. City of Los Angeles (1998) 66 Cal. App. 4th 586, 596 [77 Cal. Rptr. 2d 752].*) As the court pointed out, special assessments are based on the value of benefits conferred on property, and development fees are exacted in return for permits or other government privileges. Regulatory fees, enacted under the police power, are an entirely different animal. The parties have failed to distinguish between these types of fees and, consequently, have extracted general principles from cases involving one type of fee and applied them to cases involving a completely different type of fee. We have focused our research on those cases, like *Sinclair*, involving regulatory fees.

General principles have emerged. Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A, section 4 analysis if the " ' "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra, 15 Cal. 4th at p. 876*; *Townzen v. County of El Dorado (1998) 64 Cal. App. 4th 1350, 1359 [76 Cal. Rptr. 2d 281].*) "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." (*San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist. (1988) 203 Cal. App. 3d 1132, 1146, fn. 18 [250 Cal. Rptr. 420].*) "Such costs . . . include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." (*United Business Com. v. City of San Diego (1979) 91 Cal. App. 3d 156, 165 [154 Cal. Rptr. 263].*) Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Pennell v. City of San Jose (1986) 42 Cal. 3d 365, 375 [228 Cal. Rptr. 726, 721 P.2d 1111]*, affd. on other grounds *sub nom. Pennell v. City of San Jose (1988) 485 U.S. 1 [108 S. Ct. 849, 99 L. Ed. 2d 1].*) Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee." (*United Business Com. v. City of San Diego, supra, 91 Cal. App. 3d at p. 166.*)

The government bears the burden of proof. (*Beaumont Investors v. Beaumont-Cherry Valley Water Dist. (1985) 165 Cal. App. 3d 227, 235 [211 Cal. Rptr. 567].*)

It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*Id. at pp. 234-235.*) "Courts [look] to a variety of evidence in determining whether the agency has satisfied that burden, not all of it prepared before the adoption of the ordinance." (*City of Dublin v. County of Alameda (1993) 14 Cal. App. 4th 264, 282 [17 Cal. Rptr. 2d 845].*)

City of Dublin v. County of Alameda, supra, 14 Cal. App. 4th 264, provides guidance on the quantum of proof necessary to establish the requisite fee-cost ratio. By initiative, the voters in Alameda County enacted a comprehensive recycling plan. Under the law, the plan was to be funded from a recycling fund created by a $ 6 per ton surcharge on materials dumped in the county landfills. The issue presented was whether the evidence before the trial court established that the surcharge would not exceed the reasonably necessary costs of the programs it would fund. The Court of Appeal considered both the estimated costs of the programs and the basis for determining the apportionment of those costs.

The court wrote: "The trial court concluded that the requisite fee-cost relationship was not established because Measure D's programs are not yet developed and their costs cannot presently be calculated with certainty, but such specificity is not required. Instead, the record need only demonstrate a reasonable relationship between the fees to be charged and the *estimated* cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs." (*City of Dublin v. County of Alameda, supra, 14 Cal. App. 4th at p. 283*, original italics.)

In a similar case, the Court of Appeal addressed the quantum of proof and proportionality. "Plaintiffs fault the report for failing to include 'site-specific' data showing a 'close connection' between new development and the fees to be imposed. However, their citation to 'taking' cases shows that they are blurring legal principles. [Citation.] The fee at issue here is a general one applied to all new residential development and valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed." (*Garrick Development Co. v. Hayward Unified School Dist. (1992) 3 Cal. App. 4th 320, 333-334 [4 Cal. Rptr. 2d 897].*)

Fish and Game met its burden of showing that the amount of fees generated by *section 711.4* was far less than the cost of the environmental reviews provided. There was evidence that $ 11 million had been collected in fees, but the cost of the reviews was in excess of $ 20 million. Thus, the fees were not revenue raising in that they did not generate income which surpassed the cost of the services provided.

The more difficult issue is determining what latitude the Legislature has in establishing the amount of a fee imposed on an individual payor. Fish and Game argues the fees have no indicia of a tax. Since there is sufficient evidence to demonstrate that collectively the amount of the fees do not exceed the cost of the regulatory program they are collected to support, they urge us to uphold the constitutionality of *section 711.4*. Mills, on the other hand, insists Fish and Game failed to prove the more specific requirement that the fees are proportionate to the service provided or the burden imposed. He insists the flat fee is a tax because there is no individual correlation between the amount of the fee and the cost of the benefit or burden. Whether the Legislature retains the flexibility to mandate a flat fee by a simple majority vote is the crux of this case.

Sinclair is noteworthy for its expansive legitimation of regulatory fees. Under the formula approved by the Supreme Court, paint manufacturers are assessed fees based on their market share or their past and present responsibility for environmental lead contamination. (*Sinclair Paint Co. v. State Bd. of Equalization, supra, 15 Cal. 4th at p. 872.*) Market share is a novel methodology for assessing fees. Nevertheless, the court permitted present fees to be determined on the basis of past conduct when not only were fees nonexistent, but the dangers of lead-based paint were unknown.

As broad as the implications of *Sinclair* are, the Supreme Court did not have to reach the troublesome issue of proportionality, because paint manufacturers were assessed fees in proportion to their share of the market. Moreover, Sinclair, in moving for summary judgment, did not seek to establish that the amount of the fees bore no reasonable relationship to the social or economic burdens its operations generated. The court noted that Sinclair would have the opportunity at trial "to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic 'burdens' its operations generated." (*Sinclair, supra, 15 Cal. 4th at p. 881, 64 Cal. Rptr. 2d 447, 937 P.2d 1350.*)

Close to 20 years ago, we articulated the same rule to Mills in his earlier constitutional challenge to fees charged for processing land use applications. In *Mills v. County of Trinity (1980) 108 Cal. App. 3d 656 [166 Cal. Rptr. 674]*, we stated: " '[T]he special tax' referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services neces-

sary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." (*Id. at pp. 659-660.*) In *Mills* as in *Sinclair*, however, the case was remanded "for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities." (*Mills*, at p. 660.)

Flat regulatory fees were upheld in *Pennell v. City of San Jose, supra, 42 Cal. 3d 365.* In *Pennell*, a rent control ordinance imposed a flat annual fee on each rental unit. It was "designed to defray the costs of providing and administering the hearing process prescribed in the ordinance, not to pay general revenue to the local government." (*Id. at p. 375.*) The court concluded: "It is well settled that a municipality under the police power may impose a regulatory fee when, as here, the fee constitutes an amount necessary to carry out the purpose and provisions of the regulation." (*Id. at p. 375, fn. 11.*)

The court in *Pennell* appeared satisfied that the cumulative amount of the fee would support the administration and implementation of the hearing process without an examination of the benefits to be derived by individual lessees. Many lessors would never avail themselves of the hearing process at all and yet under the rent control ordinance, they, like the lessees who would petition for hearing, were required to pay the fee. *Pennell* does not require the government to prove proportionality on an individual basis. Under *Pennell,* the significant inquiry is whether the amount of the fees collected under the ordinance exceed the cost of the regulatory program they are collected to support. Proportionality is measured collectively to assure that the fee is indeed regulatory and not revenue raising.

While Mills cites many cases for the general proposition that fees must be apportioned according to some formula for ascertaining the benefits received or the burdens imposed by the payor's activity, he fails to cite a single regulatory fee case in which a fee was found to be a tax because the government failed to sustain its burden of proving a reasonable apportionment. On this pivotal point, the cases require close examination for what they require and for what they do not.

Two cases involve regulatory fees, like those before us, enacted to defray the costs of programs to mitigate damage to the environment. In *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist., supra, 203 Cal. App. 3d 1132* (*San Diego Gas & Electric Co.), and Brydon v. East Bay Mun. Utility Dist. (1994) 24 Cal. App. 4th 178 [29 Cal. Rptr. 2d 128]*, the Courts of Appeal upheld fee structures against challenges they constituted special taxes. Both cases discuss the apportionment issue at some length.

In *San Diego Gas & Electric Co., supra*, a utility company challenged an air pollution district's method of apportioning the costs of its permit programs by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. The emissions-based formula allowed the district to charge additional renewal permit fees based on the average pollution generated by a facility within a specific industry. The court wrote: "SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs . . . . There is no reason to require the district to show precisely how more emissions generate more costs to justify the emission-based apportionment formula. The purpose for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allocate costs based on a premise that the more emissions generated by a pollution source, the greater the regulatory job of the district." (*203 Cal. App. 3d at pp. 1147-1148*, fn. omitted.)

In rejecting *San Diego Gas & Electric Co.*'s argument that the emissions-based formula eroded the intent of the voters in enacting California Constitution, article XIII A, the court explained that "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to *[Health and Safety Code] section 42311* and the emissions-based fee schedule." (*San Diego Gas & Electric Co., supra, 203 Cal. App. 3d at pp. 1148-1149.*)

In *Brydon,* water customers challenged a new rate structure as a special tax. The inclined rate structure increased price per cubic foot for increased usage. The Court of Appeal found *San Diego Gas & Electric Co.* "a sustainable analogy." "Just as the regulatory scheme set forth by the [air pollution control district] was designed to achieve a legislatively mandated ecological objective, so is the inclined block rate structure of the District a response to state-mandated water-resource conservation requirements." (*Brydon v. East Bay Mun. Utility Dist., supra, 24 Cal. App. 4th at p. 192.*) The court emphasized the latitude necessary to set the amount of fees to meet the regulatory objectives. " In pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity. [Citation.] [P] . . . [P] . . . In short, California Constitution, article XIII A does not apply to every regulatory fee simply

because, as applied to one or another of the payor class, the fee is disproportionate to the service rendered." (*Id. at pp. 193-194.*)

Hence, both cases narrow the breadth of California Constitution, article XIII A as applied to regulatory fees. Both suggest a flexible assessment of proportionality within a broad range of reasonableness in setting fees. In *San Diego Gas & Electric Co.,* the use of a formula to distribute indirect costs was sustained, while in *Brydon* an inclined block rate schedule allowed the water district to discourage water consumption. Neither relied on the kind of exact apportionment calculation urged by Mills.

Still, *San Diego Gas & Electric Co.* and *Brydon*, unlike *Pennell*, did not involve flat fees. While the formula or rate structure may not have been exact, each bore some relationship to the benefit reaped or the burden imposed by the payor. Put another way, the payors had some control over the amount of the regulatory fee they were compelled to pay by the degree to which their respective activities impacted the environment. The more they polluted the air and consumed the water, the more they paid.

We acknowledge that in this case Mills had no comparable control over the amount of the fees he was charged to review his timber harvest plan. The amount of the fees is expressly set forth in section 711.4. Nevertheless, we hold that a regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public. The legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes. An inherent component of reasonableness in this context is flexibility. We agree with the notion that shifting the costs of environmental protection to those who seek to impact our natural resources does not subvert the objectives embodied in Proposition 13. Hence, a regulatory fee does not violate California Constitution, article XIII A when the fees collected do not surpass the costs of the regulatory programs they support and the cost allocations to individual payors have a reasonable basis in the record.

IV

The record before us is a vivid illustration of the need for flexibility in establishing the amount of regulatory fees. Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations; the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations; the intermingled functions of various departments as well as intermingled funding sources; and expansive accounting systems which are not designed to track specific tasks.

Mills asserts that these problems preclude a finding of a fee. He points out that Fish and Game did not conduct the kind of study now accepted within the expert field of user fee analysis to ascertain with precision the justifiable amount of a proposed fee based on the costs involved in providing the service. He criticizes the change in accounting systems in July 1991 which obfuscates the data necessary to make credible calculations, and he bemoans the incomprehensibility of the new CALSTARS accounting system as it relates to a user fee analysis. He insists that depositing the fees into Fish and Game's preservation fund is tantamount to a tax since the preservation fund operates as a general fund for Fish and Game. And he provides many examples of how disproportionate the fees are as to certain payors. Although most projects only receive a cursory review, there is a substantial variance in the amount of time spent on more in-depth reviews, varying from a few minutes to a few weeks, with the burden falling most heavily on small timberland owners.

This evidence is undisputed. There is no question that a flat fee will seldom represent the exact cost of providing a service. Fish and Game does not pretend such a correlation exists. Since we have determined that state regulatory fees are different from other user fees, the question presented is whether the evidence in this record is sufficient to sustain the legislative determination that a flat fee system is a reasonable means to allocate the costs of environmental review. [3]

> 3 Evidence of the legislative history of *section 711.4* was admitted at trial. Legislative history can be relevant to a determination whether an exaction is a fee or a tax. (*Centex Real Estate Corp. v. City of Vallejo (1993) 19 Cal. App. 4th 1358, 1362 [24 Cal. Rptr. 2d 48].*) Here, the trial court found the costs of environmental review exceeded the amount of the fees, but it found imposition of a flat fee arbitrary. Without the benefit of the Supreme Court's holding in *Sinclair* and the broad analysis of regulatory fees, the trial court narrowly construed *section 711.4* as a user fee requiring the amount of the fees to reflect the cost of the service provided the payor. Because we have decided that a flat fee may be a reasonable allocation of the costs of a regulatory fee and the trial court found Fish and Game had met its

burden of proof on this issue, the legislative history cited by the trial court is unnecessary.

Mills fails to appreciate the difference between regulatory fees and more typical user fees. At trial, he offered an expert from the new cottage industry of analysts and advisers to local governments on how to legitimize their fees in the litigious climate spawned by Proposition 13. That expert's testimony reflects his misguided assumption that all fees are created equal and that, to survive constitutional attack, they must be supported by exhaustive studies, unassailable time keeping, and a precise cost-fee analysis.

He insisted that a cost analysis study was not only advisable, but necessary. "So that is why I am saying it is possible for Fish and Game to do a kind of cost analysis study. My question then would be, secondly, do they now have that in place? Have they kept track? Have they required their staff to fill in reports? I mean, they might be able to do it starting now. But have they done it? Nothing has been submitted to me showing a tracking process of the steps taken and breaking down the specific tasks and functions.

"I recall this being referenced to the fact the administrative or bookkeeping costs were too high to do that. Frankly, my judgment is that becomes a cop-out. It is not too difficult. You can organize and set up, especially in today's computerized world with P.C.'s on half the staff desks.

"Attorneys have to bill by the minutes. They have to keep track of their time.

"It is perfectly possible to keep track of time. And I think, frankly, my judgment might be that if it is difficult, if your staff are not now doing those things systematically, it needs a whole retraining and regearing."

He opined that absent retraining, regearing, studies, and analysis, a fee could not survive a constitutional challenge. He went on to suggest a rather unique correlation between the time spent and the benefits achieved. Having testified he could not find a direct relationship between payment of a fee and providing any service, he stated: "There is no discussion of what happens as a result of the reviews. You know, do more spotted owls get saved? More fish saved? Or what. There is no functional relationship." Again he opined that in order to sustain the constitutionality of the fee, Fish and Game must document how a forest was saved or how many spotted owls were saved by the staff.

Fish and Game urges us to dismiss his opinion for several reasons: He had never reviewed the data supporting imposition of a state fee, he did not conduct any study to determine whether the *section 711.4* flat fees were reasonable or proportional, and he had no familiarity with CEQA or the regulatory landscape in which Fish and Game must operate, not to mention that his proffered opinion constituted an inadmissible conclusion of law.

We need not address these specific deficiencies because we believe his testimony serves to highlight the fundamental distinction between a user fee and a regulatory fee. His testimony is predicated on many faulty assumptions based on user fees when there is an obvious correlation between cost and benefit. Moreover, in many cases, a statute demands that the amount of a fee be commensurate with the value of a service provided or the cost of a burden imposed. (See, e.g., *Gov. Code, § 50076, 66001.*) No comparable statutes apply to this state-imposed regulatory fee.

From the vantage point of one who earns a living studying user fees and counseling local governments on how to insulate their fees from constitutional attack, it is not surprising he would overlook the vast discrepancy between a fee imposed or a privilege accorded an individual and a fee that apportions and distributes the collective costs of a regulation. In the latter case, the many factors this expert described as deficiencies become the reasonable justification for imposing a flat fee. That is, the Legislature may have determined that the administrative cost and burden of a statewide fee, including expensive studies and accounting, was too high when a simpler, flat fee could be imposed. Moreover, often, as here, measuring the benefits is amorphous. The Legislature could reasonably eschew a graduated fee structure based on an accounting of owls that were spared and forests that survived. He failed to understand that a legislative body in determining the amount of a regulatory fee is legitimately hampered by the many factors he describes as necessary to support a user fee.

The Legislature determined that the fee must be paid when a notice of determination is entered. Mills argues the timing of the exaction is unfair and unreasonable because many payors pay for reviews they never receive and others receive a bargain price for an extensive and time-consuming study. It is not our role to assess the wisdom of legislation from either a public policy or public relations perspective. We are asked only to determine whether section 711.4 imposes a fee or a tax. The record discloses several reasonable justifications for imposing a flat fee.

Fish and Game offered testimony that the imposition of an hourly fee for any environmental review would discourage early consultation. Often developers contact Fish and Game to discuss potential adverse impacts of a proposed project before any plans are submitted. Fish and Game then has the opportunity to engage in a collaborative process to eliminate or mitigate impacts on

fish and wildlife before resources have been committed to a particular development plan.

The record also discloses that the environmental review process for a CEQA project or a timber harvest plan can involve various biologists at the regional level, consultation with biologists at headquarters and review of various data bases. Moreover, the biologists often work on several projects simultaneously and perform work which benefits all the projects. Consequently, the evidence suggests it would be cumbersome and expensive to account for multiple biologists' time, from multiple regions, working multiple projects.

The evidentiary thrust to Fish and Game's argument is that the cost of performing its duties under CEQA and the Forest Practice Act far exceeds the revenue generated under section 711.4. (*City of Dublin v. County of Alameda, supra, 14 Cal. App. 4th at p. 282.*) Under the accounting system dismantled in 1991, Fish and Game employees recorded their time and charged the time to various codes. Before changing to a new system, the employees' time sheets were surveyed and analyzed. A new coding system was predicated on these surveys and analyses. Mills complains that the new system camouflages and inflates the true costs of environmental review.

The trial court found Fish and Game met its burden of proving the cost of its environmental review programs. The court wrote, "While Plaintiff attacks the Department's method of converting its costs under its old accounting system to the new accounting program, the authorities do not require absolute precision. Rather, as long as the estimate of costs is a reasonable one, it will be upheld."

We need not perform an appellate audit of Fish and Game's accounting systems. Having reviewed the entire record, we are satisfied there is sufficient evidence to support the trial court's finding that the cost of comprehensive environmental review far surpasses the amount of fees generated under section 711.4. " '[W]e would be demanding the impossible by insisting on rigorously supported findings.' [Citation.] All that our review requires is that we are able to determine that the [Legislature] acted after finding a reasonable relationship between the fee and the need to which the development contributes." (*Shapell Industries, Inc. v. Governing Board (1991) 1 Cal. App. 4th 218, 247 [1 Cal. Rptr. 2d 818].*) Mills squabbles about the costs associated with the review of Fish and Game's own projects, the preparation of resource databases, and a few other relatively small items. His argument, like his expert's testimony, proves the point. Complex regulatory programs involve complex accounting methodologies which render a more conventional "user fee" assessment impractical or expensive.

There is also evidence that the administrative costs to implement an extensive and comprehensive time-reporting system would be high. The evidence shows that biologists often simultaneously perform the preliminary work establishing resource data for several projects and consult and research issues relating to many different projects. It is reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eases the administrative burden of collection and provides certainty to those who submit project proposals.

Fish and Game provides an apt analogy to demonstrate the reasonableness of flat fees. The Legislature has adopted a flat filing fee for filing an action in superior court whether the matter is a simple case requiring little time and attention or a complex case requiring intensive judicial resources from pretrial motions through a lengthy trial. By statute, statewide judicial fees cannot be increased or decreased by counties to provide any kind of graduated structure. (*Gov. Code, § 54985, subd. (c)(1).*) The fees imposed by section 711.4 are quite similar. Like a civil action, the environmental review may be time and staff intensive or it may be summarily handled. In neither case does the fee operate as a tax just because a prescribed amount is charged to all who avail themselves of the opportunity to obtain discretionary government services.

Finally, plaintiff also challenges the Legislature's decision to charge a higher fee for the filing of a negative declaration than for other environmental documents. As explained by a Fish and Game senior environmental specialist supervisor at trial, the standard for a negative declaration is that a project have no adverse impact on the environment. Thus, Fish and Game has the responsibility to make sure the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and Fish and Game staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spends more time on the review of a negative declaration than for the review of an equivalent size project with EIR (environmental impact report) documentation. Hence, because of project information collection cost and the time spent negotiating mitigation measures, Fish and Game's costs are generally higher for negative declarations. There is a sufficient reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report.

V

We need not address the many other issues raised by the parties in these consolidated cases rendered moot by our finding that *section 711.4* does constitute a regulatory fee. Moreover, we dismiss Mills's second appeal because it too is rendered moot by our finding. In the underlying case, the California Association of Professional Scientists sought to enjoin the settlement entered into by Mills and Fish and Game in the original action. The crux of the appeal is whether the trial court properly restricted its constitutional ruling to Mills alone. Since we have upheld the constitutionality of *section 711.4*, we need not decide whether the trial court erred by invoking *article III, section 3.5 of the California Constitution* to limit the scope of its constitutional ruling.

Many of the arguments raised by Mills, and echoed by his expert at trial, are rooted in the perception that a flat fee is unfair. They object vociferously to the disparity between the amount of the fee and the services provided for different projects. This may be so. The scope of our inquiry, however, is not whether the fee is fair but whether the fee is, in legal effect, a tax. This case is not a challenge to the legislative power to enact a fee, nor is it a substantive constitutional challenge to the fee. We were asked to make the legal determination as to whether it is a fee exclusively for the purpose of determining whether it was properly enacted by a majority vote. Constrained by the limited scope of appellate review, we have concluded the Legislature did not violate California Constitution, article XIII A by enacting the *section 711.4* fees by a simple majority vote. Any further challenge to the equity of a flat fee structure must be presented to the Legislature for the issue is political, not constitutional.

DISPOSITION

The appeal in case No. C023075 is dismissed. The judgment in case No. C023184 is affirmed in part and reversed in part as explained above. In both cases, Mills shall pay the costs on appeal.

Sims, Acting P. J., and Nicholson, J., concurred.

The petition of appellant Albert W. Mills for review by the Supreme Court was denied July 12, 2000.

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BAY AREA CELLULAR TELEPHONE COMPANY et al., Plaintiffs and Respondents, v. CITY OF UNION CITY, Defendant and Appellant.

A114956

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

162 Cal. App. 4th 686; 75 Cal. Rptr. 3d 839; 2008 Cal. App. LEXIS 634

April 29, 2008, Filed

SUBSEQUENT HISTORY: Later proceeding at *Bay Area Cellular Telephone Company v. City of Union City, 2008 Cal. LEXIS 8626 (Cal., July 9, 2008)*
Later proceeding at *Bay Area Cellular Telephone Company v. City of Union City, 2008 Cal. LEXIS 9353 (Cal., July 10, 2008)*
Time for Granting or Denying Review Extended *Bay Area Cellular Tel. Co. v. City of Union City, 2008 Cal. LEXIS 10387 (Cal., Aug. 12, 2008)*
Review denied by, Request denied by *Bay Area Cellular Telephone Company v. City of Union City, 2008 Cal. LEXIS 9937 (Cal., Aug. 13, 2008)*

PRIOR-HISTORY:
Superior Court of Alameda County, No. HG04-161366, Winifred Smith, Judge.

COUNSEL: Meyers, Nave, Riback, Silver & Wilson, Michael S. Riback, Joseph M. Quinn and Michael T. O'Flannigan for Defendant and Appellant.

Dennis J. Herrera, City Attorney (San Francisco), Buck Delventhal, Chief Government Team Deputy Attorney, Julie K. Van Nostern, Chief Tax Team Deputy Attorney, Danny Chou, Chief Appellate Litigation Attorney, and Jean H. Alexander, Deputy City Attorney, as Amici Curiae for Defendant and Appellant.

DLA Piper US, David Colker, David F. Gross and Stephen Chiari for Plaintiffs and Respondents.

Harold Griffith as Amicus Curiae for Plaintiffs and Respondents.

JUDGES: Opinion by Rivera, J., with Ruvolo, P. J., and Sepulveda, J., concurring.

OPINION BY: Rivera

OPINION

RIVERA, J.--This case presents the question of whether a fee imposed on telephone lines by defendant City of Union City (the City) to fund its 911 emergency communication system is a special tax that must be approved by two-thirds of the voters in the City. The trial court ruled it was a tax, and entered judgment against the City and in favor of the plaintiffs in this action for declaratory relief. [1] We affirm.

1 The plaintiffs in this action are Bay Area Cellular Telephone Company doing business as AT&T Wireless Services; GTE Mobilnet of California Limited Partnership doing business as Verizon Wireless; Cingular Wireless LLC; Silvano Mendoza; and Walid Achikzai (collectively plaintiffs).

I. BACKGROUND

The Legislature enacted the Warren-911-Emergency Assistance Act (*Gov. Code,* [2] *§ 53100 et seq.*) (the Warren Act) in 1972. The Warren Act declared that the establishment of a uniform, statewide emergency number was a matter of statewide concern, and required every local public agency to establish and operate, or to be part of, a "basic system" that automatically connects a person dialing the digits 911 to a public safety answering point. (*§§ 53100, 53107, 53109.*)

2 All undesignated statutory references are to the Government Code.

In 2003, the City established an "Emergency Communication System Response Fee" (the Fee) (City Mun. Code, ch. 7.20) by adopting ordinance No. 617-03 (the Ordinance). The Fee was imposed on "every person who maintains access to the 911 communication system by subscribing to local telephone service within the City of Union City. ... [W]ith respect to wireless telephone services, a person shall be construed to subscribe to local telephone service within the City of Union City if he or she has a 'place of primary use,' as such term is defined in the Mobile Telecommunications Sourcing Act, *4 U.S.C. Section 124(8)*, within the geographic boundaries of the City." [3] (City Mun. Code, ch. 7.20, § 7.20.040, subd. A.) The Fee is paid on a flat rate, per-line basis, in an amount established by city council resolution. (*Id.*, subd. B.) Certain access lines are exempted from the Fee, including coin-operated telephones, nonprofit hospitals, and nonprofit educational organizations. (*Id.*, § 7.20.050.) The Fee is collected from the telephone subscriber by the service supplier, which remits the revenues to the City. (*Id.*, § 7.20.070, subd. A.) The revenues collected are deposited into an emergency response fund, to be used only for the expenses of the 911 communication system. (*Id.*, § 7.20.080.) They are never commingled with any other City funds. The Fee was expected to recover 75 percent of the operating, maintenance, and improvement costs for the City's emergency communication system. After calculating the costs of the system, [4] the City distributed the cost among all access lines by dividing the cost by the estimated number of lines in the City, including those that were exempt from the Fee. Regular access lines are charged $ 3.22 per month; trunk lines--with the capacity of nine individual access lines--are charged $ 29.98 per month; and high-capacity trunk lines--with the capacity of 216 individual access lines--are charged $ 77.28 per month.

3 Title *4 United States Code section 124(8)* defines " 'place of primary use' " to mean "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be--[¶] (A) the residential street address or the primary business street address of the customer; and [¶] (B) within the licensed service area of the home service provider."

4 The parties disagreed below on whether the City's calculation of the costs of the system was overinclusive. For purposes of our analysis, we will assume that the Fee covers less than the total cost of operating the system.

The pertinent facts regarding the emergency communication system and the Fee are largely undisputed. The City operates an emergency dispatch system available to persons dialing 911 from a location within the City. Before the Ordinance went into effect, 911 services were funded from the City's general fund. In fiscal year 2004-2005, after the Ordinance went into effect, 911 services were funded from the general fund and from revenues obtained under the Ordinance. Funds from the Ordinance were designed to finance improvements to and operation of the City's "enhanced" 911 communication system, which the Ordinance provided would include selective routing, automatic number identification, automatic location identification, and wireless 911 access. (City Mun. Code, ch. 7.20, §§ 7.20.010, subd. A, 7.20.020, subd. A.)

The City describes the system as "a multi-point Emergency Communication Response System that allows individuals located within Union City dialing the digits 9-1-1, or designated seven-digit police and fire emergency numbers, or City business phone lines, to gain direct access to an emergency communication center that provides emergency services dispatch." Calls to a seven-digit emergency line and to 911 are handled by the same dispatchers in the same manner. However, the City's enhanced 911 system automatically provides the location and number identification for the caller. Wireless 911 calls are answered initially by the California Highway Patrol, which forwards those emergency calls needing a police response to the City police department's seven-digit emergency line.

Over 99 percent of households in the City have telephone service, and the City is unaware of anyone in the City who is not part of a household with an access line or of anyone who maintains a place of employment in the City without an access line. Any person physically in the City has access to the emergency communication system. The City has not limited access to either the system or emergency services to those who are subject to the Fee. Telephone subscribers who are subject to the Fee but have not paid it are not denied access to the 911 system and emergency services.

Plaintiffs brought this action for declaratory relief in June 2004. They alleged in their first cause of action that the Fee was an invalid tax in violation of *California Constitution, article XIII C, section 2* (Proposition 218); in their second cause of action that the Fee was an illegal property-related fee in violation of Proposition 218; in their third cause of action that it was an illegal special tax under *section 50076* as to wireless phone subscribers and required voter approval under Proposition 218; and in their fourth cause of action that it was an illegal fee imposed on wireless subscribers.

Plaintiffs moved for summary adjudication of the first cause of action, and the trial court granted the motion. The City made a cross-motion for summary adjudication of the first, second, and third causes of action. The

trial court denied the cross-motion on the ground that the accompanying separate statement of undisputed material facts did not comply with California Rules of Court, former rule 342. [5] At plaintiffs' request, the court dismissed the remaining causes of action, and entered judgment in favor of plaintiffs, declaring that the Fee was a special tax under California law, and that it was void because it was enacted without a vote of the electorate in violation of California Constitution, articles XIII A and XIII C. This timely appeal ensued.

5 The California Rules of Court have since been renumbered. Former rule 342 is now *rule 3.1350* (hereafter *rule 3.1350*).

II. DISCUSSION

A. *Guiding Legal Principles*

Proposition 218, passed by the voters in 1996, added articles XIII C and XIII D to the California Constitution. As pertinent here, Proposition 218 defines a "special tax" as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund" (*Cal. Const., art. XIII C, § 1, subd. (d)*), and provides that no local government may impose, extend, or increase any special tax unless the electorate has approved it by a two-thirds vote (*id., § 2, subd. (d)*). The proposition, entitled the "Right to Vote on Taxes Act," included this statement of purpose: " 'The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.' (See Historical Notes, 2A West's Ann. Cal. Const. (2004 supp.) foll. *art. XIII C, § 1*, p. 55; *Apartment Assn. of Los Angeles County[, Inc. v. City of Los Angeles (2001)] 24 Cal.4th [830,] 838 [102 Cal. Rptr. 2d 719, 14 P.3d 930].*)" (*Barratt American, Inc. v. City of San Diego (2004) 117 Cal.App.4th 809, 816 [12 Cal. Rptr. 3d 132].*) Section 5 of Proposition 218 required that the provisions of the act be "liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 5, p. 109, reprinted at Historical Notes, 2A West's Ann. Cal. Const. (2008 supp.) foll. *art. XIII C, § 1*, p. 85 (Historical Notes).)

Certain kinds of impositions for specific purposes, however, are treated not as special taxes subject to the voter approval requirements but as fees not subject to those requirements. Whether an imposition is a tax or a fee is a question of law for the appellate court to decide on an independent review of the facts. (*Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866, 873-874 [64 Cal. Rptr. 2d 447, 937 P.2d 1350]* (*Sinclair*); *California Assn. of Prof. Scientists v. Department of Fish & Game (2000) 79 Cal.App.4th 935, 944 [94 Cal. Rptr. 2d 535]*; *Northwest Energetic Services, LLC v. California Franchise Tax Bd. (2008) 159 Cal.App.4th 841, 854 [71 Cal. Rptr. 3d 642]* (*Northwest Energetic*).)

Our Supreme Court in *Sinclair, supra, 15 Cal.4th at pages 873-874*, discussed "certain general guidelines used in determining whether 'taxes' are involved in particular situations." [6] As the court noted: "The cases recognize that 'tax' has no fixed meaning, and that the distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts. [Citations.] In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. [Citations.] Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. [Citations.] But compulsory fees may be deemed legitimate fees rather than taxes. [Citation.] [¶] The 'special tax' cases have involved three general categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power." (*Sinclair, at p. 874.*) In connection with the last category, the court in *Kern County Farm Bureau v. County of Kern (1993) 19 Cal.App.4th 1416, 1421 [23 Cal. Rptr. 2d 910]* (*Kern County*) stated: ? ?Special taxes must be distinguished from regulatory fees imposed under the police power, which are not subject to the constitutional provision [since they are not taxes at all]. [Citation.] Special taxes do not encompass fees charged to particular individuals in connection with regulatory activities or services when those fees do not exceed the reasonable cost of providing the service or activity for which the fee is charged, and are not levied for unrelated revenue purposes.' " (See also *Collier v. City and County of San Francisco (2007) 151 Cal.App.4th 1326, 1346 [60 Cal. Rptr. 3d 698].*) [7]

6 *Sinclair* was decided under California Constitution, article XIII A, which was approved by the voters in 1978 as Proposition 13. (*Sinclair, supra, 15 Cal.4th at p. 872.*) However, cases decided under Proposition 13 have been used in analyzing the provisions of Proposition 218. (See *Howard Jarvis Taxpayers Assn. v. City of San Diego*

(1999) 72 Cal.App.4th 230, 239-240 [84 Cal. Rptr. 2d 804].)

7 The difference between regulatory measures and taxes was described in *Oakland Raiders v. City of Berkeley (1976) 65 Cal. App. 3d 623 [137 Cal. Rptr. 648]*. There, the court noted that the ordinance in question contained "no provision which would regulate the conduct of anyone who is subject to the ordinance," and went on to conclude that "[w]here [a] statute contains no regulatory provisions, but only provides for the subjects and amounts of taxation," it is a tax. (*Id. at p. 627.*) Similarly, the court in *United Business Com. v. City of San Diego (1979) 91 Cal. App. 3d 156, 165 [154 Cal. Rptr. 263]*, stated: " ' "If revenue is the primary purpose and regulation is merely incidental the imposition is a tax; while if regulation is the primary purpose the mere fact that incidentally a revenue is also obtained does not make the imposition a tax ... [.]" [Citations.]' " In short, "[a] 'regulatory fee' is an imposition that funds a regulatory program." (*Northwest Energetic, supra, 159 Cal.App.4th at p. 857.*)

The courts have also recognized that certain "user fees" are not taxes. (See *Isaac v. City of Los Angeles (1998) 66 Cal.App.4th 586, 596-597 [77 Cal. Rptr. 2d 752]* (*Isaac*).) In *Isaac*, the court described user fees as "those which are charged only to the person actually using the service; the amount of the charge is generally related to the actual goods or services provided." (*Id.* at p. 597.) Thus, a user fee is "payment for a specific commodity purchased." (*Ibid.*; see also *Utility Audit Co., Inc. v. City of Los Angeles (2003) 112 Cal.App.4th 950, 957 [5 Cal. Rptr. 3d 520]* [sewer service fees].)

Despite these classifications, a revenue measure "may have attributes of more than one of the traditional revenue devices, and may be valid despite the measure's 'hybrid' nature." (*Kern County, supra, 19 Cal.App.4th at p. 1422.*) Therefore, a local government may "seek to justify a revenue device under alternative classifications." (*Ibid.*)

The court in *Isaac* made clear that regardless of the type of fee, it must bear some reasonable relation to the benefits and costs associated with the service: A special assessment is based on the benefit to the specific property; a development fee is not considered a special tax if it bears a reasonable relation to the development's probable cost to the community and benefits derived from the community; a regulatory fee is limited to "the reasonable cost of the services necessary for the activity for which the fee is charged and for carrying out the purpose of the regulation"; and a user fee is charged to the person using the service and its amount is related to the goods and services actually provided. (*Isaac, supra, 66 Cal.App.4th at pp. 595-597.*) Thus, in explaining the reasons that regulatory and development fees and special assessments are not regarded as special taxes, the court in *Evans v. City of San Jose (1992) 3 Cal.App.4th 728, 738 [4 Cal. Rptr. 2d 601]* (*Evans*), stated, "With each of these cases, a discrete group receives a benefit (for example, a permit to build or inspection of produce) or a service (for example, providing and administering a rental dispute mediation and arbitration hearing process) or a permanent public improvement (such as a local park or landscaped median islands on a local road) which inures to the benefit of that discrete group. The public as a whole may be incidentally benefitted, but the discrete group is specially benefitted by the expenditure of these funds. [Citations.] The public should not be required to finance an expenditure through taxation which benefits only a small segment of the population."

A tax, on the other hand, can be levied " ' "without reference to peculiar benefits to particular individuals or property." ' [Citations.] Indeed, '[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.' " (*Knox v. City of Orland (1992) 4 Cal.4th 132, 142 [14 Cal. Rptr. 2d 159, 841 P.2d 144].*)

B. *The Fee Is a Special Tax*

The principles discussed above lead us to conclude that the Fee is a special tax, and as such is subject to Proposition 218. As noted by the trial court, the parties "essentially concede[d] that the 911 Charge does not fit into the category of a special assessment, a development fee, or a regulatory fee," [8] and the issue was whether the Fee was properly characterized as a user fee rather than a tax. In concluding the Fee was a tax, the court pointed out that those who paid the Fee received no benefit not received by those who did not pay (and thus by the general public), thereby negating the distinguishing feature of a user fee.

8 In its answer to the complaint, the City admitted the Fee was not a regulatory fee. The Ordinance provided that it was enacted "solely to provide revenue for eligible project costs and eligible operating costs," and that it was "not enacted for regulatory purposes or for general revenue purposes." (City Mun. Code, ch. 7.20, § 7.20.010, subd. D.) On appeal, the City asserts that the Fee "arguably advances a regulatory purpose," but fails to identify any such purpose.

On appeal, the City acknowledges that the Fee does not fall neatly into any of the recognized categories of fees, stating: "The 911 Fee at issue here ... defies simple classification." The reason the Fee defies such classifica-

tion is that it does not share the essential characteristics of the assessments and fees that have been held not to be special taxes. Most fundamentally, there is no discrete group that is specially benefitted by the imposition. (See *Evans, supra, 3 Cal.App.4th at p. 738.*) The 911 system benefits every inhabitant of the City, and in fact benefits anyone who is in the City when an emergency arises, whether or not an inhabitant and whether or not subject to the Fee. The Fee inures to the benefit of the public as a whole, not to any particular group within the public. (See *ibid.*)

Furthermore, the Fee is not charged for *use* of the 911 system, but for *access* to the system, whether or not a resident ever places an emergency call. The access is to a system that is part of a governmental service. In enacting the Warren Act, the Legislature declared that it was in the public interest to shorten the time required for a citizen to request and receive emergency aid, that the establishment of a uniform emergency number was a matter of statewide concern, and that one of the purposes of the act was to encourage local governments to develop and improve emergency communication procedures and facilities so as to be able to respond quickly to 911 emergency calls. (*§ 53100, subd. (b).*) We see no principled distinction between an imposition charged simply for access to a governmental service that is equally available to the public as a whole and a special tax.

The City disagrees, arguing that the Fee does not have the characteristics of a tax. According to the City, "[t]he Fee is voluntary, is paid by phone service subscribers in exchange for efficient 911 access, and does not raise revenues for the City's general fund." We have already rejected the argument that the Fee is imposed in exchange for "access" to a governmental service and therefore is not a tax. And the fact that the Fee does not raise revenues for the City's general fund does not change our conclusion. The essence of a special tax "is that its proceeds are earmarked or dedicated in some manner to a specific project or projects" (*Neecke v. City of Mill Valley (1995) 39 Cal.App.4th 946, 956 [46 Cal. Rptr. 2d 266]*), and Proposition 218's definition of special taxes encompasses "any tax imposed for specific purposes" (*Cal. Const., art. XIII C, § 1, subd. (d)*). Although Proposition 218 specifies that a special tax includes a tax imposed for specific purposes even if the proceeds are placed into a general fund (see *Howard Jarvis Taxpayers Assn. v. City of Roseville (2003) 106 Cal.App.4th 1178, 1185 [132 Cal. Rptr. 2d 1]*), it is not limited to such taxes but by its terms encompasses those placed into a separate fund.

Finally, we also reject the City's contention that the Fee is not a special tax because it is voluntary. According to the City, the Fee's voluntary nature is shown by the fact that--while the Fee is compulsory for nonexempt individuals and businesses with telephone service--those subject to the Fee voluntarily consented to pay it when they chose to obtain telephone service. For this contention, the City relies on *Richmond v. Shasta Community Services Dist. (2004) 32 Cal.4th 409 [9 Cal. Rptr. 3d 121, 83 P.3d 518]* (*Richmond*). There, our Supreme Court concluded that a capacity charge for new water service connections did not violate the restrictions on assessments of article XIII D of the California Constitution and was consistent with Proposition 218's goal to enhance taxpayer consent, stating that presumably any costs imposed on customers receiving service through *existing* connections would be subject to Proposition 218's voter approval requirements, and that customers who apply for *new* connections "give consent by the act of applying." (*Richmond, at pp. 418, 420.*)

Richmond does not lead to the conclusion that the Fee is not a special tax. The question there was not whether the charge for new water service connections was a special tax or a fee, but whether it was an assessment subject to the procedures and requirements of *California Constitution, article XIII D, section 4.* (*Richmond, supra, 32 Cal.4th at pp. 418-425.*) In any case, the Fee is fundamentally different from the charge in *Richmond* in at least two respects. First, it is not imposed in exchange for the voluntary decision to seek a governmental service, but is instead imposed in response to the decision to seek telephone service from a private provider. Second, the Ordinance does not restrict the Fee to *new* telephone customers, but applies to all persons who maintain telephone service--many of whom presumably did not contemplate the fee when signing up for telephone service. [9]

> 9 We note that the compulsory nature of an imposition does not in itself transform a valid fee into a tax. (See *Kern County, supra, 19 Cal.App.4th at p. 1424.*)

Nor are we persuaded by the City's reference to *Pajaro Valley Water Management Agency v. Amrhein (2007) 150 Cal.App.4th 1364 [59 Cal. Rptr. 3d 484]* (*Pajaro Valley*). There, the court concluded that a groundwater augmentation charge was an incident of property ownership and hence subject to the restrictions of California Constitution, article XIII D, part of Proposition 218, which restricts the power of public agencies to impose a ?levy other than an ad valorem tax, a special tax, or an assessment, ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service." (*Cal. Const., art. XIII D, § 2, subd. (e)*; see *Pajaro Valley, at pp. 1384-1393.*) Before deciding that the charge was an incident of property ownership, the court rejected the argument that it was a special tax, reasoning that although the charge was intended to finance improvements, and thus to raise

revenue (see *Sinclair, supra, 15 Cal.4th at p. 874*), it was also "charged in return for the benefit of ongoing groundwater extraction and the service of securing the water supply for everyone in the basin" (*Pajaro Valley, supra, 150 Cal.App.4th at p. 1381*; see *id. at pp. 1379-1381*). The charge in *Pajaro Valley*, however, was based either on actual consumption of water (in the case of large water users with metered wells) or an estimated use rate; for residential users, this rate was based on the estimated average rate of consumption per dwelling; and for unmetered agricultural use it was based on a number of factors, including the type of crop grown on the land. The charges could be adjusted if a well's estimated consumption did not accurately reflect the amount extracted. (*Id. at p. 1374.*) Here, the Fee is not based on actual or estimated use of emergency services, but simply on the presence of a telephone line, whether or not that line is ever used to call the City's emergency communication system. As we have discussed, such a charge is not a legitimate user fee.

The City argues, however, that *section 50076* establishes that the Fee is not a special tax. [10] *Section 50076* was enacted in 1979, and was part of legislation intended to provide cities, counties and districts with authority to impose special taxes pursuant to Proposition 13. (*§ 50075.*) *Section 50076* provides: "As used in this article, 'special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes." The City points out that the revenues generated by the Fee do not exceed the cost of providing 911 services and that the Fee is not levied for general revenue purposes. Therefore, the City contends, the Fee is not a special tax.

> 10 We grant plaintiffs' request for judicial notice filed March 28, 2007. We have considered the legislative history of *section 50076* provided, but do not find it helpful in resolving the issue before us.

This argument misses the point. *Section 50076* on its face applies to fees imposed for services or regulatory activities provided by local entities. As we have discussed, the Fee does not fall into either of these categories. The Ordinance provided that it was not enacted for regulatory purposes, and the City has not suggested any regulatory purpose it might serve. Nor is the Fee imposed for "service[s]." The Fee must be paid by all nonexempt telephone service subscribers in the City--encompassing virtually all nonexempt households and businesses--whether or not they ever use 911 services. A fee for *access* to a governmental service is not the same as a fee for *use* of that service. [11]

> 11 Indeed, if it were, Proposition 218 could easily become meaningless. Taxes paid by the public to fund police or fire services available to all could be renamed "public safety access fees" and be exempt from the voter approval requirements. Taxes paid to maintain city streets could be renamed "road access fees." The list of possibilities is endless.

The City also relies on *Carlsbad Mun. Water Dist. v. QLC Corp. (1992) 2 Cal.App.4th 479 [3 Cal. Rptr. 2d 318]*. There, in considering *section 50076* and Proposition 13, the court explained: "The term 'special taxes' must be strictly construed and ambiguities resolved so as to limit the situations to which the two-thirds requirement applies because of the inherently undemocratic requirement that the tax must be approved by a supermajority of the electors." (*Carlsbad, at pp. 485-486.*) We doubt the applicability of this rule to cases decided under Proposition 218, which provides that it should be "*liberally* construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Historical Notes, *supra*, foll. *Cal. Const., art. XIII C, § 1*, p. 85, italics added.) In any case, as we have discussed, even under the reasoning of the cases decided under Proposition 13, we conclude that the Fee is a special tax.

Our conclusion is bolstered by the treatment of a state surcharge authorized by the Emergency Telephone Users Surcharge Act (*Rev. & Tax. Code, § 41001 et seq.*). This legislation, enacted in 1976, imposes on telephone users a surcharge to fund state and local agencies' costs associated with providing and administering 911 service, including installation and ongoing expenses of providing a 911 emergency phone number system. (*Id., §§ 41020, 41136, 41150.*) [12] The act defines the surcharge as "a tax levied by this state." (*Id., § 41013.*) Although the City has chosen to provide enhanced services rather than a basic system, the Fee effectively does what the surcharge does--provides revenues to fund a governmental service available to all.

> 12 *Revenue and Taxation Code section 41020, subdivision (a)* imposes a surcharge "on amounts paid by every person in the state for intrastate telephone communication service in this state ... ." Revenues generated by the surcharge are to be used, among other things, to pay refunds authorized by the Emergency Telephone Users Surcharge Act; to pay the State Board of Equalization for the cost of administering the act; to pay the Department of General Services for its costs in administering the 911 emergency telephone number system; and to pay for the installation of, and ongoing expenses for, communication ser-

vices supplied to local agencies, including a basic system, a basic system with telephone central office identification, a system employing automatic call routing, and approved incremental costs. (*Rev. & Tax. Code, § 41136.*)

Accordingly, we conclude the trial court was correct in granting summary adjudication to plaintiffs on their cause of action.

C. *The City's Motion for Summary Adjudication*

The City moved for summary adjudication on plaintiffs' first, second, and third causes of action. Each of these causes of action alleged that the Fee violated Proposition 218. The trial court denied the City's motion not on the merits, but on the procedural ground that the separate statement of undisputed material facts did not comply with *rule 3.1350*. The City contends the trial court abused its discretion in refusing to consider its motion on the merits.

We have already concluded the trial court was correct when it ruled that plaintiffs were entitled to summary adjudication in their favor on the first cause of action. After the court made its ruling, the trial court dismissed the remaining causes of action at plaintiffs' request and entered judgment in plaintiffs' favor. In the circumstances, no decision we make on this procedural issue would affect the outcome of the case, and we need not consider it. (See *Giles v. Horn (2002) 100 Cal.App.4th 206, 226-227 [123 Cal. Rptr. 2d 735].*)

The judgment is affirmed.

III. DISPOSITION

Ruvolo, P. J., and Sepulveda, J., concurred.

Appellant's petition for review by the Supreme Court was denied August 13, 2008, S164219. Baxter, J., Werdegar, J., and Corrigan, J., did not participate therein.

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1 of 1 DOCUMENT

ELAINE EVANS, Plaintiff and Appellant, v. CITY OF SAN JOSE, Defendant and Respondent.

No. H008169

COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT

3 Cal. App. 4th 728; *4 Cal. Rptr. 2d 601*; *1992 Cal. App. LEXIS 156*; *92 Cal. Daily Op. Service 1333*; *92 Daily Journal DAR 2145*

February 14, 1992, Decided

SUBSEQUENT HISTORY: Review Denied April 29, 1992, Reported at *1992 Cal. LEXIS 2292.*

PRIOR-HISTORY: Superior Court of Santa Clara County, No. 697780, Peter G. Stone, Judge.

COUNSEL: Ronald A. Zumbrun, Anthony T. Caso and Jonathan M. Coupal for Plaintiff and Appellant.

Joan R. Gallo, City Attorney, and George Rios, Assistant City Attorney, for Defendant and Respondent.

Best, Best & Krieger, Douglas S. Phillips and Robert W. Hargreaves as Amici Curiae on behalf of Defendant and Respondent.

JUDGES: Opinion by Cottle, J., with Capaccioli, Acting P. J., and Premo, J., concurring.

OPINION BY: COTTLE, J.

OPINION

Appellant Elaine Evans challenges here, as she did in the trial court, the facial constitutionality of those provisions of *Streets and Highways Code section 36500 et seq.* and San Jose Ordinance No. 22960 which authorize imposition of assessments on businesses for the purposes of general downtown promotion, the furnishing of music, and other expenditures unrelated to capital improvements. The trial court entered summary judgment in favor of the City of San Jose (city), ostensibly on the ground that Evans failed to exhaust her administrative remedies. For reasons we shall explain, we affirm the judgment.

FACTS

On October 6, 1988, at a public hearing, the City Council of San Jose adopted a resolution of intention to establish a business improvement district (BID), pursuant to *Streets and Highways Code section 36500 et seq.* (the Act), to promote the downtown area. [1] After the hearing, each of the businesses in the proposed district was notified that a hearing would be held on October 20, 1988, to consider establishing the BID. The businesses were told, "If you wish to support or oppose the establishment of the BID you may do so in person at the hearing or by writing the City Council. State law provides that the BID may not be established if the City Council receives protests in writing against its establishment from businesses which would pay a majority of the charges proposed." At the bottom of the notice, each holder of a valid business license was entitled to check one of the following two boxes: " I support the BID proposed by the San Jose Downtown Association," or " I oppose the BID proposed by the San Jose Downtown Association and *hereby register a protest pursuant to Section 36523 of the California Streets & Highways Code."* (Italics added.)

1 After the resolution of intention was passed, the Legislature amended without substantially changing the Parking and Business Improvement Area Law of 1979 (*Sts. & Hy. Code, § 36500 et seq.*). In this appeal, however, we consider only the 1979 Act.

Evans, who owns a 21-unit apartment building in the proposed district, received one of these notices. She sent the ballot in to the city council as requested, indicating she opposed the proposed BID and she was accordingly "registering a protest pursuant to *Section 36523 of the California Streets & Highways Code.*" She also sent a

letter to the mayor and city council members announcing her opposition to the BID because of "the manner in which it [was] to be financed." She observed that she already had to pay sewer fees, housing fees, rent mediation fees, utility tax, and a business license tax, all in addition to her real property taxes. She complained that her property was "enough on the outer fringe of a geographical district that it did not qualify for city aid, but close enough to pay for promotional events." She asked, "How much more do you think a business [such as mine where the occupancy rate has dropped to 25%%] is able to pay?"

Both Evans's ballot and her letter were marked "received" by the city prior to the public hearing. Her ballot was presumably one of the 90 received by the city opposing the BID. The city also received 29 ballots supporting it. In addition to the ballots, the following documents were filed at the October 20, 1988, public hearing; a feasibility analysis, a petition signed by 274 businesses favoring establishment of the BID, a recommendation from the assistant city manager, 242 business reply cards supporting formation of the BID, a list of the affected businesses, and an affidavit of mailing. Five citizens spoke in opposition to the district, and six spoke in favor.

City approved the BID and passed Ordinance No. 22960, entitled "An Ordinance of the City of San Jose Establishing the Downtown San Jose Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1979" at its October 20th meeting. The stated purpose of the ordinance was to fund: "A. Decoration of any public place in the area. [P] B. Promotion of public events which are to take place on or in public places in the area. [P] C. Furnishing of music in any public place in the area. [P] D. The general promotion of business activities in the area."

The ordinance contained the specific finding that "the businesses lying within the Area will be benefitted by the expenditure of the funds raised by the assessments or charges proposed to be levied." It provided that the charge for each apartment or hotel would be $ 5 per room or $ 150 minimum per year, beginning in the third year. The first year would be one- third that amount and the second year two-thirds.

Evans paid the 1989 and 1990 assessments "under protest" and subsequently submitted a written claim for refund to the city. She filed the instant action on January 23, 1990, seeking a refund of the assessments paid and a declaration that the Act and ordinance were unconstitutional "on their face to the extent they purport to authorize the imposition of 'assessments' for the provision of music, decorations, promotions, etc., without a two-thirds vote of the people."

Both city and Evans filed cross motions for summary judgment. After a hearing on November 21, 1990, the court issued the following minute order: "The motion by the plaintiff is denied; no jurisdiction-administrative remedies have not been exhausted. [P] The motion of the defendant is granted."

Evans timely appealed from the judgment entered on January 30, 1991.

DISCUSSION

On appeal, Evans contends (1) the court erred in ruling that she did not exhaust her administrative remedies, and (2) the BID assessments were unconstitutionally imposed and collected. As we shall explain, we agree with the first proposition but disagree with the second.

It is fundamental in California, as elsewhere, that before a party may obtain judicial review of a final administrative determination, she must first exhaust her administrative remedies. "It is not a matter of judicial discretion, but is a fundamental rule of procedure .... Exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (*Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 293 [109 P.2d 942, 132 A.L.R. 715].*) [2]

2 In *Abelleira*, "[t]he question [presented was] whether boards and commissions, charged with the administration of a statute, may carry on their administrative proceedings to completion before being subjected to judicial review." (*Id., at p. 286.*) The court reasoned that if a court allowed a suit to be maintained prior to a final administrative determination, it would be interfering with the subject matter jurisdiction of another tribunal. (*Id., at p. 293.*)

At the summary judgment motion, city asserted, and the trial court agreed, that Evans had not pursued the remedies available to her under the Act. In support of its position, city cited numerous cases in which a litigant was denied judicial review for failing to first exhaust available administrative remedies. These included *Abelleira, supra, 17 Cal.2d 280* (under the California Unemployment Insurance Act, an adjustment unit of the Employment Commission would determine whether unemployed workers were entitled to benefits; where payment was ordered, the employer could appeal to a referee; the referee would hold a hearing, take evidence and examine witnesses; after the referee issued written findings, the employer could appeal again to the commission. In *Abelleira*, the employer filed suit before the second appeal was complete); *United States v. Superior Court (1941) 19 Cal.2d 189 [120 P.2d 26]* (shippers and handlers of citrus fruits could petition the Secretary of Agriculture for a modification of a marketing agreement or-

der; they did so but filed suit before a determination on the modification had been made); *People v. Coit Ranch, Inc. (1962) 204 Cal.App.2d 52 [21 Cal.Rptr. 875]* (cantaloupe growers did not follow appeals procedure contained in a marketing order issued pursuant to California Marketing Act of 1937); *Flores v. Los Angeles Turf Club (1961) 55 Cal.2d 736 [13 Cal.Rptr. 201, 361 P.2d 921]* (appellant failed to follow detailed procedures governing appeals to the California Horse Racing Board); *Metcalf v. County of Los Angeles (1944) 24 Cal.2d 267 [148 P.2d 645]* (rock crushing company sought to enjoin enforcement of zoning ordinance prohibiting rock crushing but failed to apply under section 21 of the applicable ordinance to have its property excepted from the restriction; the company also failed to apply under another ordinance for a license to operate a rock quarry); *Tushner v. Griesinger (1959) 171 Cal.App.2d 599 [341 P.2d 416]* (further hearings before an examiner relating to suspension or revocation of real estate brokers' licenses were still pending when action filed); *Alexander v. State Personnel Bd. (1943) 22 Cal.2d 198 [137 P.2d 433]* (petition seeking review of State Personnel Board decision discharging petitioner from service properly dismissed where no petition for rehearing was filed within the time prescribed by the Civil Service Act).

Two common threads link these cases: a detailed administrative procedure was available, and the appellant either ignored it or did not await a final determination before seeking judicial intervention. Here, in contrast, the administrative remedies--though existent--were neither exhaustive nor detailed and did not provide several levels of administrative review. Furthermore, with respect to the limited remedies available, Evans pursued them to the extent possible.

City cites three cases, two written in 1904, for the proposition that the exhaustion doctrine is applicable to a challenge to the formation of an assessment district. In *O'Dea v. Mitchell (1904) 144 Cal. 374 [77 P. 1020]*, the enabling legislation provided that " 'objections *to the extent* of the district' may be made in writing by interested parties within ten days after the expiration of the time of publication of notice; that the clerk shall lay such objection before the council, and the council at its next meeting shall fix a time for hearing the objections; that the clerk shall notify the objectors; that the council shall hear and pass upon the objections, and its decision shall be final and conclusive; that if the objections be sustained all proceedings shall be stopped, but if overruled the proceedings shall continue. This is a remedy which the party interested should, at least in the first instance, avail himself of; and appellants not having done so, and having allowed the work to progress and to be completed without objection, cannot now be heard to make the objection which they should have made before the work commenced and at the time and in the manner prescribed in the statute, where the error, if any, could have been corrected. [Citation.]" (*Id., at p. 378.*) Thus, the court held that submitting a written objection would have satisfied the aggrieved owner's obligation to exhaust his administrative remedies. That is what Evans did here.

In *Duncan v. Ramish (1904) 142 Cal. 686, 692 [76 P. 661]*, the court observed that "where the property-owner has an opportunity given him, under the prescribed proceedings, to appear and contest the question before the legislative body, the determination of that body on the subject of benefits is final, and that if he fails to appear he thereby admits the finality of the determination." In the present case Evans was given an opportunity to register a protest pursuant to the Act by checking the appropriate box on her ballot. She not only did that but she also wrote the city council prior to its public hearing.

In *Teeter v. Los Angeles (1930) 209 Cal. 685 [290 P. 11]*, the court held that "under the Street Improvement Act of 1911, ... all protests against proposed work must be first filed and pursued before the city council, and all objections not so made shall be deemed waived." (*Id., at p. 688.*) Here Evans filed and pursued her protest to the formation of the BID before the city council; she sent in her ballot formally registering a protest and a separate letter further explaining her objections to the proposed BID.

City also argues that the protest procedure set forth in *Streets and Highways Code section 36523* is not the administrative remedy Evans was obligated to exhaust. It makes this claim in spite of the fact that no other remedies are specified in the Act. However, city claims we should infer other remedies from the following: because a public hearing [3] is required to establish a BID, and because the public *can* appear at that hearing, the public must appear if it wishes later to seek judicial review of the administrative agency's decision. (Cf. *Duncan v. Ramish, supra, 142 Cal. at p. 692.*) Under the facts of this case, we must disagree. This Act set out a specific protest procedure. Evans followed that procedure. She also wrote a letter to the city council which was received and considered prior to the public hearing. We conclude that Evans satisfied her obligations to pursue administrative remedies.

3 City actually claims that two public hearings are called for in the Act, one when the BID is established and one when the resolution of intention is passed. However, the Act does not require a public hearing for the resolution of intention. That requirement city infers from *Government Code section 54950* which generally provides that because "public commissions, boards and

> councils and the other public agencies in this State exist to aid in the conduct of the people's business[,] ... their actions be taken openly and ... their deliberations be conducted openly." Furthermore, at the hearing on the resolution of intention, "public testimony would be heard but ... limited to the scheduling of the public hearing [establishing the BID]." Thus, Evans would not have been permitted to object to the formation of the BID even if she had attended the hearing at which the resolution of intention was passed.

We therefore turn to the second issue: whether the Act and ordinance are unconstitutional on their face, at least "to the extent they purport to authorize the imposition of 'assessments' for the provision of music, decorations, promotions, etc., without a two-thirds vote of the people."

On June 6, 1978, the voters of this state passed by initiative a measure known as Proposition 13, which added article XIII A to the California Constitution. Its purpose was to provide "effective real property tax relief" to the taxpayers of California. (*Amador Valley Joint Union High Sch. Dist. v. State Board of Equalization (1978) 22 Cal.3d 208, 230 [149 Cal.Rptr. 239, 583 P.2d 1281]*.) "Article XIII A consists of four major elements, a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4)." (*Id., at p. 231*, italics in original.) This appeal raises the issue of whether the Act and ordinance run afoul of section 4, which places restrictions on local taxes.

Section 4 [4] of article XIII A (hereafter section 4) limits the ability of cities, counties, and special districts [5] to impose "special taxes" by requiring the district to first obtain approval of two-thirds of the qualified electors in the district. The purpose of this section is to prevent the government from recouping its losses from decreased property taxes, due to Proposition 13, by imposing or increasing other taxes. (*Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100 [211 Cal.Rptr. 133, 695 P.2d 220]*.)

> 4 That provision provides: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."
>
> 5 In *Rider v. County of San Diego (1991) 1 Cal.4th 1 [2 Cal.Rptr.2d 490, 820 P.2d 1000]*, the Supreme Court defined "special districts" as "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13." (*Id., at p. 11*.)

In the present case, the Act and ordinance authorize imposition of an "assessment" for downtown promotion without requiring approval by two-thirds of the electorate. If such an assessment is a "special tax," its imposition would be unconstitutional. The remainder of this opinion deals with the question of whether an assessment for downtown promotion is a special tax or whether it is some other type of revenue-generating procedure.

Recently the Supreme Court clarified its earlier pronouncement in *City and County of San Francisco v. Farrell (1982) 32 Cal.3d 47 [184 Cal.Rptr. 713, 648 P.2d 935]*, that "special taxes" were those "levied for a specific purpose rather than ... a levy placed in the general fund to be utilized for *general governmental purposes*." It explained that that definition "would allow a municipality to recover completely any property tax revenues lost under Proposition 13 merely by enacting an alternative form of taxation, the revenues of which being earmarked for general government purposes." (*Rider v. County of San Diego, supra, 1 Cal.4th 1, 14*, citing with approval dis. opn. of Richardson, J., in *Farrell, supra.*) The *Rider* court opined that a "more reasonable interpretation of section 4, consistent with *Farrell's* [citation] guidelines, is that a 'special tax' is one levied to fund a specific governmental project or program, such as the construction and financing of the County's justice facilities." (32 Cal.3d at p. 15.)

Evans contends the Act and ordinance on their face impose a "special tax" without requiring a concurring vote of two-thirds of the electorate; therefore, she argues they violate section 4 and are unconstitutional.

We disagree. Proposition 13 generally and section 4 specifically do not apply at all to certain revenue-generating procedures employed by local governments. For example, section 4 does not embrace fees charged in connection with regulatory activities that do not exceed the reasonable cost of providing services necessary to the activity for which the fees are charged. (See e.g., *Pennell v. City of San Jose (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111]* [ordinance may impose rental unit fee which does not exceed sum necessary to cover costs of administering prescribed hearing process]; *Trent Meridith, Inc. v. City of Oxnard (1981) 114 Cal.App.3d 317 [170 Cal.Rptr. 685]* [requirement that a subdivider either pay fees or dedicate land to a local school district to relieve conditions of overcrowding caused by the development not a special tax but rather a valid exercise of the police power]; *Mills v. County of Trinity (1980) 108 Cal.App.3d 656 [166 Cal.Rptr. 674]* [fees for county services in processing subdivision, zoning, and other land-use applications not a "special tax"

within the meaning of Proposition 13]; *Terminal Plaza Corp. v. City and County of San Francisco (1986) 177 Cal.App.3d 892, 905 [223 Cal.Rptr. 379]* [fees for land-use regulatory activities outside realm of special taxes].) Numerous statutory schemes impose fees on business entities to defray the costs of policing and regulating those activities. (See e.g., *Food & Agr. Code, § 66621 et seq.* [fees imposed on the handlers of iceberg lettuce to pay for administering Iceberg Lettuce Commission]; *Food & Agr. Code, § 65600 et seq.* [similar fees for grape growers].)

Likewise, section 4 does not apply to special assessments. (E.g., *Solvang Mun. Improvement Dist. v. Board of Supervisors (1980) 112 Cal.App.3d 545 [169 Cal.Rptr. 391]*, criticized on another ground in *City of San Diego v. Holodnak (1984) 157 Cal.App.3d 759, 763 [203 Cal.Rptr. 797]*; *County of Fresno v. Malmstrom (1979) 94 Cal.App.3d 974 [156 Cal.Rptr. 777]*; *City Council v. South (1983) 146 Cal.App.3d 320 [194 Cal.Rptr. 110]*.) Special assessments are charges imposed by a local district " ' "upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein ...." ' [Citation.]" (*San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154, 161 [228 Cal.Rptr. 47, 720 P.2d 935]*.)

The assessment on businesses for downtown promotion is not a true special assessment. [6] It is neither a charge on real property nor is its purpose to pay for permanent public improvements specifically benefitting the assessed real property. However, the fact that it is not a true special assessment does not necessarily mean it is a special tax within the meaning of section 4. The reasons the regulatory and development fee cases and the special assessment cases are exempt from the reach of Proposition 13 are the same reasons the Act and ordinance should also be exempt from its reach. With each of these cases, a discrete group receives a benefit (for example, a permit to build or inspection of produce) or a service (for example, providing and administering a rental dispute mediation and arbitration hearing process) or a permanent public improvement (such as a local park or landscaped median islands on a local road) which inures to the benefit of that discrete group. The public as a whole may be incidentally benefitted, but the discrete group is specially benefitted by the expenditure of these funds. (Cf. *City of Baldwin Park v. Stoskus (1972) 8 Cal.3d 563, 568 [105 Cal.Rptr. 325, 503 P.2d 1333, 59 A.L.R.3d 525]*; *San Diego Gas & Elec. Co. v. Sinclair (1963) 214 Cal.App.2d 778 [29 Cal.Rptr. 769]*.) The public should not be required to finance an expenditure through taxation which benefits only a small segment of the population. (Cf. *Rider v. County of San Diego, supra, 1 Cal.4th 1* [1/2 percent sales tax imposed to fund construction of justice facilities].) If it is asked to do so, it must agree by a two-thirds vote. On the other hand, where the burden for these expenditures is borne by the group specifically benefitted by them, Proposition 13 is not implicated.

6 Within a year after Proposition 13 was passed, the Legislature enacted the Parking and Business Improvement Area Law of 1979. The Parking and Business Improvement Area Law of 1965 (*Sts. & Hy. Code, § 36000 to 36081*) had referred to "taxes" for the "acquisition, construction or maintenance of parking facilities for the benefit of the area. [P] (b) Decoration of any public place in the area. [P] (c) Promotion of public events which are to take place on or in public places in the area. [P] (d) Furnishing of music in any public place in the area. [P] (e) The general promotion of retail trade activities in the area."

The 1979 Act, on the other hand, referred to "assessments" for the "acquisition, construction, or maintenance of parking facilities for the benefit of the area. [P] (b) Decoration of any public place in the area. [P] (c) Promotion of public events which are to take place on or in public places in the area. [P] (d) Furnishing of music in any public place in the area. [P] (e) The general promotion of business activities in the area." (Stats. 1979, ch. 372, § 1, p. 1246.)

The 1989 revision provides, no doubt to avoid the sweep of Proposition 13, that "Assessments levied under this part are not special taxes." (*Sts. & Hy. Code, § 36504*.) However, as the court observed in *Rider v. County of San Diego, supra, 1 Cal.4th 1*, "reliance on the Legislature's designation of the tax ... is of minor importance in light of the realities underlying its adoption and its probable object and effect. [Citation.] The statute at issue was undoubtedly drafted with section 4 ... firmly in mind." (*Id., at pp. 14-15*.)

The Legislature and city each determined that downtown businesses would be benefitted from establishment of a BID. The city specifically found "that the businesses lying within the Area will be benefitted by the expenditure of the funds raised by the assessments or charges proposed to be levied." The Mayor of San Jose wrote Evans explaining that the BID would "provide funds to make a pleasant atmosphere for Downtown residents to live" and would "attract residents and patrons," obviously to the benefit of downtown landlords and businesses. [7] The San Jose Downtown Association explained that the "objective of downtown revitalization

will remain unchanged: to give more and more San Joseans reasons to come downtown to live, work, shop and play." [8]

7 Evans emphasized that she was making a facial attack on the Act and ordinance and that the issue of benefit to her, therefore, need not be reached. We observe, nevertheless, that the potential benefit to her from downtown revitalization was extraordinary; she stated she had only a 25 percent occupancy rate.

8 Likewise, the Legislature declared in section 3 that the Act "is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV and shall go into immediate effect. The facts constituting such necessity are: [P] Parking and business improvement areas provide vital services which are necessary for the benefit of the business and commercial activity of the state. In order for these vital services not to be discontinued because of a lack of revenue, it is necessary that this act take effect immediately." (Stats. 1979, ch. 372, § 3, p. 1250.)

The Act challenged here is neither a true regulatory fee nor a true special assessment. Nevertheless it is analogous to those other schemes which impose the financial burden for a special benefit upon the person or entity receiving that benefit. The City of San Jose and the Legislature have determined that downtown promotion inures to the benefit of businesses and landlords within the BID because the funds are used to make the downtown area a safer, cleaner, and more economically viable area. Under these circumstances, where the business license holder is specially benefitted, we hold that the assessment is not a "special tax" as contemplated by article XIII A of the California Constitution.

For the foregoing reasons and not because Evans failed to exhaust her administrative remedies, the judgment is affirmed. Costs on appeal to respondent.

Capaccioli, Acting P. J., and Premo, J., concurred.

Appellant's petition for review by the Supreme Court was denied April 29, 1992.

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WASTE RESOURCE TECHNOLOGIES et al., Plaintiffs, Cross-defendants and Appellants, v. DEPARTMENT OF PUBLIC HEALTH OF THE CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents; GOLDEN GATE DISPOSAL COMPANY et al., Interveners, Cross-complainants and Respondents.

No. A060784.

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

23 Cal. App. 4th 299; *28 Cal. Rptr. 2d 422*; *1994 Cal. App. LEXIS 233*; *94 Cal. Daily Op. Service 1900*; *94 Daily Journal DAR 3463*

March 16, 1994, Decided

PRIOR-HISTORY: Superior Court of the City and County of San Francisco, No. 946390, Stuart R. Pollak, Judge.

COUNSEL: Reuben & Cera, James A. Reuben, Joeal Yodowitz and Andrew J. Junius for Plaintiffs, Cross-defendants and Appellants.

Louise H. Renne, City Attorney, and John D. Cooper, Deputy City Attorney, for Defendants and Respondents.

Howard, Rice, Nemerovski, Canady, Robertson & Falsk, Peter J. Busch and Todd E. Thompson for Interveners, Cross-complainants and Respondents.

Burke, Williams & Sorensen, Rufus C. Young, Jr., and Virginia R. Pesola as Amici Curiae.

JUDGES: Opinion by Poch, J., with Anderson, P. J., and Reardon, J., concurring.

OPINION BY: POCHE, J.

OPINION

The City and County of San Francisco (City) has a long-standing practice of granting to private entities what amounts to an exclusive franchise to collect refuse. The issue presented is whether the City's authority to enter into this type of arrangement survived passage of the California Integrated Waste Management Act of 1989. [1] We conclude that the City still has the power to grant an exclusive refuse collection permit.

1 This enactment (which shall be cited hereinafter as the Waste Management Act or the Act) comprises Division 30 ("Waste Management") commencing with *section 40000 of the Public Resources Code*. Subsequent statutory references are to this code unless otherwise indicated.

BACKGROUND

In November of 1932 the voters of San Francisco adopted an initiative measure entitled the Refuse Collection and Disposal Ordinance (Ordinance). [2] It divides the City into 97 "routes for the collection of refuse." Permits to collect or dispose of refuse from each of these routes are issued by the City's director of public health. Since the 1930's the only permit recipients have been Golden Gate Disposal Company and Sunset Scavenger Company (or their predecessors in interest), which are subsidiaries of Norcal Solid Waste Systems, Inc. As a general proposition, they alone are authorized to collect, transport, or dispose of "refuse," which the Ordinance comprehensively defines as "all waste and discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, institutions and all commercial establishments, including waste or discarded food, animal and vegetable matter from all kitchens thereof, waste paper, cans, glass, ashes, and boxes and cuttings from trees, lawns and gardens." [3] A permit is not, however, required for the collection, transportation,

or disposal of "waste paper or other refuse having a commercial value."

2 The Ordinance, which was subsequently amended in 1946, 1954, and 1960, appears as appendix A to the City's charter.

3 Excluded from the definition of refuse are "debris and waste construction materials, including wood, brick, plaster, glass, cement, wire, and other ferrous materials, derived from the construction of or the partial or total demolition of buildings or other structures."

The Ordinance--most recently amended in 1960--makes no mention of recycling which generated this litigation. Initially and primarily concerned with the collection of construction debris excluded from the Ordinance's definition of refuse (see fn. 3, *ante*), and having been blocked in their efforts to enter the recycling field, plaintiffs Waste Resource Technologies and L & K Debris Box Service, Inc., sought an injunction allowing "the collection and recycling, for a fee, of commercially valuable 'dry waste', consisting of cardboard, newspaper and other paper products, plastic bottles, sheet plastic, metal products, Styrofoam packing waste, discarded wood, and other similar commercially valuable materials."

Extensive proceedings before the trial court culminated with entry of a final judgment denying injunctive relief to plaintiffs but granting it to Norcal's subsidiaries; [4] plaintiffs were permanently restrained from soliciting, contracting, collecting, or transporting "refuse, as defined in . . . the . . . Ordinance," for a fee. Plaintiffs thereafter perfected this timely appeal.

4 A third Norcal subsidiary, Sanitary Fill Company, became a party during the course of proceedings in the trial court. It describes itself as owner and operator of "a transfer station . . . where in excess of 600,000 tons of refuse" collected annually by Golden Gate and Sunset Scavenger are processed and transported to the City's landfill site.

REVIEW

Plaintiffs attack the judgment with an array of challenges to the City's power under the Ordinance to grant and enforce an exclusive permit system which prevents plaintiffs from continuing their collection and recycling operations. Mustering a number of arguments derived from provisions of the Waste Management Act, which they claim gives them a right to collect and recycle discarded materials not within its definition of solid waste, plaintiffs contend that the City's exclusivity arrangements are now prohibited by state law. The premise for these arguments is that the Ordinance is preempted by the Act. Turning to the permit exemption the Ordinance gives to "waste paper or other refuse having commercial value," plaintiffs claim that the City's interpretation of this language has been unreasonable and arbitrary. Lastly, plaintiffs submit that if the City's course of action does not run afoul of the Waste Management Act, it nevertheless exceeds the City's police powers and thus infringes constitutional rights belonging to plaintiffs and those who contract for plaintiffs' services. Plaintiffs also contend that, as to them, the City should be deemed estopped from its enforcement of the Ordinance.

Because it proves largely dispositive of these arguments, the preemption issue will be addressed first.

I

The City has constitutional authorization to "make and enforce within its limits all local, police, sanitary, or other ordinances and regulations not in conflict with general laws." (*Cal. Const., art. XI, § 7.*) Prior to passage of the Waste Management Act, a substantial body of law upheld the police power of a municipality or unit of local government to legislate on the issue of refuse. [5] Equally well established was the concomitant right to grant an exclusive franchise or permit for refuse collection. (E.g., *Reduction Company v. Sanitary Works (1905) 199 U.S. 306, 316-317 [50 L.Ed. 204, 208-209, 26 S.Ct. 100]*; *In re Zhizhuzza (1905) 147 Cal. 328, 335 [81 P. 955]*; *Matula v. Superior Court (1956) 146 Cal.App.2d 93, 98-99 [303 P.2d 871]*; *Ponti v. Burastero (1952) 112 Cal.App.2d 846, 851-853 [247 P.2d 597]*; *Davis v. City of Santa Ana (1952) 108 Cal.App.2d 669, 676-677 [239 P.2d 656]*; *In re Sozzi (1942) 54 Cal.App.2d 304, 306 [129 P.2d 40]*; 7 McQuillin, Law of Municipal Corporations (3d ed. 1989) § 24.242, 24.245, 24.249-24.251.)

5 For the moment, we use "refuse" as an inclusive generic having no different meaning from other, equally familiar terms (e.g., trash, garbage, rubbish, etc.).

Preemption can be either express or implied. The Waste Management Act does not include anything like the plain language needed for express preemption. [6] Preemption by implication exists when the scope or the goal of state legislation necessitates the abrogation of local regulation. This is what plaintiffs obliquely contend has been done to the Ordinance by the Act. The governing principles are familiar and fixed:

6 Such as "The Legislature . . . finds that divergent and competing local tax measures imposed on financial corporations impair the uniform statewide regulation of banks and financial corporations. For this reason . . . the Legislature declares that the state, by this amendment, has pre-

empted such local taxation" (Stats. 1979, ch. 1150, § 20, p. 4220) and "It is the intent of the Legislature that this article preempt all local regulations . . . concerning the transportation of hazardous waste . . .. No state agency, city, city and county, county, or other political subdivision of this state, including, but not limited to, a chartered city, city and county, or county, shall adopt or enforce any ordinance or regulation which is inconsistent with the rules and regulations adopted . . . pursuant to this article." (*Health & Saf. Code, § 25167.3.*)

For additional examples of state legislation held to oust local efforts, see *In re Murphy (1923) 190 Cal. 286, 288 [212 P. 30]*; *Ex parte Daniels (1920) 183 Cal. 636, 641 [192 P. 442, 21 A.L.R. 1172]*.

"In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.' . . . [P] Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People* ex rel. *Deukmejian v. County of Mendocino (1984) 36 Cal.3d 476, 485 [204 Cal.Rptr. 897, 683 P.2d 1150]* [citations omitted]; accord, *IT Corp.* v. *Solano County Bd. of Supervisors (1991) 1 Cal.4th 81, 90-91, 94 [2 Cal.Rptr.2d 513, 820 P.2d 1023]* [text & fn. 10].)

The purposes of the Waste Management Act are "to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs" (§ 40052). Diminishing landfill space was a particular concern. (See *§ 40000, 41780, 42861, 42870-42871, 46001.*)

The Legislature intended to establish a "comprehensive program for solid waste management" (§ 40002) and the purview of the Waste Management Act is indeed broad, extending to what is done with "metallic discards" (§ 42160-42165), a variety of paper products (§ 42200-42222, 42550-42563, 42750-42791), composted materials (§ 42230-42247), plastics (§ 42300-42380), retreaded tires (§ 42400-42416), lead-acid and household batteries (§ 42440-42450), household hazardous waste (§ 47000-47550), and oil (§ 48600-48691).

The Act reconstituted a state Integrated Waste Management Board (§ 40400-40510) with the power to adopt "minimum standards" for solid waste handling and disposal (§ 43020; see § 40502). This board has many responsibilities, among which are approving the integrated waste management plans that all cities and counties must prepare (§ 41750, 41800), regulating closed and active landfills (§ 43500-43606, 46000-46507), and administering a fund taking in $20 million annually (§ 47900-48008; see § 46801). The board is also vested with the power to enforce the Act using a number of corrective actions (e.g., cease-and-desist orders, cleanup orders, civil penalties) (§ 43300, 45000-45201).

But if the scope of the Waste Management Act is broad, it was not achieved by elbowing local government off the stage. Quite the contrary, the Legislature expressly declared that ". . . the responsibility for solid waste management is a shared responsibility between the state and local governments" (§ 40001, subd. (a)), and that local governmental responsibilities "are integral to the successful implementation" of the Act (§ 40703, subd. (a)). There are numerous provisions directing the state board to consult and coordinate with local governmental agencies (§ 40703, 40914, 43301, 43307) and provide them with myriad types of assistance and information (§ 40001, subd. (b), 40910, 41791.2, 42500, 42501, 42511, 42540, 42600, subds. (e)-(f), 42650, 43217, 47003, 47103). It is the cities and counties, each of which must designate a "local enforcement agency," that have the primary responsibility for policing the Act, with the state board providing oversight (§ 43200-43309, 44001-44018, 44100-44106, 44300-44817, 45000-45407).

In order to sustain plaintiffs' preemption claim, we would have to conclude that with passage of the Waste Management Act the state's entry into the field of refuse collection and disposal is so overshadowing that it obliterates all vestiges of local power as to a subject where municipalities have traditionally enjoyed a broad measure of autonomy. The difficulties to such a conclusion are simply too great.

It should be apparent from the preceding statutory survey that the Waste Management Act looks to a part-

nership between the state and local governments, with the latter retaining a substantial measure of regulatory independence and authority. When the Legislature wanted to forbid local initiatives, it knew and used language appropriate to that goal in the Act. [7] The very narrow express quashing of local power in the Act undermines plaintiffs' claim of implied preemption. (See *IT Corp.* v. *Solano County Bd. of Supervisors, supra, 1 Cal.4th 81 at pp. 94-95.*)

> 7 The conspicuously unique flat taboo in the Waste Management Act is section 43208, which provides that ". . . no local governing body may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit . . . so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes" by a specified type of facility.

In addition, much in the Waste Management Act indicates that the Legislature did not intend a wholesale preclusion of political subdivisions' regulatory power. There are many provisions attesting to the Legislature's desire to have state and local authorities work together in a cooperative effort. The Act leaves unimpaired local authority to "impose and enforce reasonable land use conditions or restrictions on solid waste management facilities" (§ 40053; see § 41851, 42023, 43208). It also includes an express grant of authority for local government to legislate increased penalties for unauthorized removal of specified materials (§ 41954). Moreover, the provision directing the state board to promulgate "minimum standards for solid waste handling . . . and disposal" (§ 43020) clearly suggests the possibility of local governments adopting additional standards. This also weighs against implied preemption. (See *Candid Enterprises, Inc.* v. *Grossmont Union High School Dist. (1985) 39 Cal.3d 878, 886-888 [218 Cal.Rptr. 303, 705 P.2d 876].*)

Courts "will be reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another." (*Fisher v. City of Berkeley (1984) 37 Cal.3d 644, 707 [209 Cal.Rptr. 682, 693 P.2d 261].*) The Waste Management Act was in large measure a consolidation and recodification of existing law. (See Stats. 1989, ch. 1095, § 32, pp. 3899-3900; Legis. Counsel's Dig., Assem. Bill No. 939, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 409.) Prior to its passage courts accepted that, state legislation notwithstanding, the dominant role in refuse handling belonged to localities. (E.g., *City of Fresno v. Pinedale County Water Dist. (1986) 184 Cal.App.3d 840, 847 [229 Cal.Rptr. 275]*; *Matula v. Superior Court, supra, 146 Cal.App.2d at pp. 99-101.*) The antecedent statutes were viewed as acknowledging that allowance had to be made for "the unique circumstances of individual communities" and that the Legislature had therefore "empowered local governments to adopt refuse regulations which would best serve the local public interest." (*City of Camarillo v. Spadys Disposal Service (1983) 144 Cal.App.3d 1027, 1031 [193 Cal.Rptr. 22].*)

It is self-evident that the way in which Los Angeles deals with refuse may be entirely different from the approach of a small rural town. Provisions of the Waste Management Act demonstrate that the Legislature took account of this reality. It knew that factors such as geography and population density might require a different approach (see § 40973, 41782, 42500, 46203). Local conditions transcending city or county boundaries might require collection and disposal to be handled on a regional basis, and the Legislature encouraged such efforts (see § 40001, subd. (b), 40002, 41791.2). It therefore made provision in the Act for the creation and operation of regional agencies (§ 40970-40975), garbage disposal districts (§ 49000-49050), and garbage and refuse disposal districts (§ 49100-49195).

Touching all of these points, and close to being dispositive by itself, is section 40059 (Government Code former section 66757). Given its importance, it deserves quotation in full:

"(a) Notwithstanding any other provision of law, each county, city, [8] district or other local governmental agency may determine all of the following:

> 8 As the state's sole city and county, San Francisco qualifies as both a city and a county for purposes of the Waste Management Act (§ 40115).

"(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

"(2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

"(b) Nothing in this division modifies or abrogates in any manner either of the following:

"(1) Any franchise previously granted or extended by any county or other local governmental agency.

"(2) Any contract, license, or any permit to collect solid waste previously granted or extended by a city, county, or a city and county."

A number of conclusions--all of which are adverse to plaintiffs--can be extracted from this statute. First, the Legislature recognized that not every aspect of the solid waste problem could be handled in the Waste Management Act; the infinite details of actual day-to-day operations could not be resolved in Sacramento. Second, the Legislature further recognized that those details should more appropriately be specified by local authorities with greater knowledge of local conditions. Third, the Legislature made express provision for this element of local regulation. Fourth, the Legislature left local authorities the option of deciding that local circumstances attending solid waste handling would be best served by an exclusive service. [9] The gist of these conclusions is the Legislature's considered opinion that there was no need for statewide uniformity which outweighed the advantages of local governments retaining the power to handle problems peculiar to their communities.

9 The trial court had before it evidence that most local governments in California have opted for exclusive garbage collection arrangements. The fact that 78 municipalities appear as amici in support of the City tends to show that the practice is indeed widespread.

We do not believe that the Waste Management Act represents a fundamental change in the Legislature's traditional outlook towards the subject of waste handling. Section 40059--as well as the entire scope of the Act--establishes the Legislature's awareness that " 'substantial[] geographic, economic, ecological or other distinctions are persuasive of the need for local control' " and thus precludes the subject from being " 'comprehensively dealt with at the state level.' " (*Galvan v. Superior Court (1969) 70 Cal.2d 851, 863-864 [76 Cal.Rptr. 642, 452 P.2d 930]*.) Beyond question, the Act not only anticipates and tolerates, but as a practical matter demands, supplementary local regulation to spell out the details of solid waste collection and disposal. This is "convincing evidence that the state legislative scheme was not intended to occupy the field." (*IT Corp.* v. *Solano County Bd. of Supervisors, supra, 1 Cal.4th at p. 94, fn. 10.*) These factors demonstrate that there is no exclusive or even paramount state concern which requires disabling traditional local power in this area. There being no argument made concerning the impact upon transient citizens, not one of the three tests for implied preemption is satisfied. We find no legislative intent to displace deeply entrenched local authority. (See *City of Dublin v. County of Alameda (1993) 14 Cal.App.4th 264, 275-279 [17 Cal.Rptr.2d 845]*.) Moreover, we conclude that the City's Ordinance harmonizes with the Waste Management Act and furthers its purpose.

II

With the preemption issue decided, plaintiffs' remaining contentions are very easily resolved.

Plaintiffs' arguments construing various provisions of the Waste Management Act look to finding statutory authorization for their conduct. The jumping-off point for all of these creative arguments is the premise that the Ordinance, having been preempted, is no longer a factor. But because the Ordinance is not preempted, it is the governing authority; it is the Act which has become irrelevant.

As for plaintiffs' claim that the materials they wish to collect do not pose a genuine threat to public health or safety and thus are beyond the reach of municipal police power, the City's contrary determination is to be taken as "well-nigh conclusive." (*Berman v. Parker (1954) 348 U.S. 26, 32 [99 L.Ed. 27, 37, 75 S.Ct. 98]*.) The factors explored in the following paragraphs support the plausibility of that determination, which must therefore be upheld. (E.g., *Miller v. Board of Public Works (1925) 195 Cal. 477, 490 [234 P. 381, 38 A.L.R. 1479]*; *Ex parte Lacey (1895) 108 Cal. 326, 328-329 [41 P. 411]*.) Once that is done, the subject matter nestles comfortably within the City's valid police powers. (E.g., *City of Fresno v. Pinedale County Water Dist., supra, 184 Cal.App.3d at p. 847.*) Those powers, which have been described as "whatever will promote the peace, comfort, convenience, and prosperity" of the City's citizens (*Escanaba Co.* v. *Chicago (1882) 107 U.S. 678, 683 [27 L.Ed. 442, 445, 2 S.Ct. 185]*) should "not be lightly limited." (*Miller v. Board of Public Works, supra, at pp. 484-485.*) They are presumed exercised in good faith and a constitutional manner. (E.g., *Ex parte Hadacheck (1913) 165 Cal. 416, 421-422 [132 P. 584]*; *Barenfeld v. City of Los Angeles (1984) 162 Cal.App.3d 1035, 1040 [209 Cal.Rptr. 8]*.) Plaintiffs have not established otherwise.

An ordinance enacted pursuant to a municipality's police powers may be nullified if palpably unreasonable, arbitrary, or capricious. (E.g., *Barenfeld v. City of Los Angeles, supra, 162 Cal.App.3d at p. 1040*; *Brix v. City of San Rafael (1979) 92 Cal.App.3d 47, 50-51 [154 Cal.Rptr. 647]*.) As previously mentioned, the Ordinance requires no permit for collection and disposal of "waste paper or other refuse having a commercial value." The city attorney initially interpreted "commercial value"

from the standpoint of the collector of the refuse, but since 1964 has advised that "commercial value" should be viewed from the vantage point of the producer of the refuse. The City demonstrated that the different perspectives are intrinsically linked and are in fact somewhat circular. In brief, it has shown that the economic advantages accruing from exclusivity result in lower charges (for residential as opposed to commercial users) and increased efficiency in a number of programs (e.g., a curbside recycling program) that benefit refuse producers. [10] Although reasonable minds could differ as to the wisdom of the policy behind it, the City's revised interpretation is now of long duration and must be respected as not unreasonable, arbitrary, or capricious. (E.g., *Miller v. Board of Public Works, supra, 195 Cal. 477 at p. 490*; *DeYoung v. City of San Diego (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722]*.)

10 It would not be improper for the City to think that new entrants into the waste field would be inimical to the public good by hindering efficient and effective enforcement of the Ordinance. (See *City of Fresno v. Pinedale County Water Dist., supra, 184 Cal.App.3d 840, 847*; *Sievert v. City of National City (1976) 60 Cal.App.3d 234, 237 [131 Cal.Rptr. 358]*.)

Plaintiffs submit that the ordinance violates their "explicit constitutional property rights . . . to work and earn a living from any legitimate business pursuit." Although plaintiffs are probably not entitled to argue that the manner in which the City enforces the Ordinance infringes upon the rights of plaintiffs' once and future customers to acquire, possess, protect, and dispose of property (see *In re Cregler (1961) 56 Cal.2d 308, 313 [14 Cal.Rptr. 289, 363 P.2d 305]*), we will reach the merits because they are so clear-cut. It having already been shown that the Ordinance may be validly enforced as within the City's police powers, long-established authority holds that intrusions upon property incidental to the exercise of those powers, are accepted as *damnum absque injuria*. (E.g., *Reduction Company v. Sanitary Works*, *supra*, 199 U.S. 306, 324-325 [50 L.Ed.2d 204, 212-213]; *In re Zhizhuzza, supra, 147 Cal. at p. 335*; *In re Pedrosian (1932) 124 Cal.App. 692, 700-701 [13 P.2d 389]*.) As stated by our Supreme Court, ". . . the very essence of the police power . . . is that the deprivation of individual rights and property cannot prevent its operation" (*Beverly Oil Co. v. City of Los Angeles (1953) 40 Cal.2d 552, 557 [254 P.2d 865]*).

As for plaintiffs' estoppel argument, we will not address the merits of this factual issue which is unveiled here for the first time. (See *California Teachers' Assn. v. Governing Board (1983) 145 Cal.App.3d 735, 746 [193 Cal.Rptr. 650]*; *Coast Electric Co. v. Industrial Indemnity Co. (1983) 144 Cal.App.3d 879, 886, fn. 3 [193 Cal.Rptr. 74]*.)

The judgment is affirmed.

Anderson, P. J., and Reardon, J., concurred.

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HOWARD JARVIS TAXPAYERS ASSOCIATION et al., Plaintiffs and Appellants, v. CITY OF SALINAS et al., Defendants and Respondents.

No. H022665.

COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT

98 Cal. App. 4th 1351; *121 Cal. Rptr. 2d 228*; *2002 Cal. App. LEXIS 4198*; *2002 Cal. Daily Op. Service 4853*; *2002 Daily Journal DAR 6161*

June 3, 2002, Decided

SUBSEQUENT HISTORY: Rehearing Denied July 2, 2002.

Review Denied August 28, 2002, Reported at: *2002 Cal. LEXIS 5938.*

PRIOR-HISTORY: Superior Court of Monterey County. Super. Ct. No. M45873. Richard M. Silver, Judge.

COUNSEL: Timothy J. Morgan; Jonathan M. Coupal and Timothy A. Bittle for Plaintiffs and Appellants.

James C. Sanchez, City Attorney; Richards, Watson & Gershon, Mitchell E. Abbott and Patrick K. Bobko for Defendants and Respondents.

JUDGES: Opinion by Elia, J., with Premo, Acting P. J., and Mihara, J., concurring.

OPINION BY: Elia

OPINION

ELIA, J.

In this "reverse validation" action, plaintiff taxpayers challenged a storm drainage fee imposed by the City of Salinas. Plaintiffs contended that the fee was a "property-related" fee requiring voter approval, pursuant to *California Constitution, article XIII D, section 6, subdivision (c)*, which was added by the passage of Proposition 218. The trial court ruled that the fee did not violate this provision because (1) it was not a property-related fee and (2) it met the exemption for fees for sewer and water services. We disagree with the trial court's conclusion and therefore reverse the order.

BACKGROUND

In an effort to comply with the 1987 amendments to the federal Clean Water Act (*33 U.S.C. § 1251 et seq.*; *40 C.F.R. § 122.26(a) et seq. (2001)*), the Salinas City Council took measures to reduce or eliminate pollutants contained in storm water, which was channeled in a drainage system separate from the sanitary and industrial waste systems. On June 1, 1999, the city council enacted two ordinances to fund and maintain the compliance program. These measures, ordinance Nos. 2350 and 2351, added former chapters 29 and 29A, respectively, to the Salinas City Code. Former section 29A-3 allowed the city council to adopt a resolution imposing a "Storm Water Management Utility fee" to finance the improvement of storm and surface water management facilities. The fee would be imposed on "users of the storm water drainage system."

On July 20, 1999, the city council adopted resolution No. 17019, which established rates for the storm and surface water management system. The resolution specifically states: "There is hereby imposed on each and every developed parcel of land within the City, and the owners and occupiers thereof, jointly and severally, a storm drainage fee." The fee was to be paid annually to the City "by the owner or occupier of each and every developed parcel in the City who shall be presumed to be the primary utility rate payer . . . ." The amount of the fee was to be calculated according to the degree to which the property contributed runoff to the City's drainage facilities. That contribution, in turn, would be measured by the amount of "impervious area" [1] on that parcel.

1 "Impervious Area," according to resolution No. 17019, is "any part of any developed parcel

> of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes any hard surface area which either prevents or retards the entry of water into the soil mantle as it entered under natural conditions pre-existent to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions pre-existent to development."

Undeveloped parcels--those that had not been altered from their natural state--were not subject to the storm drainage fee. In addition, developed parcels that maintained their own storm water management facilities or only partially contributed storm or surface water to the City's storm drainage facilities were required to pay in proportion to the amount they did contribute runoff or used the City's treatment services.

On September 15, 1999, plaintiffs filed a complaint under *Code of Civil Procedure section 863* to determine the validity of the fee. [2] Plaintiffs alleged that this was a property-related fee that violated *article XIII D, section 6, subdivision (c), of the California Constitution* because it had not been approved by a majority vote of the affected property owners or a two-thirds vote of the residents in the affected area. The trial court, however, found this provision to be inapplicable on two grounds: (1) the fee was not "property related" and (2) it was exempt from the voter-approval requirement because it was "related to" sewer and water services.

> 2 Plaintiffs are the Howard Jarvis Taxpayers Association, the Monterey Peninsula Taxpayers Association, and two resident property owners.

DISCUSSION

Article XIII D was added to the California Constitution in the November 1996 election with the passage of Proposition 218, the Right to Vote on Taxes Act. Section 6 of article XIII D [3] requires notice of a proposed property-related fee or charge and a public hearing. If a majority of the affected owners submit written protests, the fee may not be imposed. (§ 6, subd. (a)(2).) The provision at issue is section 6, subdivision (c) (hereafter section 6(c)), which states, in relevant part: "Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area."

> 3 All further unspecified section references are to article XIII D of the California Constitution.

Section 2 defines a "fee" under this article as a levy imposed "upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service." (§ 2, subd. (e).) A "property-related service" is "a public service having a direct relationship to property ownership." (§ 2, subd. (h).) The City maintains that the storm drainage fee is not a property-related fee, but a "user fee" which the property owner can avoid simply by maintaining a storm water management facility on the property. Because it is possible to own property without being subject to the fee, the City argues this is not a fee imposed "as an incident of property ownership" or "for a property-related service" within the meaning of section 2.

We cannot agree with the City's position. Resolution No. 17019 plainly established a property-related fee for a property-related service, the management of storm water runoff from the "impervious" areas of each parcel in the City. The resolution expressly stated that "each owner and occupier of a developed lot or parcel of real property within the City, is served by the City's storm drainage facilities" and burdens the system to a greater extent than if the property were undeveloped. Those owners and occupiers of developed property "should therefore pay for the improvement, operation and maintenance of such facilities." Accordingly, the resolution makes the fee applicable to "*each and every developed parcel* of land within the City." (Italics added.) This is not a charge directly based on or measured by use, comparable to the metered use of water or the operation of a business, as the City suggests. (See *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles (2001) 24 Cal. 4th 830, 838 [102 Cal. Rptr. 2d 719, 14 P.3d 930]* [art. XIII D inapplicable to inspection fee imposed on private landlords; *Howard Jarvis Taxpayers Assn. v. City of Los Angeles (2000) 85 Cal. App. 4th 79 [101 Cal. Rptr. 2d 905]* [water usage rates are not within the scope of art. XIII D].)

The "Proportional Reduction" clause on which the City relies does not alter the nature of the fee as property related. [4] A property owner's operation of a private storm drain system reduces the amount owed to the City to the extent that runoff into the City's system is reduced. The fee nonetheless is a fee for a public service having a direct relationship to the ownership of developed property. The City's characterization of the proportional reduction as a simple "opt-out" arrangement is misleading, as it suggests the property owner can avoid the fee altogether by declining the service. Furthermore, the reduction is not proportional to the amount of services requested or used by the occupant, but on the physical properties of the parcel. Thus, a parcel with a large "impervious area"

(driveway, patio, roof) would be charged more than one consisting of mostly rain-absorbing soil. Single-family residences are assumed to contain, on average, a certain amount of impervious area and are charged $ 18.66 based on that assumption.

4 According to the public works director, proportional reductions were not anticipated to apply to a large number of people.

Proposition 218 specifically stated that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, § 5; reprinted at Historical Notes, 2A West's Ann. Cal.Const. (2002 supp.) foll. art. XIII C, p. 38 [hereafter Historical Notes].) We are obligated to construe constitutional amendments in accordance with the natural and ordinary meaning of the language used by the framers--in this case, the voters of California--in a manner that effectuates their purpose in adopting the law. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal. 3d 208, 244-245 [149 Cal. Rptr. 239, 583 P.2d 1281]*; *Arden Carmichael, Inc. v. County of Sacramento (2000) 93 Cal. App. 4th 507, 514-515 [113 Cal. Rptr. 2d 248]*; *Board of Supervisors v. Lonergan (1980) 27 Cal. 3d 855, 863 [167 Cal. Rptr. 820, 616 P.2d 802].*) To interpret the storm drainage fee as a use-based charge would contravene one of the stated objectives of Proposition 218 by "frustrat[ing] the purposes of voter approval for tax increases." (Prop. 218, § 2.) We must conclude, therefore, that the storm drainage fee "burden[s] landowners *as landowners*," and is therefore subject to the voter-approval requirements of article XIII D unless an exception applies. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, supra, 24 Cal. 4th at p. 842.*)

EXCEPTION FOR "SEWER" OR "WATER" SERVICE

As an alternative ground for its decision, the trial court found that the storm drainage fee was "clearly a fee related to 'sewer' and 'water' services." The exception in section 6(c) applies to fees "for sewer, water, and refuse collection services." Thus, the question we must next address is whether the storm drainage fee was a charge *for* sewer service or water service.

The parties diverge in their views as to whether the reach of *California Constitution, article XIII D, section 6(c)* extends to a storm drainage system as well as a sanitary or industrial waste sewer system. The City urges that we rely on the "commonly accepted" meaning of "sewer," noting the broad dictionary definition of this word. [5] The City also points to *Public Utilities Code section 230.5* and the Salinas City Code, which describe storm drains as a type of sewer. [6]

5 Webster's Third New International Dictionary, for example, defines "sewer" as "1: a ditch or surface drain 2: an artificial usu. subterranean conduit to carry off water and waste matter (as surface water from rainfall, household waste from sinks or baths, or waste water from industrial works)." (Webster's 3d New Internat. Dict. (1993) p. 2081.) The American Heritage Dictionary also denotes the function of "carrying off sewage or rainwater." (American Heritage College Dict. (3d ed. 1997) p. 1248.) On the other hand, the Random House Dictionary of the English Language (2d ed. 1987) page 1754, does not mention storm or rainwater in defining "sewer" as "an artificial conduit, usually underground, for carrying off waste water and refuse, as in a town or city."

6 *Public Utilities Code section 230.5* defines "Sewer system" to encompass all property connected with "sewage collection, treatment, or disposition for sanitary or drainage purposes, including . . . all drains, conduits, and outlets for surface or storm waters, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters." Salinas City Code section 36-2, subdivision (31) defines "storm drain" as "a sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial wastes other than runoff water."

Plaintiffs "do not disagree that storm water is carried off in storm sewers," but they argue that we must look beyond mere definitions of "sewer" to examine the legal meaning in context. Plaintiffs note that the storm water management system here is distinct from the sanitary sewer system and the industrial waste management system. Plaintiffs' position echoes that of the Attorney General, who observed that several California statutes differentiate between management of storm drainage and sewerage systems. [7] *(81 Ops.Cal.Atty.Gen. 104, 106 (1998).)* Relying extensively on the Attorney General's opinion, plaintiffs urge application of a different rule of construction than the plain-meaning rule; they invoke the maxim that "if a statute on a particular subject omits a particular provision, inclusion of that provision in another related statute indicates an intent [that] the provision is not applicable to the statute from which it was omitted." (*In re Marquis D. (1995) 38 Cal. App. 4th 1813, 1827 [46 Cal. Rptr. 2d 198].*) Thus, while section 5, which addresses assessment procedures, refers to exceptions specifically for "*sewers*, water, flood control, [and] *drainage sys-*

tems" (italics added), the exceptions listed in section 6(c) pertain only to "sewer, water, and refuse collection services." Consequently, in plaintiffs' view, the voters must have intended to exclude drainage systems from the list of exceptions to the voter-approval requirement.

> 7 For example, *Government Code section 63010* specifies "storm sewers" in delimiting the scope of " '[d]rainage,' " while separately identifying the facilities and equipment used for " '[s]ewage collection and treatment.' " (*Gov. Code, § 63010, subd. (q)(3), (10).*) *Government Code section 53750*, part of the Proposition 218 Omnibus Implementation Act, explains that for purposes of articles XIII C and article XIII D " '[d]rainage system' " means "any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage." *Health and Safety Code section 5471* sets forth government power to collect fees for "services and facilities . . . in connection with its water, sanitation, storm drainage, or sewerage system."

The statutory construction principles invoked by both parties do not assist us. The maxim proffered by plaintiffs, "although useful at times, is no more than a rule of reasonable inference" and cannot control over the lawmakers' intent. (*California Fed. Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal. 4th 342, 350 [45 Cal. Rptr. 2d 279, 902 P.2d 297]*; *Murillo v. Fleetwood Enterprises, Inc. (1998) 17 Cal. 4th 985, 991 [73 Cal. Rptr. 2d 682, 953 P.2d 858]*.) On the other hand, invoking the plain-meaning rule only begs the question of whether the term "sewer services" was intended to encompass the more specific sewerage with which most voters would be expected to be familiar, or all types of systems that use sewers, including storm drainage and industrial waste. The popular, nontechnical sense of sewer service, particularly when placed next to "water" and "refuse collection" services, suggests the service familiar to most households and businesses, the sanitary sewerage system.

We conclude that the term "sewer services" is ambiguous in the context of both section 6(c) and Proposition 218 as a whole. We must keep in mind, however, the voters' intent that the constitutional provision be construed liberally to curb the rise in "excessive" taxes, assessments, and fees exacted by local governments without taxpayer consent. (Prop. 218, §§ 2, 5; reprinted at Historical Notes, *supra*, p. 38.) Accordingly, we are compelled to resort to the principle that exceptions to a general rule of an enactment must be strictly construed, thereby giving "sewer services" its narrower, more common meaning applicable to sanitary sewerage. [8] (Cf. *Estate of Banerjee (1978) 21 Cal. 3d 527, 540 [147 Cal. Rptr. 157, 580 P.2d 657]*; *City of Lafayette v. East Bay Mun. Utility Dist. (1993) 16 Cal. App. 4th 1005 [20 Cal. Rptr. 2d 658]*.)

> 8 Sanitary sewerage carries "putrescible waste" from residences and businesses and discharges it into the sanitary sewer line for treatment by the Monterey Regional Water Pollution Control Agency. (Salinas City Code, § 36-2, subd. (26).)

The City itself treats storm drainage differently from its other sewer systems. The stated purpose of ordinance No. 2350 was to comply with federal law by reducing the amount of pollutants discharged into the storm water, and by preventing the discharge of "non-storm water" into the storm drainage system, which channels storm water into state waterways. According to John Fair, the public works director, the City's storm drainage fee was to be used not just to provide drainage service to property owners, but to monitor and control pollutants that might enter the storm water before it is discharged into natural bodies of water. [9] The Salinas City Code contains requirements addressed specifically to the management of storm water runoff. [10] (See, e.g., Salinas City Code, §§ 31-802.2, 29-15.)

> 9 Resolution No. 17019 defined "Storm Drainage Facilities" as "the storm and surface water sewer drainage systems comprised [*sic*] of storm water control facilities and any other natural features [that] store, control, treat and/or convey surface and storm water. The Storm Drainage Facilities shall include all natural and man-made elements used to convey storm water from the first point of impact with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the City. . . ." The "storm drainage system" was defined to include pipes, culverts, streets and gutters, "storm water sewers," ditches, streams, and ponds. (See also Salinas City Code, former § 29-3, subd. (l) [defining "storm drainage system"].)
>
> 10 Storm water under ordinance No. 2350 includes "stormwater runoff, snowmelt runoff, and surface runoff and drainage." (Salinas City Code, former § 29-3, subd. (dd).)

For similar reasons we cannot subscribe to the City's suggestion that the storm drainage fee is "for . . . water services." *Government Code section 53750*, enacted to explain some of the terms used in articles XIII C and XIII D, defines " '[w]ater' " as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." (*Gov. Code, § 53750, subd. (m).*) The average voter would en-

vision "water service" as the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants, carries it away, and discharges it into the nearby creeks, river, and ocean.

We conclude that article XIII D required the City to subject the proposed storm drainage fee to a vote by the property owners or the voting residents of the affected area. The trial court therefore erred in ruling that ordinance Nos. 2350 and 2351 and Resolution No. 17019 were valid exercises of authority by the city council.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to plaintiffs.

Premo, Acting P. J., and Mihara, J., concurred.

A petition for a rehearing was denied July 2, 2002, and respondents' petition for review by the Supreme Court was denied August 28, 2002.

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1 of 1 DOCUMENT

AMERICAN FINANCIAL SERVICES ASSOCIATION, Plaintiff and Appellant, v. CITY OF OAKLAND et al., Defendants and Appellants.

S119869

SUPREME COURT OF CALIFORNIA

34 Cal. 4th 1239; 104 P.3d 813; 23 Cal. Rptr. 3d 453; 2005 Cal. LEXIS 1018; 2005 Cal. Daily Op. Service 845; 2005 Daily Journal DAR 1236

January 31, 2005, Filed

PRIOR-HISTORY: Superior Court of Alameda County, No. 2001-027338, James A. Richman, Judge. Court of Appeal, First Dist., Div. One, Nos. A100258 & A097784.
American Financial Services Assn. v. City of Oakland, 111 Cal. App. 4th 1435, 4 Cal. Rptr. 3d 745, 2003 Cal. App. LEXIS 1443 (Cal. App. 1st Dist., 2003)

COUNSEL: Severson & Werson, Mark Joseph Kenney, Jan T. Chilton and Donald J. Querio for Plaintiff and Appellant.

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Horvitz & Levy, Lisa Perrochet and Bradley S. Pauley for National Home Equity Mortgage Association as Amicus Curiae on behalf of Plaintiff and Appellant.

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Kevin D. Stein for California Reinvestment Committee as Amicus Curiae on behalf of Defendants and Appellants.

Maeve Elise Brown for the National Housing Project, AARP, Association of Community Organizations for Reform Now (ACORN), Congress of California Seniors, Consumer Credit Counseling Service of the East Bay, Lao Family Community Development, Inc., and Spanish Speaking Unity Council of Alameda County, Inc., as Amici Curiae on behalf of Defendants and Appellants.

Paul S. Cohen for Centro Legal de la Raza and La Raza Centro Legal as Amicus Curiae on behalf of Defendants and Appellants.

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Patricia G. Price for Legal Assistance for Seniors as Amicus Curiae on behalf of Defendants and Appellants.

John T. Fellows III, City Attorney (Torrance) for The League of California Cities as Amicus Curiae on behalf of Defendants and Appellants.

JUDGES: Brown, J., with Baxter, Werdegar and Chin, JJ., concurring. Dissenting opinin by George, C. J., with Kennard and Moreno, JJ., concurring.

OPINION BY: BROWN

OPINION

BROWN, J.--"Predatory lending" is a term generally used to characterize a range of abusive and aggressive lending practices, including deception or fraud, charging excessive fees and interest rates, making loans without regard to a borrower's ability to repay, or refinancing loans repeatedly over a short period of time to

incur additional fees without any economic gain to the borrower. Predatory lending is most likely to occur in the rapidly growing "subprime" mortgage market, which is a market generally providing access to borrowers with impaired credit, limited income, or high debt relative to their income. Mortgages in this market tend to be in smaller amounts, and with faster prepayments and significantly higher interest rates and fees, than "prime" mortgages.

In 2001, California enacted legislation to combat predatory lending practices that typically occur in the subprime home mortgage market. (*Fin. Code,* [1] §§ 4970-4979.8 (Division 1.6).) [2] Eight days before Division 1.6 was signed into law by the Governor, the City of Oakland adopted an ordinance regulating predatory lending practices in the Oakland home mortgage market. [3]

1 All further undesignated statutory references are to this code.

2 Assembly Bill No. 489 (2001-2002 Reg. Sess.) (Assembly Bill No. 489) added Division 1.6. (Stats. 2001, ch. 732, §§ 1, 3-5.) A trailer bill, Assembly Bill No. 344 (2001-2002 Reg. Sess.) (Assembly Bill No. 344), made certain changes to Division 1.6. (Stats. 2001, ch. 733, §§ 1-10.) Both bills were signed into law on October 10, 2001.

3 Oakland's "Anti-Predatory Lending Ordinance" (Oak. Ord. No. 12361 CMS) is codified at Oakland Municipal Code chapter 5.33 (Ordinance). The City of Oakland also amended its linked banking services ordinance to require lenders seeking to do business with the City or participate in certain projects or programs that involved the City, to certify that neither they nor their affiliates engage in predatory lending practices, and adopted a resolution seeking a similar certification from financial institutions desiring to participate in any development projects financed by the Redevelopment Agency. There is no dispute that the validity of the other measures depends on the validity of the Ordinance, and we do not discuss them further.

We consider whether the Ordinance is preempted by Division 1.6, and if not, whether the Ordinance is nevertheless preempted by *Civil Code section 1916.12*. We conclude that the Ordinance is preempted by Division 1.6, and therefore reverse the judgment of the Court of Appeal.

I. Factual and Procedural Background[4]

4 Because there was no petition for rehearing in the Court of Appeal, we take our statement of facts largely from that court's opinion. (*Cal. Rules of Court, rule 28(c)(2)*; *People v. Hernandez (2004) 33 Cal.4th 1040, 1045 [16 Cal. Rptr. 3d 880, 94 P.3d 1080]*.)

On October 15, 2001, American Financial Services Association (AFSA) filed this action against the City of Oakland and the Redevelopment Agency of the City of Oakland (City) seeking a declaration that the Ordinance was preempted by state law, and an injunction against its enforcement. On October 25, 2001, by stipulated order, the Ordinance was stayed pending, as relevant here, final resolution of this action. In December 2001, the trial court denied AFSA's motion for a preliminary injunction against enforcement of the Ordinance, and AFSA appealed from that order.

The parties then filed cross-motions for summary judgment. On June 21, 2002, the trial court entered an order finding that the Ordinance was preempted to the extent that it exempted federally chartered lending institutions from its restrictions. The court held that the sentence exempting such institutions should be severed from the Ordinance. Subject to elimination of the federal exemption, the court denied AFSA's summary judgment motion and granted the City's. Judgment was entered severing the sentence exempting federal lenders, dismissing AFSA's complaint, and deeming the Ordinance valid as modified.

AFSA appealed from the judgment, and the City cross-appealed. The Court of Appeal ordered the appeals and cross-appeal consolidated. The court held the Ordinance was not preempted by either Division 1.6 or *Civil Code section 1916.12*. It reversed the trial court's judgment insofar as it ordered severance of the portion of the Ordinance exempting federally chartered lenders from its coverage. In all other respects, the judgment was affirmed. AFSA's appeal from the denial of its motion for a preliminary injunction was dismissed as moot.

We granted AFSA's petition for review.

II. Discussion

A. *Background*

According to its legislative history, the purpose of Division 1.6 was to regulate and thereby curtail predatory lending practices that typically occur in the subprime mortgage market. [5] Division 1.6 applies to any "covered loan," which is a "consumer loan in which the original principal balance of the loan does not exceed" $ 250,000 "in the case of a mortgage or deed of trust," and either of two conditions are met. [6] (*§ 4970, subd. (b)(1)(A), (B)*.) A "consumer loan" is defined as "a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occu-

pied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit." (*§ 4970, subd. (d)*.) A consumer loan does not include a bridge loan, a reverse mortgage, an open line of credit as defined by federal regulation, or a "consumer credit transaction that is secured by rental property or second homes." (*§ 4970, subd. (d)*.)

5 Division 1.6 does not use the term "subprime," and the term has no standard industry definition. (U.S. Dept. of the Treasury & U.S. Dept. of Housing and Urban Development, Joint Rep., Curbing Predatory Home Mortgage Lending (June 2000) p. 27.) It generally, however, refers to loans in smaller amounts, with significantly higher interest rates and fees, and faster prepayments, than "prime loans." (*Id.*, p. 28.) "Predatory lending occurs primarily in the subprime mortgage lending market." (*Id.*, p. 2.) Both Division 1.6 and the Ordinance address predatory practices regarding such high-cost loans, and the legislative history of Division 1.6 is replete with references to "subprime" lending. Therefore, like the Court of Appeal, we will at times refer to both the Ordinance and Division 1.6 as regulating predatory practices in the "subprime" mortgage market.

6 "For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor" or the "total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount." (*§ 4970, subd. (b)(1)(A), (B)*.)

Division 1.6 contains numerous prohibitions and limitations with respect to covered loans. For example, a person who originates covered loans shall not (1) "make a covered loan that finances points and fees in excess of" the higher of $ 1,000 or 6 percent of the original principal balance, exclusive of points and fees (*§ 4979.6*); (2) "make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer ... will be able to make the scheduled payments to repay the obligation based" on specified factors (*§ 4973, subd. (f)(1)*); (3) "pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer," both the consumer and the contractor, or under certain circumstances to a third party escrow agent (*id., subd. (g)*); (4) "recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt" (*id., subd. (h)*); (5) "refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer" after considering various factors (*id., subd. (j)*); (6) "steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for" based on certain information (*id., subd. (l)(1)*); (7) "finance, directly or indirectly, into a consumer loan or finance to the same borrower within 30 days of a consumer loan any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement fees, provided that credit insurance premiums, debt cancellation, or suspension fees calculated and paid on a monthly basis shall not be considered financed by the person originating the loan" (*§ 4979.7*); (8) structure a loan transaction as an open-end credit plan for the purpose of evading Division 1.6 if the "loan would have been a covered loan if the loan had been structured as a closed end loan" (*§ 4973, subd. (m)(1)*); (9) divide any loan transaction into separate parts for the purpose of evading Division 1.6 (*§ 4973, subd. (m)(2)*); or (10) "act in any manner, whether specifically prohibited by this section or of a different character [*sic*], that constitutes fraud" (*id., subd. (n)*).

Moreover, a covered loan shall not (1) include a "prepayment fee or penalty after the first 36 months after the date of" loan consummation, but "may include a prepayment fee or penalty up to the first 36 months after the date of" loan consummation under certain conditions (*§ 4973, subd. (a)(1), (2)*); (2) "contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage" and appropriate disclosure made (*id., subd. (c)*); (3) "include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds" (*id., subd. (d)*); (4) "contain a provision that increases the interest rate as a result of a default" except under certain circumstances (*id., subd. (e)*); (5) generally "contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness" (*id., subd. (i)*); or (6) be made unless a seven-paragraph disclosure form set forth in *section 4973, subdivision (k)(1)*, which includes encouragement to the borrower to consider financial counseling, is provided to the consumer no later than three business days before signing of the loan documents. A "covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated

do not fully amortize the principal balance as of the maturity date of the loan." (*§ 4973, subd. (b)(1).*) "For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan." (*§ 4973, subd. (b)(2).*) In addition, a "person who provides brokerage services to a borrower in a covered loan transaction by soliciting lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer, and any violation of the person's fiduciary duties shall be a violation of" *section 4979.5.* (*§ 4979.5, subd. (a).*) "Except for a broker or a person who provides brokerage services," however, "no licensed person or subsequent assignee shall have administrative, civil, or criminal liability for a violation of" *section 4979.5.* (*§ 4979.5, subd. (b).*)

Similarly, the Ordinance regulates predatory lending practices in home loans in Oakland. (Oak. Mun. Code, §§ 5.33.010, 5.33.030.) A "home loan" does not include a reverse mortgage, and is defined as a "loan of money, including without limitation a line of credit or an open-end credit plan," if certain criteria apply. (*Id.*, § 5.33.030.) One criteria is that the "principal amount of the loan does not exceed the current conforming first mortgage loan size limit for a single-family dwelling as established by the Federal National Mortgage Association." (*Ibid.*) Since January 1, 2005, that amount has been $ 359,650. [7] In addition, the borrower must incur the loan primarily for personal, family, or household uses, and the loan must be secured in whole or in part by a deed of trust, mortgage, or similar security device on real property located within Oakland. (Oak. Mun. Code, § 5.33.030.) The real property must (or will) contain either one to four residential units or "individual residential units of condominiums or cooperatives," one of which is or will be the borrower's principal dwelling. (*Ibid.*)

7 (Http://www.fanniemae.com/aboutfm/loanlimits.jhtml?p=About+Fannie+Mae&s=Loan+Limits [as of Jan. 31, 2005].)

A "high-cost" home loan is a home loan that meets one of two specified thresholds. [8] (Oak. Mun. Code, § 5.33.030.) The Court of Appeal observed that the " 'high-cost home loan' interest rate and fee thresholds are both lower than the threshold levels for 'covered loans' set by [Division 1.6]. ..." "[I]t is undisputed that the high-cost loan provisions of the Ordinance would apply to all home loans falling under the 'covered loan' provisions of the state statute, and also reach some loans that do not come under the state law provisions."

8 The "annual percentage rate of the loan equals or exceeds (a) by more than 3 percentage points, if the home loan is a first mortgage, or (b) by more than 5 percentage points, if the home loan is a junior mortgage, the rate set by the required net yield for a 90-day standard mandatory delivery commitment for a first mortgage loan from either the Federal National Mortgage Association (FannieMae) or the Federal Home Loan Mortgage Association, whichever is greater, as such yield is reported on the fifteenth day of the month immediately preceding the month in which the application for the home loan is received by the lender; or (2) the total points and fees on the loan equal or exceed either 5% of the total loan amount or $ 800, whichever amount is greater. If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation." (Oak. Mun. Code, § 5.33.030.)

Like Division 1.6, the Ordinance contains numerous prohibitions and limitations with respect to home loans and "high-cost" home loans. The Ordinance prohibits prepayment penalties for high-cost and certain refinanced home loans, and limits prepayment penalties for other home loans. (Oak. Mun. Code, § 5.33.040(A).) For home loans generally, no lender may (1) "finance any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums when making a home loan"; (2) "recommend or encourage a borrower to default or not to make a payment on a home loan or any other debt, when such lender action is in connection with the closing or planned closing of a home loan that refinances all or part of the borrower's debt"; or (3) "make a home loan that violates

any applicable provision" of certain federal laws regulating lending. (Oak. Mun. Code, § 5.33.040(B), (C), (D).)

In addition, the following practices are prohibited for high-cost home loans: (1) making the loan without obtaining written certification from an independent and approved housing or credit counselor that the borrower has contacted the counselor and either received counseling about the advisability of the loan transaction or waived in writing the counseling option; (2) making a loan unless the lender reasonably believes the borrower will be able to make the scheduled payments based on certain detailed criteria; (3) financing points and fees exceeding $ 800 or 5 percent of the loan amount, whichever is greater; (4) making a loan "that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower"; (5) charging a fee to modify, renew, extend, or amend a loan or defer any payment, except under certain conditions; (6) including terms that allow the lender to accelerate the indebtedness in its discretion except for certain circumstances; (7) including a provision increasing the interest rate if the borrower defaults or is delinquent, except in certain circumstances; (8) making a loan that "pays off all or part of an existing home loan or other debt of the borrower, and the borrower does not receive a reasonable and tangible net benefit from the new high-cost home loan considering all the circumstances," as delineated; and (9) making a loan that "pays off all or part of an existing home loan, and such existing loan" is a specified government or nonprofit loan unless an independent housing or credit counselor has determined that the refinance is in the borrower's best interests. (Oak. Mun. Code, § 5.33.050.)

Thus, Division 1.6 and the Ordinance are similar in that they regulate the same subject matter, i.e., predatory lending practices in home mortgages. However, Division 1.6 and the Ordinance differ in significant respects with regard to how they regulate these predatory practices. For example, Division 1.6 does "not impose liability on an assignee that is a holder in due course" and the provisions of the division do not apply to "persons chartered by Congress to engage in secondary mortgage market transactions." (*Fin. Code, § 4979.8.*) The Ordinance expressly applies to a holder in due course. (Oak. Mun. Code, § 5.33.070 ["Any person who purchases or is otherwise assigned a home loan is subject to all claims, actions and defenses related to that home loan that the borrower, the City Attorney, or others could assert against the original lender"].) Moreover, Division 1.6 permits prepayment penalties under certain conditions during the first 36 months of the loan; the Ordinance prohibits them for all high-cost and certain refinanced home loans, and limits them for other home loans. (*Fin. Code, § 4973, subd. (a)*; Oak. Mun. Code, § 5.33.040(A).) In addition, Division 1.6 requires that borrowers be encouraged in writing to seek loan counseling; the Ordinance prohibits a high-cost home loan being made without either the borrower receiving loan counseling or giving the credit counselor a written waiver of counseling. (*Fin. Code, § 4973, subd. (k)(1)*; Oak. Mun. Code, § 5.33.050(A).)

In addition to other enforcement mechanisms, Division 1.6 and the Ordinance both allow for civil and criminal penalties and for civil enforcement by borrowers, including punitive damages. (*Fin. Code, §§ 4975, subd. (c), 4977, subds. (b), (c), 4978, subds. (a), (b)(2)*; Oak. Mun. Code, §§ 5.33.080, 5.33.100.) However, Division 1.6 imposes civil penalties up to $ 25,000 per violation; the Ordinance imposes such penalties up to the amount of $ 50,000. (*Fin. Code, § 4977, subd. (b)*; Oak. Mun. Code, § 5.33.080(D).) Under Division 1.6, the amounts collected from such civil penalties are to be used by the "licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with abusive lending practices." (*Fin. Code, § 4977, subd. (g)*.) The amounts collected by the Ordinance presumably simply go into the city coffers. Punitive damages are available under Division 1.6 "upon a finding that such damages are warranted pursuant to *Section 3294 of the Civil Code*" (*Fin. Code, § 4978, subd. (b) (2)*, which requires "clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice" (*Civ. Code, § 3294, subd. (a)*); the Ordinance allows punitive damages "if the court determines by clear and convincing evidence that the lender has shown reckless disregard for the rights of the borrower." (Oak. Mun. Code, § 5.33.080(A)(5).) Division 1.6 provides that nothing in *section 4978*, which addresses civil liability, "is intended, nor shall be construed, to abrogate existing common law provisions prohibiting double recovery of damages." (*Fin. Code, § 4978, subd. (c)*.) The Ordinance, however, expressly notes its remedies "are cumulative. The protections and remedies provided under this chapter are in addition to other protections and remedies that may be otherwise available under law. Nothing in this chapter is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory." (Oak. Mun. Code, § 5.33.080(E).)

We now turn to the question of whether these similarities and differences may coexist or, if instead, the Ordinance is preempted by Division 1.6.

B. *Analysis*

"Under *article XI, section 7 of the California Constitution*, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances

and regulations not in conflict with general laws.' " (*Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897 [16 Cal. Rptr. 2d 215, 844 P.2d 534]* (*Sherwin-Williams*).) In addition, charter cities such as Oakland may adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a "municipal affair" rather than one of "statewide concern." (*Cal. Const., art. XI, § 5*; [9] Oak. City Charter, § 106; see *Johnson v. Bradley (1992) 4 Cal.4th 389, 399 [14 Cal. Rptr. 2d 470, 841 P.2d 990]*.) Here, however, the City reasonably concedes regulation of predatory practices in mortgage lending is one of statewide concern. Under these circumstances, the parties agree that if the Ordinance conflicts with state law, it is preempted.

> 9 *California Constitution, article XI, section 5, subdivision (a)* provides: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

A conflict between state law and an ordinance exists if the ordinance duplicates or is coextensive therewith, is contradictory or inimical thereto, or enters an area either expressly or impliedly fully occupied by general law. (*Sherwin-Williams, supra, 4 Cal.4th at pp. 897-898.*) Relying solely on the Legislature's failure to include express preemption language and the unique local interests of Oakland, the City contends that Division 1.6 sets only "statewide minimum standards, not statewide uniform standards, for subprime home mortgage lending." We conclude that in enacting Division 1.6 the Legislature has impliedly fully occupied the field of regulation of predatory practices in home mortgage lending, and hence the Ordinance is preempted on this ground.

"[I]t is well settled that local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute." (*Tolman v. Underhill (1952) 39 Cal.2d 708, 712 [249 P.2d 280]* (*Tolman*).) "[L]ocal legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality [citations]." (*Sherwin-Williams, supra, 4 Cal.4th at p. 898.*)

Here, of course, there is no express preemption language in Division 1.6. However, there are clear indications of the Legislature's implicit intent to fully occupy the field of regulation of predatory lending tactics in home mortgages.

"Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme." (*Tolman, supra, 39 Cal.2d at p. 712*; *Wilson v. Beville (1957) 47 Cal.2d 852, 859 [306 P.2d 789]* (*Wilson*) [same]; see *In re Lane (1962) 58 Cal.2d 99, 102-103 [22 Cal. Rptr. 857, 372 P.2d 897]* (*Lane*).) "State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation. [Citations.] In this connection it may be significant that the subject is one which ... requires uniform treatment throughout the state." (*Chavez v. Sargent (1959) 52 Cal.2d 162, 177 [339 P.2d 801]* (*Chavez*), disapproved on other grounds in *Petri Cleaners, Inc. v. Automotive Employees, etc., Local No. 88 (1960) 53 Cal.2d 455, 474-475 [2 Cal. Rptr. 470, 349 P.2d 76]*.)

"The denial of power to a local body when the state has preempted the field is not based solely upon the superior authority of the state. It is a rule of necessity, based upon the need to prevent dual regulations that could result in uncertainty and confusion. Thus, the term 'conflict' as used in *section 11 of article XI* has been held not to be limited to a mere conflict in language, but applies equally to a conflict of jurisdiction." (*Abbott v. City of Los Angeles (1960) 53 Cal.2d 674, 682 [3 Cal. Rptr. 158, 349 P.2d 974]*.) "Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned." (*Lane, supra, 58 Cal.2d at p. 102*; *id. at p. 105* ["where the state has fully occupied the field, there is no room for additional requirements by local legislation"]; *Wilson, supra, 47 Cal.2d at p. 859* ["general rule that charter provisions cannot control in matters of statewide concern where the state has occupied the field"].) "Where a statute and an ordinance are identical it is obvious that the field sought to be covered by the ordinance has already been occu-

pied by state legislation." (*Pipoly v. Benson (1942) 20 Cal.2d 366, 371 [125 P.2d 482]*.)

Thus, in *Wilson, supra, 47 Cal.2d at page 856*, we held that a person seeking compensation for a municipal taking does not lose his claim by failing to file it with the city as required by the city charter. We observed the "exercise of the power of eminent domain is a matter of statewide concern." (*Id. at p. 859.*) "The Legislature has provided a complete and detailed system for exercising the right of eminent domain and assessing compensation," such that charter provisions making more onerous the recovery of compensation were invalid. (*Id. at pp. 859-861*; *id. at p. 860* ["*The Legislature has fully occupied the field of eminent domain*"].) "If the city may enact such legislation or charter provisions the land owner is denied equal protection of the laws for the state statute would fix the limitation where the condemnor was a public utility but a different one would prevail where the condemnor was a municipal corporation. There is no distinction between such condemnors. The city along with public utilities are made equally liable by the Constitution." (*Id. at p. 861.*)

Similarly, in *Eastlick v. City of Los Angeles (1947) 29 Cal.2d 661, 665 [177 P.2d 558]* (*Eastlick*), the plaintiff's claim in a personal injury action based on state law "concededly was complete as measured by the requirements of the state law." However, the city argued judgment in the plaintiff's favor should be reversed because of her failure to itemize the damages in her claim as required by the city charter. (*Id. at pp. 664-665.*) We held that the Legislature had provided "a general scheme for the presentation of such liability claims to be effective throughout the state. ... [W]ith respect to the subjects covered, the [state] statute occupies the entire field and it impliedly precludes control to that extent by municipal or local regulation." (*Id. at p. 666.*) A municipality "may not impose more onerous conditions affecting any other matter covered by the statute, such as the contents of the claim." (*Id. at p. 667.*) "[T]he provisions of that statute 'are exclusive' in regulating the presentation of claims arising under the Public Liability Act, and no city charter provisions relating to the presentation of claims, whether adopted before or after the effective date of the statute, are applicable within the field covered thereby." (*Id. at p. 668.*)

Likewise in *Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 152 [130 Cal. Rptr. 465, 550 P.2d 1001]* , we held that a charter city's "requirement that landlords obtain certificates of eviction before seeking repossession of rent-controlled units cannot stand in the face of state statutes that fully occupy the field of landlord's possessory remedies." We observed that requiring "landlords to fulfill the elaborate prerequisites for the issuance of a certificate of eviction by the rent control board before they commence the [state] statutory proceeding would nullify the intended summary nature of the remedy." (*Id. at p. 151.*) Citing *Wilson, supra, 47 Cal.2d 852*, and *Eastlick, supra, 29 Cal.2d 661*, we also noted that "[c]ity charter provisions purporting to impose far less burdensome prerequisites upon the exercise of statutory remedies have been held to be invalid invasions of the field fully occupied by the statute." (*Birkenfeld, at p. 152*; see *Healy v. Industrial Acc. Com. (1953) 41 Cal.2d 118, 122 [258 P.2d 1]* [If "there is any conflict between charter provisions and the compensation sections of the Labor Code, the latter must prevail. Under power expressly granted to it by the Constitution, the Legislature has established a complete system of workmen's compensation which obviously is a subject of state-wide concern, and it is well settled that in such matters the general law is paramount"]; *Lane, supra, 58 Cal.2d at pp. 103-105* ["city ordinance attempting to make sexual intercourse between persons not married to each other criminal is in conflict with the state law and is void" given the "Penal Code sections covering the criminal aspects of sexual activity are so extensive in their scope that they clearly show an intention by the Legislature to adopt a general scheme for the regulation of this subject," and "although living in a state of cohabitation and adultery is prohibited [citation], neither simple fornication or adultery alone nor living in a state of cohabitation and fornication has been made a crime in this state"]; *Isaac v. City of Los Angeles (1998) 66 Cal.App.4th 586, 599 [77 Cal. Rptr. 2d 752]* (*Issac*) [ordinance giving a utility lien priority over other recorded liens invalid "because it disrupts California's statewide statutory scheme of lien priority"]; *id. at p. 600* ["lien priorities on real property a matter of statewide concern because statewide uniformity in lien priority is essential"].)

Like the statutory schemes considered in *Wilson*, *Eastlick*, and *Birkenfeld*, Division 1.6 comprehensively regulates predatory lending practices in home mortgages. It delineates at length what mortgages are covered, what lending acts are prohibited, who can be held liable for violations of Division 1.6, the various enforcement mechanisms available, who may invoke such enforcement mechanisms, and defenses to such violations. The provisions of Division 1.6 "are so extensive in their scope that they clearly show an intention by the Legislature to adopt a general scheme for the regulation of" predatory lending tactics in home mortgages. (*Lane, supra, 58 Cal.2d at p. 103.*)

Moreover, in regulating such lending tactics in home mortgages, the Legislature was not suddenly entering an area previously governed by municipalities and unexplored at a statewide level. To the contrary, as the City acknowledges, regulation of mortgage lenders has historically occurred at the state, not the municipal, level.

(See, e.g., *Fin. Code, §§ 5000 et seq.* [Savings Association Law], *50000 et seq.* [California Residential Mortgage Lending Act]; *Civ. Code, §§ 2947-2955.5* [mortgage of real property provisions].) In determining whether the Legislature intended to occupy the field of regulation of predatory home mortgage lending, we consider this historical role, and view Division 1.6 not in isolation, but as part of an overall legislative scheme addressing mortgage lending. As the Legislative Counsel's Digest to Division 1.6 notes, "Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes. [¶] This bill would impose various requirements on consumer loans secured by specified real property, defined as 'covered loans.' " (Stats. 2001, ch. 732.)

Indeed, when asked at oral argument, the City could point to no other instance in over 150 years of state history where a municipality had attempted to regulate mortgage lending. Thus, state activity in the area of regulation of mortgage lending was not only historically dominant, it was exclusive. (Cf. *United States v. Locke (2000) 529 U.S. 89, 108 [146 L. Ed. 2d 69, 120 S. Ct. 1135]* [finding no presumption against federal preemption regarding regulation of maritime commerce]; compare *Bronco Wine Co. v. Jolly (2004) 33 Cal.4th 943, 974 [17 Cal. Rptr. 3d 180, 95 P.3d 422]* [strong presumption against federal preemption of state wine label regulation given that state activity in this area historically extensive and dominant].) Thus, mortgage lending is unlike the area of gun control law, on which the City and the dissent rely, in which courts have concluded that the Legislature has chosen to legislate narrowly, and "rather than intending to deprive municipalities of their police power to regulate handgun sales, ... has been cautious about depriving local municipalities of aspects of their constitutional police power to deal with local conditions." (*California Rifle & Pistol Assn., Inc. v. City of West Hollywood (1998) 66 Cal.App.4th 1302, 1318 [78 Cal. Rptr. 2d 591]*; see *Great Western Shows, Inc. v. County of Los Angeles (2002) 27 Cal.4th 853, 865, 866 [118 Cal. Rptr. 2d 746, 44 P.3d 120]* (*Great Western*) [noting state laws regulating gun shows expressly refer to applicable local laws]; dis. opn., *post*, at pp. 1267, 1272.) As one amicus curiae notes, the City does not demonstrate that in the area of regulating residential mortgages, the Legislature has attempted "to tread lightly on a narrow path."

Moreover, it is beyond peradventure that effective regulation of mortgage lending, and in particular here abusive practices in such lending, "requires uniform treatment throughout the state." (*Chavez, supra, 52 Cal.2d at p. 177*; see *Northern Cal. Psychiatric Society v. City of Berkeley (1986) 178 Cal. App. 3d 90, 101 [223 Cal. Rptr. 609]* [" 'Certain areas of human behavior command statewide uniformity, especially the regulation of statewide commercial activities' "].) California's housing market is one of its most critical, and securities based on home loans in this market are sold not only on a statewide, but on a national level. (Eggert, *Held Up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine* (2002) *35 Creighton L. Rev. 503, 536* ["Through securitization, the source of capital for mortgage funding has been transferred from the savings industry, which used deposits to fund loans, to the capital markets and the portfolios of institutional investors"].) Commercial reality today would confound any effective regulation of mortgage lending based on potentially hundreds of competing and inconsistent measures at the local level. Rather, centralized command over such mortgage lending practices provides an essential "regulatory lever." (*California Fed. Savings & Loan Assn. v. City of Los Angeles (1991) 54 Cal.3d 1, 23 [283 Cal. Rptr. 569, 812 P.2d 916]* (*Calif. Fed.*).)

We therefore conclude that through the enactment of Division 1.6, the Legislature has fully occupied the field of regulation of predatory tactics in home mortgages. While in other cases the determination of whether the state and local laws occupy the same "field" may be somewhat nuanced, little is left to the imagination of even the most casual reader here. Both Division 1.6 and the Ordinance regulate predatory lending tactics in home mortgages, and do so in parallel fashion. The Ordinance, like Division 1.6, addresses at length what mortgages are covered, what lending acts are prohibited, who can be held liable for violations of the Ordinance, the various enforcement mechanisms available, who may invoke such enforcement mechanisms, and defenses to such violations. As previously observed, it is undisputed the Ordinance applies to at least all home loans covered by Division 1.6. Moreover, the Ordinance regulates many of the same predatory practices addressed by Division 1.6, and prevalent in subprime lending, such as excessive prepayment fees, making loans without any reasonable expectation they can be repaid, refinancing with no benefit to the borrower, encouraging default on an existing loan in connection with refinancing that loan, financing unnecessary products such as credit insurance, unfairly accelerating indebtedness, and financing excessive points and fees. Thus, the Ordinance is not supplementary legislation that in other contexts might be allowed, but a line-item veto of those policy decisions by the Legislature with which the City disagrees. In revisiting this area

fully occupied by state law, the Ordinance undermines the considered judgments and choices of the Legislature, and is therefore preempted.

In drafting Division 1.6, the Legislature balanced two compelling and competing considerations, i.e., the need to protect particularly vulnerable consumers from predatory lending practices and the concern that homeowners not be unduly hindered in accessing the equity in their own homes. (See, e.g., Sen. Judiciary Com., Analysis of Assem. Bill No. 489 (2001-2002 Reg. Sess.) as amended June 21, 2001, p. 2 ["Although many subprime lenders offer a vital service to some low-income borrowers who would not otherwise qualify for credit, many other low-income borrowers have been victimized by improper practices ... referred to ... as 'predatory practices' "]; Assem. Republican Bill Analysis, Analysis of Assem. Bill No. 489 (2001-2002 Reg. Sess.) as amended Sept. 6, 2001, p. 3 [noting federal regulators "believe that responsible sub-prime lending can expand credit access for consumers," and that "'a practice that can be abusive in some contexts can also-in [the] absence of fraud or deception-be highly beneficial to consumers ... . Well meaning but haphazard reactions on the part of the regulators ... may have the unintended consequence of hurting those whom we intend to help'"]; Assem. Com. on Appropriations, Analysis of Assem. Bill No. 489 (2001-2002 Reg. Sess.) as amended May 1, 2001, p. 2 ["The cycle of high-cost loan refinancing can ultimately deplete the homeowner's equity and result in foreclosure"].) While destructive lending practices occur most often in connection with subprime lending, such lending is not inherently abusive, and has enabled an entire class of individuals with impaired credit to enter the housing market or access the equity in their homes. (See U.S. Gov. Accounting Off., Rep. on Federal and State Agencies Face Challenges in Combating Predatory Lending, testimony of David G. Wood before Sen. Special Com. on Aging (Feb. 24, 2004) p. 4.) Severe regulation of subprime lending might cause lenders to cease making such loans in California, or preclude borrowers from obtaining a loan based on equity in their home even though such loans can serve a legitimate need. (Cal. Dept. of Real Estate, Enrolled Bill Rep. on Assem. Bill No. 489 (2001-2002 Reg. Sess.) Sept. 27, 2001, p. 7.) Moreover, increased regulation generally entails additional cost, decreasing further the availability of loan funds to subprime borrowers. Thus, the Legislature was aware regulation of certain predatory practices in mortgage lending, practices which occur most often in the subprime market, could have the unintended consequence of hurting those the legislation was intended to help, and sought to balance these competing concerns. The Ordinance, and the possibility of other divergent and competing local measures throughout California, upsets that balance. By analogy to federal preemption law, the Ordinance "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives'" of the Legislature. (*Volt Info. Sciences v. Leland Stanford Jr. U. (1989) 489 U.S. 468, 477 [103 L. Ed. 2d 488, 109 S. Ct. 1248]*.)

Taking just one example, Division 1.6 expressly does "not impose liability on an assignee that is a holder in due course" and the provisions of the division do not apply to "persons chartered by Congress to engage in secondary mortgage market transactions." (*Fin. Code, § 4979.8.*) The Ordinance expressly imposes such liability. (Oak. Mun. Code, § 5.33.070.) Such an extension of liability to "[a]ny person who purchases or is otherwise assigned a home loan" (*ibid.*) may result in secondary purchasers being hesitant or unwilling to purchase mortgages originating in Oakland. Should other cities adopt a similar extension of liability, [10] subprime lending could conceivably be sharply curtailed in the state, despite the Legislature's efforts to avoid such an event. As AFSA observes, the Ordinance "not only contradicts a careful legislative choice, [it] threatens to disrupt secondary market transactions, interrupting the flow of loan capital to this state," and "divide the state's economy into tiny geographic markets."

> 10 Los Angeles has already done so in its anti-predatory loan ordinance, added January 29, 2003. (L.A. Mun. Code, ch. XVIII, art. 1, § 181.07, subd. (B) ["Any person who purchases or is otherwise assigned a High-Cost Refinance Home Loan is subject to all claims, actions, and defenses related to that High-Cost Refinance Home Loan that the Borrower could assert against the original Lender"].)

Thus, contrary to the City's and the dissent's assertion, Division 1.6 does not set "statewide minimum" standards beyond which municipalities are free to regulate. (Dis. opn., *post*, at p. 1271; *id.* at p. 1275.) Rather, the Legislature's full occupation of this field preempts the Ordinance's regulation even of those mortgages not addressed by Division 1.6, such as loans between $ 250,000 and $ 359,650. For the reasons cited above, it is difficult to imagine how the state could maintain a centralized and uniform command in regulating predatory tactics in home mortgages if municipalities were free to regulate the area with respect to loans in amounts in excess of the state statutory ceiling.

Thus, in *Lane* we held that a city ordinance, making criminal sexual conduct the state Penal Code did not, was preempted because the state had fully occupied the field of regulation of sexual conduct by enacting a detailed legislative scheme. (*Lane, supra, 58 Cal.2d at pp. 103-105*; see *Issac, supra, 66 Cal.App.4th at p. 601* ["absence of any specific statewide legislation ... does not create a statutory loophole inviting local legislation, be-

cause of the pervasive statutory scheme already in place governing lien priority"].) Similarly here, the Legislature's decision that certain mortgages, such as loans in excess of $ 250,000, are not subject to regulation under Division 1.6 must be respected, and is not an invitation for municipal regulation. The Legislature may reasonably have concluded that mortgages in excess of the statutory ceiling were less likely to be attended by the predatory practices that it sought to curtail, and hence borrowers should have greater freedom to contract in this area. (See U.S. Dept. of the Treasury & U.S. Dept. of Housing and Urban Development, Joint Rep., Curbing Predatory Home Mortgage Lending, *supra*, p. 28 [noting on average subprime loans are smaller than prime loans].) As one amicus curiae notes, "California's housing market is one of the most vital sectors of its economy. The balances struck by the Legislature in this critical area therefore must be seen as a reflection of the Legislature's reasoned assessment of the competing needs to provide mortgage capital to the broadest possible segment of the populace while, at the same time, discouraging unfair lending practices throughout the state. Local governments should not be free to undermine the Legislature's efforts in this area ... by striking different policy balances of their own."

The City and the dissent essentially assert, however, that Oakland has a higher incidence of subprime lending and the predatory tactics associated with such lending than other areas of the state, and hence may suffer more than other parts of California the resulting blight and poverty such tactics can foster. (Dis. opn., *post*, at pp. 1268-1271, 1275.) Assuming this is correct, and while these would be important local concerns, they do not give the City a license to regulate a highly complex financial area comprehensively addressed by state law. Such an approach would mean that any city which claimed to experience a disproportionate number of foreclosures, or instances of securities fraud, could simply write its own measures regardless of any confusion these competing measures may foster. Rather, the state's interest in uniformity in the area of mortgage lending law demonstrably transcends the concerns of a particular municipality, and is a "convincing basis for legislative action ... based on sensible, pragmatic considerations." (*Calif. Fed., supra, 54 Cal.3d at p. 18.*) In this situation, the City must "defer to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution." (*Id. at p. 24.*)

The City relies on certain language in *Sherwin-Williams, supra, 4 Cal.4th at page 904*, taken out of context, to support its argument that the failure on the part of the Legislature to include express preemption language means that it had no implied intent to preempt. In *Sherwin-Williams*, there existed at all relevant times a statute that provided, "'Nothing in this code shall invalidate an ordinance of, nor be construed to prohibit the adoption of an ordinance by, a city, city and county, or county, if such ordinance regulates the sale of aerosol containers of paint or other liquid substances capable of defacing property.'" (*Sherwin-Williams, at p. 899*, quoting former Pen. Code, § 594.5.) We observed that former Penal Code section 594.1, the statute at issue, as originally enacted in 1981, had regulated aerosol paint containers larger than six ounces in section 1, an express preemption provision regarding sales and possession of such aerosol containers in section 2, and a no reimbursement provision in section 3. (*Sherwin-Williams, at p. 900.*) In 1988, former Penal Code section 594.1 was amended such that it generally applied to all aerosol paint containers in section 1, and had a no reimbursement provision in section 2. No express preemption provision was included in the 1988 amendment. (*Sherwin-Williams, at pp. 900-901.*)

We found that the amended *section 594.1 of the Penal Code* did not preempt a local ordinance governing the display of aerosol paint containers and marker pens. (*Sherwin-Williams, supra, 4 Cal.4th at pp. 895-896, 906.*) In so doing, we made the following statement, on which the City relies: "In both 1981 and 1988, the Legislature was acting, and presumably knew that it was acting, in the context of *Penal Code section 594.5*, which by its very terms would render any aerosol paint legislation 'non-preemptive,' at least as to sales. Hence, in both years, it was obligated, and presumably knew that it was obligated, to take affirmative steps if it intended to preempt. In 1981, it took such steps: it included the preemption declaration. In 1988, it did nothing. It certainly knew how to copy: in the earlier year, it inserted a 'no reimbursement' clause; in the later, it inserted a similar clause. To our mind, the conclusion is clear. In 1981, it expressly intended to preempt. In 1988, it impliedly intended not to." (*Sherwin-Williams, at p. 904.*)

As can be seen, *Sherwin-Williams* was decided based on a significantly different statutory landscape than we encounter here. Unlike *Sherwin-Williams*, the City points to no language in Division 1.6 which states that nothing in its provisions shall invalidate a local ordinance if such ordinance regulates predatory mortgage lending practices. Hence, the Legislature's failure to include an express preemption provision in Division 1.6 does not ineluctably mean there is no implied preemption. Significantly, aside from the Savings Association Law (*Fin. Code, § 5000 et seq.*), at least two other state laws governing mortgage lenders, the California Residential Mortgage Lending Act (*Fin. Code, § 50000 et seq.*), and the mortgage of real property provisions in the Civil Code (*Civ. Code, §§ 2947- 2955.5*), do not have an

express preemption provision. Indeed, the City does not point out for us any state mortgage lending law that has an express preemption provision.

The City and the dissent rely on testimony at a Senate subcommittee hearing held shortly before the passage of Division 1.6, urging inclusion of an express preemption provision, and the fact that several members of the Legislature had a brief conversation regarding preemption at that subcommittee hearing, in asserting Division 1.6 does not impliedly preempt the Ordinance. (Dis. opn., *post*, at pp. 1266-1267.)

Of course, by definition, the Legislature's implicit full occupation of a field occurs only when there is no express intent in the state law. We disagree with the Court of Appeal's statement that "when the Legislature is silent on preemption, courts presume there is *no* intent to preempt." Adopting this approach would be a notable departure from our implied preemption precedents. Instead, in such circumstances we consider factors including the language and scope of the adopted measure, the history behind the adopted measure, and the history of regulation in the area, as we have done in this and other field preemption cases. (E.g., *Great Western, supra, 27 Cal.4th at pp. 860-867*; *Tolman, supra, 39 Cal.2d at p. 712* [Legislature's "intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme"].) Neither the City nor the dissent offers a reason why we would not consider such language, scope, and purpose merely because at some point during the bill enactment process the issue of express preemption may have arisen. Nor do they demonstrate that these traditional indicators of legislative intent point toward allowing hundreds of cities in California to enact their own mortgage lending laws, an area historically regulated by the state.

Taken to its logical extreme, the City's and the dissent's approach would eliminate the doctrine of implied preemption at least to the extent someone somewhere ever suggested to the Legislature an express preemption clause would be useful, and the Legislature declined to adopt that suggestion. Such a standard would be easily manipulable, and would punish constituents who attempt to educate the Legislature about their concerns to the extent their concerns were not addressed in the precise manner proposed to the Legislature. Moreover, for well over a century, mortgage lending has occurred at the state, not municipal level, and the effects of such regulation are no longer simply statewide, but national. While we cannot know the reasons for the absence of express preemption language, the Legislature is deemed to be aware of existing law, and may have comfortably assumed that given such state dominance in mortgage lending regulation, and having omitted express preemption provisions in other mortgage lending laws without such an omission being read as a license for local regulation, that an express preemption provision was unnecessary. Indeed, unlike the dissent, we are reluctant to reward the opponents of preemption when nothing in the statutory language or history suggests they persuaded the Legislature to consider relinquishing its historical control of this particular regulatory field and to tolerate municipal, and possibly conflicting, regulation.

In addition, our prior cases establish that even when the Legislature amends a bill to add a provision, and then deletes that provision in a subsequent version of the bill, this failure to enact the provision is of little assistance in determining the intent of the Legislature. (*Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 573, fn. 5 [21 Cal. Rptr. 3d 31, 21 Cal. Rptr. 3d 331]* [" 'Unpassed bills, as evidence of legislative intent, have little value' "]; *People v. Sparks (2002) 28 Cal.4th 71, 87, fn. 20 [120 Cal. Rptr. 2d 508, 47 P.3d 289]* [same]; *Sherwin-Williams, supra, 4 Cal.4th at p. 904, fn. 6* [same].) How much less value is there in determining legislative intent when no version of a bill was ever amended to include a provision, here express preemption, suggested by a member of the public? Similarly, we have repeatedly observed that "statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation." (*Quintano v. Mercury Casualty Co. (1995) 11 Cal.4th 1049, 1062 [48 Cal. Rptr. 2d 1, 906 P.2d 1057].*) "

> 11 The dissent bases much of its position on a "concession" by AFSA that "'the Legislature could say nothing for or against preemption *without risking defeat* of'" Assembly Bill No. 489. (Dis. opn., *post*, at p. 1266; *id.* at p. 1267.) The dissent points to no evidence AFSA was involved in the legislative process of Division 1.6 even as an interested constituent. More critically, we have repeatedly concluded, as noted above, that even the statements of individual legislators are not generally considered in construing a statute. Of how much less worth is a third party's opinion regarding that legislative process? Indeed, discerning legislative intent from an outside party's "concession" appears not only a novel but a problematic approach. Had AFSA not made such a "concession," would the dissent then find there was preemption? As in the case of comments from constituents to the Legislature, on which the dissent also relies, our preemption principles simply cannot be so arbitrary and malleable.

> Even if there was competent evidence the Legislature had debated and rejected the notion of including an express preemption clause, and deliberately decided to remain silent, such history would merely show that lawmakers left the preemption issue exactly where it would have been if nothing had been said during the bill enactment process. Under such circumstances, and contrary to what the dissent claims, there would still be no basis for straying from our traditional examination of the language, scope, and purpose of the enacted statutory scheme in determining whether the Legislature manifested an implicit intent to occupy the field and preempt all local regulation. Considering that language, scope, and purpose here, as delineated at length above, we find clear indications of such an intent, and conclude the Ordinance is preempted.

Moreover, while the possibility of including express preemption language may have arisen at one committee hearing, and in certain letters from constituents, [12] it is scarcely mentioned in the remainder of Division 1.6's legislative history. Rather, in that history, the Legislature was instead focused on what the terms of the antipredatory lending law should be, which, as we have concluded, is its role in this area. Thus, in various bill analyses recounting bases for opposition to Assembly Bill No. 489 and in letters from Assembly Republican Leader Dave Cox and Senate Republican Whip Raymond Haynes to Governor Davis urging a veto of that bill, there is no mention of the absence of an express preemption provision. (See, e.g., Assem. Republican Caucus, Analysis of Assem. Bill No. 489 as amended Sept. 6, 2001, p. 2; Assem. Republican Caucus, Analysis of Assem. Bill No. 489 as amended Apr. 5, 2001, pp. 1-2; Assemblyman Dave Cox, letter to Governor Gray Davis (Sept. 25, 2001) p. 1; Sen. Raymond Haynes, letter to Governor Gray Davis (Sept. 18, 2001) p. 1.)

> 12 It is noteworthy that one such letter writer, FannieMae, expressly *withdrew* its opposition to Assembly Bill No. 489, and *then* urged the bill authors to consider adding an express preemption provision. (FannieMae, letter to Sen. Machado and Assemblywoman Migden (Sept. 13, 2001) p. 1.) Similarly, the California Mortgage Bankers Association noted it had withdrawn its opposition to Assembly Bill No. 489, was now neutral on both Assembly Bill Nos. 489 and 344, and *then* mentioned it looked forward to working with the Legislature on an express preemption provision. (Cal. Mortgage Bankers Assn., letter to Sen. Machado and Assemblywoman Migden (Oct. 4, 2001) p. 1.)

Similarly, in recounting the opposition arguments to Assembly Bill Nos. 489 and 344 (the cleanup bill for Assembly Bill No. 489), the enrolled bill reports for the State and Consumer Services Agency, the Department of Real Estate, and the Department of Financial Institutions do not mention the absence of an express preemption provision. Thus, the Department of Real Estate enrolled bill report states, "[s]ome lenders may leave the California market limiting access to capital for those who need it most. In addition, this bill would effectively preclude equity based lending for covered loans even though it has been demonstrated such loans have served a legitimate need." (Dept. of Real Estate, Enrolled Bill Rep. on Assem. Bill No. 489, Sept. 27, 2001, p. 7.) Under "[v]otes," the enrolled bill report notes, "[m]any [m]embers who voted 'no' expressed concerns that the passage of the bill would cause lenders to cease making subprime loans in California. In addition, many [m]embers who voted 'no' expressed concern that this bill would preclude a borrower from obtaining a loan solely based on the equity in the property, even though such loans may serve a legitimate need." (*Ibid.*; State and Consumer Services Agency, Enrolled Bill Rep. on Assem. Bill No. 489, Sept. 20, 2001, p. 7 ["Could eliminate a source of funding for a segment of consumers that are not served by traditional, mainstream lenders (the same argument that is applied to payday loans). Could make California loans undesirable for purchase and investment. Bankers argue that legitimate lenders that charge higher fees and interest rates to people with poor credit to compensate for the greater risk of default (known as subprime lending) will be unfairly restricted"]; Dept of Financial Inst., Enrolled Bill Rep. on Assem. Bill No. 489, Sept. 27, 2001, p. 8 ["[T]here is some concern as to the [e]ffect the provisions of this bill will have on the subprime market. As illustrated by the departure of some licensees in North Carolina, some lenders may leave California's lending market. The effect on the subprime market could be the reduction of mortgage credit available to higher risk borrowers who do not otherwise qualify in the prime market"]; Dept. of Real Estate, Enrolled Bill Rep. on Assem. Bill No. 344, Sept. 27, 2001, pp. 2, 4.) The Department of Corporations enrolled bill report did note among other arguments in opposition to Assembly Bill No. 489 that "[i]ndustry groups argue that AB 489 should expressly preempt local ordinances which exceed the protections afforded by this bill. Without preempting city or county ordinances, lenders will continue to be exposed to non-uniform restrictions imposed by various municipalities throughout California." (Dept. of Corporations, Enrolled Bill Rep. on Assem. Bill No. 489, Sep. 27, 2001, p. 8.) However, this restatement of an argument made by certain industry groups does not purport to reflect debate within the Legislature. [13]

13 Other than the statements of individual legislators at one Senate subcommittee hearing, and testimony by constituents at that same hearing, which we have already discussed, the dissent cites nothing in the legislative history of Division 1.6 to support its repeated assertion that the Legislature "consciously considered including express preemption language in the statewide statute ... , but ultimately omitted any such language from the statute as one of the essential elements of a compromise that led to the enactment of the legislation." (Dis. opn., *post*, at p. 1265, fn. omitted; see, e.g., *ibid.* ["Here, there is considerable extrinsic evidence ... that the Legislature specifically considered and purposefully rejected an express preemption clause despite extensive lobbying for the inclusion of express preemption language in the state statute"]; *id.* at p. 1261["the issue of preemption was arguably at the forefront of the debate over Assembly Bill No. 489"]; *id.* at p. 1267 ["silence on the preemption issue was not inadvertent but deliberate, part of a legislative compromise"];*ibid.* ["passage of the bill hinged on the inclusion or exclusion of express preemption language"]; *id.* at p. 1271 ["All we can be certain of is that Division 1.6 was the product of a legislative compromise, and that the compromise included deliberate silence on the matter of preemption"].)

The Court of Appeal also noted that the Governor in signing Assembly Bill No. 489 expressly lamented the fact it did not contain express preemption language, and the Legislative Counsel opined a local ordinance would be valid to the extent it did not conflict with state law. We may not consider such postenactment events as a Governor's signing statement, and not even the City relies on this circumstance. Moreover, the Legislative Counsel's generalized and routine discussion of preemption law is not evidence the Legislature believed an ordinance such as the one challenged here would survive a preemption challenge. The Legislative Counsel expressly observed, "Because we have not been provided with a specific local government ordinance regulating high-cost mortgage lending, we ... discuss generally the grounds for preemption of a local government ordinance by state law." (Deputy Legis. Counsel L. Erik Lange, letter to Sen. Machado (Sept. 7, 2001) p. 1.)

AFSA also claims that the Ordinance is preempted by Division 1.6 because it duplicates and contradicts state law and the Ordinance is preempted by *Civil Code section 1916.12*. Since we conclude the Ordinance is preempted because by enacting Division 1.6 the Legislature has fully occupied the field of regulation of predatory practices in home loans, we need not address these additional preemption arguments.

Disposition

The judgment of the Court of Appeal is reversed, and the case remanded to that court for further proceedings consistent with this opinion.

Baxter, J., Werdegar, J., and Chin, J., concurred.

DISSENT BY: GEORGE

DISSENT

GEORGE, C. J., Dissenting.--I respectfully dissent.

Past California cases establish that a general statewide statute will be held to preempt all local legislative measures only when the state legislation, explicitly or impliedly, "clearly indicates" that the Legislature intended to fully occupy the field and preclude all local regulation. (*Sherwin-Wlliams Co. v. City of Los Angeles, (1993) 4 Cal.4th 893, 898 [16 Cal. Rptr. 2d 215, 844 P.2d 534]*.) Here, the Legislature consciously considered including express preemption language in the statewide statute (division 1.6 of the *Financial Code, §§ 4970-4979.8*), [1] but ultimately omitted any such language from the statute as one of the essential elements of a compromise that led to the enactment of the legislation. In view of this legislative background--which demonstrates that the statute does not "clearly indicate" a legislative intent to preempt all local legislation--and the distinctive local interest that the City of Oakland has in adopting stringent and effective measures to protect its residents from the predatory lending practices at issue, I cannot agree with the majority that Division 1.6 properly may be found to preempt the Ordinance in its entirety. [2]

1 For convenience, like the majority opinion, I shall refer to the relevant state statute as "Division 1.6," and the relevant local legislation as the "Ordinance."

2 Because the majority concludes that the Ordinance is invalid in its entirety, I do not reach the question whether some individual provisions of the local enactment may be inconsistent with Division 1.6 and for that reason preempted by that legislation.

I

Unlike our previous implied preemption cases, this is not simply a case in which the Legislature was silent about preemption. Here, there is considerable extrinsic evidence, and a concession from the party arguing in favor of preemption, that the Legislature specifically considered and purposefully rejected an express preemp-

tion clause despite extensive lobbying for the inclusion of express preemption language in the state statute. As plaintiff American Financial Services Association (AFSA) itself acknowledges, there were strongly held disagreements over preemption between industry representatives and consumer proponents of the bill. Indeed, the record reveals that the subprime lending industry vigorously lobbied for express preemption language.

Under normal circumstances, the mere absence of express preemption language would not be dispositive. But here the party arguing in support of preemption explicitly has admitted that there were insufficient votes in the Legislature to enact the bill with an express preemption provision. Specifically, AFSA's brief acknowledges that "the Legislature could say nothing for or against preemption *without risking defeat* of [Assembly Bill No.] 489. So it elected to remain silent." (Italics added.) The majority fails to acknowledge or afford appropriate consideration to this admission.

Moreover, contrary to the majority's reading of the relevant legislative history, I believe this history supports AFSA's concession. This is not a situation where the preemption issue was abstract or peripheral. Indeed, the issue of preemption was arguably at the forefront of the debate over Assembly Bill No. 489 (2001-2002 Reg. Sess.) (Assembly Bill No. 489). For instance, the members of the Senate Banking Committee that forged the legislative compromise that led to passage of the bill heard testimony from Oakland City Councilman Ignacio de la Fuente regarding the imminent passage of the Ordinance. In response to this testimony, a committee member expressed concern that without express preemption language, there would be a host of different lending policies from community to community. In response, the bill's co-author, Assemblywoman Migden, stated at the August 27, 2001, hearing on Assembly Bill No. 489 by the Senate Banking, Commerce and International Trade Committee: "We're trying to make sure that everyone can live with the bill, industry and consumers alike and ... we've decided ... to be silent on [preemption], which does lend different interpretations."

At the same hearing, the committee also heard from numerous financial industry representatives who urged the committee to include preemption language. (Adam Bass of Ameriquest Mortgage Company: "preemption is a major issue"; John Ross, Mortgage Bankers Assn.: "preemption is a big issue for our members"; Brian Kennealy of the Responsible Mortgage Lenders Coalition: "preemption is a very, very important issue to us and our members"; Eleanda Delgado of Irwin Home Equity Corp., agreeing with the others; Bernard Nevins, Cal. Assn. of Industrial Bankers: preemption "can't hurt and it would be very bad if you didn't do it"; Phil Eisenberg, American Internat. Group: "the preemption issue is fundamental. It's not cursory. It's not a medium-sized issue. It's fundamental"; Tom McMorrow, Countrywide Mortgage and First Union: "Preemption remains fundamental.") This effort by the financial industry to include express preemption language in the statute further establishes that silence on the preemption issue was not inadvertent but deliberate, part of a legislative compromise "to make sure that everyone can live with this bill, industry and consumers alike ... ." The majority's assertion that the Legislature's silence on preemption was inadvertent, or that the Legislature believed that express preemption language was unnecessary, is simply untenable.

The majority minimizes the foregoing history by arguing that although an express preemption issue "may have arisen" at some point during the bill enactment process, the issue was peripheral. As noted, this ignores AFSA's concession that the issue of express preemption not only "arose," but threatened to derail passage of the bill. Thus, this is not simply a case where "someone somewhere ... suggested to the Legislature an express preemption clause would be useful, and the Legislature declined to adopt that suggestion." (Maj. opn., *ante*, at p. 1261.) This is a case where passage of the bill hinged on the inclusion or exclusion of express preemption language. Thus, this is not a case where the city relies on the mere absence of express preemption to argue against implied preemption. There is significantly more evidence of deliberate exclusion of a preemption provision here, and the majority's concern about the demise of the doctrine of implied preemption is unwarranted.

Nonetheless, it can be argued, as AFSA does, that the stalemate on the preemption issue neither supports nor undermines a conclusion as to preemption, and that the court should resort to certain default rules about preemption that it has developed over the years. But one of those rules, indeed the principal rule, is that legislative intent be clearly indicated. As the Court of Appeal noted in *California Rifle & Pistol Assn. v. City of West Hollywood (1998) 66 Cal.App.4th 1302, 1317 [78 Cal. Rptr. 2d 591]*, the Legislature's failure to include express preemption language may be critical. "Claims of implied preemption must be approached carefully, because they by definition involve situations in which there is no express preemption. Since preemption depends upon *legislative intent*, such a situation necessarily begs the question of why, if preemption was legislatively *intended*, the Legislature did not simply say so, as the Legislature has done many times in many circumstances." (*Ibid.*) Hence, the rule has developed that implied preemption properly can be found only when the circumstances "clearly indicate" a legislative intent to preempt. (*Sherwin-Williams Co. v. City of Los Angeles, supra, 4 Cal.4th 893, 898.*) The need for such a "clear indication" is especially acute when the extrinsic evidence and the concession of the

parties demonstrate that the Legislature declined to adopt an express preemption provision because such a provision would not command a majority of the Legislature. A legislative stalemate on preemption is not an indication of a clear intent to preempt local legislation.

II

The majority's emphasis on state uniformity and historical regulation patterns also fails to acknowledge properly the respect this court traditionally has accorded to localities regarding issues that have a unique local impact. As we stated in *Fisher v. City of Berkeley (1984) 37 Cal.3d 644, 707 [209 Cal. Rptr. 682, 693 P.2d 261]*, "[w]e will be reluctant to infer legislative intent to preempt a field covered by municipal regulation where there is a significant local interest to be served that may differ from one locality to another." I am particularly troubled by the majority's express disapproval of the Court of Appeal's contention that " 'when the Legislature is silent on preemption, courts presume there is *no* intent to preempt.' " (Maj. opn., *ante*, at p. 1261.) To the contrary, as the Court of Appeal aptly observed in *Gluck v. County of Los Angeles (1979) 93 Cal. App. 3d 121, 133 [155 Cal. Rptr. 435]*, the common thread of our preemption cases is that "if there is a significant local interest to be served from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption."

The regulation of predatory lending undoubtedly is an area of statewide concern. Nevertheless, I am not persuaded that the field is *exclusively* so, thus leaving no room for local regulation. "The significant issue in determining whether local regulation should be permitted depends upon a 'balancing of two conflicting interests: (1) the needs of local governments to meet the special needs of their communities; and (2) the need for uniform state regulation.' ... [¶] That basic issue, in turn, may in a specific instance be fragmented into the component issues which combine to effect its resolution such as whether local legislators are more aware of and better able to regulate appropriately the problems of their areas, whether substantial geographic, economic, ecological or other distinctions are persuasive of the need for local control, and whether local needs have been adequately recognized and comprehensively dealt with at the state level. Certain areas of human behavior command statewide uniformity, especially the regulation of statewide commercial activities and the conduct of transient individuals, so that mobility may not be burdened unreasonably." (*Robins v. County of Los Angeles (1966) 248 Cal. App. 2d 1, 9 [56 Cal. Rptr. 853]*.)

As the court made clear in *Robins*, although the need for state uniformity is an important consideration in resolving preemption questions, the interests of the locality also are entitled to considerable weight. "The pervasive question to be answered is: Does the demand for uniformity throughout the state outweigh the needs of local governments to handle problems peculiar to their communities." (*Tri County Apartment Assn. v. City of Mountain View (1988) 196 Cal. App. 3d 1283, 1294 [242 Cal. Rptr. 438]*.)

The record in this case establishes that Oakland's Ordinance was adopted because many low-income homeowners in the City of Oakland were targeted by unethical mortgage lenders using predatory lending practices. Many low- and moderate-income homeowners in Oakland were unable to obtain conventional legitimate financing. Local conditions allowed predatory lenders to thrive, and their practices unfairly stripped homes of equity value and resulted in a number of unjust home foreclosures. Often, through fraudulent means, homeowners were charged exorbitant fees and interest rates and unfairly were persuaded to incur mortgage debt in excess of their needs or ability to pay. The record reflects that the Oakland City Council, in passing the ordinance in question, found that the predatory lending problem in Oakland was particularly aggravated "because of the high number of minority and low income homeowners in Oakland, and the pressures of gentrification in certain neighborhoods that increase property values and home equity," which have led to a situation in which "Oakland residents in low income areas have been perceived to be 'the house rich and the cash poor' and thus are prime targets for predatory lending practices."

Oakland's findings mirror the conclusions of the United States Department of Housing and Urban Development (HUD) in an analysis of almost one million mortgages reported nationwide in calendar year 1998 under the *Home Mortgage Disclosure Act*. (See HUD Rep., Unequal Burden: Income and Racial Disparities in Subprime Lending in America (Apr. 2000), http://www.hud.gov/library/bookshelf18/pressrel/subprime.html [as of Jan. 31, 2005] (HUD Report).) HUD's detailed analysis reached four critical conclusions: (1) from 1993 to 1998, the number of subprime refinance loans increased tenfold; [3] (2) subprime loans are three times more likely in low-income neighborhoods than in high-income neighborhoods; (3) subprime loans are five times more likely in African-American neighborhoods than in White neighborhoods; and (4) homeowners in high-income African-American neighborhoods are twice as likely as homeowners in low-income White neighborhoods to have subprime loans. [4] HUD concluded that its analysis "clearly demonstrates the exponential growth in subprime lending and its disproportionate impact on low-income and particularly, minority homeowners and communities throughout the nation." (See HUD Rep., *supra*,

http://www.hud.gov/library/bookshelf18/pressrel/subprime.html.)

> 3 The subprime mortgage market is a market providing credit access to borrowers who might not qualify for traditional financing, such as those with impaired credit, limited income, or high debt-to-income ratios.
>
> HUD reports that in 1993, there were 80,000 subprime refinance loans reported under the Home Mortgage Disclosure Act. By 1998, this number had increased by more than 900 percent to 790,000. "The magnitude and speed of the increase in subprime lending alone--almost 1000% in just five years--creates a critical need for greater scrutiny and concern. While the rapid growth of subprime lending may, on the surface, appear to be good news for higher-risk borrowers, behind the numbers there is some evidence that some portion of subprime lending is occurring with borrowers whose credit would qualify them for conventional loans. Subprime lending may expose borrowers to higher up-front fees and interest rates than they would bear if they had obtained prime loans." (HUD Rep., *supra*, http://www.hud.gov/library/bookshelf18/pressrel/subprime.html.)
>
> 4 HUD also analyzed the prevalence of subprime loans in five urban areas (Atlanta, Philadelphia, New York, Chicago, and Baltimore), concluding that a study of the five cities "gives a good sense that the trends identified above are consistent at the metropolitan level." (HUD Rep., *supra*, http://www.hud.gov/library/bookshelf18/pressrel/subprime.html.)

As HUD's conclusions illustrate, Oakland's particular interest in regulating subprime loans goes beyond merely protecting its particularly vulnerable citizens. As one amicus curiae points out, "predatory lending is not just a consumer protection issue; it is a *community development* issue, because it threatens the stability of lower income homeowning neighborhoods ... . [¶] Predatory home mortgage lending has enormous impacts on targeted neighborhoods. Predatory lending practices, particularly the phenomenon of 'asset based lending,' contribute to an increase in the number of foreclosures. This can result in abandoned houses and blighted neighborhoods and contribute to the physical and economic deterioration of lower-income, minority, and inner city communities. 'Foreclosures, especially in low- and moderate-income neighborhoods turn what might be typically viewed as a consumer protection problem ... into a community development problem, in which increased foreclosures lead to property abandonment and blight.' " (Quoting HUD Rep., Recommendations to Curb Predatory Home Mortgage Lending (June 2000) pp. 24-25, available online at http://www.treas.gov/press/releases/reports/treasrpt.pdf [as of Jan. 31, 2005].)

In view of the community degradation caused by predatory lending, Oakland reasonably could have concluded that it was important to include holders in due course within the Ordinance's purview. The bulk sale of mortgage loans on the secondary market is the primary profit incentive for subprime mortgage lenders. (See Eggert, *Held up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine* (2002) *35 Creighton L.Rev. 503, 577* [noting that a primary reason for the rapid growth of the industry "is that the existence of ready capital available to lenders through the securitization of subprime loans has dramatically increased their ability to make those loans"].) The innovation of selling mortgage loans in bulk is, in fact, what fueled the enormous growth of the subprime mortgage industry. (See *id. at p. 578*) As the City of Oakland points out, "sales of subprime loans by predatory lenders is the inducement and profit-basis for their business practice of encouraging ever higher and larger loans to subprime borrowers, i.e. larger 'inventory' of loans for sale to others--all to the detriment of the consumer public." Thus, Oakland reasonably could have concluded that because the bulk of subprime loans are sold on the secondary market, the Ordinance would have significantly greater deterrence effect if borrowers were able to invoke the defense of predatory lending in a foreclosure or other enforcement action against the secondary buyers who otherwise might be immune from liability. Otherwise, as one amicus curiae points out, "[s]ince most subprime loans are sold on the secondary market, the lack of assignee liability provides little incentive to the industry to clean up its practices."

The Legislature was free to conclude that treatment of predatory lending requires statewide uniformity. Alternatively, however, it could conclude that only a statewide minimum standard of conduct is necessary, and that local jurisdictions have some freedom to additionally regulate predatory lenders pursuant to the municipal police power to prevent urban decay and neighborhood blight. Because of the local, varying nature of the problem, this is not a case in which having differing local standards is wholly illogical. (Cf. *Tolman v. Underhill (1952) 39 Cal.2d 708, 713 [249 P.2d 280]* [loyalty oaths for state employees requires uniform treatment]; *Northern Cal. Psychiatric Society v. City of Berkeley (1986) 178 Cal. App. 3d 90, 102 [223 Cal. Rptr. 609]* [no special local interest with regard to regulation of electroshock therapy].) All we can be certain of is that Division

1.6 was the product of a legislative compromise, and that the compromise included deliberate silence on the matter of preemption.

As discussed above, predatory lending is characterized by loans that are aggressively marketed to borrowers who often cannot afford the payments and eventually default on the loans. The city argues that the high rate of default and foreclosure has led to the degradation of entire neighborhoods and has contributed to the already substantial problem of urban blight in Oakland. The field of predatory lending regulation is one in which conditions peculiar to the locality are likely to differ from place to place and where supplemental regulation may well fall within the realm of local government. (*Gluck v. City of Los Angeles, supra, 93 Cal. App. 3d 121, 133* [upholding a Los Angeles ordinance regulating the placement and display of news racks on public rights-of-way].)

This court has acknowledged that the balance of power between state and local municipalities recognizes that a one-size-fits-all solution is not always in the best interest of the residents of a particular community. (See, e.g., *California Rifle & Pistol Assn. v. City of West Hollywood, supra, 66 Cal.App.4th 1302, 1318* [recognizing the need for caution in "depriving local municipalities of aspects of their constitutional police power to deal with local conditions"].) Keeping this in mind, courts have taken care to harmonize the general law and the localized need for municipal regulation even where the record reveals a pronounced statewide interest and a comprehensive statewide scheme relating to the field. (See, e.g., *People v. Butler (1967) 252 Cal. App. 2d 584 [60 Cal. Rptr. 659]* [upholding ordinance prohibiting consumption of alcoholic beverages on public streets despite a comprehensive statewide scheme relating to such beverages]; *Gleason v. Municipal Court (1964) 226 Cal. App. 2d 584 [38 Cal. Rptr. 226]* [upholding local ordinance proscribing loitering despite the then broad sweep of *Penal Code section 647*].) The case before us falls squarely within this line of precedent.

The cases cited by the majority do not compel a contrary conclusion. Although our numerous preemption cases resist easy harmonization, one theme that emerges is that those municipal ordinances that have been found to be preempted have been seen as subverting, in some tangible way, the purpose and intent of the state statute. This is true of each of the cases relied upon by the majority. In *Wilson v. Beville (1957) 47 Cal.2d 852 [306 P.2d 789]*, we invalidated a local ordinance that attempted to impose conditions more stringent than those imposed by the state on the exercise of the power of eminent domain by specifying a shorter statute of limitations for the filing of a claim. There, we observed that a "city charter cannot give a shorter time, make more onerous the recovery of compensation, than the legislation has." (*Id. at p. 861*). We also observed that "a municipality may not curtail or abridge the rights so granted [right to recover for tort] by specifying, through charter provision, a shorter time limitation ... than the period fixed by the statute." (*Ibid.*, italics omitted, citing *Eastlick v. City of Los Angeles (1947) 29 Cal.2d 661, 666 [177 P.2d 558]*.) The local legislation thus undermined the statute by making the recovery of compensation more onerous. As such, the local ordinance was invalid because the Legislature had "provided a complete and detailed system for exercising the right of eminent domain and assessing compensation." (*Wilson v. Beville, supra, 47 Cal.2d at p. 860*.)

Similarly, in *Eastlick*, we struck down a requirement in the Los Angeles City Charter that required a personal injury claimant to itemize the damages in her claim. The requirements for a personal injury claim under state law did not require such specificity. (*Eastlick v. City of Los Angeles, supra, 29 Cal.2d 661, 666.*) Again, as in *Wilson*, the locality had attempted to abridge and circumscribe a state law right, thereby undermining the purpose of the state regulation. (*Ibid.*) Likewise, in *Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, 152 [130 Cal. Rptr. 465, 550 P.2d 1001]*, we invalidated a provision in the Berkeley City Charter that attempted to impose additional restrictions on a landlord's right to evict a tenant. There, we observed that requiring "landlords to fulfill the elaborate prerequisites for the issuance of a certificate of eviction by the rent control board before they commence the [state] statutory proceeding would nullify the intended summary nature of the [statutory] remedy." (*Id. at p. 151.*) In *Isaac v. City of Los Angeles (1998) 66 Cal.App.4th 586, 600 [77 Cal. Rptr. 2d 752]*, the Court of Appeal held that an ordinance that gave utility liens priority over other recorded liens was preempted "because it disrupts California's statewide statutory scheme of lien priority" by giving the utility lien a priority over other liens that the state has determined should have priority.

The common theme running through these cases is that a locality may not impose additional burdensome requirements upon the exercise of state statutory remedies that undermine the very purpose of the state statute. Here, we are presented with a fundamentally different relationship between the state statute and local regulations. The Ordinance does not appear to undermine any of the stated goals of Division 1.6. To the contrary, the ordinance grants borrowers additional rights not afforded under state law, such as restrictions on prepayment penalties, mandatory credit counseling, and the opportunity to present defenses to secondary buyers of their mortgages if the borrowers have been victimized by predatory lending practices. Far from subverting Division 1.6, the Ordinance furthers the stated goal of the state legislation

by providing additional protections to the low-income borrowers in Oakland who are especially vulnerable to predatory lending practices.

The majority argues, however, that the Ordinance *does* disrupt the balance struck by the Legislature in enacting Division 1.6. The majority asserts that Division 1.6 balanced "the need to protect particularly vulnerable consumers from predatory lending practices and the concern homeowners not be unduly hindered in accessing the equity in their own homes." (Maj. opn., *ante*, at p. 1257.) The majority observes that "[s]evere regulation of subprime lending might cause lenders to cease making such loans in California, or preclude borrowers from obtaining a loan based on equity in their home even though such loans can serve a legitimate need. ... Thus, the Legislature was aware regulation of certain predatory practices in mortgage lending, practices which occur most often in the subprime market, could have the unintended consequence of hurting those the legislation was intended to help, and sought to balance these competing concerns. The Ordinance, and the possibility of other divergent and competing local measures throughout California, upsets that balance." (*Id.*, at pp. 1257-1258.)

Although it undoubtedly is true that the Legislature struck a balance to ensure passage of the bill, the balance was the product of compromise between consumer protection interests and finance industry interests. In order to glean the intent of the Legislature regarding preemption, we must examine the entirety of that compromise, and not selective parts of it. As discussed above, that compromise included the omission of any provision relating to preemption of local legislation. Yet, the majority concludes that preemption nonetheless was intended, emphasizing the Legislature's supposedly overriding concern regarding the threat that patchwork regulation might pose to low-income borrowers' access to capital. This emphasis on the need to prevent undue regulation ignores the principal purpose of Division 1.6, which is to improve consumer protection against predatory lending practices, *not* to protect lenders from unduly restrictive regulation.

The majority's implicit assumption is that Oakland's Ordinance, by providing for stricter regulation of certain areas of subprime lending, necessarily will cause lenders to cease making loans in Oakland and in California as a whole. (Maj. opn., *ante*, at pp. 1257-1258.) Had a majority of the Legislature agreed with that proposition, however, it could be expected that the legislation would have included a provision expressly preempting local legislation. The conscious omission of an explicit preemption provision demonstrates that the Legislature could not agree that local legislation would undermine or impair the objectives of the state legislation. Furthermore, should the undesirable consequences forecast by the majority come to pass, the Legislature, of course, would be free to step in and add an express preemption provision to Division 1.6.

The majority also places great emphasis on the City's admission that in more than 150 years of California history, no municipality has attempted to regulate mortgage lending. (Maj. opn, *ante*, at p. 1255.) [5] But we never have required a locality to prove a historical practice of regulation to establish the validity of a local regulation. Rather, as outlined above, the proper inquiry requires a clear indication of legislative intent and a studied balance between the need for state uniformity and the particular interest of the locality. Although historical regulatory patterns may be significant in assessing legislative intent, we must assess that history in context. The subprime mortgage industry has undergone tremendous growth in recent years. (See *ante*, fn. 3.) [6] During that period, predatory lending has had a grossly disproportionate impact on low-income and minority homeowners and communities. Under these circumstances, it is reasonable that the communities most affected would see a need to take action to protect their residents.

5 Of course, as the majority acknowledges, Oakland is not the only municipality seeking to regulate in this field. Los Angeles also recently enacted an Ordinance regulating predatory lending practices. (L.A. Mun. Code, ch. XVIII, art. 1, § 181.07, subd. (B).)

6 Moreover, the Legislature was aware that historically, the subject of subprime lending has not been addressed by existing regulation. A bill analysis stating the purposes of Assembly Bill No. 489 states that "[t]he licensing laws under which subprime lenders operate predate the development of the subprime market and therefore did not envision the types of problems that have arisen in this market. In fact many real estate loans are specifically exempted from consumer protections in these laws." (Assem. Com. on Appropriations, Analysis of Assem. Bill No. 489 as amended May 1, 2001, p. 3.)

Thus, despite the circumstance that mortgage regulation historically has occurred at the state rather than the local level, we must recognize the concerns implicated by the recent rapid escalation of predatory lending. In view of the documented evidence that predatory lending is especially pervasive in low-income and minority neighborhoods, it is beyond dispute that Oakland and other similarly situated localities have a more significant interest in regulating subprime lending than localities that, because of demographics and composition, are not targeted in similar ways. Local regulation thus is not only constitutionally valid, but practically vital to the

affected communities. Although predatory lending certainly is a matter of statewide concern, the specific interests of the communities most affected by the banned practices make the regulation of this field particularly amenable to local variations. Oakland's own interest in preventing predatory lending provides ample justification for that locality's enactment of stricter and more protective regulations designed to ensure that its residents receive adequate information before saddling themselves with financial obligations that could prove devastating.

In sum, I agree with the city and the decision of the Court of Appeal below that Division 1.6 establishes a floor, not a ceiling, for the regulation of predatory lending practices. As the majority recognizes, the rule of implied preemption is a " 'rule of necessity, based upon the need to prevent dual regulations which could result in uncertainty and confusion.' " (Maj. opn., *ante,* at p. 1252.) As discussed above, the Ordinance provides added protections for its citizens that will not result in uncertainty or confusion, and absent a clearly evident legislative intent I believe the Ordinance is not preempted. [7]

7 Although the majority does not reach the point, I note that AFSA also argues that because the Ordinance does not apply to federally chartered lenders, it is preempted by *Civil Code section 1916.12*, which creates a mechanism for the state to respond to changes in federal lending laws by adopting conforming changes in the regulation of state lenders. I agree with the Court of Appeal that *Civil Code section 1916.12* does not preempt the Ordinance. *Section 1916.12* does not evidence a legislative intent to preempt and does not mandate absolute parity in the treatment of federal and state lenders at either the state or municipal level, and thus does not preempt the Ordinance.

I would affirm the judgment of the Court of Appeal, upholding the validity of Oakland's antipredatory lending ordinance.

Kennard, J., and Moreno, J., concurred.

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CITY OF RANCHO CUCAMONGA, Plaintiff and Appellant, v. REGIONAL WATER QUALITY CONTROL BOARD-SANTA ANA REGION et al., Defendants and Respondents; COUNTY OF SAN BERNARDINO et al., Real Parties in Interest and Respondents.

E037079

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

135 Cal. App. 4th 1377; *38 Cal. Rptr. 3d 450*; *2006 Cal. App. LEXIS 86*; *2006 Cal. Daily Op. Service 845*; *2006 Daily Journal DAR 1126*; *36 ELR 20026*

January 26, 2006, Filed

NOTICE:

As modified Feb. 27, 2006.

SUBSEQUENT HISTORY: Modified by *City of Rancho Cucamonga v. Reg'l Water Quality, 2006 Cal. App. LEXIS 246 (Cal. App. 4th Dist., Feb. 27, 2006)*

PRIOR-HISTORY: APPEAL from the Superior Court of San Bernardino County, No. RCV 071613, Shahla Sabet, Judge.

COUNSEL: James L. Markman; Richards, Watson & Gershon, John J. Harris and Evan J. McGinley for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Mary E. Hackenbracht, Assistant Attorney General, Richard Magasin and Jennifer F. Novak, Deputy Attorneys General, for Defendants and Respondents.

JUDGES: Gaut J., with Hollenhorst, Acting P. J. and Richli J., concurring.

OPINION BY: GAUT

OPINION

GAUT, J.--

1. Introduction

This case involves environmental regulation of municipal storm sewers that carry excess water runoff to the Santa Ana River as it passes through San Bernardino County on its way to the Pacific Ocean. Federal and state laws impose regulatory controls on storm sewer discharges. Municipalities are required to obtain and comply with a federal regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems.

In this instance, the Regional Water Quality Control Board for the Santa Ana Region (the Regional Board) conducted public hearings and then issued a comprehensive 66-page municipal storm sewer permit governing 18 local public entities. Two permittees, the City of Rancho Cucamonga and the City of Upland, among others, filed an administrative appeal with the State Water Resources Control Board (the State Board.) The State Board summarily dismissed the appeal. The Cities of Rancho Cucamonga and Upland [1] then filed a petition for writ of mandate and complaint against the State Board and the Regional Board.

1 Upland is not a party to this appeal.

The trial court sustained without leave to amend the demurrer of the State Board to the entire action. It sustained the demurrer as to four causes of action and granted the motion to strike of the Regional Board. After a hearing, the trial court denied the petition for writ of mandate.

Both procedurally and substantively, the City of Rancho Cucamonga challenges the conditions imposed by the NPDES [2] permit and waste discharge requirements (the 2002 permit). It contends the procedure by which

the 2002 permit was adopted was not legal, that the 2002 permit's conditions are not appropriate for the area, and that the permit's requirements are too expensive. Because we conclude the permit was properly adopted and its conditions and requirements are appropriate, we reject these contentions.

2 The National Pollutant Discharge Elimination System.

2. The National Pollutant Discharge Elimination System

California cases have repeatedly explained the complicated web of federal and state laws and regulations concerning water pollution, especially storm sewer discharge into the public waterways. (*City of Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613, 619-621 [26 Cal. Rptr. 3d 304, 108 P.3d 862]* (*Burbank*); *Building Industry Assn. of San Diego County v. State Water Resources Control Board (2004) 124 Cal.App.4th 866, 872-875 [22 Cal. Rptr. 3d 128]* (*Building Industry*); *Communities for a Better Environment v. State Water Resources Control Bd. (2003) 109 Cal.App.4th 1089, 1092-1094 [1 Cal. Rptr. 3d 76]* (*Communities*); *WaterKeepers Northern California v. State Water Resources Control Bd. (2002) 102 Cal.App.4th 1448, 1451-1453 [126 Cal. Rptr. 2d 389]*).

For purposes of this case, the important point is described by the California Supreme Court in *Burbank*: "Part of the Federal Clean Water Act [*33 U.S.C. § 1251 et seq.*] is the National Pollutant Discharge Elimination System (NPDES), '[t]he primary means' for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma [(1992) 503 U.S. 91, 101 [117 L. Ed. 2d 239, 112 S. Ct. 1046]]*.) The NPDES sets out the conditions under which the federal [Environmental Protection Agency] or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (*33 U.S.C. § 1342(a) & (b)*.) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (*§ 13374*.)" (*Burbank, supra, 35 Cal.4th at p. 621*.)

California's Porter-Cologne Act (*Wat. Code, § 13000 et seq.*) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (*Wat. Code, §§ 13140, 13200 et seq., 13240*, and *13301*.) *Water Code sections 13374* and *13377* authorize the Regional Board to issue federal NPDES permits for five-year periods. (*33 U.S.C. § 1342, subd.(b)(1)(B)*.)

As discussed more fully in part 6 *post*, the state-issued NPDES permits are subject to the informal hearing procedures set forth for administrative adjudications. (*Gov. Code, § 11445.10 et seq.*; *Cal. Code Regs., tit. 23, § 647 et seq.*) The issuance of permits is specifically excluded from the procedures for administrative regulations and rulemaking. (*Gov. Code, §§ 11340 et seq., 11352*.)

3. Factual and Procedural Background

The Regional Board issued the first NPDES permit for San Bernardino County in 1990. The principal permittee was the San Bernardino Flood Control District (the District). The 1990 permit required the permittees to develop and implement pollution control measures, using "best management practices" and monitoring programs, to eliminate illegal discharges and connections, and to obtain any necessary legal authority to do so. The management programs could be existing or new.

In 1993, the District developed the NPDES drain area management program (DAMP).

The second NPDES permit was issued in 1996 and was based on the report of waste discharge (ROWD) prepared by the principal permittee and copermittees, including Rancho Cucamonga. The 1996 permit proposed extending the existing program, which included inspections of industrial and commercial sources; policies for development and redevelopment; better public education; and implementation of a monitoring program. It offered a commitment to reduce pollutants to the "maximum extent practicable."

In 2000, the permittees submitted another ROWD to renew their NPDES permit. The 2000 ROWD proposed continuing to implement and develop water quality management and monitoring programs.

Based on the 2000 ROWD, the Regional Board staff created five successive drafts of the 2002 permit, incorporating written comments by Rancho Cucamonga and others and comments made during two public workshops. Some of the comments addressed the economic considerations of anticipated prohibitive compliance costs.

The notice of the public hearing to consider adoption of the 2002 permit hearing announced: "relevant Regional Board files are incorporated into the record;" the governing procedures were those for an informal hearing procedure as set forth in "*Title 23, California Code of Regulations, Section 647 et seq.*;" and "Hearings before the Regional Water Board are not conducted pursuant to *Government Code section 11500 et seq.*," the alternative formal hearing procedure for administrative adjudication. The notice was mailed to all permittees. The accompanying "fact sheet," which was publicly circulated, offered further information about the conduct and nature of the hearing and the legal and factual

grounds for the Regional Board's recommendation to adopt the 2002 permit.

The informal public hearing was conducted on April 26, 2002. Neither Rancho Cucamonga nor any of the permittees objected to the form or substance of the hearing. Ultimately, after a staff presentation and testimony, including a statement from Rancho Cucamonga's counsel, the Regional Board adopted the 2002 permit. After the State Board dismissed their administrative appeal, Rancho Cucamonga and Upland filed the instant action.

The operative pleading is the second amended petition for writ of mandate and complaint. The petition alleges that the State Board and the Regional Board acted illegally and in excess of their jurisdiction in developing, adopting and implementing the 2002 permit. Based on 26 pages of general allegations, the petition asserts eight causes of action, alleging the State Board and the Regional Board violated *sections 13241*, *13263*, and *13360 of the Water Code* (the Porter-Cologne Act); the California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*); the California Administrative Procedure Act (*Gov. Code, §§ 11340-11529*); the California Constitution; and the federal Clean Water Act; and seeking declaratory and injunctive relief.

The State Board successfully opposed the action on demurrer. The Regional Board eliminated four causes of action, the fourth, fifth, seventh, and eighth by demurrer and motion to strike. On the remaining four causes of action, the trial court found in favor of the Regional Board.

4. State Board's Demurrer

Rancho Cucamonga maintains the trial court should not have sustained the demurrer of the State Board without leave to amend because the State Board is the ultimate authority on state-issued NPDES permits, and, therefore, was properly joined as a party: "Because the State Board has for all intents and purposes adopted the rules and policies of general application upon which the Permit is based, it is clearly a proper party to this action."

The difficulty with Rancho Cucamonga's theory of liability against the State Board is, to quote Gertrude Stein about the City of Oakland, "There is no there there." (Stein, Everybody's Autobiography (1937).) In other words, Rancho Cucamonga's allegations against the State Board lack any substance. Instead, Rancho Cucamonga launches an unspecific attack on the State Board without identifying any particular problems. The petition makes the unexceptional allegation that the State Board formulates general water control policy which it implements and enforces through regional boards. It also alleges the State Board has not complied with the Administrative Procedure Act but it does not identify any objectionable policies or how there is no compliance. Instead the petition complains about a State Board letter directing that all NPDES permits follow consistent principles regarding standard urban storm water mitigation plans. Additionally, the petition maintains the 2002 permit included new reporting requirements and increased costs of compliance.

But the foregoing allegations did not articulate any improper State Board conduct. The 2002 permit, issued by the Regional Board and not by the State Board, is not subject to formal rulemaking procedures. (*Gov. Code, § 11352, subd. (b).*) The State Board's letter, explaining a precedential decision concerning mitigation plans, is not an example of formal rulemaking. (*Gov. Code, § 11425.60, subd. (b).*) By dismissing Rancho Cucamonga's administrative appeal concerning the 2002 permit, the State Board declined to become involved and the Regional Board's decision to issue the permit became final and subject to judicial review. (*People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry (1987) 194 Cal.App.3d 158, 177 [239 Cal. Rptr. 349].*) But the State Board was not made a proper party by reason of its dismissal of the administrative appeal.

Furthermore, even if Rancho Cucamonga had identified any cognizable claim against the State Board, it would have been barred by the 30-day statute of limitations for challenging an improperly adopted State Board regulation or order. (*Wat. Code, § 13330*; *Gov. Code, § 11350.*)

We hold the trial court properly sustained without leave to amend the State Board's demurrer to the second amended petition for writ of mandate and complaint.

5. Standard of Review for Petition for Writ of Mandate

In deciding a petition for writ of mandate, the trial court exercises its independent judgment. (*Code Civ. Proc., § 1094.5, subd. (c)*; *Wat. Code, § 13330, subd. (d)*; *Building Industry, supra, 124 Cal.App.4th at p. 879.*) But, "[i]n exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings ... . [¶] ... [¶] ... Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." (*Fukuda v. City of Angels (1999) 20 Cal.4th 805, 817-818 [85 Cal. Rptr. 2d 696, 977 P.2d 693]* (*Fukuda*).)

On appeal, the reviewing court determines whether substantial evidence supports the trial court's factual determinations. (*Fukuda, supra, 20 Cal.4th at p. 824*; *Building Industry, supra, 124 Cal.App.4th at p. 879.*) The trial court's legal determinations receive a de novo review with consideration being given to the agency's

interpretations of its own statutes and regulations. (*Building Industry, supra, at p. 879*; *Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470, 482 [22 Cal. Rptr. 3d 772]*.)

6. Rancho Cucamonga's Objections to the Administrative Record and Lack of Notice

The notice of the administrative hearing for adoption of the 2002 permit included the statement that the Regional Board's files would be incorporated as part of the record. Before trial on the writ petition, Rancho Cucamonga attempted to raise an omnibus objection to the entire administrative record and a specific objection to four documents, three studies about marine pollution and one economic study. The trial court ruled the objections had been waived by not making them before or at the time of the hearing. Applying the presumption of administrative regularity, we affirm the trial court's evidentiary ruling. (*Mason v. Office of Admin. Hearings (2001) 89 Cal.App.4th 1119, 1131 [108 Cal. Rptr. 2d 102]*.)

The reasons given by Rancho Cucamonga as to why the trial court should have sustained its objections to all or part of the administrative record are that it did not waive its objections to the record because Rancho Cucamonga did not know the hearing was adjudicative; the Regional Board did not provide notice of an informal hearing (*Gov. Code, § 11445.30*); and Rancho Cucamonga never had an opportunity to object to the administrative record.

As noted previously, *Government Code section 11352, subdivision (b)*, makes the issuance of an NPDES permit exempt from the rulemaking procedures of the Administrative Procedure Act. Permit issuance is a quasi-judicial, not a quasi-legislative, rulemaking proceeding: "The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function." (*Sommerfield v. Helmick (1997) 57 Cal.App.4th 315, 320 [67 Cal. Rptr. 2d 51]*; see *City of Santee v. Superior Court (1991) 228 Cal.App.3d 713, 718 [279 Cal. Rptr. 22]*.)

Instead, the Regional Board correctly followed the administrative adjudication procedures (*Gov. Code, § 11445.10 et seq.*) and the companion regulations at *California Code of Regulations, title 23, sections 647-648.8* for informal adjudicative public hearings. These procedures were announced in the notice of hearing which also stated that *Government Code section 11500 et seq.*, governing formal administrative adjudication hearings, would not apply, thus satisfying *Government Code section 11445.30* requiring notice of an informal hearing procedure. At the time of the hearing, Rancho Cucamonga did not object to the informal procedure. Rancho Cucamonga's effort to argue that federal notice requirements (*40 C.F.R. § 124.8, subd. (b)(6)(ii)* (2005)) should also have been followed fails because this involved a state-issued NPDES permit adopted according to California procedures.

Because Rancho Cucamonga was given notice that the hearing on the permit would proceed as an informal administrative adjudication, it cannot successfully argue it was relieved of the obligation to object to the administrative record at the time of the hearing. An informal administrative adjudication contemplates liberality in the introduction of evidence. (*23 Cal. Code Regs., tit. 23, §§ 648, subd. (d), 648.5.1.*) If Rancho Cucamonga wished to object to the informal hearing procedures, including the liberal introduction of evidence, it should have raised its objections as provided by statute and regulation before or at the time of the hearing (*Gov. Code, §§ 11445.30, 11445.40, 11445.50*; *23 Cal. Code Regs., tit. 23, § 648.7*), not a year later in the subsequent civil proceeding.

7. Economic Considerations for Issuance of NPDES Permit

Rancho Cucamonga's next assignment of error is that the Regional Board failed to consider the economic impact of the requirements of the 2002 permit by not conducting a cost-benefit analysis. Rancho Cucamonga relies on the California Supreme Court's *Burbank* opinion, in which the court held: "When ... a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance." (*Burbank, supra, 35 Cal.4th at p. 618.*) Rancho Cucamonga contends that the 2002 permit exceeds federal requirements and that, therefore, this case should be remanded for a consideration of economic factors. (See *ibid.*; *Wat. Code, § 13241, subd. (d).*)

The two problems with this argument are the trial court found there was no evidence that the 2002 permit exceeded federal requirements and Rancho Cucamonga does not explain now how it does so. There was also evidence that the 2002 permit was based on a fiscal analysis and a cost-benefit analysis. In the absence of the foundational predicate and in view of evidence that cost was considered, Rancho Cucamonga's contention on this point fails.

We also reject Rancho Cucamonga's related procedural argument that the Regional Board's motion to strike was impermissible as piecemeal adjudication. (*Regan Roofing v. Superior Court (1994) 24 Cal.App.4th 425, 432-436*; *Lilienthal & Fowler v. Superior Court (1993) 12 Cal.App.4th 1848, 1851-1855 [16 Cal. Rptr. 2d 458]*.)

It is well recognized a court may strike all or part of a pleading as it did in this instance. (*Code Civ. Proc., §§ 431.10, 436*; *PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682-1683 [40 Cal. Rptr. 2d 169]*.)

8. Substantial Evidence

Rancho Cucamonga also challenges the trial court's independent factual determination that sufficient evidence supports the findings of the Regional Board. Rancho Cucamonga's main contention is that the 2002 permit was not distinctively crafted for San Bernardino County but, instead, copied a similar permit for other counties without identifying any particular water quality impairment in San Bernardino County caused by the permittees. In other words, no evidence in the record supports issuance of the 2002 permit and the trial court did not identify any such evidence in its statement of decision.

One problem with Rancho Cucamonga's foregoing argument is that the Clean Water Act requires an NPDES permit to be issued for *any* storm sewer discharge, whether there is any actual impairment in a particular region. (*33 U.S.C. § 1342*; *Communities, supra, 109 Cal.App.4th at pp. 1092-1093*.) Therefore, Rancho Cucamonga's contention that the permit fails to identify impaired water bodies in the region is beside the point.

In its statement of decision, the trial court discussed the inadequacy of the arguments and evidence cited by Rancho Cucamonga and concluded: "The San Bernardino Permit is based in part on the Basin Plan for this region. It is also based on the permittees' own reports and monitoring within this region ... . It incorporates the permittees' management program, which is unique to these cities and county." The trial court included a citation to the 1993 DAMP report's "Geographic Description of the Drainage Area," which discusses the specific conditions present in San Bernardino County.

On appeal, Rancho Cucamonga faults the trial court for not presenting a more detailed description of the evidence supporting the issuance of the permit. We do not think the trial court, or this court, must bear that burden.

First, "[a]n agency may ... rely upon the opinion of its staff in reaching decisions, and the opinion of staff has been recognized as constituting substantial evidence. (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com. (1976) 55 Cal.App.3d 525, 535-536 [127 Cal. Rptr. 775]*.)" (*Browning-Ferris Industries v. City Council (1986) 181 Cal.App.3d 852, 866 [226 Cal. Rptr. 575]*.) Here the Regional Board adopted the recommendation of its staff in issuing the permit. And, as the record shows, the staff's recommendation was based on the previous 1990 and 1996 permits, the 1993 DAMP report and the 2000 ROWD, the permittees' application for renewal of the 1996 permit, as well as more general water quality factors. The evidence contradicts Rancho Cucamonga's assertion, that "the Regional Board simply copied verbatim the NPDES Permit for North Orange County, a coastal region with markedly different water quality conditions and problems."

As part of the trial court's consideration of the petition for writ of mandate, Rancho Cucamonga and the Regional Board directed the court to review specific items of evidence contained in the administrative record. In its opposing brief, the Regional Board offered a detailed account of the evidence supporting the issuance of the permit. The trial court indicated it had reviewed the parties' submissions before ruling. It discussed the evidence at the hearing on the petition and referred to it in its statement of decision. (*Lala v. Maiorana (1959) 166 Cal.App.2d 724, 731 [333 P.2d 862]*.) Rancho Cucamonga had the burden of showing the Board abused its discretion or its findings were not supported by the facts. (*Building Industry, supra, 124 Cal.App.4th at pp. 887-888*.) To the extent it attempted to do so at the trial court level, it was not successful.

This court has independently reviewed the record with particular attention to the evidence as emphasized by the parties. We do not, however, find it incumbent upon us or the trial court to review the many thousands of pages submitted on appeal and identify the particular evidence that constitutes substantial evidence. Instead, we deem the trial court's findings sufficient and not affording any grounds for reversal. (*Building Industry, supra, 124 Cal.App.4th at p. 888*; see *Weisz Trucking Co., Inc. v. Emil R. Wohl Construction (1970) 13 Cal.App.3d 256, 264 [91 Cal. Rptr. 489]*, citing *Perry v. Jacobsen (1960) 184 Cal.App.2d 43, 50 [7 Cal. Rptr. 177]*.)

9. Safe Harbor Provision

As it did repeatedly below, Rancho Cucamonga maintains the 2002 permit violates section 402(k) of the Clean Water Act (*33 U.S.C. § 1342(k)*), because the permit does not include "safe harbor" language, providing that, if a permittee is in full compliance with the terms and conditions of its permit, it cannot be found in violation of the Clean Water Act. (*U.S. Public Interest v. Atlantic Salmon (1st Cir. 2003) 339 F.3d 23, 26*; *EPA v. State Water Resources Control Board (1976) 426 U.S. 200, 205 [48 L.Ed.2d 578, 96 S.Ct. 2022]*.) The trial court found there was no statutory right to a "safe harbor" provision to be included as the term of the permit. We agree.

This seems like much ado about nothing because *33 United States Code section 1342 (k)*, already affords Rancho Cucamonga the protection it seeks: "Compliance with a permit issued pursuant to this section shall be

deemed compliance, for purposes of *sections 1319* and *1365* of this title, with *sections 1311*, *1312*, *1316*, *1317*, and *1343* of this title, except any standard imposed under *section 1317* of this title for a toxic pollutant injurious to human health." Rancho Cucamonga does not cite any persuasive authority as to why this statutory protection had to be duplicated as a provision in the 2002 permit.

Furthermore, the 2002 permit complied with the State Board's water quality order No. 99-05, a precedential decision requiring NPDES permits to omit "safe harbor" language used in earlier permits. A permit without "safe harbor" language was upheld in *Building Industry, supra, 124 Cal.App.4th at page 877.* The trial court did not err.

10. Maximum Extent Practicable

Rancho Cucamonga protests that the 2002 permit's discharge limitations/prohibitions exceed the federal requirement that storm water dischargers should "reduce the discharge of pollutants to the maximum extent practicable." (*33 U.S.C. § 1342(p)(3)(B)(iii).*) The trial court, however, found there was no evidence presented that the 2002 permit exceeded federal requirements. Because there is no evidence, the issue presented is hypothetical and, therefore, premature. (*Building Industry, supra, 124 Cal.App.4th at p. 890.*)

Additionally, as Rancho Cucamonga recognizes, *Building Industry* rejected the contention that a "regulatory permit violates federal law because it allows the Water Boards to impose municipal storm sewer control measures more stringent than a federal standard known as 'maximum extent practicable.' [Citation.] [Fn. omitted.] ... [W]e ... conclude the Water Boards had the authority to include a permit provision requiring compliance with state water quality standards." (*Building Industry, supra, 124 Cal.App.4th at p. 871.*) The *Burbank* case, allowing for consideration of economic factors when federal standards are exceeded, does not alter the analysis in this case where there was no showing that federal standards were exceeded and where there was evidence that economic factors were considered. Furthermore, like the permit in *Building Industries*, the 2002 permit contemplates controlling discharge of pollutants to the maximum extent practicable through a "cooperative iterative process where the Regional Water Board and Municipality work together to identify violations of water quality standards." (*Building Industry, supra, at p. 890.*) The 2002 permit does not exceed the maximum extent practicable standard.

11. The Requirements of the 2002 Permit

Rancho Cucamonga lastly complains the requirements of the 2002 permit are "overly prescriptive," illegally dictating the manner of compliance and improperly delegating to the permittees the inspection duties of the State Board and the Regional Board. Rancho Cucamonga's arguments contradict the meaning and spirit of the Clean Water Act.

In creating a permit system for dischargers from municipal storm sewers, Congress intended to implement actual programs. (*National Resources Defense Council, Inc. v. Costle (D.C. Cir. 1977) 186 U.S. App.D.C. 147 [568 F.2d 1369, 1375].*) The Clean Water Act authorizes the imposition of permit conditions, including: "management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (*33 U.S.C. § 1342(p)(3)(B)(iii).*) The act authorizes states to issue permits with conditions necessary to carry out its provisions. (*33 U.S.C. § 1342(a)(1).*) The permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants. (*National Resources Defense Council v. U.S. EPA (1992) 966 F.2d 1292, 1308.*) That is what the Regional Board has created in the 2002 permit.

Rancho Cucamonga's reliance on *Water Code section 13360* is misplaced because that code section involves enforcement and implementation of state water quality law, (*Wat. Code, § 13300 et seq.*) not compliance with the Clean Water Act (*Wat. Code, § 13370 et seq.*) The federal law preempts the state law. (*Burbank, supra, 35 Cal.4th at p. 618.*) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits.

Furthermore, the 2002 permit does afford the permittees discretion in the manner of compliance. It is the permittees who design programs for compliance, implementing best management practices selected by the permittees in the DAMP report and approved by the Regional Board. Throughout the permit, the permittees are granted considerable autonomy and responsibility in maintaining and enforcing the appropriate legal authority; inspecting and maintaining their storm drain systems according to criteria they develop; establishing the priorities for their own inspection requirements; and establishing programs for new development. The development and implementation of programs to control the discharge of pollutants is left largely to the permittees.

More particularly, we agree with the Regional Board that the permit properly allocated some inspection duties to the permittees. As part of their ROWD application for a permit, the permittees proposed to "Conduct Inspection, Surveillance, and Monitoring. Carry out all inspections, surveillance, and monitoring procedures necessary

to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal storm drain system." The ROWD also discussed continuing existing inspection programs.

Water Code section 13383 provides that as part of compliance with the Clean Water Act, the Regional Board may establish inspection requirements for any pollutant discharger. Federal law, either expressly or by implication, requires NPDES permittees to perform inspections for illicit discharge prevention and detection; landfills and other waste facilities; industrial facilities; construction sites; certifications of no discharge; non-stormwater discharges; permit compliance; and local ordinance compliance. (*40 C.F.R. 122.26(d), (g)* (2005); *33 U.S.C. § 1342(p)(3)(B)(ii).*) Permittees must report annually on their inspection activities. (*40 C.F.R. § 122.42(c)(6)* (2005).)

Rancho Cucamonga claims it is being required to conduct inspections for facilities covered by other state-issued general permits. Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits. The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (*40 C.F.R. § 122.26(d)(2)* (2005).)

12. Disposition

Rancho Cucamonga is the only of the original 18 permittees still objecting to the 2002 NPDES permit. It has not successfully demonstrated that substantial evidence does not support the trial court's factual determinations or the trial court erred in its interpretation and application of state and federal law.

We affirm the judgment and order the prevailing parties to recover their costs on appeal.

Hollenhorst, Acting P. J., and Richli, J., concurred.

On February 27, 2006, the opinion was modified to read as printed above.

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1 of 1 DOCUMENT

Positive
As of: Jun 05, 2009

ALBERT MILLS, Plaintiff and Respondent, v. COUNTY OF TRINITY et al., Defendants and Appellants

Civ. No. 18866

Court of Appeal of California, Third Appellate District

108 Cal. App. 3d 656; *166 Cal. Rptr. 674*; *1980 Cal. App. LEXIS 2093*

July 28, 1980

SUBSEQUENT HISTORY: Respondent's petition for a hearing by the Supreme Court was denied September 24, 1980.

PRIOR-HISTORY: Superior Court of Trinity County, No. 7030, Clyde H. Small, Judge. +

+ Assigned by the Chairperson of the Judicial Council.

COUNSEL: Ronald Barbatoe, District Attorney, for Defendants and Appellants.

Wells, Wingate & Small, W. Leonard Wingate and Edward A. Shuttle as Amici Curiae on behalf of Defendants and Appellants.

David R. Hammer for Plaintiff and Respondent.

Ronald A. Zumbrun, John H. Findley, Thomas E. Hookano and James L. Meyer as Amici Curiae on behalf of Plaintiff and Respondent.

JUDGES: Opinion by Puglia, P. J., with Reynoso, J., and DeCristoforo, J., + concurring.

+ Assigned by the Chairperson of the Judicial Council.

OPINION BY: PUGLIA

OPINION

Following enactment of article XIII A of the California Constitution (Prop. 13 on the June 6, 1978, ballot, commonly known as the Jarvis-Gann initiative), the Trinity County Board of Supervisors adopted resolution No. 73-78 providing both increased and new fees for county services in processing subdivision, zoning, and other land-use applications. Plaintiff Mills then brought this action in the superior court against the county and its board challenging the constitutionality of the resolution and seeking to bar its enforcement through mandate and declaratory and injunctive relief. The trial court sustained plaintiff's claim that as a matter of law the new and increased fees under resolution No. 73-78 constitute a "special tax" within the meaning of article XIII A and thus cannot be imposed without a two-thirds affirmative vote of the electors of Trinity County. Since the board of supervisors had adopted the resolution without submitting it to the county electorate for approval, the court ordered summary judgment in plaintiff's favor and issued a peremptory writ of mandate. The writ ordered defendants to "desist and refrain from enforcing the provisions of Resolution Number 73-78" and further directed defendants to refund any and all monies received pursuant to the provisions of the resolution which exceeded amounts in effect under prior fee schedules.

Defendants appealed and filed an accompanying petition for a writ of supersedeas. We issued the writ, restraining enforcement of the judgment pending disposi-

tion of this appeal. (*Mills v. County of Trinity (1979) 98 Cal.App.3d 859 [159 Cal.Rptr. 679]*.)

Although in its generality, article XIII A is not fatally vague, "in a number of particulars [it] is imprecise and ambiguous" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]*) "and over a period of time will require judicial, legislative and administrative construction" (*id., at p. 244*). We are now called upon in this appeal to determine whether the new and increased fees exacted by resolution No. 73-78 constitute a "special tax" within the meaning of section 4 of article XIII A. That provision states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Utilizing the established rules of construction applicable to the interpretation of constitutional provisions (see *Amador Valley, supra , 22 Cal.3d at pp. 245-246*), we conclude that the "special tax" referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes. Accordingly, we shall reverse and remand for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities.

"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is to be used. (See *Crawford v. Herringer (1978) 85 Cal.App.3d 544, 548-551 [149 Cal.Rptr. 578]*; *City of Glendale v. Trondsen (1957) 48 Cal.2d 93, 99-100 [308 P.2d 1]*.) In its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes. (*City of Madera v. Black (1919) 181 Cal. 306, 310-311 [184 P. 397]*; Webster's New Internat. Dict. (3d ed. 1971) p. 2345.) In narrower contexts, the word has been construed to exclude charges to particular individuals which do not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals (*County of Fresno v. Malmstrom (1979) 94 Cal.App.3d 974, 984 [156 Cal.Rptr. 777]*; *Crawford v. Herringer, supra, 85 Cal.App.3d at p. 550*), and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities (*United Business Com. v. City of San Diego (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263]*).

Initiative measures as well as other general constitutional provisions should be interpreted liberally to give full effect to the framers' objective and the growing needs of the people. (*Amador Valley, supra, 22 Cal.3d at pp. 244-245*.) Animated by the foregoing principle, the trial court construed "tax" in its broadest meaning holding that, as used in section 4 of article XIII A, it "includes all charges, however labeled, which are to exact money for the support of government or for public purposes." However, were we to accept the trial court's broad definition, the initiative measure as so construed would prohibit any increase in fees for governmental activities conferring a direct benefit on the specific individual who is charged for such benefit without the prior approval of two-thirds of the electors. In other words, a county would be powerless to raise charges for proprietary functions such as hospital services, public transportation, and garbage collection without the two-thirds stamp of approval. We do not believe the state electors intended to put local government in such a fiscal straightjacket.

Conceding that such a draconian result was probably never intended by the electorate, plaintiff asserts the interpretation adopted by the trial court would exclude from the meaning of "special tax" fees charged for governmental activities *primarily* for the benefit of individuals and only incidentally for the benefit of the public. The minor premise of plaintiff's argument is that land-use charges imposed on the developer pursuant to the government's police power are primarily for the benefit of the public at large. Plaintiff thus concludes that such charges constitute taxes within the meaning of section 4 of article XIII A. Defendants, while not disputing the applicability of the "primary purpose" test, contend that it is the developer who is the primary beneficiary of an approval for land subdivision since the value of the land increases; the public, defendants assert, is merely the indirect beneficiary.

We eschew the public versus individual primary purpose test as a solvent of the instant litigation. The trial court also recognized the difficulty of embarking on such "spongy terrain" since all governmental activities by definition serve a public purpose. Under such a test, every charge imposed in connection with land-use activities as well as all other regulatory activities undertaken pursuant to the police power might well be categorized as a "special tax" since the police power is constitutional only if adopted to promote the health, safety, and welfare of the public as a whole. (*Euclid v. Ambler Realty Co. (1926) 272 U.S. 365, 387 [71 L.Ed. 303, 310, 47 S.Ct. 114, 54 A.L.R. 1016]*; *Associated Homebuilders etc. Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]*.)

We rely instead on statutory and judicial precedent (see *County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 850 [59 Cal.Rptr. 609, 428 P.2d 593]*) and contemporaneous legislative construction (*Amador Valley, supra, 22 Cal.3d at p. 245*) in determining that the state electorate did not intend to include within the meaning of "special tax" reasonable costs for processing land-use permits and applications.

Traditionally, courts have determined whether a local governmental charge denominated a regulatory fee is an exercise of the police power or the power to raise revenue by analyzing the use of the fee involved rather than relying on its label. (*United States Com. v. City of San Diego, supra, 91 Cal.App.3d at p. 165.*) The general rule is that a regulatory fee must not "exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought" in order to be considered as a fee rather than a guise for a tax. (*Ibid.*; see also *County of Plumas v. Wheeler (1906) 149 Cal. 758, 763 [87 P. 909]*; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 5, pp. 3991-3992; 9 McQuillin, Municipal Corporations (3d ed. 1978) § 26.15, p. 29.) As long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees is not dependent on any legislatively authorized taxing power but exists pursuant to the direct grant of police power under *article XI, section 7, of the California Constitution*. (*County of Plumas v. Wheeler, supra, 149 Cal. at pp. 761, 763.*) Land-use regulations fulfill a legitimate public welfare purpose under the police power. (*Associated Homebuilders etc. Inc. v. City of Livermore, supra, 18 Cal.3d at p. 604*; *Associated Homebuilders etc. Inc. v. City of Walnut Creek (1971) 4 Cal.3d 633, 651 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847].*) Moreover, with respect to subdivision map activities in particular, *Government Code section 66451.2* provides that ". . . local [agencies] may establish *reasonable* fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by [the Subdivision Map Act] or local ordinance." (Italics added.)

Senate Bill No. 785, enacted in September 1979 after the enactment of article XIII A and the county's adoption of resolution No. 73-78, is sufficiently contemporaneous to serve as an interpretive guide. Its purpose is to furnish legislative authorization for counties and general law cities to impose special taxes subject to the two-thirds requirement of article XIII A. *Section 50076*, added to the Government Code by Senate Bill No. 785, clarifies the meaning of "special tax" as follows: "As used in this article, *'special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes*." (Italics added.) Where the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts. (*San Francisco v. Industrial Acc. Com. (1920) 183 Cal. 273, 279 [191 P. 26]*; *Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 692-693 [97 Cal.Rptr. 1, 488 P.2d 161].*)

In addition, the "special tax" referred to in section 4 of article XIII A has been judicially construed to exclude special assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvement. (*County of Fresno v. Malmstrom, supra, 94 Cal.App.3d at p. 984.*) The *Malmstrom* interpretation is consistent with that expressed by the Legislature in Senate Bill No. 785 (*Gov. Code, § 50076*).

Ballot arguments and analyses presented to the electorate may be helpful in determining the probable meaning of an initiative's uncertain language. (*Amador Valley, supra, 22 Cal.3d at pp. 245-246.*) Here, the arguments in favor of the constitutional initiative "support a conclusion that the article is aimed at *general* taxes and governmental spending." (Original italics; *County of Fresno v. Malmstrom, supra, 94 Cal.App.3d at p. 981.*) There is nothing in the ballot arguments supporting article XIII A suggesting an intent to prevent local government from exacting fees reasonably commensurate with the cost of regulatory activity from those at whose instance the activity is conducted.

Finally, support for the Legislature's interpretation of "special taxes" is found in an initiative measure subsequently adopted by the California electorate in 1979; the measure placed limitations on governmental spending. (Cal. Const., art. XIII B.) Although applicable only to article XIII B, the phrase, "proceeds of taxes," is defined there as including, but not restricted to "all tax revenues and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds *exceed* the costs reasonably borne by such entity in providing the regulation, product, or service, . . ." (Italics added; *Cal. Const., art. XIII B, § 8, subd. (c).*)

Informed by those sources recognized as germane to the task of statutory interpretation, we conclude that "special taxes" under *article XIII A, section 4 of the California Constitution* do not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Since the trial court held the fees imposed by resolution No. 73-78 constitute a "special tax" as a matter of law, the factual question whether or not such fees exceed the reasonable cost of the related regulatory activity

has never been litigated. On remand that issue must be tried.

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On June 5, 2009 I served the foregoing document, described as

CLAIMANT CITIES' COMMENTS ON DRAFT STAFF ANALYSIS

☐ the original of the document
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in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

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☒ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 5, 2009 at Los Angeles, California.

Danette Armstead

Danette Armstead

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Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Exhibit M

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Executive Office

Charles R. Hoppin, Chairman
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Arnold Schwarzenegger
Governor

June 5, 2009

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COMMISSION ON STATE MANDATES

HAND DELIVERED

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

COMMISSION ON STATE MANDATES – RESPONSE TO DRAFT STAFF ANALYSIS RE: *MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES* 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

The State Water Resources Control Board (State Water Board) thanks the Commission staff for its thorough review of these test claims. We agree with the conclusion and staff recommendation, denying the test claims. We do, however, have significant concerns with some of the discussion and findings in the draft staff analysis. We believe that the Commission staff has misunderstood some fundamental aspects of the federal program, which are explained in more detail in the enclosed memorandum.

The municipal storm water program is a federal regulatory program intended to reduce the most significant water pollution problem that exists today. In 1972, the United States Congress adopted the Clean Water Act, which amended the earlier Federal Water Pollution Control Act. The most significant aspect of the 1972 amendments was the prohibition on all discharges of pollutants to waters of the United States (generally, lakes, rivers, and oceans) except in compliance with a federal national pollutant discharge elimination system (NPDES) permit. Before the Clean Water Act was adopted, pollution was rampant, and the major causes were discharges from large industrial plants and from sanitary sewer systems, which are operated by local agencies (publicly owned treatment works, or POTWs).

In 1972, California became the first state in the nation to issue these federal NPDES permits in lieu of issuance by the United States Environmental Protection Agency (U.S. EPA). In stepping into the federal government's role, the State Water Board and the nine regional water quality control boards (Regional Water Boards) became the agencies that issue these federal permits to industries and local agencies in California—the same permits that would otherwise have been issued by U.S. EPA. California is the regulator of discharges of pollutants to federal waters within California; it did not take on the responsibility to comply with or pay for others to comply with these federal permits issued to dischargers.

In 1987, the Congress noted that the traditional sources of water pollution had been largely controlled and that the most significant unregulated source of pollution was storm water runoff. (Unlike discharges from factories and POTWs, storm water runoff generally does not go through a treatment process.) In response, Congress amended the Clean Water Act, requiring industrial dischargers and municipal separate storm sewer systems (MS4s) to obtain NPDES permits. The amendments include more stringent requirements for the industrial sources than for the MS4s. As the federal NPDES permitting authority in California, the State Water Board and Regional Water Boards were required by federal law to issue these permits to industrial facilities and to local agencies.

The test claims concern an MS4 permit adopted by our Los Angeles Regional Water Board pursuant to the federal regulations and the federal Clean Water Act. The County of Los Angeles, the Los Angeles Flood Control District, and 85 cities in the county applied for the permit. The terms of the permit were challenged in court, and the California Court of Appeal approved the entire permit, specifically finding that the permit complies with federal law and that it does not exceed federal law. That decision, along with its findings and conclusions, is binding on the claimants, who were parties to the litigation. This permit is clearly a federal mandate that Congress imposed directly on local agencies through the 1987 amendments to the Clean Water Act. There is no "shifting" of responsibility from the state to local agencies—the state was never charged with the responsibility of controlling municipal storm water pollution. The state's role is exclusively to issue and administer the permits that govern the municipalities' federally mandated obligations; the local agencies discharge pollutants to federal waters and are mandated by federal law to reduce pollutants in these discharges to the maximum extent practicable.

The Commission staff's report provides a detailed analysis of many of the issues associated with the test claims, but takes an overly simplistic view of the Clean Water Act's municipal storm water permitting scheme. Essentially, the staff analysis looks for the permit requirements in federal law, and not finding the text of the contested provisions in federal law, concludes that certain provisions of the permit may therefore be considered state mandates. This approach fails to recognize that NPDES storm water permits, whether issued by U.S. EPA or California's Water Boards, are designed to translate the general federal mandate into specific programs and enforceable requirements. Whether issued by U.S. EPA or the California's Water Boards, the federal NPDES permit will identify specific requirements for municipalities to reduce pollutants in their storm water to the maximum extent practicable. The federally required pollutant reduction is a federal mandate. The fact that state agencies have responsibility for specifying the federal permit requirements for municipalities does not convert the federal mandate upon municipalities into a state mandate.

In summary, the mandate in the permit is a federal mandate that federal law specifically applies to local agencies. While there could be circumstances where a California Water Board imposed requirements on a local agency more onerous than required by federal law, that is not the case here. A court has already found that the MS4 permit does not exceed the federal pollutant reduction standard. The permit itself complies with federal law and does not impose any additional requirements beyond what the federal law requires. There has been no shifting of responsibility from the state to local agencies. The federal mandate applies to both private and public dischargers, the only difference being that the MS4s have less stringent requirements

than industries. Therefore, the costs are federally-mandated, and they do not constitute a program limited to local agencies. We request that the staff analysis be revised.

Sincerely,

Dorothy Rice

Dorothy Rice
Executive Director

Enclosure

cc: Service List, Exhibit A to Proof of Service

PROOF OF SERVICE

I, JEANNETTE L. BASHAW, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, I served the within documents:

LETTER TO COMMISSION ON STATE MANDATES DATED JUNE 5, 2009, REGARDING RESPONSE TO DRAFT STAFF ANALYSIS RE: *MUNICIPAL STORMWATER AND URBAN RUNOFF DISCHARGES* 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

	BY FACSIMILE: I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
X	**BY HAND DELIVERY:** I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
X	**BY FIRST CLASS MAIL TO ALL PARTIES LISTED:** I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in separate, sealed envelopes addressed to:

See Exhibit A attached hereto and made a part hereof.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on June 5, 2009, at Sacramento, California.

Jeannette L. Bashaw

JEANNETTE L. BASHAW

EXHIBIT A

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Arnold Schwarzenegger
Governor

TO: Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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FROM: Elizabeth Miller Jennings
Staff Counsel IV
OFFICE OF CHIEF COUNSEL

DATE: June 5, 2009

SUBJECT: COMMISSION ON STATE MANDATES – RESPONSE TO DRAFT STAFF ANALYSIS RE: *MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES* 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

On April 18, 2008, the State Water Resources Control Board (State Water Board) and the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) submitted lengthy comments on the Test Claims. We will not repeat those comments here. Instead, this memorandum attempts to explain and rectify some areas of confusion concerning the federal permitting scheme as described in the draft staff analysis.

The claimants sought a federal permit allowing them to discharge pollutants in storm water runoff to the nation's waters. Federal law required the claimants (not the state) to obtain a federal permit. As required by federal law, the Los Angeles Water Board issued the permit. As required by federal law, the permit required claimants to implement practices that would reduce the pollutants to "the maximum extent practicable." In a related lawsuit, the claimants alleged that the permit required practices in excess of the minimum federal requirements. The California Court of Appeal found that the permit does not exceed the minimum federal requirements that applied to the claimants. The claimants do not qualify for reimbursement for their costs to comply with the permit under Article XIIIB, Section (6) of the Constitution because the costs are directly mandated on the claimants by federal law. While we agree with the conclusion of the draft staff analysis that the test claims be denied, it is critical that the portions of the analysis describing this federal mandate be revised.

FEDERAL LAW REQUIRES THAT LOCAL AGENCIES OBTAIN NPDES PERMITS FROM CALIFORNIA WATER BOARDS

Since 1972, the federal Clean Water Act[1] has prohibited "any person" from discharging pollutants to waters of the United States, except in compliance with a national pollutant discharge elimination system (NPDES) permit[2]. "Person" is defined in the Clean Water Act as: "an individual, corporation, partnership, association, State, *municipality*, commission, or *political subdivision of a State*, or any interstate body."[3] Thus, the federal law clearly mandates that local agencies must obtain permits—it is the discharger of pollutants who must obtain the permit. States can be listed as dischargers and be required to obtain permits where they discharge pollutants. For example, state prisons and state universities operate sewage treatment plants or industrial facilities that require NPDES permits.

The Clean Water Act provides that NPDES permits shall be issued by the United States Environmental Protection Agency (U.S. EPA), but that as soon as U.S. EPA promulgated guidelines, the Governor of each state could request authorization to be the permitting authority for discharges within its borders.[4] Once a state program has been approved, the U.S. EPA no longer has authority to issue NPDES permits in the state, except under very limited circumstances.[5] All state-issued permits must comply with U.S. EPA's regulations.[6] The federal law mandates that all NPDES permits that are issued within the state of California must be issued by either the State Water Board or the appropriate regional water quality control board.[7] California was the first state in the nation to be authorized to issue NPDES permits, in 1972.

In 1987, Congress amended the federal Clean Water Act to mandate that dischargers of storm water runoff obtain NPDES permits and comply with specified substantive requirements.[8] While the original Clean Water Act had been interpreted by courts, as early as 1977, to require permits for storm water discharges, U.S. EPA had never adopted regulations implementing that requirement. The 1987 amendments to the Clean Water Act specifically required NPDES permits be issued to municipal separate storm sewer systems (MS4s) and to discharges of storm water from industrial activities.[9] "Municipality" is defined in the federal law to include "a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other

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[1] Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; popular name, Clean Water Act (CWA).

[2] CWA § 301(a) (33 U.S.C. § 1311(a)). Generally, waters of the U.S. include lakes, rivers, wetlands, and oceans.

[3] CWA § 502(5) (33 U.S.C. § 1362(5)). (Emphasis added.)

[4] CWA § 402(b) (33 U.S.C. § 1342(b)).

[5] CWA § 402(c) (33 U.S.C. § 1342(c)).

[6] CWA § 402(c)(2) (33 U.S.C. § 1342(c)(2)).

[7] CWA § 402(b) (33 U.S.C. § 1342(b)); Wat. Code § 13370 et seq.

[8] CWA § 402(p) (33 U.S.C. § 1342(p)).

[9] CWA § 402(p)(2) (33 U.S.C. § 1342(p)(2)).

wastes."[10] The permit requirements for the MS4s are less stringent than for the industrial sites.[11]

In sum, the federal Clean Water Act requires that local agencies that operate MS4s must obtain NPDES permits. The federal Clean Water Act requires that, when a state issues permits in lieu of U.S. EPA, the NPDES permits must comply with the substantive provisions of federal law. The U.S. EPA cannot issue NPDES permits in California, and if municipalities were to operate their MS4s without an NPDES permit, they would be in violation of federal law and subject to enforcement actions by U.S. EPA and to citizen suits authorized by federal law.[12]

FEDERAL LAW MANDATES THE PERMIT THAT WAS ISSUED, WHICH IS LESS STRINGENT THAN PERMITS FOR PRIVATE INDUSTRY

Regulating storm water discharges is generally considered to be more difficult than regulating traditional point sources. Traditional point sources include discharges from factories, from refineries, and from the sanitary sewer treatment systems (publicly owned treatment works or POTWs) that local agencies operate. These traditional point sources have engineered treatment systems, and the NPDES permits for these facilities generally contain numeric effluent limitations that must be met at the end of the discharge pipe. Numeric effluent limitations are pollutant restrictions placed on the discharge, with the restriction expressed as concentration and/or mass limits for specific constituents. The Clean Water Act states that such facilities must meet technology-based limitations, and where necessary to meet ambient water quality standards, more stringent water quality-based effluent limitations.[13] The Clean Water Act states that storm water discharges from industrial sites must meet all of these requirements, but that MS4s have a less stringent standard: the permit "shall require controls to reduce the discharge of pollutants to the maximum extent practicable."[14]

In the test claims at issue, the question of whether the state issued a permit that exceeded the minimum federal standard of reducing pollutants to the maximum extent practicable (MEP) has already been answered in the negative. The California Court of Appeal has already determined that the very permit before the Commission *does not exceed the federal minimum requirements*. The claimants were petitioners in that litigation and are bound by the Court of Appeal's determination.

[10] CWA § 502(4) (33 U.S.C. § 1362(4)).

[11] CWA § 402(p)(3) (33 U.S.C. § 1342(p)(3)).

[12] CWA § 505 (33 U.S.C. § 1365).

[13] CWA § 301(b) (33 U.S.C. § 1311(b)).

[14] CWA § 402(p)(3)(B) (33 U.S.C. § 1342(p)(3)(B)).

THE DRAFT STAFF ANALYSIS INCORRECTLY APPLIES THE *HAYES* CASE: THE STATE DID NOT SHIFT THE COST OF THE FEDERAL MANDATE TO THE LOCAL AGENCIES – THE FEDERAL MANDATE IS ON THE LOCAL AGENCIES AND NOT ON THE STATE

The draft staff analysis oversimplifies and misconstrues the federal Clean Water Act when it equates the decision in 1972 by California to administer the NPDES permit program with the obligation of the claimants to comply with their NPDES permit.

On page 24 of the draft staff analysis, it states: "The federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits." The analysis goes on to state: "Based on. . . Water Code section 13370, in which California voluntarily adopts the permitting program, and on the federal statutes. . . that authorized but do not expressly require states to have this program, the state has freely chosen to effect the stormwater permit program." (Footnote omitted.) The analysis then cites *Hayes v. Commission on State Mandates.*[15]

In general, a federal mandate is not subject to reimbursement. In *Hayes*, the federal Education of the Handicapped Act imposed requirements on *the state* and the state "freely chose" to shift those costs to local agencies.[16] The court stated: "A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies."[17] Thus, the court held that if there is a federal mandate on the state, and the state "freely chooses" to shift the mandate to local agencies, the costs constitute a reimbursable state mandate.[18]

In the test claims under consideration in this proceeding, the draft staff analysis treats the state's decision to *administer* the NPDES permit program in 1972 as the "choice" referred to in *Hayes*. That analysis is completely wrong, and results in an analysis whose results are absurd on their face. It is true that in 1972, California became the first state to administer the NPDES program in lieu of U.S. EPA. But administering the permit program—issuing permits to dischargers and enforcing compliance with federal law—is not the same thing as complying with the permits themselves. The federal Clean Water Act requires municipalities to apply for an NPDES that requires pollutant reductions to the maximum extent practicable. The state's "choice" to administer the program in lieu of the federal government does not alter the federal requirement on municipalities to reduce pollutants in these discharges to the maximum extent practicable.

The federal mandate is imposed specifically upon the municipalities that own and operate MS4s discharging pollutants to the nation's waters. There are times when the state (or a state agency) owns and operates an MS4. In those instances, the state agency is subject to its own

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[15] (1992) 11 Cal.App.4th 1564.

[16] *Hayes, supra* at 1587 states: "Since the 1975 amendment, the Education of the Handicapped Act has required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education."

[17] *Id.*, at 1593.

[18] *Id.*, at 1594.

NPDES permit issued by the State Water Board. For instance, the California Department of Transportation (Caltrans) is subject to its own NPDES permit, issued by the State Water Board.[19] This demonstrates how the staff analysis misconstrues *Hayes* in applying it to California's decision to issue permits in lieu of the U.S. EPA. The Clean Water Act specifies who must obtain an NPDES permit and what level of pollutant reduction they must achieve. The fact that California administers the NPDES program in lieu of U.S. EPA does not change the NPDES permitting requirements for Caltrans or the test claimants, which are mandates upon the persons who discharge pollutants.

Clean Water Act section 402(p) requires that permits be issued to "municipal separate storm sewer systems." It requires that the entities that own and operate these systems obtain NPDES permits that require them to undertake practices that reduce the pollutants to the MEP. In this case, the federal mandate is directly on the local agencies because they own and operate the MS4 in Los Angeles County. There has been no shifting of responsibility from the state to the local agencies. There is no mandate on the state to obtain or to comply with the NPDES permit for the claimants' MS4.

BECAUSE A COURT OF APPEAL HAS FOUND THAT THE PERMIT DOES NOT EXCEED THE MINIMUM FEDERAL MANDATE, THE COMMISSION CANNOT FIND THAT THE STATE HAS IMPOSED A NEW PROGRAM OR HIGHER LEVEL OF SERVICE

The test claims come to the Commission following two state appellate decisions regarding the actual permit at issue here. In the first decision, an appeals court upheld the permit following a challenge by several permittees, including the claimants.[20] In *County of Los Angeles v. Commission on State Mandates*,[21] the second case, the court remanded these test claims to the Commission. Relying on the California Supreme Court case of *City of Burbank v. State Water Resources Control Board*,[22] the court in *Commission, supra*, noted that NPDES permits may have both state and federal requirements.[23] The court pointed to the claimants' arguments that a permit *could* include state mandates that exceed the federal mandates, and stated that if the state chose to impose such costs on the local agencies, then reimbursement may be required. In consideration of these issues, the court remanded the test claims to the Commission.

At the time of the remand, the court in *County of Los Angeles v. State Water Resources Control Board, supra,* had already reached the conclusion that the permit did not exceed the federal minimum requirements for MS4 permits. This conclusion was in the unreported portion of the decision, but its findings and conclusions are binding on the test claimants, who were parties to the permit challenge. The court stated: "Plaintiffs argue the permit imposes conditions more stringent than required by the federal Clean Water Act."[24] The court concluded: "These

[19] See State Water Board Order No. 99-06-DWQ.

[20] *County of Los Angeles, v. State Water Resources Control Board,* (2006) 143 Cal.App.4th 985.

[21] 150 Cal.App.4th 898 (2007).

[22] 35 Cal.4th 613 (2005).

[23] *Commission, supra*, 150 Cal.App.4th 898, 916.

[24] *County of Los Angeles v. State Water Resources Control Board, supra*, unpublished version (Attachment No. 26 to Response to Test Claims), at p.19.

contentions have no merit."[25] The court found that the permit in total does not exceed the federal requirement of MEP:

> "The permit explicitly states it is intended to provide a cost-effective storm water pollution program to the maximum extent possible. The permit applies the same cost-effective analysis to efforts to reduce the flow of pollutants into receiving waters. Moreover, the regional board in its findings referred to a report specifying how the 'maximum extent practicable' requirement includes considerations of costs and benefit."[26]

The Court of Appeal found that the permit did not exceed the federal minimum requirement that the municipal storm water permittees must reduce pollutants in their discharge to the maximum extent practicable. There is no state mandate in excess of the federal mandate, and the test claims do not qualify for reimbursement.

The draft staff analysis appears to concede that the decision in *County of Los Angeles v. State Water Resources Control Board, supra,* statements submitted by U.S. EPA, and the federal regulations and guidance all require that the permit must include practices such as the inspection and trash collection requirements. But the draft analysis takes an overly simplistic view of the Clean Water Act's municipal storm water permitting scheme. Essentially, the staff analysis looks for the permit requirements in federal law, and not finding the text of the contested provisions in federal law, concludes that certain provisions of the permit may therefore be considered state mandates. This approach fails to recognize that NPDES storm water permits, whether issued by U.S. EPA or California's Water Boards, are designed to translate the general federal mandate into specific programs and enforceable requirements. Whether issued by U.S. EPA or the California's Water Boards, the federal NPDES permit will identify specific requirements for municipalities to reduce pollutants in their storm water to the maximum extent practicable. The federally required pollutant reduction is a federal mandate.

The Clean Water Act mandates that the *permit* "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."[27] This section has been interpreted by the Ninth Circuit Court of Appeal to require states that issue NPDES permits to specify the required controls in the permit.[28] The federal law requires that the specific requirements that will achieve MEP be inserted in the permit, and when the State is the permit program administrator, the state is expressly required by federal law to specify these controls in MS4 permits, as would the US EPA. The state has done no more than follow federal law to include specific requirements that achieve MEP in the permit. The fact that state

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[25] *Id.* at p.20.

[26] *Id.*

[27] CWA § 402(p)(3)(B)(iii) (33 U.S.C. § 1342(p)(3)(B)(iii)). The reference to the Administrator is only for permits issued within states that do not administer the NPDES program. See, § 402(b) (33 U.S.C. § 1342(b)).

[28] *Natural Resources Defense Council, Inc. v. U.S. EPA* (1992) 966 F.2d 1292, 1308.

agencies have responsibility for specifying the federal permit requirements for municipalities does not convert the federal mandate into a state mandate.

EVEN THOUGH MUNICIPALITIES ARE SINGLED OUT IN THE FEDERAL STORM WATER LAW, THE LAW IS ONE OF GENERAL APPLICATION

The draft staff analysis finds that the permit activities constitute a program subject to subvention because they "are limited to local governmental entities." The analysis correctly notes that the permittees are all local agencies, but it fails to consider that private entities must also receive NPDES permits for storm water discharges, and that those permits must include *more stringent* requirements than the requirements in the test claims. Where local agencies have separate, but similar requirements as private entities, there is no reimbursable mandate.[29]

The federal Clean Water Act requires persons who discharge storm water from industrial activities or from municipal separate storm sewer systems to obtain NPDES permits.[30] The industrial dischargers must comply with all of the requirements that any NPDES permit must contain,[31] including installing best practicable control technology currently available for conventional pollutants,[32] best available technology economically achievable for toxic pollutants,[33] and any more stringent limitation necessary to meet water quality standards and any other federal law or regulations.[34] NPDES permits for municipal storm water discharges, on the other hand, generally only include requirements established to reduce the discharge of pollutants to the maximum extent practicable.[35] It is clear that the municipal dischargers have a less stringent federal mandate than the industries. In ruling that municipal permits are not required by statute to achieve compliance with ambient water quality standards, the Ninth Circuit Court of Appeal referred to "Congress' choice to *exempt* municipal storm-sewer discharges from strict compliance with [§ 301]."[36]

In *City of Richmond v. Commission on State Mandates*,[37] the court held that where municipalities have separate but not more stringent, requirements than private entities, there is no program subject to reimbursement. In *Richmond*, local governments were newly required to pay double death benefits for local safety members, under both the public retirement system and workers' compensation. The court noted that the revised law had eliminated a prior exemption from providing workers' compensation death benefits for safety employees, putting

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[29] *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[30] CWA § 402(p)(2) (33 U.S.C. § 1342(p)(2)).

[31] CWA §§ 402(p)(3)(A) and 301(a) (33 U.S.C. §§ 1342(p)(3)(A), 1311(a)).

[32] CWA § 301(b)(1)(A) (33 U.S.C. § 1311(b)(1)(A)).

[33] CWA § 301(b)(2)(A) (33 U.S.C. § 1311(b)(2)(A)).

[34] CWA § 301(b)(1)(C) (33 U.S.C. § 1311(b)(1)(C)).

[35] CWA §402(p)(3)(B) (33 U.S.C. § 1342(p)(3)(B)). These permits must also include requirements to effectively prohibit non-storm water discharges into storm sewers.

[36] *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1165. (Emphasis added).

[37] 64 Cal.App.4th 1190 (1998).

the local agencies on an equal footing with private entities. Here, the municipal entities are not on an equal footing; they are *exempt* from meeting the more stringent requirements that private industry must meet. The fact that a separate statutory provision applies to municipalities—where that provision is less stringent than the provision that applies to private industry—does not create a program eligible for reimbursement.

Accordingly, the State Water Board respectfully requests that the draft staff analysis be modified to reflect that the mandate to obtain and comply with MS4 NPDES permits is a federal mandate, imposed directly on the municipalities that operate the MS4s, and that at least insofar as the MS4 permit imposes requirements that are consistent with the federally mandated MEP standard, that Article XIIIB, section (6) is inapplicable.

Attachments

TABLE OF ATTACHMENTS*

Attachment No.

Federal Statute

CWA § 505 1

Other Document

Order No. 99-06-DWQ;
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/1999/wq1999_06.pdf 2

All other Federal Statutes, Federal Regulations, State Statutes, State Regulations, Federal Court Decisions, State Court Decisions, and Other Documents not listed in this Table of Attachments were previously furnished to the Commission on State Mandates.

ATTACHMENT

1

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 26. Water Pollution Prevention and Control (Refs & Annos)
Subchapter V. General Provisions
→ **§ 1365. Citizen suits**

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf--

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

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except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; United States interests protected

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(3) Protection of interests of United States

Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title; (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (7) a regulation under section 1345(d) of this title,. [FN1]

(g) "Citizen" defined

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may

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be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

CREDIT(S)

(June 30, 1948, c. 758, Title V, § 505, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 888, and amended Feb. 4, 1987, Pub.L. 100-4, Title III, § 314(c), Title IV, § 406(d)(2), Title V, §§ 504, 505(c), 101 Stat. 49, 73, 75, 76.)

[FN1] So in original.

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Amendments

1987 Amendments. Subsec. (a). Pub.L. 100-4, § 314(c), inserted "and section 1319(g)(6) of this title" after "subsection (b) of this section".

Subsec. (c)(3). Pub.L. 100-4, § 504, added par. (3).

Subsec. (d). Pub.L. 100-4, § 505(c), inserted "prevailing or substantially prevailing" before "party".

Subsec. (f). Pub.L. 100-4, § 406(d)(2), added cl. (7).

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Compliance with permit as compliance, for purposes of this section, with other provisions of this chapter,

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1. Constitutionality

Clean Water Act's citizen suit provision did not effectively abrogate states' Eleventh Amendment immunity;

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Congress did not intend to abrogate that immunity and was not empowered to do so under commerce clause. Froebel v. Meyer, E.D.Wis.1998, 13 F.Supp.2d 843, affirmed 217 F.3d 928, rehearing and rehearing en banc denied , certiorari denied 121 S.Ct. 769, 531 U.S. 1075, 148 L.Ed.2d 669. Commerce ⚷ 80; Federal Courts ⚷ 265

Citizen suit provision, which permits citizens to bring actions for violation of Clean Water Act, but which requires citizens to notify Environmental Protection Agency and permits federal government to intervene at any time, did not aggrandize legislative branch at expense of executive branch, did not violate constitutional principle of separation of powers, and did not unduly interfere with executive enforcement of Act. Chesapeake Bay Foundation, Inc. v. Bethlehem Steel Corp., D.Md.1987, 652 F.Supp. 620. Constitutional Law ⚷ 2390; Environmental Law ⚷ 166

2. Purpose

Primary function of the Clean Water Act (CWA) provision for citizen suits is to enable private parties to assist in enforcement efforts where federal and state authorities appear unwilling to act. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law ⚷ 226

The citizens' suit provisions of this section were designed to supplement and expedite administrative action to abate violations of this chapter; recourse to the courts is appropriate only when the administrative action taken is less than adequate. Com. of Mass. v. U. S. Veterans Administration, C.A.1 (Mass.) 1976, 541 F.2d 119. Environmental Law ⚷ 226

Private suits in the United States district courts based upon alleged violations of "effluent limitations" of this chapter are provided for by this section as an additional means of enforcement. American Frozen Food Institute v. Train, C.A.D.C.1976, 539 F.2d 107, 176 U.S.App.D.C. 105. Environmental Law ⚷ 226

Congress did not intend to limit or prevent potential Clean Water Act (CWA) remedies that might otherwise be available against state under *Ex parte Young* doctrine, and thus federal court had jurisdiction over claim brought by landowner against state Department of Environmental Quality (DEQ) and gas company, seeking to halt runoff onto land from methane production activities; citizen's suit provision of CWA evidenced congressional intent to allow individuals to seek traditional remedial powers of federal court to extent permitted by Eleventh Amendment. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Courts ⚷ 269; Federal Courts ⚷ 272

Purpose of Clean Water Act's (CWA) private enforcement provision is to foster agency enforcement and to act as alternative enforcement mechanism absent agency enforcement. Williams Pipe Line Co. v. Bayer Corp., S.D.Iowa 1997, 964 F.Supp. 1300. Environmental Law ⚷ 226

Individuals or groups which bring citizen suits pursuant to Clean Water Act are acting as private attorney generals and, accordingly, purpose of suit is to protect and advance public's interest in pollution-free waterways rather than to promote private interests. Pennsylvania Environmental Defense Foundation v. Bellefonte Borough, M.D.Pa.1989, 718 F.Supp. 431. Environmental Law ⚷ 226

The inclusion in this chapter of this section providing for citizen suits indicates that Congress specifically intended that the interests of private citizens be protected by this chapter. Loveladies Property Owners Ass'n, Inc. v. Raab, D.C.N.J.1975, 430 F.Supp. 276, affirmed 547 F.2d 1162, certiorari denied 97 S.Ct. 2949, 432 U.S. 906, 53 L.Ed.2d 1077. Environmental Law ⚷ 226

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It was congressional intent to supplement administrative enforcement of this chapter with enforcement by citizen suits, and also to put strong reliance on administrative enforcement, generally allowing citizen enforcement only after Administrator has had opportunity to bring his powers of enforcement to bear on the polluter. Save Our Sound Fisheries Ass'n v. Callaway, D.C.R.I.1977, 429 F.Supp. 1136. Environmental Law 226

Special citizen suits provision of this section was intended to encourage citizen participation in the enforcement of this chapter. State of Minn., by Spannaus v. Callaway, D.C.Minn.1975, 401 F.Supp. 524, reversed on other grounds 543 F.2d 1198, certiorari denied 97 S.Ct. 1672, 430 U.S. 977, 52 L.Ed.2d 373. Environmental Law 226

3. Construction with other laws

The incorporation of the civil penalties section of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) into each Act's respective citizen suit section encompasses all the terms of the penalty provisions, including their limitations. U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. Environmental Law 223

Citizen enforcement suit under Clean Water Act (CWA) based on use of chemicals regulated by FIFRA could proceed even if pesticide application claimed to violate CWA did not also constitute substantial violation of FIFRA; CWA's citizen suit provision did not become inoperative under those circumstances. No Spray Coalition, Inc. v. City of New York, C.A.2 (N.Y.) 2003, 351 F.3d 602, on remand 2005 WL 1354041. Environmental Law 170; Environmental Law 226

Unlike Clean Water Act (CWA), FIFRA does not provide for citizen enforcement. No Spray Coalition, Inc. v. City of New York, C.A.2 (N.Y.) 2003, 351 F.3d 602, on remand 2005 WL 1354041. Environmental Law 459

Requirement in provision of Clean Water Act (CWA) barring citizen suits for any violation for which state has commenced and is diligently prosecuting an action under comparable state law, that state law be "comparable" to CWA should be read broadly to permit states flexibility in deciding how to enforce anti-pollution laws. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law 226

Offer of judgment rule was inapplicable to citizen suits brought under Clean Water Act (CWA); applying rule to citizens suits under CWA would violate the Rules Enabling Act, as it would create enormous disincentives and discourage plaintiffs, who were serving public interest, from vigorously prosecuting CWA claims, thereby thwarting intention of Congress. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Federal Civil Procedure 2725

Court could require city to provide New York Department of Environmental Conservation (DEC) with all information needed to issue a discharge permit, and, pursuant to its authority under All Writs Act, could order DEC, as third-party defendant to action, to complete application process and issue discharge permit within 18 months after court's order, as part of injunctive relief granted to non-profit fishing associations in citizen suit against city under Clean Water Act (CWA) for city's use of tunnel to transfer drinking water from reservoir into trout stream without discharge permit. Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, N.D.N.Y.2003, 244 F.Supp.2d 41, affirmed in part and remanded 451 F.3d 77, certiorari denied 127 S.Ct. 1373, 167 L.Ed.2d 160. Environmental Law 700

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Congress did not intend to limit or prevent potential Clean Water Act (CWA) remedies that might otherwise be available against state under *Ex parte Young* doctrine, and thus federal court had jurisdiction over claim brought by landowner against state Department of Environmental Quality (DEQ) and gas company, seeking to halt run-off onto land from methane production activities; citizen's suit provision of CWA evidenced congressional intent to allow individuals to seek traditional remedial powers of federal court to extent permitted by Eleventh Amendment. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Courts 269; Federal Courts 272

Fact that Congress, under Clean Water Act compliance, chose to give citizens authority in some circumstances to act as private attorneys general was not indication that Congress intended to cut off additional remedies otherwise available to citizens for review of agency action, such as action under Administrative Procedure Act ("APA") that gives district court jurisdiction to review any final agency action for which there is no other adequate remedy. Sierra Club v. Pena, N.D.Ohio 1996, 915 F.Supp. 1381, affirmed 120 F.3d 623, rehearing and suggestion for rehearing en banc denied. Administrative Law And Procedure 701; Environmental Law 641

If plaintiff can bring suit against responsible federal agencies under Clean Water Act (CWA), that action precludes additional suit under Administrative Procedure Act (APA), but where plaintiff's claims are not covered by citizen suit provision of CWA, plaintiff can maintain action against responsible federal agencies under APA. Environmental Defense Fund v. Tidwell, E.D.N.C.1992, 837 F.Supp. 1344. Administrative Law And Procedure 660; Environmental Law 641

4. Law governing

Action by state in federal district court alleging creation of public nuisance by water pollution is governed by federal law, although considerations of state standards may be relevant. Illinois v. City of Milwaukee, Wis., U.S.1972, 92 S.Ct. 1385, 406 U.S. 91, 31 L.Ed.2d 712. Federal Courts 433

In area of interstate water pollution, this chapter precludes application of one state's common or statutory law to determine liability and afford a remedy for discharges within another state. People of State of Ill. v. City of Milwaukee, C.A.7 (Ill.) 1984, 731 F.2d 403, certiorari denied 105 S.Ct. 979, 469 U.S. 1196, 83 L.Ed.2d 981, certiorari denied 105 S.Ct. 980, 469 U.S. 1196, 83 L.Ed.2d 981. States 18.31

Amendments in 1972 to this section displaced federal common-law remedy for nuisances resulting from discharge of pollutants into navigable waters before 1972; therefore, Illinois's claim against an in-state industrial polluter of Lake Michigan was preempted with respect to pollution before and after 1972. People of State of Ill. v. Outboard Marine Corp., Inc., C.A.7 (Ill.) 1982, 680 F.2d 473. Environmental Law 170

When interstate pollution dispute governed by Clean Air Act is litigated in state court, procedural law of forum state and statutory or common law of source state must be applied. Ashland Oil, Inc. v. Kaufman, W.Va.1989, 384 S.E.2d 173, 181 W.Va. 728. Environmental Law 633

5. Statutory or common law rights unrestricted--Generally

Citizen suit provision of this section which states that nothing in this section restricts any right which any person may have under any statute or common law to seek enforcement of any effluent standard or limitation does not permit federal courts to employ federal common law to establish more stringent standards than those set forth under this chapter and its attendant regulations; the language merely means that the provision for citizen suits

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does not revoke other remedies. City of Milwaukee v. Illinois and Michigan, U.S.Ill.1981, 101 S.Ct. 1784, 451 U.S. 304, 68 L.Ed.2d 114, on remand 731 F.2d 403. Environmental Law ⚿ 170

Remedy for action of Administrator in exempting federal agencies and instrumentalities from compliance with states' proposed water pollution permit programs was not limited to action brought under "citizen suit" provisions of this section. People of State of Cal. ex rel. State Water Resources Control Bd. v. E.P.A., C.A.9 1975, 511 F.2d 963, certiorari granted 95 S.Ct. 2655, 422 U.S. 1041, 45 L.Ed.2d 693, reversed on other grounds 96 S.Ct. 2022, 426 U.S. 200, 48 L.Ed.2d 578, on remand 538 F.2d 290. Environmental Law ⚿ 641

Provision of this section to the effect that nothing in this section shall restrict any right which any person might have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief allows further enforcement of antipollution standards arising under other statutes or state common law but it does not create a separate ground for enforcement of this section. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law ⚿ 226

Provisions of this section relating to preservation of citizens' statutorial common-law rights does not create a federal cause of action. Hanks v. Costle, E.D.Va.1980, 501 F.Supp. 195. Environmental Law ⚿ 226

6. ---- Nuisance claims, statutory or common law rights unrestricted

Clean Water Act did not bar aggrieved Vermont landowners from bringing nuisance claim pursuant to law of source state, New York. International Paper Co. v. Ouellette, U.S.Vt.1987, 107 S.Ct. 805, 479 U.S. 481, 93 L.Ed.2d 883, on remand 823 F.2d 545. States ⚿ 18.31

Federal pollution control laws did not preclude action to enjoin hotel-casino projects in Lake Tahoe Basin as constituting interstate nuisances. California Tahoe Regional Planning Agency v. Jennings, C.A.9 (Nev.) 1979, 594 F.2d 181, certiorari denied 100 S.Ct. 133, 444 U.S. 864, 62 L.Ed.2d 86. States ⚿ 18.31

Clean Water Act (CWA) did not bar Oklahoma city from asserting Arkansas law nuisance claim against poultry business that disposed of poultry waste, containing phosphorus, at Arkansas city's wastewater treatment plant, although wastewater treatment plant had Clean Water Act (CWA) permit authorizing discharge of phosphorus. City of Tulsa v. Tyson Foods, Inc., N.D.Okla.2003, 258 F.Supp.2d 1263, vacated pursuant to settlement. States ⚿ 18.91; Waters And Water Courses ⚿ 196

Savings clause in Clean Water Act citizen's suit provision preserved state law remedies to the extent that the action did not otherwise thwart goal of Clean Water Act, and thus did not preempt nuisance suit brought under law of affected state. Washington Suburban Sanitary Com'n v. CAE-Link Corp., Md.1993, 622 A.2d 745, 330 Md. 115, certiorari denied 114 S.Ct. 288, 510 U.S. 907, 126 L.Ed.2d 238. Nuisance ⚿ 59; States ⚿ 18.31

Under the "savings clause" of the Federal Water Pollution Control Act, an order requiring a regional sanitary commission to build and operate a composting site in an industrial park did not require the commission to build a site that emitted obnoxious odors that invaded the property of others and thus did not preempt neighboring property owners' state law nuisance actions. CAE-Link Corp. v. Washington Suburban Sanitary Com'n, Md.App.1992, 602 A.2d 239, 90 Md.App. 604, certiorari granted 609 A.2d 312, 327 Md. 304, affirmed 622 A.2d 745, 330 Md. 115, certiorari denied 114 S.Ct. 288, 510 U.S. 907, 126 L.Ed.2d 238. Nuisance ⚿ 41; States ⚿ 18.31; Nuisance ⚿ 18

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7. Effluent violation

Conditions set forth in state-issued National Pollutant Discharge Elimination System (NPDES) permit, which was approved by Environmental Protection Agency (EPA), qualified as "an effluent standard or limitation under this chapter," within meaning of citizen-suit provision of Clean Water Act (CWA), and federal court thus had jurisdiction over property's owner's CWA claims against owner of adjoining property, alleging violations of state-issued permit. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 226

Discharge of any "pollutant" without National Pollution Discharge Elimination System (NPDES) permit is unlawful act under Clean Water Act (CWA) and, thus, may be basis of CWA citizen suit even if Environmental Protection Agency (EPA) has not established applicable effluent limitation or permit for "pollutant" at issue; although CWA initially limited citizen suits to enforcement of existing EPA regulations, Congress' failure to prevent expiration of those limits evinced intent to allow citizen suits even if failure to obtain permit could be explained by administrative default. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Environmental Law 226

Without existence of an effluent discharge of some kind, there is no coverage under Clean Water Act citizens' suit provision for failure to obtain required permit. Save Our Community v. U.S. E.P.A., C.A.5 (Tex.) 1992, 971 F.2d 1155. Environmental Law 226

Persons seeking to bring citizen's action under the Clean Water Act against cattle feedlot proved continuous or intermittent violation; feedlot was point source and did not have National Pollutant Discharge Elimination System (NPDES) permit and there was reasonable likelihood of intermittent or sporadic discharges in event of future chronic rainfall event which would not reach 25-year, 24-hour level. Carr v. Alta Verde Industries, Inc., C.A.5 (Tex.) 1991, 931 F.2d 1055, rehearing denied.

Challengers to resale of timber by Forest Service were not entitled to maintain action under the citizen suit provision of the Clean Water Act to enforce state water quality standards affected by nonpoint sources; applicable provision of statute which referred to "effluent limitations" were by definition applicable only to point sources. Oregon Natural Resources Council v. U.S. Forest Service, C.A.9 (Or.) 1987, 834 F.2d 842. Environmental Law 226

Environmental organization satisfied Clean Water Act's (CWA) prerequisite to citizen suit to enforce effluent standard or limitation, which required them to allege violation of such standard or limitation, when they alleged in their complaint that state officials discharged pollutants or industrial stormwater without National Pollutant Discharge Elimination System (NPDES) permit. Northwest Environmental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law 226

Fact that quantities of contaminants discharged from wastewater treatment facility regularly exceeded legally permissible limits rendered sewer district and town liable under Clean Water Act (CWA). Hudson Riverkeeper Fund, Inc. v. Yorktown Heights Sewer Dist., S.D.N.Y.1996, 949 F.Supp. 210. Environmental Law 226

Injury sustained by citizen's group was "fairly traceable" to tannery operator's alleged violation of Clean Water Act, giving citizen's group standing to sue tannery for discharges of pollutants in excess of effluent standards, even if publicly owned treatment works (POTW) into which tannery discharged wastewater was in compliance with its own permit limitations, since violation of federal categorical pretreatment standards contributed to water

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pollution, such that POTW's compliance did not absolve tannery's alleged violation of pretreatment standards. Atlantic States Legal Foundation, Inc. v. Karg Bros., Inc., N.D.N.Y.1993, 841 F.Supp. 51. Environmental Law 652

Association of neighbors did not have standing under the Clean Water Act to seek injunction against construction of underground sewage retention basin where association pointed to no "effluent standard" which proposed basin would violate and where the Environmental Protection Agency grant decision involved discretion. Association of Significantly Impacted Neighbors v. City of Livonia, E.D.Mich.1991, 765 F.Supp. 389. Environmental Law 652

With respect to months where indirect discharger was in violation of monthly average limitations for effluent discharge, it would be deemed to have committed 30 violations. International Union, United Auto. Aerospace and Agr. Implement Workers of America, AFL-CIO v. Amerace Corp., Inc., D.N.J.1990, 740 F.Supp. 1072. Environmental Law 197

Complaint alleging that developers discharged sand, soil, solid wastes and other pollutants into stream leading onto plaintiff's property and that developers did not obtain permit for such discharges alleged violation of this chapter and jurisdiction lay in federal district court under this section permitting citizens suits for prospective injunctive relief against persons who violate effluent standard or limitation. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law 700

Absent violation of a previously promulgated effluent standard or order of Environmental Protection Agency with respect to such a standard, this section did not authorize citizens' suit against village and various village officials seeking to enjoin construction of certain residential development projects. Town of North Hempstead v. Village of North Hills, E.D.N.Y.1979, 482 F.Supp. 900. Environmental Law 700

8. Permit violation

Dairy farm's alleged failure to have permit before certain date could not be subject of Clean Water Act (CWA) citizen suit, where farm had permit coverage after that date. Coon ex rel. Coon v. Willet Dairy, LP, C.A.2 (N.Y.) 2008, 536 F.3d 171. Environmental Law 226

Evidence supported jury's finding that defendant property owner and operators of scrap metal business located on property engaged in continuing violation of Clean Water Act (CWA), although defendants obtained National Pollutant Discharge Elimination System (NPDES) permit before suit was commenced, in view of evidence that defendants had not yet done any storm water monitoring or implemented any storm water plan, as required by the permit. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 230

Where citizen suit under the Clean Water Act (CWA) was commenced several months after Louisiana Department of Environmental Quality (DEQ) initiated administrative penalty action against village for release of untreated sewage, exception to CWA provision barring citizen suits when state was diligently prosecuting action under comparable state law, which allowed citizen suit when action was filed prior to commencement of state's action, did not apply. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law 226

Environmental organization alleged in good faith a continuing violation of Clean Water Act, giving it standing to sue under citizen suit provision of Clean Water Act for paper company's failure to file reports required by its

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discharge permit, by asserting that the company was required to take samples on a monthly basis and maintain records and file reports and that it had not filed a complete report at the time that the lawsuit was filed, even though it had been operating under the permit for three years. Sierra Club v. Simkins Industries, Inc., C.A.4 (Md.) 1988, 847 F.2d 1109, rehearing denied, certiorari denied 109 S.Ct. 3185, 491 U.S. 904, 105 L.Ed.2d 694. Environmental Law 652

Multiple, sporadic, and past violations of various effluent limitations contained in national pollutant discharge elimination system permits could not form the basis of citizens' lawsuits under Clean Water Act. Sierra Club v. Shell Oil Co., C.A.5 (La.) 1987, 817 F.2d 1169, certiorari denied 108 S.Ct. 501, 484 U.S. 985, 98 L.Ed.2d 500, rehearing denied 108 S.Ct. 1065, 484 U.S. 1083, 98 L.Ed.2d 1027. Environmental Law 226

Condition in State Pollutant Discharge Elimination System (SPDES) permit which required that water intake structure reflect the "best technology available" for minimizing adverse environmental impact was not so vague or ambiguous as to be useless, lacking in meaning, or unenforceable in a citizen suit brought under the Clean Water Act. Hudson Riverkeeper Fund, Inc. v. Orange and Rockland Utilities, Inc., S.D.N.Y.1993, 835 F.Supp. 160. Environmental Law 197

In order to prevail in cases involving allegations of ongoing noncompliance with conditions of permit under national pollutant discharge elimination system, plaintiffs must prove on the merits that violations are in fact continuous or intermittent; citizen plaintiffs may accomplish this either by proving violations that continue on or after date complaint is filed or by adducing evidence from which reasonable trier of fact could find continuing likelihood of recurrence in intermittent or sporadic violations. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 790 F.Supp. 511. Environmental Law 226; Environmental Law 197

Violation of National Pollutant Discharge Elimination System permit is "ongoing," and can be subject of citizen enforcement action under Clean Water Act, if, in comparing self-reported exceedances before complaint was filed and afterwards, same parameter is exceeded, or violation recurs and cause has not been completely eradicated. Sierra Club v. Union Oil Co. of California, N.D.Cal.1988, 716 F.Supp. 429. Environmental Law 226

Citizen suit under Clean Water Act may seek penalties for violations of expired permit only on basis of those conditions of expired permit which have been carried to current permit and which, therefore, are presently enforced. Public Interest Research Group of New Jersey, Inc. v. Carter-Wallace, Inc., D.N.J.1988, 684 F.Supp. 115. Environmental Law 223

Court's role in action brought under citizen suit provision of the Federal Water Pollution Control Act [33 U.S.C.A. § 1365(a)(1)] is not to determine whether alleged polluter is polluting the waterway, but rather to determine whether Federal Water Pollution Control Act provisions requiring compliance with discharge permits have been violated [33 U.S.C.A. §§ 1342(k), 1344(p)]. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

9. Past violations

Provision of Clean Water Act, authorizing private citizens to commence civil action seeking injunctive relief and/or civil penalties, against any person "alleged to be in violation of" conditions of federal or state national pollutant discharge elimination system permit did not confer federal jurisdiction over citizen suits for wholly past violations, which alleged that permittee had violated permit by exceeding effluent limitations on certain

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pollutants. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., U.S.Va.1987, 108 S.Ct. 376, 484 U.S. 49, 98 L.Ed.2d 306, on remand 844 F.2d 170. Environmental Law 226

A citizen suit under the Clean Water Act is not permitted for purely past violations of the Clean Water Act (CWA). Jones v. E.R. Snell Contractor, Inc., N.D.Ga.2004, 333 F.Supp.2d 1344, affirmed 120 Fed.Appx. 786, 2004 WL 2157261, certiorari denied 125 S.Ct. 1735, 544 U.S. 962, 161 L.Ed.2d 603. Environmental Law 226

Town, as wholly past polluter at landfill site, could not be held liable to citizens under Clean Water Act (CWA) for ongoing discharge of leachate into navigable waters. Aiello v. Town of Brookhaven, E.D.N.Y.2001, 136 F.Supp.2d 81. Environmental Law 226

Clean Water Act (CWA) citizen suit may not be brought for wholly past violations. Old Timer, Inc. v. Black-hawk-Central City Sanitation Dist., D.Colo.1999, 51 F.Supp.2d 1109. Environmental Law 226

Clean Water Act citizen suit, unlike action by government, cannot be brought to recover for wholly past violations; citizens may seek civil penalties only in suit to enjoin or otherwise abate ongoing violation. Concerned Area Residents for The Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1410. Environmental Law 226

Mobile home park purchasers could not bring citizens' suit against vendors for failure to remedy past violations of Clean Water Act; since statute only authorized such suits to enjoin or abate violations, it did not apply to former owners who, by virtue of having sold source of violation, no longer had control to abate it. Brossman Sales, Inc. v. Broderick, E.D.Pa.1992, 808 F.Supp. 1209. Environmental Law 226

Private cause of action does not exist under Clean Water Act to recover for wholly past violations of effluent standards of limitation. Atlantic States Legal Foundation, Inc. v. Pan American Tanning Corp., N.D.N.Y.1992, 807 F.Supp. 230, reversed 993 F.2d 1017. Environmental Law 226

If ongoing violations of discharge permit are related to basic underlying problem complained of in citizen suit under the Clean Water Act, fact that past violations show up in one parameter of the permit does not deprive court of jurisdiction even though the postcomplaint violation occurs in a different parameter. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law 641

Court did not have jurisdiction in citizen suit under the Clean Water Act over claims of violations of discharge permit which occurred prior to the filing of the complaint and which did not correspond to any postcomplaint violations. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law 641

Environmental groups established continuing likelihood that future violations might occur in any of the surface water discharge permit parameters that permit holder had been found to have violated in the past, and permit holder's continued violation of both effluent limitations and reporting and monitoring requirements supported conclusion that continuing likelihood existed of discharge violations in general and of reporting and monitoring violations in general. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 790 F.Supp. 511. Environmental Law 207; Environmental Law 206

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Citizens' suit under Clean Water Act could not be maintained against past owners of private septic system, though system's violations of Act were continuing when suits were filed; past owners were not presently violating Act, as was necessary to maintenance of citizens' suit. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Environmental Law ⚷ 226

Individual or entity may not maintain citizen suit under Clean Water Act for wholly past violations of the Act. Pennsylvania Environmental Defense Foundation v. Bellefonte Borough, M.D.Pa.1989, 718 F.Supp. 431. Environmental Law ⚷ 226

Citizen suits may be brought under the Federal Water Pollution Control Act [Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.] for past as well as present violations; thus, plaintiff organizations could bring action against permittee for past violations of expired national pollutant discharge elimination system permits. Student Public Interest Research Group of New Jersey, Inc. v. AT & T Bell Laboratories, D.C.N.J.1985, 617 F.Supp. 1190.

Public interest organization could maintain citizen suit under Clean Water Act against paper mill for past violations of wastewater discharge permit even if paper mill was currently in compliance with terms of its permit. Sierra Club v. Simkins Industries, Inc., D.C.Md.1985, 617 F.Supp. 1120, reconsideration denied , affirmed 847 F.2d 1109, rehearing denied, certiorari denied 109 S.Ct. 3185, 491 U.S. 904, 105 L.Ed.2d 694. Environmental Law ⚷ 226

10. Ongoing violations

Unspecified ongoing or continuing violations of Clean Water Act (CWA) alleged against metropolitan sewerage district by environmental groups did not constitute separate and distinct cause of action, for purposes of determining whether state action against district and resulting stipulation had res judicata effect barring groups' CWA citizens' suit under Wisconsin law, given groups' failure to identify such post-stipulation violations in 60-day notice required under CWA, which thus precluded claims based on those violations, and given that continuing violations were related in origin and had same factual basis as pre-stipulation violations, as to which res judicata applied. Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewerage Dist., C.A.7 (Wis.) 2004, 382 F.3d 743, rehearing and suggestion for rehearing en banc denied, certiorari denied 125 S.Ct. 1593, 544 U.S. 913, 161 L.Ed.2d 293. Judgment ⚷ 828.15(1)

Dairy operation's discharges of wastewater from truck wash into irrigation canal and misapplication or overapplication of animal wastewaters to field draining into canal constituted "ongoing violations" of Clean Water Act (CWA), as required to support environmental group's CWA action against operation, since such violations had been continuing throughout significant time period, and had reasonable likelihood of recurrence. Community Ass'n for Restoration of the Environment v. Henry Bosma Dairy, C.A.9 (Wash.) 2002, 305 F.3d 943. Environmental Law ⚷ 206

City that sued developers, alleging that development activities caused silt and sediment-laden water to be discharged into lakes and surrounding wetlands, averred that such activities constituted "ongoing violation" of federal law, as required to maintain claim under Clean Water Act (CWA); complaint made good faith allegation that presence of developers' illegally discharged fill material in lakes and wetlands was continuous or intermittent. City of Mountain Park, GA v. Lakeside at Ansley, LLC, N.D.Ga.2008, 560 F.Supp.2d 1288. Environmental Law ⚷ 226

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Zinc mine operator's violations of provision of its National Pollutant Discharge Elimination System (NPDES) permit requiring it to monitor discharge from its tailings pond were not ongoing, and thus citizen enforcement action under Clean Water Act was not warranted, even if operator could not guarantee that there would be no future failures, where operator had not experienced any violations in three years since installing programmable logic controller, as well as several flow meters and pH probe, at new plant at port site. Adams v. Teck Cominco Alaska, Inc., D.Alaska 2006, 414 F.Supp.2d 925. Environmental Law 226

Clean Water Act (CWA) does not permit citizen suits for wholly past violations; rather, to have standing under CWA, citizen-plaintiff must prove existence of ongoing violations or reasonable likelihood that future violations will occur. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2005, 361 F.Supp.2d 1232. Environmental Law 650

Plaintiff asserting Clean Water Act (CWA) claims must be able to allege that the violations are ongoing, pointing either to violations that continue on or after the date the complaint is filed or to evidence from which a reasonable trier of fact could find a continuing likelihood of a recurrence in intermittent or sporadic violations. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law 226

If plaintiff-citizen alleges ongoing violation of Clean Water Act (CWA), it is sufficient to confer jurisdiction on federal district court. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law 226

In order for court to have jurisdiction over citizen suits under Clean Water Act (CWA), existence of ongoing violations must be demonstrated. Frilling v. Village of Anna, S.D.Ohio 1996, 924 F.Supp. 821. Environmental Law 226

Environmental groups' good faith allegation that violations of Clean Water Act (CWA) were occurring at time they filed citizen suit was sufficient to provide district court with jurisdiction over suit. Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law 673

For purposes of determining whether there are "ongoing violations" required for citizen suit under Clean Water Act (CWA), intermittent or sporadic violations do not cease to be ongoing until date when there is no real likelihood of repetition. Save Our Bays and Beaches v. City and County of Honolulu, D.Hawai'i 1994, 904 F.Supp. 1098. Environmental Law 226

Even if construction had ceased and erosion control measures were in place at construction site which lacked discharge permit required by Clean Water Act, developers remained in violation of Act, absent proof of complete absence of storm runoff; it was discharge of water without permit coverage that violated Act, not construction activity itself. Molokai Chamber of Commerce v. Kukui (Molokai), Inc., D.Hawai'i 1995, 891 F.Supp. 1389. Environmental Law 206

Individual landowners alleging Clean Water Act violation sufficiently charged requisite ongoing violation; complaint alleged that discharges were result of practices and procedures that defendants were continuing to follow, and that actual discharges had occurred since complaint was filed. Concerned Area Residents for The Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1410. Environmental Law 673

Exceedances in National Pollutant Discharge Elimination System permit level for phosphorus did not constitute ongoing violation sufficient to support jurisdiction under Clean Water Act, even though there were four exceedances, including two occurring 18 months apart, the latter of the two ten months after the complaint was

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filed; evidence indicated that one exceedance was caused by malfunction in sight glass which indicated amount of phosphorus being added to biological treatment system, that another of exceedances occurred to shock load of organic materials to treatment facility reducing effectiveness of one biological reactor, and third and final exceedance occurred due to 25-year storm event. Allen County Citizens for the Environment, Inc. v. BP Oil Co., N.D.Ohio 1991, 762 F.Supp. 733, affirmed 966 F.2d 1451. Environmental Law 226

Evidence was sufficient to establish that holder of national pollution discharge elimination system permit had engaged in ongoing violations of Clean Water Act sufficient to confer federal jurisdiction over citizens' suit against holder; although holder had implemented remedial measures in its wastewater treatment system that had proven effective, plaintiffs presented expert testimony indicating that there was some likelihood of recurrence of intermittent violations. Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd., E.D.Va.1988, 688 F.Supp. 1078, affirmed in part , reversed in part 890 F.2d 690. Environmental Law 230

State which brought citizen suits against Veterans Administration for violation of federal Clean Air Act was not required to allege continuing and ongoing violation of emission standards in order for district court to have subject matter jurisdiction; declining to follow *Hamker v. Diamond Shamrock Chemical Co.*, 756 F.2d 392 (5th Cir.). State of Ala. ex rel. Graddick v. Veterans Admin., M.D.Ala.1986, 648 F.Supp. 1208.

11. Prospective violations

Allegations that plans of the Nuclear Regulatory Commission and operator of nuclear power plant to attempt to partially decontaminate water following accident at the power plant and eventually to release the water into river would constitute discharge of radioactive waste within prohibition of this chapter were sufficient for purposes of subject-matter jurisdiction of the district court under this section and under section 1331 of Title 28. Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor, C.A.3 (Pa.) 1980, 619 F.2d 231, certiorari denied 101 S.Ct. 893, 449 U.S. 1096, 66 L.Ed.2d 824. Environmental Law 634; Federal Courts 243

12. Aiding and abetting

Aiding and abetting liability exists under the "citizen suit" provision of Federal Water Pollution Control Act. O'Neil v. Q.L.C.R.I., Inc., D.R.I.1990, 750 F.Supp. 551: Environmental Law 226

13. Failure to perform nondiscretionary duty--Generally

Deference must be accorded to Environmental Protection Agency's interpretation of this chapter. Environmental Defense Fund, Inc. v. Costle, C.A.D.C.1981, 657 F.2d 275, 211 U.S.App.D.C. 313. Statutes 219(6.1)

Where plaintiffs were challenging manner in which Administrator performed his duties, rather than his alleged failure to perform a nondiscretionary duty, plaintiffs could not bring suit challenging issuance of National Pollutant Discharge Elimination System permit in district court under mandamus jurisdiction of district court or under this section permitting suit in district court against Administrator for failure to perform a nondiscretionary act. Sun Enterprises, Ltd. v. Train, C.A.2 (N.Y.) 1976, 532 F.2d 280. Federal Courts 11; Federal Courts 194

Determination that landowner's activities were "normal farming" and, thus, did not require wetlands permit under Clean Water Act (CWA), was not correctly characterized as failure to perform "nondiscretionary duty," as required for cause of action against Administrator of Environmental Protection Agency (EPA) under CWA's cit-

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izen suit provision; rather, allegation was that Army Corps of Engineers performed its duty erroneously. Cascade Conservation League v. M.A. Segale, Inc., W.D.Wash.1996, 921 F.Supp. 692. Environmental Law 146

Citizen suit provision of Clean Water Act (CWA) only authorized suits against Administrator of Environmental Protection Agency (EPA) for failure to perform non-discretionary duties and, thus, precluded citizens' CWA claims against Army Corps of Engineers. Preserve Endangered Areas of Cobb's History, Inc. (P.E.A.C.H.) v. U.S. Army Corps of Engineers, N.D.Ga.1995, 915 F.Supp. 378, reconsideration denied 916 F.Supp. 1557, affirmed 87 F.3d 1242. Environmental Law 226

Corps of Engineers' jurisdictional disclaimer over dredge material discharge area, alleged by citizens to be wetlands, if erroneous, was a failure to perform a mandatory duty and allowed citizen suit under Clean Water Act. Golden Gate Audubon Soc., Inc. v. U.S. Army Corps of Engineers, N.D.Cal.1988, 700 F.Supp. 1549, clarification denied , amended 717 F.Supp. 1417. Environmental Law 146

District court had subject matter jurisdiction over action in which plaintiff sought to compel Environmental Protection Agency to enforce Clean Water Act, section 1251 et seq. of this title, in view of requisite allegation of a failure to perform nondiscretionary duty to issue order requiring compliance with section 1251 et seq. of this title to person found in violation of section 1251 et seq. of this title. Greene v. Costle, W.D.Tenn.1983, 577 F.Supp. 1225.

14. ---- Effluent limitations, failure to perform nondiscretionary duty

Fact that Congress did not explicitly require Environmental Protection Agency to intercede to prescribe total maximum daily load limits for discharge of pollutants in the absence of state action did not preclude determination that states' inaction could have ripened in refusal to act, and if Environmental Protection Agency disapproved states' "constructive submission" of no limits, that failure of Agency to act could amount to failure to perform nondiscretionary duty which could properly be raised in citizen's suit. Scott v. City of Hammond, Ind., C.A.7 (Ill.) 1984, 741 F.2d 992.

Suit brought to enforce conditions imposed pursuant to state law in National Pollutant Discharge Elimination System (NPDES) permit sought to enforce "effluence standard or limitation" under Clean Water Act (CWA) and, thus, citizens had standing under CWA to bring suit; CWA expressly contemplated stricter state effluent and other limitations deemed necessary by state to restore integrity of its waters, allowed state to incorporate those limitations into state-issued permit, and authorized citizen suits to enforce those limitations. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, N.D.Ga.1996, 953 F.Supp. 1541. Environmental Law 656

15. ---- Environmental impact statements, failure to perform nondiscretionary duty

Neither Federal Mandamus Act, section 1361 of Title 28, nor this section provided jurisdiction for federal district court to review Environmental Protection Agency's failure to object to issuance of state water discharge permit, since Agency by statute retained discretion to object to specific state National Pollutant Discharge Elimination System permit, and could waive such right of objection; mandamus jurisdiction lay, however, to entertain issue of whether environmental impact statement was required by section 4332 of Title 42 prior to issuance of permit, since such procedure, if required, is mandatory and not discretionary. Chesapeake Bay Foundation, Inc. v. U. S., E.D.Va.1978, 445 F.Supp. 1349. Federal Courts 11; Environmental Law 641

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16. Diligent prosecution by Administrator or State--Generally

Environmental Protection Agency's (EPA) prosecution of Clean Water Act (CWA) violations against defendants in citizen suit was diligent, and therefore barred citizen suit; EPA chose to investigate and reach a settlement with defendants concerning essentially the same violations alleged in complaint in citizen suit. Karr v. Hefner, C.A.10 (Okla.) 2007, 475 F.3d 1192. Environmental Law 226

Litigation between state and metropolitan sewerage district, and resulting stipulation, that occurred approximately 25 years before environmental groups filed citizens' suit against district under Clean Water Act (CWA) did not qualify as diligent prosecution by state of violations alleged by groups, and thus did not operate to bar groups' action under CWA, regardless of whether violations occurred due to lingering problems which stipulation failed to resolve, or whether violations stemmed from circumstances unrelated to those which stipulation was intended to address. Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewerage Dist., C.A.7 (Wis.) 2004, 382 F.3d 743, rehearing and suggestion for rehearing en banc denied, certiorari denied 125 S.Ct. 1593, 544 U.S. 913, 161 L.Ed.2d 293. Environmental Law 226

Citizen suit may be commenced under Clean Water Act if appropriate state or federal authorities do not take action within 60 days following notice by plaintiff to Environmental Protection Agency (EPA), state and violator of alleged violations of Act. Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., C.A.2 (N.Y.) 1991, 933 F.2d 124. Environmental Law 226

Recommendation by Oregon Department of Environmental Quality (DEQ), that enforcement action be taken against seafood processing facility which could have resulted in administrative penalties, was not "comparable" to action brought by environmental group against seafood processing facility which alleged violation of Clean Water Act (CWA), and thus citizen suit could not be precluded under "diligent prosecution" bar, since DEQ issued non-penalty administrative orders in the past, and even if monetary penalties were assessed by DEQ, monetary penalties under CWA were much higher, and prosecution under CWA provided more stringent standards. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2004, 341 F.Supp.2d 1170. Environmental Law 226

Under this section allowing citizen's suit under this chapter to proceed unless Environmental Protection Agency diligently prosecutes action for compliance, Agency's actions in entering into consent order with alleged violator did not constitute diligent compliance where the provision in the consent order extending violator's deadline for compliance exceeded Agency's authority. Student Public Interest Research Group of New Jersey, Inc. v. Fritzsche, Dodge & Olcott, Inc., D.C.N.J.1984, 579 F.Supp. 1528, affirmed 759 F.2d 1131.

Fact that Administrator was prosecuting civil action against City of New York for violating this chapter did not deprive district court of subject matter jurisdiction of suit charging the Environmental Protection Agency and the Administrator with violating federal common law of public nuisance since not only was the Administrator's suit filed after instant complaint but the "pending suit" provision of this section applies only to citizen suits against the actual violator. Long Beach Tp. v. City of New York, D.C.N.J.1978, 445 F.Supp. 1203. Environmental Law 226

16a. ---- Stipulations--diligent prosecution by Administrator or State

Stipulation intended to address alleged violations of Clean Water Act (CWA) by metropolitan sewerage district did not establish state's diligent prosecution of civil compliance action against district, such that CWA barred

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citizens' suit by environmental groups based on same alleged violations, when state court refused to enter stipulation and stipulation was subsequently rescinded by state and district, and therefore stipulation lacked any legally binding effect. Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewerage Dist., C.A.7 (Wis.) 2004, 382 F.3d 743, rehearing and suggestion for rehearing en banc denied, certiorari denied 125 S.Ct. 1593, 544 U.S. 913, 161 L.Ed.2d 293. Environmental Law ⚿ 226

16b. ---- Timely commenced action, diligent prosecution by Administrator or State

State's enforcement action against metropolitan sewerage district, and resulting stipulation, did not qualify as timely commenced action that, pursuant to Clean Water Act (CWA), barred related citizens' suit brought against district by environmental groups for alleged CWA violations when state's action was filed after citizens' suit, even though both actions were filed on same day and state had postponed filing its action at groups' request, and even though stipulation was similar to one that state and district previously had timely, but ineffectively, filed in 25-year-old state-court case. Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewerage Dist., C.A.7 (Wis.) 2004, 382 F.3d 743, rehearing and suggestion for rehearing en banc denied, certiorari denied 125 S.Ct. 1593, 544 U.S. 913, 161 L.Ed.2d 293. Environmental Law ⚿ 226

17. Enforcement actions

District court's consolidation order for federal and state enforcement actions, under CWA, including consolidation of citizen suit by environmental group, against county and municipality for sanitary sewer overflows, did not destroy legal basis under which environmental organization originally was authorized to file citizen suit, under CWA, in support of award of fees. Sierra Club v. Hamilton County Bd. of County Com'rs, C.A.6 (Ohio) 2007, 504 F.3d 634. Environmental Law ⚿ 716

Only situation in which state could not control all aspects of enforcement of Clean Water Act (CWA) was when it was pursuing something less than judicial enforcement and citizen was pursuing injunction in federal court; consequently, citizen suit that sought injunctive relief could be maintained, although civil penalties were not available because state was pursuing remedy, albeit something less than judicial enforcement. Paper, Allied-Industrial, Chemical And Energy Workers Intern. Union v. Continental Carbon Co., C.A.10 (Okla.) 2005, 428 F.3d 1285. Environmental Law ⚿ 226; Environmental Law ⚿ 700

Environmental Protection Agency's (EPA) authority under Clean Water Act (CWA) to veto United States Army Corps of Engineers' (USACE) issuance of permit to construct 1,526-acre reservoir was discretionary, and, thus, EPA's decision not to veto permit could not form basis for action against EPA under CWA's citizen-suit provision. Alliance To Save Mattaponi v. U.S. Army Corps of Engineers, D.D.C.2007, 515 F.Supp.2d 1. Environmental Law ⚿ 226

Environmental Protection Agency (EPA) was under nondiscretionary duty under Clean Water Act (CWA) to promptly promulgate revised water quality standards upon state's failure to submit its own revisions within 90 days of notice of disapproval, and thus CWA authorized citizen suit to be brought to enforce that nondiscretionary duty. Northwest Environmental Advocates v. U.S. E.P.A., D.Or.2003, 268 F.Supp.2d 1255. Environmental Law ⚿ 188; Environmental Law ⚿ 226

Public interest group's claims for substance violations of Clean Water Act National Pollution Discharge Elimination System (NPDES) permit were not barred as being subject of parallel government enforcement action, where group filed amended complaint alleging violations of permit before Massachusetts Department of Envir-

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onmental Protection (DEP) or Environmental Protection Agency (EPA) commenced action for same violations. Massachusetts Public Interest Research Group v. ICI Americas Inc., D.Mass.1991, 777 F.Supp. 1032. Environmental Law 226

Actions taken by Environmental Protection Agency (EPA) toward pollutant discharges at Air Force base that exceeded effluent limitations in permits did not involve attempt to enforce those standards and, thus, citizen's suit under Clean Water Act was not precluded; administrative order on consent, establishing schedule for construction of new waste treatment facility and interim effluent limits, was insufficient to protect environment, and the EPA commenced no action to require compliance with effective permit. Public Interest Research Group of New Jersey, Inc. v. Rice, D.N.J.1991, 774 F.Supp. 317. Environmental Law 226

Action by group acting as "private attorneys general" under Federal Clean Water Act seeking damages and injunctive relief relating to hazardous waste landfill was not barred by existence of corollary governmental enforcement effort, although government was actively litigating its action, and dismissal of group's suit would not leave group without remedy; government's effort did not address factual grievances asserted by group whose complaint was directed particularly to claim that drainage ditch and outflow pipe from landfill were illegally discharging pollutants into river. Hudson River Fishermen's Ass'n v. Westchester County, S.D.N.Y.1988, 686 F.Supp. 1044. Environmental Law 226

District court had no authority to dismiss citizen suit brought under Clean Water Act as a result of subsequently filed enforcement action by the United States covering similar issues. Atlantic States Legal Foundation, Inc. v. Koch Refining Co., D.Minn.1988, 681 F.Supp. 609. Environmental Law 226

Where settlement of waste discharge permit violation was achieved as a result of enforcement proceedings in which interested members of public lacked opportunity to be heard on merits of proposed consent order, enforcement proceeding could not be deemed equivalent of court action within meaning of this section, so that citizens' suit to enforce anti-pollution standards of this chapter could properly be entertained by federal district court. Sierra Club v. SCM Corp., W.D.N.Y.1983, 572 F.Supp. 828, appeal dismissed 747 F.2d 99. Environmental Law 226

18. State actions--Generally

State Department of Environmental Protection diligently enforced state Clean Waters Act against city for discharge of sewage effluents into coastal estuary, so as to bar citizen's suit for same violations under Federal Clean Water Act, where Department ordered tests of groundwater monitoring wells, effluent tanks, and discharges ordered new sewer treatment facility plans and enforced sewer hookup moratorium, and Department left possibility of imposing penalties open. North and South Rivers Watershed Ass'n, Inc. v. Town of Scituate, C.A.1 (Mass.) 1991, 949 F.2d 552. Environmental Law 226

Claims brought under Clean Water Act (CWA) by city against developers, alleging that development activities caused silt and sediment-laden water to be discharged into lakes and surrounding wetlands, were properly based upon developers' alleged violations of state-issued National Pollutant Discharge Elimination System (NPDES) permits; permits were required to comply with state water quality standards prohibiting discharge of water with turbidity evidenced by noticeable visual contrast in color of water. City of Mountain Park, GA v. Lakeside at Ansley, LLC, N.D.Ga.2008, 560 F.Supp.2d 1288. Environmental Law 226

State law claims of negligence, private nuisance, and trespass brought by private landowners against corporate

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landowner and biosolids recycling company, stemming from dispersal of by-product from wastewater treatment facilities, did not implicate substantial federal question under Clean Water Act (CWA), and thus were not preempted; elements of private landowners' nuisance, trespass, and negligence claims were well-settled under Virginia common law and subject to CWA savings clause. Wyatt v. Sussex Surry, LLC, E.D.Va.2007, 482 F.Supp.2d 740. Negligence ⚷ 205; States ⚷ 18.15; Trespass ⚷ 16

Cities' civil action against wastewater treatment company for failure to cure alleged violations of local law was not enforcement action commenced by state that would preclude Clean Water Act (CWA) citizen suit. Ohio Public Interest Research Group v. Laidlaw Environmental Services, Inc., S.D.Ohio 1996, 963 F.Supp. 635. Environmental Law ⚷ 226

For purposes of Clean Water Act (CWA) section barring citizen suits if state has diligently prosecuted civil action, state's denying citizen plaintiffs opportunity to intervene or comment upon consent order in state's civil enforcement action provided basis for holding that civil action was not "diligently prosecuted"; plaintiffs did everything that could reasonably have been done to seek intervention prior to entry of consent order, which was filed simultaneously with state's complaint, but they were not allowed to do so, and state's apparent failure to enact public participation safeguards mandated by implementing regulations of CWA did not alter federal standard of "diligent prosecution," which required those safeguards to be provided and followed. Frilling v. Village of Anna, S.D.Ohio 1996, 924 F.Supp. 821. Environmental Law ⚷ 226

Consent order between paper manufacturing company and Michigan Department of Natural Resources (MDNR) barred citizen's suit under Clean Water Act (CWA) where MDNR diligently prosecuted action under a Michigan statute that was comparable to CWA. Pape v. Menominee Paper Co., Inc., W.D.Mich.1994, 911 F.Supp. 273. Environmental Law ⚷ 226

State's failure to enforce its consent order is some evidence that its prosecution was not "diligent" for purposes of Clean Water Act (CWA) section barring citizen suits if government has commenced and is diligently prosecuting enforcement action. Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., D.S.C.1995, 890 F.Supp. 470. Environmental Law ⚷ 226

Where water reclamation district could not enforce its own show cause order directed at alleged polluter, show cause order was not an action in a court which would bar citizen suit against the alleged polluter under the Clean Water Act. Illinois Public Interest Research Group v. PMC, Inc. Through PMC Specialties Group, N.D.Ill.1993, 835 F.Supp. 1070. Environmental Law ⚷ 226

Citizen suit for violations of federal Water Pollution Control Act permit was not precluded by prior enforcement action against violator by New Jersey Department of Environmental Protection; Department never commenced action in court against violator, no state administrative enforcement action was ever formally commenced, and state law which Department proceeded under was not comparable to federal law. Public Interest Research Group of New Jersey, Inc. v. New Jersey Expressway Authority, D.N.J.1992, 822 F.Supp. 174. Environmental Law ⚷ 226

New Jersey Department of Environmental Protection and Energy order and notice, rather than earlier Department compliance evaluation inspection report which rated fluoropolymer manufacturer's facility "unacceptable," was "commencement" of enforcement proceeding by Department for purposes of Clean Water Act provision barring citizen suits regarding violations with respect to which state has commenced and is diligently prosecuting action under state law and, thus, citizen suit under Act against manufacturer was not barred by provision, in

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light of fact that plaintiffs sent 60-day notice letter after report, but before order and notice; report made no mention of formal charges, penalties, or hearing and indicated that enforcement action had not yet been initiated but might be in future. Public Interest Research Group of New Jersey, Inc. v. Elf Atochem North America, Inc., D.N.J.1993, 817 F.Supp. 1164. Environmental Law 226

State agency's enforcement actions against city, consisting of investigation and finding of violations of Clean Water Act, and resulting consent agreement between city and agency did not bar citizen's lawsuit filed under Act; enforcement actions taken by agency were administratively initiated and filed with another state agency, and citizen suit was first enforcement action pursued against city in federal court. Hawaii's Thousand Friends, Life of Land, Inc. v. City and County of Honolulu, D.Hawai'i 1992, 806 F.Supp. 225. Environmental Law 226

Clean Water Act citizen's suit alleging that a National Pollutant Discharge Elimination System (NPDES) permit holder had violated the effluent limitations and reporting requirements of its permit was not subject to dismissal because of a state environmental agency's eventual, and as yet unconsummated, settlement with the permit holder, as the agency did not commence suit within the required 60-day notice period. Natural Resources Defense Council, Inc. v. Loewengart & Co., Inc., M.D.Pa.1991, 776 F.Supp. 996. Environmental Law 659

Administrative action by Indiana Department of Environmental Management against holder of National Pollutant Discharge Elimination System (NPDES) permit was not the functional equivalent to action in court under Clean Water Act section, barring citizen's suit if Administrator of Environmental Protection Agency (EPA) or state has commenced and is diligently prosecuting civil or criminal action in court and, thus, administrative action did not bar nonprofit corporation from maintaining citizen's suit; agency did not have power to accord relief that would be substantially equivalent to that available in court. Atlantic States Legal Foundation, Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1990, 735 F.Supp. 1404. Environmental Law 226

Municipality was not a "state," for purposes of statute prohibiting citizen's suit under Federal Water Pollution Control Act if administrator or state has commenced and is diligently prosecuting civil or criminal action to require compliance with an Act standard, limitation or order; therefore, municipality's action against electroplating company seeking compliance with Act standards did not preclude citizen's suit. New York Public Interest Research Group, Inc. v. Limco Mfg. Corp., E.D.N.Y.1987, 697 F.Supp. 608. Environmental Law 226

For purpose of prohibition against commencement of action under Federal Water Pollution Control Act if administrator of state has commenced and is diligently prosecuting action, citizen's federal action was commenced prior to state action brought by Commissioner of Connecticut Department of Environmental Protection; action was "commenced" in federal court on August 6, 1985, when complaint was filed, and in state court when complaint was served on August 7, 1985. Connecticut Fund for Environment, Inc. v. Upjohn Co., D.Conn.1987, 660 F.Supp. 1397.

Fact that State of Connecticut sought to enforce at administrative agency level consent judgment entered in its state court action to enforce terms and conditions of industrial corporation's national pollution discharge elimination system permit did not mean that State was "diligently prosecuting" state court action so as to preclude citizens, under Federal Water Pollution Control Act Amendments of 1972, § 505(b)(1)(B), as amended, 33 U.S.C.A. § 1365(b)(1)(B), from bringing suit in federal district court for declaration that corporation had violated Act on 82 occasions by discharging into navigable waters of United States effluents in excess of levels allowed by its permit. Connecticut Fund for Environment v. L & W Industries, Inc., D.Conn.1986, 631 F.Supp.

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1289. Environmental Law 226

Actions taken by state after filing of citizen suit under Clean Water Act [Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.] may not be considered as constituting "diligent prosecution" pursuant to 33 U.S.C.A. § 1365(b)(1)(B) which precludes filing of citizen suit in event of "diligent prosecution" by state. Connecticut Fund for the Environment v. Job Plating Co., Inc., D.C.Conn.1985, 623 F.Supp. 207.

Under subsec. (b)(1)(B) of this section providing that a citizens' suit may not be brought if the state has commenced and is diligently prosecuting civil or criminal action, diligent prosecution was not lacking since alleged polluter achieved compliance with consent order entered into with the New York Department of Environmental Conservation; thus, citizens' suit brought pursuant to this section challenging alleged unremedied violations of pollutant discharge system was barred by the Act. Hudson River Sloop Clearwater, Inc. v. Consolidated Rail Corp., N.D.N.Y.1984, 591 F.Supp. 345, affirmed in part , reversed in part 768 F.2d 57. Environmental Law 226

19. ---- Compromise and settlement, state actions

Environmental group could continue to pursue citizen suit under Clean Water Act, notwithstanding settlement between alleged violator and state officials, if violations alleged were in fact continuing or terms of settlement were such that realistic prospect of continuing violations existed. Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., C.A.2 (N.Y.) 1991, 933 F.2d 124. Compromise And Settlement 16(3)

Absence of meaningful opportunity for citizen plaintiffs to intervene, as result of state agency's settlement of action against operator of wastewater treatment plant regarding violations of National Pollutant Discharge Elimination System (NPDES) permit, triggered heightened scrutiny into settlement of underlying case between agency and operator for purposes of analysis under Clean Water Act (CWA) section barring citizen suits if government has commenced and is diligently prosecuting enforcement action. Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., D.S.C.1995, 890 F.Supp. 470. Environmental Law 226

For purposes of determining whether citizen suit under the Clean Water Act was precluded on ground that violator had paid penalty under state law comparable to federal enforcement provision, the California statute under which refinery agreed to make a $2 million payment to state was not the civil penalty provision but the provision for cease and desist orders, where state agency identified its actions as being under the latter statute, and labeling was not accidental but was part of settlement agreement resulting from lengthy and detailed negotiations. Citizens for a Better Environment-California v. Union Oil Co. of California, N.D.Cal.1994, 861 F.Supp. 889, affirmed 83 F.3d 1111, as amended , certiorari denied 117 S.Ct. 789, 519 U.S. 1101, 136 L.Ed.2d 731. Environmental Law 226

20. Notice requirement--Generally

Louisiana Department of Environmental Quality (DEQ) diligently commenced administrative penalty action against village for releasing untreated sewage, under state statute that was "comparable" to Clean Water Act (CWA), and thus property owners could not maintain CWA citizen suit, arising from village's violations, unless proper notice was given prior to penalty action being commenced, and citizen suit was filed within 120 days of notice; state statute, like CWA, afforded significant citizen participation and provided citizens meaningful opportunity to participate in decision-making process. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environ-

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mental Law ⚿ 226

Clean Water Act (CWA) section requiring notice letter prior to bringing of citizen suit does not require citizen to give notice to recipient of each individual violation of specific discharge limitation. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., C.A.3 (N.J.) 1995, 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law ⚿ 659

Citizen may not sue administrator of Environmental Protection Agency under Federal Water Pollution Control Act until 60 days after citizen has notified administrator, either by certified mail or by personal service, of citizen's intent to sue. Greene v. Reilly, C.A.6 (Tenn.) 1992, 956 F.2d 593. United States ⚿ 127(2)

Petitioners, who were barred by statute of limitations from seeking review of issuance of National Pollutant Discharge Elimination System permit by the Environmental Protection Agency, would, after giving required notice, be able to commence citizen's suit against violator of terms of permit or Administrator or both and would be able to present new evidence pertaining to permit or violations thereof. Sun Enterprises, Ltd. v. Train, C.A.2 (N.Y.) 1976, 532 F.2d 280. Environmental Law ⚿ 226

This section permitted "citizens suit" to compel the Environmental Protection Agency and its Administrator to publish effluent limitation guidelines to be brought under either section 1331 of Title 28 or the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, without prior notice to the Administrator. Natural Resources Defense Council, Inc. v. Train, C.A.D.C.1974, 510 F.2d 692, 166 U.S.App.D.C. 312. Environmental Law ⚿ 659

Purpose of notice requirement under citizen's suit provision of Clean Water Act (CWA) is to provide government agencies or permit holders chance to remedy alleged permit violation prior to litigation. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law ⚿ 659

Party seeking to file citizen suit under the Clean Water Act must give notice 60 days before filing the complaint to the administrator of the Environmental Protection Agency (EPA) of the alleged violation, to the state in which the violation is occurring, and to the alleged violator and must show that the suit is not for a wholly past violation of permit. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚿ 659

Provision in Clean Water Act that potential citizen plaintiffs must provide notice to EPA, state, and potential defendant of alleged violations 60 days prior to commencing action is intended to give EPA and state chance to institute action that might preclude need for citizen suit. Connecticut Fund for the Environment v. Job Plating Co., Inc., D.C.Conn.1985, 623 F.Supp. 207.

21. ---- Jurisdictional nature, notice requirement

Clean Water Act provision requiring 60 days' advance notice before commencement of citizen suit against industrial polluter is mandatory condition precedent. National Environmental Foundation v. ABC Rail Corp., C.A.11 (Ala.) 1991, 926 F.2d 1096. Environmental Law ⚿ 659

In suit brought against the Secretary of the Navy and other federal officials by environmental and citizen groups who sought relief against further dumping by the Navy of highly polluted dredge spoil at New London dumping site in Long Island Sound, the district court had jurisdiction to hear plaintiffs' claimed violation of this chapter

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even though the action was commenced less than 60 days after plaintiffs gave notice of the alleged violation. Natural Resources Defense Council, Inc. v. Callaway, C.A.2 (Conn.) 1975, 524 F.2d 79. Environmental Law 659

The notice provision of this section was intended as a limitation on the new grant of jurisdiction for citizens suits and is not a restriction on federal court jurisdiction over actions maintainable even in the absence of special citizen suits provision. Natural Resources Defense Council, Inc. v. Train, C.A.D.C.1974, 510 F.2d 692, 166 U.S.App.D.C. 312. Environmental Law 659

Strict compliance with provision of Clean Water Act requiring plaintiff to give notice to alleged violators of Act and provide them 60 days to respond before bringing suit is mandatory jurisdictional prerequisite for citizen suit. American Canoe Ass'n, Inc. v. District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law 659

Failure of plaintiffs to provide their telephone numbers in notice letter to city was reason enough to dismiss their citizen suit under Clean Water Act (CWA) against city for lack of jurisdiction, even if plaintiffs gave their full names and addresses, and city could have looked up telephone numbers in phone book, could have called directory assistance, or could have asked plaintiffs' counsel for their phone numbers. Sierra Club Ohio Chapter v. City of Columbus, S.D.Ohio 2003, 282 F.Supp.2d 756. Environmental Law 659

Sixty-day notice requirement within citizen's suit provision of Clean Water Act (CWA) is mandatory condition precedent to suit. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law 659

Plaintiffs' notice, which was a continuing notice that defendant steelmaker was in violation of the Federal Water Pollution Control Act, was sufficient to satisfy jurisdictional requirement that no action be commenced under the Act prior to 60 days after plaintiff has given notice of the alleged violation. Chesapeake Bay Foundation v. Bethlehem Steel Corp., D.C.Md.1985, 608 F.Supp. 440. Environmental Law 659

Provision of this section requiring that citizen, before bringing action as authorized, give 60 days' notice to administrator, to state in which violation occurred and to any violator of alleged standard or order is absolute on its face and is jurisdictional requirement. Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton, W.D.Pa.1980, 506 F.Supp. 902, affirmed 644 F.2d 995. Environmental Law 226

District court had jurisdiction of count alleging violation of this chapter under section 1331 of Title 28 notwithstanding fact that notice provisions of this section were not complied with. Environmental Defense Fund, Inc. v. Alexander, N.D.Miss.1980, 501 F.Supp. 742. Federal Courts 218

Notice requirement of this chapter is jurisdictional in nature, and absent any allegation by plaintiffs that notice conditions of this chapter had somehow been satisfied, court did not have jurisdiction to consider citizen's suit based on such chapter. Biederman v. Scharbarth, E.D.Wis.1980, 483 F.Supp. 809. Environmental Law 659

Failure to comply with notice requirements of subsec. (b) of this section, did not deprive district court of subject matter jurisdiction where claim was based on federal common law of public nuisance and was brought under this chapter and section 1331 of Title 28. Long Beach Tp. v. City of New York, D.C.N.J.1978, 445 F.Supp. 1203.

The 60-day notice requirement, for commencement of action, contained in this section and section 1415 of this title is jurisdictional, and court cannot ignore its existence. Save Our Sound Fisheries Ass'n v. Callaway,

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D.C.R.I.1977, 429 F.Supp. 1136. Environmental Law 659

22. ---- Exemptions, notice requirement

Exception to otherwise applicable 90 day notification delay period before filing suit under citizen suit provision of Resource Conservation and Recovery Act (RCRA) for imminent and substantial endangerment to health or environment could not be based upon general allegation that defendants were "owners" and "operators" of hazardous waste disposal "facility" that disposed of "hazardous waste" and released contaminants from "RCRA-regulated hazardous waste management units," or that defendants somehow were regulated by hazardous waste management provisions. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law 659

Exemption from Clean Water Act requirement that 60 days' advance notice be given prior to commencement of citizen suit against industrial polluter, applicable to cases brought against Administrator of Environmental Protection Agency (EPA) challenging pollution standards adopted by Administrator, did not apply to action against private polluter. National Environmental Foundation v. ABC Rail Corp., C.A.11 (Ala.) 1991, 926 F.2d 1096. Environmental Law 659

23. ---- Failure to comply, notice requirement

Requirement in citizen suit provision in Clean Water Act (CWA) that notice of intent to sue had to be filed before action could be commenced, although mandatory, was not jurisdictional in strict sense of term, and hence failure to comply with requirement could not be raised for first time on appeal. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law 659; Environmental Law 682

Citizen's failure to provide notice to owner of private skiing facility in national forest of intent to sue owner for violation of Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) did not deprive courts of subject matter jurisdiction to consider whether NPDES permit was required, in light of citizen's valid notice of intent to sue to Forest Service under National Environmental Policy Act (NEPA) for approving facility expansion without ensuring that NPDES permit had been issued; NEPA claim subsumed CWA claim and citizen initially sued only Forest Service and owner intervened. Dubois v. U.S. Dept. of Agriculture, C.A.1 (N.H.) 1996, 102 F.3d 1273, certiorari denied 117 S.Ct. 2510, 521 U.S. 1119, 138 L.Ed.2d 1013. Environmental Law 659

Citizen's notice to Environmental Protection Agency (EPA) of alleged point-source discharges in violation of Federal Water Pollution Control Act did not satisfy requirement that citizen provide administrator of EPA with 60 days notice of intent to file suit; thus, citizen could not maintain suit against administrator to insure correction of alleged violations. Greene v. Reilly, C.A.6 (Tenn.) 1992, 956 F.2d 593. United States 127(2)

Where Clean Water Act claim was brought as part of "hybrid" complaint which simultaneously alleged hazardous waste violations under Resource Conservation and Recovery Act, there was no need for plaintiffs to observe the 60-day delay requirement of Clean Water Act prior to bringing suit. Dague v. City of Burlington, C.A.2 (Vt.) 1991, 935 F.2d 1343, certiorari granted in part 112 S.Ct. 964, 502 U.S. 1071, 117 L.Ed.2d 130, reversed in part 112 S.Ct. 2638, 505 U.S. 557, 120 L.Ed.2d 449, on remand 976 F.2d 801. Environmental Law 659

Alleged failure of plaintiffs' notice, that city was operating landfill in violation of Resource Conservation and Recovery Act and Clean Water Act, to comply with content requirements of statutory and regulatory notice pro-

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visions did not warrant drastic measure of dismissal on appeal after trial on statutory counts. Dague v. City of Burlington, C.A.2 (Vt.) 1991, 935 F.2d 1343, certiorari granted in part 112 S.Ct. 964, 502 U.S. 1071, 117 L.Ed.2d 130, reversed in part 112 S.Ct. 2638, 505 U.S. 557, 120 L.Ed.2d 449, on remand 976 F.2d 801. Environmental Law ⚷ 709; Environmental Law ⚷ 659

Failure of plaintiff to give notice prior to filing suit, as required by subsec. (b) of this section, was not fatal to suit, and, therefore, action was not required to be dismissed and refiled after proper notice where district court stayed proceedings until notice was given to proper persons and entities and 11 months elapsed before court began hearing evidence. Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton, C.A.3 (Pa.) 1981, 644 F.2d 995. Environmental Law ⚷ 659

Failure to comply with the notice provisions of this section does not foreclose any other right to relief a plaintiff might have under any statute or common law. City of Evansville, Ind. v. Kentucky Liquid Recycling, Inc., C.A.7 (Ind.) 1979, 604 F.2d 1008, certiorari denied 100 S.Ct. 689, 444 U.S. 1025, 62 L.Ed.2d 659. Environmental Law ⚷ 659

Notice letter sent to alleged violator as prerequisite to citizen suit under Clean Water Act (CWA) need not tell alleged violator what would constitute compliance, but rather need only give alleged violator opportunity to identify its own violations and bring itself into compliance voluntarily. American Canoe Ass'n, Inc. v. District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law ⚷ 659

Environmental organization's letter to city's mayor and administrator of city's department of public utilities alleging that city violated its National Pollutant Discharge Elimination System (NPDES) permit for its storm water sewer system by maintaining hundreds of illegal cross-connections from city's sanitary sewer system was not sufficiently specific to put city on notice of allegations set forth in organization's complaint, and thus organization and its members could not maintain citizen suit against city under Clean Water Act (CWA), even though organization specified which paragraphs of permit city allegedly violated, where letter failed to provide city notice of which of its actions were at issue, particular standard, limitation, or order it was alleged to have violated, or dates or locations of any alleged improper discharges, and complaint alleged violations of paragraphs not mentioned in letter. Sierra Club Ohio Chapter v. City of Columbus, S.D.Ohio 2003, 282 F.Supp.2d 756. Environmental Law ⚷ 659

Failure of plaintiff alleging violations of reporting requirements of National Pollutant Discharge Elimination System (NPDES) permit to comply with notice requirement for bringing citizen suit under Clean Water Act (CWA) was not excused by permit holder's actual notice of alleged violations. Atwell v. KW Plastics Recycling Div., M.D.Ala.2001, 173 F.Supp.2d 1213.

Failure of notice precluded landowner from proceeding with suit claiming that construction of highway near its property violated Clean Water Act prohibition against discharging pollutants into navigable waters; there was no indication that owner had complied with requirement that notice of alleged violation be given to Administrator of Environmental Protection Agency, to state in which violation allegedly occurred, and to alleged violator, at least 60 days before commencement of suit. Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts Inc., D.N.J.1997, 963 F.Supp. 395, affirmed 140 F.3d 478. Environmental Law ⚷ 659

Allegations of violations of coliform limitations of National Pollutant Discharge Elimination System (NPDES) permit in April and May of 1993 were not within terms of notice letter, listing three dates in January and early

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February of 1994, and notice requirement for citizen suit under Clean Water Act (CWA) was therefore not satisfied as to such allegations. California Sportfishing Protection Alliance v. City of West Sacramento, E.D.Cal.1995, 905 F.Supp. 792. Environmental Law ⚷ 659

Plaintiff in citizen's suit under the Clean Water Act did not satisfy requirements for 60-day notice with respect to charges which were not specifically listed in its notice and could not seek relief on the basis of notice of other, similar violations. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., D.N.J.1993, 830 F.Supp. 1525, affirmed in part , reversed in part 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law ⚷ 659

The 60-day notice requirement for citizen's suit under the Clean Water Act was not complied with, with respect to challenge to construction of underground sewage retention basin at particular site, despite the sending of letters to the Environmental Protection Agency objecting to the location chosen. Association of Significantly Impacted Neighbors v. City of Livonia, E.D.Mich.1991, 765 F.Supp. 389. Environmental Law ⚷ 659

Metropolitan sanitary district's suit against Department of Navy alleging that naval station failed to comply with permit district issued to Department to discharge into district's sewer system was not a citizens suit under the Clean Water Act and thus district had no obligation to comply with notice requirements for citizens suit. Metropolitan Sanitary Dist. of Greater Chicago v. U.S. Dept. of Navy, N.D.Ill.1989, 722 F.Supp. 1565, on reconsideration in part 737 F.Supp. 51. Environmental Law ⚷ 659

Court lacked jurisdiction to hear claim of environmental association under Clean Water Act, when group gave Environmental Protection Agency 16 days advance notice of suit, instead of the 60 days required under Act. Protect Our Eagles' Trees (POETs) v. City of Lawrence, Kan., D.Kan.1989, 715 F.Supp. 996. Environmental Law ⚷ 659

Failure of county sanitary authority to formally give federal Environmental Protection Agency and agency officials 60 days' prior notice of suit as required by did not require dismissal where, although formal notice was mailed same day complaint was filed, more than 60 days had passed since federal defendants received such notice, federal defendants had remained firm in defense of their position before and since receipt of notice, federal defendants had not suggested how conduct would have been any different had they properly received formal notice or how absence of notice had prejudiced them, and even if claims were dismissed action would be immediately refiled. Allegheny County Sanitary Authority v. U.S.E.P.A., W.D.Pa.1983, 557 F.Supp. 419, affirmed 732 F.2d 1167. Environmental Law ⚷ 659

The challenge by associations of taxpayers and property owners in Long Beach Island area to private person's filling operations must be dismissed for failure to comply with procedural requirement provision of this section which provides in part that action against Administrator for failure to fulfill his duties may not be commenced prior to 60 days after notice of the action has been given, and that action against private violator of this chapter may not be commenced prior to 60 days after notice of action has been given to Administrator, to the state in which alleged violation occurs and to the violator, and for failure to comply with notice provisions of this section or with provisions of the Agency's regulations. Loveladies Property Owners Ass'n, Inc. v. Raab, D.C.N.J.1975, 430 F.Supp. 276, affirmed 547 F.2d 1162, certiorari denied 97 S.Ct. 2949, 432 U.S. 906, 53 L.Ed.2d 1077. Federal Civil Procedure ⚷ 1741

24. ---- Postcomplaint discharge violations, notice requirement

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As long as postcomplaint discharge violation is of same type as violation included in notice letter (same parameter, same outfall), no new 60-day notice letter is necessary to include those violations in citizen suit under Clean Water Act (CWA); recipients of notice are on notice of violations of same type, whether past or continuing. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., C.A.3 (N.J.) 1995, 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law 659

Notice of noncompliance with terms of National Pollutant Discharge Elimination System permit required under Clean Water Act did not preclude environmental group's amending complaint in citizen enforcement action to allege additional instances of noncompliance based upon facts contained in permanent holder's own records and reported by permit holder itself or to allege additional unreported violations relating to same subject matter. Sierra Club v. Union Oil Co. of California, N.D.Cal.1988, 716 F.Supp. 429. Federal Civil Procedure 839.1

25. ---- Premature actions, notice requirement

Despite 60-day notice requirement of this section with respect to violations of provisions of this chapter, filing of suit only two days after giving notice to relevant agencies did not require dismissal and refiling of premature suit where, at time district court acted, it appeared that agency had had notice of the alleged violation under consideration for more than 60 days. Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor, C.A.3 (Pa.) 1980, 619 F.2d 231, certiorari denied 101 S.Ct. 893, 449 U.S. 1096, 66 L.Ed.2d 824. Environmental Law 659

Action charging violation of this chapter was premature where it was brought within 40 days of notice of intent to file suit, notwithstanding that no administrative action could cure failure of the defendant to meet past deadlines for planning and construction of sewer tie-in, since increased administrative attention could expedite completion of the project; there was no prima facie claim of futility sufficient to raise issue of constructive compliance with 60-day notice requirement of this section. Com. of Mass. v. U. S. Veterans Administration, C.A.1 (Mass.) 1976, 541 F.2d 119. Environmental Law 660

26. ---- Sufficiency of notice, notice requirement

Environmental group's notice of its citizen suit against county and municipality for violations of CWA, due to sanitary sewer overflows (SSOs) and water in basement (WIB), was sufficient for award of attorney fees for SSO and WIB claims not specifically identified in notice, since environmental group was not restricted to specificity of notice as intervenor who assumed same position as primary litigants, notice contained sufficient information to allow identification of all pertinent aspects of violations without extensive investigation, and violations were closely related. Sierra Club v. Hamilton County Bd. of County Com'rs, C.A.6 (Ohio) 2007, 504 F.3d 634. Environmental Law 716

Notice letters sent by citizen plaintiffs to defendants were inadequate under citizen suit provision of Clean Water Act (CWA); the letters failed to specify a point source and failed to identify with appropriate specificity the laws that defendants allegedly violated. Karr v. Hefner, C.A.10 (Okla.) 2007, 475 F.3d 1192. Environmental Law 659

Notice of citizen suit submitted by environmental groups to plywood company, pursuant to Clean Water Act (CWA), was not sufficiently specific to alert company to claims which groups intended to file; notice informed company that groups intended to contest validity of company's permit, and that solution would be to get a new permit, but notice did not properly cover additional claims that Oregon Department of Environmental Quality

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(DEQ) could not renew discharge permit beyond its original five-year term, and that, even if it could, company still had to renew its renewal application. ONRC Action v. Columbia Plywood, Inc., C.A.9 (Or.) 2002, 286 F.3d 1137. Environmental Law 659

Environmental organizations' Clean Water Act (CWA) notice letter to shipyard operator, challenging operator's ongoing failure to develop and implement best management practices program (BMP), storm water pollution prevention plan (SWPPP), and monitoring and reporting plan, complied with statutory notice requirements, though letter did not identify any specific date when improper discharges occurred, where letter contained sufficient detail to alert shipyard operator to at least some of its violations, as evidenced by fact that, in response to letter, operator revised its plans, adding sections that specifically made reference to requirements that organizations had identified. Natural Resources Defense Council v. Southwest Marine, Inc., C.A.9 (Cal.) 2000, 236 F.3d 985.

Environmental organization's notice of intent to bring citizen suit against manufacturer sufficiently informed manufacturer that organization was complaining about manufacturer's unauthorized discharges of die casting process wastewater to municipal sewer system, without identifying specific point source at issue, to satisfy jurisdictional requirements of Clean Water Act (CWA), regardless of manufacturer's subsequent conduct in obtaining permit covering discharges from original outfall, and then rerouting discharges to newly defined outfall after building treatment facility. Atlantic States Legal Foundation, Inc. v. Stroh Die Casting Co., C.A.7 (Wis.) 1997, 116 F.3d 814, certiorari denied 118 S.Ct. 442, 522 U.S. 981, 139 L.Ed.2d 379. Environmental Law 659

Precomplaint discharge violations not included in notice letter could be included in citizen suit under Clean Water Act (CWA), even if not listed in subsequent notice; notice letter which included list of discharge violations, by parameter, provided sufficient information for recipients of letter to identify violations of same type (same parameter, same outfall) occurring during and after period covered by notice letter. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., C.A.3 (N.J.) 1995, 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law 659

Notice which failed to name two environmental organizations that eventually became sole plaintiffs in Clean Water Act (CWA) citizen suit did not satisfy notice requirements of CWA regulations, and thus, district court lacked subject matter jurisdiction; as neither Environmental Protection Agency (EPA) nor defendant knew that organizations were involved, they were not in position to negotiate with organizations or seek administrative remedy. Washington Trout v. McCain Foods, Inc., C.A.9 (Wash.) 1995, 45 F.3d 1351. Environmental Law 659

Environmental organization that brought Clean Water Act (CWA) citizen suit against paper company, alleging that company was discharging pollutants into river without valid permit, failed to provide adequate notice of alleged CWA violations to Environmental Protection Agency (EPA); notice did not contain fair warning that EPA had acted outside its statutory authority by exceeding five-year limit to act on company's discharge permit renewal application. Natural Resources Council of Maine v. International Paper Co., D.Me.2006, 424 F.Supp.2d 235. Environmental Law 659

Plaintiffs' notice letter alleging that water and sewer authority "has and continues to violate" its National Pollutant Discharge Elimination System (NPDES) permit by failing to maintain vents and vent filters gave authority adequate notice of dates of alleged violation, and thus was sufficient to permit citizens suit under Clean Water Act (CWA), even though letter did not provide specific dates of past violations. American Canoe Ass'n, Inc. v.

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District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law ⚿ 659

Environmental organization's letters to city's mayor and administrator of city's department of public utilities alleging that there were hundreds of days of illegal by-passes at wastewater treatment plants, resulting in raw, untreated sewage being discharged in water of United States, were insufficient to put city on notice that allegations set forth in organization's complaint might be brought against them for their alleged violations of plants' National Pollutant Discharge Elimination System (NPDES) permit, and thus organization and its members could not maintain citizen suit against city under Clean Water Act (CWA), where letters did not indicate which particular paragraphs, subparagraphs, or standards in permit were allegedly violated, manner in which they were violated, or dates and specific locations of allegedly improper discharges, complaint alleged violations not referenced in letter, and letter failed to provide name, address, and telephone number of persons giving notice. Sierra Club Ohio Chapter v. City of Columbus, S.D.Ohio 2003, 282 F.Supp.2d 756. Environmental Law ⚿ 659

Landowner seeking to halt effluent runoff from methane production activities provided adequate notice of pending Clean Water Act (CWA) action to gas producer, as required properly to bring citizen's suit under CWA; notice submitted by landowner stated that standard alleged to be violated was CWA, that activity causing violations was discharge of coal bed methane process water from wells operated by producer, that producer was responsible for violations, location of violations, that violations had been occurring continuously, and contact information regarding person providing notice. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law ⚿ 659

Notice by campers association, to Puerto Rico Aqueduct and Sewer Authority (PRASA) and Environmental Protection Agency (EPA) of alleged violation of Clean Water Act (CWA) fulfilled citizen suit's 60-day notice requirement, and thus association had statutory standing, although association had modified its claims in the five years since commencing action; notices informed the pertinent parties of the impending action and the claims to be raised. Puerto Rico Campers' Ass'n. v. Puerto Rico Aqueduct and Sewer Authority, D.Puerto Rico 2002, 219 F.Supp.2d 201. Environmental Law ⚿ 659

Environmental groups' letter to city notifying it that they "intend to sue on behalf of itself and its impacted members. Other interested parties may join in as plaintiffs" did not comply with Clean Water Act (CWA) citizen suit notice requirements by failing to identify individual plaintiffs, even if city had actual knowledge on individual plaintiffs' identities. Community of Cambridge Environmental Health and Community Development Group v. City of Cambridge, D.Md.2000, 115 F.Supp.2d 550.

Notice provided by plaintiffs bringing citizen suit under Clean Water Act (CWA) was insufficient, as plaintiffs failed to identify specific permit provisions and federal regulations which were alleged in their complaint to have been violated; plaintiffs failed to identify specific standards, limitations or orders allegedly violated. Frilling v. Village of Anna, S.D.Ohio 1996, 924 F.Supp. 821. Environmental Law ⚿ 659

Plaintiffs bringing citizen suit under Clean Water Act (CWA) complied with notice requirements; first notice letters sent to defendants contained report from environmental consulting firm describing in detail alleged pollution discharging from drain and, while subsequent formal notices did not contain that report, defendants had actual notice of specific violations alleged, person or persons responsible, location of alleged violation, and that discharge was continuous. Mancuso v. New York State Thruway Authority, S.D.N.Y.1995, 909 F.Supp. 133, affirmed 86 F.3d 289, certiorari denied 117 S.Ct. 481, 519 U.S. 992, 136 L.Ed.2d 375. Environmental Law ⚿

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Notice that on specified dates wastewater treatment plant violated National Pollutant Discharge Elimination System (NPDES) permit limits for coliform, chlorine, biochemical oxygen demand, and total suspended solids satisfied notice requirement for bringing citizen suit under Clean Water Act (CWA) as to those alleged violations. California Sportfishing Protection Alliance v. City of West Sacramento, E.D.Cal.1995, 905 F.Supp. 792. Environmental Law 659

Environmental group's notice letters complaining of plant owner's exceedances of National Pollutant Discharge Elimination System (NPDES) permit, along with which group included list of biochemical oxygen demand (BOD), chemical oxygen demand (COD), pH level, total suspended solids (TSS), copper and zinc exceedances which had occurred at specified plant, were sufficient to allow group to pursue civil penalties under Clean Water Act (CWA) for all BOD, COD, pH, TSS, copper and zinc violations, but were insufficient to permit group to pursue civil penalties for alleged temperature violations, as to which group had not given notice to plant owner or included any specific allegations of temperature exceedances in any past notice letter. Friends of the Earth, Inc. v. Chevron Chemical Co., E.D.Tex.1995, 900 F.Supp. 67. Environmental Law 659

Environmental group's letter to Environmental Protection Agency (EPA) calling upon EPA to perform nondiscretionary duty to take final action regarding state's proposed water quality standards under Clean Water Act (CWA) satisfied requisite's 60-day notice provision of CWA. Defenders of Wildlife v. Browner, D.Ariz.1995, 888 F.Supp. 1005. Environmental Law 659

Environmental organizations collectively gave required 60-day notice to property owner prior to commencing citizen suit under Clean Water Act (CWA), even though three environmental organizations had not given required notice, where two other environmental organizations had. Environmental Defense Fund v. Tidwell, E.D.N.C.1992, 837 F.Supp. 1344. Environmental Law 659

Notice to alleged polluter that named person "and others" intended to file citizen suit under Clean Water Act was insufficient to satisfy notice requirements for suit by plaintiffs other than named person. Washington Trout v. Scab Rock Feeders, E.D.Wash.1993, 823 F.Supp. 819. Environmental Law 659

Landowners' notice to deputy clerk of town and correspondence between one landowner and various state and federal agencies concerning problems on land did not constitute adequate notice under Clean Water Act (CWA) and associated regulations, so that landowners did not have private right of action under CWA; individual and corporate defendants were not served via certified mail or personal service, letters were not sent to defendants but to government agencies which landowner wanted to investigate problems, deputy clerk was not "head of agency" responsible for alleged violation, most of defendants were never named in notices or letters and notices, and letters gave no indication that any CWA violation was being alleged, but alleged negligence or nuisance claims. Bettis v. Town of Ontario, N.Y., W.D.N.Y.1992, 800 F.Supp. 1113. Environmental Law 659

Notice of action under Clean Water Act sent to Chicago District of the United States Corps of Army Engineers, although sent in timely manner, did not give Secretary of Army sufficient notice as it failed to inform Secretary that citizens group believed Corps was violating sections of the Clean Water Act; complaints about local dredging project should have been served on Secretary of Army and should have specified regulations allegedly violated. Canada Community Imp. Soc., Inc. v. City of Michigan City, Ind., N.D.Ind.1990, 742 F.Supp. 1025. Environmental Law 659

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Although notice of alleged violation of Clean Water Act given by organization before bringing citizen suit could have been more specific, it satisfied regulatory requirements by giving sufficient information to identify the standard which was allegedly violated, the activity which was alleged to constitute a violation, the person responsible, the location of the violation, the dates of the violation, and the identity of the organization giving notice. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Environmental Law 659

Notice, which was given to Environmental Protection Agency Administrator, Maryland, and alleged violator and which was given at least 60 days before filing of original complaint, put alleged violator and government agencies on notice as to allegations of additional, but similar, violations of national pollutant discharge elimination system permit, which were alleged in amended complaint, and, therefore, complied with statute, that requires citizens to give at least 60 days' notice before filing suit. Chesapeake Bay Foundation, Inc. v. Bethlehem Steel Corp., D.Md.1987, 652 F.Supp. 620. Environmental Law 659

Because one plaintiff organization served adequate notice on defendant under the Federal Water Pollution Control Act [Federal Water Pollution Control Act Amendments of 1972, § 505, as amended, 33 U.S.C.A. § 1365], that plaintiff and a second plaintiff organization "substantially complied" with the requirements for providing notice of intent to sue. Student Public Interest Research Group of New Jersey, Inc. v. AT & T Bell Laboratories, D.C.N.J.1985, 617 F.Supp. 1190. Environmental Law 659

Where central complaint in both 1982 and 1984 was that defendant was discharging pollutants without valid national pollution discharge elimination system permit, and where to require plaintiffs to file new 60-day notice would not in any way further purposes of 60-day notice requirement of subsec. (b) of this section, but would only give defendants argument to delay lawsuit, there was substantial compliance by plaintiffs with 60-day notice requirement. Kitlutsisti v. Arco Alaska, Inc., D.C.Alaska 1984, 592 F.Supp. 832, appeal dismissed, opinion vacated on other grounds 782 F.2d 800.

Failure of notice served on federal officials to include two dams as sources of violations of this chapter precluded officials from receiving notice sufficient to allow possible administrative resolution of complaints as to those dams and divested court of authority to adjudicate claims of violations relating to them. South Carolina Wildlife Federation v. Alexander, D.C.S.C.1978, 457 F.Supp. 118. Environmental Law 659

Where violation of important statutes by Army Engineers Corps effectively removed plaintiff's opportunity to maintain citizen suit under this section until damage sought to be awarded would have been largely accomplished, plaintiff's expressed interest and concern about dredging project, presented to Corps as early as Jan. 26, 1972, constructively satisfied requirements under provisions of this section authorizing citizen suit and requiring 60-day notice. Save Our Sound Fisheries Ass'n v. Callaway, D.C.R.I.1977, 429 F.Supp. 1136. Environmental Law 659

Where community groups whose members were citizens of District of Columbia and Montgomery County, Maryland, two jurisdictions which are contiguous to flow of Potomac River, on May 10, 1973 gave notices to Administrator and others of actions to enjoin defendants from authorizing further sewer hookup permits which would result in sewage discharges affecting the water quality of the Potomac River, in view of fact that supplemental pleadings were filed more than 60 days after May 10, notice and in view of fact that notice complied in full with spirit of Administrator's regulations, plaintiffs gave proper notices under this section. Montgomery Environmental Coalition v. Fri, D.C.D.C.1973, 366 F.Supp. 261. Environmental Law 659

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27. Private right of action

Citizen enforcement suit under Clean Water Act (CWA) based on use of chemicals regulated by FIFRA could proceed even if pesticide application claimed to violate CWA did not also constitute substantial violation of FIFRA; CWA's citizen suit provision did not become inoperative under those circumstances. No Spray Coalition, Inc. v. City of New York, C.A.2 (N.Y.) 2003, 351 F.3d 602, on remand 2005 WL 1354041. Environmental Law 170; Environmental Law 226

There is no implied private right of action under provisions of Clean Water Act other than Act's citizen suit provision, so court lacked jurisdiction over claims of township and property owner regarding city's contractual obligations to Environmental Protection Agency under federal grant. Board of Trustees of Painesville Tp. v. City of Painesville, Ohio, C.A.6 (Ohio) 1999, 200 F.3d 396. Environmental Law 641

No implied cause of action existed under statute, which subjects violator of state-issued permit to civil penalty. State of Cal. v. U.S. Dept. of Navy, C.A.9 (Cal.) 1988, 845 F.2d 222. Environmental Law 20

A private right of action for damages is not created against a violator of this chapter in favor of a person injured by pollutant discharges. City of Evansville, Ind. v. Kentucky Liquid Recycling, Inc., C.A.7 (Ind.) 1979, 604 F.2d 1008, certiorari denied 100 S.Ct. 689, 444 U.S. 1025, 62 L.Ed.2d 659. Environmental Law 226

Citizens' groups suing to prevent development of new community to be located astride portion of zone of land supplying water to City of San Antonio failed to state claim for violation of this chapter. Sierra Club v. Lynn, C.A.5 (Tex.) 1974, 502 F.2d 43, rehearing denied 504 F.2d 760, certiorari denied 95 S.Ct. 2001, 421 U.S. 994, 44 L.Ed.2d 484, certiorari denied 95 S.Ct. 2668, 422 U.S. 1049, 45 L.Ed.2d 701, rehearing denied 96 S.Ct. 158, 423 U.S. 884, 46 L.Ed.2d 115. Waters And Water Courses 196

Electric utility had no express or implied right of action under Clean Water Act with respect to its claim that proposed modification of discharge permits issued by state would violate Act. Consolidated Edison Co. of New York, Inc. v. New York State Dept. of Environmental Conservation, S.D.N.Y.1989, 726 F.Supp. 1404. Environmental Law 226

Clean Water Act did not provide developer with private right of action to challenge authority of Army Corps of Engineers to assert jurisdiction, by way of cease-and-desist order, over development site containing wetlands. Fiscella & Fiscella v. U.S., E.D.Va.1989, 717 F.Supp. 1143.

Citizen's suit provision of Clean Water Act did not provide jurisdictional basis for a suit against state officials for their alleged failure to enforce consent orders with dischargers of hazardous pollutants. Proffitt v. Davis, E.D.Pa.1989, 707 F.Supp. 182. Environmental Law 226

There is no private right of action for monetary damages under this chapter, and any fines levied are payable to the government and not to private plaintiff. Sierra Club v. SCM Corp., W.D.N.Y.1984, 580 F.Supp. 862, affirmed 747 F.2d 99.

There is no implied right of action under this chapter against state defendants for improper administration of construction grant program under this chapter. Allegheny County Sanitary Authority v. U.S.E.P.A., W.D.Pa.1983, 557 F.Supp. 419, affirmed 732 F.2d 1167. Environmental Law 226

This section has as its sole purpose providing private parties with mechanism to compel enforcement of effluent

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standards promulgated pursuant to this chapter and does not authorize private right of action for recovery of damages; the relief authorized by this section is purely prospective. City of Philadelphia v. Stepan Chemical Co., E.D.Pa.1982, 544 F.Supp. 1135, reconsideration denied. Environmental Law 226

This section provides no mechanism for a direct suit in federal court against state for being malfeasant in not properly establishing an effluent standard and in failing to issue any orders to stop ongoing pollution. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law 226

Neither this chapter nor Rivers and Harbors Act of 1899, section 401 et seq. of this title, provided commercial fishermen, seafood wholesalers, retailers, distributors and processors, restaurateurs, marina, boat, tackle and bait owners, and employees of all above groups with private cause of action against chemical company which allegedly polluted river and bay with kepone. Pruitt v. Allied Chemical Corp., E.D.Va.1981, 523 F.Supp. 975. Waters And Water Courses 74

Developer did not have a private cause of action under the construction grant provisions of this chapter. Chesapeake Bay Village, Inc. v. Costle, D.C.Md.1980, 502 F.Supp. 213. Environmental Law 226

Neither River and Harbors Appropriation Act, section 401 et seq. of this title, nor this chapter created cause of action on behalf of owners of shore property and other individual plaintiffs against United States for alleged negligence of Coast Guard in manner in which it maintained channel buoyage and attempted pollution abatement after oil spill. Burgess v. M/V Tamano, D.C.Me.1974, 373 F.Supp. 839. Shipping 11

28. Jurisdiction--Generally

There was no citizen suit jurisdiction under Clean Water Act in action arising out of sewer authority's efforts to secure Environmental Protection Agency grant for sewer improvements, because regional administrator was entitled to insist upon current state certification as precondition for award of federal assistance. Atlantic City Mun. Utilities Authority v. Regional Adm'r, C.A.3 (N.J.) 1986, 803 F.2d 96. Environmental Law 226

If district court resolved township and sewer authority's claim in their favor, by concluding that Environmental Protection Agency acted in an arbitrary and capricious manner in applying new affordability guidelines to sewer authority's application for federal financial assistance for construction of a sewage treatment plant, the court had authority only to set aside EPA's disapproval as having been based on improper standards; thus, since township and sewer authority had a remedy under Administrative Procedure Act, mandamus jurisdiction over citizens' suit brought to compel administrator of EPA to approve sewer authority's application was inappropriate. Fairview Tp., York County, Com. of Pa. v. U.S.E.P.A., C.A.3 (Pa.) 1985, 773 F.2d 517. Mandamus 3(8)

This section giving district court jurisdiction over actions brought by any citizen against Environmental Protection Agency Administrator for failure to perform nondiscretionary duty or against any person violating effluent standards or limitations under this subchapter did not provide district court with jurisdiction of suit brought by District of Columbia against the Environmental Protection Administration and Maryland seeking to revoke operating permit for advanced wastewater treatment plant that discharged into creek flowing through the District. District of Columbia v. Schramm, C.A.D.C.1980, 631 F.2d 854, 203 U.S.App.D.C. 272. Federal Courts 218

Where this section allowing action in district court challenging alleged violations of effluent limitations or chal-

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lenging failure of Administrator to perform a nondiscretionary duty provided no jurisdictional basis for plaintiffs' suit challenging issuance of National Pollutant Discharge Elimination System permit, then savings clause of this section could not give district court jurisdiction over suit. Sun Enterprises, Ltd. v. Train, C.A.2 (N.Y.) 1976, 532 F.2d 280. Federal Courts 194

Jurisdiction of claimed violations of this chapter can exist not only under this chapter but also under either section 1331 of Title 28, or the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5. Natural Resources Defense Council, Inc. v. Callaway, C.A.2 (Conn.) 1975, 524 F.2d 79. Federal Courts 218; Environmental Law 634

Provision of Clean Water Act (CWA) requiring Environmental Protection Agency (EPA) to promulgate water quality standards within 90 days of state's failure to do so did not permit district court to exercise its equitable jurisdiction to order continued adherence to long-term phased schedule of establishing water quality standards that EPA and state had developed, but rather required court to order EPA to perform its duties under CWA. Kansas Natural Resource Council, Inc. v. Whitman, D.Kan.2003, 255 F.Supp.2d 1208. Environmental Law 695

Florida regulations governing state's National Pollutant Discharge Elimination System (NPDES) permit process did not create a non-discretionary "duty or act" sufficient to trigger federal district court's citizen-suit jurisdiction under the Clean Water Act (CWA); regulations could have created either a discretionary duty to issue a permit, which could only be challenged in the United States Circuit Court for the District of Columbia under the Administrative Procedure Act (APA), or a trivial "duty" to assume jurisdiction, which was not tangible enough to provide jurisdiction for the district court. Clean Water Act, §§ 505(a)(2), 33 U.S.C.A. §§ 1365(a)(2); 33 U.S.C.A. §§ 1369(b)(1); Sierra Club v. U.S. E.P.A., D.D.C.2007, 475 F.Supp.2d 29. Environmental Law 226

In citizen's suit under the Clean Water Act, court may exercise jurisdiction over all parameters in permit based on an ongoing violation of any parameter, especially where multiple parameters have been violated in the past. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., D.N.J.1993, 830 F.Supp. 1525, affirmed in part , reversed in part 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law 682

Jurisdiction existed for citizen suit alleging violations of federal Water Pollution Control Act, despite contention that no continuing violations were occurring, where violations were alleged to have continued after filing of complaint. Public Interest Research Group of New Jersey, Inc. v. New Jersey Expressway Authority, D.N.J.1992, 822 F.Supp. 174. Environmental Law 226

Bypassing of normal planning and zoning procedures to protect and effectuate court's jurisdiction was necessary, where city's planning and zoning commission would effectively be required by municipal coastal program of city to deny coastal area management site plan approval claimed by city to be required, and such denial would conflict with Connecticut Department of Environmental Protection order and would further frustrate implementation of district court's order requiring compliance with federal Clean Water Act. Mumford Cove Ass'n, Inc. v. Town of Groton, Conn., D.Conn.1986, 647 F.Supp. 671. Environmental Law 634

This chapter did not confer upon district court jurisdiction over action by operator of chemical transloading facility for declaratory judgment as to liability of three chemical companies for alleged release of chemicals at operator's premises, where operator had not demonstrated that it actually was in violation of order issued by state, state having only issued warning notices that point. Bulk Distribution Centers, Inc. v. Monsanto Co., S.D.Fla.1984, 589 F.Supp. 1437. Federal Courts 218

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County sanitary authority's claim that federal Environmental Protection Agency and agency officials failed to disapprove Pennsylvania's priority system and current project priority list for construction of sewage treatment works under construction grants program of this chapter and that but for such failure authority would have higher priority ranking was claim for misgovernment beyond jurisdiction of Court of Claims. Allegheny County Sanitary Authority v. U.S.E.P.A., W.D.Pa.1983, 557 F.Supp. 419, affirmed 732 F.2d 1167. Federal Courts 1073.1

Requirements for citizen's suit under this chapter had to be met for district court to have jurisdiction over landlord's suit against Environmental Protection Agency, which had begun to clean up property after tenant failed to solve environmental problems, and section 1331 of Title 28, did not give landlord alternative procedure for conferring jurisdiction on court. Caldwell v. Gurley Refining Co., E.D.Ark.1982, 533 F.Supp. 252. Federal Courts 218

29. ---- Abstention, jurisdiction

Where Michigan Watercraft Pollution Control Act of 1970, M.C.L.A. § 323.331 et seq., had not been construed in any Michigan court, its terms were far from clear in particulars that went to foundation of grievance of water carriers association and individual members who owned or operated federally licensed Great Lakes cargo vessels, it was only an assertion of plaintiffs that the Act proscribed discharge of even treated sewage in state waters and the Michigan Act demonstrated concern that Michigan pollution control requirements accord with federal law, authoritative resolution by Michigan courts of the ambiguities was sufficiently likely to avoid or significantly modify federal questions raised as to validity of the Act to warrant abstention by federal court. Lake Carriers' Ass'n v. MacMullan, U.S.Mich.1972, 92 S.Ct. 1749, 406 U.S. 498, 32 L.Ed.2d 257. Federal Courts 47.1

As to Clean Water Act's (CWA) bar against duplicative citizen suits against polluters, applicable in event of commencement of federal or state administrative enforcement action, exception to bar applicable when citizen suit was prior-filed, or when notice of citizen suit was given prior to governmental enforcement action and citizen suit followed within 120 days, was not limited to those instances when administrative enforcement action was of federal origin; i.e., exception to bar also applied where citizen suit, or notice of same, preceded state administrative enforcement action. Black Warrior Riverkeeper, Inc. v. Cherokee Mining, LLC, C.A.11 (Ala.) 2008, 548 F.3d 986. Environmental Law 226

Active oversight of compliance scheme by Oregon Department of Environmental Quality (DEQ) and Oregon's administration of federal National Pollution Discharge Elimination System (NPDES) permit program did not require "*Burford* abstention," in action brought by environmental group against seafood processing facility under Clean Water Act (CWA), since Oregon did not allow for CWA citizen suits, federal district courts had jurisdiction to hear CWA citizen suits, there were no difficult questions of state law presented and group did not plead any state law claims, and federal review would not have interfered with the state's efforts to establish and maintain coherent enforcement policy. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2004, 341 F.Supp.2d 1170. Federal Courts 47.1

Burford abstention doctrine was not implicated by citizen suit under Clean Water Act (CWA), as statutory scheme contemplated citizen suits as supplement to state government action. Culbertson v. Coats American, Inc., N.D.Ga.1995, 913 F.Supp. 1572. Federal Courts 47.1

Federal district court in Connecticut would not abstain from citizens' action against chemical manufacturer, un-

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der Federal Water Pollution Control Act, even though Commissioner of Connecticut Department of Environmental Protection had commenced action in state court; state and federal courts were less than two miles apart, possibility that inconsistent rulings on liability question was unlikely in that Department sought relief for alleged violations during three months of 1985 while citizens sought to enjoin further pollution and sought damages for alleged violations since 1981, and states were intended to enforce National Pollutant Discharge Elimination System program. Connecticut Fund for Environment, Inc. v. Upjohn Co., D.Conn.1987, 660 F.Supp. 1397.

Federal district court would not abstain from ruling in action under citizen suit provision of the Federal Water Pollution Control Act [33 U.S.C.A. § 1365(a)(1)] due to state administrative efforts in the same area, as Congress intended citizen suits to supplement state governmental action. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074. Federal Courts 47.1

Abstention was not appropriate in suit based on this chapter challenging city's discharge of pollutants into creek and river under abstention category pertaining to difficult questions of state law bearing on policy problems of substantial public import, since there were no difficult questions of state law presented, parameters of state regulation were effectively set out by a comprehensive set of federal laws and regulations, state has no exclusive control or expertise in enforcement of federal water pollution standards, and there was no reason to believe that state courts had any greater competence in interpreting federal guidelines than federal courts. Brewer v. City of Bristol, Tenn., E.D.Tenn.1983, 577 F.Supp. 519. Federal Courts 47.1

Abstention would be inappropriate in county sanitary authority's action against United States Environmental Protection Agency, Pennsylvania Department of Environmental Resources, and certain agency officials for declaratory and injunctive relief in connection with alleged improper administration of construction grants program under this chapter, notwithstanding that authority had raised same issues in pending state administrative proceeding, where only claims properly before court related to duties of federal defendants under federal law. Allegheny County Sanitary Authority v. U.S.E.P.A., W.D.Pa.1983, 557 F.Supp. 419, affirmed 732 F.2d 1167. Federal Courts 51

30. ---- Pendent jurisdiction

District court entertaining citizens' suit under the Clean Water Act would exercise its pendent jurisdiction and enforce order holding former owner of private septic system, and thus its successors, responsible for correcting system; order arose out of same set of facts and issues that were presented on claim under the Clean Water Act. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Federal Courts 15

Virginia administrative procedures did not preclude aggrieved riparian state owners from pursuing remedy for violation of Virginia Wetlands Act as pendent state claim to suit brought pursuant to Clean Water Act. City of Norfolk v. Harold, E.D.Va.1987, 662 F.Supp. 959. Federal Courts 15

Where district court's subject matter jurisdiction over action by wetlands owner against real estate developer and others was limited strictly to questions arising from discharge into stream of pollutants which qualified as "dredged or fill material" within meaning of section 1344 of this title, and other state law claims presented substantial additional issues of fact and did not derive from common nucleus of operative facts, court was without pendent jurisdiction to consider state law claims and, even if it had such jurisdiction, would decline to exercise it. Sun Enterprises, Ltd. v. Train, S.D.N.Y.1975, 394 F.Supp. 211, affirmed 532 F.2d 280. Federal Courts 15

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31. ---- Primary jurisdiction

Doctrine of primary jurisdiction did not bar court from considering injunctive relief aspects of citizen suit alleging that salmon farms released pollutants into water in violation of Clean Water Act (CWA), even though Environmental Protection Agency (EPA) had central responsibility for determining conditions to be placed on salmon farming operations regarding permissible discharge of pollutants, and state was currently working on permit for sea farms to enforce requirements of CWA, where EPA delegated its responsibility to state after failing to act for eleven years on farms' permit applications, and state was more than one year beyond agreed deadline for final permit decision. U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC., D.Me.2003, 257 F.Supp.2d 407, stay denied 273 F.Supp.2d 126, affirmed 339 F.3d 23. Environmental Law 664

Doctrine of primary jurisdiction did not bar citizen suit under Clean Water Act (CWA) alleging that gold mine owner and operator was discharging pollutants into navigable waters without National Pollutant Discharge Elimination System (NPDES) permit, even though owner's discharge permit application was pending before state agency; determination of whether owner was unlawfully discharging pollutants without permit did not involve resolution of scientific or technical facts that clearly implicated agency's special expertise and competence, and state had been investigating discharges for at least eight years, but had not yet issued any orders or permits. Sierra Club v. El Paso Gold Mines, Inc., D.Colo.2002, 198 F.Supp.2d 1265, reconsideration denied 2002 WL 33932714, reversed and remanded 421 F.3d 1133, corrected, rehearing granted in part, certiorari denied 126 S.Ct. 1653, 547 U.S. 1065, 164 L.Ed.2d 411. Environmental Law 664

Citizen's suit under this section against manufacturer for violating permits authorizing discharge of pollutants into river was not barred under doctrine of primary jurisdiction by manufacturer's having filed renewal application with EPA where, even if permit were granted, it could not be applied retroactively. Student Public Interest Research Group of New Jersey, Inc. v. Fritzsche, Dodge & Olcott, Inc., D.C.N.J.1984, 579 F.Supp. 1528, affirmed 759 F.2d 1131. Environmental Law 664

32. ---- Subject matter jurisdiction

Conditions set forth in state-issued National Pollutant Discharge Elimination System (NPDES) permit, which was approved by Environmental Protection Agency (EPA), qualified as "an effluent standard or limitation under this chapter," within meaning of citizen-suit provision of Clean Water Act (CWA), and federal court thus had jurisdiction over property's owner's CWA claims against owner of adjoining property, alleging violations of state-issued permit. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 226

Whether district court had subject matter jurisdiction over citizens suit brought under Clean Water Act (CWA) to challenge Florida's Everglades Forever Act (EFA) depended on whether EFA constituted new or revised state water quality standards, which would trigger Environmental Protection Agency (EPA) Administrator's mandatory duty to review new or revised state standards, and thus, district court could not dismiss complaint for lack of subject matter jurisdiction on basis of Florida's representations without independently deciding effect of EFA on existing state standards. Miccosukee Tribe of Indians of Florida v. U.S., E.P.A., C.A.11 (Fla.) 1997, 105 F.3d 599. Environmental Law 641

Extent of court's subject matter jurisdiction over cases in which plaintiff alleges series of discharge permit violations involving multiple discharge parameters in violation of this chapter would be determined by "modified by-parameter standard," rather than "permit-based standard" under which jurisdiction would attach to entire cases,

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not to individual violations; under modified by-parameter standard, plaintiff could establish at trial that violations were continuous or intermittent either by proving likelihood of recurring violations of same parameter or by proving likelihood that same inadequately corrected source of trouble would cause recurring violations of one or more different parameters. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., C.A.3 (Del.) 1993, 2 F.3d 493. Environmental Law 634

District court had subject matter jurisdiction over claim alleging failure of Environmental Protection Agency (EPA) to promulgate regulation governing power plant cooling-water intake structures pursuant to Clean Water Act (CWA); complaint averred that EPA administrator had non-discretionary duty under CWA to promulgate regulations governing intake structures at existing industrial facilities, but failed to do so. Riverkeeper, Inc. v. U.S. E.P.A., S.D.N.Y.2007, 514 F.Supp.2d 565. Environmental Law 641

District court had subject matter jurisdiction over action brought against seafood companies under Clean Water Act (CWA), alleging illegal discharges of processing waste, where public interest research group's allegations that defendants were committing ongoing violations of National Pollution Discharge Elimination System (NPDES) permit limitations for shrimp, crab, and hand-butchered salmon wastewater were made in good faith. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2005, 361 F.Supp.2d 1232. Environmental Law 226

Public interest and environmental organizations made good faith allegations of continuing Clean Water Act (CWA) violations by wastewater treatment company as would support finding of subject matter jurisdiction over citizen suit against company for unlawful discharge of pollutants and violations of local pretreatment standards; organizations alleged that illegal discharge was likely to continue due to company's inadequate treatment measures and that continuing violations of CWA and pretreatment standards existed, and supported allegations with provisions of municipal court complaint filed against company by cities and two notifications of continued violation that city issued company after organizations filed suit. Ohio Public Interest Research Group v. Laidlaw Environmental Services, Inc., S.D.Ohio 1996, 963 F.Supp. 635. Environmental Law 673

District court had subject matter jurisdiction over environmental groups' claims in citizen suit under Clean Water Act (CWA) alleging that Administrator of Environmental Protection Agency (EPA) had non-discretionary duty to promulgate regulations requiring that cooling water intake structures reflect best technology available for minimizing adverse environmental impact, and that Administrator had failed to perform that duty; allegations could not be regarded as "insubstantial" or "frivolous" in light of relevant portions of CWA, their legislative history, and judicial decisions addressing them. Cronin v. Browner, S.D.N.Y.1995, 898 F.Supp. 1052. Federal Courts 218

District court had subject matter jurisdiction over suit by nonprofit organizations interested in protection and improvement of quality of water in New Jersey, seeking to hold petroleum marketing terminal operator liable for violations of discharge limitations in its New Jersey Pollutant Discharge Elimination System (NJPDES) permit, absent showing by terminal operator that organizations lacked good faith when they alleged permit violations. Public Interest Research Group of New Jersey v. Star Enterprise, D.N.J.1991, 771 F.Supp. 655, amendment denied. Federal Courts 218

Citizens suit provision did not permit jurisdiction over allegations that Environmental Protection Agency (EPA) failed to promulgate water quality criteria for all identifiable effects of dioxin, not just human cancer effects, and failed to revise criteria to reflect latest scientific knowledge; administrator did not have nondiscretionary duty to

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publish numerical criteria for all identifiable dioxin effects or to revise criteria from time to time to reflect latest scientific knowledge. Natural Resources Defense Council, Inc. v. U.S. E.P.A., E.D.Va.1991, 770 F.Supp. 1093, reconsideration denied 806 F.Supp. 1263, affirmed 16 F.3d 1395. Environmental Law ⚷ 226; Environmental Law ⚷ 190

Question as to whether proposed modification of discharge permits issued under Clean Water Act would violate settlement agreement between government and electric utility did not raise any question of federal common law, such as would permit district court to exercise federal question jurisdiction. Consolidated Edison Co. of New York, Inc. v. New York State Dept. of Environmental Conservation, S.D.N.Y.1989, 726 F.Supp. 1404. Federal Courts ⚷ 218

District court had jurisdiction to review Corps of Engineers' jurisdictional decision about whether dredge material discharge area was navigable waters or wetlands to allow citizen suit under Clean Water Act where decision was made under memo of understanding with Environmental Protection Agency. Golden Gate Audubon Soc., Inc. v. U.S. Army Corps of Engineers, N.D.Cal.1988, 700 F.Supp. 1549, clarification denied , amended 717 F.Supp. 1417. Environmental Law ⚷ 640

Federal District Court lacked subject-matter jurisdiction over suits brought by environmental group under citizen suit provision of Clean Water Act, 33 U.S.C.A § 1365(a), for violation of effluent standard, limitation or order, where evidence presented in the cases clearly and unequivocally showed that none of the defendants were in violation at time the suits were filed. Sierra Club v. Copolymer Rubber and Chemical Corp., M.D.La.1985, 621 F.Supp. 1013.

32a. Ripeness

Army Corps of Engineers' issuance of nationwide permit (NWP) authorizing discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations was a final agency action, and therefore environmental groups' facial challenge to NWP under Clean Water Act was ripe for adjudication; issuance of NWP abolished the environmental groups' opportunity to object to proposals to discharge before they were authorized, and the nature of the Corps' permitting process made it difficult to object afterward, there was no process for administrative appeal of NWP authorizations, withholding consideration would cause hardship to the environmental groups, and judicial intervention would not inappropriately interfere with further action by the Corps. 5 U.S.C.A. §§ 704; Ohio Valley Environmental Coalition v. Bulen, S.D.W.Va.2004, 410 F.Supp.2d 450, modified in part 2004 WL 2384841, reconsideration denied 2004 WL 2370689, affirmed in part , vacated in part 429 F.3d 493, rehearing en banc denied 437 F.3d 421. Environmental Law ⚷ 661; Environmental Law ⚷ 662

33. Venue

Venue of citizen suit under the Clean Water Act was proper only in district in which refinery allegedly violating effluent limitations was located. Citizens for a Better Environment-California v. Union Oil Co. of California, N.D.Cal.1994, 861 F.Supp. 889, affirmed 83 F.3d 1111, as amended , certiorari denied 117 S.Ct. 789, 519 U.S. 1101, 136 L.Ed.2d 731. Federal Courts ⚷ 74

Subsec. (c)(1) of this section applies only to citizen suits against a violator and is not applicable to citizen suits against the Administrator for failure to perform a nondiscretionary act or duty; hence, venue of action charging the Environmental Protection Agency and its Administrator with violating this chapter as regards New York

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City's dumping of garbage and sewage into Hudson River and Atlantic Ocean to allege detriment of plaintiff New Jersey township would lie in the District of New Jersey. Long Beach Tp. v. City of New York, D.C.N.J.1978, 445 F.Supp. 1203. Federal Courts ⚿ 88; Environmental Law ⚿ 635

Venue for action respecting discharges from Blue Plains Plant which was located in District of Columbia was properly laid in District Court for the District of Columbia since subsec. (c)(1) of this section provides that venue for action respecting violation by discharged source of an effluent standard or limitation shall lie "in the judicial district in which such source is located". Montgomery Environmental Coalition v. Fri, D.C.D.C.1973, 366 F.Supp. 261. Environmental Law ⚿ 635

34. Exhaustion of administrative remedies

Failure to exhaust administrative remedies to challenge Regional Water Quality Control Board's cease-and-desist order, entered as part of settlement with oil company to avoid state enforcement action, did not preclude environmental group from bringing citizen suit to challenge oil company's alleged violation of effluent standards under Clean Water Act (CWA) after settlement with board; citizen suit sought to enforce CWA, not to challenge validity of cease-and-desist order. Citizens for a Better Environment-California v. Union Oil Co. of California, C.A.9 (Cal.) 1996, 83 F.3d 1111, as amended , certiorari denied 117 S.Ct. 789, 519 U.S. 1101, 136 L.Ed.2d 731. Environmental Law ⚿ 226

Rule requiring exhaustion of administrative remedies had no application in action to determine whether district court correctly ordered Environmental Protection Agency (EPA) and Michigan Department of Natural Resources (MDNR) to fund 80% of sewer system evaluation survey to be undertaken by a Michigan city; district court had jurisdiction to decide wide range of issues raised by parties in more than ten years of litigation and city was defendant in action from beginning. State of Mich. v. City of Allen Park, C.A.6 (Mich.) 1992, 954 F.2d 1201. Administrative Law And Procedure ⚿ 229; Environmental Law ⚿ 665

The only two limitations on the right of a citizen to bring suit under the Clean Water Act are that the citizen must give 60 days' notice to the Administrator of the Environmental Protection Agency, the state, and the alleged polluter to allow the alleged violator the opportunity to cure his violation or to allow the EPA or the state to commence its own enforcement action and that the citizen may not bring his own action if the Administrator or state has commenced and is diligently prosecuting a civil or criminal action. Proffitt v. Rohm & Haas, C.A.3 (Pa.) 1988, 850 F.2d 1007. Environmental Law ⚿ 226; Environmental Law ⚿ 659

Doctrine of exhaustion of administrative remedies did not prevent district court from considering complaint alleging impending violation of this chapter by the Nuclear Regulatory Commission and operators of nuclear power plant; rather district court under the terms of this section should defer for 60 days, and at that point determine whether violation has been halted by administrative action or otherwise, and if it has not been so halted, citizens' suit goes forward. Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor, C.A.3 (Pa.) 1980, 619 F.2d 231, certiorari denied 101 S.Ct. 893, 449 U.S. 1096, 66 L.Ed.2d 824. Environmental Law ⚿ 665

Even where the notice provision of this section is not a jurisdictional prerequisite to suit against the Environmental Protection Agency, the courts are entitled to give effect to the salutary purpose underlying the notice provision by resort to the requirement of exhaustion of administrative remedies. Natural Resources Defense Council, Inc. v. Train, C.A.D.C.1974, 510 F.2d 692, 166 U.S.App.D.C. 312. Administrative Law And Procedure ⚿ 229; Environmental Law ⚿ 665

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Citizen suit under Clean Water Act (CWA) was not barred by any alleged failure of plaintiffs to participate in state administrative process, as plaintiffs fulfilled 60-day notice requirement, which served as statutory exhaustion requirement by allowing agency to act prior to federal court involvement. Culbertson v. Coats American, Inc., N.D.Ga.1995, 913 F.Supp. 1572. Environmental Law ⚷ 665

Developer was required to exhaust administrative remedies before challenging legality of Federal Manual for Identifying and Delineating Jurisdictional Wetlands; there were factual issues whether delineation has been performed, whether Manual was used, whether delineation would differ from survey using preexisting regulations, and whether developer suffered any injury from use of Manual, and wetland delineation was within special expertise of agencies. Mulberry Hills Development Corp. v. U.S., D.Md.1991, 772 F.Supp. 1553. Administrative Law And Procedure ⚷ 229; Environmental Law ⚷ 665

Citizen suit seeking to determine whether the Clean Water Act covers particular discharge or whether defendant is operating in violation of NPDES permit is not subject to doctrine of exhaustion of administrative remedies, but citizen suits seeking to challenge particular effluent limitations that Environmental Protection Act or appropriate state agency has established in permit process are subject to doctrine. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Administrative Law And Procedure ⚷ 229; Environmental Law ⚷ 665

35. Persons entitled to maintain action--Generally

District court was required to rule on Article III standing of Clean Water Act (CWA) plaintiffs', two non-profit organizations, before determining that they lacked statutory standing because complained-of salt runoff was not "pollutant" under CWA; statutory standing decision was effectively ruling on merits, which could not be made in absence of Article III standing. Alliance For Environmental Renewal, Inc. v. Pyramid Crossgates Co., C.A.2 (N.Y.) 2006, 436 F.3d 82. Environmental Law ⚷ 652

Citizens group's allegations that injuries suffered by its members were "fairly traceable" to landfill operator's alleged failure to obtain Clean Water Act drainage permit satisfied standing requirement that injuries be "fairly traceable" to failure to obtain permit; operator acknowledged that its activities on landfill reduced total acreage of ponds by half and that a government agency had reported that the ponds had considerably less value for wildlife because of drainage. Save Our Community v. U.S. E.P.A., C.A.5 (Tex.) 1992, 971 F.2d 1155. Environmental Law ⚷ 652

To establish standing to redress environmental injury, plaintiffs need not show that particular defendant is only cause of their injury and that, therefore, absent defendant's activities, plaintiffs would enjoy undisturbed use of resource; rather, to meet "fairly traceable" requirement of *Valley Forge*, plaintiffs must merely show that defendant discharges pollutant that causes or contributes to kinds of injuries alleged by plaintiffs. Natural Resources Defense Council, Inc. v. Watkins, C.A.4 (S.C.) 1992, 954 F.2d 974. Environmental Law ⚷ 651

Plaintiff had no standing to challenge propriety of expenditures approved by Environmental Protection Agency pursuant to work plan under this subchapter where two-year planning period was over by the time district court ruled on cross motions for summary judgment, most of the original sums had been spent by that time, even if court could order local agency to refund any illegally spent funds, this would not result in water pollution planning that plaintiff sought, it was not clear that more grants would be forthcoming to local agency, and thus any relief that could be granted by district court would not prevent or redress claimed injury to area waters. Gonzales v. Gorsuch, C.A.9 (Cal.) 1982, 688 F.2d 1263. Environmental Law ⚷ 656

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Even if the Environmental Protection Agency would decline to prosecute in case of an unavoidable excursion with respect to party holding effluent permit, any citizen would be free to commence an enforcement action which could not be blocked even though the Agency believed suit should not go forward. Marathon Oil Co. v. E.P.A., C.A.9 1977, 564 F.2d 1253. Environmental Law ⚷ 226

Plaintiffs lacked standing, under former section 1160 of this title, to sue county officials or Regional Administrator to eliminate water pollution near their residences. Higginbotham v. Barrett, C.A.5 (Ga.) 1973, 473 F.2d 745. Waters And Water Courses ⚷ 35

Congressional findings that prompted passage of Clean Water Act (CWA), which recognized that uniform, technology-based effluent limitations were necessary to reduce and eliminate pollutants from nation's waters, established causation element of standing in action in which environmental groups, acting on behalf of their members, challenged decision of Environmental Protection Agency (EPA) not to promulgate effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges by construction and development industry, notwithstanding contention that groups' members had to trace their alleged injuries to construction sites affected by EPA's decision. National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Environmental Law ⚷ 652

Landowner did not have standing to bring claim that pipeline's national pollutant discharge elimination system (NPDES) permit issued for remediation of groundwater contamination did not cover seepage of pollutants from swamp used as part of pipeline's treatment system, thus creating Clean Water Act (CWA) violation, where swamp was not hydrologically connected to landowner's property, and any contamination that reached river through groundwater carrying seepage from swamp did not contaminate landowner's property. Williams Pipe Line Co. v. Bayer Corp., S.D.Iowa 1997, 964 F.Supp. 1300. Environmental Law ⚷ 656

Clean Water Act (CWA) citizens suits are not appropriate simply because plaintiff has more claims than were resolved by prior government enforcement action, or because plaintiff seeks higher civil fines than were leveled by government. Saboe v. State of Or., D.Or.1993, 819 F.Supp. 914. Environmental Law ⚷ 226

Citizens suit provision of the Clean Water Act confers standing to the limits permitted by the Constitution. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚷ 650

Generalized fear of loss of natural environment currently found in subject area of creek was insufficient to give corporation which owned land that would be taken for proposed project and unincorporated conservation authority composed primarily of county residents standing to seek declaratory judgment and injunction prohibiting water and sewer authority from constructing dam pursuant to allegedly expired or invalid section 404 permit, especially as all property acquisitions had been accomplished by voluntary purchases, and corporation's mere speculation of condemnation did not give it standing. Cane Creek Conservation Authority v. Orange Water and Sewer Authority, M.D.N.C.1984, 590 F.Supp. 1123. Environmental Law ⚷ 653

Plaintiff suing under this chapter must demonstrate that it is in category of persons this chapter protects and that it has some special interest in particular waterway that it is seeking to protect, and plaintiff, by demonstrating that it and its members had special interest in reservoir, demonstrated that it was appropriate plaintiff to seek adequate enforcement of effluent standards from sources. Pymatuning Water Shed Citizens for a Hygienic Environment v. Eaton, W.D.Pa.1980, 506 F.Supp. 902, affirmed 644 F.2d 995. Environmental Law ⚷ 226

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Contractor which built waste water treatment plant lacked standing to bring civil action against regional administrator of the Agency pursuant to this section. J. E. Brenneman Co. v. Schramm, E.D.Pa.1979, 473 F.Supp. 1316.

36. ---- Redress of injuries, persons entitled to maintain action

Environmental organizations satisfied redressability test, as required to establish their standing to bring action contesting Corps of Engineers' issuance, under the Clean Water Act (CWA), of Section 404 permits to fill headwater streams with material from mountaintop removal coal mining; requested declaratory and injunctive relief, requiring Corps to rescind permits and prepare an environmental impact statement (EIS), would alleviate organizations' concerns. Ohio Valley Environmental Coalition v. U.S. Army Corps of Engineers, S.D.W.Va.2007, 479 F.Supp.2d 607. Environmental Law ⚷ 652

National trade association representing builders, land developers and remodelers had prudential standing to bring action in a representational capacity on behalf of its members seeking declaration that general permit issued by United States Army Corps of Engineers (USACE) regulating the discharge of dredged or fill materials into non-tidal upland ditches exceeded USACE's authority under the Clean Water Act (CWA); association's members were among those individuals whose activities were regulated by the CWA, and more specifically by USACE general permits. National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.D.C.2008, 539 F.Supp.2d 331. Environmental Law ⚷ 652

Member of non-profit environmental organization, who lived several hundred miles away from watershed, nevertheless had individual, particularized injury distinct from organization's institutional interests to bring suit in his own right, as required for organization to have representational standing to bring citizen-suit action under Clean Water Act (CWA) against two lumber companies for alleged violations of National Pollution Discharge Elimination System (NPDES) permit conditions at that watershed, where member visited watershed over dozen times before suit commenced as well as several times during tenure of suit, and he expressed his intent to visit watershed in future. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law ⚷ 656

Promulgation by Environmental Protection Agency (EPA) of effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges by construction and development industry could redress reduced enjoyment of nation's waters suffered by individual members of environmental groups, supporting groups' associational standing to challenge EPA's decision not to promulgate ELGs and NSPSs; such relief had already been deemed by Congress to be critical to reducing pollution, and declarations of members with expert knowledge of impact of storm water discharges showed that requested regulations would likely reduce pollution. National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Environmental Law ⚷ 652

Relief requested for coastal landowners' alleged violation of Clean Water Act (CWA), arising from their ditching activities, including imposition of civil penalties and order compelling landowners to remove illegal fill material and restore waters, as well as obtain all required CWA permits, would redress alleged injuries to use and enjoyment of coastal waters of members of shellfish growers and environmental associations, so as to support finding that associations had representational standing to maintain action against landowners under CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law ⚷ 652

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Although environmental group might only be awarded civil penalties in enforcement action under Clean Water Act (CWA) against owner of plant for alleged violations of National Pollutant Discharge Elimination System (NPDES) permit, and those penalties would be paid into United States Treasury, such award would satisfy redressability requirement for constitutional standing. Friends of the Earth, Inc. v. Chevron Chemical Co., E.D.Tex.1995, 900 F.Supp. 67. Environmental Law ⚿ 652

Plaintiffs seeking to establish their standing to bring citizen suit under Clean Water Act against fluoropolymer manufacturer were not required to show that they were likely to receive favorable decision but, rather, that, assuming decision favorable to plaintiffs, relief available would be likely to redress their injuries. Public Interest Research Group of New Jersey, Inc. v. Elf Atochem North America, Inc., D.N.J.1993, 817 F.Supp. 1164. Environmental Law ⚿ 656

37. ---- Private attorneys general, persons entitled to maintain action

Citizen suit provision in Clean Water Act is intended to allow private attorneys general to fill in gaps in public enforcement and are proper only if federal, state, and local agencies fail to exercise their enforcement responsibility. Saboe v. State of Or., D.Or.1993, 819 F.Supp. 914. Environmental Law ⚿ 226

Group could act as "private attorneys general" under Federal Clean Water Act to enforce limitation on effluent discharges from county outflow pipe contingent upon establishment at evidentiary hearing that county was intentionally using pipe as point source for pollutant discharge although no permit had been issued to county; obtaining permit is itself important effluent limitation in Federal Clean Water Act which private attorneys general may enforce via citizen suits. Hudson River Fishermen's Ass'n v. Westchester County, S.D.N.Y.1988, 686 F.Supp. 1044. Environmental Law ⚿ 226

38. ---- Environmental organizations, persons entitled to maintain action

Environmental groups alleged sufficient injury in fact to establish standing to seek injunctive relief in action against holder of National Pollutant Discharge Elimination System (NPDES) permit for alleged violation of mercury discharge limits, pursuant to citizen suit provision of Clean Water Act (CWA), even if there was no resulting injury to the environment, as group members alleged that, although they would like to use affected river for recreational purposes, they would not do so due to permit holder's alleged discharges. Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., U.S.S.C.2000, 120 S.Ct. 693, 528 U.S. 167, 163 A.L.R. Fed. 749, 145 L.Ed.2d 610, on remand 208 F.3d 209. Environmental Law ⚿ 652

Owner of property through which stream flowed suffered injury in fact that was fairly traceable to county's operation of waste-treatment plant, as required to confer individual standing upon owner to maintain citizen suit, under Clean Water Act, against county, and thus environmental association of which owner was a member had standing to maintain such suit, because green algae on stream interfered with owner's use of stream, and there was evidence that plant had discharged heat into stream and that heat could cause green algae to proliferate. Piney Run Preservation Ass'n v. County Com'rs of Carroll County, MD, C.A.4 (Md.) 2001, 268 F.3d 255, certiorari denied 122 S.Ct. 1960, 535 U.S. 1077, 152 L.Ed.2d 1021. Environmental Law ⚿ 652; Environmental Law ⚿ 656

Individual members of environmental organizations who alleged they had used creek for recreational activities several times in the past, and that logging company's alleged pollution of creek had impaired their enjoyment of those activities, alleged sufficient injury in fact to bring suit against company in their own right, and organiza-

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tions thus had standing to bring action under Clean Water Act (CWA) against company for alleged violations of National Pollution Discharge Elimination System (NPDES) permit conditions. 33 U.S.C.A. §§ 1365. Ecological Rights Foundation v. Pacific Lumber Co., C.A.9 (Cal.) 2000, 230 F.3d 1141.

Purported members of nonprofit environmental protection corporation organized under laws of District of Columbia had "indicia of membership" in corporation, and corporation thus had standing to bring citizen suit, under Clean Water Act, alleging that chemical company violated terms of its National Pollution Discharge Elimination System (NPDES) permit, even if corporation had no legal members under corporate laws of District of Columbia; purported members elected corporation's governing body and financed its activities, members voluntarily associated themselves with corporation, and corporation had clearly articulated membership structure. Friends of the Earth, Inc. v. Chevron Chemical Co., C.A.5 (Tex.) 1997, 129 F.3d 826. Environmental Law ⚿ 653

Environmental group established that its injury was fairly traceable to oil company's discharge of produced water into bay for purposes of group's standing to bring suit against oil company for violations of Clean Water Act (CWA); group alleged that oil company lacked National Pollution Discharge Elimination System (NPDES) permit so that any discharge would violate CWA, group member asserted that he had canoed near oil company's facility and intended to continue to do so, group presented expert testimony that oil company's discharges were typical of produced water which had harmful effects on water quality and marine life, and member alleged that produced water contributed to injury and to ability to enjoy canoeing and wildlife. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Environmental Law ⚿ 652

Plain language of Clean Water Act (CWA) authorized citizens suit to enforce all permit conditions and, thus, environmental activist group had standing to bring citizens suit to enforce broad state water quality standards included as conditions of National Pollution Discharge Elimination System (NPDES) permit even though permit failed to translate water quality standards into numeric end-of-pipe effluent limitations for combined sewer overflow (CSO) outfalls at issue. Northwest Environmental Advocates v. City of Portland, C.A.9 (Or.) 1995, 56 F.3d 979, rehearing and suggestion for rehearing en banc denied 74 F.3d 945, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Environmental Law ⚿ 652; Environmental Law ⚿ 226

Environmental organizations which brought suit under the Clean Water Act satisfied standing requirement that injury be "fairly traceable" to actions of defendant, where members of organizations stated that waterway into which defendant discharged pollutants had an oily or greasy sheen they found offensive, and that defendant's discharge permit contained limits on oil and grease defendant could discharge in its effluent; moreover, reports of defendant to the Environmental Protection Agency (EPA) indicated that defendant had discharged oil and grease in excess of such limits; thus, aesthetic injury suffered by individual members could fairly be traced to defendant's effluent. Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals Inc., C.A.3 (N.J.) 1990, 913 F.2d 64, rehearing denied, certiorari denied 111 S.Ct. 1018, 498 U.S. 1109, 112 L.Ed.2d 1100. Environmental Law ⚿ 652

Allegations of environmental groups that groups' members resided in vicinity of affected waters and that those members recreated in, on or near, or otherwise used and enjoyed those waters, and that their members health, recreational, aesthetic and environmental interests had been, or were being and would be adversely affected by corporation's illegal pollution discharges satisfied both constitutional requirements of standing and requirement that plaintiff be "citizens" as defined in provision of Clean Water Act [33 U.S.C.A. § 1365(g)] governing cit-

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izens suits. Chesapeake Bay Foundation v. American Recovery Co., Inc., C.A.4 (Md.) 1985, 769 F.2d 207.

Nonprofit corporation dedicated to protection and restoration of Hudson River had standing to bring citizen suit under Federal Water Pollution Control Act Amendments of 1972, § 505(a), as amended, 33 U.S.C.A. § 1365(a), for railroad's alleged violations of discharge permits issued by New York State Department of Environmental Conservation, where one member of corporation stated he passed River regularly and found pollution in River offensive to his aesthetic values, and other member of corporation averred that his children swam in River , his son occasionally fished in River, and his family had and would continue to picnic along the River. Friends of the Earth v. Consolidated Rail Corp., C.A.2 (N.Y.) 1985, 768 F.2d 57. Environmental Law 653

National Wildlife Federation has standing to enforce duty of Administrator of Environmental Protection Agency to regulate water quality changes caused by dams under National Pollutant Discharge Elimination System. National Wildlife Federation v. Gorsuch, C.A.D.C.1982, 693 F.2d 156, 224 U.S.App.D.C. 41. Environmental Law 652

Environmental organizations satisfied organizational standing requirement, for purposes of standing inquiry in action contesting Corps of Engineers' issuance, under the Clean Water Act (CWA), of Section 404 permits to fill headwater streams with material from mountaintop removal coal mining, where one member of a plaintiff organization had standing to sue in her own right, interest at issue was germane to organization's purpose of improving and preserving the environment, and participation of individual members of the organizations was unnecessary. Ohio Valley Environmental Coalition v. U.S. Army Corps of Engineers, S.D.W.Va.2007, 479 F.Supp.2d 607. Environmental Law 652

Member of non-profit environmental organization had individual, particularized injury distinct from organization's institutional interests to bring suit in his own right, as required for organization to have representational standing to bring citizen-suit action under Clean Water Act (CWA) against two lumber companies for alleged violations of National Pollution Discharge Elimination System (NPDES) permit conditions, where member personally observed sediment in watershed which organization attributed to companies, member's recreational and conservation interests were harmed by sediment deposited without NPDES permit, and member's injuries would have been redressed if companies were enjoined from discharging storm water without NDPES permit. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law 656

Environmental organization had standing to bring Clean Water Act (CWA) citizen suit against paper company, alleging that company was discharging pollutants into river without valid permit; complaint stated sufficient facts to establish ongoing violation of CWA since, as of time suit was filed, state Department of Environmental Protection had not issued new discharge permit. Natural Resources Council of Maine v. International Paper Co., D.Me.2006, 424 F.Supp.2d 235. Environmental Law 652

Environmental groups, whose members visited, lived near, recreated near, drove by and/or flew over areas of the state that were visibly harmed by valley fills, surface impoundments, and related surface mining activities, had standing to raise facial challenge to nationwide permit (NWP) authorizing discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations; threatened injury to groups' interests in the affected areas was concrete and particularized, actual and imminent because Army Corps of Engineers had already issued specific authorizations, and injury was fairly traceable to the challenged action of the Corps, and was likely that the injury would be redressed by a favorable decision. Ohio Valley En-

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vironmental Coalition v. Bulen, S.D.W.Va.2004, 410 F.Supp.2d 450, modified in part 2004 WL 2384841, reconsideration denied 2004 WL 2370689, affirmed in part , vacated in part 429 F.3d 493, rehearing en banc denied 437 F.3d 421. Environmental Law 652

Public interest research group had representative standing to bring action against seafood companies under Clean Water Act (CWA), alleging illegal discharges of processing waste, where group members had individual standing, primary focus of group was clean water issues, and participation of members was not required, since action sought injunction and civil penalties rather than individual damages. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2005, 361 F.Supp.2d 1232. Environmental Law 652

Alleged injuries to use and enjoyment of coastal waters by members of shellfish growers and environmental associations were fairly traceable to coastal landowners' ditching activities, so as to support finding that associations had representational standing to maintain action against landowners under Clean Water Act (CWA); evidence showed that landowners' activities could lead to increased fecal coliform levels in adjacent waters, that pollutants on tract could reach waters used by members, and that activities coincided with increased fecal counts in surrounding waters. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 652

Environmental organization had standing to bring citizen suit under Clean Water Act against wastewater treatment plant for violations of conditions of its National Pollutant Discharge Elimination System permit, where organization alleged that its members could not enjoy swimming, boating or fishing in creek due to toxic pollutants discharged by plant, and that value of members' homes had decreased due to pestilence that emanated from creek. SURCCO v. PRASA, D.Puerto Rico 2001, 157 F.Supp.2d 160, on reconsideration. Environmental Law 652

Clean Water Act did not authorize suit by private entities against director of state's Division of Environmental Protection to remove him from office, based on alleged violation of federal regulation requiring state National Pollution Discharge Elimination System (NPDES) programs to ensure that any board or body approving permits did not include any person who received in last two years a significant portion of income from permit holders or permit applicants; instead, regulation was to be enforced by Environmental Protection Agency (EPA). Ohio Valley Environmental Coalition v. Miano, S.D.W.Va.1998, 66 F.Supp.2d 805. Environmental Law 226

Environmental organization, by and through its representatives, had standing to bring Clean Water Act (CWA) citizens' suit against dairies arising from discharge of animal manure wastes into joint drain which flowed into a river, where representatives owned property in river valley, representatives' recreational use of, and aesthetic enjoyment of, river were restricted due to presence of manure in river and foul odor, one representative's commercial interests in orchard were adversely affected by irrigation pipes being clogged with manure wastewater, dairies discharged manure and animal wastewater into joint drain, and award of civil penalties for CWA violations would have deterrent effect on other polluters of river. Community Ass'n for Restoration of the Environment v. Henry Bosma Dairy, E.D.Wash.1999, 65 F.Supp.2d 1129. Environmental Law 652

Environmental groups had standing to seek declaration that Forest Service was violating Clean Water Act (CWA) by issuing grazing permits without requiring permittees to first obtain certification from state establishing that grazing would not violate state water quality standards; members of groups lived and recreated in area of challenged action, it was admitted that cattle grazing contributed to water pollution, and shown that pollution

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in creek was related to cattle grazing, and groups were only required to show that procedural requirement was not followed in order to satisfy redressability requirement. Oregon Natural Desert Ass'n v. Thomas, D.Or.1996, 940 F.Supp. 1534, reversed 172 F.3d 1092, certiorari denied 120 S.Ct. 397, 528 U.S. 964, 145 L.Ed.2d 310. Declaratory Judgment 300

Nonprofit environmental protection corporation lacked representational standing to bring private civil enforcement action under citizen suit provision of Clean Water Act (CWA), as corporation failed to demonstrate compliance with its internal bylaws regarding creation of class of members within corporation and, consequently, could not establish that it had any members; corporation failed to show that its board of directors ever took requisite action to create class of members to "populate" corporation, and while informal membership policy would have been appropriate for unincorporated association, it was insufficient for corporation. Friends of the Earth, Inc. v. Chevron Chemical Co., E.D.Tex.1996, 919 F.Supp. 1042, reversed 129 F.3d 826. Environmental Law 653

Environmental organizations had standing under citizen suit provision of Clean Water Act to bring action against indirect sources whose wastewater was treated by publicly owned treatment works (POTW), despite proof that POTW did not violate its effluent standards; indirect sources did not challenge relationship between pollutants unlawfully discharged and type of injury alleged, and release sought would redress injuries alleged. Atlantic States Legal Foundation, Inc. v. Colonial Tanning Corp., N.D.N.Y.1993, 827 F.Supp. 903. Environmental Law 652

Allegations by environmental groups, that members engaged in recreational activities in and around affected waters, would recreate more in areas if waters were not so polluted, and that they are interested in obtaining accurate information regarding amount of pollution discharged into waters stated injury in fact needed to have standing to bring suit for violations of federal Water Pollution Control Act. Public Interest Research Group of New Jersey, Inc. v. New Jersey Expressway Authority, D.N.J.1992, 822 F.Supp. 174. Environmental Law 652

Citizens organization had standing to bring Clean Water Act violation action in federal court; organization alleged and putative polluter admitted it had been discharging effluent into water system continuously without permit from publicly owned treatment works (POTW) for over year prior to suit, organization had satisfied notice requirements, and there was no current enforcement action pending having effect of barring action. Connecticut Fund for Environment v. Acme Electro-Plating, Inc., D.Conn.1993, 822 F.Supp. 57. Environmental Law 652

Environmental watchdog groups had standing to bring citizens' suit seeking to remedy violations of Federal Water Pollution Control Act, where plaintiffs alleged that city water treatment facility was engaged in continuing daily violations of Clean Water Act. Hawaii's Thousand Friends v. City and County of Honolulu, D.Hawai'i 1993, 821 F.Supp. 1368. Environmental Law 652

Affidavits of members of environmental groups were sufficient to establish groups' standing to bring citizen suit under Clean Water Act against owner of chemical plant; members stated that they lived or recreated in vicinity of plant and that their health, recreational, environmental or professional interests were harmed by pollution from plant. Natural Resources Defense Council, Inc. v. Vygen Corp., N.D.Ohio 1992, 803 F.Supp. 97. Environmental Law 652

Environmental organizations had standing to bring citizen's suit under Clean Water Act challenging pollutant discharges at Air Force base exceeding effluent limitations in its permits, based upon interests of their individual

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members; group alleged sufficient injury in harm to aesthetic, recreational, and environmental interests of members, and demonstrated substantial likelihood that excessive discharges caused their harm and that judicial relief sought would address their injury. Public Interest Research Group of New Jersey, Inc. v. Rice, D.N.J.1991, 774 F.Supp. 317. Environmental Law ⚷ 652

To sue under Clean Water Act, organization must show that defendant's allegedly illegal conduct has caused plaintiff or its members to suffer some actual or threatened injury, that the injury can be fairly traceable to the challenged action, that a favorable decision from the court will likely redress the injury, that members of the organization would have standing to sue in their own right, that the interests which the organization seeks to protect are germane to the organization's purpose, and that neither the claim nor the relief requires participation of individual members in the suit. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1987, 657 F.Supp. 989, reversed 862 F.2d 580. Environmental Law ⚷ 652

National organization dedicated to pursuing legal actions against many sorts of environmental violations, which had no geographical or philosophical ties to Maryland area or the Chesapeake Bay, which declined to publicly name any of its members who were affected by defendant steelmaker's actions in the Patapsco River area, lacked standing to pursue action alleging violations of Federal Water Pollution Control Act in its own right; however, the organization had standing to pursue the action as a representative of some of its members which lived in the area of defendant's discharges and who used the waterways in question. Chesapeake Bay Foundation v. Bethlehem Steel Corp., D.C.Md.1985, 608 F.Supp. 440. Environmental Law ⚷ 652

Where two members of environmental public interest membership organization set forth in affidavits in precise terms specific adverse effects they suffered from alleged unremedied violations by a corporation of its pollutant discharge system, the organization had standing to bring a citizens' suit challenging the alleged unremedied violations. Hudson River Sloop Clearwater, Inc. v. Consolidated Rail Corp., N.D.N.Y.1984, 591 F.Supp. 345, affirmed in part , reversed in part 768 F.2d 57. Environmental Law ⚷ 652

National public interest organization dedicated to protection of environment, whose members retain effective control over direction of the organization, had standing to bring an action on behalf of its members under this chapter alleging that a company was violating its national pollutant discharge elimination system permit. Sierra Club v. Aluminum Co. of America, N.D.N.Y.1984, 585 F.Supp. 842.

39. ---- Indian tribes, persons entitled to maintain action

Indian tribe had standing to seek declaration that Forest Service was violating Clean Water Act (CWA) by issuing grazing permits without requiring permittees to first obtain certification from state establishing that grazing would not violate state water quality standards; tribe had treaty rights in area, which were injured by alleged violations. Oregon Natural Desert Ass'n v. Thomas, D.Or.1996, 940 F.Supp. 1534, reversed 172 F.3d 1092, certiorari denied 120 S.Ct. 397, 528 U.S. 964, 145 L.Ed.2d 310. Declaratory Judgment ⚷ 300

40. ---- Injured persons, persons entitled to maintain action

Citizen suit provisions of this section apply only to persons who can claim some sort of injury and there is no basis for inferring existence of separate cause of action for "injured" as opposed to "noninjured" plaintiffs. Middlesex County Sewerage Authority v. National Sea Clammers Ass'n, U.S.N.J.1981, 101 S.Ct. 2615, 453 U.S. 1, 69 L.Ed.2d 435. Environmental Law ⚷ 547; Environmental Law ⚷ 651; Environmental Law ⚷ 226

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Operator of hydroelectric power plant had standing under the Clean Water Act (CWA) to challenge revised water flow requirements imposed by the Federal Energy Regulatory Commission (FERC) when it granted operator a license to operate for another 40 years, where operator was the party directly subject to the FERC action in question, and, as applicant for license under consideration, it held an evident interest in the action. Snoqualmie Indian Tribe v. F.E.R.C., C.A.9 2008, 545 F.3d 1207. Environmental Law ⚿ 656

Labor organization adequately stated actual or imminent injury to its members, for purpose of associational standing inquiry in lawsuit under Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA), where complaint alleged that members of organization had been exposed to contaminated soil and waste materials while working at subject location, many members drank water from public water supplies drawn from Lake Erie that were being polluted by water migrating through subject location, many members resided and worked near subject location, and many members used Lake Erie and area surrounding subject location for recreation and enjoyed aesthetic value of area. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law ⚿ 652

Injuries of lake owner arising from smelting facility's repeated violations of National Pollutant Discharge Elimination System (NPDES) permit were redressable for standing purposes by citizen suit under Clean Water Act seeking injunctive relief for continuing and threatened future violations of permit; facility had over 350 discharge violations and 650 monitoring and reporting violations in last year for which record contained evidence. Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., C.A.4 (S.C.) 2000, 204 F.3d 149, on subsequent appeal 263 Fed.Appx. 348, 2008 WL 344689. Environmental Law ⚿ 656

Members of public interest group failed to show threatened injury that could be traced to zirconium carbonate manufacturer's violations of its obligations under its National Pollution Discharge Elimination System (NPDES) permit to monitor and report its discharges of pollutants, and thus, members lacked standing to sue manufacturer under Clean Water Act for such violations; discharges did not injure or cause any threat of injury to members, and despite their claim that manufacturer's failure to report caused them to reduce their recreational use of river and to fear drinking water from river, they made no showing that discharges affected fish toxicity or that discharges affected salinity level of river water that came from treatment plant. Public Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., C.A.3 (N.J.) 1997, 123 F.3d 111. Environmental Law ⚿ 652

Affidavits from individual environmental group members satisfied injury in fact prong of test for group's standing to bring action under Clean Water Act (CWA) against oil company, even though members merely expressed concern about effect of oil company's produced water discharges and even though all but one member couched injury in terms of future impairment; two affiants lived near discharge area and all affiants used bay for recreational activities dependent on good water quality. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Environmental Law ⚿ 652

Environmental organizations claiming that they used state waters and were adversely affected by failure of Environmental Protection Agency (EPA) to establish total maximum daily loads (TMDL) of pollution which could be introduced into waters had standing to compel EPA to perform its obligations under Clean Water Act (CWA) with respect to all waters of state, and not simply those which they could prove they used. Alaska Center for Environment v. Browner, C.A.9 (Wash.) 1994, 20 F.3d 981. Environmental Law ⚿ 652

In action brought against refinery for discharge permit violations under this chapter, environmental groups ad-

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equately showed that their injuries were traceable to refinery's permit violations; members of environmental groups testified that sight and unpleasant smell of pollution in vicinity of refinery interfered with their enjoyment of bird watching, swimming, boating and fishing in river waterfront parks and that presence of toxic chemicals in waterway inhibited them from eating local fish, and expert testified that effluents placed into river by refinery may poison fish, render areas unsafe for people to swim, and generally limit river as fertile ground for recreation. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., C.A.3 (Del.) 1993, 2 F.3d 493. Environmental Law 652

If discharge from nuclear reactor contributed to pollution interfering with use of river by members of environmental organizations, members and organizations, as representatives, would show injury fairly traceable to discharge and would have standing to sue Department of Energy (DOE), even though members did not return to river immediately upon shutdown of reactor for three years. Natural Resources Defense Council, Inc. v. Watkins, C.A.4 (S.C.) 1992, 954 F.2d 974. Environmental Law 652

Corporation which operated shopping mall and which alleged an aesthetic injury and damages under common-law tort theories, under which it would not be entitled to recover litigation costs could not, by joining suit under § 505 of the Clean Water Act, claim reimbursement of costs, including attorney fees and expert witness expenses. Citizens Coordinating Committee on Friendship Heights, Inc. v. Washington Metropolitan Transit Authority, C.A.D.C.1985, 765 F.2d 1169, 247 U.S.App.D.C. 15. Environmental Law 716; Federal Civil Procedure 2741

Testimony of member of environmental organization, that she suffered direct aesthetic injury, satisfied injury in fact prong of standing inquiry in organization's action contesting Corps of Engineers' issuance, under the Clean Water Act (CWA), of Section 404 permits to fill headwater streams with material from mountaintop removal coal mining; member testified that she frequently traveled to mine area to take photographs and observe aquatic wildlife in streams, but that she would not wade in streams impacted by the mining because of the presence of chemicals used in the mining process. Ohio Valley Environmental Coalition v. U.S. Army Corps of Engineers, S.D.W.Va.2007, 479 F.Supp.2d 607. Environmental Law 652

National trade association representing builders, land developers and remodelers sufficiently alleged injury in fact arising from general permit issued by United States Army Corps of Engineers (USACE) regulating the discharge of dredged or fill materials into non-tidal upland ditches, as required for association to have Article III standing to sue in its own right; association alleged that the permit exceeded USACE's authority under the Clean Water Act (CWA) and burdened association's members by requiring the submission of pre-construction notifications (PCNs), even though the members may not ultimately need approval from USACE for their projects, and that because association was directed by its members to advocate for the appropriate regulation of non-tidal upland ditches, permit hindered association's ability to adequately represent its members. National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.D.C.2008, 539 F.Supp.2d 331. Environmental Law 652

Allegations of environmental organization's complaint, that individual members of organization used two rivers for recreation and that at least one member had been injured by discharges into the rivers, satisfied "injury in fact" requirement for representational standing to sue Oregon officials and timber companies under Clean Water Act (CWA) for discharging stormwater into rivers from ditches alongside logging roads in state forests without National Pollutant Discharge Elimination System (NPDES) permits. Northwest Environmental Defense Center v. Brown, D.Or.2007, 476 F.Supp.2d 1188. Environmental Law 652

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Member of non-profit environmental organization, who had been compensated for his work at particular watershed as independent contractor for organization, nevertheless had individual, particularized injury distinct from organization's institutional interests to bring suit in his own right, as required for organization to have representational standing to bring citizen-suit action under Clean Water Act (CWA) against two lumber companies for alleged violations of National Pollution Discharge Elimination System (NPDES) permit conditions at that watershed, where member's alleged injuries did not arise from his position as independent contractor and member could establish standing as member. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law 656

Declarations documenting the use of waterways for aesthetic and recreational purposes by environmental groups' individual members, which indicated that members had used, studied, and enjoyed their local waterways for years and that sedimentation, increased turbidity, and pollution resulting from storm water discharges from construction and development sites had decreased members' use of and pleasure in waterways, established that groups' members had suffered injury in fact required for groups' associational standing to challenge decision of Environmental Protection Agency (EPA) not to promulgate effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges by construction and development industry under Clean Water Act (CWA). National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Environmental Law 652

Members of public interest research group had standing to bring action against seafood companies under Clean Water Act (CWA), alleging illegal discharges of processing waste; complaint averred that members had interest in preserving aesthetic integrity of river, that their enjoyment of river was affected by their concern for water quality and health of fish and wildlife, that their injury was traceable to defendants' wastewater discharge, and that their injuries were redressable by court via injunction or other civil penalty. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2005, 361 F.Supp.2d 1232. Environmental Law 652

Members of shellfish growers and environmental associations adequately alleged injury in fact, resulting from coastal landowners' alleged actions of violating the Clean Water Act (CWA) and contaminating shellfish beds and surrounding waters with their ditching activities, so as to support finding that associations had representational standing to maintain suit under CWA; members alleged they used area at issue, and that their recreational, aesthetic, and economic interests in area had been impaired or threatened as result of landowners' ditching activities. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Environmental Law 652

Landowner seeking to halt effluent runoff from methane production activities had proper standing to bring Clean Water Act (CWA) citizen's suit against gas company to enforce effluent limitations established by state, since state water quality standards incorporated into company's National Pollutant Discharge Elimination System (NPDES) permit were enforceable under CWA, and state standards were not more strict than federal program. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law 656

In order to pursue citizens suit under Clean Water Act (CWA), plaintiffs must demonstrate standing by showing injury in fact or invasion of legally protected interest which is concrete and particularized and actual or imminent, causal connection between injury suffered and conduct that is basis for suit, and likelihood that injury will be redressed by favorable decision. Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law 651

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Injuries allegedly suffered by members of environmental group, particularly diminished recreational activity, diminished aesthetic beauty, and pollution-contaminated seafood as result of pollution in lake and gulf were sufficient for purposes of constitutional standing to bring private civil enforcement action against plant owner under Clean Water Act for violation of National Pollutant Discharge Elimination System (NPDES) permit. Friends of the Earth, Inc. v. Chevron Chemical Co., E.D.Tex.1995, 900 F.Supp. 67. Environmental Law 652

Party has asserted "injury in fact" which is fairly traceable to Clean Water Act violation by indirect source of water pollution, as required to have standing to sue indirect source, if source's discharges exceed effluent standards, pollutants reached waterway, and those pollutants are of type which cause injury sustained by plaintiffs. Atlantic States Legal Foundation, Inc. v. Karg Bros., Inc., N.D.N.Y.1993, 841 F.Supp. 51. Environmental Law 651

Individual landowners alleged sufficient "injury in fact" to have standing to bring private Clean Water Act claim against farmer using manure fertilizer; complaint alleged aesthetic harm, consisting of intense, obnoxious odors that had caused landowners great inconvenience, discomfort and annoyance. Concerned Area Residents for The Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1410. Environmental Law 656

Plaintiffs had standing to bring citizen suit under Clean Water Act against fluoropolymer manufacturer, despite manufacturer's payment of $275,000 under its settlement with New Jersey Department of Environmental Protection and Energy; plaintiffs alleged violations for which maximum penalty available under Act would be close to $60 million and imposition of such penalties would result in further deterrence against future violations by other violators and thereby provide redress to plaintiffs. Public Interest Research Group of New Jersey, Inc. v. Elf Atochem North America, Inc., D.N.J.1993, 817 F.Supp. 1164. Environmental Law 656

Plaintiffs who claimed injury to recreational, aesthetic, and environmental interests had standing to maintain citizen's suit under Clean Water Act alleging that city violated Act by discharging raw sewage into local bodies of water. Hawaii's Thousand Friends, Life of Land, Inc. v. City and County of Honolulu, D.Hawai'i 1992, 806 F.Supp. 225. Environmental Law 656

There was strong connection between plaintiff's request for civil penalties and their claimed injuries in the nature of harm to water, giving them standing to maintain citizen suit under the Clean Water Act against refinery which was allegedly violating discharge permit. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law 656

Members of the plaintiff association, whose affidavits indicated that they had been injured by pollution in creek and that remedial measures they sought against alleged polluter would redress injury, had standing to maintain Clean Water Act citizen's suit for violations of terms of National Pollutant Discharge Elimination System permit. Natural Resources Defense Council, Inc. v. Loewengart & Co., Inc., M.D.Pa.1991, 776 F.Supp. 996. Environmental Law 652

Environmental groups had standing to bring civil action alleging violation of Federal Water Pollution Prevention and Control Act, even if particular members had not suffered injury, where members lived downstream from discharge point, would have used waters downstream more often and eaten fish more often were it not for pollution, alleged excessive pollution could cause irritation for swimmers and harm to aquatic life, alleged harms were fairly traceable, and members' injuries would be redressed by favorable decision. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 757 F.Supp. 438, reconsideration granted in part 790

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F.Supp. 511. Environmental Law ⚷ 652

Nonprofit membership corporation had standing, under Federal Constitution and citizen suit provision of Clean Water Act, to challenge corporation's violations of its National Pollutant Discharge Elimination System permit based on showing that its members used water into which allegedly illegal discharges flowed; standing was not undermined because members had not explicitly said they were harmed by permit violations, and prefiling contact and authorization from identified individual members was not necessary to confer representational standing. Natural Resources Defense Council, Inc. v. Outboard Marine Corp., N.D.Ill.1988, 692 F.Supp. 801. Environmental Law ⚷ 653

Nonprofit California corporation claiming policy of litigating issues affecting the environment had no standing to seek injunctive relief against, or imposition of fines for, violations of this chapter without demonstrating some injury to some of its members, and noble purpose alone could not serve as substitute for "injury in fact." Sierra Club v. SCM Corp., W.D.N.Y.1984, 580 F.Supp. 862, affirmed 747 F.2d 99. Environmental Law ⚷ 653

In order to have standing to maintain mandamus action against regional administrator of Agency for failure to perform duty of ascertaining that bid specifications for waste water treatment plant did not contain proprietary, exclusionary or discriminatory requirements, plaintiff must show injury in fact within a protected zone of interest. J. E. Brenneman Co. v. Schramm, E.D.Pa.1979, 473 F.Supp. 1316. Mandamus ⚷ 23(1)

Intergovernmental committee formed by Alaskan city, village, and borough to advise city and village on matters related to village's relocation did not have standing to bring action based on alleged violations of the Clean Water Act; there was no allegation that city, borough, or village suffered any injury as a result of the alleged violations or had authorized committee's action, and action was not germane to committee's purpose. Kivalina Relocation Planning Committee v. Teck Cominco Alaska, Inc., D.Alaska 2004, 227 F.R.D. 523, affirmed 141 Fed.Appx. 650, 2005 WL 1939873. Environmental Law ⚷ 654

41. ---- Persons adversely affected, persons entitled to maintain action

For purpose of associational standing inquiry in lawsuit under Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA), complaint filed by labor organization did not have to state names of members of organization who had been particularly injured in order for organization to properly allege injury in fact to its members. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law ⚷ 652

Parties claiming that state waters were adversely affected had standing under Clean Water Act (CWA) to sue Environmental Protection Agency (EPA) to compel EPA to perform its duties under the CWA, even though it was claimed that some of benefit to be derived from cleaner air was dependent in part upon state-agency action in identifying sources of pollution, and that plaintiffs might not obtain benefit because state was not party to lawsuit. Alaska Center for Environment v. Browner, C.A.9 (Wash.) 1994, 20 F.3d 981. Environmental Law ⚷ 656

Nonprofit corporation made up of city taxpayers, residents and homeowners, had standing to sue Environmental Protection Agency alleging that Agency wrongfully denied city permission to install research pilot project to demonstrate method of sewage disposal termed "deep current assimilation," in light of this section specifically authorizing citizen lawsuits, and in light of allegations of corporation's complaint that its members would be adversely affected by pollution of water and contamination of marine life attendant upon alternative method of

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sewage disposal, which involved secondary treatment of raw sewage through chemical processing. RITE--Research Improves Environment, Inc. v. Costle, C.A.5 (Fla.) 1981, 650 F.2d 1312. Environmental Law 653

Variation in wording between "interested person" standard of subsec. (g) of this section and the "persons having an interest which is or may be adversely affected" of section 1369(b) of this title is of no significance as both provisions incorporate the Sierra Club injury in fact rule for standing. Montgomery Environmental Coalition v. Costle, C.A.D.C.1980, 646 F.2d 568, 207 U.S.App.D.C. 233. Environmental Law 651

National trade association representing builders, land developers and remodelers, sufficiently alleged that it had Article III standing to bring action in a representational capacity on behalf of its members seeking declaration that general permit issued by United States Army Corps of Engineers (USACE) regulating the discharge of dredged or fill materials into non-tidal upland ditches exceeded USACE's authority under the Clean Water Act (CWA); association alleged that permit, which required pre-construction notification for all activities, burdened association's members by requiring the submission of pre-construction notifications (PCNs), even though the members may not ultimately need approval from USACE for their projects, that preparation of PCNs was cumbersome process, and that the interests at stake in this litigation were quite germane to association's ability to ensure its members' unhindered lawful use of their land, given that purpose of association was to represent its members in legal, regulatory, and legislative matters affecting the use and development of their land. National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.D.C.2008, 539 F.Supp.2d 331. Environmental Law 652

Member of non-profit environmental organization did not suffer personal and particularized injury by alleged harm he suffered by his observations of muddy, turbid water during his many drives over creek in his car, for purpose of representational standing inquiry in citizen-suit action under Clean Water Act (CWA) against two lumber companies for alleged violations of National Pollution Discharge Elimination System (NPDES) permit conditions at that watershed; such indirect contact with area was insufficient to establish standing. Environmental Protection Information Center v. Pacific Lumber Co., N.D.Cal.2007, 469 F.Supp.2d 803. Environmental Law 656

Injuries to New York and Connecticut allegedly resulting from increased pollution from upstream, out-of-state construction and development sites were fairly traceable to decision of Environmental Protection Agency (EPA) not to promulgate, under Clean Water Act (CWA), effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges of construction and development industry, supporting states' standing to challenge decision, given states' ongoing expense of refining own standards in response to changing conditions and information, legislative findings that national regulations were needed, and states' uncontroverted evidence that discharges from construction and development sites in upstream states with differing discharge standards were polluting their waterbodies. National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Environmental Law 654

Landowner seeking to halt effluent runoff from methane production activities alleged property interest that was adversely affected by producer's ongoing violations of effluent standards, as required to state claim under citizen's suit provision of Clean Water Act (CWA); landowner alleged that his interest in his ranch and its economic viability would be adversely affected by producer's past and continuous discharges of coal bed methane process water, in violation of National Pollutant Discharge Elimination System (NPDES) permit issued by state Department of Environmental Quality (DEQ). Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental

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Law ⚷ 226

Member of nonprofit organization did not suffer an injury that supported the organization's Article III standing to bring citizen suit under Clean Water Act against California Department of Boating and Waterways (DBW), although he had witnessed DBW's herbicidal spraying activities and was fishing and recreating less often and stopped eating fish from the waters out of concern for his health, where DBW stopped spraying herbicides pending approval of its application for a national pollutant discharge elimination system (NPDES) permit. San Francisco Baykeeper, Inc. v. Moore, E.D.Cal.2001, 180 F.Supp.2d 1116. Environmental Law ⚷ 652

Citizens groups clearly established representational standing to bring cause of action under Clean Water Act against operator of nuclear energy facility; injury in fact was established from alleged exposure of individual members to environmental contamination caused by illegal discharges, direct causal connection existed between failure to comply with Clean Water Act and exposure to health hazards created by discharging in violation of Act, and exposure to unpermitted discharges would very likely be effectively redressed by ordering compliance with Act. Heart of America Northwest v. Westinghouse Hanford Co., E.D.Wash.1993, 820 F.Supp. 1265. Environmental Law ⚷ 652

Owner and lessees of lakeshore property had standing to bring Clean Water Act action against nearby municipality for alleged improper discharge of effluents from waste treatment system, even though municipality claimed that claimants were entitled only to the correction of present and future problems and that previously taken corrective action had eliminated possibility of further trouble; there was evidence of violations of chlorine residual parameter in month suit was filed, and violation of flow parameter two years after suit was filed, plus evidence of frequent violations of both parameters immediately prior to filing of suit. State Line Fishing & Hunting Club, Inc. v. City of Waskom, Tex., E.D.Tex.1991, 754 F.Supp. 1104. Environmental Law ⚷ 656

Nonprofit corporation had standing to bring citizen's suit under Clean Water Act for manufacturer's alleged violation of terms and conditions of National Pollutant Discharge Elimination System (NPDES) permit; members of nonprofit corporation used waters which manufacturer allegedly polluted, alleged pollution harmed those members, and favorable decision requiring manufacturer to come into compliance with permit and/or imposing civil penalties would redress alleged injuries. Atlantic States Legal Foundation, Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1990, 735 F.Supp. 1404. Environmental Law ⚷ 653

Citizen had standing to bring citizen suit under the Federal Water Pollution Control Act at the time he commenced action against municipality for violation of discharge permit where neither the Environmental Protection Agency nor the state Department of Environmental Resources had prosecuted an action in any court concerning compliance with permit and where citizen proved that his health, recreational, aesthetic or environmental interests had been and would be directly and adversely affected by the allegedly illegal effluent discharges. Proffitt v. Municipal Authority of Borough of Morrisville, E.D.Pa.1989, 716 F.Supp. 845, affirmed 897 F.2d 523.

Citizen taxpayer did not have standing to seek termination of allegedly unnecessary sewerage treatment for discharge of sewage into river, and thus, terminate what he considered would become unnecessary sewer user fee or tax; although taxpayer filed suit against Environmental Protection Agency, sewer user fee was local tax, EPA had no power to impose tax or repeal it, although EPA may have had been mandating superfluous treatment standards, it was up to local governing bodies to seek administrative hearing. Kazmann v. U.S. E.P.A. Through Thomas, M.D.La.1987, 669 F.Supp. 144. Environmental Law ⚷ 656

Organization had standing to sue for past violations of Clean Water Act, even if some of alleged violations oc-

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curred before organization was founded, as it was quite possible that creek was harmed to such extent that members of organization were affected by violations even though they occurred earlier. Atlantic States Legal Foundation v. Al Tech Specialty Steel Corp., N.D.N.Y.1986, 635 F.Supp. 284. Environmental Law ⚿ 652

Parties who bring action against alleged polluter under citizen suit provision of the Federal Water Pollution Control Act [33 U.S.C.A. § 1365(a)(1)] are not required to show that a certain percentage of the pollution which adversely affects their interests is traceable to alleged polluter's effluent. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074.

Members of plaintiff organizations, who lived near bodies of water affected by permittee's discharges into water and who claimed injury in the form of preclusion from using bodies of water for fishing and recreation, of having to look at ugly waterways, and of having to drink bottled water because of pollution in water supplies, and general public would benefit sufficiently from remedies sought by Federal Water Pollution Control Act [Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.] so as to support organizations' standing to sue for past violations of expired national pollution discharge elimination system permits. Student Public Interest Research Group of New Jersey, Inc. v. AT & T Bell Laboratories, D.C.N.J.1985, 617 F.Supp. 1190. Environmental Law ⚿ 652

Public interest group had standing to challenge paper company's alleged discharge of pollutants into Delaware River in violation of Environmental Protection Agency Discharge permit on basis of group's allegation that its members were denied recreational opportunities, despite company's allegation that its contribution to river's pollution was too small to be discernable. Student Public Interest Research Group of New Jersey, Inc. v. Georgia-Pacific Corp., D.C.N.J.1985, 615 F.Supp. 1419. Environmental Law ⚿ 652

Public interest organizations had standing to bring suit to enjoin oil company from drilling without national pollution discharge elimination system permit, in view of fact that oil company potentially was and currently was discharging large amount of pollutants into Norton Sound illegally, which were waters used by such plaintiffs, and under this chapter, plaintiffs were not required to show that discharges would cause irreparable harm to environment or direct harm to themselves to maintain standing. Kitlutsisti v. Arco Alaska, Inc., D.C.Alaska 1984, 592 F.Supp. 832, appeal dismissed, opinion vacated on other grounds 782 F.2d 800.

Allen Park citizens who brought suit charging Allen Park with failure to proceed with element two of project involving sewage plant alleged interest sufficient to confer standing by claiming that they were residents and homeowners within city of Allen Park whose properties and persons were adversely affected by combined sewer system. State of Mich. v. City of Allen Park, E.D.Mich.1980, 501 F.Supp. 1007. Environmental Law ⚿ 656

Allegations of associations of taxpayers and property owners in Long Beach Island area that their members were "Directly affected" by ecological system of Barnegat Bay, that they enjoy the area's aesthetic benefits, that they used the area for recreational activities, and that the value of the properties they owned in the area would be adversely affected by a deterioration in the environmental quality of the bay were sufficient to confer standing under this section to challenge activities in filling the bay. Loveladies Property Owners Ass'n, Inc. v. Raab, D.C.N.J.1975, 430 F.Supp. 276, affirmed 547 F.2d 1162, certiorari denied 97 S.Ct. 2949, 432 U.S. 906, 53 L.Ed.2d 1077. Environmental Law ⚿ 652

Community groups who alleged that their members were citizens of District of Columbia and Montgomery County, Maryland, two jurisdictions which are contiguous to flow of Potomac River, had standing to maintain action for declaratory and injunctive relief ordering the defendants to refrain from authorizing further sewer

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hookup permits which would result in sewage discharge affecting the water quality of the Potomac River, as against contention that plaintiffs had no standing because they failed to allege that they or their members individually used the river for any purpose, much less that they used it in any way that would be adversely affected by defendants' actions. Montgomery Environmental Coalition v. Fri, D.C.D.C.1973, 366 F.Supp. 261. Declaratory Judgment 300

42. ---- States, persons entitled to maintain action

A State is a "citizen" under the Clean Water Act (CWA) and a "person" under Resource Conservation and Recovery Act (RCRA) and is thus entitled to sue under the citizen suit sections of those Acts. U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. Environmental Law 654

Commonwealth of Massachusetts was a "citizen" within meaning of this section and, hence, was authorized to bring suit under provisions of this section charging United States Veterans Administration with violating conditions of its National Pollution Discharge Elimination System permit. Com. of Mass. v. U. S. Veterans Administration, C.A.1 (Mass.) 1976, 541 F.2d 119. Environmental Law 226

States of New York and Connecticut demonstrated sufficient injuries to their proprietary interests to establish standing to challenge decision of Environmental Protection Agency (EPA) not to promulgate, pursuant to Clean Water Act (CWA), effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges by construction and development industry when states asserted that, in the absence of national standards, they had suffered increased pollution from upstream, out-of-state construction and development sites, that such increased pollution had forced them to take on expense of developing total maximum daily loads (TMDLs) for waterbodies polluted by out-of-state sources, and that continuing absence of national ELGs and NSPSs required them to devote their own resources to developing and refining technology-based permit requirements. National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Environmental Law 654

In order for state enforcement action to bar citizen's suit under Clean Water Act, state enforcement must seek penalties, not mere compliance; Act requires that state commence action under state law comparable with subsection providing for administrative penalties. Molokai Chamber of Commerce v. Kukui (Molokai), Inc., D.Hawai'i 1995, 891 F.Supp. 1389. Environmental Law 226

State is "citizen" capable of maintaining citizen suit under Clean Water Act. U.S. v. City of Toledo, N.D.Ohio 1994, 867 F.Supp. 595. Environmental Law 226

States are not authorized to bring citizen suits under section 505 of the Clean Water Act, Federal Water Pollution Control Act Amendments of 1972, § 505, as amended, 33 U.S.C.A. § 1365. State of California v. Department of Navy, N.D.Cal.1986, 631 F.Supp. 584, affirmed 845 F.2d 222. Environmental Law 226

This section mandates appropriate action by Administrator when violation of this chapter is reported to him, and State was not precluded from bringing civil action against Administrator to compel him to act in proper case. People of State of Ill. ex rel. Scott v. Hoffman, S.D.Ill.1977, 425 F.Supp. 71. Environmental Law 641; Mandamus 73(1)

43. ---- Territories and insular possessions, persons entitled to maintain action

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Puerto Rico which would sustain injury to its claim of sovereignty over its nonnavigable waters if it was required to comply with federal regulations promulgated under this chapter had standing to bring declaratory judgment action seeking determination as to applicability of such regulations to Puerto Rico's nonnavigable waters. Com. of Puerto Rico v. Alexander, D.C.D.C.1977, 438 F.Supp. 90. Declaratory Judgment 302.1

44. Parties

Citizen-suit provision of Clean Water Act (CWA) did not authorize suit against United States Army Corps of Engineers (USACE). Alliance To Save Mattaponi v. U.S. Army Corps of Engineers, D.D.C.2007, 515 F.Supp.2d 1. Environmental Law 226

Municipality and Oregon Department of Environmental Quality (DEQ) were not "indispensable parties" to citizen suit brought by environmental group against seafood processing facility under Clean Water Act (CWA), since district court was permitted to enforce provisions of CWA with or without presence of administrative agencies, neither municipality nor DEQ claimed any legally protectable interest in the action, court could have fashioned meaningful relief without subjecting facility to multiple or inconsistent obligations, and neither municipality nor DEQ was prejudiced by their absence in the litigation. Oregon State Public Interest Research Group, Inc. v. Pacific Coast Seafoods Co., D.Or.2004, 341 F.Supp.2d 1170. Federal Civil Procedure 219

In Clean Water Act (CWA) citizen's suit brought by landowner seeking to halt effluent runoff from methane production activities, producers of coal bed methane other than defendant gas company whom allegedly also had discharged effluents were not necessary parties to action, and thus would not be subject to joinder; absence of other producers would not preclude any of landowner's requested remedies, disposition of action would not impair or impede other producers' interests, and neither defendant gas company or state would be subject to substantial risk of incurring multiple or inconsistent obligations. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Federal Civil Procedure 211

Environmental groups that achieved favorable settlement of their claims against Environmental Protection Agency (EPA) under Clean Water Act (CWA) and Endangered Species Act (ESA) were entitled to recover attorney fees relating to formal discovery performed before EPA provided notice of its intent to produce administrative record, where litigation was limited to administrative record pursuant to protective order. American Canoe Ass'n, Inc. v. U.S. E.P.A., E.D.Va.2001, 138 F.Supp.2d 722. Environmental Law 722; Environmental Law 716

State agency, community association, and estate were not indispensable parties to citizen's suit against city alleging violations of Clean Water Act; complete relief could be accorded without these parties, as plaintiffs primarily sought to enjoin city from discharging unprocessed sewage in nearby waters, and parties had not intervened or asserted interest in action since filing of suit. Hawaii's Thousand Friends, Life of Land, Inc. v. City and County of Honolulu, D.Hawai'i 1992, 806 F.Supp. 225. Federal Civil Procedure 211; Federal Civil Procedure 219

45. Sovereign immunity

Inclusion in citizen suit sections of both Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) of United States as "person" went only to clauses subjecting government to suit, and broader waiver could not be inferred; authorization of district courts to impose punitive fines under Acts' civil penalties sections excluded United States from among "persons" who may be fined. U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992,

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112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. Environmental Law ⚿ 223

Citizen suit sections of Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA), to extent that they waived federal immunity at all, waived that immunity only from federal law penalties. U.S. Dept. of Energy v. Ohio, U.S.Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. United States ⚿ 125(9)

Army Corps of Engineers has sovereign immunity against citizens' Clean Water Act (CWA) suit. Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers, C.A.11 (Ga.) 1996, 87 F.3d 1242. United States ⚿ 125(28.1)

Environmental Protection Agency (EPA) administrator had sovereign immunity against citizens' Clean Water Act (CWA) suit concerning administrator's decision not to overrule Army Corps of Engineers' determination of wetlands permit; administrator's decision was discretionary. Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers, C.A.11 (Ga.) 1996, 87 F.3d 1242. United States ⚿ 50.10(1)

Congress has not waived United States' sovereign immunity to authorize imposition of punitive civil penalties on federal facilities for past violations of Clean Water Act, whether permit is issued by Environmental Protection Agency (EPA) or by the State and approved by EPA. Sierra Club v. Lujan, C.A.10 (Colo.) 1992, 972 F.2d 312. United States ⚿ 125(9)

Even if federal common law of nuisance extends to suits involving pollution originating and having effect in the territorial jurisdiction of the same state, action by Commonwealth of Massachusetts charging United States Veterans Administration with violating such law by discharging effluents from its Bedford, Massachusetts hospital into a tributary of the Shawsheen River, was barred by doctrine of sovereign immunity since the Administration is a federal agency and the action sought relief in form of monetary penalties or court-ordered actions from or by the Administration; waiver of immunity to common law suit could not be found in waiver provisions of subsec. (a) of this section coupled with policy provision of section 1323 of this title subjecting federal installations to this chapter's provisions. Com. of Mass. v. U. S. Veterans Administration, C.A.1 (Mass.) 1976, 541 F.2d 119. United States ⚿ 125(9); United States ⚿ 125(28.1)

Citizen suit provisions of Clean Water Act (CWA) did not abrogate state's sovereign immunity, and thus city could not maintain third-party action against state for indemnification and contribution for monetary penalties for which it was found liable in citizen suit as result of its violations of CWA. Catskill Mountains Chapter of Trout Unlimited Inc. v. City of New York, N.D.N.Y.2002, 207 F.Supp.2d 3.

Army Corps of Engineers had sovereign immunity against citizen suit under Clean Water Act (CWA) based on its alleged failure to enforce terms and conditions of permits issued by Corps to regulate discharge of dredged and fill material into navigable stream, absent showing that Environmental Protection Agency (EPA) was acting in tandem with Corps. Northwest Environmental Defense Center v. U.S. Army Corps of Engineers, D.Or.2000, 118 F.Supp.2d 1115.

Clean Water Act (CWA) section expressly permitting citizen suits against "Administrator" of Environmental Protection Agency (EPA) did not extend waiver of sovereign immunity to include Army Corps of Engineers, despite claim that Administrator had delegated duties to Secretary of Army, such that Corps stood in shoes of EPA; court was not at liberty to rewrite statute in accordance with extrinsic delegations of authority and, moreover, Administrative Procedure Act (APA) provided alternative means of obtaining judicial review of de-

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termination by Corps. Cascade Conservation League v. M.A. Segale, Inc., W.D.Wash.1996, 921 F.Supp. 692. United States 125(28.1)

As to count of environmental groups' complaint charging federal officials with violating this chapter, sovereign immunity was abolished by provision of this section that any citizen may commence civil action on his own behalf against United States or any other governmental instrumentality or agency for violating effluent standards or limitation in this chapter. South Carolina Wildlife Federation v. Alexander, D.C.S.C.1978, 457 F.Supp. 118. United States 125(9)

Action brought against Environmental Protection Agency and its Administrator under this chapter and based on federal common law of nuisance was not barred by sovereign immunity, notwithstanding want of compliance with notice requirements of this section, i.e., that notice be given Administrator 60 days before commencing action against Administrator for failure to perform a nondiscretionary duty. Long Beach Tp. v. City of New York, D.C.N.J.1978, 445 F.Supp. 1203. United States 125(28.1)

Where funds for construction of storm and sanitary sewer separation system had already been committed by government for expenditure, so that effect of injunctive relief would be only to bar expenditure in particular way, action against Environmental Protection Agency challenging its denial of bidder's protest was not barred by sovereign immunity. Maclean Const. Co. v. U.S. Environmental Protection Agency, W.D.Mich.1976, 432 F.Supp. 242. United States 125(28.1)

The intended objects of this chapter's limited waiver of immunity from state enforcement of effluent standards are federal buildings and installations operated directly by the government, such as penitentiaries, Army bases, post offices, court houses and the like; however, contractor operator of United States owned munitions plant was not a "department, agency, or instrumentality" of the federal government and enjoyed no immunity as result of its relationship with government from state's enforcement of this chapter. U. S. v. Pennsylvania Environmental Hearing Bd., M.D.Pa.1977, 431 F.Supp. 747, affirmed 584 F.2d 1273. States 18.93

It was congressional intent to waive sovereign immunity as to any action brought to enforce this chapter. State of Minn., by Spannaus v. Callaway, D.C.Minn.1975, 401 F.Supp. 524, reversed on other grounds 543 F.2d 1198, certiorari denied 97 S.Ct. 1672, 430 U.S. 977, 52 L.Ed.2d 373. United States 125(5)

46. State defendants

Citizen suit provisions of Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), permitting citizens to sue as private attorneys general in circumstances in which government authorities have, after notice, failed to take steps to remedy particular environmental harms, did not abrogate state sovereign immunity under Eleventh Amendment, but rather were expressly limited by it. Burnette v. Carothers, C.A.2 (Conn.) 1999, 192 F.3d 52, certiorari denied 121 S.Ct. 657, 531 U.S. 1052, 148 L.Ed.2d 560. Federal Courts 265

Eleventh Amendment generally prohibits federal courts from hearing suits brought by private citizens against state governments, without state's consent, and state immunity extends to state agencies and to state officers, who act on behalf of state and can therefore assert state's sovereign immunity. Natural Resources Defense Council v. California Dept. of Transp., C.A.9 (Cal.) 1996, 96 F.3d 420. Federal Courts 265; Federal Courts 269

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Clean Water Act (CWA) did not prescribe limits on citizen suits in federal court against state officers for violation of CWA, and thereby implicitly authorized federal jurisdiction over claims against director of California Department of Transportation for prospective injunctive relief for violations of CWA to extent permitted by Eleventh Amendment. Natural Resources Defense Council v. California Dept. of Transp., C.A.9 (Cal.) 1996, 96 F.3d 420. Federal Courts 272

Upon proper evidentiary showing at trial, damages could be awarded against New York State Thruway Authority (NYSTA) in citizen suit brought under Clean Water Act (CWA), despite NYSTA's claim of Eleventh Amendment immunity; legislature had directed that all awards and judgments against NYSTA were to be paid out of monies of NYSTA and, therefore, if plaintiffs prevailed, they would receive nothing from state treasury. Mancuso v. New York State Thruway Authority, S.D.N.Y.1995, 909 F.Supp. 133, affirmed 86 F.3d 289, certiorari denied 117 S.Ct. 481, 519 U.S. 992, 136 L.Ed.2d 375. Federal Courts 268.1

Citizen suit provision of Federal Water Pollution Control Act did not authorize action against state officials and methane gas producer based on officials' alleged failure to require producer to comply with effluent limitations adopted under Federal Water Pollution Control Act when issuing national pollutant discharge elimination system permit. Legal Environmental Assistance Foundation, Inc. v. Pegues, M.D.Ala.1989, 717 F.Supp. 784, affirmed 904 F.2d 640. Environmental Law 226

Pennsylvania Environmental Hearing Board was not required to vindicate its effluent standards against contractor or operator of government owned munitions plant by a civil action in a United States district court. U. S. v. Pennsylvania Environmental Hearing Bd., M.D.Pa.1977, 431 F.Supp. 747, affirmed 584 F.2d 1273. Environmental Law 214

47. Indian tribes

"Citizen suit" and accompanying provisions of Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) waived Indian tribe's sovereign immunity in citizen suit brought by environmental organizations against tribe in its capacity as operator of landfill; term "person," as used in relevant sections of Acts, unequivocally included Indian tribes. Atlantic States Legal Foundation v. Salt River Pima-Maricopa Indian Community, D.Ariz.1993, 827 F.Supp. 608. Indians 235

48. Intervention by citizens--Generally

Environmental group was equivalent to "party" able to litigate fully on merits, as intervenor in consolidated actions for federal and state enforcement of CWA, including consolidation of environmental group's citizen suit, against county and municipality for sanitary sewer overflows, where environmental group's consolidated complaint was not mere duplicate of governments' complaints, but was based on allegations that state and federal governments had failed to diligently prosecute ongoing CWA violations for 10 years, and that governments were proposing to consent to settlement inadequate to remedy violations. Sierra Club v. Hamilton County Bd. of County Com'rs, C.A.6 (Ohio) 2007, 504 F.3d 634. Environmental Law 716

Property owners waived arguments, in citizen suit under Clean Water Act (CWA) against, inter alia, village, which were raised for first time in their reply briefs on appeal. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law 682

Environmental group and its members stated sufficient allegations to classify them as "citizens" entitled to inter-

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vene in suit by Administrator of Environmental Protection Agency to attain compliance with Clean Water Act. U.S. v. Metropolitan St. Louis Sewer Dist. (MSD), C.A.8 (Mo.) 1989, 883 F.2d 54. Federal Civil Procedure 331

Under 1972 amendments to this section, Illinois had right to intervene in United States action against Illinois industrial polluter of Lake Michigan. People of State of Ill. v. Outboard Marine Corp., Inc., C.A.7 (Ill.) 1982, 680 F.2d 473. Federal Civil Procedure 338

State Stream Pollution Control Board's action to abate a nuisance as a matter of federal common law was not an action to require compliance with a "standard, limitation or order" within meaning of this section, and thus private citizen was not entitled to intervene. Stream Pollution Control Bd. of State of Ind. v. U.S. Steel Corp., C.A.7 (Ind.) 1975, 512 F.2d 1036. Federal Civil Procedure 315

Court would allow environmental association to participate as an amicus curiae in action seeking declaration that United States Army Corps of Engineers (USACE) had no authority to regulate upland ditches, since association sought to support the government's arguments in favor of the validity of its action and its interpretation of the scope of the CWA, and, thus, the court may benefit from association's input. National Ass'n of Home Builders v. U.S. Army Corps of Engineers, D.D.C.2007, 519 F.Supp.2d 89. Amicus Curiae 1

To extent State, like the United States, was seeking abatement in form of injunctive relief that was requested by both parties in suit under Clean Water Act, state could maintain its federal cause of action as citizen-intervenor, despite its failure to give prior notice to alleged violator. U.S. v. City of Toledo, N.D.Ohio 1994, 867 F.Supp. 595. Environmental Law 659

Public interest group and towns located on shore of Massachusetts Bay were not entitled to intervene in case under Federal Water Pollution Control Act, following determination of liability and issuance of long-term scheduling order, to protect their rights to unpolluted bay water, which were allegedly threatened by possible siting of sewage outfall somewhere in bay and by other decisions to be made in cleanup effort, even if some sort of violation of effluent standards should occur in future with siting of outfall; movants were aware of their concerns well before agency began to openly consider placement of sewage outfall, allowing intervention would likely reopen issues already decided in liability phase, movants were entitled to participate in political and administrative fora in which substantive decisions for new treatment system would be made and introduction of new parties would hamper important goal of bringing pollution of harbor under meaningful control as soon as possible. U.S. v. Metropolitan Dist. Com'n, D.Mass.1988, 679 F.Supp. 1154, affirmed in part , appeal dismissed in part 865 F.2d 2.

The absence of an opportunity for intervention in state proceedings, by itself, does not automatically entitle a plaintiff to avoid this section's mandatory preference for administrative, rather than a private citizen enforcement action. Hudson River Sloop Clearwater, Inc. v. Consolidated Rail Corp., N.D.N.Y.1984, 591 F.Supp. 345, affirmed in part , reversed in part 768 F.2d 57. Environmental Law 226

State is "citizen" for purposes of 1972 amendments to this section dealing with the right to intervene in an action under the amendments. National Wildlife Federation v. Ruckelshaus, D.C.N.J.1983, 99 F.R.D. 558. Federal Civil Procedure 338

This section, authorizing intervention of right of a "citizen" having an interest which is or may be adversely affected, does not contemplate limited intervention. U. S. v. Ketchikan Pulp Co., D.C.Alaska 1977, 74 F.R.D. 104.

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Federal Civil Procedure ⚷ 315

49. ---- Exhaustion of administrative remedies, intervention by citizens

This section, which confers upon a "citizen" the right to intervene in any enforcement action in which he has an interest, does not make exhaustion of administrative remedies a prerequisite to such intervention, and thus intervention two months after filing of complaint by the United States and filing of proposed consent decree which had been negotiated with pulp company was timely, though intervenors had not participated in administrative and public hearings and though company's duties under the proposed decree were about to begin, where intervenors had rapidly made comments on the proposed decree and attempted to intervene after receiving necessary information. U. S. v. Ketchikan Pulp Co., D.C.Alaska 1977, 74 F.R.D. 104. Federal Civil Procedure ⚷ 320

50. ---- Interests affected, intervention by citizens

Owners of property subject to condemnation for two reservoir projects, conservation groups whose members used property that would be affected by the projects, and contractor's association whose members would be directly affected by injunction against further work on the projects, all had interest sufficient to confer standing upon them to intervene in action brought by state to enforce this chapter. State of Ohio ex rel. Brown v. Callaway, C.A.6 (Ohio) 1974, 497 F.2d 1235. Environmental Law ⚷ 656; Environmental Law ⚷ 652

Landowner seeking to halt effluent runoff from methane production activities alleged property interest that was adversely affected by producer's ongoing violations of effluent standards, as required to state claim under citizen's suit provision of Clean Water Act (CWA); landowner alleged that his interest in his ranch and its economic viability would be adversely affected by producer's past and continuous discharges of coal bed methane process water, in violation of National Pollutant Discharge Elimination System (NPDES) permit issued by state Department of Environmental Quality (DEQ). Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law ⚷ 226

Criticisms of proposed consent decree in action brought to compel Administrator of Environmental Protection Agency (EPA) to issue regulations regarding cooling water intake structures did not demonstrate that decree would impair any legally protected interests of electric utilities and associations so as to warrant their intervention; utilities and associations offered no evidence that their views would not be taken into account in administrative process set forth in proposed decree, that their interests would be prejudiced as result of timetable and provisions for its modification contained in decree, or that EPA was under any obligation imposed by proposed decree to issue substantive regulations, or any regulations at all. Cronin v. Browner, S.D.N.Y.1995, 898 F.Supp. 1052. Federal Civil Procedure ⚷ 331; Federal Civil Procedure ⚷ 2397.3

Right to intervene was granted to petitioners by this section, adversely affected interest of proposed intervenors being specific and not generalized concern with chemical dump site issue, but applicants did not have right to intervene under "citizen suit" provision of Resource Conservation and Recovery Act, section 6972 of Title 42, which was more limited. Federal Water Pollution Control Act Amendments of 1972, §§ 505, 505(b)(1), (b)(1)(B), (g), 33 U.S.C.A. §§ 1365, 1365(b)(1), (b)(1)(B), (g). U. S. v. Hooker Chemicals and Plastics Corp., W.D.N.Y.1982, 540 F.Supp. 1067, affirmed 749 F.2d 968. Federal Civil Procedure ⚷ 331

In action under this section, organization alleging that it had members who derived a portion of their livelihood from commercial fisheries which might be impacted by effluent discharge, and organization which alleged that the waters which might be impacted were used by its members for recreation, had standing to intervene, but al-

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legation of only a generalized interest by third organization was insufficient. U. S. v. Ketchikan Pulp Co., D.C.Alaska 1977, 74 F.R.D. 104. Federal Civil Procedure 331

Allegation that members of environmental organization had significant, judicially protectable interests in the aesthetic, conservational and recreational as well as economic quality of the water sought to be protected by federal regulations did not rise to level of a direct, substantial, legally protectable interest warranting intervention as of right in action brought by power utility companies challenging the regulations. Commonwealth Edison Co. v. Train, N.D.Ill.1976, 71 F.R.D. 391. Federal Civil Procedure 331

51. Remedies available

Compensatory mitigation was an acceptable form of mitigation to offset the environmental degradation of streams and creeks under federal regulations implementing the Clean Water Act and Army Corps of Engineers guidelines. City of Olmsted Falls, Ohio v. U.S. Environmental Protection Agency, C.A.6 (Ohio) 2006, 435 F.3d 632, rehearing and rehearing en banc denied. Environmental Law 191

Trial court did not abuse discretion by ordering Environmental Protection Agency (EPA) to perform its obligations under Clean Water Act (CWA) by ordering EPA to submit to court report on adequacy of water quality monitoring in Alaska, and to propose long-term schedule for establishment of total maximum daily loads (TMDL) of pollution allowed to be discharged into waters, even though EPA claimed that language of CWA did not specifically require it to prepare or present report on water quality monitoring, and that statute relegated pace at which TMDL would be established entirely to EPA's discretion. Alaska Center for Environment v. Browner, C.A.9 (Wash.) 1994, 20 F.3d 981. Environmental Law 695

Limited remedies set forth in citizen-suit provision of Clean Water Act (CWA) did not bar environmental organizations' claim against Environmental Protection Agency (EPA) under Administrative Procedure Act (APA) for EPA's failure to veto permit issued by United States Army Corps of Engineers (USACE) to city for construction of 1,526-acre reservoir. Alliance To Save Mattaponi v. U.S. Army Corps of Engineers, D.D.C.2007, 515 F.Supp.2d 1. Environmental Law 226

If person prevails in citizen's suit under Clean Water Act (CWA), court may order any relief it considers necessary to secure prompt compliance with CWA. Swartz v. Beach, D.Wyo.2002, 229 F.Supp.2d 1239. Environmental Law 695

Citizen suit under Clean Water Act could not be brought to challenge alleged failure of Environmental Protection Agency (EPA) Administrator to comply with statutory mandate to "promptly" prepare and publish water quality standard regulations, as statutory requirement was not categorical mandate depriving EPA of all discretion over timing for preparing and publishing regulations; to resolve case, court would have to define limits of EPA's discretion by looking to legislative language, history and statutory scheme as whole. Defenders of Wildlife v. Browner, D.Ariz.1995, 888 F.Supp. 1005. Environmental Law 641

Plaintiffs are not entitled to "personalized" remedy in Clean Water Act (CWA) citizen suits. Saboe v. State of Or., D.Or.1993, 819 F.Supp. 914. Environmental Law 695

52. Injunction--Generally

Construction of mining disposal facility would adversely affect the environment by destroying trees and other

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vegetation, and by killing aquatic life, warranting injunction pending conservation groups' appeal of trial court's grant of summary judgment for United States Army Corps of Engineers, Corps officials, and the United States Forest Service in Clean Water Act (CWA) action challenging the Corps' issuance of permit authorizing mining company's construction of facility. Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, C.A.9 2006, 472 F.3d 1097. Environmental Law ⚷ 700

District court did not abuse its discretion by modifying injunction, which prohibited oil company from discharging produced water from waste treatment facility into bay until it obtained National Pollution Discharge Elimination System (NPDES) permit, in order to allow oil company to attempt to take advantage of grace period under new general NPDES permit issued by Environmental Protection Agency (EPA); modified injunction required oil company to comply with EPA's permit and would still subject oil company to penalties for any violation of injunction or permit, and EPA was more appropriate supervising body than district court. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Environmental Law ⚷ 700

Irreparable harm necessary to enjoin further violations of National Pollutant Discharge Elimination System Permit could not be presumed from fact that Clean Water Act had been violated by refinery operator in past; rather, traditional equitable standards were required to be applied in determining whether injunction was appropriate for remedying operator's violations. Natural Resources Defense Council v. Texaco Refining and Marketing, Inc., C.A.3 (Del.) 1990, 906 F.2d 934, on remand 800 F.Supp. 1. Environmental Law ⚷ 700; Environmental Law ⚷ 229

Law does not require Clean Water Act defendant to show there is no conceivable chance that future violation will occur in order to escape imposition of an injunction; defendant only is required to show there is no reasonable expectation that wrong will be repeated. Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc., C.A.11 (Ala.) 1990, 897 F.2d 1128. Environmental Law ⚷ 700

In the absence of a current violation of the Clean Water Act, an action under the citizens suit provision of the Act may go forward if the citizen-plaintiff fairly alleges a continuing likelihood that the defendant, if not enjoined, will again proceed to violate the Act; declining to follow *Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd.*, 791 F.2d 304 (4th Cir.). Pawtuxet Cove Marina, Inc. v. Ciba-Geigy Corp., C.A.1 (R.I.) 1986, 807 F.2d 1089, certiorari denied 108 S.Ct. 484, 484 U.S. 975, 98 L.Ed.2d 483. Environmental Law ⚷ 226

Submission of plaintiff's Clean Water Act claim to jury, without objection by city, did not preclude district court from considering plaintiff's request for injunctive relief in view of the fact that jury was only asked to decide legal issue of whether city violated Act while power to grant or deny equitable relief in the form of injunction resided in district court. Jones v. City of St. Clair, C.A.8 (Mo.) 1986, 804 F.2d 478. Environmental Law ⚷ 700

District of Columbia failed to establish that Maryland advanced wastewater treatment plant which discharged effluent into creek which ran through the District was a nuisance so as to entitle District to an injunction. District of Columbia v. Schramm, C.A.D.C.1980, 631 F.2d 854, 203 U.S.App.D.C. 272. Nuisance ⚷ 84

Immediate and permanent injunction against use of non-North American strains of Atlantic salmon in salmon farms was necessary in public interest, pursuant to Clean Water Act (CWA), to protect endangered wild Atlantic salmon populations in Maine; injunction would remove principal hazard posed by farms' operations to health of wild populations and would significantly promote health of species. U.S. Public Interest Research Group v. At-

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lantic Salmon of Maine, LLC., D.Me.2003, 257 F.Supp.2d 407, stay denied 273 F.Supp.2d 126, affirmed 339 F.3d 23. Environmental Law ⚿ 700

Injunctive relief against future violations of discharge permit was not warranted, notwithstanding past violations, in view of permittee's compliance with administrative consent order entered into with New Jersey Department of Environmental Protection and Energy (NJDEPE), in absence of environmental injury which was permanent or of long duration and in view of permittee's sincere and founded claims of penitence. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., D.N.J.1993, 830 F.Supp. 1525, affirmed in part , reversed in part 50 F.3d 1239, on remand 1996 WL 905920. Environmental Law ⚿ 700

Harm to waters in which plaintiffs had cognizable interest could be redressed by injunction barring further violations of discharge permit, so that plaintiffs had standing to maintain citizen suit under the Clean Water Act. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚿ 656

District court would not determine whether injunction could properly issue to prohibit National Pollutant Discharge Elimination System (NPDES) permittee from future violations of terms and conditions of permit, where permit had expired on its own terms before conclusion of litigation regarding violations. Atlantic States Legal Foundation Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1992, 786 F.Supp. 743. Environmental Law ⚿ 700

Environmental groups challenging in citizen's suit under Clean Water Act pollutant discharges at Air Force base in excess of effluent limitations in permits were entitled to permanent injunction requiring that new waste water treatment plant be constructed on schedule, that interim backwash filters be installed to reduce amount of toxic pollutants presently being discharged, that necessary maintenance and repairs be undertaken, and that relevant reports be provided; excessive discharges caused and would continue to cause irreparable harm, issuance of injunction would not cause Air Force undue harm, it was in public interest to reduce pollution, and it was established that excess discharges violated Clean Water Act. Public Interest Research Group of New Jersey, Inc. v. Rice, D.N.J.1991, 774 F.Supp. 317. Environmental Law ⚿ 700

Immediate injunctive relief would not be granted in citizen suit under Clean Water Act challenging city's dumping of leachate in bay, as part of cleanup efforts at landfill, because immediate injunction would be unworkable; permanent injunction would be entered permitting state and municipal defendants reasonable time to develop alternative plan for landfill cleanup. New York Coastal Fishermen's Ass'n v. New York City Dept. of Sanitation, S.D.N.Y.1991, 772 F.Supp. 162. Environmental Law ⚿ 700

Injunctive relief was appropriate to prevent surface water discharge permit holder from allowing future effluent violations in action under Federal Water Pollution Prevention and Control Act where environmental groups had shown actual success on merits, effluent violations where irreparable injuries, risk of future violations was present where permit holder had exceeded discharge parameters at least once since litigation was commenced, and where permit holder had long history of violations prior to commencement of action. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 757 F.Supp. 438, reconsideration granted in part 790 F.Supp. 511. Environmental Law ⚿ 701

Injunction would be issued against violation of Clean Water Act discharge and reporting requirements by indirect discharger found to have committed such violations. International Union, United Auto. Aerospace and Agr. Implement Workers of America, AFL-CIO v. Amerace Corp., Inc., D.N.J.1990, 740 F.Supp. 1072. Environ-

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mental Law 700

Persons and entities challenging discharge of raw sewage into river caused by failure of private septic system were entitled to preliminary injunction against owners and operators of system requiring removal of sewage from holding tanks; there was sufficient probability of success on merits of claims that owners and operators were in violation of federal and state Clean Water Acts, Rhode Island common law of nuisance and administrative order, irreparable harm would result if pollution was allowed to resume flowing until permanent solution was found and constructed, and owners and operators knew of violations before they bought property containing septic system, made minimal efforts to correct the situation, and executed paper land transactions reducing equity in land by over $2,000,000 without correcting septic system. Friends of Sakonnet v. Dutra, D.R.I.1990, 738 F.Supp. 623. Environmental Law 701

Limited partnerships which were precluded from developing housing on their property due to past failure of owner of water pollution control plant to comply with construction schedule in National Pollution Discharge Elimination System permit were not entitled to injunction requiring owner to comply with the schedule contained in the permit, where owner was in compliance with the schedule and there was no evidence that violation was reasonably expected to recur. Locust Lane v. Swatara Tp. Authority, M.D.Pa.1986, 636 F.Supp. 534. Environmental Law 700

Public interest group which brought citizen suit against paper company under § 505 of Clean Water Act [33 U.S.C.A. § 1365] based on company's alleged violation of Environmental Protection Agency water pollution discharge permit could seek injunction permitting group to establish and operate one year discharge monitoring program to be financed by paper company. Student Public Interest Research Group of New Jersey, Inc. v. Georgia-Pacific Corp., D.C.N.J.1985, 615 F.Supp. 1419. Environmental Law 700

Under this section, owner of land traversed by pond and stream allegedly polluted by defendant could sue for only prospective injunctive relief upon giving 60 days' notice to federal Environmental Protection Agency, the state, and any alleged violator and owner could not recover monetary relief under this section or under federal common law. Love v. New York State Dept. of Environmental Conservation, S.D.N.Y.1981, 529 F.Supp. 832. Environmental Law 700

52a. ---- Balance of hardships, injunction

Balance of hardships favored injunction pending conservation groups' appeal of trial court's grant of summary judgment for United States Army Corps of Engineers, Corps officials, and the United States Forest Service in Clean Water Act (CWA) action challenging the Corps' issuance of permit authorizing mining company's construction of disposal facility; disposal of tailings would not begin for some months, and thus construction activities would not have to begin immediately. Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, C.A.9 2006, 472 F.3d 1097. Environmental Law 700

52b. ---- Public interest, injunction

Public interest favored injunction pending conservation groups' appeal of trial court's grant of summary judgment for United States Army Corps of Engineers, Corps officials, and the United States Forest Service in Clean Water Act (CWA) action challenging the Corps' issuance of permit authorizing mining company's construction of disposal facility; although the public had an economic interest in the mine, delay in construction activities caused by the injunction would not reduce significantly any future economic benefit that may result from the

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mine's operation. Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, C.A.9 2006, 472 F.3d 1097. Environmental Law ⚷ 700

52c. ---- Likelihood of success, injunction

Plaintiffs seeking a preliminary injunction after Army Corps of Engineers issued fill permit for road across wetlands failed to show likelihood of success on merits of claims under Clean Water Act (CWA) in balancing of benefits and detriments, consideration of alternatives and secondary impacts, analysis of public interest, and effects of proposed discharge. Northwest Bypass Group v. U.S. Army Corps of Engineers, D.N.H.2007, 470 F.Supp.2d 30, reconsideration denied 2007 WL 1447687, reconsideration denied 490 F.Supp.2d 184. Environmental Law ⚷ 701

53. Civil penalty

Individualized proof was not required on claims brought by labor organization alleging violation of Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA), for purpose of associational standing inquiry, since organization only sought civil penalties and injunctive relief, not money damages. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law ⚷ 652

Where administrative penalty action against village for releasing untreated sewage was commenced by Louisiana Department of Environmental Quality (DEQ) prior to property owners' filing of notice of intent to sue, under Clean Water Act (CWA), and DEQ's action encompassed all violations included in notice, exception to CWA provision, barring citizen suits in situations in which state was diligently prosecuting actions under comparable state law, did not apply to allow owners' action. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law ⚷ 226

Alabama statutory scheme under which state environmental agency had issued enforcement order against city's wastewater treatment plant was not "comparable" to federal Clean Water Act (CWA), and thus CWA citizen suit was not barred; although penalty-assessment provisions of state and federal schemes were similar, state law did not contain comparable public-participation provisions. McAbee v. City of Fort Payne, C.A.11 (Ala.) 2003, 318 F.3d 1248, rehearing and rehearing en banc denied 65 Fed.Appx. 716, 2003 WL 1877216. Environmental Law ⚷ 226

Fact that proposed consent decree in citizen suit brought under Clean Water Act (CWA) contained no admission of liability by the defendant did not alter requirement that consent decree call for civil penalty based on prior court determination of liability. Friends of the Earth v. Archer Daniels Midland Co., N.D.N.Y.1992, 780 F.Supp. 95. Federal Civil Procedure ⚷ 2397.2

Penalties for Clean Water Act violations would be linked to citizen plaintiff's proof that polluter had committed postcomplaint violations or that, at time of trial, there was reasonable likelihood that sporadic or intermittent pollution would occur in future. Natural Resources Defense Council, Inc. v. Gould, Inc., D.Mass.1990, 733 F.Supp. 8. Environmental Law ⚷ 223

Penalties could be imposed in citizen suit only for violations committed after filing of complaint under Clean Water Act. Natural Resource Defense Council, Inc. v. Gould, Inc., D.Mass.1989, 725 F.Supp. 634, modified 733 F.Supp. 8. Environmental Law ⚷ 223

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54. Clean up order

Clean up order would not properly issue against National Pollutant Discharge Elimination System (NPDES) permittee where responsibility for cleaning affected area was within jurisdiction of county drainage board, which had already scheduled clean-up project. Atlantic States Legal Foundation Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1992, 786 F.Supp. 743. Environmental Law 212

55. Enforcement of state regulations

Citizen suit under Clean Water Act (CWA) may not be brought to enforce state regulations, including provisions of state pollutant discharge elimination system (SPDES) permits, which mandate greater scope of coverage than that required by CWA and its implementing regulations. Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., C.A.2 (N.Y.) 1993, 12 F.3d 353, as amended , certiorari denied 115 S.Ct. 62, 513 U.S. 811, 130 L.Ed.2d 19. Environmental Law 226

56. Attorney fees--Generally

Enhancement for contingency of attorney fees awarded to prevailing party is not permitted under fee-shifting provisions of Solid Waste Disposal Act and Clean Water Act. City of Burlington v. Dague, U.S.Vt.1992, 112 S.Ct. 2638, 505 U.S. 557, 120 L.Ed.2d 449, on remand 976 F.2d 801. Environmental Law 716

Even if Environmental Protection Agency (EPA) found and was required to act upon finding that mine operator was violating Clean Water Act (CWA), pursuant to CWA provision indicating that administrator "shall issue" order requiring violator to comply with CWA or bring civil action, course which was actually taken by EPA, and which rendered moot lawsuit to compel it to act, that of issuing permit to operator, was not mandated by statute and thus did not support, under catalyst theory, recovery of attorney fees by environmental groups which had sued to compel EPA to act. Bravos v. E.P.A., C.A.10 (N.M.) 2003, 324 F.3d 1166, 190 A.L.R. Fed. 643. Environmental Law 716

District court could apply forum-wide market rate covering all of New Jersey in determining "relevant market" for legal services rates, in awarding attorney fees under the Clean Water Act in suit against Air Force, rather than using "southern New Jersey"; evidence in record showed that few southern New Jersey law firms were available that were willing to represent public interest group bringing suit, and record lacked evidence from which geographic boundaries of southern New Jersey market for legal services could be inferred. Public Interest Research Group of New Jersey, Inc. v. Windall, C.A.3 (N.J.) 1995, 51 F.3d 1179, on remand 1995 WL 836144. Environmental Law 716

Environmental groups' suit challenging Army Corp of Engineers' determination that tract of land was not wetlands under Clean Water Act qualified as a citizen's suit for purposes of determining environmental group's entitlement to attorneys' fees. National Wildlife Federation v. Hanson, C.A.4 (N.C.) 1988, 859 F.2d 313, rehearing denied. Environmental Law 715

Fact that district court reviewed Army Corps of Engineers' wetland determination using standards set forth in Administrative Procedure Act did not preclude environmental groups from recovering attorneys' fees under Clean Water Act; Clean Water Act did not establish standards for reviewing wetland determinations, and appropriate standards for reviewing action were contained in Administrative Procedure Act. National Wildlife Federation v. Hanson, C.A.4 (N.C.) 1988, 859 F.2d 313, rehearing denied. Environmental Law 715

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There was no basis for including a contingency factor in award of attorney fees to plaintiffs following settlement of suit under the Federal Water Pollution Control Act, where there was no trial, recovery was minimal, and risks to plaintiffs' counsel appeared slight. Friends of the Earth v. Eastman Kodak Co., C.A.2 (N.Y.) 1987, 834 F.2d 295. Federal Civil Procedure 2737.13

The Clean Water Act left the awarding of costs and attorneys fees solely to the discretion of the court so that submission to jury of basic question of whether city violated Clean Water Act could not shift to jury responsibility for deciding issue of costs of litigation. Jones v. City of St. Clair, C.A.8 (Mo.) 1986, 804 F.2d 478. Environmental Law 716

Environmental group could not recover from industry intervenors its attorney fees in successfully defending settlement agreement with Environmental Protection Agency, pursuant to which agency agreed to implement toxic pollutant control provisions of Clean Water Act, where intervenors' claims that settlement was inconsistent with recent amendments to Act were plainly not unfounded and were reasonably calculated to advance implementation of Act. Natural Resources Defense Council, Inc. v. Thomas, C.A.D.C.1986, 801 F.2d 457, 255 U.S.App.D.C. 243. Environmental Law 716

No fees could be awarded against government for expenses that citizens group incurred in appeal of district court's order issuing preliminary injunction halting all land clearing on portion of tract not already designated as wetland and requiring federal defendants to prepare final wetland determination within 60 days, and determining which land clearing activities required permit under 33 U.S.C.A. § 1344 where citizens groups prevailed in appeal only over private defendants, not government. Avoyelles Sportsmen's League v. Marsh, C.A.5 (La.) 1986, 786 F.2d 631.

Petition for review of permit decision of Environmental Protection Agency would be deemed a "citizen suit" "brought pursuant to" this section governing citizen suits for purposes of attorney fees even though, procedurally, it was maintained under section 1369 of this title governing petitions for review. Roosevelt Campobello Intern. Park Com'n v. U.S. E.P.A., C.A.1 1983, 711 F.2d 431. Environmental Law 716

Section 2412 of Title 28 which provides for mandatory award of counsel fees to qualified prevailing party in actions brought against the United States, unless its position was substantially justified, applies to petition for counsel fees incurred in review proceeding brought pursuant to this chapter, which provides for award of counsel fees for civil actions brought in the district court but is silent with respect to counsel fees for petitions for review filed in the court of appeals. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.3 1983, 703 F.2d 700. United States 147(16)

In action brought by United States against oil tanker owners to recover costs of cleaning up oil spill, no error occurred in denying attorney fees to United States, where fact of applicability of section 2412 of Title 28 generally barring attorney fee awards meant that absent specific and express authorization by statute, United States could not recover its fees, and neither this chapter nor Rivers and Harbors Act, section 401 et seq. of this title provided such authorization, and Court of Appeals was not cited to any other statute which could govern instant suit, and United States' contention that local 32 L.P.R.A.App. II, Rule 44.4 permitting attorney fees for obstinacy applied was unequivocally refuted by case law. U. S. v. M/V Zoe Colocotroni, C.A.1 (Puerto Rico) 1979, 602 F.2d 12. Federal Civil Procedure 2737.6

A plaintiff's subjective bad faith is not the determinative factor in determining whether to award fees to a prevailing defendant in suit brought under the Clean Water Act (CWA), but if bad faith is present, there might be a

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stronger basis to support an award of fees. Sierra Club v. Cripple Creek and Victor Gold Mining Co., D.Colo.2006, 509 F.Supp.2d 943. Environmental Law ⚷ 716

Provision of Clean Water Act (CWA) authorizing award of attorney fees to prevailing party in action brought pursuant to citizen suit section of CWA did not authorize fees award in favor of environmental groups who sent 60-day notice of intent to sue and intervened in government's civil enforcement action but who never brought separate citizen suit. U.S. v. Maine Dept. of Transp., D.Me.1997, 980 F.Supp. 546. Environmental Law ⚷ 716

Reasonable market rate for attorneys in Northern District of Indiana, rather than reasonable rate for New York area, applied in awarding attorney fees to prevailing plaintiff represented by New York counsel in action under Clean Water Act brought in Indiana, absent showing that competent Indiana counsel was unavailable; plaintiff made only limited efforts to find counsel in Indiana, and issues presented were not unduly complex. Atlantic States Legal Foundation, Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1992, 798 F.Supp. 522. Environmental Law ⚷ 716

Private citizen who obtained ruling against Army Corps of Engineers, which created defense to enforcement action against port by disclosing jurisdiction, were not entitled to recover attorney fees from Corps under Clean Water Act; private citizens did not sue Corps under enforcement section of Act nor could they do so since that statute allows suits against entities for violation of effluent standard or limitation. Golden Gate Audubon Soc., Inc. v. U.S. Army Corps of Engineers, N.D.Cal.1988, 738 F.Supp. 339. Environmental Law ⚷ 716

Prevailing defendants are entitled to award of attorney fees and costs under Clean Water Act only when they are able to demonstrate that plaintiff's claim was frivolous, meritless, or vexatious. National Wildlife Federation v. Consumers Power Co., W.D.Mich.1989, 729 F.Supp. 62. Federal Civil Procedure ⚷ 2737.3

Affidavits in which local counsel stated that they were not aware of any local law firms who would have been willing to handle the case was insufficient to support application of rate other than the forum rate in awarding attorney fees in action under the Federal Water Pollution Control Act. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law ⚷ 716

Environmental organization and legal foundation which settled action brought under citizens suit provision of Clean Water Act against company which operated wastewater purification plan, alleging over 380 violations of company's state pollutant discharge elimination system permit, enjoyed some success so as to be entitled to award of attorney fees, even though environmental organization and legal foundation were not prevailing parties; company's exceedances of its water permit dropped following service of notice of intent to bring lawsuit and, pursuant to settlement, company made significant contribution to a conservation foundation. Friends of the Earth v. Eastman Kodak Co., W.D.N.Y.1987, 656 F.Supp. 513, affirmed 834 F.2d 295. Environmental Law ⚷ 716

Court was without authority to order award of attorney fees under this section, in that review of what intervenors described as their successes, i.e., the "modifications" they brought about in settlement agreement, revealed that no successes were in fact achieved. U.S. v. Hooker Chemicals & Plastics Corp., W.D.N.Y.1984, 591 F.Supp. 966. Environmental Law ⚷ 716

57. ---- Prevailing party, attorney fees

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Environmental group was "prevailing party or substantially prevailing party," as required for award of attorney fees as intervenor in consolidated actions for federal and state enforcement of CWA for sanitary sewer overflows, although group was not signatory to final consent decree with county and municipality; environmental group advocated forcefully and persistently for additions and changes resulting in final comprehensive consent decree which would not have come to fruition without group's efforts, was instrumental in appointment of ombudsman to resolve future complaints, and was given authority to inform district court of unenforced violations of decree, and group's unsuccessful objections to final decree were only small part of its efforts in litigation. Sierra Club v. Hamilton County Bd. of County Com'rs, C.A.6 (Ohio) 2007, 504 F.3d 634. Environmental Law 716

Despite being granted partial summary judgment on its claim that city had violated its National Pollutant Discharge Elimination System (NPDES) permit by allowing sanitary sewer overflows to occur unabated, public interest organization did not achieve actual relief on the merits against city, and thus was not "prevailing party" entitled to attorney fees award under Clean Water Act (CWA), when district court merely declared that city had violated its permit and declined to grant other requested relief, including injunction barring city from future permit violations, such that organization could point to no effect that declaration had on city's behavior toward organization, and, having no relief to enforce, did not receive enforceable judgment. Sierra Club v. City of Little Rock, C.A.8 (Ark.) 2003, 351 F.3d 840. Environmental Law 716

Public interest group was not entitled to attorney fees under Clean Water Act section authorizing court, upon "issuing any final order," to award attorney fees "to any prevailing or substantially prevailing party," even though group prevailed on appeal on its claim that it could bring suit for penalties against violator of Act as to whom Environmental Protection Agency (EPA) had already instituted administrative compliance action in same matter; group had not prevailed on what lawsuit originally sought to accomplish, but had only established that district court had jurisdiction to decide suit. Washington Public Interest Research Group (Wash PIRG) v. Pendleton Woolen Mills, C.A.9 (Wash.) 1993, 11 F.3d 883. Environmental Law 716

Environmental groups which obtained some relief requested in Clean Water Act suit pursuant to settlement agreement requiring Idaho to adopt specified water quality standards were not entitled to attorney fee award against Environmental Protection Agency (EPA), even though EPA was named defendant in suit, where district court issued no ruling, interim or final, against EPA, EPA did not participate in settlement negotiations, suit did not serve as catalyst for any actions by EPA, and EPA had consistently argued that state should establish its own water quality standards. Idaho Conservation League, Inc., v. Russell, C.A.9 (Idaho) 1991, 946 F.2d 717. Environmental Law 716

Plaintiff in citizen suit under Clean Water Act may be entitled to award of costs and attorney fees even though settlement agreement is reached between alleged violator and appropriate state authorities after commencement of citizen suit; absent contrary evidence, it may be inferred that existence of citizen suit was motive for alleged violator's settlement and that citizen suit plaintiff is therefore prevailing party. Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co., C.A.2 (N.Y.) 1991, 933 F.2d 124. Environmental Law 716

Environmental groups which successfully demonstrated that Army Corps of Engineers did not undertake necessary investigation to determine whether tract of land was wetlands and that environmental protection agency did not take appropriate corrective action with respect to Corps' determination, were "prevailing parties" and thus were entitled to attorneys' fees under Clean Water Act, whether tract of land was ultimately determined to be wetlands; environmental groups' suit served key purpose of citizen suit provision of Clean Water Act by ensur-

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ing that agencies fulfilled their duties under Act responsibly. National Wildlife Federation v. Hanson, C.A.4 (N.C.) 1988, 859 F.2d 313, rehearing denied. Environmental Law 715

Riparian landowners were entitled to recover costs and reasonable attorney fees under Clean Water Act [Federal Water Pollution Control Act Amendments of 1972, § 505(d), as amended, 33 U.S.C.A. § 1365(d)] after they substantially prevailed on their claims under the Act. Stoddard v. Western Carolina Regional Sewer Auth., C.A.4 (S.C.) 1986, 784 F.2d 1200. Federal Civil Procedure 2727; Environmental Law 716

Consent decree between the United States and owner and operator of kosher meat processing plant was a judicially sanctioned change in the parties' relationship that conferred prevailing party status on local environmental group in government and group's consolidated actions against owner, alleging that owner repeatedly violated environmental laws by exceeding pretreatment effluent limitations and final effluent limitations in agreement with city pursuant to which it discharged wastewater into Publicly Owned Treatment Works (POTW), for purposes of Clean Water Act (CWA) section providing for an award of attorney fees to prevailing party in an action against an alleged polluter, although group was not a formal party to the consent decree, where consent decree materially altered legal relationship between group and owner, because it wholly foreclosed group from seeking relief against owner under the CWA, and it directly benefited group, insofar as it provided group the relief it had sought, namely, a substantial civil penalty and a cessation of pollution by means of an enforceable judgment. Northeast Iowa Citizens For Clean Water v. Agriprocessors, Inc., N.D.Iowa 2007, 489 F.Supp.2d 881. Environmental Law 716

Prevailing plaintiffs in action against salmon farm operators under Clean Water Act (CWA) were not entitled to recover compensation for attorney fees and costs incurred in connection with administrative proceedings before state and federal environmental agencies, even if state permits were issue in litigation, and agencies had not yet fulfilled their statutory duties to promulgate standards for aquaculture. U.S. Public Interest Research Group v. Stolt Sea Farming, Inc., D.Me.2004, 301 F.Supp.2d 46. Environmental Law 716

Sport fishing associations that prevailed in liability phase of Clean Water Act (CWA) proceeding against city were prevailing parties entitled to recovery of attorney fees and costs associated with litigation. Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York, N.D.N.Y.2003, 244 F.Supp.2d 41, affirmed in part and remanded 451 F.3d 77, certiorari denied 127 S.Ct. 1373, 167 L.Ed.2d 160. Environmental Law 716

Clean Water Act (CWA) plaintiff, who was "prevailing party" as to motion on which plaintiff had received final determination, would be allowed to recover as "prevailing party" for legal and expert witness fees incurred in opposing prior motion, which was withdrawn by defendant at eleventh hour, but which nevertheless presented substantially same issues decided in motion on which final determination was received; plaintiff had achieved some vindication of its rights which had received recognition by court, and had established that litigation efforts expended in withdrawn motion were necessary and important factor in obtaining subsequent results. Atlantic States Legal Foundation, Inc. v. Onondaga Dept. of Drainage and Sanitation, N.D.N.Y.1995, 899 F.Supp. 84. Environmental Law 716; Federal Civil Procedure 2741

Environmental organization and two individuals who brought Clean Water Act citizen suit against power company based upon its operation of nuclear power plant were prevailing parties for purposes of award of attorney's fees, where settlement they obtained obligated power company to commit funds which benefited public and which might have benefited environmental organization. Earth Island Institute, Inc. v. Southern California Edison Co., S.D.Cal.1993, 838 F.Supp. 458. Federal Civil Procedure 2737.13

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Award of attorney fees under the Clean Water Act in favor of the prevailing party is not mandatory; benchmark of an award under fee shifting statute is that the fees assessed against the nonprevailing party be reasonable. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 721 F.Supp. 604, on reconsideration 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law ⚷ 716

Argument that court should extend the law of another circuit to the facts of the instant case was not frivolous, groundless, baseless or pursued in bad faith, and thus award to prevailing defendants of attorneys' fees and expert witness fees under the Clean Water Act (CWA) was not warranted. Fisher v. Chestnut Mountain Ski Corp., N.D.Ill.2002, 2002 WL 1794238, Unreported.

58. ---- Calculation of lodestar figure, attorney fees

District court acted improperly in applying 50% negative multiplier to lodestar in awarding attorney fees to public interest group in citizen suit under Clean Water Act against Air Force, based on determination that group received injunctive relief but failed to obtain monetary relief; instead, district court should have considered relationship between extent of success and amount of fee award, but only after lodestar was determined. Public Interest Research Group of New Jersey, Inc. v. Windall, C.A.3 (N.J.) 1995, 51 F.3d 1179, on remand 1995 WL 836144. Environmental Law ⚷ 716

Enhancement of lodestar award to prevailing party in action under Resource Conservation and Recovery Act and Clean Water Act is no longer justified on basis of factors such as novelty of issues, complexity of litigation, high quality of representation, or number of people benefited; all these factors are considered subsumed in calculation of lodestar. Dague v. City of Burlington, C.A.2 (Vt.) 1991, 935 F.2d 1343, certiorari granted in part 112 S.Ct. 964, 502 U.S. 1071, 117 L.Ed.2d 130, reversed in part 112 S.Ct. 2638, 505 U.S. 557, 120 L.Ed.2d 449, on remand 976 F.2d 801. Environmental Law ⚷ 719; Environmental Law ⚷ 716

Hourly rates of $220 and $210 for attorneys, $80 for paralegal, and $30 for law clerks were reasonable, for purposes of fixing the lodestar figure, in calculating amount of attorney fees to be awarded local environmental group under the Clean Water Act (CWA), as prevailing party in government and group's consolidated actions against owner and operator of kosher meat processing plant, alleging that owner repeatedly violated environmental laws by exceeding pretreatment effluent limitations and final effluent limitations in agreement with city pursuant to which it discharged wastewater into Publicly Owned Treatment Works (POTW), where attorneys were experienced attorneys in the field of environmental law and their requested rates did not exceed prevailing market rates, and requested rates for the legal assistants did not exceed prevailing market rates for such professionals. Northeast Iowa Citizens For Clean Water v. Agriprocessors, Inc., N.D.Iowa 2007, 489 F.Supp.2d 881. Environmental Law ⚷ 716

Environmental organization and two individuals, who obtained settlement in Clean Water Act citizen suit against power company based upon its operation of nuclear power plant, were not entitled to enhancement of $1.4 million lodestar attorney's fees amount by 1.66 multiplier in computing award of attorney's fees, but rather were entitled to award of lodestar amount, where negotiated fee was disputed, and law firm's premium rates subsumed firm's excellence, skill and experience. Earth Island Institute, Inc. v. Southern California Edison Co., S.D.Cal.1993, 838 F.Supp. 458. Federal Civil Procedure ⚷ 2737.13

Lodestar was appropriate measure of attorney's fees in Clean Water Act action brought by environmental organization and two individuals against power company based upon its operation of nuclear power plant, even though lodestar analysis was not mandatory, as it was guiding light of fee-shifting jurisprudence. Earth Island

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Institute, Inc. v. Southern California Edison Co., S.D.Cal.1993, 838 F.Supp. 458. Environmental Law 721; Environmental Law 716

In awarding attorney fees in Clean Water Act case, court first determines the hours reasonably spent on the case and multiplies that figure by a reasonable hourly rate of compensation for each attorney involved; using that "lodestar" figure as the starting point, adjustments may be made in light of contingent nature of the case, the quality of the work performed, and the party's degree of success. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 721 F.Supp. 604, on reconsideration 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law 716

59. ---- Degree of success, attorney fees

City's approval of 42 percent sewer rate increase, in response to request by city's sanitary sewer committee for funding to fulfill committee's obligations to public interest organization under settlement agreement, did not establish relief necessary for organization to be prevailing party for purposes of organization's request for attorney fees award against city, pursuant to Clean Water Act (CWA), in same action giving rise to settlement with committee, notwithstanding contention that city would not have approved increase but for district court's ruling that city had violated its National Pollutant Discharge Elimination System (NPDES) permit and court's retention of jurisdiction in case, when court noted city's history of cooperating with committee and expressly refused to grant injunction compelling cooperation, such that committee's request, rather than finding of permit violation, was source of rate increase. Sierra Club v. City of Little Rock, C.A.8 (Ark.) 2003, 351 F.3d 840. Environmental Law 716

District court was required to consider expressly to what extent attorney fees awarded to environmental group as prevailing party should be adjusted based on group's limited degree of success in Clean Water Act (CWA) action, regardless of fact that polluter had agreed to pay reasonable attorney fees. New Mexico Citizens for Clean Air and Water v. Espanola Mercantile Co., Inc., C.A.10 (N.M.) 1996, 72 F.3d 830. Environmental Law 716

Award of attorney fees to local environmental group, in government and group's consolidated actions against owner and operator of kosher meat processing plant, alleging that owner repeatedly violated environmental laws by exceeding pretreatment effluent limitations and final effluent limitations in agreement with city pursuant to which it discharged wastewater into Publicly Owned Treatment Works (POTW), was "appropriate," for purposes of Clean Water Act (CWA) section providing for an award of attorney fees to prevailing party in an action against an alleged polluter, even if there were a lack of effort and vigor in group's prosecution of its claims, where group, which had standing to sue under the CWA, was a catalyst to consent decree by which the United States and owner settled their dispute, and even though group objected to consent decree it still received much of what it sought. Northeast Iowa Citizens For Clean Water v. Agriprocessors, Inc., N.D.Iowa 2007, 489 F.Supp.2d 881. Environmental Law 716

60. ---- Duplication of effort, attorney fees

District court had to consider possibility of duplication of effort arising from multiple attorneys attending meetings with client, defense counsel and court, for purposes of determining amount of attorney fees to award to prevailing party in Clean Water Act (CWA) action. New Mexico Citizens for Clean Air and Water v. Espanola Mercantile Co., Inc., C.A.10 (N.M.) 1996, 72 F.3d 830. Environmental Law 716

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61. ---- Compliance with notice requirements, attorney fees

Indian Tribe's failure to provide 60-day's notice required by Clean Water Act (CWA) before bringing suit precluded Tribe from being proper party to suit and, thus, precluded award of attorney fees to Tribe as prevailing party even if another plaintiff had provided sufficient notice. New Mexico Citizens for Clean Air and Water v. Espanola Mercantile Co., Inc., C.A.10 (N.M.) 1996, 72 F.3d 830. Environmental Law 716

Time spent by public interest group in preparing intent to sue letter for citizen suit under Clean Water Act was compensable in award of attorney fees to group as prevailing party, as compliance with notice provision in citizen suit was jurisdictional prerequisite; overruling *Student Public Interest Research Group of New Jersey v. Monsanto Co.*, 721 F.Supp. 604 (D.N.J.). Public Interest Research Group of New Jersey, Inc. v. Windall, C.A.3 (N.J.) 1995, 51 F.3d 1179, on remand 1995 WL 836144. Environmental Law 716

Plaintiffs who sought and obtained injunction prohibiting United States Forest Service from completing construction of paved road and from engaging in commercial timber harvesting or constructing logging roads in portions of national forest were entitled to award of attorney fees pursuant to this chapter, and neither their failure to give formal notice of alleged violation 60 days prior to commencing suit nor fact that violations of federal effluent standards involved were prospective only precluded such award. Northwest Indian Cemetery Protective Ass'n v. Peterson, N.D.Cal.1983, 589 F.Supp. 921. Environmental Law 716

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62. ---- Financial condition of party, attorney fees

Economic position of plaintiff was irrelevant to matter of its being awarded attorney fees pursuant to this section and section 1415 of this title. Save Our Sound Fisheries Ass'n v. Callaway, D.C.R.I.1977, 429 F.Supp. 1136. Environmental Law 722; Environmental Law 716

63. ---- Litigation expenses, attorney fees

Where consent decree, in environmental organizations' Clean Water Act (CWA) suit, required Environmental Protection Agency (EPA) to establish Total Maximum Daily Loads (TMDLs), organizations monitoring EPA's compliance with decree could properly recover attorney fees for time needed to examine content of TMDLs, state's underlying water quality limited segment (WQLS) lists, and state-EPA performance partnership agreements (PPAs); organization's monitoring obligation was not exhausted upon determination that TMDLs had been issued, regardless of their content. Sierra Club v. Hankinson, C.A.11 (Ga.) 2003, 351 F.3d 1358. Environmental Law 716

Even if Environmental Protection Agency (EPA) had nondiscretionary duty under Clean Water Act (CWA) to take enforcement action against alleged illegal discharge of pollutants from mining operations, once finding of CWA violation had been made, such that EPA's conduct in issuing permit to mine operator after environmental groups sued to compel EPA to act would qualify as being mandated by law and thus support groups' request for

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attorney fees under CWA pursuant to catalyst theory, such finding had not been made, given that EPA geologist upon whose conclusions groups relied had not been delegated authority to find violation, and there was no evidence that person with authority to make such a finding had done so. Bravos v. E.P.A., C.A.10 (N.M.) 2003, 324 F.3d 1166, 190 A.L.R. Fed. 643. Environmental Law ⚿ 716

Court would not award $1,391.60 in litigation expenses requested by mine operator who prevailed in Clean Water Act (CWA) suit brought by environmental organizations, since operator provided no itemization of these expenses that demonstrated what they were for or when they were incurred. Sierra Club v. Cripple Creek and Victor Gold Mining Co., D.Colo.2006, 509 F.Supp.2d 943. Environmental Law ⚿ 716

Not every expense which might ordinarily be charged to a firm's fee-paying clients is necessarily reasonable under the attorney fee award provision of the Clean Water Act. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 721 F.Supp. 604, on reconsideration 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law ⚿ 716

64. ---- Miscellaneous amounts reasonable, attorney fees

In ruling on public interest group's request for attorney fees in Clean Water Act citizen suit brought by it against Air Force, the district court was required to consider Air Force's particular objections to award for hours that were duplicative or unnecessary, rather than merely relying on negative multiplier. Public Interest Research Group of New Jersey, Inc. v. Windall, C.A.3 (N.J.) 1995, 51 F.3d 1179, on remand 1995 WL 836144. Environmental Law ⚿ 716

No upward or downward adjustment was required to the lodestar calculation of $324,644.25 in attorney fees for counsel for mine operators who prevailed in Clean Water Act (CWA) suit brought by environmental organizations, where at time of trial, the matter had been pending for roughly half a decade, the operators needed counsel experienced in the substantive legal area and in trial work, during trial, the parties raised several legal issues for which there was no binding precedent and which required immediate research and resolution, and the stakes at trial were great, in that the organizations had requested more than $1,000,000 in penalties had they prevailed. Sierra Club v. Cripple Creek and Victor Gold Mining Co., D.Colo.2006, 509 F.Supp.2d 943. Environmental Law ⚿ 716

In awarding fees pursuant to Clean Water Act's (CWA) fee shifting provision, court would utilize hourly rates of $75 for travel, $150 for partners, $100 for associates, and $50 for paralegals. Atlantic States Legal Foundation, Inc. v. Onondaga Dept. of Drainage and Sanitation, N.D.N.Y.1995, 899 F.Supp. 84. Federal Civil Procedure ⚿ 2742.5

Hourly rates for attorneys for environmental organization and two individuals, who obtained settlement in Clean Water Act citizen suit against power company based upon its operation of nuclear power plant, which ranged from $145 per hour to $500 per hour, were reasonable for purposes of computing attorney's fees award, where law firm represented that rates were accurate and consistent with firm's normal billing rates. Earth Island Institute, Inc. v. Southern California Edison Co., S.D.Cal.1993, 838 F.Supp. 458. Federal Civil Procedure ⚿ 2737.13

Plaintiffs were entitled to attorney fees for their work in preparing attorney fee petition in connection with Federal Water Pollution Control Act action. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law ⚿ 716

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Overall reduction of 20% to firm's lodestar was appropriate in computing attorney fees in Clean Water Act action in view of the degree of success obtained, the relative simplicity of proving liability through the defendant's own data, and the economy of time and resources that should have accrued from simultaneous prosecution of 26 similar claims. Student Public Interest Research Group of New Jersey v. Monsanto Co., D.N.J.1989, 721 F.Supp. 604, on reconsideration 727 F.Supp. 876, affirmed 891 F.2d 283. Environmental Law 716

Delay enhancement of lodestar in clean water case was warranted; prevailing market rates and interest rates for period of time during which payment was delayed was offered and chief counsel submitted affidavit in which he stated that he was compelled to draw upon bank line of credit to pay office and staff expenses. Proffitt v. Municipal Authority of Borough of Morrisville, E.D.Pa.1989, 716 F.Supp. 845, affirmed 897 F.2d 523. Environmental Law 716

Lodestar had to be adjusted downward in determining amount of attorney fees and costs to be awarded environmental organization and legal foundation which settled action brought under citizen suit provision of Clean Water Act against company which operated wastewater purification plant, alleging over 380 violations of company's state pollutant discharge elimination system permit, where virtually all of plaintiffs' proof came from monthly discharge monitoring reports prepared by company, which were required to be filed with governmental agencies and settlement provided only that company make contribution of $49,000 to a conservation foundation. Friends of the Earth v. Eastman Kodak Co., W.D.N.Y.1987, 656 F.Supp. 513, affirmed 834 F.2d 295. Environmental Law 716

For purposes of calculating attorney fee award for plaintiffs in a citizens suit under this chapter challenging defendant's unauthorized discharge of oil and solids into a stream, hourly rates of $110, $85, and $75 were reasonable. Citizens Coordinating Committee on Friendship Heights, Inc. v. Washington Metropolitan Area Transit Authority, D.C.D.C.1983, 568 F.Supp. 825. Environmental Law 716

Plaintiffs' prevailing party attorney fee award in their Clean Water Act suit against Secretary of Army, arising from alleged noncompliance at wastewater treatment plant, would be reduced by deduction of all hours spent on motion to hold Secretary in contempt of prior court order, except for fees relating to compliance monitoring, due to plaintiffs' lack of success on motion, where Secretary was already in compliance with decree at time motion was filed, and plaintiffs achieved no success as a result of filing motion. Public Interest Research Group of New Jersey v. Stone, D.N.J.1994, 156 F.R.D. 568. Environmental Law 716

65. Costs

Prevailing plaintiffs in Clean Water Act (CWA) citizen suit could recover fees for non-testifying expert witness who helped monitor consent decree; post-judgment monitoring was needed to protect relief afforded to plaintiffs through consent decree. Sierra Club v. Hankinson, C.A.11 (Ga.) 2003, 351 F.3d 1358. Environmental Law 716

Public interest organization's claim that city violated its National Pollutant Discharge Elimination System (NPDES) permit by failing to implement comprehensive master planning process was not frivolous, unreasonable, or without foundation, in that city's failure to incorporate its comprehensive master planning process into single document made it difficult to determine city's compliance when organization originally brought action, and therefore city was not entitled to award of expert fees as prevailing defendant under Clean Water Act (CWA). Sierra Club v. City of Little Rock, C.A.8 (Ark.) 2003, 351 F.3d 840. Environmental Law 710

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Although citizen plaintiffs, who had standing under § 505 of the Clean Water Act, could have recovered expert witness costs paid by corporation which joined the action and could have reimbursed the corporation, the corporation, which had no standing under the Act, could not recover such costs; it could recover only that portion of costs that assisted the other claimants' § 505 claim, and then, solely by reimbursement from those parties who had standing. Citizens Coordinating Committee on Friendship Heights, Inc. v. Washington Metropolitan Transit Authority, C.A.D.C.1985, 765 F.2d 1169, 247 U.S.App.D.C. 15. Federal Civil Procedure ⚷ 2741

Court would not award expenses to mine operators who prevailed in Clean Water Act (CWA) suit brought by environmental organizations, where, in accordance with the stipulation between the parties, the clerk of court had awarded $29,000 in costs to the operators. Sierra Club v. Cripple Creek and Victor Gold Mining Co., D.Colo.2006, 509 F.Supp.2d 943. Environmental Law ⚷ 716

For purposes of calculating amount of litigation costs to be awarded local environmental group under the Clean Water Act (CWA), as prevailing party in government and group's consolidated actions against owner and operator of kosher meat processing plant, alleging that owner repeatedly violated environmental laws by exceeding pretreatment effluent limitations and final effluent limitations in agreement with city pursuant to which it discharged wastewater into Publicly Owned Treatment Works (POTW), group's mileage requests totaling $320 were reasonable, where mileage was incurred during a trip to visit group members and during a trip to meet with Environmental Protection Agency (EPA) officials. Northeast Iowa Citizens For Clean Water v. Agriprocessors, Inc., N.D.Iowa 2007, 489 F.Supp.2d 881. Environmental Law ⚷ 716

Prevailing plaintiffs in suit brought under Clean Water Act (CWA) were entitled to recover only one-half of expert's fee, where expert ultimately did not testify at trial, but did assist attorneys in preparation of case. U.S. Public Interest Research Group v. Stolt Sea Farming, Inc., D.Me.2004, 301 F.Supp.2d 46. Environmental Law ⚷ 710

66. Complaint--Generally

It was not necessary that plaintiffs prove their allegation of ongoing noncompliance with conditions of permit under national pollutant discharge elimination system before jurisdiction could attach under provision of Clean Water Act permitting citizen suits concerning alleged violations of conditions of permit; mere allegation of violation was sufficient, since "good faith" pleading requirements were sufficient to protect defendants from frivolous allegations. Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., U.S.Va.1987, 108 S.Ct. 376, 484 U.S. 49, 98 L.Ed.2d 306, on remand 844 F.2d 170. Environmental Law ⚷ 673

Plaintiff's mere belief that gun club might again in the future discharge lead shot and clay target debris into Long Island Sound was not sufficient to meet the "in violation" requirement to state cause of action under the Clean Water Act; there was no contention that the club was presently discharging lead shot and clay target debris into Long Island Sound, and club provided evidence that trap and skeet houses, from which targets used were thrown, were dismantled and removed. Connecticut Coastal Fishermen's Ass'n v. Remington Arms Co., Inc., C.A.2 (Conn.) 1993, 989 F.2d 1305. Environmental Law ⚷ 226

For purposes of assessing a citizen plaintiff's allegations of ongoing violations of the Clean Water Act by discharge of pollutants exceeding limits established by National Pollutant Discharge Elimination System permit, court must always look to date complaint was filed; if defendants continued to violate NEPDES permit on and after date complaint was filed, plaintiffs may request both injunctive and civil penalties. Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc., C.A.11 (Ala.) 1990, 897 F.2d 1128. Environmental Law ⚷ 226; Envir-

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onmental Law ⚷ 223; Environmental Law ⚷ 700

Complaint drafted as citizen's suit to require performance by Administrator of Environmental Protection Agency could not be employed to challenge substance or content of agency action. Scott v. City of Hammond, Ind., C.A.7 (Ill.) 1984, 741 F.2d 992. Environmental Law ⚷ 226

Since complaint posited right of recovery solely on provisions of this chapter, which confers no private cause of action independent of citizens suit provisions of this chapter, and contained no allegations of negligence or wrongful conduct on part of the United States other than alleged violations of this chapter, owner of seafood business failed to state cause of action against federal government and city for pollution which forced closing of river from which business had been harvesting shellfish. Davis v. U.S., C.A.4 (Va.) 1983, 722 F.2d 1157, certiorari denied 104 S.Ct. 2151, 466 U.S. 950, 80 L.Ed.2d 537.

Plaintiffs seeking to establish district court's jurisdiction over Clean Water Act citizen suit in which defendant fluoropolymer manufacturer ceased allegedly illegal conduct during pendency of litigation were not required to make good-faith allegations of ongoing violations of each parameter separately; manufacturer's National Pollutant Discharge Elimination System (NPDES) permit could be viewed as a whole, such that good-faith allegations of ongoing violations of any aspect of permit would be enough to establish jurisdiction over past and present violations of all parameters. Public Interest Research Group of New Jersey, Inc. v. Elf Atochem North America, Inc., D.N.J.1993, 817 F.Supp. 1164. Environmental Law ⚷ 226

Plaintiffs in citizen suit under the Clean Water Act who showed 42 violations of discharge permit after the filing of the complaint established court's jurisdiction over 323 precomplaint violations to which the postcomplaint violations corresponded. Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚷ 641

Citizens' complaint simply alleged that manufacturing plant violated the Clean Water Act on several occasions more than five years ago, but did not allege that violations continued beyond particular date nor did it allege there was reasonable likelihood that manufacturing plant would violate Clean Water Act in the future, or that manufacturing plant was violating Clean Water Act at time suit was filed, so that complaint failed to state cause of action under Clean Water Act as citizens were suing solely for past violations. Brewer v. Ravan, M.D.Tenn.1988, 680 F.Supp. 1176. Environmental Law ⚷ 673

Allegation in environmental organization's action against corporation under Federal Water Pollution Control Act Amendments that copy of environmental organization's notice-of-violation letter was timely sent to State Department of Environmental Conservation was sufficient to overcome challenge to subject matter jurisdiction on basis of assertion that organization failed to notify Department of alleged violations at least 60 days prior to commencing suit, as required under Act. Sierra Club v. Hanna Furnace Corp., W.D.N.Y.1985, 636 F.Supp. 527. Environmental Law ⚷ 659

Insofar as wetlands owner claimed that real estate developer and others discharged dredged or fill material into stream without having obtained permit from Secretary of Army as required by section 1344 of this title, claim for relief was stated over which district court had subject matter jurisdiction. Sun Enterprises, Ltd. v. Train, S.D.N.Y.1975, 394 F.Supp. 211, affirmed 532 F.2d 280. Federal Courts ⚷ 243

Citizens' complaint was sufficient to state cause of action against Administrator for injunctive relief to require the Administrator to perform certain acts under section 1318(a)(A) of this title providing that the Administrator

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shall require the owner or operator of any point source to maintain such records and install such equipment as he may reasonably require whenever necessary to carry out the objective of this chapter and under section 1255(d) of this title to conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical applications of water management and water treatment methods and under section 1255 of this title to conduct within the Environmental Protection Agency or to finance by grants projects demonstrating advanced methods of dealing with certain types of water pollution problems. Committee for Consideration of Jones Falls Sewage System v. Train, D.C.Md.1975, 387 F.Supp. 526. Environmental Law 700

67. ---- Release of dammed waters, complaint

Complaint filed by private environmental groups stated claim for relief on theory that administrator had violated his enforcement duties under this chapter by not issuing order directing Corps of Engineers to comply with its provisions and by not enjoining construction or operation of dam after having been fully informed that water to be released from the dam would contain pollutants. South Carolina Wildlife Federation v. Alexander, D.C.S.C.1978, 457 F.Supp. 118. Environmental Law 209

68. ---- Sewage and sewage treatment works, complaint

County sanitary authority's allegation that federal Environmental Protection Agency and agency officials failed to perform mandatory duty to disapprove Pennsylvania's priority system and project priority list for construction of sewage treatment works as not in compliance with this chapter and its implementing regulations stated cause of action. Allegheny County Sanitary Authority v. U.S.E.P.A., W.D.Pa.1983, 557 F.Supp. 419, affirmed 732 F.2d 1167. Environmental Law 673

Where gravamen of complaint was that defendants were allowing the channeling of more sewage into plant than could be adequately processed affecting the water quality of the Potomac River, a claim capable of relief was stated as to defendants Washington Suburban Sanitary Commission, the Governor of Maryland, the Maryland Department of Health and Mental Hygiene and the Water Resources Administration of Maryland. Montgomery Environmental Coalition v. Fri, D.C.D.C.1973, 366 F.Supp. 261. Declaratory Judgment 303; Environmental Law 195

69. ---- Toxic waste discharges, complaint

Complaint by municipalities and class they sought to represent for alleged damages sustained by reason of discharge by liquid refiner of toxic chemicals into a river from which municipalities drew water for their treatment plant did not state a claim under this section on which relief could be granted. City of Evansville, Ind. v. Kentucky Liquid Recycling, Inc., C.A.7 (Ind.) 1979, 604 F.2d 1008, certiorari denied 100 S.Ct. 689, 444 U.S. 1025, 62 L.Ed.2d 659. Environmental Law 673

Plaintiffs were not required, as prerequisite to citizen suit under Clean Water Act (CWA), to provide notice of specific effluents or pollutants allegedly discharged by water and sewer authority in violation of its National Pollutant Discharge Elimination System (NPDES) permit, where complaint did not allege violations of effluent limitations, but rather identified emission of hydrogen sulfide as permit violation. American Canoe Ass'n, Inc. v. District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law 659

Fruit processor's discharge of water, produced in process of drying fruit, to irrigate fields, was not a discharge

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from a point source, as required to support Clean Water Act (CWA) citizen suit against processor, although processor allegedly applied wastewater to its fields in excess of crops' actual absorption of water. Hiebenthal v. Meduri Farms, D.Or.2002, 242 F.Supp.2d 885. Environmental Law 175

Complaint charging that, upon information and belief, dredged spoil which defendants proposed to dump contained polluted and toxic materials, dumping of which would violate applicable effluent and water quality standards and ocean dumping criteria established by Environmental Protection Agency and State of Rhode Island did not properly allege violations of either section 1316 of this title concerning national standards of performance or section 1317 of this title requiring establishment of standards by Administrator, and plaintiff thus failed to bring itself within narrow exceptions to 60-day notice requirement of this section for commencement of action. Save Our Sound Fisheries Ass'n v. Callaway, D.C.R.I.1977, 429 F.Supp. 1136. Environmental Law 659; Environmental Law 673

70. ---- Amendment, complaint

Trial court did not abuse its discretion in denying plaintiffs' motion to amend their complaint to add a Clean Water Act claim after the court had ordered dismissal of their original Clean Water Act claim in view of the fact that new incidents had been disclosed to plaintiffs long before they filed their motion to amend and new incidents concerned matters not within scope of citizens suit provision of Clean Water Act. Pawtuxet Cove Marina, Inc. v. Ciba-Geigy Corp., C.A.1 (R.I.) 1986, 807 F.2d 1089, certiorari denied 108 S.Ct. 484, 484 U.S. 975, 98 L.Ed.2d 483. Federal Civil Procedure 841

Environmental organization was not entitled to amend its complaint in action against Environmental Protection Agency (EPA) and National Marine Fisheries Service (NMFS) regarding state's compliance with Clean Water Act (CWA) in order to assert additional claims relating to state's alleged failure to adopt adequate toxic water quality criteria under CWA, where motion was not filed until over four months after motion for summary judgment was filed and five weeks after parties had completed briefing on motion, new claims involved state actions, not all of which were related to issues contained in current pleadings, and new claims would have greatly expanded scope of litigation that was already wide-ranging. Northwest Environmental Advocates v. U.S. E.P.A., D.Or.2003, 268 F.Supp.2d 1255. Federal Civil Procedure 840; Federal Civil Procedure 841

Individuals and citizens associations suing for injunctive relief restraining defendants from granting permits for sewer hookups into sewer system and requiring defendants to revoke certain existing hookup permits would be permitted to amend complaint to add count asserting that the alleged discharges into the stream system constituted an imminent and substantial endangerment to the health of persons under section 1364 of this title. Committee for Consideration of Jones Falls Sewage System v. Train, D.C.Md.1974, 375 F.Supp. 1148, affirmed 539 F.2d 1006. Federal Civil Procedure 841

71. Defenses--Generally

Permit shield shielded dairy farm from CWA citizen suit alleging that farm did not have permit before certain date; under terms of farm's renewed CWA permit, farm did not have to be fully compliant with its permit until a specific date which was after lawsuit was initiated. Coon ex rel. Coon v. Willet Dairy, LP, C.A.2 (N.Y.) 2008, 536 F.3d 171. Environmental Law 226

Oil company failed to state claim for abuse of process under Texas law concerning environmental group's citizen suit under Clean Water Act (CWA) against oil company concerning its discharges of produced water from waste

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treatment facility into bay, despite oil company's claim that environmental group's pattern of suing and settling with oil companies was attempt to extort money from oil companies while allowing any illegal conduct to continue; group's consent judgments against other oil companies generally prohibited discharges into bay after grace period, consent judgment terms requiring payment of group's attorney fees was not improper, and Department of Justice and Environmental Protection Agency (EPA) reviewed and approved prior settlements. Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc., C.A.5 (Tex.) 1996, 73 F.3d 546, certiorari denied 117 S.Ct. 57, 519 U.S. 811, 136 L.Ed.2d 20. Process ⚿ 171

Retroactive effect given by the State Water Control Board to National Pollutant Discharge Elimination System permit was not defense in citizens' suit under this chapter to allegations that utility was discharging sewage effluent without a permit during period prior to State Board's action; compliance with permit program was prerequisite to lawful discharge of pollutants, and retroactive application of National Pollutant Discharge Elimination System permit did not excuse discharger from that clear statutory mandate. Menzel v. County Utilities Corp., C.A.4 (Va.) 1983, 712 F.2d 91, rehearing denied 718 F.2d 120. Environmental Law ⚿ 208

Refinery which was alleged to have violated its discharge permit could not establish a "lost sample" defense to claims based on its reports simply by making the terse notation "sample lost except for metals analysis" on the relevant discharge monitoring report (DMR). Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., D.Del.1992, 800 F.Supp. 1, affirmed in part , reversed in part 2 F.3d 493. Environmental Law ⚿ 207

Plaintiffs in citizens suit under Federal Water Pollution Control Act were not estopped from asserting violation of Act on ground that chemical manufacturer relied on Connecticut Department of Environmental Protection's representations that numbers in National Pollutant Discharge Elimination System permit were goals, not limitations; order was stated to be National Pollutant Discharge Elimination System permit for Act purposes and chemical manufacturer was expected to know effect of limits contained in that permit and could not reasonably rely on conduct of state agents to contrary. Connecticut Fund for Environment, Inc. v. Upjohn Co., D.Conn.1987, 660 F.Supp. 1397. Estoppel ⚿ 62.2(2); Environmental Law ⚿ 226

Measurement error was not valid basis to defeat organization's motion for summary judgment in its citizen suit for past violations of Clean Water Act. Atlantic States Legal Foundation v. Al Tech Specialty Steel Corp., N.D.N.Y.1986, 635 F.Supp. 284. Environmental Law ⚿ 226

Affirmative defense of upset did not apply to permittee's violations of national pollutant discharge elimination system permits where violations occurred before provision for affirmative defense of upset became effective. Student Public Interest Research Group of New Jersey, Inc. v. AT & T Bell Laboratories, D.C.N.J.1985, 617 F.Supp. 1190. Environmental Law ⚿ 208

Letter from Environmental Protection Agency to oil company which had sought permit for drilling of offshore test well, to effect that because of budgetary considerations a permit could not be issued but agency would exercise its discretion not to prosecute, did not insulate oil company from citizen suits. Kitlutsisti v. Arco Alaska, Inc., D.C.Alaska 1984, 592 F.Supp. 832, appeal dismissed, opinion vacated on other grounds 782 F.2d 800. Estoppel ⚿ 62.2(4)

72. ---- Estoppel, defenses

Action in which environmental group challenged decision of Environmental Protection Agency (EPA) not to

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promulgate, under Clean Water Act (CWA), effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for storm water discharges by construction and development industry did not, for claim preclusion purposes, involve same cause of action as group's earlier suit against EPA regarding effluent limitation guidelines, given that second action arose from events which had not yet transpired when earlier suit was settled and so did not involve same transactional nucleus of facts, that consent decree in earlier suit reserved to group the right to challenge EPA's decision not to promulgate ELGs and NSPSs for source categories identified in source plan, that rights involved in two cases were distinct, and that evidence offered in two cases varied to some degree. National Resources Defense Council v. U.S. E.P.A., C.D.Cal.2006, 437 F.Supp.2d 1137. Judgment 566; Judgment 585(3); Judgment 585(5)

Previous lawsuit between oil company which had leased pit and landowner which concerned company's obligations under Federal Water Pollution Control Act (FWPCA) and their obligations to perform under their lease did not preclude Environmental Protection Agency (EPA) from bringing an action pursuant to CERCLA. U.S. v. Gurley Refining Co., E.D.Ark.1992, 788 F.Supp. 1473, affirmed in part , reversed in part 43 F.3d 1188, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 73, 516 U.S. 817, 133 L.Ed.2d 33. Judgment 715(2)

Although private suits under Clean Water Act represent public interest, Government is not precluded from subsequently filing suit. Antrim Min., Inc. v. Davis, M.D.Pa.1991, 775 F.Supp. 165. Environmental Law 226; Environmental Law 205

73. ---- Laches, defenses

Citizen suit under Clean Water Act to enforce nondiscretionary duty of administrator of Environmental Protection Agency (EPA) is suit to protect public interest and, thus, laches does not apply. Natural Resources Defense Council, Inc. v. Fox, S.D.N.Y.1995, 909 F.Supp. 153. Environmental Law 672

73a. ---- Res judicata, defenses

Doctrine of res judicata barred environmental groups' claims under Clean Water Act (CWA) based on spills from city and county's wastewater collection and treatment system, where Environmental Protection Agency (EPA) was diligently prosecuting claims in separate enforcement action based on identical facts. Sierra Club, Hawaii Chapter v. City and County of Honolulu, D.Hawai'i 2005, 415 F.Supp.2d 1119, on reconsideration in part 486 F.Supp.2d 1185, on reconsideration in part 2008 WL 515963. Administrative Law And Procedure 501; Environmental Law 226

74. Moot questions

Claim alleging violation of Clean Water Act (CWA), which was premised on discharge of polluted water without permit, was not moot at pleading stage by alleged violator's acquisition of permit, where it was unclear whether permit allegedly obtained covered entire site or all areas where alleged violations had been occurring. Building and Const. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc., C.A.2 (N.Y.) 2006, 448 F.3d 138. Environmental Law 663

District Court had jurisdiction in citizen suit alleging that owner of inoperative gold mine violated Clean Water Act (CWA) by discharging pollutants, even though the conduct giving rise to the alleged violation had ceased; plaintiffs alleged that abandoned mine shaft was the point source from which recurring and ongoing discharges

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were flowing. Sierra Club v. El Paso Gold Mines, Inc., C.A.10 (Colo.) 2005, 421 F.3d 1133, corrected, rehearing granted in part, certiorari denied 126 S.Ct. 1653, 547 U.S. 1065, 164 L.Ed.2d 411. Environmental Law ⚷ 226

Lake association's Clean Water Act (CWA) claim for injunctive relief against purported polluters became moot when purported polluters' national pollution discharge elimination system (NPDES) permit terminated and state agency approved stipulated agreement requiring purported polluters to pay penalties for past permit violations, given lack of evidence showing existence of fact questions regarding whether underlying construction was completed and permit was terminated, or to support claim that permit's termination was wrongfully procured. Comfort Lake Ass'n, Inc. v. Dresel Contracting, Inc., C.A.8 (Minn.) 1998, 138 F.3d 351, rehearing and suggestion for rehearing en banc denied. Environmental Law ⚷ 663

Citizen suit for civil penalties under Clean Water Act was not moot, even though, following series of admitted violations that continued past date on which complaint was filed, defendant entered into settlement with local enforcement agency covering some of the violations and established that any allegedly wrongful behavior could not reasonably be expected to recur; allowing discharger to escape all liability by virtue of its postcomplaint compliance would weaken Act's deterrent effect, and could not be squared with Act's mandatory civil penalty language. Atlantic States Legal Foundation, Inc. v. Pan American Tanning Corp., C.A.2 (N.Y.) 1993, 993 F.2d 1017. Environmental Law ⚷ 663

Cattle feedlot's postdischarge improvements to its wastewater disposal system did not moot citizen's action brought pursuant to the Clean Water Act; feedlot could not adduce evidence from which it was absolutely clear that future discharge would not reasonably be expected to recur but rather, evidence indicated that feedlot might discharge in event of future chronic rainfall event which did not reach 25-year, 24-hour level. Carr v. Alta Verde Industries, Inc., C.A.5 (Tex.) 1991, 931 F.2d 1055, rehearing denied.

Although the Environmental Protection Agency had made it clear that it had no intention of bringing either civil or criminal action against petitioner for inability to conform to effluent limitations in this chapter, where the Agency conceded that it could not foreclose that possibility in the future and that stipulation between the Agency and petitioner would not prevent citizen from seeking imposition of sanctions against petitioner; petitioner's action challenging the Agency's refusal to extend compliance date was not moot. Bethlehem Steel Corp. v. Train, C.A.3 1976, 544 F.2d 657, certiorari denied 97 S.Ct. 1666, 430 U.S. 975, 52 L.Ed.2d 369. Action ⚷ 6; Environmental Law ⚷ 663

Environmental organizations' claims for supplemental and injunctive relief and an order requiring removal of allegedly unlawfully placed fill were mooted by expiration of challenged Clean Water Act (CWA) permit to fill wetlands, where already existing fills were wholly past violations, if violations at all, and any ruling would not relate to an existing standard, limitation, or order. National Parks Conservation Ass'n, Inc. v. U.S. Army Corps of Engineers, S.D.Fla.2008, 574 F.Supp.2d 1314. Environmental Law ⚷ 663

In action brought by environmental organization against paper company, alleging that company was discharging pollutants into river without valid permit, organization's claims for injunctive and declaratory relief were moot; state's issuance of final, enforceable discharge permit, notwithstanding alleged failure of Environmental Protection Agency (EPA) to do so, obviated need for injunction requiring company to cease discharges until permit had issued. Natural Resources Council of Maine v. International Paper Co., D.Me.2006, 424 F.Supp.2d 235. Declaratory Judgment ⚷ 81; Environmental Law ⚷ 663

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Haulers of waste deposited at landfill demonstrated that it was absolutely clear that alleged violations of Clean Water Act (CWA) could not reasonably be expected to recur and, thus, there was no continuing violation conferring federal jurisdiction in landfill owners' citizen suit for past violations but, rather, CWA claims were moot; haulers had ceased discharging any material onto landfill, at latest, four and one-half years prior to commencement of suit, and rather than being paid for depositing waste at site as in past, haulers were now being sued for doing so, thus creating very little incentive for them to resume such action. Prisco v. State of N.Y., S.D.N.Y.1995, 902 F.Supp. 374. Environmental Law 663

Given conflicting evidence as to likelihood that plant owner would violate total suspended solids (TSS) limits of its National Pollutant Discharge Elimination System (NPDES) permit, owner failed to demonstrate that it was "absolutely clear" that additional TSS violations could not reasonably be expected to occur and, thus, environmental group's claim for injunctive relief in private civil enforcement action under Clean Water Act was not moot. Friends of the Earth, Inc. v. Chevron Chemical Co., E.D.Tex.1995, 900 F.Supp. 67. Environmental Law 663

Citizen's suit under Clean Water Act may be dismissed on ground of defendant's compliance with Act subsequent to filing of complaint, but in order to prove mootness, defendant must show that it is absolutely clear that allegedly wrongful behavior could not reasonably be expected to recur. Molokai Chamber of Commerce v. Kukui (Molokai), Inc., D.Hawai'i 1995, 891 F.Supp. 1389. Environmental Law 696; Environmental Law 663

County's attempt to comply with Clean Water Act (CWA) with respect to controlling leachate discharges from landfill did not render claim for injunction relief in citizen suit moot; it could not be said with absolute certainty that no further violations of CWA would occur. Orange Environment, Inc. v. County of Orange, S.D.N.Y.1994, 860 F.Supp. 1003. Environmental Law 663

Issue of mootness of citizen's suit under the Clean Water Act was to be judged at the time that the complaint was filed, not at the time that the court reached the motion. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., D.N.J.1993, 830 F.Supp. 1525, affirmed in part , reversed in part 50 F.3d 1239, on remand 1996 WL 905920. Federal Courts 13.25

Present and future remedial measures imposed on wastewater treatment plants by state orders did not render moot requests for injunctive relief raised in citizen suit under Clean Water Act; until future remedial measures were instituted, permit violations could not be said to have ceased without likelihood of recurrence. Coalition for a Liveable West Side, Inc. v. New York City Dept. of Environmental Protection, S.D.N.Y.1993, 830 F.Supp. 194. Environmental Law 663

Clean Water Act claims by not-for-profit environmental groups against tannery were moot, even though at least nine violations occurred after groups commenced action and thus were not wholly past violations; allegations in complaint of ongoing violations became false due to tannery's postcomplaint remedial measures, and groups presented no evidence to suggest reasonable expectation that any violations would recur. Atlantic States Legal Foundation, Inc. v. Pan American Tanning Corp., N.D.N.Y.1992, 807 F.Supp. 230, reversed 993 F.2d 1017. Environmental Law 663

Public interest group's claims for civil penalties and injunctive relief stemming from flow violations of Clean Water Act National Pollution Discharge Elimination System (NPDES) permit were moot, where defendant company had been issued subsequent permit during litigation with more relaxed terms, only a few violations under

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previous permit would have constituted violations under subsequent permit, there had been no flow violations of subsequent permit for the 15 months in which it had been in effect, and allegedly wrongful behavior could not reasonably be expected to recur. Massachusetts Public Interest Research Group v. ICI Americas Inc., D.Mass.1991, 777 F.Supp. 1032. Environmental Law 663; Environmental Law 223

Burden is on alleged polluter to demonstrate mootness of action brought under "private litigant" provisions of Clean Water Act (CWA). Tobyhanna Conservation Ass'n v. Country Place Waste Treatment Facility, M.D.Pa.1991, 769 F.Supp. 739. Environmental Law 663

Citizen's suit under Clean Water Act for violations of National Pollutant Discharge Elimination System (NPDES) permit was not moot given absence of evidence that holder of permit would not violate its permit in the future. Atlantic States Legal Foundation, Inc. v. Universal Tool & Stamping Co., Inc., N.D.Ind.1990, 735 F.Supp. 1404. Environmental Law 663

Citizen suit under Federal Water Pollution Control Act, which was filed before polluter's permit expired, was not barred by supersession of that permit by subsequent permit; prayer for relief included equitable remedies which resulted in consent order against future violations. Public Interest Research Group of New Jersey v. U.S. Metals Refining Co., D.N.J.1987, 681 F.Supp. 237. Environmental Law 663

Environmental conservation organizations' action against manufacturer challenging manufacturer's alleged violations of National Pollutant Discharge Elimination System permit was not moot even if manufacturer had achieved compliance with permit since action was filed. Sierra Club v. C.G. Mfg., Inc., D.Mass.1985, 638 F.Supp. 492. Federal Courts 13.25

Expiration of national pollutant discharge elimination system permit did not preclude relief in form of civil penalties sought by public interest organization under this chapter for violations of NPDES permit; however, to extent organization sought relief to enjoin company's further violations of outdated permit, such request for relief was moot. Sierra Club v. Aluminum Co. of America, N.D.N.Y.1984, 585 F.Supp. 842. Environmental Law 700; Environmental Law 223; Environmental Law 663

75. Dismissal

In view of the fact that at the time plaintiffs brought suit under citizens suit provision of Clean Water Act alleging violations of permit that limited defendant's discharge of process wastewater, defendant had ceased operating under permit because of its completion of tie-in arrangement with municipal treatment facility, there was no reasonably likelihood that defendant's alleged infractions would continue, and thus action was properly dismissed. Pawtuxet Cove Marina, Inc. v. Ciba-Geigy Corp., C.A.1 (R.I.) 1986, 807 F.2d 1089, certiorari denied 108 S.Ct. 484, 484 U.S. 975, 98 L.Ed.2d 483. Environmental Law 226

District court's ability to protect defendants from duplicative litigation under Clean Water Act [33 U.S.C.A. § 1251 et seq.] includes consolidation, citizen intervention and intervention of government in citizen suit, but does not include dismissal of previously filed citizen suit when government subsequently files suit. Chesapeake Bay Foundation v. American Recovery Co., Inc., C.A.4 (Md.) 1985, 769 F.2d 207.

Where Environmental Protection Agency had commenced proceedings to issue National Pollution Discharge Elimination System permit to sewage treatment plant, Environmental Protection Agency was vested with primary jurisdiction over issue whether sanitary commission had exceeded its allotted share of sewage treatment

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capacity of such plant, resulting in violation of promulgated water quality standards, and suit by citizens' environmental groups to enjoin sanitary commission from exceeding its share of sewage treatment capacity would therefore be dismissed. Montgomery Environmental Coalition Citizens Coordinating Committee on Friendship Heights v. Washington Suburban Sanitary Commission, C.A.D.C.1979, 607 F.2d 378, 197 U.S.App.D.C. 64. Environmental Law ⚷ 664

76. Stay

Even assuming that salmon farm operator would be permitted by Court of Appeals to pursue appeal from civil contempt order that enjoined operator's further violation of order restraining its introduction of new class of fish into its net pens, stay of civil contempt order pending appeal was not warranted, inasmuch as there was not strong likelihood that operator would achieve success on merits of appeal, any financial harm suffered by operator had not been shown to be irreparable in nature and occurred solely due to operator's own conduct in disregarding likely effect of court's prior rulings on the merits of case and by disregarding order underlying contempt finding, any harm done to operator by denial of stay would not outweigh injury to environmental group's interests by granting of stay, and stay would not further public's interests in court's enforcement of Clean Water Act (CWA). U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC, D.Me.2003, 262 F.Supp.2d 1. Contempt ⚷ 66(5)

Court which certified for appeal issue of adequacy of notice of certain alleged permit violations would stay citizen suit under the Clean Water Act concerning other related violations pending resolution of the issue on appeal. Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc., D.N.J.1993, 830 F.Supp. 1549. Federal Courts ⚷ 684.1

Court would not stay environmental association's Clean Water Act action against waste treatment company pending evaluation of company's recently installed breakpoint chlorination and dechlorination system; discovery would be allowed to proceed to logical conclusion at which time properly substantiated dispositive motions would be submitted to court. Tobyhanna Conservation Ass'n v. Country Place Waste Treatment Co., M.D.Pa.1989, 734 F.Supp. 667. Action ⚷ 68

Association's citizen action under the Federal Water Pollution Control Act, with respect to commercial plant, would be stayed until upgraded waste water facility at plant was operational, given likelihood that action would be rendered moot when upgraded system was operational. Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc., N.D.Ala.1988, 682 F.Supp. 1186. Action ⚷ 68

Suit for violation of Clean Water Act brought by environmental organization against manufacturer would be stayed pending Supreme Court decision as to whether citizen's suit can be brought solely for past violations of the Clean Water Act. Sierra Club v. Coca-Cola Corp., M.D.Fla.1987, 673 F.Supp. 1555. Action ⚷ 69(5)

Even if citizens group were not barred by automatic stay from proceeding with proposed suit under Clean Water Act based upon postpetition activities of Chapter 11 debtor operator of open pit taconite mine, group would be enjoined from proceeding with suit on ground that suit would impose burdens not offset by any discernible benefit; debtor was working under active oversight and involvement of state agency to resolve environmental problems, and currently had proposed and implemented remedial activity for correcting problems. In re Chateaugay Corp., Bkrtcy.S.D.N.Y.1990, 118 B.R. 19. Bankruptcy ⚷ 2368

Although environmental public interest membership organization violated automatic stay by bringing citizen's

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suit under this section against debtor-in-possession, district court would not hold organization in civil contempt where the organization apparently lacked a sufficient understanding of the bankruptcy laws to appreciate requirement that it needed to lift a stay in bankruptcy court prior to bringing the action and where organization had not acted in bad faith in bringing the suit. In re Revere Copper and Brass, Inc., Bkrtcy.S.D.N.Y.1983, 29 B.R. 584, affirmed 32 B.R. 725. Bankruptcy 2465.2

77. Compromise and settlement

Proposed consent decree settling citizen's suit brought under Clean Water Act, which decree required defendant to make payments to environmental organizations, was not in violation of Act; defendant did not admit liability, and thus payments did not constitute "civil penalties" which would have to be paid only to United States Treasury, and Act does not preclude private parties from entering into settlements which do not require defendant to tender civil penalties to United States. Sierra Club, Inc. v. Electronic Controls Design, Inc., C.A.9 (Or.) 1990, 909 F.2d 1350. Federal Civil Procedure 2397.2

Proposed consent decree settling litigation under Clean Water Act was not "fair, reasonable and equitable," and was thus rejected; it was not product of good faith negotiations, as it was negotiated between government and single defendant, government relied on defendant to develop much of technical data upon which it relied in formulating decree and remediation plan, and public comments identified significant shortcomings in proposed remediation plan and cast doubt on government's assessment of appropriate penalty for alleged violation. U.S. v. Telluride Co., D.Colo.1994, 849 F.Supp. 1400. Federal Civil Procedure 2397.2

Proposed consent decree providing for study of nonpoint source pollution of river which arose from action brought under citizen suits provisions of the Federal Water Pollution Control Act was to be approved; study was described with sufficient precision, was closely related to alleged violations, and furthered objectives of Act. Atlantic States Legal Foundation, Inc. v. Simco Leather Corp., N.D.N.Y.1991, 755 F.Supp. 59. Federal Civil Procedure 2397.2

Because of absence of proof that borough's sewage treatment plant was presently violating or would violate applicable pollutant discharge limits, it was impermissible in citizen suit brought under Clean Water Act to disapprove proposed consent decree solely for reason that it did not contain provision requiring borough to pay civil penalty to the United States. Pennsylvania Environmental Defense Foundation v. Bellefonte Borough, M.D.Pa.1989, 718 F.Supp. 431. Federal Civil Procedure 2397.3

Consent decree settling dispute under Clean Water Act was at odds with Act and would not be approved; money to be paid under settlement was scheduled to go to private organizations rather than federal treasury as required by the Act in that decree provided for payment of money to nonprofit organization as trustee which in turn would distribute money to designated private, nonprofit environmental organizations and Act did not authorize any private party to recover damages for violations of the Act. Sierra Club, Inc. v. Electronic Controls Design, Inc., D.Or.1989, 703 F.Supp. 875, reversed 909 F.2d 1350. Federal Civil Procedure 2397.3

Proposed consent decree under which civil penalty of $50,000 would be imposed on manufacturer for discharging excess quantities of pollutants from its citrus processing plant into a small stream would not denigrate seriousness of past violations, encourage future violations, or in any other way disserve goals of Clean Water Act, and thus, proposed consent decree would be entered. Sierra Club v. Coca-Cola Corp., M.D.Fla.1987, 673 F.Supp. 1555. Federal Civil Procedure 2397.2

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Where, as to violations sued upon in case involving effluent discharge requirements of this chapter, proposed consent decree fully satisfied liability of defendants and did not preclude citizen's suits for different violations or attempt to preclude citizen's suits to force Environmental Protection Agency to enforce decree, decree, which precluded further suits for specific violations in question, did not unlawfully grant immunity from citizen's suits for future violations of permit. U. S. v. Ketchikan Pulp Co., D.C.Alaska 1977, 430 F.Supp. 83. Federal Civil Procedure 2397.2

Fair, reasonable, and equitable consent decree settling citizens' suit alleging that city violated Clean Water Act (CWA) would be approved, despite contention by nonparty United States that decree should provide for payment of $250,000 civil penalty based on determination of city's liability, where consent decree required city to undertake several expensive curative actions that would benefit community and environment; no public purpose would be served by requiring that city pay civil penalty to United States. Hawaii's Thousand Friends, Life of Land, Inc. v. City and County of Honolulu, D.Hawai'i 1993, 149 F.R.D. 614. Federal Civil Procedure 2397.2

Once intervenors had been given opportunity to object to proposed consent decree in case involving effluent discharge requirements of this chapter, they had their appropriate day in court and judgment on consent could be entered despite their objections. U. S. v. Ketchikan Pulp Co., D.C.Alaska 1977, 74 F.R.D. 104.

78. Limitations

If notice of intent to sue under Clean Water Act (CWA) that property owners sent to Louisiana Department of Environmental Quality (DEQ), which did not include name of Secretary of DEQ, was sufficient, 120 day limitations period in which property owners had to bring Clean Water Act (CWA) claim against village began to run when owners sent notice. Lockett v. E.P.A., C.A.5 (La.) 2003, 319 F.3d 678. Environmental Law 671

General federal five-year limitation period, and not California's three-year limitations period, applied to citizen action seeking enforcement of civil penalties under Clean Water Act. Sierra Club v. Chevron U.S.A., Inc., C.A.9 (Cal.) 1987, 834 F.2d 1517. Federal Courts 424

Organizations' claims alleging that the Environmental Protection Agency (EPA) failed to exercise its discretionary duty under Clean Water Act (CWA) to review state's antidegradation policy accrued, and six-year limitations period began to run, when EPA began considering the provisions in question. Kentucky Waterways Alliance v. Johnson, W.D.Ky.2006, 426 F.Supp.2d 612, affirmed in part, reversed in part and remanded 540 F.3d 466, rehearing denied. Environmental Law 671

Environment group's claim against water and sewer authority under Clean Water Act (CWA) for violating terms and conditions of its National Pollutant Discharge Elimination System (NPDES) permit by failing to install odor controlled carbon filters on vents located on Park Service property did not accrue when authority stopped maintaining filters on vents, but rather was ongoing violation for which suit was timely. American Canoe Ass'n, Inc. v. District of Columbia Water and Sewer Authority, D.D.C.2004, 306 F.Supp.2d 30, dismissed 2004 WL 2091485. Environmental Law 671

General five-year federal statute of limitations applied to citizen action seeking enforcement of civil penalties under Clean Water Act (CWA). U.S. Public Interest Research Group v. Atlantic Salmon of Maine, LLC., D.Me.2003, 257 F.Supp.2d 407, stay denied 273 F.Supp.2d 126, affirmed 339 F.3d 23. Environmental Law 670

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For limitations purposes, continued failure of state to establish total maximum daily loads (TMDLs) for polluted waters created continuing duty on part of Administrator of Environmental Protection Agency (EPA) to disapprove of state's action and to promulgate TMDLs for state; failure of Administrator is repeated, and therefore new cause of action accrues, whenever Administrator's duties are triggered by either nonsubmission or inadequate submission by state "from time to time." Natural Resources Defense Council, Inc. v. Fox, S.D.N.Y.1995, 909 F.Supp. 153. Environmental Law ⚷ 671

No statute of limitations applies to citizen suits brought under Federal Water Pollution Control Act. Public Interest Research Group of New Jersey v. U.S. Metals Refining Co., D.N.J.1987, 681 F.Supp. 237. Environmental Law ⚷ 670

Two-year statute of limitations for enforcement of penalties under New Jersey law could not be employed in partial bar of claims against nuclear generating facility for pollution of water courses brought by environmental groups which assumed role of private Attorneys General in order to bring citizen suits under Federal Water Pollution Control Act. Student Public Interest Research Group of New Jersey, Inc. v. Jersey Cent. Power & Light Co., D.N.J.1986, 642 F.Supp. 103. Environmental Law ⚷ 670

79. Summary judgment

When plaintiff bringing citizens' lawsuit under Clean Water Act has alleged ongoing violation, but fails to demonstrate fact issue about whether defendant is "in violation," trial court should grant summary judgment for defendant on merits, instead of dismissing for want of jurisdiction. Sierra Club v. Shell Oil Co., C.A.5 (La.) 1987, 817 F.2d 1169, certiorari denied 108 S.Ct. 501, 484 U.S. 985, 98 L.Ed.2d 500, rehearing denied 108 S.Ct. 1065, 484 U.S. 1083, 98 L.Ed.2d 1027. Federal Civil Procedure ⚷ 2498.3

Genuine issues of material fact as to whether fecal coliform, a pollutant, traveled from coastal landowners' tract of land to water covered by the Clean Water Act (CWA), and as to whether alleged increase in fecal coliform levels in such navigable water was related to landowners' ditching activities, precluded summary judgment in citizen suit under CWA. North Carolina Shellfish Growers Ass'n v. Holly Ridge Associates, LLC., E.D.N.C.2003, 278 F.Supp.2d 654, 357 N.C. 1429. Federal Civil Procedure ⚷ 2498.3

Genuine issues of material fact existed as to whether environmental organization asserting Clean Water Act (CWA) claims against sewer district and town suffered injury in fact from discharge, from wastewater treatment plant, of pollutants in excess of limits set by applicable state permits, precluding summary judgment against organization for lack of standing. Hudson Riverkeeper Fund, Inc. v. Yorktown Heights Sewer Dist., S.D.N.Y.1996, 949 F.Supp. 210. Federal Civil Procedure ⚷ 2498.3

County's past violations of Clean Water Act (CWA) with respect to leachate discharges into river from landfill did not entitle citizen suit plaintiffs to summary judgment where it could not be said that future violations would occur establishing need for injunctive relief. Orange Environment, Inc. v. County of Orange, S.D.N.Y.1994, 860 F.Supp. 1003. Federal Civil Procedure ⚷ 2498.3

Affidavit of expert contending that river water intakes at electric power facility did not utilize best technology available raised genuine issue of fact in citizen suit brought under the Clean Water Act as to whether utility violated condition of discharge permit requiring utilization of best technology available to minimize adverse environmental impact, precluding summary judgment. Hudson Riverkeeper Fund, Inc. v. Orange and Rockland Utilities, Inc., S.D.N.Y.1993, 835 F.Supp. 160. Federal Civil Procedure ⚷ 2498.3

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Material issue of fact as to whether farmer's alleged discharges of pollutants originated from requisite "point source" precluded summary judgment for farmer, in Clean Water Act citizen suit challenging farmer's use of water-laden manure as fertilizer; surface run-off of contaminated waters, once channeled or collected, could constitute discharge by point source. Concerned Area Residents for The Environment v. Southview Farm, W.D.N.Y.1993, 834 F.Supp. 1410. Federal Civil Procedure ⚷ 2498.3

Discharge monitoring reports and laboratory reports showing that polluter violated discharge limits in permit issued under federal Water Pollution Control Act maybe relied on by court in granting summary judgment as to liability. Public Interest Research Group of New Jersey, Inc. v. New Jersey Expressway Authority, D.N.J.1992, 822 F.Supp. 174. Environmental Law ⚷ 228

Surface water discharge permit holder's evidence of testing error in Discharge Monitoring Reports was too speculative to defeat citizen's motion for summary judgment in action under Federal Water Pollution Prevention and Control Act for permit holder's discharge of effluents in excess of permit levels since evidence showed nothing more than theories by permit holder as to why specific discharge exceedances occurred but did not show that errors existed in actual tests performed. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 757 F.Supp. 438, reconsideration granted in part 790 F.Supp. 511. Federal Civil Procedure ⚷ 2498.3

80. Admissibility of evidence

Exclusion in Clean Water Act action of settlement agreement in prior litigation reached between polluter's subsidiary and some of citizens in instant Clean Water Act case was within trial court's discretion. U.S. E.P.A. v. City of Green Forest, Ark., C.A.8 (Ark.) 1990, 921 F.2d 1394, rehearing denied, certiorari denied 112 S.Ct. 414, 502 U.S. 956, 116 L.Ed.2d 435. Environmental Law ⚷ 228

Evidence of national pollution discharge elimination system permit holder's violations in some parameters is admissible as evidence that future violations are likely in other parameters, particularly where numerous parameters have been violated on many occasions since filing of suit. Public Interest Research Group of New Jersey v. Yates Industries, Inc., D.N.J.1991, 790 F.Supp. 511. Environmental Law ⚷ 228

Letters from state and federal environmental protection agencies indicating that alleged water polluter's discharge did not comply with its discharge permit effluent limitations established that alleged water polluter was in violation of its discharge permit, for purposes of action under the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.]. Student Public Interest Research Group of New Jersey, Inc. v. P.D. Oil & Chemical Storage, Inc., D.N.J.1986, 627 F.Supp. 1074. Environmental Law ⚷ 206

Discharge reports required to be kept by manufacturer under permits authorizing discharge of pollutants into river could be used as admissions to establish its liability for violating the permits. Student Public Interest Research Group of New Jersey, Inc. v. Fritzsche, Dodge & Olcott, Inc., D.C.N.J.1984, 579 F.Supp. 1528, affirmed 759 F.2d 1131. Evidence ⚷ 222(2)

81. Review

Court of Appeals had discretion to consider issue of whether Clean Water Act (CWA) preempted maritime common law on punitive damages in action arising from grounding of supertanker and resulting oil spill in Alaska, although defendant oil company did not raise the issue until almost 13 months after stipulated motions deadline,

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which was imposed after jury returned punitive damages verdict. Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605, 171 L.Ed.2d 570. Federal Courts ⚷ 634

In order for state law to be "comparable" to Clean Water Act (CWA), and thus for state's enforcement action to bar CWA citizen suit, penalty assessment, public participation and judicial review provisions of state law each must be roughly comparable to corresponding classes of federal provisions. McAbee v. City of Fort Payne, C.A.11 (Ala.) 2003, 318 F.3d 1248, rehearing and rehearing en banc denied 65 Fed.Appx. 716, 2003 WL 1877216. Environmental Law ⚷ 226

Court reviewing grant of summary judgment reviews all issues de novo, applying same test as district court. Wilson v. JOB, Inc., C.A.5 (La.) 1992, 958 F.2d 653. Federal Courts ⚷ 776

Determination whether environmental preservation was more central to public interest than national security interest was not appropriate function of Court of Appeals reviewing denial of preliminary injunction against reopening of nuclear reactor until completion of cooling tower. Natural Resources Defense Council, Inc. v. Watkins, C.A.4 (S.C.) 1992, 954 F.2d 974. Environmental Law ⚷ 687

Court of Appeals had jurisdiction to hear environmental organization's appeal from district court's refusal to enter consent judgment settling citizen's suit brought under Clean Water Act. Sierra Club, Inc. v. Electronic Controls Design, Inc., C.A.9 (Or.) 1990, 909 F.2d 1350. Federal Courts ⚷ 576.1

Suit seeking review of regulations promulgated by the Administrator of Environmental Protection Agency establishing standards of performance for new point sources in the coal-mining industry, on grounds that the regulations specifically deferred promulgation of regulations that would apply to those water-polluting discharges attributable to closed or abandoned mines was citizen's suit seeking to compel the Administrator to perform a nondiscretionary duty and, as such, should have been brought in federal district court, despite contention that suit was properly brought in the court of appeals on ground that it challenged deficient regulation and that the subject of the deferred regulations had been included in the scope of the administrative proceedings. Com. of Pa., Dept. of Environmental Resources v. E.P.A., C.A.3 1980, 618 F.2d 991, rehearing granted in part. Federal Courts ⚷ 1134

Plaintiffs's disagreement with court's conclusion that Army Corps of Engineers, in issuing permit to fill wetlands for road construction project, had rebutted the presumption under the Clean Water Act (CWA), that there were practicable alternatives to the project, was not ground for reconsideration of court's order denying plaintiffs's motion for preliminary injunction; court had applied the same standard for alternatives analysis as urged by plaintiffs. Northwest Bypass Group v. U.S. Army Corps of Engineers, D.N.H.2007, 490 F.Supp.2d 184. Environmental Law ⚷ 701

Discovery in Clean Water Act (CWA) and Endangered Species Act (ESA) citizen suit claims is limited to administrative record, unless record fails to explain administrative action, agency relied on materials or documents not included in administrative record, or record needs to be supplemented in order to explain or clarify technical terms or other difficult subject matter included. American Canoe Ass'n, Inc. v. U.S. E.P.A., E.D.Va.1999, 46 F.Supp.2d 473. Environmental Law ⚷ 675

In examining proposed consent decree settling litigation under Clean Water Act, district court's role is not to substitute its judgment of what constitutes appropriate settlement or to reform decree; nevertheless, court may not abdicate its responsibility to ensure that decree upholds important policies underlying Act simply because

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government advises court that it should defer to Environmental Protection Agency's judgment. U.S. v. Telluride Co., D.Colo.1994, 849 F.Supp. 1400. Federal Civil Procedure ⚿ 2397.2

82. Remand

Supreme Court had discretion to remit dispute with respect to alleged pollution of Lake Michigan to appropriate district court for resolution. Illinois v. City of Milwaukee, Wis., U.S.1972, 92 S.Ct. 1385, 406 U.S. 91, 31 L.Ed.2d 712. Federal Courts ⚿ 443

Action under Clean Water Act in which consent decree was entered would be remanded to district court for it to determine in first instance whether intervenors had private enforceable right under provision of Act requiring the Environmental Protection Agency (EPA) and state to provide for, encourage, and assist with public participation in development and enforcement of any plan. U.S. v. Metropolitan St. Louis Sewer Dist. (MSD), C.A.8 (Mo.) 1992, 952 F.2d 1040. Environmental Law ⚿ 698

In citizen enforcement action under Clean Water Act, appellate court judgment determining that holder of national pollutant discharge elimination system permit was liable for past violations of permit was amended in light of Supreme Court's decision in *Gwaltney v. Chesapeake Bay Foundation* to contain requirement that permit holder's liability for past violations be subject to citizens group's ability to prove on remand existence of ongoing violations or reasonable likelihood of continued violations; group could prove ongoing violations either by proving violations that continued on or after date complaint was filed or by adducing evidence from which reasonable trier of fact could find continuing likelihood of recurrence in intermittent or sporadic violations, which were violations that did not cease to be ongoing until date there was no real likelihood of repetition. Sierra Club v. Union Oil Co. of California, C.A.9 (Cal.) 1988, 853 F.2d 667, on remand 716 F.Supp. 429. Environmental Law ⚿ 226; Environmental Law ⚿ 709

In determining whether Clean Water Act conferred federal jurisdiction over citizens' suit against holder of national pollutant discharge elimination system permit, remand was required for direct finding by district court as to whether citizens had proved at trial that permittee had engaged in intermittent or sporadic violations of permit, so as to constitute ongoing violation; citizens had to prove violations continued on or after date complaint was filed or present evidence from which reasonable trier of fact could find continuing likelihood of recurrence of intermittent or sporadic violations, and district court was entitled to consider whether remedial actions were taken to cure violations, ex ante probability that such remedial measures would be effective and any other evidence bearing on whether risk of continued violation had been completely eradicated when citizens filed suit. Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd., C.A.4 (Va.) 1988, 844 F.2d 170, on remand 688 F.Supp. 1078. Environmental Law ⚿ 709

Material question of fact, on whether permittee's failure to comply with requirements of permit as regards discharge of treated effluent into stream was mere isolated occurrence or possible recurring problem caused by designed deficiencies in its system, precluded entry of summary judgment for permittee in action under "private litigant" provisions of Clean Water Act. Tobyhanna Conservation Ass'n v. Country Place Waste Treatment Facility, M.D.Pa.1991, 769 F.Supp. 739. Federal Civil Procedure ⚿ 2498.3

Suits to recover damages resulting from alleged escape of hazardous or toxic materials from waste site did not "arise under" any federal statute, for removal purposes; plaintiffs had consistently sought to litigate state claims in state court and had apparently foregone federal remedies to pursue any available state relief, and claims set forth in complaint did not raise substantial issues requiring construction of federal environmental laws and regu-

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lations which, though containing provisions for private enforcement, did not permit recovery of compensatory damages and preserved states' rights to legislate in areas and individuals' rights to pursue state remedies. Boone v. DuBose, M.D.La.1988, 718 F.Supp. 479.

33 U.S.C.A. § 1365, 33 USCA § 1365
Current through P.L. 111-21 approved 5-20-09

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ATTACHMENT

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STATE WATER RESOURCES CONTROL BOARD
901 P STREET
SACRAMENTO, CALIFORNIA
JULY 15, 1999

FACT SHEET
FOR
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS) PROPERTIES, FACILITIES, AND ACTIVITIES (ORDER NO. 99 – 06 - DWQ)

BACKGROUND

In 1972, The Federal Water Pollution Control Act [also referred to as the Clean Water Act (CWA)] was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful, unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added section 402(p) which directs that storm water discharges are point source discharges and establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) promulgated final regulations that establish the storm water permit requirements.

Pursuant to these regulations, storm water permits are required for discharges from a municipal separate storm sewer system (MS4) serving a population of 100,000 or more. USEPA defined MS4 to include road systems owned by states which are in an area with a population greater than 100,000. The regulations also specified a requirement for storm water permits from 11 categories of industry, including construction activities where the construction activity disturbs five acres or more.

In California, the MS4s were issued individual NPDES permits by the Regional Water Quality Control Boards (RWQCB). Caltrans is currently under permit in all of the areas of California that have been determined to require an MS4 permit with the exception of the Salinas area. Industrial activities are covered by General Permits that have been adopted by the State Water Resources Control Board (SWRCB). Caltrans currently seeks coverage under the NPDES General Permit for Construction Activities (Construction General Permit) for construction activities that are over five acres. The exception to this is in the Lake Tahoe area, where the RWQCB adopted its own Construction General Permit for projects over five acres and Waste Discharge Requirements (WDRs) for projects under five acres.

In 1996, Caltrans requested that the SWRCB, consider adopting a single NPDES permit for storm water discharges from all Caltrans properties, facilities, and activities that would cover both the MS4 requirements and the statewide Construction General Permit requirements. The federal regulations allow for the issuance of system-wide MS4 NPDES permits. Caltrans submitted an application for a permit with a draft Storm Water Management Plan (SWMP) in August 1996. The SWRCB gave Caltrans comments on the SWMP and received a revised SWMP from Caltrans in March 1997. Because the RWQCBs have issued NPDES storm water permits to all of the areas currently requiring a permit, with the exception of the Salinas area, this permit was not considered a new storm water permit, and a Part I and Part II application were not required.

The "Interpretative Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems" issued by USEPA on May 17, 1996 outlines the requirements for permittees seeking a second Municipal NPDES Storm Water Permit. The requirements are: (1) name and address of the applicant; (2) name and title of primary administrative and technical contacts; and (3) proposed changes or improvements to the storm water management program and monitoring activities for the upcoming five-year term of the permit. In addition, USEPA recommends that the applicant provide identification of any previously unidentified water bodies and a summary of any known water quality impacts.

This permit is intended to cover all municipal storm water activities by Caltrans in California, both in areas that require an MS4 permit and areas that do not currently require a permit. It is also intended to cover all Caltrans construction activities that require a permit under the federal regulations. It directs that all existing storm water permits for discharges from Caltrans properties, facilities, and activities should be rescinded. RWQCBs may in the future issue individual storm water permits for Caltrans construction activities, as explained below.

This permit shall be implemented and enforced by the nine RWQCBs.

PROHIBITIONS

This permit authorizes storm water and authorized nonstorm water discharges from Caltrans properties, facilities, and activities. This permit prohibits discharges of material other than storm water (nonstorm water discharges) that are not authorized by this permit.

EFFLUENT LIMITATIONS

NPDES permits for storm water discharges must meet all applicable provisions of sections 301 and 402 of the CWA. These provisions require control of pollutant discharges to the Maximum Extent Practicable (MEP) for the MS4 permit requirements and to the standard of Best Available Technology Economically Achievable/Best Conventional Technology (BAT/BCT) for Construction General Permit requirements. It

also requires dischargers to implement more stringent controls, if necessary, to meet water quality standards.

It is not feasible at this time to establish numeric effluent limitations for storm water. The reasons why establishment of numeric effluent limitations is not feasible are discussed in detail in SWRCB Orders No. WQ 91-03 and WQ 91-04. Therefore, this permit allows Caltrans to implement Best Management Practices (BMPs) to comply with the requirements of this permit.

RECEIVING WATER LIMITATIONS

Storm water discharges shall not cause or contribute to a violation of an applicable water quality standard. This permit requires Caltrans to reduce or prevent pollutants in storm water discharges and authorized nonstorm water discharges through the development and implementation of BMPs which constitutes compliance with either MEP or BAT/BCT, whichever is applicable. Storm water discharges must also be in compliance with water quality standards. If receiving water quality standards are exceeded, Caltrans is required to submit a written report providing additional BMPs or other measures to be taken that will be implemented to achieve water quality standards.

MS4 PERMIT REQUIREMENTS

MS4 permit requirements are to be implemented to MEP. These requirements are addressed in the SWMP that is an integral and enforceable component of this NPDES Permit. However, the SWMP also refers to other documents that Caltrans has prepared which give the detailed discussion of how the program elements are to be implemented. Where the SWMP was determined to be inadequate, further requirements are outlined in the permit. Caltrans will submit changes to the SWMP on an annual basis. Substantive changes to the SWMP will require approval by the SWRCB.

The SWMP which was submitted in August 1996 defined terms in the development of the program in a way that is inconsistent with the definitions in Title 40 of the Code of Federal Regulations Section 122.22 (40 CFR 122.22). Caltrans is required to rewrite the SWMP in a manner that is consistent with the definitions in the regulations. Caltrans also uses terms such as "winter season" and "significant erodible slope" which are not used in the regulations. Caltrans uses terms such as these to determine the scope of the program, with the understanding that Caltrans is responsible for discharges at all times during the year, and that if implementation of the program using these terms leads to discharge of pollutants, the terms will have to be redefined.

Caltrans is required to submit a revised SWMP within 90 days of the adoption of this permit. Because the SWMP is an integral and enforceable part of this permit, this revised SWMP will be presented to the State Board for approval. The incorporation of this revised SWMP into the permit will be made pursuant to the federal regulations for NPDES permit modification found at 40 CFR Section 122.62 and 40 CFR Section 124.

Caltrans has developed a BMP program for control of pollutants from existing facilities and for new and reconstructed facilities as part of the SWMP. This BMP program must be revised to reflect the definition of pollutant in the federal requirements, including a reevaluation of BMPs. The evaluation of the feasibility of structural BMPs in the SWMP does not reflect the current state of knowledge among other transportation agencies. BMPs are rejected that are routinely used by other transportation agencies. Therefore, the BMP selection in the SWMP does not meet MEP. The federal regulations require the consideration of structural BMPs where they are appropriate. MEP cannot be met without the consideration of structural BMPs. The fact that a BMP has not been used before is not an adequate reason to reject its use if other factors make it appropriate

In addition to the annual submittal of the SWMP, this permit also requires Caltrans to submit a workplan that explains how the program will be implemented in each Region. The purpose of the workplan is to bring the theoretical and proposed program of the SWMP to the practical and implementable level at the regional, watershed and water body level. Through the workplan process, Caltrans will be able to discuss the implementation of the program and show how their priorities will address specific local needs.

The MS4 permit requirements include:

Coordination with Local Agencies

This permit requires Caltrans to develop a program for communication with local agencies and coordination with other MS4 programs where the programs overlap geographically with Caltrans facilities.

Legal Authority

In the April 1998 SWMP, Caltrans submitted a certification of adequate legal authority to implement the program. Through implementation of a storm water program, Caltrans may find that the legal authority is, in fact, not adequate. This permit requires Caltrans to reevaluate the legal authority each year and recertify that it is adequate. Caltrans must submit the analysis of the legal authority as part of the Annual Report each year. If it becomes clear that the legal authority is not adequate to fully implement the SWMP and the requirements of the permit, Caltrans must seek the authority necessary for implementation of the program.

Fiscal Analysis

Caltrans must maintain adequate funding to implement an effective storm water program and must submit an analysis of the funding each year. This includes a report on the funding that is dedicated to storm water as well as an estimate of the funding that has been allocated to various program elements that is not included in the storm water

program funding. An example of this would be to estimate the funding that has been made available to the Maintenance Program to implement the development of Maintenance Facility Pollution Prevention Program Plans (FPPP) and to implement the BMPs that are necessary for water quality. In addition, Caltrans is required to seek adequate funding from the legislature for an effective storm water program.

Vegetation Control Program

This permit requires Caltrans to develop a program for vegetation control that minimizes the use of agricultural chemicals and maximizes the use of appropriate native and adapted vegetation for erosion control and filtering of runoff.

Storm Water System Management

This permit requires Caltrans to develop a program to monitor and clean storm drain inlets. For storm water structures that contain excessive material on a regular basis, Caltrans must determine if an Illicit Connection/Illegal Discharge (IC/ID) Detection investigation is warranted or if an enhanced BMP program is required for the drainage area. Vegetation in storm channels may reduce erosion from these channels and provide filtration and may be subject to sections 401 and 404 of the CWA.

Accidental Spills

This permit requires Caltrans to notify the MS4 permittee of any spills that may have an impact on the MS4's ability to comply with its municipal storm water permit. This means any spill that could reach the MS4 permittee's storm drain system in a large enough quantity to impact the system. Caltrans must also notify the RWQCB of any spill that may reach a receiving water and have an adverse effect on the receiving water. Generally, this notification would be limited to spills that are large enough to require cleanup or lane closure, but only if the spill could have an impact on water quality.

Illicit Connection/Illegal Discharge (IC/DC) Detection

This permit requires Caltrans to have a program to detect and investigate IC/IDs. Because Caltrans is different from a typical municipality, it is not intended that Caltrans should do routine inspections of their system for illicit connections. It is unlikely that a discharger would have access to the Caltrans storm drain system to make an illicit connection. It is also not intended that Caltrans would do routine field screening for illegal discharges. The Caltrans system is too large and spread out for this to be effective. However, Caltrans is required to train field maintenance personnel to recognize IC/IDs and to respond to them. Caltrans is also required to have a method for receiving and responding to public complaints.

Characterization of Discharges

In the areas which require an MS4 permit, Caltrans is required to characterize discharges as specified in 40 CFR 122.26(iv)(d)(1) and (2) over the life of the permit. This requirement was to be done as part of the Part II application for the initial permits that Caltrans received in these areas; so for most areas, this data should already be available. The purpose of this requirement is to provide Caltrans with adequate information about the storm drain system to effectively implement the program. This characterization is a one time requirement. If adequate information was submitted under the original Part II application, this requirement is satisfied and the data should be used as the basis for the Regional Workplans.

Maintenance Facilities

This permit requires Caltrans to prepare FPPP for all maintenance facilities, implement BMP programs at each facility as necessary and periodically inspect each facility. Monitoring is only required as part of the overall monitoring program to determine the effectiveness of the BMP program.

Training and Public Education

The Training and Public Education component consists of three parts to address the three major audiences that Caltrans must address. The three audiences are Caltrans employees, Caltrans contractors, and the general public. Caltrans has prioritized these three parts and has developed and implemented programs for the first two audiences. The program for the final part, which addresses the general public, will be developed and implemented during this permit period.

The detailed requirements in the permit outlining what is to be included in a public education component were recommended by the Public Information/Public Participation Subcommittee of the California Storm Water Quality Task Force. The members of this committee are all responsible for public education programs throughout the State and have experience in developing public education programs.

Program Evaluation and Monitoring

This permit requires Caltrans to evaluate the effectiveness and adequacy of the storm water program on an annual basis. This includes both monitoring and a self-audit of the program. Caltrans has submitted a three-year monitoring strategy that will be updated annually. Caltrans will also be required to submit a detailed monitoring program prior to the upcoming rainy season for each year. The monitoring is intended to demonstrate the effectiveness of its storm water and nonstorm water programs and specifically to achieve the following objectives:

1. Characterization of storm water discharges, including pollutant concentrations and mass loadings, from locations representative of Caltrans owned properties, facilities, and activities. Of particular interest is the discharge of high volume systems which discharge to areas subject to or sensitive to beach closures;

2. Evaluation of effectiveness of maintenance activity control measures;

3. Evaluation of effectiveness of maintenance facility pollution prevention plans;

4. Evaluation of effectiveness of construction erosion prevention and control measures;

5. Evaluation of effectiveness of permanent control measures; and

6. Evaluation of effectiveness of highway operation control measures.

Caltrans has also submitted a Guidance Manual for Stormwater Monitoring Protocols which specifies the manner in which monitoring is to be undertaken.

In addition to monitoring, Caltrans must perform a program audit each year to determine how well the program is being implemented and whether the program is actually adequate. Caltrans must submit an outline of this audit six months in advance of the Annual Report so that the SWRCB can evaluate the methods to be used to perform the audit.

Region Specific Concerns

Each of the RWQCBs was given the opportunity to specify specific water quality concerns in their Region that required special conditions. At this time, these requirements are limited to items that Caltrans is currently responsible for either under a current NPDES permit or under a RWQCB Basin Plan. Region-specific concerns have been identified in the Lahontan RWQCB. Some of the requirements are specific to the Lake Tahoe Hydrologic Unit and are based on the unique quality of the resource. Other requirements are applicable to the entire region.

To accommodate the concerns about the Lake Tahoe Hydrologic Unit, the Lahontan RWQCB has placed requirements in the RWQCB Basin Plan that are, therefore, requirements of this permit. They include (1) numeric effluent limits for storm water, (2) nonstorm water discharge prohibitions, (3) a requirement for the capture and treatment of all storm water from the 20-year storm, (4) erosion control guidelines for high mountain areas, (5) construction site and maintenance facility inspection requirements, and (6) a winter ban on soil disturbance throughout the Lake Tahoe Hydrologic Unit and other high mountain portions of the Region. If the Basin Plan requirements that are referenced in this NPDES Permit are changed during the life of this NPDES Permit,

Caltrans can request that the terms of this permit be changed to reflect the changes in the Basin Plan.

In addition, the Lahontan RWQCB requires Caltrans to meet some specific requirements in their construction program. These include involving the RWQCB in the design of the project and early submittal of Storm Water Pollution Prevention Plans (SWPPP).

The Lahontan RWQCB requires that Caltrans submit information to them about the program to control snow and ice throughout the Region. This requirement includes the submittal of information about the use of abrasives and deicing agents throughout the Region, including the location of the use, the source and chemistry of the deicing agents and abrasives, and the volume of abrasive and deicing agents used on individual highway segments. For example, Caltrans must report separately on abrasives and deicing agents use within the Lake Tahoe Hydrologic Unit by volume of material used on State Route 50, State Route 89, State Route 28, and State Route 267, rather than providing only the total volume used in the Lake Tahoe Hydrologic Unit or within a specific Caltrans District. In the Truckee River Hydrologic Unit, the reports would be volume of material used on State Route 89S, State Route 89N, State Route 267, and Interstate 80.

Caltrans is required to develop a monitoring program that evaluates the effectiveness of BMPs used to recover abrasives and deicing materials and that evaluates the impacts of abrasives and deicing materials on surface waters within the Lake Tahoe Hydrologic Unit. A report on the use of deicing agents and abrasives is required each year as part of the Annual Report.

CONSTRUCTION PERMIT REQUIREMENTS

Construction activities which disturb five acres or more outside of the Lake Tahoe Hydrologic Area are currently required to be covered by the Construction General Permit. The current Construction General Permit is SWRCB Order 99- DWQ.

The Lahontan RWQCB has developed an NPDES Storm Water Permit for construction projects that involve more than five acres of soil disturbance and non-NPDES waste discharge requirements for construction projects for projects less than five acres within the Lake Tahoe Hydrologic Unit. The current Lahontan Construction Permit is Lahontan RWQCB Board Order 6-93-63. The WDRs for small projects are contained in Lahontan RWQCB Board Order 6-91-31. All projects within the Lake Tahoe Hydrologic Area are currently subject to one of these two Board Orders depending on the size of the project.

Storm water discharges from all Caltrans construction projects will be covered by this permit except for those projects that the RWQCB determines should be covered by an individual permit. Caltrans will be required to notify the RWQCB that a project is to be covered under this permit at least 30-days prior to the onset of construction. This 30-day

notification under this permit is the equivalent of filing a Notice of Intent (NOI) under the Construction General Permit.

The RWQCB can require submittal of the SWPPP up to 30 days prior to the onset of soil disturbance, require changes to the SWPPP, perform inspections, and take enforcement action. Caltrans can negotiate an alternative process with the appropriate RWQCB if an alternative method of complying with the requirement for early submittal of the SWPPP is appropriate.

The permit requires Caltrans to implement an effective construction storm water program. The program that Caltrans plans to implement is contained in their SWMP. This plan, in turn, refers to BMP manuals and the Standard Specifications that contain the details of the BMP implementation.

Caltrans must implement an effective construction storm water program during the entire year throughout the State. Because the construction storm water program will be implemented year round, regardless of whether or not Caltrans elects to implement baseline or more advanced erosion control measures, any discharges of material not authorized by this permit is a violation.

Caltrans construction projects may involve soils that contain lead in quantities that meet the State definition of hazardous waste but not the federal definition. The Department of Toxic Substances Control (DTSC) has issued waivers allowing Caltrans to use these soils in construction projects under a narrow range of conditions. In addition to the waivers, Caltrans also needs authorization from the RWQCB to allow the use of these soils. Caltrans is required to obtain WDRs from the RWQCB for the use of these soils.

ANNUAL REPORT

This permit requires Caltrans to submit an Annual Report each April. The Annual Report will contain (1) an evaluation of the previous year's program, (2) the results of the program audit, including information about compliance with the construction requirements and maintenance facility requirements, (3) a vegetation management report, (4) an IC/ID report, (5) a nonstorm water discharge report, (6) an analysis of the legal authority, (7) an analysis of the fiscal resources for the coming year, (8) a report on the training and public education program, and (9) reports on the regional requirements. The Annual Report must also contain a monitoring report and a monitoring plan for the upcoming year and workplans for each of the regions. There is a one year lag in the reporting of the monitoring program and the program audit in the Annual Report. This lag is intended to allow Caltrans the time to adequately analyze the data that has been generated.

STATE WATER RESOURCES CONTROL BOARD

ORDER NO. 99 - 06 - DWQ
NPDES NO. CAS000003

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
STATEWIDE STORM WATER PERMIT
AND
WASTE DISCHARGE REQUIREMENTS (WDRs)
FOR THE
STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS)

The State Water Resources Control Board (SWRCB) finds that:

1. **NPDES PERMIT APPLICATION**: On September 5, 1996, Caltrans, located at 1120 N Street, Sacramento, California 95814 submitted an NPDES Permit application for storm water discharges from the Caltrans highways, properties, facilities, and activities throughout the State of California for Caltrans headquarters and for the District offices including: the North Coast region (District 1), Northern Central Valley and Far Northeastern region (District 2), Sacramento area (District 3), San Francisco Bay area (District 4), Central Coast (District 5), Lower Central Valley (District 6), Los Angeles Basin (District 7), San Bernardino area (District 8), Mono/Inyo area (District 9), Middle Central Valley (District 10), San Diego area (District 11), and Orange County (District 12). The application was accepted on October 4, 1996. As part of the application, Caltrans submitted a Storm Water Management Plan (SWMP) and Monitoring Plan. The SWMP and Monitoring Plan were amended in March 1997 and again in April 1998. The application is considered an application for permit reissuance because Caltrans is currently under permit in all of the parts of the State for which a Municipal Separate Storm Sewer System (MS4) permit is currently required. The MS4 permits that Caltrans holds, the permitting agency, the adoption date, and expiration date are shown in Table 1.

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TABLE 1
CURRENT CALTRANS STORM WATER PERMITS

RWQCB	Caltrans District	Board Order	NPDES Permit Number	Adoption Date	Expiration Date
North Coast	4	97-119	CA0025038	10/22/97	10/22/02
San Francisco Bay	4 and 10	94-098	CAS029998	8/17/94	8/27/99
Los Angeles	7	90-079	CA0061654	6/18/90	6/18/95
Central Valley	6	94-244	CA0083500	9/16/94	9/1/99
Central Valley	3, 4, 6 and 10	95-001	CA0083640	1/27/95	1/1/00
Lahontan	3	6-93-62	CAS616002	6/11/93	6/11/98
Colorado River Basin	8 and 11	94-038	CAS617001	11/15/94	11/17/99
Santa Ana River	8 and 12	94-5	CA8000279	7/8/94	7/8/99
San Diego	8,11, and 12	97-08	CAS029998	3/12/97	3/12/02

2. **FEDERAL AUTHORITY**: In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES Permit. The 1987 amendments to the CWA added section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Permit Program.

3. **STATE AUTHORITY:** California Water Code section 13376 provides that any person discharging or proposing to discharge pollutants to waters of the United States must apply for and obtain WDRs. (For this permit, the State term "WDRs" is equivalent to the federal term "NPDES permits" as used in the CWA). Furthermore, municipal and industrial storm water discharges are discharges of waste that could affect the quality of the waters of the State. Applicable State of California regulations are contained in the California Code of Regulations (CCR), Title 23, Division 3, Chapter 9.

4. **CALTRANS DISCHARGES SUBJECT TO MUNICIPAL STORM WATER PERMIT REGULATIONS**: On November 16, 1990, the U.S. Environmental Protection Agency (USEPA) promulgated final regulations that establish application requirements for storm water permits codified at Title 40 of the Code of Federal Regulations (CFR), Section 122.26 (40 CFR 122.26). Federal regulations 40 CFR 122.26(a)(iii) and (iv) require that NPDES storm water permits be issued for discharges from large and medium MS4s. The regulations define "municipal separate storm sewer" to mean "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, . . .". Caltrans, as the owner of an MS4, is subject to an NPDES Permit in those areas of the State subject to an MS4 storm water permit. Caltrans performs activities that impact storm water quality. These activities include operation of roads and highways, construction activities, and maintenance activities.

To enable Caltrans to implement a uniform storm water program, this NPDES Permit will cover storm water discharges from all Caltrans highways, properties, activities and facilities throughout the State.

5. **CALTRANS DISCHARGES SUBJECT TO CONSTRUCTION STORM WATER PERMIT REGULATIONS:** Federal regulations (40 CFR 122.26) require discharges of storm water associated with construction activity including clearing, grading, and excavation activities (except operations that result in disturbance of less than five acres of total land area and which are not part of a larger common plan of development or sale) to obtain an NPDES Permit and to implement Best Management Practices (BMPs) that achieve the performance standards of Best Available Technology economically achievable/Best Conventional Pollutant Control Technology (BAT/BCT) to reduce or eliminate storm water pollution.

6. **STORM WATER DISCHARGE DEFINITION:** Storm water discharges consist only of those discharges that originate from precipitation events. Storm water is defined in 40 CFR 122.26(b)(13) as storm water runoff, snowmelt runoff, and surface runoff and drainage. During precipitation events, storm water picks up and transports pollutants into and through municipal storm water conveyance systems and ultimately to waters of the United States.

7. **NONSTORM WATER DISCHARGE DEFINITION:** Nonstorm water discharges consist of all discharges from a municipal storm water conveyance system which do not originate from precipitation events (i.e., all discharges from a conveyance system other than storm water). Nonstorm water discharges include illicit discharges, nonprohibited discharges, and NPDES permitted discharges. An illicit discharge is defined in 40 CFR 122.26(b)(2) as "any discharge to a municipal storm sewer that is not composed entirely of storm water except discharges pursuant to an NPDES Permit (other than the NPDES Permit for discharges from the MS4) and discharges resulting from fire fighting activities." Nonstorm water discharges are addressed in Provision B of this permit.

8. **PERFORMANCE STANDARDS:** CWA section 402(p) establishes two different performance standards for storm water discharges. NPDES permits issued for MS4 storm water discharges require controls to reduce the discharge of pollutants to the Maximum Extent Practicable (MEP). Caltrans can reduce pollutants to MEP through the effective implementation of BMPs. NPDES Permits issued for industrial storm water discharges (including construction activities) must meet BAT for toxic pollutants and BCT for conventional pollutants. In addition, storm water discharges may not cause or contribute to exceedance of water quality standards. The requirements for compliance with water quality standards are described in Provision C., Receiving Water Limitations.

9. **CALTRANS ACTIVITIES:** Caltrans is primarily responsible for the design, construction, management, and maintenance of the State highway system, including freeways, bridges, tunnels, maintenance facilities, and related properties, and facilities.

10. **CALTRANS BUDGET:** Caltrans derives funding from federal, State, and local government sources. The annual operating budget for Caltrans is determined through the

State's financial planning process. The final determination on the budget is made by the Legislature and the Governor.

11. **REGIONAL WATER QUALITY CONTROL BOARD (RWQCB) BASIN PLANS:** Each RWQCB has adopted a Basin Plan containing the policies, prohibitions and requirements that apply to that Region. Caltrans is subject to the policies and prohibitions and requirements contained in these Basin Plans in the Region in which the Basin Plan is applicable.

12. **CALTRANS DISCHARGES:** Caltrans discharges consist of storm water and nonstorm water runoff generated from (a) maintenance and operation of State-owned highways, freeways, and roads; (b) maintenance facilities; (c) other properties, facilities, activities, and construction projects; (d) permanent discharges from subsurface dewatering, and (e) temporary construction related dewatering which discharge directly or through municipal storm water conveyance systems to surface water bodies in the State. These surface water bodies include creeks, rivers, reservoirs, lakes; wetlands, lagoons, estuaries, bays, and the Pacific Ocean and tributaries thereto. These surface waters are waters of the United States as defined in 40 CFR 122.2. This permit regulates storm water discharges on Caltrans highways, properties, and facilities.

13. **POTENTIAL POLLUTANTS IN CALTRANS DISCHARGES:** Discharges of storm water from the Caltrans owned rights-of-way, properties, facilities, and activities, including storm water management activities in construction, maintenance, and operation of State-owned highways within the State of California have been shown to be contributors of pollutants to waters of the United States. As such, the discharge of storm water may be causing or threatening to cause violations of water quality objectives. The quality and quantity of these discharges vary considerably and are affected by hydrology, geology, land use, season, and sequence and duration of hydrologic events. Pollutants occur in both the storm water discharges and nonstorm water discharges. Pollutant sources from Caltrans rights-of-way, properties, facilities, and activities include motor vehicles, highway maintenance, construction site runoff, maintenance facility runoff, illegal dumping, spills, and landscaping care. Pollutant categories include metals (such as copper, lead, and zinc), synthetic organics (petroleum products and pesticides), sediment, nutrients (nitrogen and phosphorus fertilizers), debris, oxygen demanding substances (decaying vegetation, animal waste, and other organic matter), and other pollutants which may cause aquatic toxicity in the receiving waters.

14. **STORM WATER MANAGEMENT PLAN (SWMP):** The SWMP submitted by Caltrans describes a framework for management of storm water discharges during the term of this permit. The title page and table of contents of the SWMP are attached to this NPDES Permit. The SWMP describes the Caltrans facilities, the institutional arrangements within Caltrans, legal authorities, funding, training and public education and participation, the annual reporting program evaluation process, and monitoring studies to be undertaken. The SWMP includes a discussion of activities to be implemented by each of the Divisions within Caltrans, including programs for design and construction, maintenance, and additional region-specific programs to be undertaken. Revisions to the SWMP for subsequent years will be submitted to the SWRCB as part of the Annual Reporting and Program Evaluation Process. This NPDES Permit directs Caltrans to implement its

SWMP. Where the SWMP was found to be inadequate, this NPDES Permit directs Caltrans to fulfill additional requirements and specifies what these requirements are.

Caltrans SWMP must be revised in accordance with the Provisions of this NPDES Permit to address concerns about the scope, detail of proposed actions, and time frame for implementation.

Caltrans began implementation of this SWMP in March 1997.

15. **ENFORCEABILITY OF THE SWMP:** The SWMP and modifications or revisions to the SWMP that are approved, in accordance with Provision F.1 of this NPDES Permit, and future year workplans to be submitted, in accordance with the SWMP and Provision F.1 of this NPDES Permit, are integral to and an enforceable component of this NPDES Permit.

16. **LOCAL MUNICIPALITIES:** The RWQCBs have issued NPDES Permits for the discharge of storm water from municipal storm water conveyance systems to municipalities in California which require these permits. Caltrans operates highways and highway-related properties, activities, and facilities that cross through all of these permitted areas. Some storm water discharges from Caltrans-owned rights-of-way, properties, facilities, and activities discharge to storm water conveyance systems managed by these municipalities. Some storm water discharges from these municipalities discharge to storm water conveyance systems managed by Caltrans.

17. **LOCAL CONTROL:** This NPDES Permit does not preempt or supersede the authority of local municipal agencies to prohibit, restrict, or control storm water discharges and authorized nonstorm water discharges to storm drain systems or other watercourses within their jurisdictions as allowed by State and federal law.

18. **CALTRANS CONSTRUCTION PROGRAM:** Caltrans performs construction activities that are required to have NPDES Permits for storm water discharges from the construction site. This NPDES Permit will effectively regulate storm water discharges from construction projects within the Caltrans rights-of-way. Caltrans will not be required to obtain coverage under the State NPDES General Permit for Construction Activities (Construction General Permit), SWRCB Board Order 92-08 DWQ.

19. **DREDGE AND FILL MATERIALS:** This NPDES Permit does not authorize discharges of fill or dredged material regulated by the U.S. Army Corps of Engineers under CWA section 404 and does not constitute a waiver of water quality certification under CWA section 401.

20. **RECEIVING WATER LIMITATIONS:** The impact of storm water runoff from highway facilities on the water quality of receiving waters is highly variable. For this reason, this NPDES Permit does not include numeric effluent limitations. Instead, this NPDES Permit will emphasize the use of BMPs to control storm water pollution and the establishment of a monitoring program to determine the impact of storm water runoff from highways on receiving water bodies. The Lahontan RWQCB does have numeric effluent limits for storm water discharges for the Tahoe Basin in the Basin Plan. These numeric effluent limits also appear in their Regional Construction Permits (RWQCB Board Orders

6-91-31 and 6-93-63) and the Caltrans MS4 Permit RWQCB Board Order No. 6-93-62) for the Tahoe Basin, and these limits apply to this NPDES Permit in that area.

It is the SWRCBs intent that this NPDES Permit shall ensure attainment of applicable water quality objectives and protection of the beneficial uses of receiving waters. This NPDES Permit, therefore, includes standard requirements to the effect that discharges shall not cause or contribute to violations of water quality objectives nor shall they cause certain conditions to occur which create a condition of nuisance or water quality impairment in receiving waters. "Standard" language is the standard for storm water permits; it is not the same as the "standard" language for other NPDES permits. Accordingly, the SWRCB is requiring that these standard requirements be addressed through the implementation of control measures to reduce pollutants in storm water discharges.

Receiving water limitations in this NPDES Permit are based on the federal CWA, RWQCB Basin Plans and policies, USEPA Guidance, Best Professional Judgement, and BMPs.

21. **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**: The action to adopt an NPDES Permit is exempt from Provisions of the CEQA (CEQA: Public Resources Code section 21100, et. seq.), pursuant to section 13389 of the California Water Code.

22. **PUBLIC NOTIFICATION**: The SWRCB has notified Caltrans and all known interested agencies and persons of its intent to prescribe an NPDES Permit and WDRs for said discharge and has provided them with an opportunity for a public meeting and an opportunity to submit comments.

23. **PUBLIC HEARING**: The SWRCB in a public meeting held on June 9, 1998 heard and considered all comments pertaining to this NPDES Permit. The permit was adopted at a public meeting held on July 15, 1999.

24. **RWQCB ENFORCEMENT**: Following adoption of this NPDES Permit, the RWQCBs shall enforce the Provisions.

25. **IMPLEMENTATION:** This NPDES permit is in compliance with section 402 of the CWA and shall take effect upon adoption by the SWRCB.

26. **ANTI-DEGRADATION:** This NPDES Permit is consistent with the anti-degradation Provision, section 40 CFR 131.12 and SWRCB Resolution 68-16.

IT IS HEREBY ORDERED that all MS4 storm water permits issued to Caltrans by RWQCBs shall be rescinded insofar as they apply to Caltrans.

IT IS HEREBY ORDERED that in order to meet the Provisions contained in Division 7 of the California Water Code and regulations adopted thereunder and the Provisions of the Federal CWA and the regulations and guidelines adopted thereunder, Caltrans shall comply with the following: (***REPORTING REQUIREMENTS ARE SHOWN IN ITALICS WITH ALL CAPITAL LETTERS***):

A. GENERAL DISCHARGE PROHIBITIONS

1. Any discharge from Caltrans rights-of-way or Caltrans properties, facilities, and activities within those rights-of-way that is not composed entirely of "storm water" to waters of the United States is prohibited unless authorized pursuant to Section B of this NPDES Permit. For some discharges, Caltrans may also need to obtain Water Quality Certification under CWA S2. The discharge of runoff from Caltrans owned rights-of-way or Caltrans properties, facilities, and activities to waters of the United States which have not been reduced to the MEP is prohibited. The discharge of runoff from construction sites containing pollutants which have not been reduced using BAT for toxic pollutants and BCT for conventional pollutants to waters of the United States is prohibited.

2. The discharge of pollutants or dredged or fill material to waters of the United States, except as authorized by an NPDES Permit or a dredged or fill material permit (subject to the exemption described in California Water Code (CWC) section 13376), is prohibited.

3. The discharge of waste to waters of the State in a manner causing or threatening to cause a condition of pollution or nuisance defined in CWC section 13050, is prohibited.

4. The dumping, deposition, or discharge of waste by Caltrans directly into waters of the State or adjacent to such waters in any manner that may allow its being transported into the waters is prohibited unless authorized by the RWQCB.

5. The discharge of any radiological, chemical, or biological warfare agent into waters of the State is prohibited. The discharge shall not contain toxic substances in concentrations that are toxic to or that produce detrimental physiological responses in human, plant, animal, or aquatic life.

6. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters, is prohibited.

7. Wastes or wastewater from road sweeping vehicles or from other maintenance or construction activities shall not be discharged to any surface waters or to any storm drain leading to surface water bodies.

Caltrans shall achieve the pollutant reductions described in General Discharge Prohibitions A.2. above through implementation of the SWMP described in General Requirements, Provision E., below.

B. NONSTORM WATER DISCHARGE PROHIBITIONS

1. Caltrans shall effectively prohibit nonstorm water discharges into its storm water conveyance system unless such discharges are either:

   a. authorized by a separate NPDES permit; or

   b. authorized in accordance with Nonstorm Water Discharge Prohibition B.2. of this NPDES Permit.

2. Exempted Discharges.

   In carrying out nonstrom Water Discharge Prohibition B.1. of this NPDES Permit, the following nonstorm water discharges need not be prohibited unless they are identified as sources of pollutants to receiving waters:

   a. flows from riparian habitats or wetlands;
   b. diverted stream flows;
   c. springs;
   d. rising ground waters; and
   e. uncontaminated ground water infiltration.

   If any of the above categories of discharges or sources of such discharges are identified as sources of pollutants to receiving waters, then such categories or sources shall be addressed as conditionally exempted discharges in accordance with Prohibition B.3.

3. Conditionally Exempted Discharges

   The following nonstorm water discharges need not be prohibited if identified by either Caltrans or the Executive Director as not being sources of pollutants to receiving waters or if appropriate control measures to minimize the adverse impacts of such sources are developed and implemented under the SWMP in accordance with Prohibition B.4.:

   a. uncontaminated pumped ground water;
   b. foundation drains;
   c. water from crawl space pumps;
   d. footing drains;
   e. air conditioning condensate;
   f. irrigation water;
   g. landscape irrigation;
   h. lawn or garden watering;
   i. planned and unplanned discharges from potable water sources;
   j. water line and hydrant flushing;
   k. individual residential car washing; and
   l. discharges or flows from emergency fire fighting activities.

4. Caltrans shall identify and describe the categories of discharges 3.a through 3.l that are to be exempt from Prohibition B.1 in the Annual Report. For each such category, Caltrans shall identify and describe as necessary and appropriate to the category either documentation that the discharges are not sources of pollutants to receiving waters or circumstances in which they are not found to be sources of pollutants to receiving waters. Otherwise, Caltrans shall describe (a) control measures to reduce pollutants to the maximum extent practicable and minimize the adverse impacts of such sources, (b) procedures and Performance Standards for their implementation, (c) procedures for notifying the SWRCB of these discharges, and (d) procedures for monitoring and record management. Such submissions shall be deemed to be incorporated into the SWMP unless disapproved by the Executive Director. If necessary, on a case-by-case basis, Caltrans shall prohibit any individual or class of nonstorm water discharge(s) listed above that is determined by Caltrans to be a significant source of pollutants to waters of the United States.

5. Permit Authorization for Exempted Discharges

   a. Discharges of nonstorm water from sources owned or operated by Caltrans are authorized and permitted by this Order, if they are in accordance with the conditions of this Provision and the SWMP.

   b. Any RWQCB may require dischargers of nonstorm water other than Caltrans to apply for and obtain coverage under an NPDES permit and comply with the control measures developed by Caltrans pursuant to Provision B. Nonstorm water discharges that are in compliance with such control measures may be accepted by Caltrans and are not subject to Prohibition B.1. Caltrans may refer nonstorm water dischargers to the Caltrans system to the RWQCB for permitting or enforcement.

   c. Caltrans may propose additional categories of nonstorm water discharges to be included in the exemption to Discharge Prohibition B.1. Such proposals are subject to approval in accordance with the NPDES permit regulations.

6. If a RWQCB Executive Officer determines that any individual or class of nonstorm water discharge(s) listed in Nonstorm Water Discharge Prohibition B.2 or B.3. above may be a significant source of pollutants to waters of the United States in that region, the RWQCB Executive Officer may require Caltrans to monitor and submit a report on the discharge and to follow the procedures outlined in Nonstorm Water Prohibition B.4. The RWQCB may require that discharge cease in the event that nonstorm water discharges are a significant source of pollutants to waters of the United States.

7. Caltrans shall examine all illicit connection/illegal discharge (IC/ID) investigation results for the presence of elevated levels of pollutants (e.g., chlorine, sediments, or surfactants) which may be the result of one or more classes of nonprohibited nonstorm water discharge(s) identified in Nonstorm Water Discharge Prohibition B.2. or B.3. above. If such elevated levels of pollutants are commonly present, Caltrans

shall conduct a follow-up investigation to identify the source of the elevated pollutants.

8. Discharges or flows from health and safety emergencies, such as fire fighting activities and accident response, shall be addressed only when such flows are identified by Caltrans to be significant sources of pollutants to waters of the United States. *(It is not the intention of the SWRCB for Caltrans to prohibit, under any circumstances, the discharge of water or other fire retardants that flow into storm water conveyance systems as a result of their use for protection of life and public or private property. However, there may be instances when specified BMPs are appropriate for fire fighting flows).* Although this NPDES Permit does not prohibit these discharges, they may still be subject to regulation under the federal and/or State law.

9. Caltrans shall submit a ***COMPREHENSIVE NONSTORM WATER REPORT*** each year as part of the Annual Report. This report shall include the analysis of each category of discharge, and the BMPs to be implemented for each category. Caltrans must also periodically evaluate the effectiveness of the modified BMPs by examining illicit discharge/illegal dumping investigation results and take any further action necessary to reduce such pollutant concentrations.

C. RECEIVING WATER LIMITATIONS

C-1- RECEIVING WATER LIMITATIONS FOR MUNICIPAL ACTIVITIES:

1. The discharge of storm water from a facility or activity that causes or contributes to the violation of water quality standards or water quality objectives (collectively WQSs) is prohibited.

2. The discharges shall not cause the following conditions to create a condition of nuisance or to adversely affect beneficial uses of waters of the State:

   a. Floating, suspended solids, or deposited macroscopic particulate matter, or foam;

   b. Bottom deposits or aquatic growths;

   c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;

   d. Visible, floating, suspended, or deposited oil or other products of petroleum origin, and /or;

   e. Toxic or deleterious substances present in concentrations or quantities which will cause deleterious effects on aquatic biota, wildlife, or waterfowl, or which render any of these unfit for human consumption

either at levels created in the receiving waters or as a result of biological concentration.

3. Caltrans shall comply with Parts C-1.1. and 2. of this permit through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SWMP and other requirements of this permit including any modifications; the SWMP shall be designed to achieve compliance with Parts C-1.1. and 2. of this permit; if exceedance(s) of WQSs persist notwithstanding implementation of the SWMP and other requirements of this permit, the permittee shall assure compliance with Parts C-1.1. and 2. of this permit by complying with the following procedure:

   a. Upon a determination by either Caltrans or the RWQCB that discharges are causing or contributing to an exceedance of an applicable WQS, Caltrans shall promptly notify and thereafter submit a report to the appropriate RWQCB. The report shall describe BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report may be incorporated in the annual update to the SWMP unless the RWQCB directs an earlier submittal. The report shall include an implementation schedule. The RWQCB may require modifications to the report;

   b. Submit any modifications to the report required by the RWQCB within 30 days of notification;

   c. Within 30 days following approval of the report described above by the RWQCB, Caltrans shall revise the SWMP and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required; and

   d. Implement the revised SWMP and monitoring program in accordance with the approved schedule.

4. So long as Caltrans has complied with the procedures set forth in Receiving Water Limitations C-1-3. above and are implementing the revised SWMP, Caltrans does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the RWQCB to develop additional BMPs.

C-2-RECEIVING WATER LIMITATIONS FOR CONSTRUCTION ACTIVITIES:

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.

2. The SWPPP developed for the construction activity covered by this NPDES Permit

shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB's Basin Plan.

3. Should it be determined by Caltrans, SWRCB or RWQCB staff that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, Caltrans shall:

   a. Implement corrective measures immediately following discovery that water quality standards were exceeded, followed by notification of the RWQCB by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14 days to the appropriate RWQCB, unless otherwise directed by the RWQCB, describing (1) the nature and case of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any additional BMPs which will be implemented to prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance.

   b. Caltrans shall revise its SWPPP and monitoring program immediately after the report to the RWQCB to incorporate the additional BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring needed.

   c. Nothing in this section shall prevent the appropriate RWQCB from enforcing any provisions of this permit while Caltrans prepares and implements the above report.

D. RWQCB AUTHORITIES

1. Following adoption of this permit, RWQCBs shall implement the Provisions of this permit. Implementation of this permit may include, but is not limited to, reviewing SWPPPs, reviewing Maintenance Facility Pollution Prevention Plans (FPPPs), reviewing monitoring reports, conducting compliance inspections, conducting monitoring, reviewing the Annual Reports and taking enforcement actions.

2. RWQCBs may require submittal of, require changes to, specify a format for, and enforce Provisions of SWPPPs and FPPPs. RWQCBs may also designate projects which do not meet the acreage requirements based upon water quality concerns and require SWPPPs. RWQCBs may require that Caltrans submit all SWPPPs automatically up to 30 days in advance of the onset of construction.

3. RWQCBs may require retention of records for more than three years.

4. RWQCBs may require additional monitoring and reporting program requirements and may provide guidance on monitoring plan implementation.

5. RWQCBs may require Caltrans to conduct additional site inspections, submit reports and certifications, to perform water quality sampling and analysis of discharges from construction sites, roadways and maintenance facilities.

6. RWQCB staff may inspect Caltrans facilities and construction sites.

7. The RWQCB Executive Officer may require Caltrans to monitor and submit a report on nonstorm water discharges that have been determined to be a source of pollutants in the region.

8. RWQCB may issue Caltrans other individual storm water NPDES permits, particularly for large construction projects or other discharges beyond the scope of this permit.

E. GENERAL REQUIREMENTS

In order to meet the federal requirements contained in the CWA and the corresponding regulations contained in the 40 CFR 122.26, Caltrans shall:

1. Maintain and implement an effective SWMP. The SWMP shall identify and describe the BMPs used to control or reduce pollutants to waters of the United States to MEP for the Municipal Storm Water Management activities (all activities except construction). For the Construction Management Program, the SWMP shall identify and describe BMPs used to control or reduce pollutants to waters of the United States that meet BAT/BCT. BMP development is a fluid and dynamic process, and the menu of BMPs contained in the SWMP may require changes over time as experience is gained and/or the state of the art progresses. The SWMP shall be reviewed annually and modified as necessary to maintain an effective program. The SWMP shall reflect the principles that storm water management is to be a year-round proactive program to eliminate or control pollutants at their source or to reduce them from the discharge by either structural or nonstructural means when elimination at the source is not possible. The ***REVISED SWMP*** shall be submitted to the SWRCB's Executive Director by April 1 as part of the Annual Report (40 CFR 122.26 (d)(vi)) each year. In accordance with NPDES Permit regulations, significant changes to the program will be taken to the SWRCB for approval. Caltrans shall change all other appropriate manuals to reflect modifications to the SWMP.

2. In addition to the revised SWMP, Caltrans shall submit ***REGIONAL WORKPLANS*** (workplans) each year for each region by April 1 as part of the Annual Report each year. The workplans will be forwarded to the appropriate RWQCB's Executive Officer for approval. The workplan shall cover all activities to be undertaken by the Districts in the region and shall address the water bodies in the region, the impact of the Caltrans discharge on the water body and the BMPs and monitoring program to be implemented in the region, and changes that are to be made to the previous year's

program. The workplan shall also include identification of high risk areas, such as locations where spills from Caltrans owned rights-of-way, activities or facilities can discharge directly to municipal or domestic water supply reservoirs or ground water percolation facilities, and consideration of appropriate spill containment and spill prevention control measures for these new areas. Because the BMP programs and monitoring program are described in other documents, this workplan shall describe how the various programs will be implemented in the Region.

3. The SWMP shall define terms in a manner that is consistent with the definitions in 40 CFR 122.2. This includes, but is not limited to, the definitions for pollutant, waters of the United States, and point source. Where there is a conflict between the SWMP and the permit language, the permit language shall govern.

4. The SWMP shall include or describe procedures for implementing the following:

CHAPTER 1.	PROGRAM OVERVIEW (Provision F)
CHAPTER 2.	PROGRAM MANAGEMENT (Provision G)
CHAPTER 3.	CONSTRUCTION PROGRAM MANAGEMENT (Provision H)
CHAPTER 4.	MAINTENANCE PROGRAM MANAGEMENT (Provision I)
CHAPTER 5.	TRAINING AND PUBLIC EDUCATION (Provision J)
CHAPTER 6.	PROGRAM EVALUATION/REPORTING (Provision K)
CHAPTER 7.	LOCATION SPECIFIC REQUIREMENTS (Provision L)

F. PROGRAM OVERVIEW

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision F.

1. Caltrans must reevaluate and revise the BMP program in the SWMP to reflect the definition of pollutant in the federal regulations. The selection of BMPs must reflect the need to meet MEP, or where appropriate, BAT/BCT and water quality standards. It is appropriate to address pollutants known to be in a waste stream, even if there is not yet any documented evidence of adverse effect. Decisions regarding storm water management should be made in response to site-specific circumstances, depending on the location and nature of the activity in question and the local receiving water conditions. In geographic areas in which the requirements in effect prior to adoption of this permit are more stringent than the requirements of this permit, Caltrans will specify in the SWMP and regional workplans, a program which is at least as stringent as the prior requirements for that area. In no event shall the BMP program in any part of the State be less stringent than it was under the prior requirements.

2. The revised SWMP shall be submitted within 90 days of the adoption of the permit. Until such time as Caltrans has an approved SWMP, Caltrans will continue to meet the requirements that were in effect under the permits adopted by RWQCBs.

3. Caltrans shall include an analysis of the feasibility of structural controls in the BMP selection process. At a minimum, a consideration of structural controls for water

quality improvement shall be included in the design of any new construction or major reconstruction or repair projects.

The SWMP shall be updated each year as part of the Annual Report and shall contain the following elements:

a. A listing of appropriate control measures, including design, operation, and maintenance specifications, referenced by facility type, location, and other suitable factors. (Suitable factors may include prevention and control of erosion and sedimentation, source control of potential pollutants, control of pathogens, control and treatment of runoff, spill containment, and protection of wetlands and water quality resources);

b. An effective operation and maintenance program for BMPs;

c. Consideration of pollution prevention and pollutant removal factors, including spill containment and corresponding operation and maintenance requirements in the design of facility drainage structures and other features;

d. Development and implementation of policies, programs, procedures, and standards to improve pollutant removal and water quality benefits of landscape design after construction is completed;

e. A description of how these BMPs will be developed, constructed and maintained by the Environmental Engineering, Project Development, Construction, and Maintenance Branches and other affected functional offices and branches;

f. A ***BMP SELECTION REPORT*** which presents the revisions to the BMP programs (including both structural and nonstructural BMP candidates) to be implemented in the coming year along with the process used for evaluating the revised BMPs. The process shall include a mechanism for public input and review during the BMP selection process; and

g. A mechanism for evaluating new treatment and control technologies and for considering these technologies as part of the BMP programs. A ***NEW TECHNOLOGY REPORT*** is required as part of the Annual Report each year.

4. Storm Water Drainage System Retrofitting: In urban areas subject to a MS4 permit, Caltrans shall seek opportunities to retrofit the Storm Water Drainage System for water quality improvement whenever a section of the rights-of-way undergoes significant construction or reconstruction. Permanent control measures shall be implemented, both to control erosion and to control runoff of pollutants resulting from normal use of Caltrans facilities such as highways.

   a. Controls that shall be considered: Techniques that capture and or reduce the amount of pollutants, especially sediment from entering the storm drain system

or receiving water. Cost effectiveness is a factor in the consideration of controls.

b. Treatment controls that have proven to be cost prohibitive to date and therefore need not be considered for most situations include reverse osmosis, ion exchange, and granular activated carbon.

G. PROGRAM MANAGEMENT

Caltrans shall implement the program specified in their SWMP. Caltrans shall also implement any additional requirements contained in this Provision G.

.1. Coordination with MS4 Permittees

a. Caltrans is expected to comply with lawful requirements of municipalities, counties, drainage districts, and other local and or regional agencies regarding discharges of storm water to separate storm sewer systems or other watercourses under the jurisdiction of the local and or regional agencies. These include, but are not limited to applicable requirements in MS4 storm water programs developed to comply with NPDES Permits issued by the RWQCBs to local agencies.

b. Caltrans shall submit a ***MUNICIPAL COORDINATION PLAN*** to the SWRCB Executive Director within 90 days of the adoption of the Permit for approval. The plan shall describe the approach that Caltrans will take in establishing communication, coordination, cooperation, and collaboration of Caltrans storm water management activities and other pertinent activities with MS4 storm water management programs including establishing agreements with municipalities, flood control departments, or districts as necessary or appropriate. Caltrans shall report on the progress of this interagency cooperation in each Annual Report.

2. Legal Authority

a. Caltrans shall establish and maintain adequate legal authority through ordinance, statute, permit, contract or other means to control discharges to and from Caltrans properties, facilities and activities pursuant to 40 CFR 122.26(d)(2)(i)(A-F).

b. Caltrans has provided a statement certified by its chief legal counsel that Caltrans has adequate legal authority to implement and enforce each of the key regulatory requirements contained in 40 CFR 122.26(d)(2)(i)(A-F). Caltrans shall submit annually, as part of the Annual Report, an ***ANALYSIS OF THE ADEQUACY OF LEGAL AUTHORITY*** based on Caltrans experiences during the previous year and explain and justify whatever conclusions are reached in the annual certification of legal authority.

3. Fiscal Resources

a. Caltrans shall maintain adequate fiscal resources to maintain compliance with this NPDES Permit. This includes but is not limited to:

(1) implementing and maintaining all BMPs identified in the SWMP,

(2) maintaining an effective storm water monitoring program, and

(3) retaining adequate trained personnel to manage the storm water program.

b. Caltrans shall submit a ***FISCAL ANALYSIS*** of the storm water program expenditures within 90 days of the adoption of this permit and shall include one for the 3rd year and 5th year of the Permit period in the Annual Report submitted April 1. At a minimum, the fiscal analysis shall show the allocation of funds to the Districts for compliance with this permit; the funding of the program elements; and a comparison of actual past year expenditures with the current year's expenditures and next year's proposed expenditures. The 3rd year report shall show how Caltrans funding met the goals set out for the program in the first two years. The 5th year report shall contain the budget analysis for the next permit period.

4. Policies: Caltrans shall identify policies needed to resolve conflicts between implementation of the storm water program and current standard practices and policies.

5. Inspection Program: Caltrans shall have an inspection program to insure actions are implemented and facilities are constructed, operated, and maintained in accordance with this NPDES Permit and the SWMP. The program shall include training for inspection personnel, documentation of field activities, a reporting system that can be used to track effectiveness of control measures, enforcement procedures (or referral for enforcement) for noncompliance, and responsibilities and responsible personnel of all affected functional offices and branches.

H. CONSTRUCTION PROGRAM MANAGEMENT

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision H.

1. Caltrans shall have a program to control all construction in the rights-of-way. This includes both construction by Caltrans, construction done under contract for Caltrans, and construction done by local government agencies or other third parties on Caltrans or nonCaltrans projects. The program must include:

a. review of construction site plans;

b. requirement of structural and nonstructural BMPs;

c. site inspections and enforcement; and

d. education of construction site operators.

The program must be implemented year round on all construction projects in all parts of the State. The SWMP must be revised to address these requirements and have a program and a schedule for inspections.

2. The Construction Management Program shall be in compliance with requirements of the NPDES General Permit for Construction Activities (Construction General Permit) not including NOI filing. The current Construction General Permit is SWRCB Board Order 92-08--DWQ.

Terms that are defined in the Construction General Permit will have the same definition for the construction portion of this NPDES Permit.

3. The Lahontan RWQCB has adopted an NPDES Storm Water Permit for construction projects that involve more than five acres of soil disturbance and nonNPDES WDRs for construction projects for projects less than five acres within the Lake Tahoe Hydrologic Unit. The current nonNPDES Lahontan Construction Permit is Board Order 6-93-63. The WDRs for small projects are contained in Lahontan RWQCB Board Order 6-91-31. Projects in the Lake Tahoe Hydrologic Unit must be in compliance with the Provisions of the Lahontan RWQCB Order that is applicable to the project. The Lahontan RWQCB has also developed erosion control guidelines for high mountain areas throughout the region. Caltrans shall follow these guidelines in the appropriate parts of the region.

4. Caltrans shall plan, site, and develop roads and highways in a manner that protects water quality, beneficial uses of water and minimizes erosion and sedimentation .

5. Caltrans shall site, design, and maintain bridge structures so that sensitive and valuable aquatic ecosystems and areas providing water quality benefits are protected from adverse effects.

6. Caltrans shall limit the application, generation, and migration of toxic substances from construction sites.

7. Caltrans shall implement adequate erosion and sediment control BMPs during the interim period between completion of construction and final landscaping activities.

8. The following items apply to construction activities:

a. A report of ***NOTIFICATION OF CONSTRUCTION*** for all construction projects shall be submitted to the appropriate RWQCB at least 30 days prior to the start of construction. The tentative start date, tentative duration, location of construction, description of project, an estimate of the number of affected acres, resident engineer in charge of the project, and telephone number of the resident

engineer shall be reported. If a resident engineer has not been assigned at the time of notification, information about the construction field office should be provided and the resident engineer information provided when the assignment is made.

b. A site specific SWPPP shall be developed and implemented for each construction project as required by the State Construction General Permit (or the appropriate Lahontan RWQCB Permit). The RWQCBs can designate projects under five acres which pose a threat to water quality as being subject to the conditions of this permit and can require the development and implementation of an SWPPP from these projects. For projects that may have a significant potential water quality impact, Caltrans is encouraged to involve the RWQCB staff in the planning stages. The SWPPP shall contain a BMP program that meets the performance standards of BAT/BCT. The resident engineer shall approve the SWPPP prior to construction and ensure that the SWPPP is effectively implemented. The SWPPP shall contain all of the elements required by the Construction General Permit. Caltrans is responsible for having an effective SWPPP at all times and for implementing the SWPPP at an appropriate level through the entire year. RWQCB staff has the authority to require the submittal of an ***SWPPP*** at any time, including up to 30 days prior to commencement of significant soil disturbance activities; to require changes to the SWPPP; and to enforce the provisions of the SWPPP.

   The SWPPP shall contain a BMP program for any mobile operations that are used in the construction project. This includes operations such as asphalt recycling, concrete mixing, crushing, and storage of materials that are established by the contractor within the construction site or on other property specifically arranged for and provided by Caltrans for execution of the project.

   The SWPPP shall apply to all areas that are directly related to the construction activity, including but not limited to staging areas, storage yards, material borrow areas and storage areas, access roads, etc., whether or not they reside within the Caltrans rights-of-way.

c. Monitoring and inspection of construction sites shall be done in accordance with the Provisions of the Construction General Permit. Noncompliance shall be reported in accordance with the plan to be submitted under Program Evaluation and Reporting Provision K.2.a.

d. A ***NOTICE OF COMPLETION*** shall be submitted to the RWQCB upon completion of the construction and stabilization of the site. A project will be considered complete when the criteria for final stabilization in the Construction General Permit are met.

9. Caltrans has applied for and received variances from the California Department of Toxic Substances Control (DTSC) for the reuse of some soils that contain lead. Notification that projects involve soils that are subject to this variance shall be provided to the appropriate RWQCB(s) in writing 30 days prior to advertisement for

bids to allow a determination by the RWQCB(s) of the need for development of WDRs.

I. MAINTENANCE PROGRAM MANAGEMENT

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision I.

1. Highway Maintenance Activities

   a. Caltrans shall develop and implement runoff management programs and systems for existing roads, highways, and bridges to reduce runoff pollutant concentrations and volumes entering surface waters.

      (1) Identify priority and watershed pollutant reduction opportunities (e.g., improvements to existing urban runoff control structures).

      (2) Establish schedules for implementing appropriate controls.

      (3) Identify road segments with slopes that are prone to erosion and discharge of sediment and stabilize these slopes to the extent possible.

   b. Vegetation Control: Caltrans shall revise the Vegetative Control Program to reflect the following elements:

      (1) Enhancement of the use of appropriate native and adapted vegetation throughout all Caltrans rights-of way for the purpose of preventing erosion and removing pollutants in storm water and nonstorm water runoff.

      (2) Application of herbicides in a manner that minimizes or eliminates the discharge of herbicides to receiving waters. Factors to be considered include timing in relation to expected precipitation events, proximity to water bodies, and the effects of using combinations of chemicals.

      (3) Caltrans shall apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface water.

      (4) In places where Caltrans has already developed vegetation control management plans, Caltrans shall continue to implement these plans and integrate them into their overall statewide plan. In instances where elements of these plans are to be changed or dropped, Caltrans shall discuss the changes in the workplan portion of the Annual Report.

   c. Storm Water Drainage System Facilities Maintenance

      (1) Caltrans shall remove all waste from those inlets that pose a significant threat to water quality on an annual basis prior to the winter season each

year. All waste removed from drain inlets shall be managed in accordance with all applicable laws and regulations, including CCR Title 27, Division 2, Subdivision 1.

(2) Drain inlets which contain significant materials must be considered for an IC/ID investigation and considered for an enhanced BMP program focused on reducing the sources of the material found in the inlet.

2. Highway Surveillance Activities

a. Accidental Spills

(1) Caltrans will follow Office of Emergency Services (OES) procedures for reporting highway spills.

(2) A report of ***DISCHARGE OR THREAT OF DISCHARGE NOTIFICATION*** will be made under the following conditions: Caltrans will notify the owner/operator of the MS4 or the principal permittee as soon as practicable, but no later than 24 hours after onset of or threat of discharge of any discharge or threat of discharge which can cause adverse conditions to the storm sewer system or the receiving water that is not covered by OES procedures from a highway to a storm sewer system subject to an MS4 permit.

(3) A report of ***DISCHARGE OR THREAT OF DISCHARGE NOTIFICATION*** will be made immediately to the RWQCB of any discharge which can cause adverse conditions to the storm sewer system or the receiving water, with a follow up in writing within 24 hours. Adverse conditions include but are not limited to serious violations or serious threatened violations of WDRs, significant spills of petroleum products or toxic chemicals, or serious damage to control facilities that could affect compliance. Caltrans shall perform follow-up monitoring of major spills and/or perform confirmation sampling to ensure that threats to waters of the United States have been eliminated as determined by the local RWQCB. (This Provision applies to highway operation, not construction projects. Provisions for reporting discharges are contained in the Construction General Permit).

b. IC/ID Detection Program: Caltrans shall implement the IC/ID Detection Element described in the SWMP in conjunction with the legal authority with the following changes:

(1) Detection of IC/IDs: Caltrans shall develop procedures for receiving and investigating public complaints including establishing telephone numbers which the public can use to report IC/IDs and shall post these numbers in places where illegal dumping is found to be a problem.

(2) Investigation of each IC/ID: Caltrans shall develop procedures to conduct investigations of every IC/ID to identify the source. These procedures may include further field screening (observations and field analyses), collection and laboratory analysis of samples (upstream and downstream), smoke or dye tests, video taping with a remote control camera, or other appropriate means.

(3) Elimination of IC/IDs: Caltrans shall eliminate all identified IC/IDs as expeditiously as possible. In addition to reporting IC/IDs to the municipal authorities and to the RWQCBs, Caltrans shall use its own legal authority to eliminate IC/IDs.

(4) Caltrans shall develop a procedure to track all reports of IC/IDs and the action taken on them. A ***REPORT ON THE IC/ID PROGRAM*** will be required each year as part of the Annual Report.

(5) Caltrans shall report on the program developed under this Provision as part of the April 2000 Annual Report. (***DEVELOPMENT OF IC/ID PROGRAM***).

3. Program for Highway Maintenance Facilities

a. Caltrans shall prepare Maintenance FPPPs for all maintenance facilities. Because these facilities are considered municipal activities rather than industrial activities, these FPPPs must have BMP programs that reduce pollutants to MEP.

b. Generic FPPP elements can be used for activities that are performed at more than one maintenance facility; however, each site must be evaluated separately and provided with appropriate site specific BMPs.

c. RWQCB staff has the authority to require the submittal of a FPPP at any time, to require changes to a FPPP, and to require the implementation of the Provisions of a FPPP.

J. TRAINING AND PUBLIC EDUCATION

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision J.

In areas where Caltrans is already participating in an areawide Public Education Program, Caltrans will continue participation. The Public Education Program shall address the three main audiences that impact Caltrans storm water discharges. The three audiences are: Caltrans Employees; Caltrans Construction Contractors, and the General Public. The program shall contain the following elements for each of these groups:

1. Caltrans Employees

a. Caltrans shall implement the program specified in the SWMP.

b. Caltrans shall provide frequent educational reminders to employees to reinforce the training.

2. Caltrans Construction Contractors

a. Caltrans shall implement the program specified in the SWMP.

b. Caltrans shall provide outreach to contractors to raise their awareness of the problems and causes of storm water pollution and to reinforce their training.

3. General Public

a. ***PLAN FOR DEVELOPMENT AND IMPLEMENTATION OF A PUBLIC EDUCATION PROGRAM***: Caltrans shall submit a plan for approval by the SWRCB Executive Director within 180 days of adoption of this NPDES permit for development and implementation of a Public Education Program that includes education of the general public and commercial and industrial entities whose actions may impair storm water quality discharged from Caltrans properties, facilities and activities. In areas where a Caltrans is already part of a Public Education Program with other MS4 permittees, Caltrans must continue with their participation in the program. (***PLAN FOR DEVELOPMENT AND IMPLEMENTATION OF A PUBLIC EDUCATION PROGRAM***)

b. The plan shall include the following elements:

(1) Research--A plan for conducting research on public behavior that affects the quality of Caltrans runoff. The information gathered will form the foundation for all the public education conducted.

(2) Public Education Strategy--Develop a three-year public education strategy. The strategy should be based on the research conducted and must include goals and objectives to be achieved regarding changing behaviors.

(3) Mass Media Advertising--Develop and conduct an advertising campaign as a focal point of the public education strategy. The campaign should focus on the behaviors of concern and should be designed to motivate the public to change those behaviors. The public education campaigns may be done as a cooperative effort with other MS4 permittees.

c. Upon approval of the submitted plan, Caltrans shall implement the plan to develop a Public Education Program. The ***PUBIC EDUCATION PROGRAM PROGRESS REPORT*** on the progress made on the public education program development will be made as part of the Annual Report each year. A proposed ***PUBLIC EDUCATION PROGRAM*** will be submitted with the Annual Report in 2001. The ***PUBLIC EDUCATION PROGRAM*** shall be submitted with the

Annual Report in 2002. Caltrans will begin implementation of the plan in April 2002.

K. PROGRAM EVALUATION AND REPORTING

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision K.

1. Characterization of Discharges: Caltrans shall develop a plan to identify and describe existing major discharges and points of discharge, as defined in 40 CFR 122.26(iv)(d)(1 and 2), to surface water bodies in areas subject to the MS4 permit requirements and to identify and describe other discharge points as funding allows. Caltrans shall also provide information concerning major existing structural controls (such as the location of detention basins, infiltration basins, etc.). Characterization should be done in phases with the highest priority given to discharge points that are part of BMP studies and in areas where these discharges fit into ongoing watershed characterization studies. For discharges that contain pollutants, Caltrans shall investigate the source of the pollutants and, where appropriate, eliminate the IC/ID or implement BMP programs. The plan shall also identify procedures for notifying the RWQCB and affected municipal storm water management agencies of these discharges and future planned discharges and procedures for monitoring and record management. Discharges which Caltrans cannot control, such as discharges from other parties over which Caltrans has no authority, shall be referred to the appropriate regulatory agency for appropriate action. The ***PLAN FOR CHARACTERIZATION STUDIES***, describing how the studies shall be carried out, shall be submitted with the 1999 Annual Report. Characterization studies shall be completed by April 1, 2003.

2. Receiving Water Monitoring: Caltrans has submitted a three-year monitoring strategy that outlines the research monitoring that it intends to undertake in the next three years. The ***MONITORING STRATEGY REPORT UPDATE*** will be updated annually based on the results of previous years' monitoring and in response to the needs of the program and the funding available. The updated Monitoring Strategy Report will be submitted as part of each Annual Report.

   a. Caltrans shall submit to the SWRCB by April 1, 2000 and each April 1 thereafter a ***MONITORING AND REPORTING PROGRAM*** acceptable to the Executive Director that shall identify and justify sampling locations, frequencies, and methods, suite of pollutants to be analyzed, analytical methods, and quality assurance procedures. Alternative monitoring methods (special projects, literature review, visual observations, use of indicator parameters, etc.) may be proposed with justification. Current MS4 Permits for Caltrans have monitoring requirements. Results of the monitoring efforts undertaken under RWQCB MS4 Permits may be submitted to fulfill these monitoring requirements.

   The RWQCB Executive Officers are authorized to require additional monitoring and reporting by Caltrans when additional information is needed to assess

existing or potential adverse impacts by storm water discharges, to evaluate effectiveness of storm water pollution prevention or control measures, or to demonstrate compliance with permit requirements.

3. Compliance Monitoring and Evaluation

a. Caltrans shall prepare a plan to be submitted as part of the Annual Report due April 1, 2000 explaining how the RWQCBs will be notified about noncompliance. The plan shall include the identification in each Office and Region, the parties to notify and receive the notification. The notification shall identify the type(s) of noncompliance, describe the actions necessary to achieve compliance, and include a time schedule, subject to the modifications by the RWQCB indicating when compliance will be achieved. Noncompliance notifications must be submitted verbally within 5 working days, with written followup within 30 days of identification of noncompliance. (***REPORTING OF NONCOMPLIANCE***)

b. Construction site monitoring and inspections shall be carried out as required by the Construction General Permit or the applicable Lahontan RWQCB Permit.

c. Maintenance Facility Compliance Monitoring

(1) Caltrans is required to conduct periodic inspections. The purpose of the inspections is to identify areas contributing to a discharge of storm water associated with the maintenance facility activities and to evaluate whether control practices to reduce pollutant loadings identified in the FPPP are adequate and properly implemented or whether additional control practices are needed. A record of the inspections must include the date of the inspection, the individual(s) who performed the inspection, and the observations.

(2) Any noncompliance shall be reported to the RWQCB in accordance with the plan to be submitted under Program Evaluation and Reporting Provision K.3.a.

(3) The RWQCB may require Caltrans to conduct additional site inspections, to submit reports and certifications, or to perform sampling and analysis.

(4) Records of all inspections, compliance certifications, and noncompliance reporting must be retained for a period of at least three years. With the exception of noncompliance reporting, Caltrans is not required to submit these records unless otherwise requested.

(5) Monitoring at all maintenance facilities is not required.

d. Overall Management Program Effectiveness:

Caltrans shall perform a self-audit of the storm water program each year to determine (1) if the program is being implemented as required by this NPDES Permit, the SWMP, and the guidance documents prepared by Caltrans; and (2) if the program specified by the SWMP and the guidance documents is adequate. The results of this ***SELF-AUDIT*** shall be submitted by April 1, 2000 and as a part of the Annual Report thereafter to the SWRCB Executive Director. Caltrans may use any method to evaluate program effectiveness and shall identify the direct and indirect measurements that will be used to track the long-term effectiveness. An outline of the proposed audit is to be submitted by February 1 of each year so that the SWRCB and RWQCBs can evaluate the measures to be used.

4. Reporting

Caltrans shall submit 13 copies of an ***ANNUAL REPORT*** to the SWRCB Executive Director by April 1 each year starting on April 1, 2000. The Annual Report shall contain the data and a summary and analysis of the data collected in the previous year. The report due on April 1, 2000 will cover data collected during the winter of 1998-1999. Reports that are required from Caltrans include the items listed in Table 2.

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TABLE 2
COMPILATION OF REPORTING REQUIREMENTS

Provision	Requirement	Date Required
B.9	Comprehensive Nonstorm Water Report	Every Annual Report
E.1, F.1	Revised SWMP, including Revisions to the BMP Programs with Justification and Public Input	Every Annual Report
E.2	Regional Workplans	Every Annual Report
F.2.f	BMP Selection Report	Every Annual Report
F.2.g	New Technology Report	Every Annual Report
G.1.b	Municipal Coordination Plan	April 1, 2000
G.1.b	Municipal Coordination Program Report	Every Annual Report
G.2.b	Analysis of the Adequacy of Legal Authority	Every Annual Report
G.3.b	Fiscal Analysis	90 days from adoption
G.3.b	Fiscal Analysis	3rd and 5th year Annual Report
H.8.a	Notification of Construction	At least 30 days prior to construction
H.8.b	SWPPP	Request by RWQCB
H.8.d	Notice of Completion	Upon final stabilization
I.2.a.(2)	Discharge or Threat of Discharge Notification to MS4 Permittee	Upon discharge or threat of discharge
I.2.a.(3)	Discharge or Threat of Discharge Notification to RWQCB	Upon discharge or threat of discharge
I.2.b.(4)	Report on the IC/ID Program	Every Annual Report
I.2.b.(5)	Development of IC/ID Program	April 1, 2000
I.3.c	FPPP	Request by RWQCB
J.3.a	Plan for Development and Implementation of a Public Education Program	April 1, 2000
J.3.c	Public Education Program Progress Report	Every Annual Report
J.3.c	Public Education Program	April 1, 2003
K.1	Plan for Characterization Studies	April 1, 2000
K.2	Monitoring Strategy Report Update	Every Annual Report
K.2.a	Monitoring and Reporting Program	Every Annual Report
K.3.a	Reporting of Noncompliance	April 1, 2000
K.3.d	Self Audit	Every Annual Report
L.10.a	De-icer Monitoring Proposal	Every Annual Report
L.10.b	De-icer Report	June 1, 2000
M.7	Report of Waste Discharge	180 days prior to expiration of permit

These reporting requirements are contained in the text of the NPDES Permit. If there is a discrepancy between the text of the NPDES Permit and this table, the text of the NPDES Permit contains the requirement.

L. LOCATION SPECIFIC REQUIREMENTS

Caltrans shall implement the program specified in the SWMP. Caltrans shall also implement any additional requirements contained in this Provision L.

Lahontan Region: The Water Quality Control Plan for the Lahontan Region (Basin Plan) has additional requirements which have been historically applied to Caltrans permits and which apply to this NPDES Permit in the Lahontan Region. These requirements include:

1. Numerical effluent limitations for storm water discharges within the Lake Tahoe Hydrologic Unit, as specified in Table 5.6-1 on page 5.6-4 of the Basin Plan.

2. Caltrans shall comply with all Waste Discharge Prohibitions specified in sections 4.1 and 5.2 of the Basin Plan.

3. The following nonstorm water discharges which are permitted under Nonstorm Water Provision B.2. of this NPDES permit are prohibited within the Lahontan Region:

   a. Water line-flushing discharges.

   b. Ground or surface water pumping discharges associated with construction activities that would violate numerical effluent limitations within the Lake Tahoe Hydrologic Unit or receiving water objectives throughout the Lahontan Region, as specified on pages 3-3 through 3-56 of the Basin Plan.

   c. Potable water resource discharges.

   d. Uncontaminated pumped ground water discharges that would violate numerical effluent limitations within the Lake Tahoe Hydrologic Unit or receiving water objectives throughout the Lahontan Region, as specified on pages 3-3 through 3-56 of the Basin Plan.

   e. Air conditioning condensate discharges (not applicable to vehicles).

4. Storm water/urban runoff collection, treatment, and/or infiltration disposal facilities shall be designed, installed, and maintained for the discharge of storm water runoff from all impervious surfaces generated by the 20-year, one-hour design storm (1) within the Lake Tahoe Hydrologic Unit (one inch of rain), (2) within the Truckee River Hydrologic Unit (3/4-inch of rain), (3) within the East Fork Carson River and West Fork Carson River Hydrologic Units (one inch of rain), and (4) within the Mammoth Creek Hydrologic Unit above the 7,000-foot elevation (one inch of rain). All Caltrans facilities within the Lake Tahoe Hydrologic Unit must be retrofitted to comply with this requirement by the Year 2008. If site conditions do not allow for adequate on site disposal, all site runoff must be treated to meet applicable Effluent Limits and/or Receiving Water Limitations specified in the Basin Plan. Runoff in excess of the design storm and generated by the facility or within the project site shall only be discharged to a storm drain or stabilized drainage adequate to convey the 100-year 24-hour flow. The RWQCB Executive Officer may approve alternative mitigation measures.

   All Caltrans facilities within the Lake Tahoe Hydrologic Unit must be retrofitted to comply with this provision by the Year 2008. Caltrans shall continue to participate in the Capital Improvement Program (CIP), as described in volume IV of the CWA Section 208 Water Quality Management Plan (208 Plan). The purpose of the CIP is to identify projects, develop an implementation program, and develop a funding mechanism for storm water runoff and erosion control projects in the Lake Tahoe Hydrologic Unit.

5. All construction/maintenance projects shall comply with Erosion Control Guidelines for the Lake Tahoe Hydrologic Unit, Erosion Control Guidelines for the Truckee River Hydrologic Unit, and Erosion Control Guidelines for the North Lahontan Region where applicable.

6. Caltrans shall inspect active project sites and maintenance facilities prior to, during, and after storms to ensure that BMPs are functioning adequately and preventing the discharge of pollutants to surface waters or storm water conveyance systems that discharge to surface waters.

7. Unless granted a variance by the RWQCB Executive Officer, there shall be neither removal of vegetation nor disturbance of existing ground surface conditions between October 15 of any year and May 1 of the following year, except when there is an emergency situation that threatens the public health or welfare. This prohibition period applies to the Lake Tahoe, Truckee River, East Fork Carson River, and West Fork Carson River Hydrologic Units and above the 5,000-foot elevation in the portions of Mono and Inyo Counties within the Lahontan Region.

8. Project Review Requirements

   a. Caltrans shall participate in early project design consultation for all projects within the Lake Tahoe, Truckee River, and Mammoth Creek Hydrologic Units. This requirement also applies to projects involving more than five acres of soil disturbance or that require a CWA section 404 permit throughout the Lahontan Region. Caltrans shall solicit RWQCB staff review when project development/design is at the 50 percent design level. Consultation with RWQCB staff shall continue throughout the remainder of the design development and environmental review process.

   b. Caltrans shall submit an SWPPP or a Water Pollution Control Plan for RWQCB staff review and approval no later than 30 days prior to beginning construction activities. RWQCB staff's proposed modifications shall be included within the plans prior to beginning construction activities.

9. Snow and Ice Control

   Where abrasives and/or de-icing agents are used on highways within the Lahontan Region, the following shall be recorded:

   a. Location of the source of abrasives materials.

   b. Types and chemistry of de-icing agents.

      (1) Deicing salt shall be analyzed for: total phosphorus, total nitrogen, iron, and percent NaCl.

(2) Alternative deicers shall be analyzed for: total nitrogen, and total phosphorus.

c. Type and chemistry of abrasives with the gradation and percent organic matter. Gradation and percent organic matter shall be determined from composite samples. The composite samples shall be taken from one stockpile that represents all deliveries from the originating source. Composite samples shall be taken from every new delivery from a new originating source.

(1) Abrasives shall be analyzed for: volatile solids, iron, total nitrogen, total phosphorus, and total reactive phosphorus.

d. Volume of abrasives and deicing agents used on individual highway's segments.

10. Reporting/Notification Issues

a. Caltrans shall submit a monitoring program proposal that evaluates the effectiveness of BMPs used to recover abrasives and deicing materials and that evaluates the impacts of abrasives and deicing materials on surface waters within the Lake Tahoe Hydrologic Unit. The proposal shall include monitoring locations and sampling and analysis methodologies. The proposal shall be submitted within 180 days of adoption of this NPDES Permit for review and approval by the Lahontan RWQCB Executive Officer. (***DEICER MONITORING PROPOSAL***)

b. A report shall be submitted, as part of the Annual Report each year describing the results of the abrasives and deicing materials analysis and the annual results of the above-referenced monitoring program involving BMP effectiveness and surface water impacts. The report shall also include a summary of Caltrans CIP activities, including progress on implementing the CIP, and project effectiveness. Project effectiveness has historically been documented with photographs including preproject photographs, photographs taken during the spring following project completion, and photographs taken two years following project completion. If photographs or project site inspections indicate that the project is not fully meeting project objectives, Caltrans shall include within the report a corrective action plan and a schedule that will meet the project objectives. (***DEICER REPORT***)

11. Caltrans shall immediately notify the RWQCB by telephone, not later than 24 hours, whenever an adverse condition occurs as a result of a discharge with written confirmation following within two weeks. An adverse condition includes, but is not limited to, a serious violation or a serious threatened violation of conditions specified in this NPDES Permit, significant discharges of spills of petroleum products or toxic chemicals, or serious damage to control facilities that could affect compliance.

M. OTHER PROVISIONS

1. Caltrans shall ensure that all personnel whose decisions or activities could affect storm water quality are familiar with the contents of this NPDES Permit.

2. Caltrans shall comply with all conditions and limitations of this NPDES Permit upon adoption of this NPDES Permit. Any NPDES Permit noncompliance constitutes a violation of the CWA and the CWC and is grounds for enforcement action pursuant to the CWA and CWC, NPDES Permit termination, or denial of a renewal application.

3. This NPDES Permit does not authorize violation of any federal, State, or local law or regulation.

4. Caltrans shall properly operate and maintain at all times any facilities and systems of treatment and control (and related appurtenances) which are installed or used by Caltrans to achieve compliance with the conditions of this NPDES Permit and with the requirements of SWPPPs. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures.

5. This NPDES Permit does not convey any property rights of any sort or any exclusive privileges, authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, State, or local laws or regulations.

6. Caltrans shall comply with the Standard Provisions for NPDES Permit found at 40 CFR 122.41 and 40 CFR 122.42(c).

7. This NPDES Permit expires five years from date of adoption, 2004, and Caltrans shall file a complete Report of Waste Discharge in accordance with Title 23, CCR, at least 180 days in advance of such date as an application for issuance of a new Board Order. (***REPORT OF WASTE DISCHARGE***)

8. This Board Order shall serve as an NPDES Permit pursuant to section 402 of the Federal CWA, as amended, and shall become effective at the end of ten (10) days from the date of the Board Meeting which this NPDES Permit was adopted by the SWRCB, provided that the Regional Administrator, USEPA, has no objections.

9. This NPDES Permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by Caltrans for an NPDES Permit modification, revocation and reissuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any NPDES Permit condition. Causes for modification include the promulgation of new regulations or adoption of new regulations by the SWRCB or the RWQCBs, including revisions to the RWQCB Basin Plans.

10. Signatory Requirements

a. All permit applications, reports, or information submitted to the RWQCB, SWRCB, and/or USEPA shall be signed by either a principal Executive Officer, Executive Director, or ranking elected official. [40 CFR 122.22(a)]

b. All reports required by this NPDES Permit and other information requested by the RWQCB, SWRCB, or US EPA shall be signed by a person described in Other Provisions 10.a. of this Provision or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in Other Provisions 10.a. of this Provision;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the RWQCB. [40 CFR 122.22(b)]

c. Changes to authorization: If an authorization under Other Provisions 10.b. of this Provision is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Other Provisions 10.b. of this Provision must be submitted to the RWQCB prior to or together with any reports, information, or applications to be signed by an authorized representative. [40 CFR 122.22(c)].

d. Certification: Any person signing a document under Other Provisions 10.a. or b. of this Provision shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete to the best of my knowledge and belief. I

am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment of knowing violations. [40 CFR 122.22(d)]

e. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this NPDES Permit, including monitoring reports or reports of compliance or noncompliance, upon conviction, shall be punished by a fine of not more than $10,000 per violation, imprisonment for not more than two years per violation, or by both.

CERTIFICATION

The undersigned, Administrative Assistant to the SWRCB, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 15, 1999.

AYE: James M. Stubchaer
Mary Jane Forster
John W. Brown
Arthur G. Baggett, Jr.

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché
Administrative Assistant to the Board

EXHIBIT N

DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

June 19, 2009

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JUN 2 2 2009
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter dated April 10, 2009 referencing the Los Angeles Regional Quality Control Board's Permit No. 01-182 CAS004001 (test claim permit), the Department of Finance (Finance) has reviewed the Commission's draft staff analysis for the consolidated test claims, "Municipal Storm Water and Urban Runoff Discharges," submitted by the County of Los Angeles and several cities (claimants).

Finance agrees with Commission's staff recommendation that the local agencies have sufficient authority to levy regulatory fees related to dischargers of pollutants pursuant to Public Resources Code Section 40059 and Section 7, Article XI of the California Constitution. We also agree that fees would be upheld in court if the fee is not a special tax, does not exceed the reasonable cost of the services, and is levied for related revenue purposes. As a result, the costs incurred by the local agencies are not reimbursable within the meaning of Section 6, Article XIII B of the California Constitution. Therefore, the test claim should be denied.

Finance disagrees with the Commission's draft staff analysis that the test claim permit and its provisions are state imposed reimbursable mandates absent fee authority, because the role of the Los Angeles Regional Quality Control Board (Water Board) as an "administrator" under the federal Clean Water Act (CWA) is voluntary. Finance believes that the test claim permit and its provisions are federal mandates because all dischargers are required to obtain permits, and the United States Environmental Protection Agency (EPA) and appellate court case support that the provisions of the test claim permit do not exceed the federal mandate.

Finance also asserts that the test claim permit is a federal mandate regardless of the Water Board's "voluntary" authority to administer, develop, issue, and enforce National Pollutant Discharge Elimination System (NPDES) permits for the federal government. Finance believes the test claim permit is a federal mandate because the duty to apply for a NPDES permit is required by federal law on public and private dischargers. The federal CWA mandates that dischargers (public and private) apply for and receive permits regulating discharges of pollutants. Specifically, Section 402(p)(3) of the CWA identifies the permit requirement for industrial discharges and municipal discharges. Therefore, the Water Board is imposing the test claim permit on the local agencies because the federal requirement of a permit is imposed directly by federal law on dischargers, in this case, local agencies. Pursuant to subdivision (c) of Government Code Section 17556, the test claim permit is not a reimbursable state mandate if it is imposed upon local agencies by federal law.

Finance continues to assert that the specific activities of the test claim permit do not exceed federal law even though they are not explicitly noted in the CWA. In *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal. App.4th 985, the appellate court held that the Water Board did not exceed the federal law mandating the test claim permit. The conditions of the test claim permit were found to be practical and cost-effective. Pursuant to subdivision (c) of Government Code Section 17556, an executive order that is mandated by a federal law and results in costs is not a reimbursable state mandate unless the executive order mandates costs that exceed the mandate in that federal law.

Pursuant to the CWA, the Water Board, as the administrator, coordinates the detailed permit provisions with local agencies to meet the following federal NPDES permit requirements: (1) prohibit non-stormwater discharges, and (2) reduce the discharge of pollutants to the maximum extent practicable. Permits may include best management practices, control techniques and system, design and engineering methods, and other provisions deemed appropriate for the control of pollutants [CWA, Title 33, U.S.C., Section 1342(p)(3)(B)(ii) and (iii)]. Finance notes that United States EPA has the authority to veto permits. The EPA did not veto the test claim permit and, in fact, issued a letter verifying that the test claim permit complies with, and does not exceed, the federal law. Therefore, the provisions of the test claim permit coordinated by the Water Board are federal mandates.

Finance also notes that the test claim permit is different from the issue addressed in *Long Beach Unified School District v. State of California* (*Long Beach*), as identified on page 23 of the draft staff analysis. In *Long Beach,* it was found that the courts had suggested certain steps and approaches might be helpful in alleviating racial segregation issues, while the state executive order and guidelines required specific actions. Here, the federal law requires NPDES permits to include specified requirements. Because the provisions of an NPDES permit are required by federal law to be specified, the test claim permit is a federal mandate and is not a reimbursable state mandate within the meaning of Section 6, Article XIII B of the California Constitution.

In conclusion, Finance believes that the test claim permit and its provisions are federal mandates, and that the test claim should be denied pursuant to both subdivisions (c) and (d) of Government Code Section 17556.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your April 10, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-04, CSM-03-TC-19, CSM-03-TC-20; CSM-03-TC-21

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

June 19, 2009
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Municipal Storm Water and Urban Runoff Discharges
Test Claim Number: CSM-03-TC-04, CSM-03-TC-19, CSM-03-TC-20; CSM-03-TC-21

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On 6/19/09, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Ms. Tracy Egoscue
Los Angeles Regional Water Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Mr. Leonard Kaye
County of Los Angeles
Auditor – Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Sergio Ramirez
City of Foster City, Estero Municipal
Improvement District
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B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
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Mr. Evan J. McGinley, Esq.
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Ms. Dorothy Rice
State Water Resources Control Board
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Mr. Richard Montevideo
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Ms. Juliana F. Gmur
MAXIMUS
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Mr. Steve Smith
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B-08
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Ms. Jolene Tollenaar
MGT of America
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Ms. Elizabeth Miller Jennings
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 6/19/09 at Sacramento, California.

Kelly Montelongo
Antonio Lockett

EXHIBIT O

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE DISMISSAL OF PORTIONS OF TEST CLAIM: California Regional Water Quality Control Board, Los Angeles Region, Executive Order Number 01-182, Permit Number CAS004001 (December 13, 2001), Parts 1 & 2, Pages 16-18; Part 4C & E, Pages 27-34 and 42-45; and Part 4F(5) & (6), Pages 48-51. Originally filed on September 30, 2003; And Re-filed on October 3, 2007 pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court (Case Nos. BS089769 and Bs089785) and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898; Parts 1; 2; 4.C2.c; 4.F.5.a; 4F.5.b; and 4.F.6 withdrawn on November 13, 2008, By Cities of Bellflower, Covina, Downey, Monterey Park, and Signal Hill, Claimants.	Case No.: 03-TC-21 *Stormwater Pollution Control Requirements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (Adopted on January 30, 2009)

STATEMENT OF DECISION

On November 13, 2008, the claimants requested withdrawal of portions of the test claim filing (Parts 1; 2; 4.C2.c; 4.F.5.a; 4F.5.b; and 4.F.6) on *Stormwater Pollution Control Requirements (03-TC-21)*. Claimants' request was served in writing, and a sixty-day notice of this withdrawal and dismissal was provided pursuant to California Code of Regulations, title 2, section 1183.08.

No interested parties objected to the claimant's request for withdrawal, or took over the claim by substitution of the parties, on or before January 11, 2009.

CONCLUSION

IT IS HEREBY ORDERED that Parts 1; 2; 4.C2.c; 4.F.5.a; 4F.5.b; and 4.F.6 of the test claim filing, *Stormwater Pollution Control Requirements* (03-TC-21), is dismissed, without prejudice, pursuant to California Code of Regulations, title 2, section 1183.08.

Any claimant may file a new test claim on the above-referenced test claim legislation. However, any such claim shall be subject to a new filing date and to the statute of limitations pursuant to Government Code section 17551.

Paula Higashi

PAULA HIGASHI, Executive Director

Dated: February 4, 2009

HKATHLEEN CONNELL, as Controller, etc., et al., Petitioners,
v.
THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; SANTA MARGARITA WATER DISTRICT et al., Real Parties in Interest.
No. C024295.

Court of Appeal, Third District, California.
Nov. 20, 1997.

SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment-- Necessity For Further Orders. A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--Appealable

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Judgment.
An appealable judgment or order is a jurisdictional prerequisite to an appeal.
[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14.]
(3) Appellate Review § 17--Decisions Appealable--Interlocutory Judgment.
An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.
In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.
In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.
[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]
(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.
Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes § 29--Construction--Language--Legislative Intent.
In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.
In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

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COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

James A. Curtis for Real Parties in Interest.

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); [FN1] Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting ***386** petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [FN2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207-was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

FN1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, §§ 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of

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public health." Section 60313 [FN3] of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. ***387**

> FN3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system-the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of $17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313 [FN4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. ***388**

> FN4 Section 60313 of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.
>
> "(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [FN5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, [FN6] which required reimbursement to local agencies for costs mandated by

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bursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561 [FN7]), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) [FN8] defining "costs mandated by the state." (See now Gov. Code, § 17514. [FN9]) The test claim also cited section 6 (fn. 1, *ante*).***389**

FN5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in Government Code sections 17521-17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." (Stats. 1982, ch. 1586, § 3, p. 6264.)

FN7 Government Code section 17561 provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514...."

FN8 Former Revenue and Taxation Code section 2207 provided in part: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program ...." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 Government Code section 17514 provides: " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 ...."

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies

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seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, [FN10] submitted to the Legislature a statewide cost estimate of $14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

> FN10 Former Revenue and Taxation Code section 2255 provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)
>
> The current provision is contained in Government Code section 17600, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost $14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including $945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. ***390**

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make

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that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's ***391** decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. & Tax. Code, § 2253.2, subd. (b)(4); [FN11] Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556 [FN12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

> FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

> FN12 Government Code section 17556 provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment

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stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) ***392** the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

Discussion

I. *Appealability*

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget [FN13] (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

> FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. ***393**

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

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Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist.* v. *State of California, supra,* 190 Cal.App.3d 521-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.)Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*)Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (*Morehart* ***394*** v. *County of Santa Barbara* (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtaining review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs-which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. *Standard of Review*

(4) In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. *Collateral Estoppel*

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. ***395**

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacra-*

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mento II). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *SacramentoII* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258](*Sacramento I*).) On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II*, *supra*, 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II*, *supra*, 50 Cal.3d at p. 64, original italics.) ***396**

The Supreme Court also rejected the argument that res judicata applied. "Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II*, *supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. [FN14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [20 Cal.Rptr. 321,

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369 ***397** P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

> FN14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 .... The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 ...."

In light of the Supreme Court's decision in *Sacramento II*, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist.* v. *State of California*, *supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. *Authority to Levy Fees*

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

. . . . . .

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [FN15](Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) ***398**

> FN15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in Government Code section 17556. [FN16]

> FN16 Government Code section 17556 provides in part: "The commission [formerly

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> the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

The facial constitutionality of this provision was upheld in *County of Fresno v. State of California* (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Districts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had ***399** "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [FN17]

> FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A

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motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge ...." The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical ***400** phrase, 'sufficient to pay for the mandated costs,' that's the condition with [*sic*] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay ...."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear ***401** and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature ...." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action ...." (Webster's New

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World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case.Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" ***402** increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II*, *supra*, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any

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such argument and in any event do not base our decision on that ground. ***403**

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.
The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998. ***404**

Cal.App.3.Dist.
Connell v. Superior Court
59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal. Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255

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APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES, Defendant and Respondent.
No. S082645.

Supreme Court of California
Jan. 8, 2001.

SUMMARY

A city council, seeking to establish and fund a program to remedy substandard housing conditions, adopted an ordinance that required the owners of all residential rental properties subject to inspection under the program to pay a fee. An apartment association and other groups with similar interests brought an action for declaratory and injunctive relief against the city, alleging that the fee ordinance was unconstitutional and therefore void as a charge upon real property under Prop. 218 (Cal. Const., art. XIII D). The trial court sustained the city's demurrer without leave to amend, finding that the fee was not subject to the constitutional requirements, and entered judgment for the city. (Superior Court of Los Angeles County, No. BC195216, Charles W. McCoy, Jr., Judge.) The Court of Appeal, Second Dist., Div. One, No. B130243, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that this ordinance did not fall within the scope of Cal. Const., art. XIII D, which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to fees imposed on an incident of property ownership, but rather to fees imposed on a parcel or a person as an incident of property ownership; this distinction was crucial to this case. According to its plain meaning, Cal. Const., art. XIII D applies only to exactions levied solely by virtue of property ownership. This inspection fee was imposed because the property was being rented; it ceased along with the business operation, whether or not ownership remained in the same hands. (Opinion by Mosk, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Dissenting opinion by Brown, J., with Baxter, J., concurring (see p. 845).)

HEADNOTES

Classified to California Digest of Official Reports

(1) Appellate Review § 145--Scope of Review--Questions of Law and Fact-- Interpretation of Constitutional Provision.
The interpretation of a constitutional provision, passed by voter initiative, is a question of law for the appellate courts to decide on independent review of the facts.

(2a, 2b, 2c) Property Taxes § 7.6--Real Property Tax Limitation-- Proposition 218--Construction--In Context of Proposition 13.
Prop. 218, which added Cal. Const., art. XIII C and art. XIII D, can best be understood against its historical background, which began in 1978 with the adoption of Prop. 13, the purpose of which was to cut local property taxes. Prop. 218 buttressed the limitations in Prop. 13 on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges. Prop. 218 must be construed in the context of Prop. 13. Prop. 218 focuses on exactions, whether they be called taxes, fees, or charges, that are directly associated with property ownership.

(3a, 3b, 3c, 3d, 3e) Property Taxes § 7.6--Real Property Tax Limitation--Proposition 218:Municipalities § 54--Ordinances--Fee Imposed on Owners of Residential Rental Properties--Validity.
A city ordinance that required payment of a fee by the owners of all residential rental properties subject to inspection under a program designed to remedy substandard housing conditions did not fall within the scope of Prop. 218 (Cal. Const., art. XIII D), which only restricts fees imposed directly on property owners in their capacity as such. The inspection fee was not imposed on landlords in their capacity as property owners, but rather in their capacity as business owners. This constitutional provision does not refer to

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